

Ministry of Internal Affairs of Georgia after November 2012: Evaluation report

Joint Report of

Transparency International Georgia

Georgian Democratic Initiative

Human Rights Education and Monitoring Center (EMC) and

Georgian Young Lawyers' Association

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1. Introduction

The present report is a joint work of four non-governmental organizations - "*Transparency International Georgia*", "*Georgian Democratic Initiative*", "*Human Rights Education and Monitoring Center*" (EMC) and the "*Georgian Young Lawyers' Association*". The report presents the monitoring results of the activities of the Ministry of Internal Affairs of Georgia (MIA) after the 2012 parliamentary elections and covers the period from November 2012 until March 2014. The report assesses the key legislative initiatives, the actions aimed at securing freedom of assembly and the crime prevention measures taken by the Ministry. Further, facts of potential abuse of power by the Ministry staff are discussed. We have even evaluated the Ministry's staff turnover and the results of the Ministry's work on human rights protection in general during the post-election period.

The activities of the law-enforcement agencies are one of the most challenging issues since Georgia gained independence. Prior to the Rose Revolution in 2003, MIA's activities were heavily criticized in terms of corruption and human rights violations. After the revolution, significant reforms were undertaken to eradicate corruption within the police, to recruit qualified cadres in the agency and to modernize the Ministry. Yet, difficulties remain with respect to human rights protection, abuse of powers by police officers and the continuing politicized nature of the agency.

Prior to the 2012 elections, one of the key promises of the opposition forces related to the reform of the very MIA. Comprehensive reform provided, *inter alia*, for separating the security segment from the Ministry itself. For this very reason, we decided to evaluate the work of the police under the new government.

Our monitoring has identified several important trends:

- Although the MIA has drafted its development strategy at once, it did not include the separation of security segment from the Ministry.
- We welcome the development of the new Law "on the Police", because the Georgian police previously acted on the basis of the legislation adopted in the 1990s. Nevertheless, the new Law has inherited considerable problems, including the use of force procedures that could be used for crime prevention but at the same time could authorize police officers to infringe upon human rights.
- Some of MIA's legislative initiatives were clearly non-progressive and detrimental to the reforms taken in the law-enforcement area. For instance, postponing the introduction of a new procedure for witness interrogation for 2 years is an obvious step backwards. The same applies to postponing legislative amendments aimed at increasing the defense attorneys' rights.
- Initially, the Ministry was exposed to certain problems in terms of securing freedom of assembly. Ensuring the safety of assemblies of opposition parties remained a key challenge during the observed period. The February 2013 developments at the National Library serve as a good example. However, improvements were noted in this respect, and especially during the pre-presidential election period in 2013 (in view of certain exceptions). Yet, light sanctions applied against potential offenders are still a problem.
- The MIA's activities aimed at securing freedom of religion and freedom of expression of minorities are assessed clearly negatively. This year, the systemic issues prevailing in the country in terms of freedom of religion were displayed very acutely. The developments illustrated that the police is still ineffective in solving these issues. On May 17, 2013, the police has failed to effectively plan the necessary measures required for ensuring the safety of a rally held at the occasion of the International Day Against Homophobia. It has also failed to detain the offenders and apply adequate sanctions

against them.

- An old malicious system of operative surveillance and wiretapping is still a problem within the MIA. Incompliance of the existing legislation with international standards is yet another issue.
- Several facts of pressures on witnesses and failures to conduct effective investigation were identified during the observed period.
- So-called “raids aimed at crime prevention” were carried out over the reporting period, resulting in several violations of the citizens' rights. The report clearly shows that the police has abused its powers.
- The investigation of potential abuse of powers and offences by the MIA staff is a significant problem. There is still no independent and effective mechanism of investigation of offences committed by the staff of law-enforcement agencies.

2. Legislative Initiatives

Throughout 2013, the MIA has participated in the development of several bills. At its initiative, the Parliament of Georgia has debated and adopted the following draft Laws:

- "On the Road Traffic"
- "On the Amendments to the Law of Georgia"
- On the "Fees and Terms for Services Rendered by the Legal Entity of Public Law - the Service Agency of the Ministry of Interior of Georgia"
- "On the Amendments to the Civil Code of Georgia"
- "On the Amendments to the Law of Georgia "on Enforcement Proceedings"
- "On the Amendments to the Code of Administrative Offences of Georgia"
- "On the Amendments to the Law of Georgia "on Higher Education"
- "On the International Cooperation in the Law-Enforcement Area"
- "On the Amendments to the Law of Georgia"
- "On the Diplomatic Service".

In addition, the MIA has submitted the draft Amendments to the Law "on the Border Police of Georgia", but without gaining Parliament's support.

The MIA's strategy and several widely debated draft Laws, which the Parliament of Georgia has discussed after the 2012 parliamentary elections, are particularly noteworthy and will be discussed below.

2.1. Development Strategy of the Ministry of Interior

In 2013, the MIA has presented to the public the Ministry's Development Strategy,¹ which by itself was a positive fact. Depoliticizing the agency was set as a key task of the MIA reform. Under the Strategy it was planned to restructure the Ministry, set up the Agency for Reforms and Development, develop a long-term strategy, establish the publicly-oriented police, introduce accountability and transparency, ensure civil society participation, improve human resources management, as well as to involve representatives of national minorities and secure gender equality within the Ministry. Unfortunately, the Strategy was silent on the separation of the security segment from the MIA.

Public Participation

During the Strategy development process, NGOs were given an opportunity to participate in the document drafting process.

2.2. The Law on the Police

The Law "on the Police" has entered into force since 1 January 2014. The Parliament of Georgia has adopted the new version of the Law of Georgia "on the Police" on 4 October 2013. In accordance with the Law, the police maintains its status as a law-enforcement institution performing executive powers, but does no longer belong to the system of militarized institutions.

¹ http://police.ge/files/pdf/misia%20da%20strategia/_2013_22.pdf.

A special chapter of the Law is dedicated to coercive measures, including the use of special devices and firearms. In such cases, any police officer is obliged to observe the proportionality principle, meaning that a police officer must only use such coercive measures when useful, necessary and proportionate. This is meant to be a warranty against any eventual power abuse by the police.

Procedure and conditions of recruitment and dismissal of a police officer, as well as the social protection guarantees provided under the new Law, has come in compliance with the effective legislation. The Law includes a clear wording, according to which in case of discovery of potential criminal behavior by any police officer, the General Inspection is obliged to transfer the case material to the Chief Prosecutor's Office of Georgia. This is a considerable improvement, because there might have been risks of conflict of interests if the police had administered cases against its own staff. Pursuant to the new Law, in such cases the relevant authority of the Prosecutor's Office leads the investigation, thus significantly reducing the described risks.

Nevertheless, the Law is still problematic in many ways. The special police control and limitation of movement/possession of an object contains a risk of diverse application in practice and subsequent infringement upon human rights. Notwithstanding the comments of NGOs, agreeing over these issues proved to be impossible.

Public Participation

Several meetings with public representatives were held at the first stage of the drafting the Law on the Police. The adopted version of the Law of Georgia "on the Police" was developed with active participation of NGOs, which is an undoubtedly positive precedent. Recommendations of organizations involved in the committee hearings have improved the procedure for carrying out several policing measures, as well as issues related to serving in the police.

2.3. Norms Regulating To Insults of Religious Feelings

The draft Law that was initiated by the MIA last November, which introduced the new Article 169-1 to the "Code of Administrative Offences of Georgia", has caused significant turmoil. In accordance with this bill, a person would have been subjected to administrative liability, if through his/her statements or actions s/he would publicly have expressed hatred towards religious sacred objects, a religious organization, a priest or a follower and aimed at insulting the religious feelings of the follower. Such offense would also have applied if a person's public expression would have demonstrated religious hostility and hatred or contained public appeal towards such actions.

The civil sector has responded to examination of this draft Law in the Parliament and urged the Parliament not to support the legislative amendment, which would have introduced arbitrary and unjustified limitations on the right to freedom of expression and would endanger free public debates in society.²

Under the MIA-offered legislative amendment, the substantial limitations related to freedom of expression directly contradicted the standards established by the European Court of Human Rights and the Constitutional Court of Georgia. Accordingly, NGOs have criticized this draft Law on numerous occasions.

At a later stage, the Government withdrew this bill from the Parliament, thus deserving positive feedback from

² Joint statement of the Civil Society Organizations. <http://transparency.ge/post/general-announcement/sazogadoebrivi-organizatsiebi-sakartvelos-parlaments-moutsodeben-ar-miighos-kanoni>.

the civil sector. The Government's decision to abandon a legislative amendment that would have considerably endangered the rights to freedom of expression must be welcomed.

Public Participation

During the examination of package of amendments to the "code of Administrative Offences" in the Parliament, the MIA has very unexpectedly – which violated the Regulations of the Parliament - presented the norm regulating insult of religious feelings at the second hearing of the package of amendments. This norm had not been discussed in advance with the NGO sector, and even the preliminary information on the norm had not been disseminated.

2.4. Postponing the Witness Interrogation Procedure

At the MIA's initiative, the Parliament debated and supported additional postponement of enactment of the new witness interrogation procedure at the investigation stage.

Postponing the new witness interrogation procedure to the 31st December 2015 is a clearly negative fact, which directly contradicts the rights guaranteed by the Constitution of Georgia. Further, the postponement of the adoption of this amendment will impede the development of criminal justice and will once again prolong the unequal position of the parties during criminal proceedings.

Consequently, we believe that the enactment of the new witness interrogation procedure would revoke unjustified advantages granted to the prosecution and thus would ensure the equality of the parties during criminal proceedings. In particular, the prosecution would no longer be able to obtain a witness testimony through a mandatory procedure during the stage of investigation. Instead, any witness would mandatorily testify at the trial under equal conditions for both the prosecution and the defense.

Despite several demands³ of the civil sector, the Parliament of Georgia has adopted this draft Law on 26 December 2013 and hence delayed the enactment of the new witness interrogation procedure.⁴

Public Participation

Notwithstanding the fact that the NGO sector and the Georgian Bar Association have often discussed this matter and expected the enactment of this procedure, they were not involved in the consultations and discussions on the amendments. Furthermore, neither the Government, the Parliament nor the country's President has taken into consideration any of the appeals and recommendations of the civil sector.

2.5. Delay in Wider Rights for the Defense

The original version of amendments initiated by the Government of Georgia to the criminal procedural legislation provided for crucial and significant guarantees for the defense, such as the right of the defense to: request from a public or private institution evidence required for proper exercise of the defense; request

³ The Coalition's statement on the postponement of the new witness interrogation procedure. <http://transparency.ge/post/general-announcement/gantskhadeba-motsmis-dakitkhvis-akhali-tsisis-amokmedebis-morig-gadavadeba>.

⁴ Voting results on the draft Law for postponing the new witness interrogation procedure.

before the court search and seizure of any possession required for the defense; appeal the verdict and other procedural decisions in view of the interests of a defendant.

The civil society has supported this initiative of the Government, as it would substantially improve the quality of the defense's effectiveness, contribute to the equality of the parties, reinforce the adversariality of the trial system and create guarantees for a fair trial.

Unfortunately, after the two hearings the Parliament of Georgia has adopted this draft Law with significant modifications. Namely, defense attorneys were not granted the right to request information from public and private institutions, while the enactment of the right to move before the court about search and seizure was postponed until 1st of September 2014.

Unpreparedness of law-enforcement agencies was brought at the parliamentary hearings as a sole argument for postponing the right to advance motion about search and seizure. Similar arguments were used to explain the postponement of the introduction of the new witness interrogation procedure.

Public Participation

The NGO sector⁵ as well as the Georgian Bar Association has clearly expressed its position on this issue, but the authorities have fully ignored all comments and proposals. There was no public participation in the process and the enactment of wider rights for defense attorneys has been postponed without involvement of interested parties.

3. Evaluation of the Ministry of Interior's Activities in terms of Securing Freedom of Assembly

The lawfulness and effectiveness of the police activities aimed at securing freedom of assembly is a key aspect for the evaluation of the policy pursued by the MIA in 2013 in respect to human rights protection.

The analysis of freedom of assembly in Georgia during the current year illustrates that the state responsibility was a larger concern due to the ineffective fulfillment of the state's positive obligations to secure freedom of assembly. Over this period, the authorities have nevertheless ensured that politically loaded opposition rallies were held in a safe environment. This could be explained by the change of government and the existing political context: in light of grave breaches committed by the state in previous years on the matter, the new authorities may try to stay away from the past experience, which was a key argument for criticizing the previous authorities during political campaigns. Yet, it is important that the authorities manage to demonstrate similar approach and political will in the future, as political rallies might become a more serious and large-scale challenge.

3.1. Protecting the Safety of Assemblies of Opposition Parties

Over the reporting period, the authorities have more or less managed to ensure a safe environment during political rallies. However, the protest rally held in front of the National Library building in Tbilisi on 8 February 2013 was a problematic episode in this respect, as the demonstrators verbally insulted several members of the "United National Movement" and even physically assaulted them. Though the police should

⁵ Statement of NGOs on the postponement of the new witness interrogation procedure. Available at: <http://transparency.ge/post/general-announcement/sakartvelos-parlamentma-mkhari-ar-unda-dauchiros-motsmis-dakitkhvis-akhali-tsisis-gadavadebas>.

have foreseen the number of the rally participants, the potential violent behavior and the risks coming therefrom, the actions of the law-enforcers aimed at preventing and tackling any violence were ineffective.⁶ The number of locally mobilized law-enforcers and preventive measures carried out by them proved to be clearly insufficient in order to ensure the safety of the political officials visiting the Library.⁷

The application of preventive measures was a huge concern during the protest rallies organized against pre-election events of the "United National Movement" **on 20-21 July 2013 in Zugdidi and Batumi**. During these incidents, the rally participants have demonstrated aggressive behavior and committed gross violence offenses towards members of the "United National Movement", notably by throwing stones and eggs and insulting them verbally. These facts required timely and effective investigation by the MIA and imposition of liability on relevant individuals. Yet, although the Minister of Interior took the investigation of this case under personal control, the results of investigation are still unknown to the public.⁸

3.2. Protecting Freedom of Assembly of the Workers.

The mass detention of participants of the rally held in relation to the International Workers' Day on 1 May 2013 was a serious violation of the freedom of assembly. Unlike other rallies held over the reporting period, the state has directly interfered in the May 1 rally and breached the participants' right to freedom of assembly by clearly using a disproportionate police force and detaining rally participants in masses. In particular, a short (approximately 10 minutes) and partly closure of the main road section by the rally participants during the May 1 rally was deemed as a sufficient reason by the police to detain a majority of the rally participants (37 participants), including almost all organizers of the rally.

Video footage of the case demonstrates that the police detained rally participants even when they were using the pedestrian parts of the road and had consequently not committed any violation of public order.⁹ Further, the police used obviously unnecessary and disproportionate force against several demonstrators. Yet, the police forces released the rally participants in question after several hours of detention.

In this case, the police has failed to show a degree of tolerance and restraint before attempting to disperse the crowd, which had not presented any danger to public order. Furthermore, it can be noted that following the consideration of cases of administrative offences, the court has imposed an administrative fine of 400 GEL on 5 demonstrators only (for committing the offences stipulated in Articles 166 and 173), and a fine of 100 GEL on 9 other participants (for committing the offence stipulated in Article 166). The court has released 19 participants from administrative liability and limited itself to verbal notice, while the proceedings were terminated in respect of four persons in the absence of any offense noted.¹⁰ These court decisions illustrate *per se* that the mass detention of the rally participants by the police was an illegal and disproportionate measure. Undoubtedly, the police may isolate persons who endanger public order and in such cases restrict the right to freedom of assembly (the state carries burden of proof in this respect), but in this particular case

⁶ Statement of the Public Defender, 09.02.13. <http://www.ombudsman.ge/index.php?page=1001&lang=0&id=1638>; Human Rights Watch Country Report on Georgia, 2014: <http://www.hrw.org/world-report/2014/country-chapters/122253?page=3>.

⁷ Report of the EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia Thomas Hammarberg, Chapter 6: http://eeas.europa.eu/delegations/georgia/documents/news/20130920_report_ka.pdf.

⁸ <http://1tv.ge/news-view/52844>.

⁹ Statement of the Human Rights Education and Monitoring Center (EMC), 1 March 2013: <http://bit.ly/1ezJcDR>.

¹⁰ Summary analysis of court trials held on the cases of administrative offences of the rally participants detained on May 1, Georgian Young Lawyers' Association. <http://gyla.ge/geo/news?info=1607>.

the mass and indiscriminate detention of the rally participants represented an unjustified and disproportionate interference to the demonstrators' freedom of assembly

3.3. Protecting Freedom of Expression of Minorities

Counter-demonstrators blocking the planned assembly held at the occasion of the International Day Against Homophobia and Transphobia (IDAHO) on 17 May 2013 was the gravest violation of the freedom of assembly during the observed period. Despite high safety guarantees given by the authorities to the rally participants, the state has failed to fulfill its positive obligation in terms of protecting demonstrators from counter-demonstrators and securing their safety.¹¹ After counter-demonstrators had broken through the cordon, the police evacuated rally participants, who in reality were deprived of their right to enjoy freedom of assembly.

In light of the number and the rhetoric of counter-demonstrators, the police should have predicted the risks coming from them. Yet, the safety plan elaborated by the police aimed at fencing off the counter-demonstrators' and holding the IDAHO day rally in a safe environment proved to be ineffective from the beginning.¹² The coercive means that the police used to secure the safety of the rally did not even *symbolically* prove its intention to ensure that the May 17 rally took actually place. The police force used by the MIA at the place of assembly was clearly inadequate and unviable for fencing off counter-demonstrators in case of any attempt to break through the cordon.¹³ Moreover, the video footage shows that the counter-demonstrators did not meet substantial resistance from the police when breaking through the cordon and even demonstrates that the police officers did let through clergymen and several participants of the counter-demonstration following them.¹⁴

The effectiveness of the police actions aimed at securing the safety of the rally participants was mostly disputable in relation to the incident on the Vachnadze Street, as the police failed to timely and properly assess risks coming from the counter-demonstrators. The police was late in evacuating activists (up to 20 persons) from Vachnadze Street, which resulted in the activists suffering from physical injuries and grave stress.

However, as the rally participants acknowledged themselves, several MIA employees have duly fulfilled their duties of evacuating the rally participants during the counter-demonstrators' attacks.

The absence of a plan to prevent uncontrolled and aggressive behavior of a large number of counter-demonstrators in the streets after the evacuation of the planned IDAHO rally participants was a major flaw of the police activities in terms of due control of the rallies. In this episode, numerous individual cases of violence were reported against various persons (who were LGBT persons or were identified as such by the aggressors) in the areas adjacent to the rally, violence that the police should have foreseen.

Considering the scale of violence shown by the counter-demonstrators on May 17 and the results of investigation available now, it can be concluded that the efforts of investigation with respect to May 17

¹¹ Statement of NGOs on the May 17 developments: <http://gyla.ge/geo/news?info=1581>.

¹² In this respect refer to the report of the Georgian Democratic Initiative (GDI), Chapter 7, available at: <http://gdi.ge/wp-content/uploads/2013/07/GDI-report-full-version.pdf>.

¹³ Amnesty International, 17.05.2013: <http://amnesty.org/en/news/georgia-homophobic-violence-mars-tbilisi-pride-event-2013-05-17>.

¹⁴ <http://www.youtube.com/watch?v=7uC7VYF0NBI>.

violence has been ineffective.¹⁵ Therefore, the state has failed to fulfill its positive obligation to provide effective legal response to the violations of the freedom of assembly and thus remedy to these human rights breaches. After May 17, only four persons were fined with 100 GEL for petty hooliganism (Article 166 of the Code of Administrative Offences). Charges were brought against two clergymen for committing the crime stipulated in Article 161 of the Criminal Code (infringing upon the right of assembly and manifestation).¹⁶ Prosecution has terminated against one of the defendants, and judicial proceedings are still pending in respect of another clergyman.

By taking into account the above-described violations, it is crucial that the MIA plans and pursues effective policies aimed at duly securing the freedom of assembly, which is a complex process including:

- Development of guidelines and policy documents for implementing the international standards of freedom of assembly,
- Adoption of internal instructions for the police officers for the management, control and fulfillment of the safety of the rallies,
- Development of effective methods for managing counter-demonstrations and preventing violence,
- Improvement of the rules and procedures for applying special devices during the management of the rallies,
- Improvement of the decision-making procedures during the management of the rallies,
- Training of the police officers and increasing their knowledge/capabilities about LGBT rights.

3.4. Evaluation of the Ministry of Interior's Activities aimed at Securing Freedom of Religion

Systemic problems of the country in respect of freedom of religion were most acutely revealed in 2013. Somewhat vigorous cases of violence towards religious minorities identified during this period require a complex explanation and their causes should be sought in the current political context. However, for the purposes of this report, the present sub-chapter provides only a legal assessment of the MIA activities in this regard.

The analysis illustrates that the studied period has witnessed several grave cases of restriction of freedom of religion, including, *inter alia*, the religious conflicts identified in **villages Nigvziani, Tsintskaro and Samtatskaro** against the Muslim community in 2012-2013;¹⁷ the illegal dismantling of the Mosque minaret by the central authorities on 26 August 2013 in village Chela, accompanied by the police-orchestrated large-scale operation and use of disproportionate force against the local Muslims;¹⁸ several serious offences committed against the Jehovah's Witnesses based on religious hatred;¹⁹ violence exhibited due to religious intolerance in Tbilisi during the Hanukkah celebration.²⁰ Unfortunately, the MIA's response to these facts has been neither adequate nor effective.

¹⁵ Report of the EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia Thomas Hammarberg, Sub-Chapter 4.4: http://eeas.europa.eu/delegations/georgia/documents/news/20130920_report_ka.pdf.

¹⁶ In this respect refer to the joint NGO statement on the recent developments in relation to the May 17 developments: <http://gyla.ge/geo/news?info=1579>.

¹⁷ Study of the Human Rights Education and Monitoring Center (EMC): Crisis of Secularism and Loyalty to the Dominant Group (study of religious conflicts identified in Georgia in 2012-2013), available at: <http://emc.org.ge/2013/12/05/25/>

¹⁸ Joint NGO statement on developments in village Chela, available at: <http://gdi.ge/?p=403>.

¹⁹ Statement of the Human Rights Education and Monitoring Center (EMC), available at: <http://bit.ly/1eXyX2I>.

²⁰ Statement of the Public Defender, available at: <http://ombudsman.ge/index.php?page=1001&lang=0&id=1853>

3.4.1. Religious Conflicts in Nigvziani, Tsintskaro and Samtatskaro

The analysis of religious conflicts in the villages of Nigvziani, Tsintskaro and Samtatskaro shows that the role of the police during these religious confrontations was passive and that they did not react adequately to the committed offences. Despite violence showed during the conflicts and numerous facts of violent attempts, which *prima facie* indicated the breaches of specific articles of the Criminal Code or the Code of Administrative Offences, the police have failed to prevent them and detain the offenders. For instance, on 2 November 2012 several local Christians have forcefully entered the shrine area in the village Nigvziani and attempted to obstruct the religious ritual by threats of violence. Nevertheless, the police was only observing the process without preventing the actual infringement²¹.

Furthermore, the video footage made on 29, 30 November 2012 in the village of Tsintskaro shows cases of threat and attempts to obstruct the religious ritual by the local Christians and demonstrates that actions of the police were identically passive, such as in the Nigvziani case.²²

On 24 May 2013, some of the local Christians in the village of Samtatskaro broke into the shrine of the Muslim community, threw out religious items and attributes from the shrine and obstructed the planned prayer,²³ and although police officers were present on the spot, they failed to prevent the offence. On 31 May 2013, residents of village Samtatskaro closed the road to the village, did not let through representatives of the Muslim Administration and forced them to go back by using force and threats.²⁴

On 7 July 2013, the MIA staff allegedly used duress on the Samtatskaro Muslim community Khoja Suliko Khozrevanidze, facts that he directly describes in the explanation given to the Public Defender.²⁵ On 28 June 2013, a large group of local Christians invaded Suliko Khozrevanidze's house and demanded under threats to close down the shrine. The police mentioned later that no offense was reported during the incident.²⁶ The police have not detained anyone in relation to the incident.

Apart from the effective response, the state has subsequently failed to effectively investigate potential offences reported during the conflicts. According to the MIA, the local population have not illegally obstructed, exercised violence or threats and insulted the religious feelings of the Muslims during their religious rite on 2 November 2012 in the village of Nigvziani, while the investigation was not even launched in the case of Tsintskaro, due to the absence of reasonable suspicion of criminal activity. According to the MIA, in respect of the Samtatskaro conflict, the investigation is underway concerning the illegal obstruction of a religious rite, pursuant to Section 1 of Article 155 of the Criminal Code.²⁷

Overall, the policies pursued by the police during the religious conflicts were not in line with requirements of international standards of human rights protection. Namely, in the described cases, the police inaction has contradicted the positive obligation of the state to protect individuals from infringement upon their rights through effective investigation and application of punitive mechanisms. Further, the non-interference shown by the police during the religious conflicts has resulted in the expansion and escalation of such conflicts. In

²¹ Study of the Human Rights Education and Monitoring Center (EMC), Sub-Chapters 2.2.2. and 5.2;

²² Study of the Human Rights Education and Monitoring Center (EMC), Sub-Chapters 3.2.2. and 5.2;

²³ <http://www.ick.ge/articles/14431-i.html>.

²⁴ <http://www.ick.ge/articles/14503--videos.html>.

²⁵ <http://www.ick.ge/articles/14873-i.html>.

²⁶ <http://www.ick.ge/articles/14818--video.html>.

²⁷ Study of the Human Rights Education and Monitoring Center (EMC), Sub-Chapter 5.2;

conclusion, our analysis of the mentioned religious conflicts illustrates that every other religious conflict exhibited a level of higher intensity and caused further human rights violations.

3.4.2. Illegal Dismantling of the Mosque Minaret in Village Chela

A considerable breach of freedom of religion took place in August 2013 in the village of Chela in Adigeni Municipality, becoming one of the most prominent human rights violations occurred in 2013.

On 26 August 2013, the Customs Department of the Revenue Service of the Ministry of Finance has illegally dismantled the Mosque minaret. The Revenue Service has referred to the field inspection procedure after the clearance of the good as a formal basis for dismantling the minaret. The statement released by the Revenue Service said that the weight of the construction and the product identification number (PIN) may have been inconsistent with the declared data, and therefore the decision on carrying out a product expert examination was taken. Yet, , NGOs as well as the Public Defender have assessed the measure carried out by the Customs Department of the Revenue Service as illegal and clearly unjustified.

As the local residents claim in their interviews that during the dismantle of the minaret, all roads leading to the village were closed, while the special operation itself was of unprecedented scale, involving 2 helicopters, up to 40 SUVs and 200 law-enforcement officers (including the SWAT). The police exercised violence against part of the population, which tried to approach the shrine during the dismantling, while they detained others accusing them of civil disobedience. The mobile phone footage made by the citizens demonstrates that the police made several warning shots to threaten the population. According to the disseminated information, during the special operation the police detained 21 persons, part of which was released on the night of August 26.

On August 27, the Akhaltsikhe District Court fined six detained individuals for committing administrative offences, while ordered three detainees to pay 2,000 GEL - each on bail as a preventive measure for the crime stipulated in Article 353 of the Criminal Code. In November 2013, the Revenue Service nevertheless decided to return and erect the minaret in Chela.

In brief, the police have used against local Muslims clearly disproportionate and unjustified force. Regardless of numerous justified appeals concerning the launch of investigation into facts of abuse of power by the police during the dismantling of the Chela minaret, the Prosecutor's Office and the MIA have refused to launch the investigation. Moreover, according to the MIA the actions of police officers did not even include disciplinary misdemeanors.

3.4.3. Facts of Violence against Jehovah's Witnesses

Facts of violence against Jehovah's Witnesses have considerably increased in 2013-2014. The analysis of current situation shows that not only the number of violent cases has grown, but the nature of the exposed violence has transformed as well. Violent facts committed during the studied period based on religious hostility often take place openly and in public spaces, as well as the observed violence is usually collective. A comparative analysis of current practices with the findings of the Public Defender's 2011-2012 reports shows that unlike the religious offences committed in previous years, which were mainly non-violent and expressed through verbal insults and attacks on the Kingdom Hall, in 2013-2014 the number of attacks on physical persons has increased, majority of which infringed upon the victims' physical and mental integrity.

According to the report of the Christian Organization of Jehovah's Witnesses, 45 violent cases against Jehovah's Witnesses were identified throughout 2013. In 14 of the cases, the offenders have infringed upon physical integrity and insulted religious feelings of the Jehovah's Witnesses during a religious rite. In several cases, the observed physical violence against Jehovah's Witnesses was deemed as severe.

The 2014 report unveils 25 violent incidents against Jehovah's Witnesses over January-March. In 20 cases, the religious rites were obstructed, in 9 cases out of these through physical violence and 11 through verbal insults of religious feelings. Six out of the 25 incidents occurred in Tbilisi, and the remaining 19 - in various regions of Georgia. All six incidents in Tbilisi took place in public areas, when the Jehovah's witnesses were preaching next to a stand adjacent to a metro station entrance. . In majority of the attacks, the offenders have insulted religious feelings, demonstratively grabbed religious literature and destructed it immediately afterwards. Aggression is usually coming from several persons collectively, acting spontaneously.

Similar to previous years, the response of the police to offences committed on religious grounds is mostly inadequate. It is though a positive sign that when law-enforcement authorities decided to launch an investigation for facts of violence; they did give such facts the right legal qualification (where the aspect of obstructing religious activities or violation of equal rights is evident). Yet, concrete legal consequences are missing due to frequently prolonged investigation process. Notably, although there has been a video footage for most of the above-described incidents, which was attached to the victims' applications and which among other proofs provided grounds for suspecting that those persons had potentially committed actions prohibited by the Criminal Code, the Prosecutor's Office has not initiated criminal prosecution and until now has not issued any resolution on indictment. . In addition, instead of launching investigation into actions covered by the Criminal Code, the police has applied the lightest penalty for an administrative misdemeanor - a warning, which cannot be considered as a lawful and relevant measure aimed at fighting such criminal offenses.

3.4.4. Incident related to the Hanukkah Holiday

The most problematic in the Hanukkah-related incident is the qualification of actions of detained persons. The MIA has qualified the actions of detainees under Article 166 of the Code of Administrative Offences (petty hooliganism), despite the fact that their actions contained signs of a crime foreseen by Article 155 of the Criminal Code (illegal obstruction of a religious rite). Notably, in order to prevent crimes committed on the grounds of religious hostility, it is essential that the MIA gives an adequate legal assessment to the identified offences.

3.4.5. Piruz Tsulukidze and Temur Bakhuntaradze Case

Piruz Tsulukidze and his coach Temur Bakhuntaradze were detained on 13 September 2013 in Batumi for showing resistance to the police. The defendants have considered their detention to be a case of persecution on religious motives. Information was released prior to their detention, according to which the European wrestling champion, , the 20-year old Piruz Tsulukidze was not allowed attend the World Championships on 10 August 2013 for the very religious reasons. According to the detainee, several days prior to his departure the police officer has prohibited him from leaving the territory of Georgia without any explanation, while on the next day the Wrestling Federation has explained that he was prohibited from leaving the country on the ground of "contacts with people undesirable for Georgia".

Piruz Tsulukidze claims that the police have mercilessly beaten his coach and himself during the detention. As the detainee alleges, they were beaten for about one hour, during which the policemen were stepping on their

backs before hitting him with a blunt object and kicking his head on the ground. According to the detainees, the police officers were especially aggressive towards Temur Bakhuntaradze, following which the latter had lost consciousness. Physical insult was accompanied with verbal insults, and emphasis was made on their faith, particularly because the detainees were Muslims. The trustee of the Public Defender has also confirmed numerous body injuries suffered by the detainees.

Further, the detainees claim that they had been pressured prior to that on religious grounds. In particular, the police officers have prohibited Coach Temur Bakhuntaradze from conducting prayers in the hall arranged on the ground floor of his residential house.

Undoubtedly, the above-mentioned information suggest that the law-enforcement authorities has treated both Tsulukidze and Bakhuntaradze improperly and has persecuted them on religious ground. We therefore call on the law-enforcement authorities to effectively investigate the case and sanction the relevant individuals.

3.4.6. Limiting Freedom of Movement for Muslims Residing in the Pankisi Gorge

On 22 February 2014, the local Muslims in village Duisi organized a rally in order to protest against facts of illegal and arbitrary limitation of freedom of movement by the MIA for individuals residing in Pankisi or in proximity of the Pankisi Gorge. According to the locals, without any legal and factual explanations, the MIA does not allow the local Kists and Chechens to leave as well as enter the territory of Georgia. They claim that the MIA has included a certain group of the local Kists and Chechens (mainly youth) in the so-called red list and applies to them a special regime of limitation of freedom of movement.

The case of Saikhan Muzaev is a good example of above-described practice of limitation of freedom of movement. According to the explanations that Saikhan Muzaev gave to EMC, in January and February 2014 he was going on a study visit to the UK, and although all of his documents were in order, in Tbilisi Airport he was not allowed to depart and was given no explanations. He tried to cross the border 6 times but in vain. Notably, facts of arbitrary and unjustified limitation of freedom of movement for the Muslims were reported back in August 2013. Worth mentioning in this respect is the Piruz Tsulukidze case, who has experienced a similar problem when leaving the territory of Georgia (as explained in section 3.4.5).

Evaluation of the draft Law initiated by the MIA on 19 September 2013 is important for analyzing the discussed problem and the policy pursued by the MIA in this respect. The draft Law intended to supplement the Law of Georgia "on the Procedure for Exiting and Entering Georgia by the citizens of Georgia". Pursuant to the initiated bill, the new Sub-Paragraph 'd' was to be added to Article 10 of the Law, according to which a citizen of Georgia may have been denied a Georgian passport or the extension of a passport in order to exit country temporarily or to cross the state border. Such a refusal would have been decided "in view of interests of the state and/or protection of public safety". The initiated draft Law demonstrated the Ministry's intention to legalize a practice of arbitrary limitation of freedom of movement, which indirectly exposed the absence of legal grounds for such limitation. Due to a sheer conflict with the human rights standards, the initiated bill was not adopted, but irrespective of the absence of relevant lawful grounds, the freedom of movement of a certain group of Georgian citizens is still being limited today.

The effective legislation (Article 10 of the Law of Georgia "on the Procedure for Exiting and Entering Georgia by the citizens of Georgia") exhaustively lists cases when a person may be denied the exit from or entry into the territory of Georgia. At the occasion of these cases of limitation of movement, the Ministry did not refer to any of conditions stipulated by the Law, and in fact, any such reference would have been irrelevant.

Conclusion

To conclude based on the above-described facts and assessments, the MIA's policies aimed at duly ensuring freedom of religion for all were inadequate and unfair. In light of the extreme importance of assuring a thorough protection of minority rights, which are still a sensitive issue for the Georgian public, the law-enforcement authorities need to reconsider these policies. In this respect, the MIA must strictly observe the requirement of religious neutrality and develop an effective policy of fight against crimes committed on the grounds of religious hatred. Lastly, the MIA must conduct timely, effective and transparent investigation of pending criminal proceedings on crimes committed based on religious intolerance.

4. Surveillance and Wiretapping

4.1. Current Practice

The ruling party that won the majority at the 2012 parliamentary elections has promised to set up strong mechanisms in order to restrain illegal surveillance and wiretapping, but a year and a half after coming to power no substantial steps have been taken to create institutional mechanisms to ensure the protection of personal data. Unfortunately, there were even cases of illegal use of obtained images against concrete individuals.

4.2. Managing the Archive Discovered in the MIA

After the parliamentary elections in 2012, 28687 files obtained by illegal surveillance and wiretapping recordings were discovered in the electronic system of the MIA, the bulk of which depicted meetings, offices and residential houses of members of the authorities, members and leading officials of opposition parties, as well as opposition-minded public representatives. Part of the discovered data were personal intimacy recordings

On 15 August 2013, the Government of Georgia has set up a Commission,²⁸ which mainly aimed at registering and analyzing this material and decide over destructing or archiving these materials. The Commission consisted of representatives from the Government, the mass media and the NGO sector.

On 5 September 2013, the Commission has publicly destroyed 110 electronic disks containing details of the intimate life of persons under surveillance. *Non-intimate type recordings were sent to the investigation with instruction to identify persons responsible for carrying out illegal surveillance of individuals, but the results of investigation are still unknown.*

The final activity report of the Interim Commission working on issues of illegal surveillance and secret recordings was posted on the web page of the MIA on 31 January 2014,²⁹ where it was noted that the major portion of the audio/video and photo material stored on electronic drives depicted the meetings, offices and residential houses of activists and leading officials of opposition parties, as well as opposition-minded public representatives. Further, the Commission could not identify even one official document confirming the lawfulness of the discovered video, audio and photo footages. It seems that in most of the cases the data were obtained through large-scale and gross breaches of the law requirements. Wiretapping of telephone conversations and installing of reserve surveillance video cameras in various places served as one of the methods for collecting discreditable materials.

Although the final report of the Commission stated that the state should not leave a single case of illegal interference into private life without response, the report did not include the dissenting opinion of the individual members of the Commission Lasha Tughushi, Kakha Kakhishvili and Eka Gigauri, which included concrete recommendations for amending the current legislation in order to avoid illegal surveillance and wiretapping in the future in view of the best international practices.

²⁸ Resolution on setting up the Commission. http://www.government.gov.ge/files/276_37974_104398_206150813.pdf.

²⁹ Final activity report of the Interim Commission Working on Issues of Illegal Surveillance and Secret Recordings, available at: <http://police.ge/files/pdf/saboloo%20angariSi%20.pdf>.

4.3. Black Boxes in the Offices of Mobile Operators

The demand of the individual members of the Commission concerning the need to adopt number of legislative amendments was based not only on the discovery of illegally obtained recordings, but the fact that following their discovery, the First Deputy of then Minister of Interior Gharibashvili, Gela Khvedelidze, has illegally disseminated Internet video footages of the journalist's personal life for personal motives. This fact once again attests a potential high risk of illegal dissemination by the law-enforcement authorities of materials obtained from secret surveillance. ***The existence of special "black boxes" installed by the MIA and law-enforcement authorities, which enable them to have totally uncontrolled direct access to the data of communication operators and all types of communication between private individuals, is a prevailing problem.*** The urgency to regulate and resolve this issue is discussed by the EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia Thomas Hammarberg in his annual report *"Georgia in Transition - Background, Steps Taken and Remaining Challenges"*.³⁰

4.4. Dissemination of Private Life and Other Video Images and Effective Investigation

Following the above-mentioned incident, the then Minister of Interior Irakli Gharibashvili has announced the arrest of Gela Khvedelidze. The investigation against Gela Khvedelidze was launched under Section 3 of Article 157 of the Criminal Code of Georgia - illegal infringement upon private secret by a person obligated to protect this secret due to an official position.

Based on the prosecution's request, on 15 May 2013 Gela Khvedelidze was offered a bail as a preventive measure and was released from the penitentiary institution. At the pre-trial hearing on 26 September 2013, Gela Khvedelidze did not plead guilty,³¹ while his defense attorney has at the same trial refused to examine the case on merits due to the absence of the prosecution's evidence. The court has rejected this motion and currently the case is considered on merits with Gela Khvedelidze denying the charges.

On 19 December 2012, the Chairman of the Supreme Court made a special statement concerning the attempt of representatives of the MIA's special service to influence the assistant of one of the judges of the Tbilisi City Court. According to Konstantine Kublashvili, the representatives of the special service have contacted the judge's assistant on 15 December 2012 and offered a certain amount in exchange for cooperation, as well as threatened to disclose some facts of her private life. The Chairman of the Supreme Court has handed over the respective materials to the Chief Prosecutor's Office of Georgia and demanded timely investigation of the case. Regardless of this well-known fact, the results of investigation are still unknown.

On 20 June 2013, the MIA showed the civil society and media representatives at a closed-doors meeting the video footage of torture discovered in a special secret place in Samegrelo. Several NGO representatives left the screening in sign of protest. Afterwards similar screenings were organized for the members of the Tbilisi Sakrebulo (*city council*) and the images were shown to representatives of the diplomatic corps as well. The reason behind showing these images to various public groups is unclear. The Ministry has not provided any legitimate purpose or cause.

Despite numerous high-profile cases, at this moment effective investigation has mostly not been carried out. Persons responsible for introducing practices infringing upon private life have not been identified and held

³⁰ http://eeas.europa.eu/delegations/georgia/documents/news/20130920_report_ka.pdf.

³¹ <http://news.ge/ge/news/story/65109-khvedelidze-tavs-damnashaved-ar-tsnobs>.

liable.

Several high officials of the MIA's Constitutional Security Department were detained on 15 November 2012 for unauthorized wiretapping. According to the former Chief Prosecutor Archil Kbilashvili, a computer virus software had been developed, which made it possible to access the computer of an online user, obtain information stored, and to carry out audio and video surveillance in the rooms where the computer was located. Archil Kbilashvili stated that through the developed software the leadership of the Constitutional Security Department was illegally accessing the computer systems of representatives of various political parties and religious organizations and carrying out unauthorized surveillance.

Later, on 22 November 2012, the Tbilisi Appellate Court has substituted the imprisonment sentence applied as preventive measure against four officials of the MIA detained for the above charges with bail. Under the court ruling, the former Head of the Constitutional Security Department Levan Kardava was released from courtroom in exchange for bail of the amount of 30,000 GEL. The Deputy Head of the Constitutional Security Department Giorgi Kavlashvili was offered a bail of 15,000 GEL, while Vasil Jamalashvili 3,000 GEL, Giorgi Javakhidze 10,000 GEL and Avtandil Solomnishvili 5,000 GEL.

5. Staff Turnover in the MIA after the 2012 Elections

5.1. New Staff Recruitment Procedure

An important event related to the personnel policy of the MIA at the outset of 2013 was the issuing of the 25 January 2013 Order N39 of the Minister of Interior of Georgia,³² which has changed the procedures regulating several personnel issues in the police and made it possible to appoint or promote persons to the positions of platoon leader or a higher official of the Patrol Police Department, Head or Deputy Head of the Operative Sub-Unit, detective-investigator, senior district inspector-investigator, border-controller and several other important posts without undertaking the professional learning program and training courses.

Amending this procedure would create the possibility for appointing or promoting a person to the police staff without any preliminary training and relevant examination. The Minister's Order was in effect until 31 March 2013. Although the Order was in effect for a limited period, it contained significant risks. In particular, there was a risk of recruiting the police officers who would not meet relevant requirements and would not possess appropriate knowledge or experience.

Further, legitimate questions arouse as to the reasons for temporarily disregarding the required professional learning programs and training courses. "Transparency International Georgia" has addressed³³ the Minister of Interior with question concerning the reasons for issuing this Order.

The MIA has provided response to the organization's questions in a letter on March 7th 2013. ³⁴ The letter stated that the Ministry's system was undergoing fundamental changes: the Special Operative Department (SOD) has joined the Criminal Police, and undertaking special learning programs in SOD was not necessary. According to the MIA, undertaking of learning programs required certain amount of time and created problems in terms of filling the regular staff numbers. The MIA's letter talked also about expanding the

³² http://transparency.ge/sites/default/files/post_attachments/ბრძანებები%2039.pdf.

³³ http://transparency.ge/sites/default/files/post_attachments/TI%20Georgia's%20Letter.pdf.

³⁴ http://transparency.ge/sites/default/files/post_attachments/MIA's%20Response.pdf.

patrolling zones of the Patrol Police and the need for the extra-enforced crews, which required taking urgent and efficient measures. The letter also states that the Ministry has carried out testing to evaluate the level of knowledge, qualification, professional skills and training of the Ministry's staff. Intensive training of the staff was planned based on the test results. The Ministry's letter finally noted that the Minister's Order N39 was in full compliance with the law.

Notwithstanding the Ministry's position, it should be noted that the special courses and learning programs serve as gaining of professional skills and knowledge, as well as impartial recruitment of qualified cadres. Single-handed disregard for professional learning programs and training courses has temporarily suspended preconditions of impartial recruitment, thus increasing the risks of biased decisions and nepotism.

5.2. Personnel Policies Implemented in the Ministry after the Elections

"Transparency International Georgia" has drafted a report³⁵ on personnel changes carried out in the civil service after the 2012 parliamentary elections until March 2013. This report has studied the statistics of servants appointed and dismissed within the MIA.

Certain difficulties have arisen in the process of requesting public information. Apart from grossly violating the terms established for providing the response, the Ministry's four-month late response was incomplete as it answered only three questions out of the authors' 13.

According to the provided information, a **total of 897 employees were dismissed from the Ministry and the legal entities of public law (LEPL) subordinate to it**. 302 of them have resigned at their own initiative. 1012 new employees were recruited in the Ministry over the reporting period. As noted above, the Ministry has not explained the basis for appointing civil servants; therefore, the status of these appointed persons is unknown. However, there are grounds to assume that the majority consists of staff appointed in consideration of the 25 January 2013 Order N39³⁶ of the Minister of Interior of Georgia. This Order was in effect until 31 March 2013 and made it possible to appoint or promote a person to a police officer without any preliminary training and relevant examination.³⁷

5.3. Appointment of Former High Officials of the MIA in Other State Agencies

On 13 December 2013 the Prime Minister of Georgia Irakli Gharibahsvili presented nine new governors.³⁸ Remarkably, several former officials of the MIA were appointed as governors:

1. Former Head of the Samtskhe-Javakheti Regional Department of the MIA's State Security Agency (Department) Akaki Machutadze became the **Samtskhe-Javakheti Governor**;

³⁵ Personnel Policies in Civil Service after the 2012 Elections, "Transparency International - Georgia", 12 August 2013. <http://transparency.ge/post/press-release/sakadro-politika-sajaro-samsakhurshi-2012-tslis-saparlamento-archevnebis-shemdeg>.

³⁶ <http://goo.gl/mWDF0>.

³⁷ In detail about this Order please see the blog-post of "Transparency International - Georgia": <http://transparency.ge/blog/shss-shi-kadrebis-aqvanis-protsedura-droebit-martivdeba>.

³⁸ <http://www.youtube.com/watch?v=dEAfJ6xO75E> last seen on 13.02.2014.

2. Levan Shonia, appointed as the Samegrelo-Zemo Svaneti Regional Head after the 2012 parliamentary elections, was nominated as the **Samegrelo-Zemo Svaneti Governor**;
3. Former Head of the Western Regional Department of the MIA's State Security Agency (Department) Zaza Meparishvili became the **Imereti Governor**.

Along with presentation of the Governors, Akaki Chkhenkeli was nominated as the new Head of the Government Chancellery Department for Relations with Regions and Local Authorities, who was the First Deputy Head of Department of the MIA's General Inspection when Irakli Gharibashvili served as the Minister.

It is noteworthy also that the former officials of the MIA have been appointed as Deputy Ministers in the other ministries. Deputy Minister of Defense Aleks Batiashvili was the Deputy Minister of Interior from 30 October 2012 until 23 November 2013, while the Deputy Minister of Justice Aleksandre Tabatadze served as the Deputy Minister of Interior in 2012.

Notably, transferring professional cadres from one agency to another in general is not a violation and is in full compliance with the law, but certain doubts arise because of the trend, according to which the former MIA officials were appointed as the State Governors and Deputy Ministers right after the former Minister of Interior Irakli Gharibashvili became the country's Prime Minister. This fact may contribute to the monopolization of the Government's management system.

6. Evaluation of Individual Problematic Cases

6.1. The Police Raids

In August 2013, citizens were massively stopped and checked for several days in Tbilisi. During the raids, pedestrians as well as transport means were regularly searched and the personal documentation of citizens were checked. According to the disseminated information, in several cases the police officers were writing down information on the citizens and took pictures of checked persons with mobiles. The MIA has dubbed these police raids as a preventive measure, which, the MIA claimed lasted for a week and aimed at identifying grave offences.³⁹

Article 22 of the Constitution of Georgia guarantees the right to freedom of movement. According to this article, "Everyone legally within the territory of Georgia shall, within throughout the territory of the country, have the right to liberty of movement." Limiting or removing a person's freedom of movement is a substantial interference to the inviolability of individual liberty secured under Article 18 of the Constitution. Human liberty implies his/her physical liberty and his/her right to freely move, according to his/her own will. Human liberty is his/her liberty of movement in a narrow sense.

Pursuant to the Law of Georgia "on the Police", raids can be organized based on the grounds stipulated by the criminal procedural legislation and legislation on administrative offences. The Criminal Procedure Code of Georgia sets the circumstances for carrying out the search and removal. Therefore, in order for the search and removal to be carried out within legal scopes, it is crucial that every police officer is guided by the Criminal Procedure Code, in accordance to which the aim of search is to discover or remove an object, document, substance or other object containing information that is significant for the case. Conducting the search and removal is possible also for discovering a wanted person or a corpse. Search and removal should be carried out based on substantiated assumption, which is defined by the same Code as: unity of facts and information, which in conjunction with circumstances of a given criminal case would suffice an objective person to conclude that a person had potentially committed a crime; an evidentiary standard prescribed for conducting an investigative action and/or applying a preventive measure directly stipulated by this Code. Considering a mass search of persons randomly selected by police officers as being based on substantiated assumptions is therefore unreasonable. Stopping and searching citizens massively creates substantial doubts that the policemen were not searching for a person who had committed a concrete crime or some other offender to eventually make an arrest, but were selecting and searching individuals at random.

The statement of the MIA about raids as preventive natures attests of the failure of undertaken measures to comply with the above-described requirement of the law. Such a preventive measure contradicts lawful purposes.

In addition, according to the Paragraph 3 of Article 9¹ of the Law of Georgia "on the Police", "a police officer is obligated to let the stopped person know about his/her identity, show a document confirming due authorization and explain the right to challenge the lawfulness and justification of stopping."

According to our information, on several occasions the law-enforcers have violated this requirement of the law. Accordingly, we find these measures were illegal and in breach of the citizens' constitutional rights and

³⁹ Statement of NGOs on the raids: <http://transparency.ge/post/general-announcement/arasamtavrobo-organizatsiata-ertoblivi-gantskhadeba-bolo-periodshi-politsi>.

freedoms.

Released information claimed that the police officers in question went after the journalist of TV Company Tabula, who was recording the raid. They have searched the journalist and made her delete the video footage forcefully. Under the legislation of Georgia, obstructing a journalist's professional activities is a crime, hence requiring adequate investigation and inquiry. Tabula has addressed the MIA and requested to investigate this fact, but according to the Ministry, any offence in this particular case could not be identified and therefore adequate response has not followed.

6.2. Freedom of Religion (village Chela, Akhaltsikhe, etc.)

The behavior of the Custom Department during the Chela and Akhaltsikhe Incident

The Chela and Akhaltsikhe incident has been examined in section 3.4.2. This section will therefore provide for a legal analysis for the behavior of the Custom Department during the Incident. Representatives of various NGOs including the "Georgian Democratic Initiative" have observed the developments in Chela and Akhaltsikhe, following which a joint legal assessment of this fact has been produced.

Measure taken by the Customs Department of the Revenue Service was illegal, unjustified, and in breach of the property right of the minaret's owner and freedom of religion of the Muslim population.

On 14 July 2013, Jambul Abuladze imported in Georgia the minaret (assembled construction) in a dissembled condition, produced in Turkey.

In the customs declaration the applicant noted that the good imported by him was a mobile house, the code of which under the National Product Classifier for Foreign-Economic Activities is 9406 00 110 00.

In accordance to the Tax Code of Georgia, during the custom clearance of goods the applicant is obligated (save exceptions provided in the legislation) to pay the VAT and the import tax.

Taking into account that the good was produced in Turkey, and the Free Trade Agreement between Georgia and Turkey has entered in force since 2007, goods produced in the Republic of Turkey are not taxed by an import tax. Accordingly, VAT was the only tax that the applicant had to pay.

According to Article 169.1 of the Tax Code of Georgia, the rate of a VAT equals 18 percent of the customs value. Pursuant to Paragraph 1 of Article 213 of the same Code, determining a customs value of the product means its estimation on the day of declaring the product.

Under Paragraph 2 of the same article, the applicant determines the product's customs value. The Revenue Service controls the accuracy the estimated product's customs value, and in case it disagrees with the declared customs value, it makes the determination by itself.

Paragraph 3 of this article sets forth the following methods for determining the customs value:

- a) By a transaction value (first method);
- b) By the value of transaction on identical goods (second method);
- c) By the value of transaction on similar goods (third method);
- d) By a product unit price (fourth method);
- e) By a composite value (fifth method);

f) By a reserve method (sixth method).

Paragraph 4 of Article 213 of the Tax Code stipulates that each successive method should be applied if a previous method cannot be applied in a justified manner.

In view of legislative regulations in force, Jambul Abuladze had to pay 18% of customs value of goods declared by him. According to the available information, customs value of the product, after applying the first value determination method, was 9000 USD (price indicated in the invoice).

Pursuant to legislative requirements, the applicant has paid the tax and cleared the product, following which he transferred it in the ownership of third persons.

According to the statement of the Revenue Service, "the analysis of documents has led to a substantiated doubt that the incorrect classification of the product in the customs declaration and its attachments may reduce the volume of import taxes. Establishing the amount of such reduction without physical inspection and the relevant expert opinion is impossible." This very circumstance was the formal basis for dismantling the minaret.

As already noted, goods produced in the Republic of Turkey are not subject to taxation by an import tax. Accordingly, irrespective of the weight and classification of this product, it should have been exempt from an import tax.

As for the VAT, it equals 18% of a customs value in all cases, and the customs value in this particular case was already determined and paid by applying the first customs value determination method.

Should the customs authority have questioned the accuracy of the customs value through application of the first method, it should have first applied the second value determination method, then the third, etc. At the same time, when applying each successive method it should have justified the failure to determine the customs value by means of a previous method.

The 20 August 2013 Order N39828 of the Acting Head of the Customs Department of the Revenue Service of the Ministry of Finance Vladimer Khundadze, based on which the post-clearance field inspection was carried out, is silent on the failure to determine the customs value by applying the preceding method.

Furthermore, even if the applicant had wrongly marked the classifier (ex: a mobile house instead of a metal construction), this should not have had any effect on the tax amount, because it still must have been calculated by 18% of the customs value.

All of the above clearly illustrates that the applicant has not concealed any taxes from the state budget and he had fully fulfilled tax liabilities imposed on him by the legislation of Georgia, while the statement released by the Revenue Service seems aimed to mislead the public.

Paragraph 2 of Article 214 of the Tax Code of Georgia provides for the form of customs control such as the post-clearance inspection.

Chapter XXV of the "Instruction on the Movement and Clearance of Goods in the Customs Territory of Georgia" sets additional regulations in respect of this inspection.

Paragraph 1 of Article 112 of this Instruction lists exhaustive grounds for carrying out the post-clearance inspection. The Order issued by the Acting Head of the Customs Department does not refer to any of the grounds for carrying out the post-clearance inspection pursuant to Paragraph 1 of Article 112, which strengthens the suspicion that the Customs service lacked due lawful grounds for carrying out the inspection.

Paragraph 1 of Article 115 of the same Instruction obligates the tax authority to notify the applicant or other responsible person about the inspection 10 business days prior to launching the post-clearance field inspection. Available documentation proves that such notification was delivered to Jambul Abuladze's spouse on 21 August 2013, while dismantling took place on August 26. This action has manifestly violated the legal requirement.

Paragraph 5 of Article 115 of the Instruction provides an exhaustive list of powers enjoyed by the relevant agency during the post-clearance inspection. These powers are the following:

a) To request from an applicant or other responsible person the submission of documentation relating to the import and/or export operations of declared goods, registration (accounting) data on goods-material assets, and/or other information;

b) To obtain from an applicant or other responsible person or his/her authorized representative (who possesses relevant documentation and/or information) written and verbal explanations on the issues raised during the field inspection;

c) To observe the activities of an applicant and/or other responsible person, inspect the goods, take a test and/or sample.

The action of the Customs Department has clearly exceeded the authority granted to it by the law. The minaret, which was already installed, was not a good but was an essential constituent part of already existing other immovable object. At the same time, during the inspection the property of another third person (Davit Chogadze) and not the applicant (or other responsible person) was trespassed. It is obvious that the law-enforcement agencies did not have this authority.

Statements that the state officials were making in parallel with the described processes were especially disturbing. The Minister of Justice has expressed an alarming position on the developments in Chela. She stated that the Muslims could pray without minarets as well, while with the phrase – “Georgia will have to decide if there should be minarets in the country” – she has in fact questioned the possibility of religious minorities to construct their very place of worship. Statements of the State Minister for Reintegration Issues are equally disturbing, as she (what does it mean?) and has not found it necessary to view the issue in a “religious context”. Such approach of the high officials towards similar sensitive issues seriously endangers current situation in terms of religious tolerance in the country and the fulfilment of the freedom of religion.

Unfortunately, the discriminatory approach displayed by the state towards cases of infringement upon the rights of the religious minorities throughout 2013, left the issue without due reaction. Inappropriate statements or actions have resulted in a systemic restriction of the rights of the Muslim population, which represent a severe breach to their right to freedom of religion.

Violence against the Jehovah's Witnesses – during the reporting period, breaches of freedom of religion have occurred in respect of the Jehovah's Witnesses as well. According to disseminated information, three Jehovah's Witnesses were beaten in Batumi on 26 October 2013. They were attacked also in Ozurgeti, where the glasses of the Jehovah's Witnesses' cars were broken and they were deprived of possibility to conduct a religious rite. Jehovah's Witnesses have experienced problems in village Kheltubani of the Gori Municipality, where the Orthodox population of the village did not allow them to build a house. Lawyer of the Jehovah's

Witnesses claimed religious faith was the reason of the confrontation. During the incident, Jehovah's Witnesses were verbally insulted.

The state carries a positive obligation, which implies undertaking effective measures by the state authorities aimed at avoiding the risk of any infringement upon the right to freedom of religious. Accordingly, it is vital that the state adequately and timely reacts to all above-described incidents and holds the offenders liable.

6.3. Obstructing the Activities of the Public Defender

Effective human rights mechanisms must exist within the state institutions in order to strengthen the rule of law principle and protect human rights and freedoms. Significant in this respect in Georgia is the institute of Public Defender, which at the same time executes the functions of the national prevention mechanism foreseen by the Optional Protocol of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

According to the Kakheti Information Center, on 17 October 2013 members of the Public Defender's special prevention group were forced to leave the duty room of the MIA's Sagarejo Department without getting familiar with documents, despite the fact that they had duly introduced themselves to the Deputy Head of this Department Giorgi Revazishvili and showed him official certificates. Released video recording illustrate that the state has obstructed the activities of the Public Defender's representatives.

Statement made by the Head of the MIA's Public Relations Department in connection with this incident on October 18 totally differs from the facts as depicted in the video recording. . The official commentary alleged that representatives of the Public Defender's administration have entered the duty unit of the Sagarejo District Department without presenting documents confirming their representation of the Public Defender or without introducing themselves verbally.

Pursuant to Article 27 of the Law of Georgia "on the Public Defender of Georgia", the employees of the Public Defender's administration exercise powers prescribed on this Law through a special power of attorney issued by the Public Defender of Georgia. Within the scope of powers prescribed by the Law, the trustees of the Public Defender enjoy unrestricted access to any state or local authority, as well as other places of detention, pre-trial custody and restriction of liberty. Further, Sub-Paragraph 'b' of Article 18 of the Law "on the Public Defender" grants the trustees authority to request from relevant agencies all documents and other materials required for the inspection, and to receive explanations on the examined issues from any official.

The state is obligated to efficiently enforce regulations provided by the law. The Public Defender's Institute is one of the major key human rights protection mechanisms in Georgia. It is alarming that this agency was deprived of the possibility to freely execute the powers granted by the law. We believe that every case of obstruction of activities of the Public Defender requires impartial approach and adequate response from the executive authorities in order to avoid the encouragement of the offender officials. Loyal approach of the authorities towards this fact undermines the rule of law and damages effective protection of human rights and freedoms in the country. We consider the investigation launched in relation to this fact must be carried out timely and effectively.

6.4. Problem of Effective Investigation of Offences Potentially Committed by the MIA Staff

Described below are the cases in which the MIA staff have potentially committed offences. Investigation is launched into certain parts of these cases, but we are not aware of any case of holding any MIA employee liable. Ineffectiveness of investigation was often very apparent and outward. The case of Shio Kobidze is one of the clearest examples. Shio Kobidze alleges that the police officers have tortured him on 27 October 2013. Since then he tried with the attorney's help to draw the law-enforcers' attention to this case by filing the complaints or organizing personal meetings. Yet, the investigation was not only effective but was not even launched for several months. The investigation was launched on 4 February 2014, in several days after holding a special press conference in GYLA on this case. It is unfortunate also that the MIA representatives tried to assess NGO activities around this issue as an attempt to discredit the system. Below we provide a brief summary of concrete cases:

1. Beka and Lasha Gochiashvili case.⁴⁰ Statement of the Georgian pianist Beka Gochiashvili was released in media on 14 January 2013, in which he talked about psychological pressure exercised on him during his interrogation as a witness. According to the disseminated information, Beka Gochiashvili and his brother Lasha Gochiashvili were interrogated as witnesses on 8 January 2013 in the Vake-Saburtalo 5th Unit in relation to a case of theft. The interrogation of minor (16-years old) Beka Gochiashvili was attended by his parent Valerian Gochiashvili. In his statement, Beka Gochiashvili talked about psychological pressure and threat exercised against him as well as his brother Lasha Gochiashvili.

GYLA has once again contacted Beka Gochiashvili's father, who has confirmed in an interview with GYLA the facts of pressure reported in Beka Gochiashvili's statement. He has noted also that pressure was exercised during Beka's interrogation, exposed in threats of "imprisonment" and "turning the life into misery". Verbal insult and the threat of physical abuse were reported against Lasha Gochiashvili.

2. Levan Korkotashvili case.⁴¹ Levan Korkotashvili's family members have approached the Georgian Young Lawyers' Association on 9 October 2013, who claimed that on October 8, the employees of the MIA's Old Tbilisi Department #4 have arrested Levan Korkotashvili with charges for illegal purchase and storage of drugs. According to the applicants, during the arrest the police officers have brutally beaten Levan Korkotashvili and caused him various body injuries. He was placed in the temporary isolation ward in the city of Dusheti and required urgent medical interference due to grave health condition.

GYLA's lawyer has visited detained Levan Korkotashvili, who told the following story: on October 8, he was in borough Tskneti at the bus stop, when the NIVA vehicle approached him. Police officers sitting in the car have asked him to get in the car and to follow them, and when Korkotashvili asked for the reason, the police officers became aggressive, got out of the car and started beating him without remorse. Because of beating, Korkotashvili was suffering grave injuries on extremities, the face area, his right hand was swollen, and the lower jaw was injured.

Levan Korkotashvili claimed that he was taken afterwards to the police station, where he was forced to admit the crime as of possessing drugs during detention, but Korkotashvili did not admit guilt despite physical and psychological pressure. Because of his aggravating health condition (his face began swelling and bleeding), he was taken to the Ghudushauri Clinic, where he was given medical emergency treatment.

3. Vasil Lomsadze case.⁴² Materials of the Vasil Lomsadze case studied by GYLA's lawyers provide the following:

⁴⁰ <http://gyla.ge/geo/news?info=1370>.

⁴¹ <http://gyla.ge/geo/news?info=1753>.

⁴² <http://gyla.ge/geo/news?info=1817>

Employees of the 2nd Unit of the Rustavi City Department have detained citizen Vasil Lomsadze on 27 October 2013 in Rustavi. He is accused of committing the crime under Section 1 of Article 353 of the Criminal Code of Georgia (attacking a police officer). As stated in the indictment, , on 27 October 2013, around 21:50 in Rustavi, in an area adjacent to N7 Balanchivadze Street, the Deputy Head of the MIA's Rustavi City Department Zaal Adamia was attacked in connection with his official duties by Vasil Lomsadze, causing him a light body injury without aggravating his health condition. On 29 October 2013, the Rustavi District Prosecutor's Office has filed a motion in the Rustavi City Court and requested to imprison Vasil Lomsadze as a preventive measure. The court has granted the motion of the Prosecutor's Office in part and offered a bail to Lomsadze as a preventive measure instead of imprisonment, which the Prosecutor's Office had subsequently appealed. The Tbilisi Appellate Court has upheld the ruling of the Rustavi City Court.

The study of case materials has revealed number of gaps attesting to the investigation's bias, inefficiency and non-objectivity. In particular:

1. Investigation was launched against Vasil Lomsadze and the Deputy Head of the MIA's Rustavi City Department Zaal Adamia was recognized as a victim, whereas Vasil Lomsadze and several eyewitnesses claim that Lomsadze was a victim and the police officers had beaten him. The defense has questioned A.A. as a witness, according to who: "... it was clear by this person's face that he was terribly beaten, his nose was bleeding and his entire face was swollen. We asked what was wrong. At this time that person started crying and said that Zaal had beaten him... around 10 persons have ran into the entrance hall, some of which wore police uniforms and some the civilian clothes. Several persons in the police uniform have rudely grabbed that beaten person and started beating him, and then took him out of the entrance hall while still beating him. When he was taken out of the entrance hall, the others have also rushed to him and started beating him. Then one of the persons in civilian clothes has turned around and rudely instructed us to get into the house, and we did so." The defense has in addition questioned E.O., Z.K. and G.K. as witnesses, who have also confirmed that the police officers had beaten Vasil Lomsadze.

2. At the initiative of the defense, medical expert examination was carried out on Lomsadze at the independent forensic center "Vector". The conclusion of the examination has identified a closed head injury and brain concussion and a magnetic resonance tomography. Medication treatment under strict neurology supervision is required to heal the brain contusion and ruptures in facial bones. Lomsadze has been suffering from injuries in form of bleeding, swollen tissues on the left of his face, sub-conjunctival hemorrhage, and the contused wound and notches on the chin. Based on the above, in accordance with the current data Vasil Lomsadze has been suffering from numerous injuries caused by some firm blunt object/s.

3. Witness statements of two police officers - Ivane Chokuri and Mikheil Bakhutashvili - lack credibility and raise questions. Notably, the ruling of the Rustavi City Court also points this out, pursuant to which: "the factual circumstances in the statements of these witnesses are so consistent and similar that even the orthographic mistakes are the same".

4. Detained Vasil Lomsadze was not told about his rights, owing to which the Criminal Procedure Code was grossly violated. The Rustavi City Court has rejected the motion on imprisonment of Vasil Lomsadze for this very reason. The court ruling states: "Not a single interrogation minutes proves that his rights and obligations were explained to the detained Vasil Lomsadze. ... From the moment when the police officers have restricted Vasil Lomsadze's freedom of movement, he was considered as detained and defendant, and accordingly there was an obligation to clearly explain to the detainee the grounds of detention, a crime that he was accused of having committed , that he had the right to a defense attorney, and the right to remain silent and not to

answer any questions. ... The court finds that the requirements of Articles 174 and 175 of the Criminal Procedure Code of Georgia have been substantially violated."

4. Davit Kapanadze case.⁴³ On 8 October 2013, media have reported that the police officers have beaten Davit Kapanadze, causing him a serious body injury as a result. GYLA's representatives have visited Davit Kapanadze, whose report contains signs of a crime, namely:

Davit Kapanadze, is a choreographer and works by profession in two schools in Tbilisi. He had verbally confronted another choreographer, T.Zh before the incident.

On 29 September 2013, a unfamiliar person called on Kapanadze and told him his name was Lasha Tsnobiladze, T.Zh.'s son-in-law. According to Kapanadze, Lasha Tsnobiladze insulted him verbally. On the next day, Kapanadze and Tsnobiladze agreed to meet. Approximately, at 14:30, near Dighomi Block, Lasha Tsnobiladze came to meet Kapanadze together with around 20 police officers in the civilian clothes. The police officers insulted Kapanadze verbally and afterwards beat him, put him in the car forcefully and took him away to the Dighomi Block sub-unit. Lasha Tsnobiladze, who turned out to be a staff member of the MIA's General Inspection, also visited the police station. Kapanadze alleges that Tsnobiladze together with other police officers started "discussing the case details" and pressured him not to confront T.Zh. (his father-in-law) anymore. "Discussion of case details" was accompanied with verbal and physical abuse.

On his return from the police station, Kapanadze felt discomfort, called 112 and stated that the police officers had beaten him and asked for the medical crew. Kapanadze was taken to a hospital and given appropriate medical treatment. The certificate issued by the Tbilisi Central Hospital includes the following diagnosis: "closed chest injury, numerous ruptures on the ribs".

On the same day, the police visited the hospital and demanded Kapanadze to return to the police station, where, Kapanadze claims the police officers forced him to give a false testimony as if some strangers had physically injured him after leaving the police building for an unknown reason.

5. Shio Kobidze case.⁴⁴ Information provided by Shio Kobidze is alarming. According to him, on 27 October 2013, at 2 a.m. on the Rose Square, the police officers of the Old Tbilisi District detained him and took to the police department. Kobidze claims the police tortured him, where 4-5 persons were remorselessly beating him, sticking a pen in the injuries, cursing at him, threatening with the use of "a broom" and turning him into a cripple. The medical expert examination report issued by the Levan Samkharauli National Forensics Bureau confirms traces of physical violence on the body. According to Kobidze, his friend who was detained together with him, eye-witnessed the torture. Shio Kobidze notes that together with his lawyer he was requesting the launch of investigation for three months, but in vain. The investigation was launched only on 4 February 2014, in several days following a special press conference organized in GYLA over this issue.

6. Lasha Shatirishvili.⁴⁵ Employees of the third Unit of the Rustavi City Department have detained Lasha Shatirishvili on 24 December 2013. He was charged with committing a crime under Sub-Paragraph 'a' of Section 2 of Article 260 of the Criminal Code of Georgia, i.e. storing the drugs in a large amount. According to him, during the detention the police officers beat him and insulted him verbally. Further, they have threatened him with planting the drugs on him in case he would report on the incident. The Rustavi City Court has

⁴³ <http://gyla.ge/geo/news?info=1750>.

⁴⁴ <http://gyla.ge/geo/news?info=1953>.

⁴⁵ <http://gyla.ge/geo/news?info=1953>.

imprisoned Shatirishvili as part of a preventive measure. The application form of the Rustavi City Hospital and the injuries recorded by the doctor upon his entry in the penitentiary institution confirms the trace of physical violence on Shatirishvili's body.

7. Irakli Tsuladze.⁴⁶ Staff of the Tbilisi Chief Department detained Irakli Tsuladze on 18 November 2013 near Varketili. According to him, during the detention the police officers physically and verbally abused him and then planted the drugs on him. The Tbilisi City Court has imprisoned him as part of a preventive measure. Injuries recorded by the doctor upon his entry in the penitentiary institution confirm traces of physical violence on Tsuladze's body.

8. Davit Chachua.⁴⁷ According to the statement of citizen Davit Chachua, the police officers have detained him on the dawn of 19 January 2014 and took him to one of the Vake-Saburtalo police stations (next to television). As Davit Chachua claims, he was first physically abused and afterwards released.

9. Giorgi Jikurashvili.⁴⁸ Giorgi Jikurashvili reported about verbal and physical abuse by the police officers. He stated he was forced as a result of violence to admit a crime he had not committed. Apart from the police officers, the explanations of Giorgi Jikurashvili refer to actions containing criminal elements committed by one of the prosecutors.

10. Seip Seipiev.⁴⁹ In explanations given to GYLA's lawyer, Seip Seipiev, who is currently in the penitentiary institution #8, notes that he was summoned to the Marneuli police department for interrogation on 11 August 2013. After entering the police department, he was taken into one of the rooms of the police building where they started beating him. They were demanding from him to admit complicity in a robbery. According to him, three persons were beating him and one prosecutor was observing. Seip Seipiev also claims that later he was transferred to Rustavi where physical and verbal abuse on him continued. He says they have put a plastic bag over his head and removed it only after he felt bad. He claims beating was carried out for 10-12 hours, with the intervals of several minutes and sometimes approximately half an hour.

11. Teimuraz Gvaradze. In explanations given to GYLA's lawyer, Teimuraz Gvaradze says that the Telavi Police staff detained him on 21 May 2013. During the detention, the police officers Nugzar Zatiashvili, Merab Komshiashvili, Vano Khaziuri, the Head of the Telavi Police and several other persons have beaten him with bottles filled with water.

12. Giorgi Kotuashvili. In explanations given to GYLA's lawyer G.Kotuashvili notes that during his detention the staff of the Gori police department have physically and psychologically abused him, namely, by kicking him in the back with their legs, kicking a gun butt in his head, beating him with fists in the face area, and trying to plant a knife with him.

13. Mikheil Parulava. In explanations given to GYLA's lawyer M.Parulava states he was detained in Tbilisi on 5 February 2014, during which he was physically and psychologically abused, and as a result of which he had to admit a crime he had not really committed (purchase and storage of drugs).

14. Mamuka Karelidze. In explanations given to GYLA's lawyer, M.Karelidze, who was detained in Gori on 20 August 2013, says that while walking in the street, several police officers approached him suddenly, threw

⁴⁶ <http://gyla.ge/geo/news?info=1953>.

⁴⁷ <http://gyla.ge/geo/news?info=1953>.

⁴⁸ <http://gyla.ge/geo/news?info=1953>.

⁴⁹ <http://gyla.ge/geo/news?info=2049>.

him on the ground and started beating him. They were demanding from him the admission of the burglary of a bar, or otherwise they would "create facts on" his friends and brother.

15. Valerian Bezhikoshvili. In explanations given to GYLA's lawyer on February 19 Valerian Bezhikoshvili states that he was detained on 28 January 2014 in Tbilisi near the "Kolkheti" Hotel, following which the policemen offered him to "cooperate" and give information on his former inmates, in exchange for which they promised monetary compensation. After he has refused, he was physically and verbally abused.⁵⁰

16. Ramaz Nadiradze. In explanations given to GYLA's lawyer, Ramaz Nadiradze claims that on 7 November 2013, approximately at 20:30 he was in the borough of Agara at the main highway together with his friend, when the police detained him and brought to the police station. Nadiradze alleges that in the police department the Head of the Kareli Police was forcing him to give a false testimony and admit storing drugs, which he refused. Afterwards the Head of the Kareli Police abused him physically and verbally.

17. Irakli Kelbakiani. In explanations given to GYLA's lawyer, Irakli Kelbakiani claims that on 15 March 2014, two police officers came out of the patrol police car (plate #KCK-636) in Tbilisi at the cross of the Arsena and Zaal Kikodze Streets, and asked him to get in the car. After Kelbakiani had asked for the reason, they insulted him verbally and forced him into their patrol car. . After putting him in the car, they put handcuffs on him and continued his verbal and physical abuse - by beating him with hands and iron bats in the face, head and extremities. Kelbakiani claims they also simulated his strangling. The external examination protocol drawn up upon his arrival in the temporary isolation ward indicates that he was suffering from "a notch on the neck, scratches behind the left ear, small bruises on both shoulders and the left knee, and bruises on the right shoulder". The health certificate issued also attests of the injuries.⁵¹

18. Beka Gogvadze. In explanations given to GYLA's lawyer Beka Gogvadze claims that on 17 November 2013, two employees of the Didube-Chughureti Unit #5 detained him and brought him to the police department, when the officers abused him physically and verbally. In particular, he was initially verbally insulted in the office of the Department Head, following of which he was knocked down and beaten with legs in the body and facial areas.

19. Nugzar Tabagari. According to explanations given to GYLA's lawyer, Nugzar Tabagari was detained on 18 February 2014 at approximately 3 a.m. by the Old Tbilisi Unit #5, with theft charges. During the detention, the police officers abused him physically and verbally, as well as threatened to plant drugs on him and a gun in case he would not admit any crime.

20. Mamuka Mikautadze. During the reporting period, public attention was drawn to the illegal detention of Mamuka Mikautadze. During his interrogation as a witness, he claims to have been put under pressure by the police officers in order to extract evidence from him. According to the official version, on the next day after the interrogation, Mikautadze has hanged himself. According to our information, Mamuka Mikautadze was detained on 5 July 2013 in the morning hours at his workplace. According to eyewitnesses, Mikautadze was held for several hours at the place of detention, following of which the law-enforcers took him away. Mamuka Mikautadze was taken to the MIA's Tbilisi Chief Department, where, according to the official version, he was interrogated as a witness. Notably, his defense attorney, who was not allowed an entry in the police building due to his failure to contact the investigator, was deprived of the right to meet Mikautadze and attend the interrogation. For several hours, the attorney could not meet either with the second detainee Gela Manjavidze.

⁵⁰ <http://gyla.ge/geo/news?info=2049>.

⁵¹ <http://gyla.ge/geo/news?info=2049>.

After Mamuka Mikautadze left the police building, he told his friends about pressure exercised on him and stated they made him sign evidence against Gela Manjavidze while being thrown on the floor with legs pressing on his head. He also stated he was summoned to the police next morning.

Mamuka Mikautadze told about pressure exercised on him to his spouse as well. On the next morning, Mikautadze told his friends he did not want to live anymore due to what had happened. Later on, Mamuka Mikautadze was found hanged near the Tbilisi Sea territory. At the initiative of the investigating authority, expert examination was carried out on the corpse of Mamuka Mikautadze, while later; an alternative expert examination was carried out with the family's consent. The latter has identified on the corpse several injuries, which the time of infliction was consistent with Mamuka Mikautadze's presence in the police building. According to the expert, in the course of a short period prior to his death, Mikautadze had suffered injuries "from some firm, blunt object".

The General Inspection of the MIA has carried out investigation on Mamuka Mikautadze's suicide and concluded that the staff of the Criminal Police have not exercised any physical or mental abuse on Mamuka Mikautadze.

We believe the investigation on this case should not have been conducted by the MIA, as some of its employees might be responsible for the potential committed crime, but by the Prosecutor's Office of Georgia. Preliminary assessments released at the investigation stage by the Investigative Unit of the MIA's General Inspection cast doubts on the independence, efficiency and credibility of the conducted investigation.

Pursuant to Paragraph 2 of the 7 July 2013 Order N34 of the Minister of Justice (on determining the investigative and territorial investigative jurisdiction for criminal cases), if a crime is potentially committed by a police officer, a case shall be subject to the jurisdiction of an investigator of the Prosecutor's Office.

In fact, in "*Enukidze and Girgvliani vs. Georgia*" the European Court of Human Rights has stated: "For an investigation to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice. This means not only a lack of hierarchical or institutional connection with those implicated in the events but also a practical independence. The effective investigation required under Article 2 serves to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility."

All of the above demonstrates that the investigation process on the Mikautadze case has resulted in grave breaches of standards set by the legislation of Georgia and the European Court of Human Rights.

21. Roman Iakobadze. Our attention during the reporting period was also drawn to the case of Roman Iakobadze. His family members claim that the Adigeni Police staff were exercising pressure on him, and forced him to plant a gun on his relative. They noted that Iakobadze was forced to write a statement against himself. The victim's family informed about this fact the Prosecutor's Office of Adjara as well as NGOs. Furthermore, it is noteworthy that after the detention Iakobadze was deprived of the right to defense by the same police department. The police officers deny the authenticity of the facts related to the Iakobadze case that were provided by the family to the public. Yet, information on conducting a full-scale investigation on these facts by the Prosecutor's Office and any subsequent results has not become available.

7. Recommendations

"Transparency International Georgia", "Georgian Democratic Initiative", "Human Rights Education and Monitoring Center" and "Georgian Young Lawyers' Association" find that in the near future:

- It is important to launch a wide-ranging reform of the MIA, including the agency's reorganization, separation of the security segment, and management of the cadres;
- It is necessary that the MIA's legislative initiatives are consistent with international standards and contribute to the introduction of high standards of protection of citizens' rights;
- The MIA should request the enactment of the witness interrogation procedure and other progressive regulations in the shortest period of time;
- The MIA should, on one hand, necessarily analyze last year's challenges, especially in terms of securing freedom of expression, and on the other hand, plan effective ways for resolving these difficulties, *inter alia*, training of the staff;
- It is crucial that all crimes related to potential abuse of powers by police officers are investigated without delay;
- It is important to introduce within the MIA a system of surveillance and wiretapping compliant with international standards on the matter. To this end, it is necessary to adopt legislative amendments that would restrict the possibility of infringing upon private life to the maximum extent and that would curb power abuse by entities carrying out secret investigative actions;
- To set up the mechanism of supervision over secret surveillance and wiretapping, it is equally important to expand the circle of bodies responsible for the protection of personal information, make sure these are effective and grant them extra functions by the legislation;
- It is essential to set up a special supervisory parliamentary commission, which would supervise the observance of relevant procedures for the examination, the use and the storage of personal information as well as it should supervise the deletion and destruction of the data obtained as a result of secret surveillance and wiretapping;
- Pursuant to the legislation of Georgia, the crimes committed by police officers must be investigated by an investigator of the Prosecutor's Office. Yet, several occasions were reported in practice when the MIA's General Inspection was conducting the investigation ("inquiry"). It is crucial that this requirement of the law is observed unconditionally in each specific case;
- To conduct an objective, impartial and effective investigation of crimes committed by police officers, it is essential to set up the mechanism that would exclude or minimize the risks of ineffective and biased investigation.