**EMC assesses the restricted materials containing state secrets in Machalikashvili’s case**

The Human Rights Education and Monitoring Centre (EMC) assesses the restricted materials containing state secrets in the investigation of Temirlan Machalikashvili’s death case, including the records of the member of the Special Forces Unit who fired the shot and other participants in the special operation, and points out the formal, ineffective and illusory nature of the investigation.

**Introduction**

As is known to the public , EMC requested access to the restricted part of the case from the very [beginning](https://emc.org.ge/ka/products/emc-prokuraturas-temirlan-machlikashvilis-sakmis-arsebit-mtkitsebulebebze-dashvebisken-moutsodebs) (taking into consideration the personal identification data protection of the members of the Special ForcesUnit), and yet the Tbilisi Prosecutor’s Office continues to restrict these documents up to the present day on grounds of the State Secrets Protection law. It was only on January 10th of this year that we were granted access to the restricted materials, when the European Court initiated an communication on the case of *Machalikashvili and others v. Georgia,* and requested that the Georgian government share with them full information related to the case. As the investigating body explained, they completed their investigation through the materials containing the state secrets data and shared with us **all information** obtained by the investigation (with the state secrets redacted).

The case involves the records of the interrogations of 32 members of the Special Forces Unit, of several security service officers and relevant correspondence between the Tbilisi Prosecutor’s Office and the State Security Agency relating to the decision-taking process regarding the special operation and its subsequent implementation. As it has become known to us from the case materials, the other significant documents, to which we have been requesting access from the prosecutor’s office since the very beginning of the investigation, such as the verified decision for carrying out the special operation, its written plan, the instructions and guidelines given to the members of the Special Forces Unit, and the mechanisms and documents of monitoring and reporting throughout the process of implementation of the special operation, were not provided in a written form by the State Security Agency and were based only upon oral communication.

It is also noteworthy that all the investigative activities in this part of the case have been carried out relatively late, well after the investigation began, and the State Security Office continually responded to the requests of the Tbilisi Prosecutor’s Office in a delayed manner. In particular, the address of the investigating body dated December 30, 2017, which requested that the identities of the persons involved in the special operation, including those who carried out the shooting, be revealed, was responded to by the state Security Office only on February 1, 2018.

Below we shall discuss in detail the content of the material shared with us on January 10th and the problems highlighted therein.

1. **Information confirmed by the records of the interrogations of the member of the Special Forces Unit who carried out the shooting and the other people who participated in the special operation**

From the outset of the investigation, the State Security Agency have tried to justify the use of lethal force against Machalikashvili by arguing thatMachalikashvili was threatening the lives of the members of the Special Forces Unit with a hand grenade when they walked into his bedroom. Considering this version of events, it is of crucial significance when determining the truth, that the evidence related to the entry of the Special Forces Unit into Machalikashvili’s bedroom, their possible communication with him and the factual preconditions of using force against him, be fully analyzed. In this respect the most important evidence is found in the witness statements of the members of the Special Forces who were present during the raid.

As the materials prove, the member of the Special Forces who carried out the shooting was interrogated several times. However, he submitted the actual information to the investigation body on February 1, 2018 and on August 6, 2019.

In the record of the interrogation dated to February 1, 2018, the member of the Special Forces points out that on December 26, 2017, at about 3.30-4.00 am the special operation commenced in Duisi. According to the orders of the commander, he in particular, and three colleagues, were ordered to enter the bedrooms located on the second floor of Temirlan Machalikashvili’s house and the other colleagues were ordered to enter the rooms on the first floor. According to the witness statement, he, together with another colleague, walked into the first room on the right hand of the balcony on the second floor. Before he entered the room, he saw that the light in the room was on, and the door was shut but not locked. He opened the door at once, which caused a noise and took approximately two steps into the room. He was followed step by step, by his colleague.

It is worth noting that the report **does not contain** information about whether or not the members of the Special Forces had information that Temirlan Machalikashvili was in the first bedroom, nor does it indicate whether they had previously seen photos of the other members of his family.

According to the person who carried out the shooting, immediately upon entering the room he saw T. Machalikashvili semi-reclined in his bed with his duvet pulled up to his chin, so that he could not see his hands. According to the member of the Special Forces Unit he immediately asked Temirlan Machalikashvili to show him his hands and not to make another move. Yet, T. Machalikashvili did not obey his command, pushed his duvet away, leaned to his right side, pulled a hand grenade out of his bed and tried to activate it when the Special Forces officer fired in the direction of Temirlan Machalikashvili who was shot in head, and the grenade dropped down from his hand. Not even one Special Forces officer mentions whether Temirlan Machalikashvili was holding a phone or not. It has never appeared even as a question on the side of the Prosecutor’s office itself.

According to the Special Forces officer, he approached the bed after the gunfire, and pulled away Temirlan’s duvet, in order to see whether there was any other dangerous object around him. The other officer followed in his footsteps, and after a while another office also walked into the room after they had completed the security check of the area. The person who carried out the shooting left the room, walked out to the balcony, where he saw that Temirlan Machalikashvili’s officer, Nata Machalikashvili was lying on the floor while another Special Forces officer was standing over her. He helped Nata Machalikashvili to get up and walked her down the stairs to the first floor, where Malkhaz Machalikashvili was, with whom he stayed for a while, and then went back up to T. Machalikashvili’s bedroom. According to him at that time the doctors of the State Security medical service were providing first aid to T. Machalikashvili and were awaiting an ambulance.

The Special Forces officer in this report also emphasizes that a cartridge was jammed in his weapon and he needed to replace part of his machine gun. According to him, the cartridge did not come out and he had to take it out only after going back to his unit, and removed it after discharging the device. The officer of the relevant unit of the State Security Agency replaced the damaged part of the gun, yet this action has not been documented anywhere. According to the Special Forces officer guns are usually checked prior to military action, yet, he says in this case the shooting caused damage of the mechanism responsible for pulling the cartridge out.

The information given in the record of the interrogation of the Special Forces officer who carried out the shooting was repeated by his colleague who was in the room. He added that T. Machalikashvili was holding the hand grenade in his right hand, while the two officers of the Special Forces who were standing on the balcony told the investigating officers that they heard the sound of shooting coming from the bedroom unexpectedly, and after walking into the room the shooter told them that T. Machalikashvili did not obey his command, tried to explode the grenade and therefore he had to shoot him. The officer who walked into the room says that the hand grenade was dropped on the floor. Yet, there is no information in the report about where exactly the grenade dropped on the floor.

It should be mentioned that the records of the interrogations of the other members of the Special Forces are essentially identical, although some of them did not even go into the Machalikashvili’s bedroom at all as they only learned about what happened on the handheld radio after the shooting, later they obtained the first hand information from the shooting officer himself after getting back to their unit, who told them that T. Machalikashvili did not obey his command and he carried out the shooting.

Yet, it is important to note that the records of interrogations contain certain inconsistencies regarding the time of shooting. In particular, some officers of the Special Forces point out that the shooting took place several minutes after the start of the special operation within an approximate 10 minute time period, while according to those officers who were in the yard, it happened within seconds after the main group got up onto the second floor, they heard later on the radio that the target was wounded.

Besides the time related inconsistencies several issues are also worth highlighting. First of all we must note, that the investigation office interrogated the officer who carried out the shooting **only** a month later. Also, according to the officer’s report, Temirlan pulled out the hand grenade from his bed, yet it does not specify from **which part of the bed nor how did he pull it out.** Also, the investigation body never asked a question about the communication the officer might have had with Temirlan in the moment of entering the room and after giving him the first warning. At the same time, according to the Special Forces officers standing outside on the balcony, the sound of shooting came from the room unexpectedly. Considering their location as they described themselves (they say that they were standing close to the room) and considering the fact that the officer had opened the door before, they should have heard his warning and any communication that he might have had with Machalikashvili. Yet, the records of interrogations give us an impression that they had not heard any explanation on the side of the shooting officer and the sound of shooting was unexpected, which supports the possibility that the officer carried out shooting in the direction of T. Machalikashviili while entering the room immediately without a warning, which naturally deepens the suspicion about the absence of the hand grenade in the room.

Besides, according to the statement of the State Security, which has already been [assessed](https://emc.org.ge/ka/products/emc-machalikashvilis-sakmeze-sus-is-maghali-tanamdebobis-pirebis-gamokitkhvis-protsess-afasebs) by EMC, it is certain that the officers of the Special Forces Unit stayed about two hours at Temirlan Machalikashvili’s house and other people including the investigators of the State Security Agency had no access to the house during that time.

1. **Assessment of the location of Temirlan Machalikashvili’s body at the moment of shooting, the location of the grenade after the gunfire and the further actions related to it**

The significant point in examining whether T. Machalikashvili held a hand grenade and whether he had a chance to activate it would be to consider the location of his body in the moment of shooting and the location of the hand grenade after the shooting. The only way to answer these questions and rebuild the crime scene is surely to base it upon the witness statements of the officers who were present in the room and also upon the conclusions drawn by the investigating experts. These questions were not raised at the initial interrogations of the shooting officer and the other members of the Special Forces Unit. These questions are included only in the records of the interrogations on August 6, 2019. To be more precise the questions were asked only after the National Forensics Bureau and independent experts had already defined the location of Temirlan Machalikashvili’s body at the moment of the shooting, which confirmed that T. Machalikashvili was in a reclined position and excluded a possibility of any other position in the moment when he was shot.

According to the first witness statement of the Special Forces officer, T. Machalikashvili leaned to his right at first, then to his left and tried to activate the hand grenade. Yet, after the forensic analysis proved that T. Machalikashvili was beneath the traces of shooting on the top of his bed and could not possibly be in a vertical position, the same officer specifies during the later interrogation that T. Machalikashvili was semi-reclined in the moment when he tried to bend from right to left and he did not have his head leaning against the bed. In the record it is not clear what is meant by semi-reclined: whether he was sitting up with his torso or did he only have his head elevated? According to the experts’ analysis (ballistic expertise, complex court medical expertise) it has been confirmed that traces of the shooting were found on his pillow and also on top of his bed. It is precisely by the simulation carried out within the framework of this observed damage that it has been confirmed that T. Machalikashvili had his head slightly elevated while being reclined in his bed.

As to the location of the hand grenade at the initial stage of the interrogation, after studying the visual material it has become evident to us that the hand grenade allegedly belonging to T. Machalikashvili was located on a small rug on the left from the entrance door of his bedroom. It naturally raises the question: how could the hand grenade be dropped on a rug far away from the bed, to which the investigating officers replied that for security purposes the minesweepers had to move and deactivate it. In the records of interrogations the minesweepers say that after deactivation, they put the grenade exactly in the place where they found it upon their arrival, namely on the rug on the left from the door and also put the fuse several centimeters away from it. It seems that moving the grenade from its initial position happened not by the minesweepers but by the officers of the Special Forces who were in Temirlan Machalikashvili’s room.

In the record of the interrogation dated to August 6, 2019 the shooting officer claims that T. Machalikashvili dropped the hand grenade after he was shot and it fell on his bed (yet he does not specify where exactly on the bed). He says he took the grenade, which had a fuse attached to it and moved it to a small rug on the left from the door, and only after this did the minesweepers deactivate the grenade. In spite of such an explanation, the investigating body never asked a question about how safe it was to move a fused grenade to another place before deactivation and why did the shooter not call the minesweepers immediately. Also, the investigating body never asked a question about why the interested person himself decided to misplace important evidence, and why there is no evidence proving the initial location of the hand grenade.

It is only natural that such explanations and every further specification on the side of the Special Forces officers raises suspicions about the intention of the investigating body in trying to avoid asking specific questions, while the officer of the Special Forces Unit is limiting his answers to general explanations and trying to clarify his witness statement in agreement with the various investigating activities carried out in regard to specific circumstances.

1. **Other particular circumstances established by the restricted part of the case**

The study of the so called restricted materials in the case confirmed once again that the special operation was carried out in Duisi on December 26, 2017 without a proper written plan and instructions. No written report was submitted after the operation was over. The members of Special Forces Unit confirmed that their instructors introduced the action plan orally, no written plan existed and they never received further guidelines either.

The main information they received was that the people targeted for arrest were in touch with A. Chataev and they might have been equipped with weapons. Yet, it is not mentioned whether the State Security Office had concrete information or whether they held a secret investigation about the people to be arrested – nor is there a relevant question raised over the issue.

Also, according to the person apparently in charge of the operation, nobody has submitted a written report about the special operation and he simply made an oral declaration to the authorities about what happened.

The people who participated in the operation also condemned the fact of improper conduct towards the members of T. Machalikashvili’s family, yet, they admit that they put the family members in separate rooms and did not let them move to the other room before the Special Forces Unit left their house.

At the same time, several officers of the Special Forces Unit point out that T. Machalikashvili was not wearing a hat and nobody found headphones in his bed. In spite of this information, the ballistic expertise found that the hat taken from Machalikashvili’s room has traces of gunfire, and the photo obtained by EMC proves that there were headphones in Temirlan Machalikashvili’s bed, which increases the chance that he might have been using them at the moment of shooting. **In this respect, it should be noted that even the officers of the Special Forces Unit cannot insist categorically whether T. Machalikashvili heard their arrival on the balcony and whether he could get ready or not.**

**Summary**

According to the all above mentioned, we can say that the investigating body delayed and then held somewhat formally the interrogation of those members of special forces group who implemented the actual shooting and of those who were present. Also, they did not ask them critical questions which would have been essential for finding out the truth, and the following circumstances have not been clarified:

* From which exact part of the bed, and how, did Temirlan Machaikashvili take a hand grenade; if he lifted a hand grenade, then why did he go back to the horizontal position and how would it be possible for him to activate the grenade in that position?
* The Prosecutor’s office has not asked questions about Temirlan Machalikashvili’s use of his phone while the information that we introduced confirms that Temirlan was active on a social network a few minutes just before the special operation started;
* What kind of communication took place between Temirlan and the member of the Special Forces before the shooting, why did he shoot him in the area of his head and why did not he attempt to disable his so called resistance in a different way?
* Where the hand grenade was located initially after the gunfire and was it safe to move it to a different place independently by the member of Special Forces Unit?

The records of interrogation of the State Security Officers reveals fundamental inconsistency. The major essential inconsistencies are found in the entry of the Special Forces Unit into the room and in the moments of the shooting. According to those members of the Special Forces Unit who were inside the room, the gunfire took place within **10 minutes** after the commencement of the special operation, while the other members of the unit say that it happened within several **seconds**. It is worth noticing that the Machalikashvili’s family, who were also present at the time, also point out the simultaneity of the entry into the room and shooting.

Considering all the above, EMC reckons that studying the additional materials **revealed and confirmed once again** that

1. **There was professional misconduct in the way The State Security Agency planned the special operation without the analysis of the risks and considerations of preventive measures.** The State Security Agency did not make an effort in studying appropriately the persons to be arrested and the possible risks coming from them. The large scale operation was planned only upon the basis of general dangers. Particularly, it is not mentioned in the case materials nor were questions raised about whether the State Security Office possessed or carried out some secret investigation against the people in question. The Special Forces officers only point out all they knew was that the people were connected with A. Chataev. Besides, the records of interrogation **do not contain** information about whether the members of the Special Forces Unit had information whether Temirlan Machalikashvili was in the first bedroom and also whether they had seen previously or not photos of the other members of his family.
2. **The Special operation was carried out without a proper analysis, preparation and coordination.** The State Security Agency was not in possession of a written supported decision and a written plan for the special operation. Nor had any clear written instructions and guidelines been given to the officers of the Special Forces Unit during the operation or the monitoring procedures after the operation. It is obvious that a neglect for analysis, prevention and monitoring procedures while using methods of suppression on such a scale would have created a very high risk of violation of human rights. This verdict refers to the internal institutional challenges within the State Security Agency and poses the need for the radical changes in current practice.
3. **The official statement disseminated by the State Security Agency at the very first stage of the investigation, alleging that Temirlan Machalikashvili tried to attack the Special Forces Unit using a hand grenade, has been found to be even weaker and groundless**. The descriptions of the Special Forces officers regarding the alleged resistance appear to be imprecise, unsupported and inconsistent, thus making the State Security Agency’s claims over the inevitability of using force even less credible.
4. **At the moment of using force the member of the Special Forces Unit failed the proportionality principle** which is evidenced by not giving a warning on his side as well as by not trying other options for disabling the alleged resistance on the side of Temirlan.
5. **The members of the Special Forces Unit confirmed that during a few hours after the gunfire the Special Forces Unit (the interested party) had full control over the room of Temirlan Machalikashvili and the State Security investigators had no access to the room.** In those circumstances, which proved according to the testimony of the officers of the Special Forces Unit that the change of the so called initial location of the hand grenade was done not by the minesweepers but by interested Special Forces officers, it is obvious that our suspicions about the falsifying of evidences have increased.

**On the whole, our assessment proves that the ongoing investigation is formal, ineffective and illusory and the obviously arbitrary intervention of the State Security Agency in the process of investigation fails the fundamental principle of institutional autonomy of investigation.**

Considering all the above EMC will apply additional requests to the investigation including:

1. To carry out an investigative experiment with the aim of comparing the information provided to the investigation by the shooting officer with the already established factual circumstances as well as with the aim of defining Temirlan Machalikashvili’s opportunity for activating the hand grenade;
2. Interrogating again some of the officers of the Special Forces Unit and asking them those clarifying questions which were not asked previously.

EMC will share with public the further news regarding the investigation.