



SOCIAL
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INVESTIGATION SYSTEM REFORM

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*Promoting Rule of Law
in Georgia (PROLoG)*

INVESTIGATION SYSTEM REFORM

The independence of the investigation is a major challenge for the criminal justice system in the country. The current legislation does not provide sufficient guarantees for the investigation to be conducted in an objective, competent and impartial manner. A few years ago, the state commenced work on the reform in response to existing challenges. During the parliamentary elections, the issue of reform was active on a larger scale. It is commendable that the ruling political party took political responsibility for the reform.

At this stage, the state needs to be able to implement the reform; to create an open and inclusive working process, so that the reform implementation is not merely formal, is carried out properly, taking into account all the fundamentally important issues.

EXISTING CHALLENGES

In terms of the independence of the investigation, there are significant challenges at both the institutional and functional levels.

Challenges at the institutional level

- Two different functions in the hands of one agency - under the current law, the prosecutor's office exercises both prosecution and investigation functions, simultaneously. It is the prosecutor's office that is empowered to launch an investigation into the most important types of cases, including those allegedly committed by political officials or alleged crimes involving those persons holding political positions. Accumulation of prosecution and investigative functions within one agency undermines the independence of the investigation.
- Obfuscation of powers - In many investigative bodies, operative and investigative divisions are not separated. Combining investigative and operative functions into one service leads to the obfuscation of functions, overwork of investigators, and reduction of the transparency of the process and the quality of investigation in general.
- Qualifications of investigators - Investigators of all agencies don't need to have a higher legal education. Inadequate education has a significant impact on the quality of the investigation and makes the investigator/investigation even more dependent on the prosecutor.

CHALLENGES IN TERMS OF FUNCTIONAL INDEPENDENCE

- Status of the investigator - the investigator, on the one hand, is responsible for conducting the investigation thoroughly, fully, and objectively, but at the same time, investigator is a party on the prosecution side. Thus, the investigator's procedural status does not allow s/he to act independently.
- Wide discretionary power of the prosecutor - the authority of the prosecutor in the investigation process is excessive:
 - Prosecutor's instructions to the investigator are binding;
 - The investigator does not have the authority to make a decision independently of the prosecutor to carry out a specific (including simple) investigative action;
 - The prosecutor may withdraw a case from one investigator and transfer it to another investigator;
 - The prosecutor may decide on a complaint against the action of the investigator;
 - The prosecutor may conduct a full-scale investigation.

GIVEN THAT THE INVESTIGATOR IS NOT A NEUTRAL PERSON, IS A PARTY ON THE PROSECUTION SIDE, CANNOT ACT INDEPENDENTLY OF THE PROSECUTOR, AND IS OBLIGED TO OBEY THEIR INSTRUCTIONS, THE DEFENSE REMAINS WITHOUT AN OBJECTIVE INVESTIGATION. SUCH REGULATION OF THE INVESTIGATION PROCESS STRIPS THE ADVERSARIAL PROCESS OF ITS MEANING. INsofar AS THE INVESTIGATION IN THIS SITUATION IS AIMED NOT AT ESTABLISHING OBJECTIVE CIRCUMSTANCES OF THE CASE, BUT AT ACHIEVING A SUCCESSFUL PROSECUTION.

MAIN DIRECTIONS OF THE REFORM

In order for the reform not to be formal and to achieve concrete results, it is necessary to consider several key issues:

INSTITUTIONALLY

- The prosecutor's office should not have the authority to investigate and should be only the body authorized to conduct the prosecution;
- Investigative subordination should be defined by law;
- Investigative and operative divisions should be clearly separated at all agencies;
- Legal education should be a mandatory qualification requirement for investigators of all investigative bodies; The reform should provide for the training of existing investigators to improve their skills.
- The investigation should be led not by the prosecutor, but by the head of the investigative unit;
- The main purpose of the procedural oversight of the investigation by the prosecutor should be to ensure the lawfulness of the investigation. Procedural oversight, in practice, should not envisage planning and conducting investigation;

FUNCTIONALLY

- The investigator needs to be a neutral subject in the process. The investigator should not be a party on the prosecution side, along with the prosecutor;
- The prosecutor's directives should not be mandatory for the investigator, they should only be recommendatory at all stages of the process;
- The investigator should be able to decide independently on the conduct of a specific investigative action;
- The investigator should be able to apply to a court, independent of the prosecutor, to obtain a court order for enforcing an investigative action that may restrict human rights;
- The prosecutor should not have the right to conduct an investigation;
- The prosecutor should only be authorized to conduct the prosecution.

The reform of the investigation system requires large-scale changes. It is necessary to determine the reasonable time frame for the reform and divide it into appropriate stages.