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REFORM VISION ON THE JUDICIARY AND LAW ENFORCEMENT

(RECOMMENDATIONS PREPARED FOR THE 2024 PARLIAMENTARY ELECTIONS)

Reform Vision on the Judiciary and Law Enforcement

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The reforms proposed in this document have been developed with the understanding that the current model of the separation of powers and the country's constitutional framework remain unchanged. Therefore, the main limitation of our visions is the current constitutional-legal order. If the balance between governmental institutions and political power is fundamentally reconsidered, it may become necessary to modify the existing visions to adapt them to the new constitutional and political reality.

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Introduction

A fundamental challenge for Georgian democracy is the concentration of political power in the hands of certain individuals or parties and its subsequent manipulation, which influences not only the political and social agenda of the country but also democratic institutions and their functions. Unfortunately, since gaining independence, Georgia has been unable to establish sustainable democratic institutions that are free from the influence of political or other private interests. Today, this problem is even more evident, as the consolidation of power takes place informally, outside the constitutional-legal framework. As a result, the systems of accountability and political responsibility have been completely dismantled. Existing constitutional institutions merely serve to formalize pre-decided political decisions, while significant political decisions are made outside these institutions.

The problem of power abuse is exacerbated by weak institutions that are subject to party influence. A clear example of this is the judiciary, which fails to fulfill its role as a balancer and counterweight to other branches of government. Instead, the judiciary is often used as a tool for political retribution. A judiciary driven by party or narrow corporate interests is also problematic in that it fails to instill respect for the law in society, cannot consolidate society around shared norms and principles of justice, and contributes to a sense of distrust and instability in almost every sphere of life.

Beyond a submissive judiciary, another extreme problem for Georgian democracy is the law enforcement system, which is equipped with excessive power and lacks accountability, and is, in turn, also unable to withstand political influence. Unfortunately, in our reality, the instrumentalization of the police and the prosecutor's office for party interests has become an established practice, and there are frequent instances where compliance with party or private interests takes precedence over the requirements of the law. Beyond politicization, the punitive and overly controlling policies

of these agencies are also problematic. Despite the official abandonment of the zero-tolerance policy on crime after 2012, Georgian legislation and crime-fighting policy have not been fundamentally revised, and our citizens remain at risk of unjust punishments. A clear example of this is the country's drug policy, which has not yet shifted to a prevention, care, and support-based approach, and still relies on harsh penalties.

In recent years, there has also been an increase in the instrumentalization of security agencies and, more broadly, security issues for party purposes. A central aspect of this problem is the State Security Service, which is extremely secretive and equipped with excessive power. Today, this agency is one of the most powerful political tools, yet much of its activities remain hidden, and there are no strong mechanisms of external oversight in the country to ensure the agency's effective accountability.

This document presents reform visions in the areas of justice and law enforcement. It consolidates the key reform issues concerning the institutional setup of the common courts system, the prosecutor's office, the police, the State Security Service, and the Special Investigative Service. Additionally, it offers perspectives on reviewing the existing criminal justice and drug policies. The document also includes recommendations regarding the problems of police misconduct and their prevention.

1
THE JUDICIAL SYSTEM FREE FROM POLITICAL AND CLAN INFLUENCE

Despite numerous reforms carried out over the past decade, the common courts system continues to face fundamental challenges and is experiencing a crisis of legitimacy and trust. In some cases, superficial attempts to improve the judiciary have even facilitated the consolidation of power within the system and the increase of informal influences. As a result, today the judiciary is an extremely closed, unaccountable institution, still heavily subject to external political and internal corporate influences.

The High Council of Justice, which is the main body responsible for administering the system and managing judges' careers, has itself become the principal threat to the independence of both the judiciary and individual judges due to the excessive concentration of power in its hands. At the same time, the Council is an exceptionally closed and opaque institution, which increases the risk of arbitrary decisions and further diminishes public trust, both in this specific body and in the judiciary as a whole. The closed nature of the judicial system is also evident in the fact that there is almost no influx of qualified and conscientious personnel from outside the system. As a result, today we do not have enough judges, leading to delays in case proceedings and low-quality justice. Furthermore, the same small group of individuals continuously rotates in key administrative positions.

Although in recent years there have been improvements in the guarantees for individual judges' independence in certain areas, the current legislation and institutional setup still leave judges vulnerable to internal corporate and external influences. The opaque and flawed system of appointments and promotions, vague and unfair disciplinary mechanisms, secondment rules, and other mechanisms significantly increase the risk of undue influence over judges.

The need for fundamental reforms in the judiciary has also been highlighted in the European Commission's recommendations for 2022 and 2023.[1]

Specifically, a comprehensive reform of the judiciary, particularly the High Council of Justice, as well as improvements in matters related to the careers of individual judges (appointments, secondments, disciplinary measures), and the introduction of a extraordinary mechanism for checking the integrity of individuals appointed or elected to key positions (including the High Council of Justice, the Supreme Court, and court chairpersons) are critical steps the country must take to meet its goals for European integration.

The next phase of judicial reform should be planned with consideration of the problems that have been systematically identified so far, the local political and institutional context, and relevant international recommendations. The reform of the judicial system must, first and foremost, include the following steps:

1 Social Justice Center, Judicial Reform, and European Integration – Status and Future Prospects of the Implementation of the European Commission's 3rd Recommendation, 2023. Available at: https://cutt.ly/kemeH1TJ (Accessed: 26.08.2024).

Identifying Problems in the Judicial System and Developing a Reform Strategy

- A detailed analysis and political assessment of the reforms carried out in the common courts system, as well as the current challenges, should be conducted. The goal should be to comprehensively and deeply plan and implement future reforms;
- A reform strategy and action plan for the judicial system should be developed on the basis of broad societal and political consensus, taking into account the challenges currently facing the system, the local political, historical, and cultural context, and relevant international recommendations.

Fundamental Institutional Reform of the Common Courts System

- The powers and functions of the High Council of Justice must be fundamentally revised to decentralize the excessive concentration of power in its hands and to distribute competencies more broadly across other judicial administration bodies;
- The Council decisions on key issues (such as the appointment/nomination, promotion/transfer, disciplinary actions of judges, and the election/dismissal of the independent inspector) should require the support of two-thirds of both judge and non-judge members, ensuring the effective involvement of non-judge members and increasing the Council's public accountability;
- The authority to serve as a member of the High Council of Justice should be restricted for individuals holding administrative positions in the courts (e.g., court/panel/chamber chairpersons) to prevent excessive power concentration in the hands of the same individuals;
- To ensure broader participation of judges in judicial self-governance, the possibility of reappointing Council members for a second term should be limited;
- Regional, hierarchical, and gender quotas should be established within the Council.

Reducing the Risks of Corporatism and Informal Influence through Decentralization of Power

- The work and decision-making process of the Judges' Conference must become more transparent. Specifically, the visions and action plans of candidates to be elected at the conference should be made known in advance. Judges attending the conference should base their decisions on these criteria when selecting members of the High Council of Justice. Additionally, formats should be encouraged/created for asking questions to candidate and hearing their views on current judicial issues. If a judge elected to an administrative position leaves before the end of his/her term, both the Conference and the public must be provided with an explanation for the resignation;
- The High School of Justice should become more independent from the High Council of Justice. Specifically, the influence of the Council over the process of forming the Independent Board of the school should be reduced. Additionally, to improve the school's effectiveness, it should be provided with adequate resources to more effectively prepare the necessary personnel for entry into the system;
- The authority to elect court chairpersons should be granted to the judges of that same court (rather than the High Council of Justice). Furthermore, it is important to reduce the privileges enjoyed by chairpersons due to their managerial functions (e.g., taking into account the workload of other judges, the percentage of the chairpersons' workload should be increased to a reasonable level; the ability of chairpersons to make vague and unsubstantiated decisions regarding case distribution should be restricted, and other similar measures);
- A fairly and democratically composed Council should ensure the influx of new personnel into the system and the appointment of judges who meet the qualifications and integrity requirements stipulated by law.

Increasing Career (appointment/nomination, promotion, secondment) and Financial Independence Guarantees for Judges

- The election of Supreme Court judges by Parliament should require a qualified majority, not a simple one, to prevent decisions from being made by a single party and to avoid appointments based on political loyalty;
- The law must establish clear and objective criteria for the promotion of judges and their appointment without competition (currently, the definition of these criteria falls under the competence of the Council, which has failed to fulfill this function for over 13 years);
- When deciding on a judge's secondment, the judge's consent must be mandatory. In the absence of such consent, the law must provide the following guarantees: the principle of random selection of judges, limitations on geographical and jurisdictional scope, clear and exhaustive regulation of the conditions for secondment, limited duration of secondment, and an obligation to justify the decision (the Venice Commission's recommendations should be considered in this regard)[2];
- The amount of remuneration for judges of the common courts, members of the High Council of Justice, and the independent Inspector, as well as the grounds for granting additional benefits, must be clearly regulated by the Organic Law of Georgia "On Common Courts" to minimize the Council's discretionary powers in this area, as this poses risks to judicial independence.

2 EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), COMPILATION OF VENICE COMMISSION OPINIONS AND REPORTS CONCERNING JUDGES, 2023. P. 58.

Refining the System of Disciplinary Liability of Judges

- The Independent Inspector, who plays a crucial role in the system of disciplinary liability of judges, must be appointed through a transparent competition process and under high public scrutiny. The High Council of Justice should make decisions regarding the appointment and dismissal of the Inspector with a two-thirds majority of both judge and non-judge members;
- Decisions to initiate disciplinary proceedings and impose a disciplinary liability on judges must also be made by the High Council of Justice with a two-thirds majority;
- To address the problem of delays in disciplinary proceedings, procedural time limits must be established at each stage to ensure both the efficiency of the process and the opportunity for a thorough consideration of the case;
- The composition of disciplinary misconducts must be refined to minimize the risk of arbitrary interpretation and infringement on judicial independence.

Refining the Rules for Case Distribution and Reducing Judges' Workload

- The conditions for exceptions to the principle of random case distribution in the electronic distribution system must be reduced by law. Currently, only 62% of cases submitted to the common courts are assigned through the random selection principle;
- To fully implement the electronic case distribution system, it is necessary to ensure an adequate number of judges in the common courts and introduce an effective case management system;
- To ensure an equal workload for judges during electronic case distribution, the workload percentage for judges holding administrative positions should also be increased, considering their objective administrative responsibilities;

- In the case distribution process, additional criteria such as the complexity and weight of the case must be considered;
- The role of chairpersons in the electronic case distribution system should be minimized. Furthermore, the law must clearly define the obligation to provide justification for decisions made in exercising their authority and establish the procedural basis for carrying out these responsibilities.

Increasing the Transparency and Accountability of the Judicial System:

- Court decisions must be proactively published in accordance with the requirements of the Organic Law of Georgia "On Common Courts";
- In accordance with the requirements of the Organic Law, decisions made by the High Council of Justice must be proactively published. (Despite this legal obligation, the Council has not fulfilled this duty for over a year.) Additionally, the High Council of Justice must ensure that citizens can attend public sessions without hindrance;
- The release of public information by the administrative bodies of the common courts must comply with legislative requirements. The High Council of Justice must also ensure the publication of annual reports on its activities.

An Extraordinary Integrity Check Mechanism of Judges:

- At the initial stage, it is important for Parliament to express its political will through an appropriate political act (for example, a resolution) and commit to ensuring the implementation of this mechanism, which should be followed by the initiation of a transparent, inclusive, and professional work process;

- A package of necessary constitutional and legislative amendments must be prepared, which will include all essential elements required for the implementation of the mechanism (including the bodies authorized to conduct the review/their mandate, the circle of persons subject to review and their rights, the review criteria, the transitional legal regime during the review process, the legal consequences of the review, and other relevant details). The legal framework must consider all relevant international standards of the rule of law and human rights;
- The integrity check process must be carried out in close cooperation with relevant international organizations and the appropriate institutions of the European Union, with the goal of obtaining proper legal expertise and other forms of support. Additionally, international experts must be involved in this process with a decisive role.

2
A POLITICALLY NEUTRAL AND ACCOUNTABLE PROSECUTOR'S OFFICE

Despite numerous reforms implemented in the prosecutor's office since 2013, the institution remains vulnerable to political and *party* influences. Since 2015, the country has had a Prosecutorial Council, which was formally intended to guarantee the independence of the prosecutor's office. However, it has not evolved into an effective institution and primarily holds advisory powers. Additionally, the Council lacks a proper balance between political and internal corporate interests. Most importantly, the division of competencies between the Prosecutorial Council and the General Prosecutor remains inadequate, with the latter still possessing excessive power.

The powers of the General Prosecutor extend not only to institutional or justice policy-related issues but also allow direct influence over any individual case. The issue is exacerbated by the procedure for appointing the General Prosecutor, which does not ensure that the position is filled based on professional criteria and with broad political and public consensus. The rule allowing the General Prosecutor to be appointed by a simple majority in Parliament encourages the selection of candidates based on party loyalty, which subsequently affects the politicization of the entire prosecutor's office.

To ensure the political neutrality of the prosecutor's office and to strengthen individual prosecutors, as well as to increase the accountability of the entire system, the following steps must be taken:

Appointment of the General Prosecutor by Political Consensus and Balancing Their Power:

- To reduce political influence on the prosecutor's office, it is necessary for Parliament to make decisions regarding the appointment of the General Prosecutor by a qualified majority;
- The powers of the General Prosecutor should be limited to making decisions on institutional and criminal justice policy issues. The General Prosecutor should be restricted from issuing mandatory directives or interfering in individual cases in any other form.

Establishing Democratic Rules for the Composition of the Prosecutorial Council and Strengthening its Functions

- In accordance with the recommendation of the Venice Commission, Parliament should elect members of the Prosecutorial Council by a qualified majority.
- To ensure the complete distancing of the prosecutor's office from the Ministry of Justice and the government cabinet, the Minister of Justice should be stripped of the authority to nominate one member to the Prosecutorial Council. Similarly, members of Parliament should not be included in the Council.
- Additionally, the method for electing prosecutor members of the Council should be revised, and the requirement for candidates to be supported by a 30-member initiative group should be abolished. Furthermore, regional and hierarchical/positional quotas should be established for prosecutor members in the Council.

- The balance between prosecutor and non-prosecutor members in the Prosecutorial Council must be revised, with the majority of the Council's members being selected by Parliament based on professional or academic qualifications.
- The role of the Prosecutorial Council should be expanded in the decision-making process regarding personnel and administrative matters (appointment, promotion, and disciplinary measures of prosecutors).
- A system of mutual balance between the General Prosecutor and the Prosecutorial Council should be established. Specifically, for issues such as developing criminal justice policy guidelines, determining staffing numbers, defining regulations, and other matters, the General Prosecutor should prepare the draft decision, which will then be approved by the Prosecutorial Council.

Ensuring Transparency and Accountability in the Prosecutor's Office and Empowering Individual Prosecutors

- It is essential to publish the document on criminal justice policy guidelines, as it is crucial for ensuring transparency in the prosecutor's office and defining the state's policy towards various crimes. The guidelines cover the primary approaches and strategies related to criminal prosecution and plea agreements. Therefore, for the purpose of public and democratic oversight of the institution's activities, the publication of this document is necessary.
- The annual report submitted to Parliament, in addition to the data required by the Organic Law, should also include findings from victimology studies and future strategies for combating specific categories of crime. This would encourage thorough research on individual types of crime and the general criminogenic situation, thereby promoting the implementation of an evidence-based crime-fighting policy.
- Instructions given by a superior prosecutor to a subordinate prosecutor regarding a specific criminal case must be in written form and attached to the relevant case materials.

3 A FAIR CRIMINAL JUSTICE POLICY

The criminal justice policy in Georgia remains disproportionately harsh and unjust. Legislation imposes overly severe sentences for various categories of crimes, including non-violent ones. This trend is evident in certain drug-related and property crimes, as well as in sections of the criminal code that are often used for political purposes and/or in the context of protest activities. It is also problematic that in recent years, sentences for certain crimes have been increased multiple times without adequate justification or prior research.

The harshness of the legislation and its application is confirmed by recent reports from the Council of Europe on prison statistics:[3] In terms of both the number of prisoners/probationers and the length of imprisonment, Georgia significantly exceeds the average European standard. The government is attempting to address these challenges through one-time measures rather than systemic reform. An example of this is the large-scale amnesty initiated before the elections, which will not solve the fundamental challenges existing in the criminal justice system.[4]

3 Council of Europe – Prison Populations SPACE I – 2023. Available at: https://cutt.ly/pemeVUTY (Accessed: 26.08.2024)

4 Social Justice Center, "Pre-Election Amnesty as a Tool for Political Manipulation", 25.07.2024. Available at: https://cutt.ly/WexPE5kP (Accessed: 26.08.2024).

In parallel with harsh legislation and policies, the need for a systematic and multi-sectoral approach to crime prevention is often overlooked. As a result, the current prevention policy and individual preventive measures are not adequately addressing the challenges the country faces.[5]

Reform of the crime-fighting and criminal justice policies should include the following directions:

Review of the Sentences Defined by the Criminal Code

- The sentences provided by the Criminal Code (especially for drug-related and public order crimes) should be reviewed, and the terms of imprisonment should be reduced. Lowering the minimum sentencing limits will also strengthen the role of the judge in the legislative process and make the overall process more just.

Strengthening Crime Prevention Mechanisms

- State policy documents should define the role of social policy in crime prevention issues (including within the penitentiary system).[6]
- The practice of continuous criminological research should be implemented and encouraged to ensure that preventive policies are always aligned with the current situation.

5 Social Justice Center, "Crime Prevention Policy in Georgia, 2023." Available at: https://cutt.ly/3exPmTg5 (Accessed: 26.08.2024).

6 Social Justice Center, "Crime Prevention Policy in Georgia, 2023. Available at: https://cutt.ly/3exPmTg5 (Accessed: 26.08.2024).

Revising and Publicizing Strategic Documents

- The strategy and action plan for the reform of the criminal justice system should be updated and publicly released (these documents were last updated in 2019, whereas previously they were published annually). In these documents, besides the Criminal Code, special attention should be paid to the reform of the legislation regulating administrative offenses.[7]
- In accordance with the criminogenic context, the document on criminal justice policy guidelines should be updated and made public. Currently, the Prosecutor's Office does not disclose the document on guidelines, which relate to several important mechanisms in criminal justice policy (plea agreements, preventive measures, initiation of criminal prosecution). As a result, the public is unaware of the state's policy and strategies concerning specific categories of crime.

7 Strategic Plans Available at: https://cutt.ly/rexPTcZW (Accessed: 26.08.2024).

4

A CARE-ORIENTED AND BALANCED DRUG POLICY

As of 2021, Georgia inhibited approximately 50,000 people who inject drugs (PWID).[8] With this number, Georgia surpasses both the European Union and the region, as well as neighboring countries, by several times. Currently, harsh penalties are in place for drug-related offenses, but this has not reduced the number of people with drug dependencies in the country. From a public health perspective, non-injectable drugs, particularly new psychoactive substances, also pose a challenge. The methods of production, distribution, and consumption of these substances are entirely different, and standard law enforcement methods are less effective in combating this problem.

To effectively address the health and social challenges stemming from drug use, an evidence-based drug policy reform is necessary. The reform should aim to fundamentally change the current approach to drug use and replace the punitive policy with methods focused on care and prevention. The drug policy reform should include the following steps:

8 Determination of the Population Size of Injectable Drug Users in Georgia, 2022, Accessed: 10.07.2024. Available at: https://cutt.ly/KegZL7SP (Accessed: 26.08.2024).

Revision of Legislation Related to Drug-Related Offenses

- Criminal sanctions for drug use should be abolished, and such actions should only be subject to administrative liability. Additionally, administrative detention for drug use should also be abolished. Furthermore, the legislation should introduce alternative mechanisms of legal responsibility (such as participation in informational programs about the risks of drug use or involvement in self-help groups, etc.).
- The disproportionately harsh penalties provided by the Criminal Code for drug-related offenses should be revised and reduced. In particular, the lower treshhold for the penalties should be reduced, which would automatically increase judicial discretion in determining sanctions. Additionally, the "Law on Narcotic Substances, Psychotropic Substances, Precursors, and Narcological Assistance" should be amended, and the threshold quantities (small, large, especially large) for narcotic substances, which are linked to the severity of the penalty, should be changed. It is important that these threshold quantities be adjusted to reflect the realistic amounts typically used.
- The mechanism of deprivation of rights provided by the "Law on Combating Drug-Related Crimes",[9] which imposes additional restrictions on individuals convicted of drug-related offenses, should be abolished.[10] The abolition of this mechanism will be balanced by the judge's discretion, which already allows for the temporary restriction of certain occupations in individual cases as part of additional sentencing.

9 Convicted persons aged 3 to 20 are automatically and blanketly deprived of the following rights: 1) driving vehicles; 2) medical or pharmaceutical activities; 3) legal practice; 4) pedagogical and educational activities; 5) public service employment rights; as well as 6) passive electoral rights and 7) rights related to the manufacture and possession of weapons.

10 Social Justice Center, "Mechanism for Deprivation of Rights in Drug-Related Crimes" Policy Document, 2023. Available at: https://cutt.ly/Xev0yp36 (Accessed: 26.08.2024).

Improving Health and Harm Reduction Services

- The rules for distributing medications within the framework of opioid substitution therapy should be changed and brought into alignment with the recommendations of the World Health Organization and the European Union's Drug Agency. Under the current regulations, dispensing medication for multiple days at once is prohibited, which significantly harms both individuals with severe health problems (who depend on others for care) and the rights of employed individuals.[11] According to international recommendations, patients should undergo individual assessments, and the issue of dispensing medication should be decided based on this assessment.[12] Typically, the primary criteria in individual assessments are the length of the patient's participation in the program and their behavior during this period.
- The geographical coverage of the opioid substitution therapy program should be expanded, and additional service points should be added. When implementing programs, the special needs of vulnerable groups, including women, must be taken into account to prevent double stigma and discrimination. At the same time, the state should promptly ensure the introduction and availability of long-termsubstitution therapy programs for opioid-dependent individuals within the penitentiary system.[13]

11 Social Justice Center, Statement, "Legislative Changes Substantially Deteriorate the Rights of Individuals Engaged in Opioid Substitution Therapy," Available at: https://cutt.ly/qev0ifi7 (Accessed: 26.08.2024).

12 World Health Organization, "Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence", 2009, p. 36. Available at: https://cutt.ly/twZ4dEiF (Accessed: 26.08.2024).

13 Social Justice Center, "Opioid Dependence Substitution Treatment Programs in the Penitentiary System – Analysis of Legislation," 2023. Available at: https://cutt.ly/pemw7S0W (Accessed: 26.08.2024).

- A long-term psychosocial rehabilitation program should be developed to meet the needs of a broad group of individuals dependent on narcotic substances. Despite the number of the individuals who have developed dependency or are using drugs, in the country, the state does not fund psychosocial rehabilitation for patients, which creates additional barriers to managing the condition. It is important that opportunities for long-term rehabilitation courses be provided under state funding. To achieve this, efforts should be intensified in the direction of introducing psychosocial rehabilitation and continuous care services for patients.
- A national early warning system[14] should be established promptly, which will proactively monitor the drug scene and effectively inform responsible parties about dominant substances and trends or changes identified in the scene, particularly in the context of new psychoactive substances. A clear model and structure for the system must be developed, defining the involved actors, their functions, and applying a multisectoral, multidisciplinary approach. It is important that experts and community organizations be involved in both the creation and subsequent operation of the early warning system.

14 European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) operating guidelines for the European Union Early Warning System on new Psychoactive substances", 2019, https://cutt.ly/Dev0jqnY (Accessed: 26.08.2024)

Establishing a Drug Use Prevention System

- To prevent drug use, it is important to implement a balanced, evidence-based policy that takes into account the social and cultural factors present in the country and is grounded in the accumulated experience of prevention sciences. In this regard, it is essential that the planning of the policy is conducted with consideration of the European Prevention Curriculum and that the field are involved in the policy planning process.[15]
- Drug use prevention programs should be implemented in school environments, as this is where broad access to adolescent groups is possible. Interventions aimed at preventing or delaying drug use are highly effective when conducted in schools. The most effective interventions are those based on the principles of universal prevention,[16] focusing on the development of social skills, as well as creating a safe learning environment that promotes a positive learning climate and establishes clear rules regarding the use of psychoactive substances.[17] It is important that the geographical coverage of school-based prevention programs in Georgia be expanded and that they are promptly introduced in the capital and all major cities.

15 European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), „European Prevention Curriculum (EUPC): a handbook for decision-makers, opinion-makers, and policy-makers in science-based prevention of substance use, https://cutt.ly/qevHbvVm (Accessed: 26.08.2024).

16 European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Unplugged – a Comprehensive Social Influence Programme for Schools: life skills training with correction of normative beliefs, Available at: https://cutt.ly/WexOmYsr (Accessed: 26.08.2024).

17 European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Schools and Drugs: Health and social responses, Avavilable at: https://cutt.ly/RexOAzlS

5

A POLITICALLY NEUTRAL POLICE SYSTEM AND LAW ENFORCEMENT BASED ON HUMAN RIGHTS

The Georgian law enforcement system has always been excessively influenced by political and party interests, and the current government is no exception, as it increasingly uses police services for party purposes.[18] This reality is a result of the excessive and unbalanced power of the Minister of Internal Affairs. The minister, as a political official, is simultaneously the country's top police officer and holds exclusive authority over various administrative matters (staffing, discipline, etc.). The centralized system further deepens the problem of the ministry's politicization and increases the risk of undue influence on individual police officers.

In addition to politicization, the current legislation grants the police several powers that lead to rigid and disproportionate interference with human rights, pushing law enforcement officers to use repressive, force-based, and control-oriented methods. An example of this is the lack of sufficient procedural guarantees for administrative offenses and the current legislative framework for administrative detention. Additionally, the preventive measures provided for in the "Law on Police" are, in essence, more like mechanisms for responding to crime. The same law grants law

18 Social Justice Center – "Political Neutrality in the Police System," 2016. Available at: https://cutt.ly/Pelr2GGH (Accessed: 26.08.2024).

enforcement the ability to use special means without clearly defined and predictable criteria.

The "Law on Operative-Investigative Activities of Georgia" deserves special mention, as it creates a parallel legal regime for investigations separate from that established by the Criminal Procedure Code. Both internal and external oversight of this law is extremely weak. In reality, many operative-investigative measures are investigative in nature and result in harsh interference with human rights. The low level of external oversight over these activities provides law enforcement officers with wide opportunities for arbitrariness and abuse of authority.

The problem of power abuse by police officers is exacerbated by low accountability and the inefficiency of the responsibility system. Although crimes committed by law enforcement officers are investigated by an external agency—the Special Investigative Service—this agency does not currently have sufficient functional and institutional independence guarantees to effectively carry out its duties. The disciplinary system for law enforcement officers is even more ineffective, as it is heavily subordinated to the political hierarchy, and the current structure of the General Inspection fails to ensure the professional accountability of police officers.[19] The issue of accountability is further deepened by the duplication of responsibilities among various departments within the ministry.

To democratize the police system and law enforcement activities, the following steps must be taken:

19 Social Justice Center – "Political Neutrality in the Police System," 2016, p. 38. Available at: https://cutt.ly/Pelr2GGH. (Accessed: 26.08.2024).

Balancing the Excessive Power of the Minister of Internal Affairs and Increasing the Job Security Guarantees of Ministry Officials

- The Minister of Internal Affairs' authority in personnel and disciplinary matters should be limited, and these competencies should be distributed among professional entities within the system.
- The level of the minister's involvement in police-investigative activities should also be reduced, and the minister should not be able to directly influence specific police or investigative actions.
- The minister's authority should be limited to making decisions on institutional/political matters.
- Job security guarantees for department/directorate heads and other managerial (professional) positions within the ministry should be strengthened.

Ensuring Higher Standards of Human Rights Protection in Police Work and Reforming/Abolishing Problematic Legislative Instruments

- A systematic reform of the Code of Administrative Offenses should be carried out to provide individuals facing charges with adequate procedural guarantees. Additionally, as a result of the reform, the composition of offenses should be clearly and unambiguously defined, and fair and proportionate penalties should be established.
- The legal framework for preventive measures under the "Law on Police" should be clearly defined, and effective oversight/control mechanisms should be applied to these measures.[20]
- The "Law on Operative-Investigative Activities" should be abolished, and the operative measures currently in place should be redistributed

20 Social Justice Center, "Crime Prevention – Risks of Police Control," 2017. Available at: https://cutt.ly/qemewzvW (Accessed: 26.08.2024).

between the Law on Police and the Criminal Procedure Code, according to their significance and nature.[21]

- In line with the recommendations of the OSCE/ODIHR,[22] police operational plans should include principles governing police conduct during protests. Emphasis should be placed on the importance of a tolerant approach to minor offenses to protect fundamental rights to assembly and expression.

Effective Prevention of Police Power Abuse and Increasing Police Accountability

- The use of body cameras by police officers must be mandatory during communication with citizens. Failure to comply with this requirement should result in the imposition of disciplinary sanctions on the responsible law enforcement officer;
- It is essential that during gatherings and demonstrations, law enforcement officers present on-site, including members of special task forces, are identifiable in some way. If disclosing their identity poses certain risks, identification numbers or symbols must be mandatory on their uniforms; [23]
- A systematic reform of the General Inspection is necessary, within which the institution will be provided with greater guarantees of functional and institutional independence;
- The procedures, timelines, stages, and standard of proof for the activities of the General Inspection must be clearly and specifically de-

21 Social Justice Center – "Reforms in the Law Enforcement System" – Practical Guide, 2020. Available at: https://cutt.ly/XelRGkhp (Accessed: 26.08.2024).

22 OSCE Office for Democratic Institutions and Human Rights, "Human Rights Handbook on Policing Assemblies," 2016. Available at: https://cutt.ly/YeOb0Tom (Accessed: 26.08.2024).

23 Social Justice Center Statement – "Inability to Identify Law Enforcement Officers at Protests Contradicts International Standards." Available at: (Accessed: 26.08.2024). https://cutt.ly/HemeIMOO (Accessed: 26.08.2024).

fined. At the same time, the participation and information of the complainant must be ensured during the disciplinary proceedings;

- Statistics on violations identified by the General Inspection and the sanctions imposed must be continuously maintained and proactively published;[24]
- Employees subject to disciplinary proceedings must be provided with adequate legal protection mechanisms. The person involved in the disciplinary process must be allowed to participate in the decision-making process and be given the opportunity to prove their innocence;
- To increase institutional accountability and transparency, it is necessary to separate the police, preventive, and investigative functions within the ministry.

24 Social Justice Center, "Crime Prevention – Risks of Police Control," 2017, p. 77. Available at: https://cutt.ly/6emeu8jo (Accessed: 26.08.2024).

6

SPECIAL INVESTIGATION SERVICE AND POWER ABUSE OVERSIGHT

The mandate of the Special Investigation Service covers crimes committed by representatives of law enforcement agencies, officials, or individuals equated to them. However, the law [25] provides several exceptions[26] (such as the General Prosecutor, the Minister of Internal Affairs, and the head of the State Security Service) to whom the mandate of the Special Investigation Service does not apply. Additionally, the service lacks sufficient guarantees of institutional and functional independence, which poses a threat to the effective investigation of cases under its jurisdiction.

At every stage of the selection and appointment process for the head of the service, political influence is heavily present. Specifically, the commission responsible for selecting candidates for the head of the service consists of seven members, three of whom have direct political affiliations (the chairpersons of the Legal Issues Committee and Human Rights and Civil Integration Committee as well as a government representative). Additionally, one member represents the General Prosecutor's Office (either the

25 Order No. 3 of August 23, 2019, of the General Prosecutor on "Determination of Jurisdiction for Criminal Investigations and Territorial Investigations," Subpoint "a" of Paragraph 8 of the Annex.

26 "Investigative and jurisdictional determination of criminal cases concerning the sub-location" as per the Prosecutor General's letter N3, dated August 23, 2019, and in accordance with Order, paragraph 8, sub-paragraph 'a' of the Annex.

First Deputy or the Deputy General Prosecutor)—an institution whose employees may be under investigation by the service.[27] Furthermore, the candidates selected by the commission are first submitted to the Prime Minister, who then nominates their preferred candidates to Parliament. Parliament makes the final decision by a simple majority, which increases the risk of decisions being made based on political or party interests.

As for functional independence, the service's investigator is unable to carry out any significant investigative action independently and requires the consent of a superior prosecutor, (by submitting a motion to the court). This legislative arrangement makes the entire agency dependent on the Prosecutor's Office during the investigation process.

It is also problematic that, as a result of the accelerated reform in 2021, the jurisdiction of the service significantly expanded and its competence now covers substantially different types of crimes (for example, illegal interference with a journalist's professional activities, violations of freedom of speech, crimes related to violations of personal privacy, and others). Consequently, today the service is no longer focused solely on crimes related to improper conduct.

To ensure the real independence of the Special Investigation Service and its effective investigation of crimes committed by law enforcement officers, it is necessary for the agency's reform to encompass the following areas:

27 European Commission for Democracy through Law (Venice Commission), Opinion "On the Law on The Special Investigation Service and on The Provisions of the Law on Personal Data Protection concerning The Personal Data Protection Service", 137th Plenary Session, 15-16 December 2023.

Changes to the procedure for appointing the head of the investigative service and increasing the service's functional independence:

- The selection commission for candidates should not include political officials or representatives of the Prosecutor's Office. The majority of the commission members should be individuals nominated from professional/academic circles;
- The Prime Minister should not participate in the selection process, and the commission should present the selected candidates directly to the Parliament.
- The Parliament, in turn, should make the final decision on appointing the candidate based on a qualified majority and broad political consensus.
- To ensure institutional and functional independence from the Prosecutor's Office, the Special Investigation Service should be granted independent prosecutorial powers, as well as the authority to initiate, terminate, and transfer cases within its jurisdiction.[28]

Review of crimes within the jurisdiction of the Special Investigation Service and clarification of the scope of subjects:

- The service's activities should be limited to investigating crimes committed by representatives or officials of law enforcement agencies, which was the original purpose of establishing the service;
- To ensure impartial investigations and prevent differentiated treatment of officials, it is necessary for the service's mandate to also extend to crimes committed by the General Prosecutor, the Minister of Internal Affairs, and the head of the State Security Service.

28 Venice Commission, Opinion "On the Law on The Special Investigation Service and on The Provisions of the Law on Personal Data Protection concerning The Personal Data Protection Service", 137th Plenary Session, 15-16 December 2023. paragraph. 80.

7

THE STATE SECURITY SERVICE AND THE DEMOCRATIC CONTROL SYSTEM

In 2015, the State Security Service of Georgia (SSSG) was separated from the Ministry of Internal Affairs (MIA) and established as an independent agency. As a result of this change, the competencies of the two agencies were mechanically divided. However, the SSSG did not undergo a real and substantive reform, and the excessive concentration of power within the agency was not addressed. The reform also failed to ensure the agency's institutional independence and the establishment of a democratic accountability system.[29]

The political instrumentalization of the SSSG remains a challenge to this day. Current legislation places both counterintelligence and investigative activities under the SSSG's competences. Given the vertical hierarchy of the SSSG, the mechanisms for the political appointment and dismissal of the agency's head are problematic. The practice of covert surveillance by the service continues to be a challenge, and in this context, the institutional arrangement and subordination of the Operative-Technical Agency to the SSSG remain issues.

29 Transparency International Georgia, Social Justice Center, "Reform of the Security Service in Georgia: Results and Challenges." Available at: https://cutt.ly/uemeJbcH (Accessed: 26.08.2024).

Both the strategic planning of the security sector's operations and the weaknesses in the mechanisms of democratic oversight and their effectiveness are problematic. The activities of the agencies within the security sector depend on conceptual documents that reflect the National Security Concept and objectives. It is notable that since 2011, the National Security Concept, which should define the threats facing the country and outline the objectives for security services, has not been updated. This concept should be supported by threat assessment documents and action plans, which are crucial for the effectiveness of the security sector's operations.

The democratic control mechanisms over the State Security Service of Georgia are weak and ineffective. Under the current setup, the security sector is largely subject to two types of oversight—parliamentary and judicial control. However, these external control mechanisms have several limitations, making it impossible to exercise effective oversight over the agency. This, in turn, increases the risks of arbitrary actions and abuse of power.

To address the listed challenges, a systemic reform of the State Security Service of Georgia is essential, which should include the following aspects:

Eliminating Party Influence from the SSSG

- The procedure for appointing and dismissing the head of the SSSG should be reformed to eliminate the risks of decisions being made based on party loyalty or interests. It is essential that appointments and dismissals are decided by Parliament with a qualified majority and based on broad political consensus. This will help ensure that decisions are made based on professional criteria.

Deconcentration of Excessive Powers of the SSSG and Clear Delineation of Internal Competencies

- It is important to remove investigative functions from the SSSG, leaving the agency with only counterintelligence (analytical) functions. Investigative functions of the SSSG should be reassigned to other relevant investigative agencies.
- The Operative-Technical Agency, which is equipped with covert surveillance capabilities, should be completely removed from the SSSG's jurisdiction. This agency should be accountable to Parliament, and decisions regarding the appointment of its head should be made by the legislative body with a high quorum.
- The current structure of the SSSG should be reviewed to eliminate the duplication of powers and competences among its departments. This will help increase the agency's accountability.
- Instead of bylaws, a clear list of agencies authorized to conduct special counterintelligence activities should be defined at the level of legislation.

Implementation of Effective Democratic Control Mechanisms over the SSSG

- Parliamentary control over the security sector needs to be significantly strengthened. It is essential to fundamentally review the mandate, composition, and legal/institutional status of the Parliamentary Trust Group. Considering the existing committee system in Parliament, it might be reasonable to transform the Trust Group into a separate committee or sub-committee. At the same time, the new parliamentary control mechanism should have sufficient material, human, and expert resources to thoroughly and effectively oversee all aspects of the SSSG's activities.
- When exercising parliamentary control, committee members should have the right to conduct unplanned visits to all agencies subject to

such control (e.g., SSSG, Operative-Technical Agency). Additionally, the use of parliamentary control mechanisms should not be solely dependent on the political will of the majority of the legislative body.

- It is essential for judicial control to extend to all special measures of counterintelligence activities that involve significant interference with the right to personal privacy. Legislation should clearly define both covert investigative actions and special measures for counterintelligence to make the intensity of interference with rights during their use anticipated.
- Judicial control over counterintelligence activities should be conducted not by a single judge, but by several judges from the Supreme Court on a rotational basis. This would safeguard them from vulnerabilities related to the special services of the security sector and address judges' safety concerns.
- The timelines for conducting electronic surveillance for both investigative and counterintelligence purposes, and for informing the subject of surveillance regarding its use, should be reduced. In counterintelligence regime, it is necessary that the matter of notifying the person is subject to judicial control.