Policy of Invisible Power

Analysis of the Law Enforcement System

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Policy of Invisible Power

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Part 1. Preface

Chapter 1. Introduction

Law enforcement system of a country, as well as, the principles of its administration, and level of democracy is an important evaluation indicator of a country. Operational principles of these very structures and type of their interaction with public and their position regarding certain facts demonstrate the forms of governance, values and their priorities.

Despite the several important reforms implemented in recent years, creation of effective, independent law enforcement system that has high legitimacy and trustworthiness on the institutional level has not been possible yet.

At various times, the police forces used against political meetings and demonstrations[1], the practice of administrative detention[2], illegal surveillance and wiretapping cases, systemic problems of ineffective investigation of crimes allegedly committed by law enforcement officials[3], and intrusion practices of security officers[4] creates ground to think that law enforcement system, with its two integral structures, – Police and Prosecutor's Office are the key players of certain political processes. It stems on the police system, controls and regulates political stability in the country; meanwhile leading political power tries to strengthen its influence and therefore, easily finds support in police structures.

Due to inexistence of long-term, continuous democratic governance and neutrality, it is easy to establish the cooperation over political ideology, between political leadership and administrative structures. There has always been a common sense among the public that law enforcement system may become a political weapon against opposition, anti-governmental or other reactive groups. Obviously, involvement of law enforcement system in political processes is not solely an intuitional problem; however, there is no doubt that the reality of such threats is largely due to the sort of chain of the systemic problems.

The following shortcomings of the system create the grounds for politicized law enforcement system:

• Centralized system and little functional autonomy of certain departments.

• The excessive concentration of power beyond the non-transparent forms of governance;

• Lack of Democratic and effective accountability system;

• Noneffective and nonstructured liability methods.

• Faulty investigative and police functions;

In addition, it is clear that the systemic shortcomings of the police or the prosecutor's office do not exist in isolation and it is part of the united context of the criminal justice system. For through assessment of major critical challeng-

1 - Use of Police force against manifestations is discussed by UN Human Rights Committee in 4th periodic report of Georgia July , 2014,

2 - "Administrative Error – Georgia's Flawed System for Administrative Detention", Human Rights Watch, 2012. http://www.hrw.org/reports/2012/01/04/administrative-error-0; last updated on 25.05.2015

3 - "Assessment of the Internal Affairs Ministry performance in 2013"Joint report of Non-governmental organizations, see: http://bit.ly/1BM8U3c; last updated: 25.05.2015

4 - Security Officers ("ODRs") - existing malpractice, TI Georgia, 2014. see: http://transparency.ge/en/node/4682; last updated on 25.05.2015

es, general context should be considered. Therefore, it is important to analyze not only the institutional structure and functions of the police, but also other departments of investigative and prosecutorial structures, as well as, the part of penitentiary system that is linked to aforementioned issues.

The given research was planned based on the needs of such systemic analysis. The research comprises the following structures and thematic groups:

The topics covered by the research:

1. Institutional Independence and Political Neutrality
2. Concentration of Power;
3. Preventive police functions
4. Investigative system
5. Responsibility and Accountability of the Law enforcement agencies

For the research purposes, in the term – law enforcement agencies – are meant following agencies:

1. Ministry of Internal Affairs and it's individual agencies;
2. Prosecutor's, Office and its structural units;
3. Other investigative agencies;
4. Penitentiary system

The necessity of the research derived from several factors, such as: recommendations of local organizations that confirmed the existence of systemic problems in the law-enforcement structures[5]; special and parliamentary reports of public defender[6], special report and recommendations[7] of Thomas Hammarberg and reports of other international experts about Georgia.

The recent announcement, in 2014, by the prime minister concerning the reform of Ministry of Internal Affairs and Prosecutor's Office also confirms the importance of the issue for the political leadership and its political agenda. Moreover, in the light of Association Agreement, the issues of criminal justice and reforms of law enforcement system are one of the crucial aspects of Georgia – European Union relations[8].

Chapter 2. Research Methodology

As mentioned above, presented research refers to the operation and institutional analysis of law enforcement system, special attention is paid to the high degree of power concentrated in the system and the mechanisms to balance it, to the volume of competences of specific bodies and the existing threats of using the power with possible political or other illegal motives. It also refers to investigative institutions, police activity and other.

For the purpose of analysis of aforementioned issues, the research methodology used secondary analysis of the following research documents:

• Request and analysis of public information;

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5 -"Assessment of the Internal Affairs Ministry performance in 2013"Joint report of Non-governmental organizations, p.3, see: http://bit.ly/1BM8U3c; last updated on: 25.05.2015

6 - Reports of Georgian public Defender about The Situation in Human Rights and Freedoms in Georgia – 2012, see: http://www.ombudsman.ge/uploads/other/0/86.pdf, last updated on: 25.05.2015

7 - GEORGIA IN TRANSITION Report on the human rights dimension: background, steps taken and remaining challenges,2013,http://eeas.europa.eu/delegations/georgia/documents/virtual_library/cooperation_sectors/georgia_in_transition-hammarberg.pdf ; last updated on 14.05.2015

8 - Association Agenda between the European Union, priorities, 2.3.

• Study of international standards and best practice.

• Study/analysis of academic materials;

• Analysis of normative framework;

• Workshops;

Secondary analysis of existing research documents

This research method allowed us to analyze the current state, as well as, the situation in the past. In order to consistently consider the issue, secondary analysis of research documents is very important method; it helps to identify the historic background of certain shortcomings. Several documents have been reviewed, including the works of local and international experts, Public defenders reports, recommendations issued for Georgia and etc.

Request of Public Information

The working group requested relevant public information from Ministry of Internal affairs, Ministry of Justice, Ministry of Corrections and Probation, Prosecutor's Office, Common Courts and other state organizations. The aim of study of requested information was to establish general institutional outline of certain structures, to find out the management structure of certain law enforcement systems, number of personnel and other issues.

International Standards and Best Practices

The separate problematic issues identified in the research and the recommendations given out on them are based on comparative analysis, which was taking place simultaneously while working on presented document.
For the purpose of deeper understanding and evaluation of the existing system, law enforcement system models of different countries were examined, including the critical and positive assessments expressed by international supervisors, also reforms process of law enforcement systems of other countries were reviewed.

The countries were selected according to the following criteria: characteristics of criminal justice system (adversarial and inquisitorial) and model of constitutional–legislative framework. Thus, the research groups has studied law enforcement system models of several countries, which are qualitatively different or similar to the legal system of Georgia.

Academic Research

For theoretical processing of the issue and better understanding of the problems, the research group has searched and analyzed the academic papers on the arrangement of law enforcement system, the role and mandate of specific bodies, their operation and on other relevant topics.

Analysis of Normative Framework

In reference to independence, accountability and transparency, authors of the study analyzed relevant legislation, bylaws and regulations that shape the rules for creation and functioning of the system. The legal order was evaluated retrospectively, which entails simultaneous study of current and previously existing systems, their comparison and comprehension. The legislative acts in this process are studied with existing, as well as, with old editions. During the process, several legislative acts, strategies, political documents, reform proposals, and opinion papers

have been analyzed.

Workshops

The workshops were held with the organizations and experts working on the actual issues of the research; they possess the important knowledge and experience for the research purposes. Several individual meetings were held with the experts working on the issues of safety, police and prosecutor's office, meetings were also held with the current and former employees of the system, who were directly involved or are still involved in the reforming process of the system. During the meetings, several topics regarding the law enforcement system were discussed and critically assessed. As a result of individual meetings different positions and arguments from individuals with relevant experience where obtained regarding some critical issues.

Obstacles During the Research Process

The major impediment during the current research was the problem of sourcing public information from public institutions. The institutions typically are providing information with violation of statutory period. In most cases, the information provided was incomplete, did not include any relevant messages and contained banal texts of a template letter.

Another major obstacle for the research group was classified documents, such as internal regulations of certain departments or certain structure, internal regulatory legal acts or cooperation terms among certain structures. During the project Ministry of Internal Affairs made three Statutes public, nevertheless, the Statutes of Security Structures remains to be state sector. Another piece of information that is classified is the number of employees in Ministry of Internal Affairs and some of its departments.

Given these settings it was exceptionally difficult for the research group to identify certain problems and therefore to provide relevant recommendations.

Chapter 3. Main Findings of the Study

1. Institutional Independence and Political Neutrality

• Low degree of institutional and functional independence of law enforcement agencies (Police and Prosecutor's Office) provides grounds for political influences;

• Expressively centralized and hierarchical nature of law-enforcement agencies, contributes to the increase of political influence on overall system;

• Procedures for appointment and dismissal of the head of Prosecutor's Office and Prosecutor General contain several drawbacks:

  • The process of appointment is fully under control of executive government, namely, Minister of Justice

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5 -"Assessment of the Internal Affairs Ministry performance in 2013"Joint report of Non-governmental organizations, p.3, see: http://bit.ly/1BM8U3c; last updated on: 25.05.2015

6 - Reports of Georgian public Defender about The Situation in Human Rights and Freedoms in Georgia – 2012, see: http://www.ombudsman.ge/uploads/other/0/86.pdf, last updated on: 25.05.2015

7 - GEORGIA IN TRANSITION Report on the human rights dimension: background, steps taken and remaining challenges,2013,http://eeas.europa.eu/delegations/georgia/documents/virtual_library/cooperation_sectors/georgia_in_transition-hammarberg.pdf ; last updated on 14.05.2015

8 - Association Agenda between the European Union, priorities, 2.3.

and the Prime Minister;

• Selection process of Prosecutor General is politically driven. Prosecutor General is not selected based on professional background, qualification, experience or any other predefined objective criteria;

• Appointing/dismissing the Prosecutor General is a sole authority of the ruling party. Non-governmental political parties are unable to influence the process;

• The degree of influence of Prosecutor General over the activities of individual prosecutors is rather high. Moreover, Prosecutors Office is characterized as highly hierarchical system, that increases the risks for political influences;

• Individual prosecutors do not have adequate functional independence. There is absolute subordination towards supervising position;

• Ministry of Internal Affairs exercises strong influence over the activities of Police system. It is authorized to intervene in specific police actions. In given settings, MIA is number one police officer;

• Considering the structural subordination system, Minister of Internal Affairs, being a political figure, can intervene in the activity of an employee of any ranking. The Minister is also authorized to change or cancel the decision made by an employee;

• "Middle Management" as such, does not exist within the system of Ministry of Internal Affairs, there are no officials in the system who can enjoy high degree of functional independence and autonomy from political leadership of the system;

• Police authority services (departments) are institutionally and also functionally subordinate to the Ministry of Internal Affairs and its Political leadership;

• Merging certain ministers to the central management of the Ministry and to its leadership, increases the risks for political involvement, including during specific police actions;

• Considering the restricted and nontransparent management system of the MIA, classified information about its human and technical resources, secret regulations about the functions, practically rules out the possibility to control the lawfulness of Ministry's operation. This creates basis for unlawful use of power by the representatives of the system, including for political purposes;

2. Power Concentration in the Ministry of Internal Affairs

After the Ministry of Internal Affairs and Security Services were united and relevant reforms were implemented, Ministry of Internal Affairs ended up to be the largest and most powerful state agency. The number of employees reaches 40 000;

• The following functions are concentrated in one system - Ministry of Internal Affairs: protection of state security and safety, crime investigation, implementation of police-preventive actions and operative-searching activities, border protection, protection services and provision of other public services;

• Compilation of several different agencies in one system, allows the ministry to access unlimited amount of information and resources;

• Terms of cooperation and information exchange is not clearly regulated by the law;

• The mandates and authorities of each agency of the Ministry are not defined distinctly. Competences seem to overlap among the departments, which makes their work ineffective and it challenges implementation of external control;

• Service Agency is a source of important information. Moreover, financial resources received in return to the information is quite a significant financial tool for the Ministry;

• Security Police is a powerful human resource entity (more than 11 000 employees), it is also an important financial source of the Ministry. Control mechanism over the use of those funds is ineffective;

• Most part of the legislation that regulates the activities of security services is confidential. The information about real purpose, influences and the scope of work of security services is practically inaccessible;

• According to the legal acts that are accessible, security services have wide range of powers: apart from analytical and intelligence activities regarding state security issues, their competences also include investigation of certain criminal cases, police-preventive activities to avoid crime and other violations. All the above mentioned responsibilities unjustifiably expends the authorities of this service;

• As the competences and the mandate of security services is unclear, it is impossible to supervise their activities. This creates a doubt that the resources may be used for political reasons, for maintaining political stability and authority of ruling political power, or for unlawful social control;

• The result of granting unlimited powers to such agencies is that, those agencies start to carry out police-preventive and investigative activities. The law does not clearly define if those activities are carried out only for state security and safety purposes, or in response to any criminal offence;

• The influence of security services is farther enhanced by the opportunity to assign special security officers ("Odeers") in specific departments. It has to be underlined, that ""Odeer" responsibilities and terms of cooperation with other departments is not accessible. There are no effective means for implementing control over their activities.;

• In parallel to placing secret investigative activities in Criminal Procedural Code, no changes were made to the legislation on counterintelligence activities. Therefore these two to normative acts sets different regulations for implementations of measures as: secret video and audio surveillance;

• Legislative framework does not strictly regulate the rules of investigative agencies for sharing the information for investigation/prosecution purposes, that was obtained in the frames of counterintelligence activities;

3. Police Preventive Activities

• Most of the police preventive actions stipulated in a new Law on Police 2013, are binding and of repressive nature. Many times the intensity of intervention in human rights while police preventive actions, equals to the intensity of criminal prosecution;

• The wording of the law, creates grounds for carrying out preventive measures in response to specific crime, which becomes far from prevention;

• It is vaguely formulated, which structural units or employees of which ranking can carry out police-preventive activities;

• It is questionable that operative-searching activities is in the frames of criminal justice system. It is also questionable, why operative–searching activities are considered as one of the types of preventive activities according to the Law on Police. However, those measures can be carried out for other purposes too, such as for investigation of certain cases or responding to them;

• Special police control (same as "reid") is associated with intensive limitation of rights; this action is also considered a prevention activity. In cases of reid, sort of emergency situation is created and every person or object is subject to inspection. What makes it even more problematic is that, decision about carrying out those actions are made exclusively by the minister or by the official specially designated by the minister. It is a powerful tool in the

hands of the minister or politician to carry out direct intervention in the activities of police;

• When preventive police actions are implemented, the addressees of those actions are not sufficiently protected by legal guarantees. It is not mandatory for the police to identify itself while carrying out the actions. Only in limited number of cases the police officer is obliged to submit a protocol. There is no effective mechanism for filing an official complaint against the actions carried out.

4. Investigation System

• Investigation jurisdiction is regulated by bylaws, based on Minister's order. However, it does not clearly define the competences of certain agencies, it is also impossible to avoid duplication of competences. The problem also lies in the authorization of Prosecutor General to forward a certain case from one investigative unit to another, even if it does not comply with the rules established by the order;

• The competence of supervising an investigative structure is not clearly defined by the law, their influences over the investigation of certain issues is no clear. According to the procedural legislation, Prosecutor is responsible for procedural supervision of the investigation. Although, the head of investigative agency is not equipped with such procedural status. As consequently, it is unknown how the matter will be resolved if the head of the agency and the supervising prosecutor issue conflicting orders it respect of an investigator;
• In current system of investigation and prosecution is unable to provide effective and unbiased investigation of cases concerning the crimes potentially committed by the former or current law enforcement officer. This type of circumstances creates the need for independent investigative/prosecution mechanism, which is not part of the law enforcement system;

• Legislation clearly defines the basis for initiating an investigation and the moment of staring it. However, the law does not regulate the cases of postponing the start or actual investigation. There are controversial statements in this regard in the Criminal Procedural Code and the Law on Operative-Searching activities;

• Legislation does not provide sufficient guarantees if the accusation of a person is postponed. meanwhile this person does not have any legislative advantages to request compensation for the damage affected due to delay of granting the status;

• Procedural Code contains regulations that are inconsistent with equality and competitiveness principles of parties;

5. Responsibility System of Law enforcement System

• The level of institutional independence of general inspections is very low.

• Minister/Prosecutor General have unlimited rights to intervene in the activities of General Inspections, in the same manner as they can intervene in any other departments of the structure;

• Ministers/Prosecutor General determine the staffing policy of the departments and appoints and dismisses the department heads, this diminishes the level of independence and autonomy of general inspections;

• The reports submitted by the inspection departments is of recommendatory character, Minister and the Prosecutor General can disregard the report and make final decision of different content. They are not obliged to justify the different decision;

• General inspections are not accountable externally, therefore information about their activities is not accessible;

• Disciplinary proceedings are vague in the structures under discussion. Evidentiary standard and the issue of burden of proof, stages of disciplinary proceedings and other issues are not defined.

• In the given settings, the general inspection is represented as an agency for studying the case, implementer of disciplinary proceedings and the structure who receives the final decisions (recommendation letters.) As a result, the case is proceeded without involvement of impartial, neutral entity of official;

• Persons who have committed certain offence are not equipped with sufficient guarantees. Namely, the basis of disciplinary proceedings is unclear. It is not mandatory to hold hearings with the person while disciplinary proceedings. They do not have any advantages to collect evidences for proving their position.

• The mechanism for filing a complaint against the disciplinary agency is not effective;

• Criminal responsibility system of law enforcement agencies is not effective. It does secure guarantees for conflict of interest on the stage of investigation and prosecution;

6. Accountability System

• Existing model for accountability of law enforcement structures is ineffective;

• Accountability of Prosecution agencies implies to periodic update of the Prime Minister about the activities of the system and presentation of a Prosecutor General to the Parliament. However, it should be pointed out that the parliamentary supervision of the system is rather week and there is no practice of it. Nevertheless, Prosecutor's Office does not have similar or any accountability obligations towards the Minister of Justice;

• Minister of Internal Affairs is accountable to the government, as well as, to the Parliament. Nonetheless, existing accountability model does not provide parliamentary minority with any effective tools to hear or question the information provided by the Minister of representative of the ministry.

• The law does not stipulate existence of one or two parliamentary committees, to which the Prosecutor's Office or MIA would have been accountable and obliged to provide regular information.

Part 2. Institutional and Functional Independence and Political Neutrality

Chapter 1. Introduction

The key criteria while assessing the law enforcement system is the independence granted to certain agencies and the level of political neutrality. Operation of law enforcement system should be deemed impartial and independent, there may not be any questions about its political inclinations, such questions are as damaging for the system, as actual interference in the procedures[9].

Political neutrality and independence mean functional autonomy of certain law enforcement entities from the political governance. In this type of system, the political leader of the agency (for example, the Minister of Internal Affairs) is responsible for defining general policy, while operational units are independent from the political leaders of the system and have functional autonomy. Functional autonomy in the conditions of institutional subordination is achievable when the authority of political leadership, their influence on the system and the protection guarantees of the employees of the system (among others, appointment, assessment, promotion, discipline) are adequately regulated. In these conditions, the risk of improper political influence is excluded at the institutional level.

In the given chapter, we discuss the issue of political neutrality in the system of the Ministry of Internal Affairs and the Prosecutor's Office. In order to illustrate, how the Prosecutor's Office and Ministry of Internal Affairs is protected from the political influence, the following chapter will outline their place in the legal framework, the appointment procedures and termination of duty of leaders of the office - Chief Prosecutor and the Minister of Internal affairs - as well as their competences and level of influence on subordinate structures.

Chapter 2. Prosecutor's Office

2.1. Institutional location of the Prosecutor's Office

Prosecutor's Office of Georgia has gone under several fundamental and less significant changes during the past years; nevertheless, it has never succeeded to properly define the place and the institutional independence of the Prosecutor's Office. Consensus has not been reached on the topic of institutional location of the Prosecutor's Office in different branches of government. Namely, whether it is rightfully located within the structure of Ministry of Justice. One of the first topics of Constitutional Commission's current agenda is determination of institutional location of Prosecutor's Office. This fact underlines the urgency of the matter.

Furthermore, it is a great challenge to change the public attitude towards the Prosecutor's Office, In order to ensure that it is not perceived as a politically repressive tool of the government, but rather a guaranty of equality and justice[10].

Prior to 2004, in the Constitution of Georgia contained the following clause[11] : *Prosecutor's office of Georgia is part*

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9 - VENICE COMMISSION REPORT ON EUROPEAN STANDARDS AS REGARDS THE INDEPENDENCE OF THE JUDICIAL SYSTEM (PART II), P. 7, IAP standards of professional responsibility and statement of the essential duties and rights of prosecutors; European Guidelines on Ethics and Conduct for public prosecutor (Budapest guidlines); Recommendation REC (2000)19, Adopted by the Committee of Ministers of the Council of Europe on 6 October 2000.

10 - According to the survey conducted in 2014, only 35 % of respondents partially or fully trusted prosecutors, see survey: http://www.ewmi-jilep.org/images/stories/books/Reports/JILEP_CRRC_Final_Report_2014_Geo.pdf, p. 7 last updated on, 26.05.2015

of the Judiciary, that conducts criminal prosecution, supervises disquisition and sentence completion. It supports the allegations of the government. The constitution stipulated[12], that the Prosecutor's Office is a united centralized system and the prosecutor is appointed nominated by the president and appointed by the parliament by a majority vote. The above-mentioned clause was removed after amendments were made in 2004; nevertheless, Prosecutor's Office continues to operate within the judiciary.

Institutional location of the Prosecutor's Office was eventually determined during the constitutional reform in 2008[13]. Article 844[14] was added to the Constitution, according to which, Prosecutor's Office is part of the structure of Ministry of Justice; accordingly, it is the competence of minister of Justice to oversee the activities of its departments. Accordingly, today the institutional location of the Prosecutor's Office is clearly in the part of the Executive Government. Nevertheless, communication with political leadership of the country and the risks of political influence, as well as moderate accountability remain to be a challenge.

2.2. Institutional Independence of the Prosecutor's Office

Independence of Prosecutor's Office should not be classified as the independence of the judiciary . Even a minimal interference is unacceptable in the Judiciary, while Prosecutor's institutional independence is originally limited, as it was mentioned, this body is included as a part of the ministry of Justice. The functional independence of prosecutor's office is limited with such circumstances, as existing criminal law policy, guidelines to implement the given policy. However it is crucial that individual prosecutors and the system of prosecutor's office entirely are safe from unlawful interventions based on private, political or collaborative or some other reasons.

As mentioned above location of the Prosecutor's Office in legislative framework was eventually determined in 2008, nevertheless, while Prosecutor's Office became an integral part of an executive branch, an issue of political neutrality and problem of impartiality has arrived. In the model of 2008, practically no prevention mechanism is employed, that would stop the Minister of Justice Interference in the Prosecutors activities and to its influence over certain criminal cases. In this regard, recent changes to the *Law on Prosecutor's Office in Georgia*, in 2013 should be positively noted[15]. According the amendments, the Minister of Justice is no longer considered as the high-ranking prosecutor, it does not conduct criminal prosecution against certain public officials or other defendants[16]. Meanwhile the Minister of Justice maintained its authority of decision-making over several important issues (participation in the process of assigning the Prosecutor General).

Organizational management related issues of Prosecutor's Office that used to be the sole competence of the Minister of Justice, was delegated to the Prosecutor General, such as: creation of departments, determination of their competences, approval of criminal law policy implementation guidelines, funding and logistic support. The later makes major decisions content wise regarding several issues, however proposals elaborated by the Prosecutor General is made legal only by the order of the Ministry of Justice, which can be considered as a meaningful advantage for the system[17]. The issue of appointing and dismissing the prosecutor General can be considered as an important asset for influencing the Prosecutors Office. This decision is still made by the Ministry of Justice and the Prime Minister. The status and unlimited power of the Prosecutor General can be considered as an important advantage in the hands of an executive government for interference in the activities of the Prosecutors Office.

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11 - Constitution of Georgia, Article 91, part 1. As of amendments of February 6, 2004.

12 - Constitution of Georgia, Article 91, part 1. As of amendments of February 6, 2004

13 - Constitutional Law, October 10, 2008.

14 - VENICE COMMISSION REPORT ON EUROPEAN STANDARDS AS REGARDS THE INDEPENDENCE OF THE JUDICIA SYSTEM (PART II), P. 6-7

15 - Law of 30 May 2013 N№ 6 59.

16 - Law on Prosecutor's Office of Georgia, Article 8.

17 - Ibid, Article 9

2.3. Appointment and Dismissal of Chief Prosecutor

While assessing the independence and political neutrality of prosecution system, among other issues it is important to oversee the procedures of appointment and dismissal of Chief Prosecutor and those criteria that the candidate should comply. Generally, government's interest to have full authority over the process of appointment and dismissal of Chief Prosecutor is natural, nevertheless, while administering the process, public interest should be taken into consideration, the nominated Chief Prosecutor candidate should be a person with a recognized authority in professional circles and ability to lead the system effectively and independently[18] .

In 2008, new law on Prosecutor's, Office regulated the issue of appointing the Chief Prosecutor in a different way; it became a sole competency of the Executive. Earlier the Chief Prosecutor was appointed by the majority vote of the parliament for 5 years, upon the nominations of the President. According to the new law, the president of Georgia upon nomination of the Ministry of Justice appoints Chief Prosecutor, although from 2013 instead of the president this authority is granted to the Prime Minister[19]. The same procedure applies during dismissal of Chief Prosecutor.

The Law on the Prosecution Service specifies those requirements that each candidate of Prosecutor or the Investigator of Prosecution Services should comply with. The requirements are as follows: Georgian citizenship, higher legal education, and command of the language of legal proceedings, internship from six months to one year at the Prosecution Services, certificate of qualification exams in relevant commissions, Prosecutors Oath, being the sworn employee of the Prosecution Service, hard-working and moral characteristics and condition of health[20]. The Law on the Prosecution Service or other statutes does not impose any higher requirements for the position of Chief Prosecutor, moreover the given law on the Prosecution Services allows some exceptions, by which the Chief Prosecute and his/her deputies can avoid prosecution qualification exams and mandatory internship[21]. Accordingly, The Law on the Prosecution Service allows a person to hold the position of Chief Prosecutor or his/her deputy, without having practical experience and entrance into the profession has not been checked according to the special rule.

This approach could have been justified, if the Prosecutor General's competence were limited to the managerial functions, but today Prosecutor General is considered as the prosecutor of highest status, who can carry out criminal prosecution against high political officials and against persons of several other positions, he/she has an authority to influence any criminal case. Relevantly, the law should determine additional, high professional criteria for this position.

With the changes of 2013, the appointment process of the Chief Prosecutor's has not in fact changed. The right to participate in this process is still reserved to the members of the executive government, namely holders of the political offices – the Minister of Justice and the Prime Minister. The fact of exclusion of the Georgian parliament from this process, in the first place, has created basis for making this decision in a simple way, by one political party only and has cancelled the possibility of discussing the matter in the parliament. Due to these changes, any political instruments to influence the process by the parliamentary minority have been cancelled. At the same time, the authority to make a decision was transferred to the leader of the governing political party, with the participation of the member of the government, the Minister of Justice. Thus the process of selecting the candidate, appointment and dismissal is now limited to the decisions of two members of the executive team.

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18 - *VENICE COMMISSION REPORT ON EUROPEAN STANDARDS AS REGARDS THE INDEPENDENCE OF THE JUDICIA SYSTEM (PART II), P. 8*

19 - *Law on Prosecutor's Office of Georgia, Article 9, section 1.*

20 - *Article 31, section 1 of the same law.*

21 - *Part 2 and section 3 of the same Article.*

In several other countries, different branches of the government are involved in the appointment process of a Prosecutor General[22]. For example in Lithuania, the president proposes the candidates of Prosecutor General to the Parliament for 5-year term. The president also assigns and dismisses the deputies of the Prosecutor General . In Poland, the president assigns the Prosecutor General for 6-year term, based on the list submitted by the National Council of Prosecutor's Office and by the National Council of Justice[23]. Moreover, as per Venice Commission Report, through cooperation of governmental structures unilateral decision-making can be avoided.

In Georgia exclusion of non-governmental, oppositional political parties from the process, as well as, elimination of the parliamentary mechanisms, create a real danger that the appointment and dismissal of the Chief Prosecutor may happen based not on professional merits but on political and other unrelated motives. In this regard, those minimal demands must also be taken into consideration that are established by the law with regards to the appointment of the Chief Prosecutor and which reduce the possibility of selecting the candidate by his or her professional abilities.

It has to be mentioned that specialized council operates in various countries[24] , which is involved in assigning the Prosecutor General. For example, Minister of Justice of Poland, similar to Georgia, was an ex-officio Prosecutor General until 2010. Nevertheless, from March 31, 2010, Prosecutor's Office separated from the Ministry of Justice[25].

As of today National Council of Justice and the Council of National Prosecutor's Office proposes two candidacies to the president. The later councils created in 2010 includes the representative of the president, four members of the parliament, Prosecutor General, Minister of Justice and other prosecutors from various levels[26]. The aim of the councils is to protect the independence of Prosecutor's Office.

In Lithuania, Prosecutor General Selection commission is in place, which is created by the Prosecutor General for the purpose of selecting the candidates for Deputy Prosecutor General's[27]. The commission is comprised of three members that are elected for three-year term. In order to assemble the commission, collegial council nominates two prosecutor members, Prosecutor General also nominates two prosecutors (among which one of them should be nominated by the Professional Union Of Prosecutors); one members is nominated by the President, one member is nominated by the head of the parliament and one member is nominated by the prime minister.

Considering the experience of Lithuania and Poland, while selecting, nominating and electing the candidate for Prosecutor General, it is crucial to introduce the elements of professional selection, together with participation of political parties. This kind of procedures will significantly reduce the risks and political control of certain political figure or group over the selection process. Democratic process for recruitment of commission members is important for the effectiveness of overall process. It is crucial that different branches of the government and prosecutors are included in the selection process of commission members.

It must be taken into account that the most important role of the Prosecutor's Office is to supervise the investigation process. In several countries, the experience showed that in order to create formal guarantees for objectivity and independence, legal control system of the investigation should be introduced; the function of the control was granted to the Court or Prosecutor[28]. It also has to be underlined, that in adversarial-based system, it is not

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22 - Constitution of Lithuania. Article 118.

23 - Position of Prosecutor's Office in Governmental system, comparative study of international standards and practices of other governments. Ministry of Justice, January 2015, p 80.

24 - e.g. Poland and Latvia

25 - http://www.pg.gov.pl/en/the-prosecution-in-poland/the-prosecution-in-poland.html#.VHtbLTGUfh4 last updated on: 01.11.2014.

26 - See: http://www.unodc.org/documents/corruption/WG-Prevention/Art_11_Judicial_and_prosecutorial_integrity/Poland.pdf last updated on 01.11.2014.

27 - Position of Prosecutor's Office in Governmental system, comparative study of international standards and practices of other governments. Ministry of Justice, January 2015 p. 59.

28 - The role of the public prosecution office in a democratic society: multilateral meeting organized by the Council of Europe in cooperation with INTERCENTER, Messina (Sicily), 5-7 June 1996, Council of Europe, pg. 109

a prosecutor's role to find the guilty person. His/her function is to impartially present to the court the evidences collected by the investigator. Given such situation, it is important to separate the functions of the investigator and the prosecutor, but allow the required and relevant cooperation[29]. By distancing the prosecutor from the investigation process, it becomes impossible to make independent decision (which prosecutor is obliged to make), as the prosecutor will always be depended on police to collect relevant information[30].

Objective and comprehensive supervision requires special separation between the Ministry of Internal Affairs and the Prosecutor's Office in order these agencies to understand their different positions and obligations and perform their duties.. In the conditions when the Prime Minister has a right to appoint both the Minister of Internal Affairs as well as the Prosecutor General, there is an increased risk that the loyalty between these two agencies may increase and the supervising function may be weakened.

2.4. Influence of Chief Prosecutor over Prosecution System

The structure of Prosecutor's Office of Georgia is strictly organized hierarchical system, headed solely by Chief Prosecutor. Unity and centralizations, the submission of subordinate prosecutor and other employees of the Prosecution Service to the Chief Prosecutor is one of the stated principles of Prosecution System[31]. Forms of Subordination of the Subordinate Prosecutor to the Supervising Prosecutor are comprehensive and apply to all decisions made to exercise Prosecution powers[32] .

There are practically no limits to its power, it covers any topic regarding the operation of the Prosecutor's Office - defining the general policy or making decisions over certain issues: Prosecutor General defines and submits to the Ministry of Justice the principles of criminal policy guidelines. Prosecutor General defines and submits to the Ministry for approval the propositions about financing and material technical equipment of the Prosecutor's Office. He/she also carries out prosecution against high-ranking officials, assigns special prosecutors, Issues binding legal acts and instructions and fulfills some other functions.

As mentioned above, apart from controlling general political issues, Chief Prosecutor is authorized to make decision about specific cases. For instance, he/she determines the basis for disciplinary responsibility and decides upon the application of disciplinary punishment against certain prosecutor.

There are practically no limits to its power, it covers any topic regarding the operation of the Prosecutor's Office - defining the general policy or making decisions over certain issues

The influence of the Chief Prosecutor over the prosecution system is farther enhanced by strictly hierarchical nature of the system, which is governed by the Chief Prosecutor. In this regard, it is important to measure if hierarchy is compatible with the autonomous nature of the individual prosecutor, and if the hierarchy resulted into unbalanced distribution of powers, where the person in charge has practically unlimited jurisdiction to control a function autonomy of lower level prosecutors[33]. At Prosecutor's Office, the authorities of supervising prosecutor are quite broad and allow them to make specific references to the subordinate prosecutors, as well as, to alter or abolish orders issued by them, also define the forms of subordination of the subordinate prosecutors[34]. In the meantime,

29 - Tony Krone, Policy Commonwealth Director of Public Prosecutions, ACT, POLICE AND PROSECUTION, .3

30 - Dr Despina Kyprianou, Comparative Analysis of Prosecution Systems (Part II): The Role of Prosecution Services in Investigation and Prosecution Principles and Policies, pg. 4

31 - Law on Prosecutor' Office of Georgia, Article 4, section "E"

32 - Law on Prosecutor' Office of Georgia, Article 13

33 - THE ROLE OF PUBLIC PROSECUTION IN THE CRIMINAL JUSTICE SYSTEM; Recomendation Rec (2000) 19; P. 6.

34 - Law on Prosecutor' Office of Georgia, Article 13

the legislation does not provide sufficient guarantees for the prosecutors and they are unable to make decisions based on their own beliefs and judgment. A clear example of this is a binding instruction of the higher prosecutor, as the legislation does not stipulated either the form or the frames of such indication.

Such arrangement of the Prosecutor's Office significantly increases the risk of its politicization, since the Chief Prosecutor is on the highest point of the hierarchical tree and is appointed and dismissed solely by the leading political power. Consequently, if selection is made on political grounds, which is highly possible given the existing legislative model, the whole system will be at risk of politicization, because as mentioned above, Chief Prosecutor has unlimited influence over the operation of the system.

In order to better illustrate the competencies of Chief Prosecutor, it is interesting to review Criminal Code of Georgia, Article 33, which states that Chief Prosecutor, despite investigative jurisdiction, can withdraw the case from one investigative authority and assign it to another. Chief Prosecutor is also authorized to remove subordinate prosecutor from procedural guidance of the investigation and assign those functions to another prosecutor. Clear basis or standards that would justify such decision are not defined. All the above lays ground for improper influence over the legal proceedings.

(see. Relevant chapter about investigative jurisdiction of criminal cases)

Generally, we may assume that the hierarchal nature of the Prosecutor's Office, as well as the influence of the political governance over the process of appointing and dismissing Prosecutor General, increases the risk of politicizing the activities of the Prosecutor's Office and reinforces the belief that in case of political interest and will, the given mechanism may be used by the political force as a means of achieving political goals

Chapter 3. Ministry of Internal Affairs

3.1. The competence of the Ministry of Internal Affairs

Before 2004, Constitution of Georgia used to include the following clause: *The armed forces, state security forces, and the police shall not be united*[35]. The clause was removed in the frames of Constitutional Reform in 2004[36] that subsequently enabled security services to operate under the umbrella or Ministry of Internal Affiars (hereinafter MIA) in parallel with police and investigative functions. Unification of two important law enforcement agencies – Ministry of Internal Affairs and Ministry of State Security were united in fast manner, without any fundamental research and analysis. Required legislation for unification process was adopted in the parliament by speedy legislative process. The main justification for this decision was saving government resources, eliminating of competency overlaps of these two ministries and creation of effective and efficient system that would control public order and state security at the same time[37]. It is worth noting that practically all departments joined Ministry of Internal Affairs, except the Foreign Intelligence Department, which was later formed as a separate entity, initially accountable to the President and later to the Prime Minister[38].

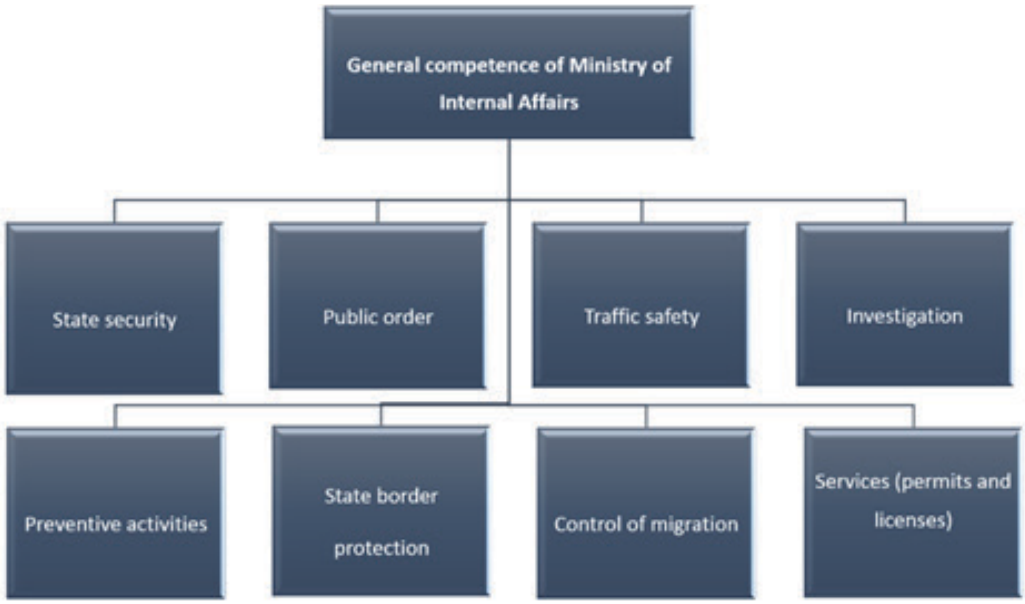
During the last decade, numbers of reforms were made in the Ministry of Internal Affairs. Part of the reforms served to improve the operation of the system; on the other hand, it resulted into concentration of competencies and power into a single system. Nowadays MIA is the largest and most complex structure in Georgia, number of employees amounts to 40 000[39], and its competences include wide range of public administration activities.

35 - Constitution of Georgia, Article 78, Part 2, as of amendments of June 23, 2003.

36 - https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=13294

37 - See explanatory note of the law Letter from staff of Georgian Parliament December 3, 2104, N1235/2-4).

38 - http://gis.gov.ge/html/02.htm , last updated on 25.05.2015.



The functions listed in the graphic and relevant resources needed for their implementation are gathered in one centralized system, which significantly complicates the internal and external control of it and assessment of the service effectiveness.

3.2. Appointment of Ministry of Internal Affairs and competences

The system of the Ministry of Internal Affairs is based on the principles of one-man management and hierarchy, in which the Minister, as a member of governmental team and a political figure, has unlimited mandate in terms of activities of each level of the Ministry's structure. The Minister is authorized to individually make decision about the policy of the system. The Minister also has supervising function, which in fact, means possibility of overseeing the decision and activities of the structural sub departments, State sub agencies and territorial entities operating under the authority of the Ministry, as well as, other employees of the Ministry. Another leverage in the hands of the Minister is the existing internal disciplinary entity in the form of the General Inspection, which is also accountable to the Minister.

Given the fact that the post of the Minister is State-Political position[40], it is not necessary to comply with the requirements assigned by the Law of Georgia on Civil service. The regulations and restrictions of the Law on Police do not apply to the Minster of Internal Affairs since it only regulates the activities of the police. Accordingly, Prime Minister has discretionary privilege while selecting the Minister of Internal Affairs, regardless of the professional knowledge and experience of the candidate. Prime Minister is also involved in appointing the deputy ministers, after they are nominated by the Ministry of Internal Affairs. The Minister autonomously solves the issue of appointing Department heads and there are no special criteria established to hold this position.

Statute of the Ministry of Internal Affairs that was approved by the government in 2013 has left Interior Minister Competence set by the 2004 Regulations practically unchanged. The only difference that occurs in the new Statute is the issue of accountability of the Minister. If earlier, he was obliged to report about the activities of the Ministry to the President and to the Prime Minister, today this obligation applies only in respect to the Prime Minister.

39 - GEORGIA IN TRANSITION Report on the human rights dimension: background, steps taken and remaining challenges, p 20.

40 - Law of Georgia on Civil service, Article 1, section 3.

Minister has broad powers and authorities that practically encompasses all areas of the Ministry governance[41]. In reality the power of Minister is not limited only with solving general issues. The legislation grants number of legal advantages to the Minister that goes beyond political and strategic competences and allows making decisions regarding specific cases. For example, competences of the Minister include official oversight[42]. Official oversight is defined in the Law of Georgia on the Structure, Powers and Order of Activity of the Government of Georgia[43]. In the frames of official oversight, it is possible to alter enactment or activities, suspend, or find it invalid. Enactments include normative and individual-legal acts. The same law stipulates that the Minister exercises oversight on the legality and expediency of the activity of structural units of the Ministry and state sub-departmental institutions and territorial bodies within the sphere of governance of the Ministry.

legislation grants number of legal advantages to the Minister that goes beyond political and strategic competences and allows making decisions regarding specific cases. For example, competences of the Minister include official oversight

Based on the Statute of Minsitry of Internal Affairs, the Minister is authorized to oversight the decisions and activities of officials and other employees of the Ministry as well[44]. Accordingly, in frames of office supervision, the Minister may intervene not only at the level of policy and systemic issues, but also in the decisions on specific cases of the lower-level officers. Clear example of Minister's broad competence is exclusive decisions on special police control, whereby in order to respond to the specific infringement police measures are carried out.

Another meaningful advantage of the Minister is the authority to apply incentives and impose disciplinary sanctions to employees. In this case Minister is sole decision-maker, while at the same time he/she approves the rule of service within the agencies of Internal Affairs and disciplinary regulations of the employees of the Ministry.

Politicization of the system becomes even more dangerous given the circumstances of such sharp centralization, political vertical and power concentration. Specific departments of the ministries are closely interconnected with the political leadership and central office. There is only slight functional autonomy of the departments with significant power from their political leadership, which lays grounds for political influence. Despite their structural subordination to the Ministry of Internal Affairs, patrol and investigative departments are not functionally separated. In case of political interest, it is possible that the departments are used for political purposes. Apart from centralized structure and power concentration, the threats of politicizing also derive from closed and obscure management methods. Statutes of certain important departments are undisclosed, it is not possible to obtain information about the number of personnel in the department and their functions, etc.

Given such circumstances, it becomes impossible to control the human and technical resources accumulated in the Ministry. This especially refers to security services, about which available information is limited. It is practically impossible to determine the exact functions of the employees of security service; at what extent are their functions balanced and proportionate, are their functions used properly and legally, etc. The classification practice of certain rules of activities and other important information, which are not related to specific cases and related evidences, makes it possible for the system to avoid any kind of external control. In case of political will, the leadership can easily utilize the power for the purposes of certain political goals.

The threats of politicizing also derive from closed and obscure management methods. Statutes of certain important departments are undisclosed, it is not possible to obtain information about the number of personnel in the department and their functions, etc

41 - Statute of the Ministry of Internal Affairs of Georgia , Article 5, section 2.

42 - Section 2 , subsection "D"

43 - Chapter XI of the Law.

44 - Statute of the Ministry of Internal Affairs of Georgia, Article 5, section 2, Subsection "D".

Chapter 4. Summary and Recommendations

Considering all the above, it is important to introduce changes in different directions, in order to regulate the issues of appointment and dismissal of officials, their functions and limitations of competences, as well as the mechanisms of preventing the polarization.

Appointment of Prosecutor General:

The rule of appointing the Prosecutor General has to be fundamentally altered, the change should also reflect on the influence of the executive government and political officers on the selection procedure. The reform should encompass following important aspects: 1. Instead of political selection, introduce professional selection of Prosecutor General; 2.Ensure involvement of legislative body in the decision-making process; 3. Limit the influence of ruling political party over the process and increase involvement of non-ruling political groups. Aforementioned tasks can be accomplished through the following selection method of Prosecutor General – when the candidate is selected by the special competition commission, the candidate is nominated by the President and the final decision is made by the Parliament by 2/3 majority votes.

➢ The candidacy of Prosecutor General should be selected through open competition; it should not be nominated by any political figure;

➢ In order to introduce professional criteria while appointing the Prosecutor General, it is important to establish a special competition commission in the Presidents administration, that would be responsible for determination and assessment of compliance of candidates to the defined requirements;

➢ Selection body should be representative and independent from political officers or groups, it should be determined to make justified decision.

➢ The rules of creation and recruitment of the commission should be regulated by law and the members of the commission should allow selection of candidates based on professional background. Representatives of the Prosecutor's Office should be members of the commission (those representatives who are selected by the prosecutor's conference and are not high-ranking prosecutors); it also might include Public Defender, representatives of professional and scientific circles selected by the qualified majority members of the parliament. The members of the committee will choose the chairman by the majority;

➢ It is important to determine the list of certain criteria for the candidates of Prosecutor General, such as: minimal age, years of professional experience and limitations concerning the political activities of the candidate, etc. Establishment of criteria by the constitution aims at highlighting the significance of this position. Selection principle of the Prosecutor General, based on professional background will limit the chances of decisions made by political preferences and promote the process of professional selection;

➢ Comission should be authorized, with 2/3 majority vote, to select the best candidates for the Prosecutor General out of received applications, based on pre-defined criteria and propose at least three candidates to the President. The president should nominate the candidate to the Parliament based on the proposed shortlist. The right of the president to nominate the candidate will prevent one particular political group to make the decision;

➢ Parliament should have the right to approve the candidate of Prosecutor General nominated by the President, based on 2/3 majority votes. Strengthening the role of the parliament in the process of appointment of the Prosecutor General will weaken the influence of particular political group over this position. 2/3 majority votes of the parliament will strengthen participation of different non-ruling groups in the process, through parliamentary discussions and other methods. Accordingly, the process of appointment of the Prosecutor General will become more transparent and based on consensus principles, it will be led by the general rules of the parliament and will not be preceded by particular political entity;

➢ One person cannot be appointed for the second term on the position of Prosecutor General, the aim of this

regulation is to prevent the acting Prosecutor General from the temptation of establishing loyal relations with particular political groups, and to their requests and ideas;

➢ If parliament fails to assign the Prosecutor General by ⅔ of votes, commission will select another three candidates based on professional background, one of them will be nominated by the president. In case the candidate is not approved on second round, in order to prevent a deadlock, the decision about appointing the Chief Prosecutor might be made by the commission. In this case, the selection should be made between those two candidates that were proposed by the president to the parliament.

➢ The same person cannot be appointed as a Chief Prosecutor for two consecutive terms. The essence of the mentioned regulation is that the Chief Prosecutor was protected from the temptation which is related to his/her selection for a second term which can lead to his/her loyalty to the ideas/demands of a certain political group;

➢ Apart from the rule of appointing the Prosecutor General for only one term, it is also important to define the length of the term, which can be for seven years. The rationale for defining certain length of the term is to protect Prosecutor General from political influences. According to the report of the Venice Commission, Prosecutor General who is expecting re-appointment from certain political entity, will always act in a way to earn sympathy from that entity, at least he/she will create an impression of such behavior[45].

➢ In order to ensure independence of the Prosecutor General, as well as, the independence of the whole system, it should be defined by the constitution that Prosecutor General could be dismissed by standard impeachment procedure, which entails existence of relevant grounds for it (crime committed by the Prosecutor General or violation of Constitution of Georgia); In this case the parliament should initiate impeachment proceedings by ⅓- of votes, relevant conclusion should be submitted by the Constitutional Court and the final decision should be made by the ⅔ of the parliament..

Competence of the Prosecutor General

For the purpose of avoiding political influence and for introducing democratic principles, apart from regulating the appointment procedures of the Prosecutor General, it is also important to define the competences of the Prosecutor General and the terms of relation to the subordinates.

➢ The right of the Prosecutor General to forward a particular case from one investigative body to another without any justification should be limited with by obligation to justify. On the other hand, investigative jurisdiction rules should be set out in law and the Prosecutor General should not have a right to violate established rules;

➢ The competences of the Prosecutor General should be limited by involvement of collegial body during the decision making process concerning certain issues. This may include holding disciplinary responsible, defining the grounds for disciplinary responsibility, promotion or downgrading the prosecutors etc.;

➢ It is important to equip subordinate prosecutors with legislative advantages while relating to the supervising prosecutor[46] ;

➢ It should be strictly defined at what extend supervising prosecutor (including Prosecutor General) can interfere in the work of subordinate prosecutor. It is important to create the form of mandatory instructions from the supervisor that is set out in writing.

➢ The instruction of the supervisor should be attached to the case, so that other parties of the process were also able to become familiar with it;

45 - Venice Commission Report "European Standards of Law Enforcement system" paragraph 37; part II – Prosecutor's Office.

46 - THE ROLE OF PUBLIC PROSECUTION IN THE CRIMINAL JUSTICE SYSTEM; Recommendation Rec (2000) 19; P. 7.

➢ The Prosecutor should have the liberty to choose the argument he will be using while appearing in before the court;
➢ Supervising prosecutors should not be able to give instruction about terminating the prosecution, this should made exceptionally in extreme cases;

De-politicization of the Ministry of Internal Affairs:

Ministry of Internal Affairs is the state agency with special authority and power, which is led by the political officer. If such will exists, there is the threat of political influence over the system considering wide range of competences of the Ministry, high degree of power concentration, obscure and nontransparent management principles and uncontrolled utilization of material and human resources of the system. The major shortcoming is not only the fact that the Minister of Internal Affairs is the member of political group, the main problem lies in the unlimited competences of the Minister over particular departments of the system, that do not have any functional autonomy. In the conditions of strict centralization, no department of special authority is sufficiently distanced from the political government. Therefore it is crucial to plan the principles of power de-concentration and decentralization of specific bodies while implementation of Ministry of Internal Affairs reform.

➢ The competence of the Minster of MIA should be revised in regards to certain sub-departments of the system, as well as accountability levels of the departments towards the minster (including General Inspection);

➢ Apart from revising the competences of the minister, certain departments and services should be granted by higher autonomy and should be distanced from the core political management. One method to achieve this goal is to strengthen local government in terms of control and accountability of patrol department;

➢ The departments of patrol police and central criminal police should be distanced from the ministry. Only the management services, the public relations and analytical services should stay in connection with the central apparat.

➢ The officers of so called middle management should be equipped with higher level of independence and operation advantages, the rules of their appointment and dismissal should be clearly defined, in order to limit the influence of political changes over the professional career of those officers. The police chief must be selected by competition, by considering professional skills and he/she must have defined term of being on the appointed position. This way it will become possible to institutionally strengthen the system and introduce the mechanisms of independence. On the other hand, those actions will create the strong administrative management that will be distanced from the political leadership;

➢ It is important to secure the guarantees for the personnel of the system to protect from improper influences from inside the system. The major priority in this regard is to ensure institutional independence and fundamental reform of internal inspection mechanisms – General Inspection.

Part 3. Concentration of Power within Ministry of Internal Affairs

Chapter 1. Historical background

Ministry of Internal Affairs is one of the largest and complex state institutions, Its competences encompass wide range of relationships. Having a system concentrating variety of competencies and affairs to be regulated, it is important to evaluate legal and factual background, system of checks and balances and forms of accountability of the agencies within the system. Most functions of the Ministry, such as protection of state security, maintenance of public order, protection of territorial integrity and fight against crime, require special human and material-technical resources, as well as, collection and processing of huge amount of information. Concentration of information and resources in the single system, where no clear frames are established between the competencies of different departments, may generate risks of uncontrolled and improper use of power. In the given circumstances, it is difficult to exercise external checks and balances, which may lead law enforcement body to inappropriate use of authority.

Ministry of Internal Affairs, in its current form was shaped due to substantial legislation changes made during last decade. Unlike today, the competencies and direct functions of the Ministry in 90-ies was limited to combat crime and maintenance of public order. Ministry was also responsible to oversight the execution of the sentence[47]. Nevertheless, the later responsibility was removed from the Ministry in 2001 and was assigned to the Ministry of Justice, through Penitentiary Department, which was a positive step forward. Another positive change that was made in 2004, was withdrawal of Internal Troops from the System, otherwise it was similar to Soviet Policia. Rights and duties of Internal Troops where quite broad[48], consequently its presence as an integral part of the Ministry of Internal Affairs formed a huge unbalanced power under one umbrella.

As mentioned in previous chapter, unification process of police and security services happened in a short period of time. Due to fast reform process, no substantial analysis was made concerning the negative effects or dangerous results of consolidating departments with radically different functions, goals, operation principles and regulations.

In addition to the fact that Police and Security Services substantially differ from each other, each of them represent important resource and origin of power, thus their unification might have caused problems in this respect as well. Despite existence of risks, merger of these two bodies took place and it laid the ground for creation of Ministry of Internal Affairs as a center point of authority.

Meanwhile Border Police also merged to the Ministry of Internal Affaris; previously it used to be a separate department in the executive branch[49], supervised by the chairman of the department appointed by the President. He personally was responsible for effective operation of the department[50]. Later in 2007, Legal Entity of Public Law - Service Agency of the Ministry of Internal Affairs was established[51] . Primary functions of the agency are to provide public services, issue driving licenses, vehicle registration, issue a criminal record or other types of certificates[52].

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47 - Decree of President of Georgia about Statute of Ministry of Foreign Affairs N672, chapter VII.

48 - Internal Troops were integral part of military forces, supervised by the commander of internal troops. Main functions included Fight against the organized crime, terrorist and diversion groups, participation in suppression of mass disorders, taking intelligence actions, Termination of illegal assemblies and demonstrations and other (The Law of Georgia On the Internal Troops of the Ministry of Internal Affairs of Georgia. Chapter IV)

49 - Statute of Georgian State Border Protection Department, section one.

50 - Same statute, part three.

51 - http://sagency.ge/index.php?m=327

52 - Statute of Legal Entity of Public Law - Service Agency of the Ministry of Internal Affairs, Article 2.

During the last decade, number of structural and organizational reforms took place in the Ministry of Internal Affairs. Part of them aimed to increase effectiveness of operations; on the other hand, it led to accumulation of unbalanced strong authority and number of competencies in one system. These reforms took place in parallel to the strengthening of police powers and risks of interventions in private lives of people.

Today,The Ministry of Internal Affairs (MIA) is the largest governmental body having complex structure and employing up to 40 000 employees[53]. It is worth noting that the Ministry is based on one-man management principle[54] and its strictly hierarchical subordination system provides minimum chances for decentralization. It is by far possible that decisions on any topics are made on the level of highest political official – Minister. Such arrangements, certainly, increases the risk of politicizing the total system.

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Chapter 2. Current Functions and Their Implementing Agencies

Competencies of Ministry of Internal Affairs are broad and encompass important areas of public affairs.
General outline of its competencies include four major goals: protection of state security and public order, detection, suppression of activities targeted against the vital interests of the country, as well as ensuring protection of the State border[55].

In order to achieve the above-mentioned goals, Ministry has to accomplish several tasks of different format and content: Implementation of measures for protection of constitutional order of Georgia, sovereignty, territorial integrity, implementation of counterintelligence activities, fight against crime and other violations of law, protection of rights and freedoms of individuals from illegal encroachment, protection of public order, maintenance of road traffic safety, fight against illegal migration, permission issuing and registration activity, protection and control of the State border, development and maintenance of unified registry of crimes[56].

To sum up the authorities and functions of the Ministry can be categorized in the following way:

- Preventive measures by the police;
- Protection of public order;
- Reactive measures (investigation);
- Protection of state security and safety;
- Protection of the State border;
- Other public services, (Service Agency, Security Police etc.)

Since, the functions listed above require ample amount of human and material technical resources, the scale and capacity of the Ministry is large and unites 22 structural subunits and 7 legal entities of public law[57].

Chapter 3. Separation of Competencies among the Departments of the Ministry

As it was previously mentioned, the Ministry implements its functions through seven Legal Entities of Public Law and also 22 structural subunits. Parts of those subunits perform only administrative, technical and analytical activities[58] and are not involve in actual fight against crime, or in measures for maintenance of security and public

safety. The later activities are mainly delegated among 12 subunits[59].

Despite the large scale of the Ministry, the overlap of functions among the departments creates obstacles for effective supervision of the system. Within the given legal framework, there is lack of clear distribution of competencies and scope of duties, it is practically impossible to name the specific duties of each unit. For example, out of 12 unites mentioned above, 9 have the authority for performing activities for criminal investigation and 7 of them is actually authorized to fully investigate the criminal case. 8 subunits are authorized to perform Operative searching activities, and eight of them have right to implement, preventive police actions, established by law Georgian Law on Police, in order to avoid criminal, as well as, administrative violations. At some point, there unclear what is the difference between having an authority for performing activities for criminal investigation and being authorized to fully investigate the criminal case.

Structural entity	Investigation	Counterintelligence	Police prevention
General Inspection	√	√	√
Operative-Technical Department	√		
Counterintelligence Department	√	√	√
Central Criminal police Department	√	√	√
Patrol Police Department	√	√	√
Special and Emergency Measures Center		√	√
State Security Agency	√		√
Anti-corruption Agency	√	√	√
Counterterrorist Center	√	√	√
Operative Support Department	√	√	

Assigning certain functions to the department, without considering its nature and mandate, results into overlap of authorities among the departments and lack of transparency of the system. The problem becomes even more significant, when the law does not stipulate detailed competences of each department and it makes the system practically uncontrollable. Several departments can simultaneously fulfill operative-technical activities, hold criminal investigation and also preventive measures by the police. Overall, law enforcement system is becoming more inclined to obscure governance, where it is hard to distinguish legal actions and activities beyond the law, external control are weak.

59 - General Inspection, Operative-Technical Dep. Forensic Main Division, Counterintelligence Dep., Central Criminal Police Dep., Patrol Police, Special and Emergency Measures Center, State Security Dep., Anti-corruption Dep., Counterterrorism center, Operational Support Dep., Migration Dep.

Assigning certain functions to the department, without considering its nature and mandate, results into overlap of authorities among the departments and lack of transparency of the system.

Chapter 4. Security Services

There are different systems and mandates of intelligence and security services in different countries[60]: The meaning of state security and safety also varies and it derives from the political and economic factors of the country. Therefore, it largely depends on subjective perceptions, stereotypes, political and cultural settings of certain society and its elite. The context of safety in several countries include protection of internal market, cultural identity and maintenance of religious traditions[61].

Defining the safety services' clear mandate is principally important. It must be sufficiently general so that the service had possibility to adequately analyze existing and future threats. Simultaneously, the services should have clearly defined mandate, so they could provide protection of human rights and fundamental freedom of the citizens[62].

According to National Security Concept adopted in 90-ies, Ministry of Internal Affairs was the leading figure together with other structures for achieving the assigned goals, and at the same time it was main power center[63]. Due to the reforms made in that period, the ministry was gradually becoming stronger and eventually was formed as guardian structure for state security and safety.

State security and public safety is one of the major functions of MIA and is implemented through following activities: protection of the constitutional system of Georgia, the sovereignty of the country, territorial integrity, and military potential from the illegal actions of the special services and separate persons of other states; Fight against crime that fall under their competence according to the law, realization of measures on providing of protection of the state secret[64].

As noted above, in 2004 Security Services merged to the Ministry of Internal Affairs, consequently number of new departments was established within the Ministry. Those departments where given those duties and responsibilities, that were previously carried out by a separate ministry.

4.1. Counter-intelligence Department

Main activity of Counter-Intelligence Department is to carry out counter-intelligence activity in order to prevent, reveal and suppress the intelligence activity of special services and organizations of foreign states directed against Georgia. To carry out counter-intelligence activity for certain devisions of MIA and military force; to take part in the working out and realization of measures on protection of the state secret, to carry out control over its preservation; to check the person for admitting to the state secret[65].

For the purpose of protection of the state secret, to carry out control and supervision of activities of security officers

61 - http://www.nplg.gov.ge/gwdict/index.php?a=term&d=5&t=2809

62 - See: http://www.nato.int/acad/fellow/97-99/vitkauskas.pdf , p.10.

63 - Georgia's Security Sector Review Project, (Final Report 2014). P.. 107.

64 - The Law of Georgia On the State Security Service, Article 4.

65 - Statute of Ministry of Internal Affairs, Article 10, Section „I"

(so called Odeers), who are assigned in key governmental organizations and institutions.

It has to be noted, that current Statute of Ministry of Internal Affairs, which was adopted in 2013, contain much wider competences of counter-intelligence department, than it was in the previous Statute[66]. According to earlier Statute, this department was not authorized to fulfill operative-technical activities and preventive police activities. Moreover, department officers used to be authorized to take only certain legal procedural enforcement measures and could not hold a complete criminal investigation. According to the Current Statute, Counter intelligence Department officers have right to officially carry out all the above mentioned activities.

It is important to mention that the current legislation does not specify the reasons, for which the department officers can carry out operational-technical, or preventive activities by police, whether it will be for ensuring the state security, or for preventing and reacting over any type of criminal case. In such circumstances, when regulations are not specific, one can conclude that right to carry out investigative or preventive measures is not linked to departments' scope of competence, which significantly alters the purpose and nature of Counterintelligence unit.

4.2. State Security Agency

State Security Agency is the rightful successor of Constitutional Security Department (CSD) created in 2004. This used to be one of the most powerful departments within the Ministry of Internal Affairs with following functions: prognostication, prediction-suppression, neutralization of any political and economic threat to the country or state institution. For this purpose, the department obtained information from open or closed sources for its further analytical processing. Department was obliged to protect state constitutional system from any non-constitutional forced alteration, including the crimes of corruption, extremism and other official crimes. This department could easily gain authority over other state structures and units, because this department conducted coordination and control over the activities of security officers appointed in the state agencies and institutions and ensured analytical procession of the information obtained from these officers.

In 2013, instead of the Department of Constitutional Security, State Security Agency was created. In function or substance, the only novelty is the fact that the body is no longer responsible for the fight against corruption or the crimes of the state officials and another department in the ministry now has this function.

With the exception of the above mentioned, the newly created Agency actually fully maintained its predecessor's competence and besides, has been granted with the right to investigate criminal cases and has been fully authorized to use preventive measures to prevent a crime, or with the aim to eradicate it[67].

We can say that in current law enforcement system the State Security Agency has one of the most obscure functions; its competence is very abstract. The regulations of State Security Service activities and also the number of employed staff is a secret. A lack of clarity and the opaque nature of the Service, together with the abstract competency raise doubts that the Office is repressive mechanism in the hands of a particular political group.

We can say that in current law enforcement system the State Security Agency has one of the most obscure functions; its competence is very abstract

Unlike other security services, which have a relatively fixed nature, the State Security Agency looks like the mechanism of maintaining political stability, the ideology force and power of the ruling political party, which can be used against escalating anti-government movement and protest if there is a political will and interest. In this regard, discussion which is currently taking place in Canada about the mandate related to safety services, must be taken

66 - *Statute of Ministry of Internal Affairs, as of December 27, 2004 (Final version) Article 21, section "K".*

67 - *Statute of The ministry of Internal Affairs Article 10, section "P"*

into consideration, as one of the fields of its activity is the destruction of the constitutional order. Despite the fact that "overthrow" is defined is special act, which separated legitimate opposition and illegal overthrow from each other, this competence still presents a topic for discussion, as it gives a possibility for wide and dangerous interpretation[68].

Doubts on politicization of State Security Agency and misuse of the its power is more grounded, as special departments of security, external security and terrorist threats issues already exist in the Ministry. Thus, the State Security Agency's role in these matters is vague and raises doubts about its real purpose

4.3. Counterterrorist Center

Counterterrorist Center was established in 2005[69]. Major function of the center is to fight against terrorism and for this purpose conduction operative-searching measures[70]. According to the current Statute of Ministry of Internal Affairs Counterterrorist Center can conduct investigation and preventive activities to avoid crime and other violations of law. The statute doesn't specify that the officers of the center can take preventive measures only for avoiding terroristic threats or for any other crime or violations of the law.

4.4. Threats in Activities of Security Services

In the report on security services, Venice Commission clearly made the point that it is "absolutely crucial" to have as clear regulatory norms for internal security services as possible[71]. According to the report it is important that intelligence and security institutions were differentiated from other state institutions, such as from law enforcement system. This can be farther facilitated by legally defining the mandate of those institutions. If it is not clearly differentiated, there will be an ambiguous merger of accountabilities and responsibilities, and the powers of intelligence and security structures will be exercised in regular situations, when the government is not in any particular danger[72].

The competencies granted to Security Services in Georgia are quite comprehensive and includes following activities: to carry out counter-intelligence activity (Including in Georgian Army); to carry out operation and investigation measures; in cases related to its competence established by the legislation, to carry out inquiry and preliminary investigation, to search and detain criminals or persons suspected in crimes; to take part in the working out and realization of measures on protection of the state secret, to carry out control over its preservation in those organizations, in which the activity connected with the state secret is carried out; check departments, enterprises, establishments and organization for registration of the appropriate sanctions for granting of the right to realization of activity connected with the state secret; ensure the state security, identify potential threats and take relevant measures; jointly with the corresponding departments to carry out measures in ensuring the security of the state border of Georgia, vitally important facilities of strategic purpose, supreme officials; register the information on those crimes, record-keeping on which is relevant to the competence of the Ministry of Internal Affairs[73].

The State Security Service have the right to use in urgent cases a communication facility belonging to the state organization, enterprises and establishments and also to public associations and citizens; in urgent cases for travel to a place of incident, to use vehicles belonging to citizens, enterprises, organization and establishments ;

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68 - See. http://www.nato.int/acad/fellow/97-99/vitkauskas.pdf, p.. 18

69 - See: http://police.ge/ge/ministry/structure-and-offices/kontrteroristuli-tsentri-departamenti

70 - Statute of Georgian Ministry of Internal Affairs, Article 10, subsection „R".

71 - See:Venice Commission, CDL-INF(98)6, pg. 7 and a ¶¶ 127-205

72 - Hans Born, Ian Leigh, Democratic Accountability of Intelligence Services, 2006, p. 31

73 - Georgian Law on Public Safety, Article 5.

for prevention of a crime or detention of persons committing a crime or in order to establish the identity of the person - to check the citizens' documents, certifying the person; to appoint the officer on security issues in the State bodies and establishments and also in the State representations of Georgia abroad[74].

It is obvious that the legislation does not limit the Security Services to provide only general analytical activities, or threat prevention. State Security Services are also authorized to hold investigation, take measures and implement preventive activities for avoiding and suppressing crime and other offences. Consequently, structures responsible for state security are at the same time authorized for taking investigative and preventive measures.

In 2009, Special Rapporteur of Human Rights while countering terrorism issued a report[75]. It states that after September 11, in several countries the law enforcement and intelligence structure started to grow closer (e.g., Security agencies were given the right for detentions and other rights). This dependency does not come in conflict with an international law, in case the relevant guarantees for human rights protection are provided. Special Rapporteur also points out that some of the counties duplicate the powers of law enforcement structures to avoid such guarantees[76]. In such cases, government utilizes the information for criminal proceedings that was obtained by intelligence services through administrative procedures. During the court hearings, the addressee of the proceedings is restricted to check the legality of evidences obtained by this method[77]. Restriction of freedom should not be based only on the information provided by the intelligence services; it should be based on specific evidence.

Moreover, according to the Guidelines issued by the parliamentary assembly of European Council, internal security services should be able to carry out law enforcement activities, such as investigation detention of a person; this creates a risk of abuse of power. Therefore, based on the Guidelines, in order to avoid the duplication of competences, above listed powers should be given exclusively the Police[78].

It is obvious that the legislation does not limit the Security Services to provide only general analytical activities, or threat prevention. State Security Services are also authorized to hold investigation, take measures and implement preventive activities for avoiding and suppressing crime and other offences. Consequently, structures responsible for state security are at the same time authorized for taking investigative and preventive measures.

The arrangement of security services in Georgia does not share the principles and recommendations mentioned above, those structures enjoy wide range of competences, which encompasses the police and investigative functions.

One of the major problems is that the law leaves the issue open and doesn't define those criminal cases or offences that are applicable for preventive measures taken by the Security Services. It is not determined; weather leaving the issue open automatically means that they are authorized to conduct preventive activities against any kind of crime, including, those that are not related to the state security.

Those measures taken by Security Services for ensuring safety (including counter-intelligence activity, operation and investigation measures, processing and usage of latent sources) in addition to employing investigative and police activities comes into conflict with the Law of Georgia on Counter-Intelligence Activities[79], Which states, that

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74 - Ibid. Article 6.

75 - Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin; Distr. GENERAL A/HRC/10/3 4 February 2009, pg. 11, ¶ 37, see: http://www2.ohchr.org/english/issues/terrorism/rapporteur/docs/A.HRC.10.3.pdf*

76 - Ibid. ¶ 37-39, see: http://www2.ohchr.org/english/issues/terrorism/rapporteur/docs/A.HRC.10.3.pdf

77 - Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin; Distr. GENERAL A/HRC/10/3 4 February 2009, gv. 11, ¶ 37, see:*

78 - See: http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta99/EREC1402.htm , last updated on 20.05.2015

79 - Law of Georgia on Counterintelligence services, Article 5.

no information obtained by counterintelligence activities can be used as a basis for criminal prosecution.

> *Those measures taken by Security Services for ensuring safety (including counter-intelligence activity, operation and investigation measures, processing and usage of latent sources) in addition to employing investigative and police activities comes into conflict with the Law of Georgia on Counter-Intelligence Activities*

According to the law, counterintelligence activities can be implemented through latent video and audio records, film and photography and through control over postal correspondence[80], moreover it is not subject to judicial control. All these derive from the analysis of the Law on Counterintelligence activities, which has not been changed after the amendments, were made to the Criminal Procedure Code of Georgia. The above mentioned activities are also listed in the Criminal Procedure Code of Georgia as secret investigative activities. For implementing such activities the Code obliges relevant agencies to provide court permit[81]. Discrepancy is obvious between two legislative acts (Law on Counterintelligence activities and Criminal Procedure Code). Given the above listed circumstances, Security Service as authorized counterintelligence body, can implement investigative actions without judicial control and through simplified procedures. According to the Venice Commission, it is impossible to provide adequate protection of human rights by excluding judicial control[82]. What makes the problem even more serious is that, information obtained through such activities can be later used for investigation and prosecution purposes, while standard for investigative activities is strictly defined by the Criminal Procedure Code.

Furthermore, those bodies have all the possibilities to share obtained information to other investigative agencies without any obstacle. It is father facilitated by unstructured information exchange system and inexistence of control mechanisms over it. Easy information exchange creates threat for the governance principle that is based on human rights and rule of law. When Security Services have all the possibilities to share information that was obtained in alternative way and for analytical purposes, to other investigative bodies it becomes pointless to restrict any investigative bodies and investigative actions with procedural norms and standards and it also brings this process completely out of control. In the light of all the above, it is practically impossible to supervise and determine, which structural unit have obtained information of what kind, weather it have processed and transferred it to some other unit.

> *When Security Services have all the possibilities to share information that was obtained in alternative way and for analytical purposes, to other investigative bodies it becomes pointless to restrict any investigative bodies and investigative actions with procedural norms*

The risks concerning the functioning of the Security Services also is associated with the high threat of their politicization. The information around activity of safety and security services is essentially limited. Existing regulations in the legislation indicates that the current mandate of the security services is protection of the sovereignty and territorial integrity; prevention of unlawful acts of foreign intelligence services, acting against terrorism and terrorist threats. However, clear and comprehensive definition of these objectives cannot be found in Georgian legislation.

There are three main departments carrying the functions of security in the Ministry of Interior from which two - counter-intelligence and counter-terrorism centers perform the main part in the described functions. As for another security service - the State Security Agency - its real purpose and mandate is more obscure. For the reason that the main information about security services' activities regulating legislation, the number of personnel employed in the security services is not accessible, questions around them increase even more. The vagueness and the lack of transparency in activity rules create a reasonable doubt that the security functions may be used for political purposes.

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80 - ibid, Article 9

81 - Criminal Procedure Code, chapter XVII.

82 - INTERNAL SECURITY SERVICES IN EUROPE Report adopted by the Venice Commission at its 34th Plenary meeting (Venice, 7 March 1998).

Chapter 5. Investigative Functions

One of the primary functions of the Ministry of Internal Affairs is investigation, which means the determination of facts and circumstances, establishment of unified image by the investigative actions by legislation about the crime already committed[83] . Before 2003 investigative authorities were distributed among relevant departments of Prosecutor's Office, Ministry of Security and Ministry of Internal Affairs[84], the later was considered as the central investigative body. As noted before, compared to todays' structure of MIA, but that time it was much simpler and the competences of each department were strictly divided. The leading body of the investigation process was Department of Investigation. It was entirely focused on resolve the criminal case and objectively assesses all the factual circumstances.

Investigative activities were also implemented by Criminal police and Transport Police departments in accordance to the competences assigned to them[85]. Starting from 2003, investigative departments gradually started to operate in other Ministries as well. One of first Investigative Departments was established in 2009, in the Ministry of Finance, in its current format[86]. Consequently, departments with investigative functions were formed in Ministries of Defense, Justice, in Ministry of Corrections and Legal Assistance and in the Ministry of Environment Protection and Natural Resources. As of today investigation of criminal cases are carried out by the investigative units of the Ministries of Justice, Interior Affairs, and Defense and in the Ministry of Corrections and Legal Assistance[87]. Prosecutor's Office of Georgia is also authorized to precede investigation[88]. Within such arrangement, most of the cases are investigated by Ministry of Internal Affairs; subunits of other Ministries have relatively specific competencies.

Investigation of criminal cases and territorial investigative jurisdiction is determined by the decree of Minister of Justice[89], which states that, criminal case falls within the jurisdiction of the Interior Ministry's investigative agencies[90]. The same decree defines in which cases investigation is carried out by other investigative agencies. For example, it is the competence of Prosecutor's office to carry out investigation against supreme political officers, judges, persons with highest military or special rankings and other officials. Investigative department of the Ministry Finances investigates crimes of financial-economic nature and so on.

Investigation and territorial investigative jurisdiction under the decree of Minister of Justice is poorly regulated and in many cases, there is a competition between different bodies. One of the most significant disadvantages of the legislation is the power granted to the Chief Prosecutor. He/she has authority to neglect jurisdiction regulations stated by the decree without providing any justification. Chief Prosecutor can withdraw a criminal case from one investigative body and hand it over to another[91].

As previously noted, 7 departments[92], out of 22 are authorized to fully carry out investigation on criminal cases. Central Criminal police department, Anticorruption Agency and General Inspection are largest in size and scale. We have already discussed those security services that exercise investigative powers.

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83 - Collection of Authors, Criminal Procedure (Various institutions of General part), second edition, p. 341.

84 - Criminal Procedure Code, Article 61, as of August 26, 2003.

85 - Presidents Decree # 672, , about the statute of Ministry of Internal Affairs, November 17, 1997.

86 - See: http://www.is.ge/4162. Last updated on 25.05.2015.

87 - Criminal Procedure Code of Georgia, Article 34, section 1.

88 - Ibid. Article 32.

89 - Decree of Ministry of Internal Affairs #N4, about Investigation of criminal cases and territorial investigative jurisdiction. (July 7, 2013).

90 - First section of the Decree.
91 - Criminal Procedure Code, Article 33, section 6, subsection "A"

92 - General Inspection, Counterintelligence apartment, Department of Central Criminal Police, Department of Patrol Police, State Security Agency, Anticorruption and Counter terroristic Center.

5.1. Central Criminal Police

Criminal Police with its current format was established in December, 2012[93] . In addition to other vitally important tasks, this department became responsible for the functions of former Special Operative Department (SOD) that was abolished in the meantime. Today, Central Criminal Police is one of the most important investigative bodies. It acquires wide range of competences and ensures fight against crime, carries out operative-searching measures, combat and prevent illegal migration, combats illegal deprivation of liberty, trafficking and illegal migration, drug addiction and international drug business, illegal trade of weapon, organizes preventive measures for suppression of crimes committed by minors and crimes committed against them, defends participants of criminal proceedings and conducts certain protection measures; fulfillment of special tasks to prevent crime and illegal actions[94].

Apart from fighting against crime, functions of Criminal Police include analytical activities, elaborating recommendations about sharing international best practices, monitoring of activities of department subdivisions and monitoring of operational-investigative activities of territorial units of the Ministry in general[95].

Diversity of competencies, more precisely equipping one structure with the functions of security service, criminal investigation and administrative-police functions, automatically means that information obtained for above listed three different purposes by three different methods can be equally accessed for any further use. According to the Statute of Ministry of Internal Affairs, Criminal Police implements the functions established by "Georgian Law on Public Safety Services", which implies counterintelligence activities[96]. To sum up, central investigative body of the country is authorized to carry out activities for counterintelligence purposes by avoiding judicial control; such activities normally require judge's order. Later on this information obtained through this method, will be used for processing the specific criminal case.

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Central Criminal Police is responsible for evaluation, study and generalization of current practices and submission of relevant recommendations to the officials of the Ministry, which also proves illogical. Evaluation of activities should be carried out, not actually by the implementing body, but by another distant entity. It is important to underline that this department, likewise entire Ministry is based on One-man management principle, and department head is appointed and dismissed by the Minister of Internal Affairs[97]. While overseeing administrative or operational affairs, the Minister has more than enough possibilities to influence everyday activity of the criminal police.

5.2. Anti-corruption Agency

Anti-Corruption Agency as a separate entity was created in 2012. Until that time Anti-corruption agency was a part of Constitutional-Security Department. As its name implies, is fully oriented on fighting against official corruption and offence, which involve carrying out separate investigative measures, full investigation of cases and also general preventive measures[98]. The agency is authorized to implement operative–searching and counterintelligence activities, which requires especially critical evaluation. As mentioned above this Agency is aimed at revealing

93 - See: http://police.ge/ge/shinagan-saqmeta-ministrma-utskebis-tsliuri-angarishi-tsaradgina/5684?print=1

94 - Statute of Central Criminal Police of the Ministry of Internal Affairs, Article 3.

95 - Statute of Ministry of Internal Affairs, article 10, subsection "K".

96 - Law of Georgia on Public Safety, Article 5.

97 - Statute of Ministry of Internal Affairs, Article 5, subsection "E".

98 - Statute of Anticorruption Agency of Ministry of Internal Affairs, Article 3.

potential criminal operations of former and current public officials, meanwhile granting the powers for counterintelligence activities increases the risks of the Agency turning into a tool for political or other type of revenge.

In addition, it seems unreasonable to grant the powers of preventive activities to the Agency, while neither the statute of the Ministry, nor the statute of Anti-Corruption Agency specifies in what cases, and what extent and against which criminal cases can the agency officers implement preventive activities stipulated by the law.

It is confusing, what is the connection between the functions of Anti-corruption Agency of Ministry of Internal Affairs and the functions of Investigative services of the Ministry of Finance. The later is created for the same purpose of preventing, revealing and fighting against financial and economic crimes. Legislation does not define clear boundaries between these two bodies; therefore, it is unclear how the issue of jurisdiction over certain cases is resolved.

5.3. General Inspection

General Inspection is the central body of internal control of the Ministry, it is directly responsible for ensuring detection and adequate response to the facts of violation of ethics and disciplinary norms, improper fulfillment of official duties and of certain unlawful actions committed within the system.

These kinds of settings father promote Investigative functions of this department, effective operation of the Inspection is essential for the Ministry, for its credibility and public trust.

It is important to point out that scope of competencies of General Inspections is inexcusably wide. Apart from ensuring ethic and professional standards, department is authorized to carry out counterintelligence and operational-searching activities and to oversight the legality of such activities, also to inspect the legality and reasonability of expenditure of financial and material resources. It is obvious that investigation is also integral part of their competencies; which creates concerns about effectiveness of investigation carried out by this department. The most problematic issue is accumulation of information that was obtained for different purposes in one department. There is a chance for use of this information for other criminal cases. General Inspection as the central responsible unit will be father discussed in following chapters,

Chapter 6. System of Preventive Functions

Prevention of crime and other violations of law is primary competence of the Ministry of Internal Affairs and described earlier 8 structures of the Ministry is authorized to carry out preventive measures[99]. This function is mainly implemented through operative searching activities and preventive measures by police. These two directions will be further discussed in this chapter.

6.1. Preventive measures carried out by Police

Police Law of Georgia adopted in 2013 provides comprehensive definition of preventive measures that police can carry out for the purpose of avoiding and averting crime and other offences. This has to be regarded as a positive development, as in previous law on Police no terms and conditions or grounds were determined for utilizing the leverages available to the police. Nevertheless, it is important to examine at what extent did the new law change the balance between police capacities and freedom of human.

The resolution of UN Economic Council 1997/33 indicates that standards and norms of responsible crime pre-

99 - General Inspection, Operative-Technical Dep, Forensic Main Division, Counterintelligence Dep., Central Criminal Police Dep., Patrol Police, Special and Emmergency Measures Center, State Security Dep., Anti-corruption Dep., Contrterroristic center, Operational Support Dep., Migration Dep.

vention. The resolution urges the governments to reinforce non-repressive crime prevention considering the magnitude of the crime[100].

On the other hand, according to the crime prevention guidelines established by the Resolution of Economic and Social Council of 2002, "crime prevention" comprises strategies and measures that seek to reduce the risk of crimes occurring, including fear of crime, by intervening to influence their causes.
For example, in Sweden it is restricted to carry out certain special activities (secret camera surveillance or surveillance by any other means). Sector surveillance (with camera or any other means) is only allowed within preliminary investigation[102].

Current law defines 11 types of preventive measures in total[103]; each of them will be discussed in details in the following chapters. This chapter provides general outline of the power granted to the police through different competences and which departments are responsible for their implementation.

Police Law of Georgia defines those mechanisms in a following way: *preventive measures carried out to prevent a threat to or violation of public security and legal order*[104]. This definition implies that main emphasis is made on law and order, public safety and most importantly on how to avoid threatening factors[105]. However, most of the defined activities aim at responding and preventing certain violations of law, which is the prerogative of Criminal Procedure Law, not the Police Law. There is insignificant difference between implementing above-mentioned activities and carrying out criminal investigation. Numbers of listed activities directly serve the interests of criminal prosecution and investigation, and actually this is how it is defined in the law.

Departments of the Ministry that are authorised to carry out preventive activities are: patrol police, criminal police department, general inspection, Counter-intelligence department and other. At some point, it is questionable why does the key investigative unit (Central Criminal Police) have prevention functions granted. On the other hand, it is unacceptable and dangerous unsafe to have increased number of departments that are able to actively intrude in human liberty. It is also difficult to create and apply adequate control system. Current settings of an institution do not guarantee that those measures will not be taken for investigation of specific cases, or for the purpose of ensuring state safety and security.

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100 - See: http://www.un.org/documents/ecosoc/res/1997/eres1997-33.htm , last updated on 10.02.2015

101 - See: UN Economic and Social Council by resolution 2002/13 at its 37th plenary meeting on 24 July 2002: http://ww2.unhabitat.org/programmes/safercitis/documents/declarations/ny.pdf Article- 3

102 - See: http://www.coe.int/t/dlapil/codexter/Source/pcti_questionnaireReplies/SWEDEN.pdf. last updated on 20.05.2015

103 - The survey, identification, invitation, frisk or examination, a special check or examination, a special police control, request to leave a place and restriction to entry a particular area, restriction of relocation of a person or a vehicle or restriction of actual ownership of an item, restriction to use automatic photo-technic and video technic, creation of technical means and usage, the use special investigative measures.

104 - Georgian Police Law, Article 18, first section.

105 - In Latin America, the concept of security was associated with concepts like "national security", "internal security" or "public security", all of which refer specifically to the security of the State. Under democratic regimes, the concept of security against the threat of crime or violence is associated with "citizen security" and is used to refer to the paramount security of individuals and social groups. Nevertheless, it is worth highlighting that the concept of "public security" is still widely used in the United States and Canada to also refer to the security of the individuals and groups who make up society. By contrast, as noted above, in Latin America the very same expression, "public security", refers to a different concept altogether, alluding to the security built by the State or, on occasion, the security of the State. Inter American Commission on Human Rights, Report on Citizen security and human rights p. 21, see: http://www.cidh.org/countryrep/Seguridad.eng/CitizenSecurity.II.htm, last updated on 25.05.2015.

6.2. Operative Searching Activities

According to the amendments made in 2014, such activities as latent surveillance and recording of phone conversations, fixation and rendering of information, secret video, audio, film recording and other activities was removed from the Law on Operative Searching Activities and was placed in the Criminal Procedural Code. Later decision can be defined as positive development, as due to the change the standards for investigative actions apply to those activities.

Despite such development of the reform, other statutes for operative searching activities were left unchanged. Some of the activities stipulated in those statutes are directed at revealing potential criminal and carrying out criminal provisions against him/her. The later refers to supervised procurement and supply procedures, inclusion of secret employee in a criminal group and creation of secret organization. Despite the nature of the listed activities, the legislation does not define basis and terms of implementation of those measures. One general rule applies to those activities – operative-searching activities can be carried out to reveal, suppress and to avoid legal violations[106], it applies to criminal cases, as well as any other illegal actions, information collected through the activities can be used to avoid or suppress any type of illegal action[107].

As mentioned before, legislation changes made in 2014 significantly limited the scope of operative-searching activities, therefore threats to human rights violation was also reduced. However, this field remains to be an important tool in the hands of law enforcement bodies, which easy to utilize, especially when there is no prosecutorial or judicial control over operative-searching activities.

Chapter 7. Other important Functions Concentrated in Ministry

In order to fully analyze the situation, it is important to evaluate those departments, where, at first glance, the functions does not imply fight against crime or public order maintenance and does not result into infringement of human rights, such as Border Police, Service Agency of Border Police and Security Police. Those departments actively participate in social life and gather significant amount of informational, human and material resources.

7.1. Border Protection Police

Border Protection Police is an important body and the implementer of strategic functions. Its activities are entirely tied to protecting state borders, which includes preventing/suspending illegal actions close to borders, realizing operative-searching activities within its sphere of competence, carrying out investigation and administrative proceedings and etc[108].

Compared to other bodies associated with the Ministry, the border police relatively more distanced from the central governing body and this manifests itself in the accountability towards the Minister of Internal Affairs, as well as, the Prime Minister. The latter appoints on the position of the Head of the border police, but the candidate is nominated by the Minister of Internal Affairs. The Head of the border police is also a deputy to the Minister of Internal Affairs and consequently, Minister's is authorized to oversight activities of the head of the police, as well as, whole department[109].

106 - Law on Operative-searching activities, Article 3.

107 - Ibid., Articles 2 and 11.

108 - Statute of State Subordinate Agency – Border Police, Article 3.

109 - Statute of Ministry of Internal Affairs, Article 6.

7.2. Service Agency of the Ministry of Internal Affairs

Entity of Public Law - Service Agency of the Ministry of Internal Affairs was established in 2007[110]. Activities of the Agency include: vehicle registration, issuing permit for carrying and/or purchasing weapons, issuing relevant documents concerning a person's prior conviction, cases of crossing the border and other personal data[111]. The role and significance of the Agency can be indicated based on the information (personal data or other information) that is processed there every day. At the same time, the Agency has access to the online Public Registry of the Ministry of Justice[112], which turns the Agency into an information hub, in which various sorts of information is gathered, Agency personnel practically have unlimited access to this information. The immediate supervising agency is the Ministry of Internal Affairs, also the director of the agency is appointed by the Minister[113].

The Agency activities are subject to remuneration, those funds represent one of the sources of income of the Agency, however, this income can be used for better functioning of an agency, as well as, for the general development of the system of the Ministry[114]. However, none of the normative acts define what is the System Development, even though annul balance of the service agency is approved by the Ministry[115], we may conclude, that the Minister has significant budgetary and financial mechanism and can direct the funds towards other specific areas.

7.3. Security Police

Security Police is one of the important subordinate agencies of the Ministry of Internal Affairs, its competences include: implementation of private orders for protection of specific property of legal entities/physical persons from illegal encroachment[116]. It has to be underlined, that one of the departments of the Ministry - Special and Emergency Measure Center also provides protection of strategic facilities and public officials[117]. Given the aforementioned settings, it is difficult to provide justification about existence of two structures with similar functions within a Ministry. In addition, this is the largest department in the Ministry with up to 11 000 employees[118]. In this situation, concentration of such amount of human resources might be problematic. It is difficult to effectively control legitimacy of employing such amount of human resources. Security Police can also serve as important financial pillar for the Ministry, since it is a source of income from state budget, as well as from the remuneration for state orders and separate agreements[119]. Those funds are handled upon consent of the Minister, which means that the funds can be used by the Ministry for any other purposes.

Chapter 8. Conclusion and Recommendations

In conclusion it is worth noting the powers of Ministry of Internal Affairs are immense and practically impossible to asses. First of all the closed structure does not allow proper evaluation, secondly, the limits between the compe-

110 - See: http://sagency.ge/index.php?m=327

111 - Statute of Legal Entity of Public Law - Service Agency of the Ministry of Internal Affairs, Article 2, section 1.

112 - See: http://www.justice.gov.ge/News/Detail?newsId=2876

113 - Aforementioned Statute, Article 3.

114 - Statute of Service Agency, Article 11.

115 - Ibid., Article 12.

116 - Statute of Legal Entity of Public Law – Security Police, Article 2.

117 - Statute of Ministry of Internal Affairs, Article 10, Subsection "N".

*118 - Letter of Ministry of Internal Affairs , 21.11.14, N **2359575**

119 - Statute of Security Police, Article 8.

tencies of each departments are unclear. The system in general is obscure and inclined to closed and nontransparent governance. It is practically impossible to define the competencies and power of each department.

The matter becomes especially critical while there is excessive power concentration in the system and no other institutions have possibility to exercise checks and balances. Duplication of functions among different structures makes it impossible to monitor effective operation of the ministry and legal proceedings of law enforcement system representatives. Centralized structure of the system and obvious political position lays ground for its further politicization and leads to unlawful usage of the power concentrated in the system.

For the goal of eliminating aforementioned problems, it is crucial to:

➢ Security services should be disassociated from MIA and established as a separate entity that will have high degree of independence and autonomy;

➢ Head of newly created security services should be politically independent, with high public trust and should be appointed for a specific term. Democratic procedures for assigning and dismissing should be defined by law.

➢ The terms of cooperation of security services and police/investigative services should be strictly regulated and balanced;

➢ Define the forms of democratic accountability of security services;

➢ Regulatory norms, the volume and functions of security services should be made public.

➢ Systemic revision should be made to the regulatory legislation of security services, particularly, the rules and standards of their activity, information sourcing and extent of judicial control should be reconsidered;

➢ It is important to clearly determine that the competence of security services is only analytical processing of information. Their advantages over police, investigative and repressive actions should be limited.

➢ Despite the changes to the law on operative-searching activities, the further improvements should be made in the law and it should be clearly defined what are the aims of the actions envisaged by the law. In parallel to this changes should be made to the regulation of the law on counterintelligence activities, it should comply to the criminal procedural code, which imperatively carries out judiciary control over secret investigative activities;

➢ Apart from separating security services from the Ministry, competences and power of each remaining department should be established by normative acts. Special attention should be paid to avoiding duplication of functions, in order to have reasonable chances for carrying out control over the activities of particular departments and over the Ministry in general.

➢ Reconsider the cooperation issues and information exchange system between the departments with preventive and investigative functions. Forwarding the information obtained for preventive and analytical purposes to the departments with investigative functions should be restricted by law.

➢ The information obtained for the purposes of safety, security should be safeguarded separately, and limitations should be set for regarding the permissions of persons and structures to access this information. System of information exchange control should be established institutionally within the structure. The method of information exchange should be formalized in general.

➢ Harmonization of legislation in this regard is important, in particular, compliance of standards for limiting constitutional human rights and the standards of investigation actions.

Part 4. Analysis of Preventive Police Functions

Chapter 1. Introduction

The key implementer of preventive functions in current model of law enforcement system is the Ministry of Internal Affairs. Those functions include detection of possible threats to state security and public safety, to prevention of crime and other violations of law, also suppression of possible threats to public order. Given such settings, it becomes difficult to draw a line between preventive and repressive mechanisms, in most of the times one operation can serve to avoid the action that contains public threat, as well as, responding to this action and also to eliminate specific threat of action

Most of the measures ensuring public order and prevention are set out in the Police law of Georgia. Generally, it is worth pointing out, that prevention is an activity that is carried out apart from criminal justice system; it is a parallel process and one of the most important components of the modern police work and system. Crime prevention is an essential part of criminal justice goals and results. Nevertheless, there are two fundamentally different fields, forms and methods of implementation that vary notably and intensity of intervention in human rights is also quite different.

Preventive functions of Police, its scope and content require proper research and analysis. Once the balance between prevention and criminal justice is disrupted, it creates threat to the state of human rights. If the preventive police actions are extended and used in improper way, we may encounter critical problems of freedom and total social control. Therefore, it is important to analyze the current model of preventive functions of Georgian police in the light of human rights, individual freedom and principles of protection from unlimited police control.

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Position of the government regarding this issue could be less rigid and restrictive, yet more oriented on creation of the police for social change and long-term goal. It is also possible that the government chooses rigid and repressive approach, through intensive intervention in human freedom that would result in immediate outcome. Considering this, we can differentiate two different models of prevention social and situational[120]. There might be several differences, advantages and pitfalls between these two models, it is obvious that both models are part of the preventive policing, rather than a tool developed by criminal justice and in the hands of investigative and prosecution authorities. Preventive functions may give even more ground for criticism, considering the fact that legislation formally merges criminal justice and preventive mechanisms, but in fact, it is integral, equal part of criminal justice system.

For deeper analysis of this issue, this chapter will discuss current model of preventive police actions, individual preventive measures, their goals, objectives, mandatory standards and potential threats of intervention in human rights. It is important to study preventive police actions, in order to have better understanding of the law enforcement system and its nature, also for identification of the results of obscure, overly extensive, preventive mechanisms that exist in the country.

120 - Criminal Justice, edited by Anthea Hucklesby, Azrini Wahidin, Oxford University Press, 2009

Chapter 2. Crime Prevention System in Georgia

Until 2013, terms and conditions for carrying out preventive police actions were not defined by the police law, furthermore it was not specified which measures could police officers exercise for prevention. In October 2013, *Law on Police* was adopted, which defined the types of preventive actions and rule for their use.

Throughout the process, before and after adoption the Law, the emphasis was laid on the fact that this kind of formulation of preventive police actions is a significant progress and enables police not just to react over the crime, but also work on its prevention. Certainly, prevention and suppression of crime is equally organic function of the police as responding to the crime, it used to be a function of police before adopting the law, but there might have been space for farther improvement of this function. In respond to the later argument, the legal act regulating activities of police provides list of police functions, implementation of which requires intervention if human freedom and direct contact with a citizen. For example, questioning of a person, identification of a person, or other special police control (e.g. raid), which is actively exercised by the police[121].

Overall, the law defined ten types of preventive police actions, suggestions for operative-searching activities – as one of the preventive measures also appeared in the law. Whilst operative-searching activities is considered as regular police action, it is clear what is the character of general preventive police actions today. As indicated in previous chapters, those actions are directed at specific crimes, their elimination, solution and prevention. It is practically impossible that operative-searching activities were directed at crime prevention or avoiding illegal actions, as those measures have narrow and specific scope, their goal is to establish certain facts and circumstances[122].

Due to the fact that the legislation allows police to easily intervene in human freedom while police carrying out police actions and does not reflect any control mechanisms for carrying out the measures, preventive functions of the police appears to be quite extensive[123]. Apart from this, its forms are so close to the criminal justice mechanisms, that it acquired somewhat repressive content, as it has lost the general, wide forms of action and has been oriented on specific illegal actions.

Current model of policing in Georgia is significantly distanced from any kind of social prevention policy and is more focused on short-term results. In these settings, government ignores some most important accents and while combating the crime it confronts the individuals, rather than the motives of the crime. If the police system has unlimited and one-man based authority, it makes obvious the kind of governmental policy that is directed on identification of potential "criminals". Eventually, government rationally perceives citizens as source of increased crime, which is also reflected on presumption, which is against presumption of human freedom and innocence.

Government ignores some most important accents and while combating the crime it confronts the individuals, rather than the motives of the crime.

Resolution of Economic and Social Council of 2002, defining the guidelines for crime prevention[124], indicates that governments should protect human rights and rule of law in every aspect of crime prevention[125]. It states that crime prevention strategy should be effective, but also humane[126].

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121 - Decrees of Internal Affairs Ministry N 691, 692

122 - Georgian Law on Operative-Searching activities, Article 7.

123 - See: Raids in Poti were conducted by persons wearing bulletproof vests, masks. shttp://www.interpressnews.ge/ge/samartali/308999-fothshi-policia-reidebs-atarebs.html?ar=A

124 - UN Economic and Social Council by resolution 2002/13 at its 37th plenary meeting on 24 July 2002:http://ww2.unhabitat.org/programmes/safercities/documents/declarations/ny.pdf Article-3, last updated on 25.05.2015

125 - Economic and Social Council resolution 2002/13, annex. Guidelines for the prevention of crime, art.12; see: http://www.unodc.org/pdf/compendium/compendium_2006.pdf pg. 295

126 - Ibid. Article 7.

Carrying out overly aggressive preventive measures alters public attitude, which may reflect on the crime rate. If the community views coercive preventive measures targeted at their members as unfair or unjust, they may ultimately prove self-defeating[127].

The following chapters will cover preventive police measures in reference to criminal justice; also it will discuss the topics that support aforementioned assessments about the system, such as topics related to the changes of presumption liberty and to the implementation of preventive functions.

Chapter 3. Prevention vs. Criminal Justice

The goal of preventive policing is not investigation or response to a specific crime, more importantly it is does not mean coercive measures against the person who allegedly committed a crime. All these activities fall into the field of criminal justice and is regulated by Procedural Code. It is obvious that reaction on specific criminal case is a prerogative of criminal justice and averting the crime is the work of preventive policing. Therefore, preventive measures cannot be taken while responding to criminal case or while investigation.

In addition, coercive or other types of measures taken in the frames of prevention, should not reach the intensity of criminal justice and interference in individual rights. Otherwise, we may have a situation, when law enforcement body can choose their preferred mode of measures for reaching the goal, criminal-investigative prosecution or preventive police actions. It is obvious that, they will make a choice in favor of police measures, since the prosecutor does not supervise the later and it is only possible to appeal against the police actions in court post-factum[128].

Coercive or other types of measures taken in the frames of prevention, should not reach the intensity of criminal justice and interference in individual rights. Otherwise, we may have a situation, when law enforcement body can choose their preferred mode of measures for reaching the goal, criminal-investigative prosecution or preventive police actions.

At first glance, the law clearly separates from each other crime prevention and police investigative techniques. Procedural Code also gives ground for making such conclusion, which states that any form of information dissemination creates an obligation to initiate an investigation[129], as a result proceedings are carried out in the framework of criminal justice, where the legislation does not allow any exceptions. Despite all these, the margin between this two modes is almost seamless and the legislation does no secure the intensity of intervention while preventive police actions, which is more typical for criminal law enforcement mechanisms.

As mentioned above, the list of police actions is long, it includes stopping and identification of a person, frisk examination and limiting his/her movement on certain territory or restricting the possession of specific object. According to the law on police actions, developing and using technical means and operative searching activities are considered as police actions. Such variety of tools gives police officers opportunity for making wide range of decisions, since the grounds for implementing each action is more or less similar to each other[130], police can exercise discretionary powers while selecting the mechanism[131].

Number of preventive mechanisms are closely linked to criminal offences. While defining preventive functions Police law of Georgia frequently uses these terms: “person committed an offence or will commit”, person is directly

127 - David Cole , The Difference Prevention Makes: Regulating Preventive Justice, pg. 15. See: http://scholarship.law.georgetown.edu/facpub/1354

128 - Article 56 of the law on Police Law.

129 - Criminal Procedure Code, Articles 100 and 101.

130 - The exception is special police control, that is carried out based on the order of MIA, but the ministry is not limited by any specific grounds for issuing the order.

131 - Law of Georgia on Police Article 13

connected with the offence committed"; offence is or will be committed", this indicates the linkage.

For example questioning means identification of a person, it is mandatory to participate in the process if the person's appearance is similar to the appearance of a wanted or missing person, there are reasonable grounds to believe that person has committed, or there is possibility that he/she will commit crime[132]. The law allows to stop and ask person to present identity documents, but in practice it is less possible and even is illogical that police limits him/herself only by identification and does not ask more questions. Considering the fact that police does not explain to person that while conducting an interview he/ she has right not to release information that can be used against him/her and has right to hire a lawyer, it is highly possible that he/she provides information that can be used against him/her, while answering the questions of police. The same kind of problems may arise when police invites a person for an interview, which is conducted on voluntary basis. Nevertheless, the police officer explains that only arriving at and leaving a police station is voluntary[133], but no information is provided about procedural rights, even if this measure is taken for the purpose of collecting information on specific violations of law.

Frisk examination is also is also a problematic issue. Frisk of a person means patting down his/her clothing with hands or with a special device or instrument, if: there are reasonable grounds to believe that a person has an item, carrying of which is restricted, or which poses threat to his/her or other people's lives and health; that persons staying in the territory of Georgia illegally gather in the place where the person is, or the place is used by wanted persons to hide, or an offence may be committed. A police officer has the right to examine an item or a vehicle, if: here are reasonable grounds to believe that offender or a person illegally deprived of liberty is in the vehicle or there is an item in the vehicle that has to be seized[134]. The sings of criminal proceedings is also present here, however, police officers can carry out preliminary measures without prosecutorial or judicial supervision and in the frames of police actions and not by using investigative mechanisms.

It also has to be noted that the law directly specifies the right of police officers to conduct search, right after frisk examination. Police Law of Georgia directly allows police to conduct preventive police actions for the purpose of responding to criminal conduct and for defining the circumstances, which is illogical and unjustified. This kind of action is not considered as investigative or other criminal procedural measures and is not subject to prosecutorial oversight. At the same time, the extent of intervention in individual rights is not defined and the Law does not provide any guarantees that the intervention does not reach the intensity of criminal prosecution.

The Police Law of Georgia defines operative-searching activities as one of the preventive police activities. These activities of the Police are also regulated by Law on Operative-Searching Activities[135], which states that these measures can be carried out for preventing crime and violations and also for detection, suppression of crime and for other reasons stipulated in the law[136]. The list of operative-searching measures[137] include such activities, basis and goals of which are regulated by the Police Law of Georgia, e.g. (questioning of a person, identification of a person), Nevertheless police officers can carry out such measures within far wider discretion, than it is allowed by the Police Law.

Such ambiguity of legislation, when one normative act defines the basis for carrying out certain measures and the same law allows to those measures to be used in non-urgent and regular cases without any control or established rules; it comes into conflict with democratic self-governance principles and facilitates arbitrariness of the law enforcement officers.

Handling this issue is even more problematic, given the fact that large number of departments in the Ministry of

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132 - Ibid. Article 19.

133 - Police Law of Georgia Article 21

134 - Ibid. 22 Ibid. Article 29.

135 - Law on Operative-searching activities, Article 3.

136 - Ibid. Article 7, para 2

137 - Ibid. Article 7, para 2

Internal Affairs are authorized to carry out investigative and at the same time preventive police functions, they can make selection in favor of more convenient and easy measures.

Chapter 4. Inconsistency to Presumption of Freedom

As indicated above, the goal of preventive police actions is protection of public safety and legal order, which implies indestructibility of constitutional order and other legal acts[138]. Self-defensive model of constitutional order can be skeptical about certain behaviors or actions of certain groups. As a result presumption of freedom and innocence can be infringed[139]. This kind of infringement cannot take place on regular basis; it is only acceptable in exceptional conditions.

In Georgian context, it is important at what extent does the legislation allows infringement of Presumption of Innocence and freedom and how exceptions are made. Special police control is particularly important in this regard, which definitely is characterized by much more intensity of intervention in human rights than any other preventive measures. This type of measures are carried out in pre-selected area, in specific time frame. The law does not provide specific terms for selecting the area and time, moreover, the grounds for conducting police control is too general – it is enough to have grounds to believe that a crime or other offence has been or will be committed[140]. These types of actions create micro emergency, where each person or object on the selected territory is subject to inspections and police officers are not obliged to give explanations to certain citizens about the grounds for inspection. With this perspective, unjustified intervention in individual rights in the frames of preventive measures is not subject to any control. Those actions imply that any person can be inspected, since he/she is located on the territory, where crime was either committed or is planned to be committed. All the individuals that became subject to inspection are somehow implied by the government that they might have connection to illegal actions, which notably undermines the Presumption of freedom and innocence.

> *Special police control creates micro emergency, where each person or object on the selected territory is subject to inspections and police officers are not obliged to give explanations to certain citizens about the grounds for inspection.*

As noted above, existence of emergency criminal situation is not necessary to conduct special police control; it can be carried out in response to already committed or potential criminal action. The formal exceptionality can only be explained by the fact that it requires to have special order from the minister to conduct such measures. Nevertheless, this control mechanism does not ensure that special control is used only in emergencies; as the minister does not have to justify his/her order. Moreover, he can delegate this authority to other subordinates. Granting such power to the Minister of Internal Affairs is problematic for providing principle of political neutrality, as the Minister is the high political official and a representative of specific political team and his direct intervention in the police activity cannot be perceived as an action empty from political motives.

138 - Police Law of Georgia Article 2 .

139 - A. Shaio, From self-defensive democracy to preventive state. 5, final conclusions.

140 - Police Law of Georgia Article 24.

	Preventive measure	Grounds for implementing preventive measures	Available legal means of protection
High level of threat	Special police control	Ambiguous	Sufficient
	Demand to leave a place and prohibition of entry onto a certain territory	Not determined	Insufficient (no report is prepared)
	Development and use of technical means	Ambiguous	Ambiguous
Low level of threat	Special inspection	Determined	Insufficient (no obligation to explain rights or to prepare report)
	Restriction of movement of a person or vehicle or restriction of actual possession of an item	Determined	Insufficient (no report is prepared)
	Use of self-operating photo (radar) and video devices	Not determined	Sufficient
	Questioning a person	Determined	Insufficient (no report is prepared; person has to answer the respective questions)
No threat	Identification of a person	Determined	Report is prepared, which determines the grounds of police measures.
	Invitation of a person	Determined	The invited person is informed about the grounds of invitation, also voluntary nature of the police measure. The report is also prepared.
	Frisk and examination	Determined	The report is prepared, person is informed about the right to appeal.

** Legal means are evaluated based on the following criteria: obligation of policeman to introduce him/herself; obligation of policeman to explain person, to whom the measure is applied, the grounds for implementing the measure and his/her rights applied; obligation of preparing the report.*

In order to avoid unjustified and discretionary implementation of preventive police actions, it is important to analyze the protection instruments that addressees of those actions can exercise. Generally, it can be considered as a deficiency that police officers are not obliged to identify themselves as police officers while carrying out certain measures. They are obliged to present a document evidencing his/her authority to a person unless it hinders accomplishment of police functions[141].

Important mechanism for protecting a citizen is provision of explanation about the measures taken and creation of a relevant protocol. Out of 11 police actions, only three of them[142] require creation of a protocol, but in any

141 - Police Law of Georgia Article-18, section 3.

case, the law does not state imperatively the exact time of issuing the protocol. Given such settings, police officer can incorporate desired information that occurred during or after implementing the police actions. The practice of drafting the document post factum minimizes the chances of checking the validity of actions using the protocol. The grounds for police actions is defined only in two cases (inviting and identification of a person). As for other more intensive actions, such as: special police control and frisk examination of a person, police officers have obligation to provide explanations only about the right to appeal against the lawfulness of police actions. The later is simply unjustifiable, as those actions require rapid intervention in individual rights and the addressees should at least have information about the grounds for actions.

The system for appealing against an action of a police officer can also be considered ineffective143. Validity of police measures can be appealed under the administrative legislation to the administrative body that has carried out the measure, to an official superior to the official who has carried out the measure. The principle of administrative appeal is not effective while the balance between the criminal justice and preventive functions is problematic and when preventive functions are conducted in response to criminal offence. There is a minimal chance for objective consideration of an appeal, given the fact that collegial relations among police officers is very strong and superior official is responsible for any possible malefaction of his/her subordinates.

The decision made by the senior official is subject to administrative legal proceedings by general court, nevertheless, the addressee of possible illegal preventive measures encounters the problem of lack of evidence, as the protocol about measures taken is created only in exceptional cases, plus it is possible that information included in the protocol does not fully reflect the reality.

Chapter 6. Conclusion and Recommendations

The Police Law of Georgia, adopted in 2013 introduced many positive changes, but on the other hand, it has created the system of preventive measures that does not aim identification of systemic problems, but rather is directed at bringing rapid and short-term results through exercising repressive measures. By creation of such legislative settings, legal order has become segregated from real grounds of the problems and, motives of crimes and other social factors. The government made choice in favor of that presumption, which considers people as potential criminals and tries to identify them in advance.

In addition to all the above and considering the nature and frequency of measures taken, preventive measures have lost its essence and has converted into more repressive means used by police officers. Given preventive system lays ground for rigid intervention in individual rights, which sometimes equals to intensity of criminal provisions. Therefore, the important balance between prevention and respond to crime is violated. Another major drawback of the preventive system is lack of guarantees that secure addressees of police actions, which allows police officers to act upon their own discretion, which is farther encouraged by ineffective control mechanisms.

In order to eliminate aforementioned shortcomings, number of legislative changes should be implemented, in particular:

➢ Clear line should be set between preventive activities and coercive activities defined by Criminal Procedural Code. The concept and the goal of police actions should be defined more clearly;

➢ Eliminate legislative duplication that is a result of assumption that operative-searching activities are one of the types of preventive activities. Specify in details, in which cases it is possible to carry out operative-searching activities for police purposes;

142 - Inviting a person, identification, frisk examination and inspection.

143 - Police Law of Georgia Article 56, section 2.

➢ Establish by the Law on Police, non-repressive methods of crime prevention, that will not entail interference in human right at the same extent as it happened during criminal procedures;

➢ Government should reconsider the crime prevention strategy and maintain fair balance of safety and independence concepts;

➢ Introduce the rule of obligatory justification of police actions, which limit the rights of individuals. Moreover establish effective internal and external control over police actions;

➢ Equip the addressees of police actions with effective defense mechanisms that would assist to effectively respond to any unlawful. Defense mechanisms can be as follows: explanation of the basis of actions, right to be acquainted with the record that is mandatory to issue, and right to make changes in it. Establish effective mechanisms for appealing against police actions;

➢ The norms of special police control should be revised, it should be used only in exceptional cases and groundless usage of such mechanism should be eliminated;

➢ Clearly define, which department officers of law-enforcement system have right to carry out police-preventive activities, in order to ensure that any officer of any department of the minister is authorized to interfere in independence of an individual;

➢ Law enforcement officers should be obliged to provide information about their identity and authorities while carrying out police actions. This obligation should be overlooked only in exceptional cases, for the greater good, which police officer is accountable justify.

Part 5. Analysis of Investigation System

Chapter 1. Introduction

According to the Criminal Procedure Code of Georgia, investigation is a consolidation of actions carried out by the authorized person, according to the rules of the later Code, for the purpose of collecting evidence of the crime[144]. *Investigation can be defined quite simply as a systematic fact-finding and reporting process. It is derived from the Latin word vestigere, to "track or trace," and encompasses a patient, step-by step research*[145]. Unlike the functions granted to other law enforcement agencies, that are directed on wider range of addressees, (such as police preventive activities, security and safety activities) Investigation of criminal case is the complex of response mechanisms for a specific criminal act in order to set out factual circumstances of the case.

The primary focus of the Investigation, according to the Procedural Code, is collection of evidences about a criminal case. Besides, together with the prosecutor, investigator can also be an accuser. The issue of independent (Institutionally) investigation is quite interesting in this regard, does the current settings allow the investigation to be neutral in relation to plaintiffs or defendant while collecting the evidences. Based on the analysis of provisions in the Procedure Code, it is hard to assume that investigation body is completely neutral and unbiased (free from influence from plaintiffs' or defendants). However, investigation process is not so predefined; there are several aspects that have to be considered to analyze the issue.

Impartiality and the nature of the investigation can be defined by the level of interdependency between the investigator and prosecutor. What is the subordination status of the investigator to the prosecutor, how the roles are delegated between them and how intensive is the supervision of the prosecutor over the investigation.

It is also important to evaluate the procedural or other types of mechanisms that are provided by the Georgian legislation, in order to ensure impartiality, objectivity, effectiveness and timeliness of the investigation. It is also worth considering the institutional arrangement of investigative agencies, how are they protected from political or other inappropriate influence. Those are the topics that we will be focusing on, in the current chapter.

Chapter 2. Initiation of an Investigation

Criminal Procedure Code before 2010 used to define several stages of criminal prosecution, such as, research, preliminary and court investigation, but current Code does not provide such classification, the term Investigation now is comprehended as the whole process - starting from initiation of the criminal case (which automatically means the initiation of the investigation) ending with closing the case.

New Procedural Code does not include the subsidiary, private and private-subsidiary types[146], of prosecution, there are general rules for prosecution, were the law does not allow any exceptions, that would require consent of the victim or accused, while carrying out investigation or prosecution.

Today any kind of notice is enough to initiate an investigation, regardless of existence or inexistence of the consent

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144 - Criminal Procedure Code of Georgia, Article 3, section 10.

145 - AN INTRODUCTION OF THEORY< PRACTICE AND CAREER DEVELOPMENT FOR PUBLIC AND PRIVATE INVESTIGATORS. Whitney Gunter, Christopher A. Hertig. 2004. P.1

146 - Criminal Procedure Code of Georgia of February 20, 1998, Articles 23 (As of addition dated 25/11/2004).

from any party of the case[147]. The notification can enter in written form, as well as verbally. Regardless of how the information about the crime was disseminated, whether it was a private message to the public official or an information spread in mass media, it is mandatory to start an investigation. There is only one exception allowed by the Procedure Code in this regard – if the notification was made by the anonymous person, investigator is not only obliged to, but he/she is granted discretionary power to start an investigation.

Prosecutor and investigator are authorized to make decision over starting the investigation. Prosecutor can make this decision independently, according to the law, but investigator is obliged to inform the prosecutor about initiation of investigation and the later can change or reject this decision.

It is legitimate to have the obligation of notification before starting the investigation, it allows effective supervision over the criminal process and ensures that each action is performed lawfully and correctly, without violation of individual rights, it also helps to avoid making any harmful decisions for the investigation process. Nevertheless, notification cannot be considered as a guarantee for effective supervision and legitimate investigation process, this mechanism has several drawbacks.

First of all, delaying the start of the investigation is not properly insured, there are risks that in parallel with procedural actions, start of investigation is not officially documented. There is one clause[148], in the Law on Operative –Searching Activities that can be considered as a major legal flaw. It states that the basis for operative-searching activities can be a notification about the criminal act, even if the there are not enough signs of crime to start an investigation. This contradicts with the rule assigned by the Criminal Procedure Code, it practically sets standards about certain amount of data required in order to enact criminal prosecution. What makes the problem more serious is that prosecutorial supervision over the operative-searching activities is rather superficial and fragmentary; it only focuses on precise and homogenous implementation of the law and no control mechanism is applied over the content of the information or means of collecting the information[149].

First of all, delaying the start of the investigation is not properly insured, there are risks that in parallel with procedural actions, start of investigation is not officially documented;

Several police actions are also linked to the commencement of the investigation or criminal proceedings that can be exercised to respond to potential or already committed crime. The standards for police preventive actions are relatively low, and the law provides much less guarantees to the addressees of such actions, then to the parties of criminal investigative procedural actions. Given this kind of normative settings, investigator and police officers can exercise practically similar researching activities. They are allowed to carry out certain measures, right after receiving an information, even if it is not yet officially justified as criminal proceeding, therefore it is not under prosecutorial supervision. Controversial and inconsistent mechanisms of law enforcement practices lay ground for arbitrariness of law enforcement bodies and weakens the guarantees of individual rights while criminal proceedings are in process.

Chapter 3. Procedural Supervision over Investigation

As noted above, investigation is compound investigative and procedural actions, for the purpose of collecting evidence of the crime. Based on the methods and intensity of investigation, undue interference in the rights of individuals is highly possible. In order to avoid intervention and for effective administration of justice, Prosecutor

147 - Criminal Procedure Code of Georgia, Articles 100 and 101.

148 - Georgian Law on Operative-Searching Activities, Article -8, paragraph "B".

149 - Ibid 21.

carries out procedural supervision over the investigation. The level of impartiality is crucial in this regard; therefore, it is important to know what are the frames of the supervision and level of intensity.

In number of countries, special commissions discussed the level of involvement of Prosecutor's Office in investigation. For example in Great Britain, creation of Royal Prosecutor's Office preceded with the work of Philips Commission. According to the decree of the commission, it is important to separate the functions of prosecutor and the investigator. Commission indicated "if the prosecutor is exceedingly involved in the investigation process, it is highly possible that he/she will continue to evaluate one-sidedly and lose the ability to judge the case objectively[150]."

In Ireland in 1998, a commission was created to study the system of Prosecutor's Office. The report submitted by the commission states that as indicated, international comparisons do not provide a compelling argument to the effect that this separation should be regarded as a basic principle[151].

The practical aim of such a separation of functions is to avoid a situation in which the prosecution, instead of objectively assisting the court to arrive at the truth by presenting the facts, which constitute the case against the accused, would be "committed" in advance, as a result of its involvement in the investigation, to securing a conviction. Preliminary involvement of prosecutor in the investigation creates predefined sentiments concerning the case, which hinders the unbiased presentation of the case.

Georgian legislation does not define clearly the role of the prosecutor during the investigation process, what is his/her major priority? Is it effective and objective investigation or the criminal prosecution finalized with the awarded sentence? Law directly obliges the investigator, unlike prosecutor, to conduct comprehensive and objective investigation[152]. Due to this obligation investigation is distanced from the position of plaintiff and carries much more importance than effective implementation of criminal prosecution. However, some questions arise regarding the possibilities of an investigator to objective and comprehensive study of the case.

Within the current legislative framework, investigation is directly linked to the criminal prosecution. More specifically, precondition of criminal prosecution is effective investigation; prosecutor carries out supervision specifically in this context. Accordingly, existing legislative regulations and institutional organization of law enforcement bodies favors the idea that prosecutorial supervision is directed not on objectivity of the investigation, but rather at better implementation of criminal prosecution. Because of the absolute nature of surveillance and in the conditions of comprehensive coverage of the investigation by it, the investigator is in double condition, during which, on one hand, he/she is in charge of the comprehensive and objective study of the case, and, on the other hand, he/she is limited by the supervising prosecutor of the case with his/her mandatory instructions. And its comprehensive coverage of the investigation into the double condition investigator, during which he is in charge of the comprehensive and objective study of the hand, the other hand is limited by the supervising prosecutor mandatory instructions.

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The obligation of an investigator to thoroughly and objectively investigate the case comes into conflict with the other norms and principles of the Procedure Code. First of all it is has to be underlined that the investigator represents the party of the plaintiff and such status is not fictitious[153]. As opposed to the old Procedure Code, today inves-

150 - See: https://www.dppireland.ie/filestore/documents/Report_of_the_Public_Prosecution_System_Study_Group.pdf. As per 14.01.2015

151 - REPORT OF THE PUBLIC PROSECUTION SYSTEM STUDY GROUP, see. 4.4.8, can be accessed at: https://www.dppireland.ie/filestore/documents/Report_of_the_Public_Prosecution_System_Study_Group.pdf., last updated on 25.05.2015

152 - Criminal Procedure Code of Georgia, Article 37, section 2.

153 - Ibid., Article 3, paragraph 6.

tigator is not authorized to make decisions over certain issues independently from the prosecutor, such as filing a motion to the court about conducting investigative activities that restrict the rights, about preventive measures, regarding the termination of investigation and other. Investigator has several limitations from the prosecutor. Such distribution of powers has positive aspects, such as involvement of the prosecutor in decision-making process over important issues. It also prevents the risks of harmful actions of the investigation and decreases the unduly intervention in the rights of individuals. It also increases the level of justification of motions submitted.

Nevertheless, given such regulations, investigator's status as impartial and objective entity is somewhat fictitious. As the main goal of the procedural supervision is criminal provision and prosecutor's major focus is justification of guilt, logically it is difficult to ensure objectivity, while being a party of the case.

Only advantage that an investigator holds in relation with the prosecutor is that he/she can deny to conduct the investigation, after submitting information in written form to the supervising prosecutor about the case and provides his/her opinions over it. In this case, supervising prosecutor annuls the order of the subordinate prosecutor and assigns another investigator to the task[154]. This mechanism is hard to consider as a procedural safeguard for objective investigator or investigation process, because it only provides "negative" solution, such as removing a person from the investigation process, or canceling the order.

In the light of effectiveness of procedural supervision, it is important to evaluate institutional arrangement of current investigative bodies. As mentioned earlier, during the investigation of specific criminal case, at one hand their activity is subject to supervision of prosecutor, on the other hand, each investigative unit ministries have department heads. Their role is to supervise investigators, but they are not involved in procedural activities. Despite the fact that, investigative department heads do not have possibility to legally supervise procedural activities, this type of structure facilitates creation of two-headed institutional model. Considering the circumstances the conflict of competences between the investigative department heads and the prosecutor may arise and there are no safeguard mechanisms in place[155]. On legislative level resolution of such conflict is obvious (Only supervisor prosecutor is authorized to oversight the procedural activities of an investigator and give binding order), but in practice it is hard to tell which position wins, as internal work provisions equips the investigative body heads with significant levers and they can interfere with the work of subordinate employees. This creates doubts concerning effective procedural supervision and comprehensive, objective investigative procedures.

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Chapter 4. The system of Investigative Units and Investigative Subordination

As discussed in previous chapters, Ministry of Internal Affairs is the key agency fighting against crime; therefore most of the investigations are conducted by the agencies of the Ministry. It is not new that major law enforcement functions is concentrated in MIA, this ministry has been investigating most of the crimes since independence of Georgia. However, in order to see the whole picture of investigative departments, it is important to analyze the entire investigative system.

The chapter will further discuss certain investigative units, their competences, functions, levels of institutional independence and accountability. In this section, we will discuss briefly the process of their establishment. Before 2003, only Prosecutor's Office, Ministry of Internal Affairs and Ministry of Security had authority for investigative functions. In 2003, a new clause appeared about investigative department of Ministry of Finance, although enactment of the later took place only in 2004.

154 - Criminal Procedure Code of Georgia, Article 37, section 3.

155 - European Choice of Georgia, reform concept or Prosecutor's Office of Georgia (Fair and effective Prosecutor's Office) p. 54.

In 2009, it was established in its current form –with the status of state subordinate agency[156].

From 2005, Investigation Service of Ministry of Justice was created; their function was to investigate criminal cases committed on the territory of penitentiary establishments and investigations regarding the enforcement of court orders[157]. Jurisdiction of the later type of crimes was removed from the competence of the department in 2008, due to the fact that a separate ministry of Correction and Legal Assistance was created. Investigative unit was also created in this ministry that was assigned the responsibility to investigate the crimes committed on the territory of penitentiary establishment.

In 2006, investigative service of the Ministry of Defense was established – same as military police. In the meantime, separate entities - investigative services of Security Ministry were abolished, more precisely those agencies together with the Ministry of Security was integrated into the Ministry of Internal Affairs.

In 2007 – 2011 investigative departments were established in the Ministry of Environment and Natural Resources and in the Ministry of Energy, though none of those departments operate today as separate entities, their functions have been delegated to the investigative bodies of Ministry of Internal Affairs[158].

Today the competence of criminal investigation is assigned to the investigative units of Ministry of Justice, Ministry of Defense, Ministry of Corrections and Legal Assistance and Ministry of Finance. A special investigative department operates in the system of Prosecutors Office as well. Investigative jurisdictions of above listed units are defined by the executive order of Minister of Justice[159].

The fact that issue of jurisdiction is not regulated by the law, as it used to be according to the previous Procedural Code, and it is regulated by the executive order of the minister, can be considered as legislative shortcoming. The later makes the matter of jurisdictions less foreseeable and grants the Minister of Justice advantage to change the rules of jurisdiction easily. Content wise, the major problem is imprecision concerning the delegation of criminal cases to various investigative bodies and frequent duplication of competences. The problem of duplication is not solved by the clause in the order, which states that in case of competition between investigative unit of any ministry and the prosecutors' office, the case will be assigned to the later. Such regulation of the matter does not provide solution to the problem, it does not safeguard the risks of conflict of interests during the investigation process, and in addition, it is possible that case is assigned to the body that is unable to investigate it properly.

Article 33 of the Criminal Procedure Code is also questionable, it grants the chief prosecutor or a person authorized by him/her the right to remove certain criminal case from jurisdiction of one body and assign it to another, without any justification and through negligence of the rules stated in the executive order of the Minister.

Considering the given circumstances, it becomes irrelevant for the Minster of Justice to establish the rules of investigative jurisdiction, as the chief prosecutor can disregard the requirements specified by the minister[160]. The law does not specify who else, except chief prosecutor, is authorized to delegate the cases among the investigative units and through overlooking the established jurisdiction rules. Vague definition of "authorized person" lays ground for negligence of jurisdiction rules on a permanent basis; it is highly possible that "violation" of jurisdiction rules by the prosecutors is not considered an exception, but rather a regular occurrence[161].

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156 - See: http://is.ge/4162, last updated on: 25.05.2015

157 - See: https://matsne.gov.ge/ka/document/view/1427487, last updated on: 25.05.2015

158 - Criminal Procedural Code, Article 34.

159 - Executive order ofthe Ministerof Justice on Criminal Cases Investigation and determination of the investigative jurisdiction(N34 – July 7, 2013).

160 - According to the letter of Chief prosecutors office dated May 20, 2015, N/32426, in 2013-2014 years 100 cases (2013-50; 2014-50) of possible crimes were transferred from Chief prosecutors office to General inspections office of Internal Affairs Ministry.

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Furthermore, it is important to note that procedural legislation allows to forward the case to different jurisdiction. If based on the investigation, it appears that investigation of the specific case is the competence of another investigative body, after completing emergency investigative actions; prosecutor should immediately forward the case according to the jurisdiction. In the situation, when prosecutor of any ranking has competence to independently change the matter of jurisdiction of particular case, it questions the possibility fulfillment of this obligation.
In the long run it has to be noted that legislative framework is ambiguous concerning the jurisdiction of investigative units, about forwarding the cases and also about the basis for assigning particular cases to certain investigators. This facilitates the existence of the threats of arbitrariness, misuse of power in the process of investigation.

4.1. Investigative Department of the Ministry of Justice.

Investigative services in the Ministry of Justice was initially carried out by the separate department, but today it is integrated as one of the divisions of the department of General Inspection in the Ministry[162].

The competence of this division is to carry out investigation on the crimes (actions defined by the Criminal Code, Articles 332, 333, 335, 337, 342) committed by the officers of legal entity of public law and structural units of the Ministry[163]. Department of general inspection of the Ministry unites operative division; the major role of the division is to provide operational services to the investigative department.

It should be emphasized that the Minister of Justice supervises the structures of Prosecutor's Office and at the same time supervises general operation of investigative department and leads personnel policy of it. Consequently, one public official simultaneously exercises authority over investigative departments of the ministry, as well as over the structure that conducts prosecutorial supervision of those departments Hence, prosecution and investigative departments are not divided institutionally, which limits the chances of effective procedural supervision.

4.2. Military Police

Investigative department of the Ministry of Defense was established as a separate entity – military police. Its activities are regulated by the Law on Military Police. The competence of the military police is to conduct investigation on the military crimes, more specifically crimes defined by the Criminal Code, Articles 356, 359, 383, 392, 394, 403. It also carries out investigation for the crimes committed on the territory of the institutions under the Ministry of Defense and in the military Units[164].

In parallel with investigation, military police carries out regular police functions, such as responding to administrative offences, providing security for particular buildings and dislocation destinations, fight against crime in the frames of the competences and other[165]. One of the most important functions of the Military Police is operative-searching activities[166].

Structurally, Military Police is a special structural law enforcement unit in the headquarters of Georgian armed

162 - Statute of the general inspection of Ministry of Justice, Article 18.

163 - Ibid. article 19.

164 - Executive order ofthe Ministerof Justice on Criminal CasesInvestigationanddetermination of theinvestigative jurisdiction(N34 - 2013July 7) section 6.

165 - Law on Military Police of Georgia, Article 2.

166 - Aforementioned Law, Article 8, paragraph "B and Article 14.

forces; it is governed by head of military police. External monitoring of the military police[167] is implemented in two ways. The first is parliamentary control; it is performed by the committee of defense and security of the parliament. The second is prosecutorial procedural supervision of the investigation.

4.3. Investigation Agency of the Ministry of Corrections and Legal Assistance

The Investigation Agency of the Ministry of Corrections and Legal Assistance has been formed as a department and it is responsible for carrying out investigation for the crimes defined in the articles 3421, 378, 3781, 3782,379, 380, 381 of the criminal code of Georgia (in the part of failure to implement custody), as well as, the crimes committed on the territories of institutions operating under the department of correction[168].

The only internal regulating normative act of the Agency is the statute of 2009[169]. Despite the numerous changes to the document, it still contains norms, which were characteristic to the old procedural criminal code; because of that, it is hard to define the exact sphere of expertise of the Agency based on the statute.

The Investigation Agency is under the supervision of the Minister and the curator Deputy Minister[170]. The Agency is not well-distanced from the central management body of the Ministry and this is obvious also from the fact that it represents the Ministry while carrying out its functions[171]. At the same time, except for prosecutorial supervision, there is no institutional external control mechanism, which leaves the Agency beyond the attention of the society and it becomes impossible to assess its activities in terms of legitimacy and effectiveness.

4.4. Investigation Agency of the Ministry of Finance

Investigation Agency of the Ministry of Finance, based on its functions, is one of the strongest and the most important investigative bodies, consequently its structure is vast and together with other departments, it comprises important agency such as investigation, special research, special examination and operational-technical provision departments[172].

Among the general competence of the Investigation Agency of the Ministry is to expose and prevent criminal[173] and illegal acts in the financial-economic spheres. The law concerning investigation agency of the Ministry of Finance, states clearly and definitely, that the actions of the Agency must be directed at preventing and revealing crimes[174], although the entry in the law, stating that the Agency creates and uses operational-technical means and ensures their protection, bears the risk. In these conditions it is impossible to establish, what kind of technology is used by the Agency and how can operational-technical activities be controlled effectively.

In terms of organization, the management of the Agency, coordination and administration is provided by the Head of the Agency, who is appointed and removed from the post by the Prime Minister at the suggestion of the Minister of Finance.

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167 - Ibid. Article 22, Article 23.

168 - Exeecutive order ofthe Ministerof Justice on Criminal Cases Investigation and determination of the investigative jurisdiction(N34 – 2013, July 7) , Sectionh 8

169 - Executive order of the Minister of Correction

170 - Article 5 of the executive order of the Investigation Agency of the Ministry of Corrections and Legal Assistance

171 - Section4 of the first article

172 - Section 2 of the article 3 of the executive order of the Investigation Agency of the Ministry of Finance.

173 - Crimes described in the articles 182, 189, 1891, 190, 192, 1921, 193, 195, 201, 205, 214, 216, 221 of the criminal code of Georgia.

174 - Ibid. Article 10..

Similar to the General Inspection Agency of the Ministry of Internal Affairs, the Agency of internal inspection of the Investigation Agency of the Ministry of Finance, in parallel to controlling discipline and legitimacy, has the authority to lead criminal investigation and operative-investigative activities[175], which in this case, is unjustifiable since criminal investigation and operational activities are beyond the nature of administrative-disciplinary agency.

Important units are operational-technical provision department and the Special Force Group. The first one provides operational-technical service of the whole Agency and performs these actions itself too[176]. The function of the special force group is to support the investigation agency in executing its functions. Although, what exactly is means by this support, is not provided either by law or by the executive order and in whole, it is doubtful whether it is at all necessary to have this kind of group under the Ministry of Finance.

Outside control is implemented by submitting annual reports by the Head of the Agency to the Ministry of Finance and the government. The frequency of reporting is defined by the Minister of Finance.

4.5. Investigation Agency of the Chief Prosecutor's Office

Among today's investigation agencies, together with the Ministry of Internal Affairs, the Investigation agency of the Prosecutor's Office is the agency with the longest institutional history, although its role and the field of expertise have changed more than once and today its main responsibility lies in investigating the crimes committed by the persons of high political rank[177] and other law enforcement officers. The scope of this agency is so specific, that the cases for investigation must be very rare and specific, but in reality, this agency is one of the most active investigation agencies[178].

The structure of the Agency is simple and it has three units: the unit of Prosecutorial Supervision, unit for Executing Criminal Prosecution in case of legalization illegal income and the department of Case management, Research and Control. It is unjustifiable, to place the Prosecutor Monitoring department under the Investigation Agency, which in fact, means that both investigation and prosecution are under the same umbrella, in which performers of both functions are under the subordination of the same person – the Head of the Investigation Agency. In these conditions, it is highly possible that the employees of these two units develop strong senses of loyalty and collegiality, which in fact, hinders execution of effective prosecutor monitoring.

Chapter 5. Conclusion and Recommendations

As a summary, there are number of shortcomings that need further improvement in the current investigative system. It is important to define exact time of starting an investigation, although this process is clearly regulated by the Procedural Code. Insufficient clarity concerning the terms for criminal prosecution and period of investigation can be a negative influence on fear judicial procedures.

In addition to inconsistent legislative framework, there are several drawbacks in current structure of investigative bodies, in the principles of their management and delegation of jurisdiction among them. Considering all the above, several aspects of current legislative framework should be critically revised and reconsidered, such as:

➢ The commencement of investigation should be clearly defined, investigative bodies should be effectively con-

175 - Article 42of the executive order of the investigation agency of the Ministry of Finance.

176 - Article 7 of the executive order

177 - The president of Georgia, member of Georgian parliament, member of government, judge of Georgia, Public Defender, General Auditor, the member of the council of the National Bank, Georgian ambassador and special envoy, employee of the Prosecutor's Office, policeman, an officer in the highest military rank or having special title or the person on the equal level.

178 - European Choice of Georgia, Concept of reforming Georgian prosecution-fair and effective prosecution, p. 54.

trolled and checked how efficiently they initiate investigation based on the relevant information;

➢ Other laws should comply with the Criminal Procedural Code, in particular, the entry in the law on operative-searching activities should be eliminated, and it allows certain bodies to carry out operative-searching activities on possible crime, while investigation of the case has not been started yet. The regulation of Law on Police should also be reconsidered, so that law enforcement officers did not have possibility to use alternative investigative mechanisms, such as pre-investigation;

➢ The issue of subordination of prosecutor and investigative body should be defined clearly. in order to avoid the conflict between the prosecutor who carries out procedural supervision and the head of investigative body, which proceeds the case;

➢ The rules of investigative jurisdiction should be set out by law. Removing the case from one investigative body and transferring it to other body should be possible only by the Chief Prosecutor, removing such decision of a case from one investigative body and its transfer to another body should be possible just for the Chief Prosecutor, with obligation to appropriate justification of such decision, so he/she does not violate the essence of jurisdiction, and does not create the grounds for conflict of interest;

➢ The regulations for appointing and dismissing the heads of investigative departments should be clearly defined. Those officers should have relevant independence and legal rights, in order to avoid the influence from political leadership or from the changes made in the cabinet of ministers;

Part 6. Responsibility System of Law Enforcement Agencies

Chapter 1. Disciplinary Liability

National Anti-corruption Action Plan approved in 2005 specifies that most effective measures for creating effective and transparent governmental system is to reform General Inspections[179] and to ensure political, functional and material independence of inspection services. According to the action-plan, General Inspections should observe the activities of public services, including high-level structures, detect illegal actions and offer relevant response. The action-plan envisaged to create a unified law that would unite all those services and would set out general standards for their operation.

The majority of the challenges that existed ten years ago still prevail; the goal of establishment of effective, institutionally independent, trustworthy inspection services has never been fulfilled. Current General Inspections continue to operate according to the old regulations; there are no structured general rules of their operation, no substantial changes have been made to the model of their formation and operation that would strengthen public trust towards the system.

The present chapter describes the procedures of formation, regulation and operation of General Inspections within the Ministry of Internal Affairs, Prosecutor's Office and Ministry of Corrections and Legal Assistance.

As general assessment, it can be said that General Inspections of above listed ministries are not sufficiently distanced from the central governmental structure and from the political leadership of the structure. The Ministers (Prosecutor General in case of Prosecutor's Office) maintain important advantages over the activities of internal inspections.

Institutionally the inspections are not equipped with certain guarantees that would ensure objective and unbiased study of the case and relevant decisions made. The leading role in forming internal inspection services is played by the Ministries. The Ministries define personnel and budgetary policy. Therefore, it is highly possible that ruling political power maintains improper influence over the activities of general inspectorate.

It is worth pointing out that law enforcement system requires not only proper disciplinary mechanisms, but also effective evaluation, motivation and promotion system. Current regulations only provide basis for sanctions against the person, while, in case of outstanding performance no motivational or promotion procedures are considered in any normative act or law.

1.1. Independence of General Inspections

In 2009, Commissioner for Human Rights elaborated an opinion concerning independent and effective determination of complaints against police[180]. However, this opinion does not apply only to the traditional police structure, but other authorities, who enforce law, prevent crime, carry out investigation and protect human rights. Commissioner indicates that an independent and effective police complaints system is of fundamental importance for the operation of a democratic and accountable police service[181].

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179 - of National Anti-corruption Strategy of Georgia, Subparagraph 2.5 , 2005.

180 - Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police; 12 March 2009, CommDH(2009)4;see: https://wcd.coe.int/ViewDoc.jsp?id=1417857#P324_32538 Last updated on: 25.05.2015.

181 - Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police; 12 March 2009, CommDH(2009)4; ¶5.

Two different tendencies has evolved in modern development of oversight agencies 1) Guarantees for their competence and independence is increasing[182] . 2) There is a shift from simple "review" mechanisms to a mechanism that includes independent investigations powers and, in some cases, even independent prosecution power[183].

Special Rapporteur in his report to Human Rights Councils indicated that, the mechanism should have full operational and hierarchical independence from the police, and be free from executive or political influence[184].

As an example, in Ireland police was reviewing the complaints filed against the police officers. In 2000 Police Ombudsmen as created which is accountable to the Assembly of Ireland through Minster of Justice of Northern Ireland[185] . The structure of Police Ombudsmen is non-departmental structure and it is administrated by the Ministry of Justice. IPCC operates in Great Britain (Independent Police Complaints Commission) which is comprised of the chair and 12 commissioners[186].

In Belgium, *Committee P* was established, which reviews the complaints filed against the police. The Committee is accountable to the Lower House of Parliament. They are responsible for dismissing and appointing the members of the members of the committee. The committee includes investigative department, which investigates the complaints[187].

General Inspection units in Georgia are not institutionally separated from the central government; they operate as regular departments units. Therefore, there is a close link between inspection services and central government that created ground for improper political influence over the activities of the inspectorate.

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The Ministers (Prosecutor General in the case of Prosecutor's Office) establish personnel policy and general scope of activities of the units. It is practically identical to the formation and operation system of General Inspections in Ministry of Internal Affairs and in the Ministry of Corrections and Legal Assistance. In both cases the Minister assigns and dismisses the head of the General Inspection, as well as other employees. The legislation does not regulate the process of assignment and dismissal and participation of other persons except the Minister. Therefore, the advantage of inspectorate staffing is in the hands of political leadership of the structure.

General Inspections do not differ with the level of independence or autonomy from any other structural units of the Ministries. Although the statutes of General Inspections include clause about their independence and about non-interference in their activities, but it does not rule out influence and oversight by the minister over the activities of this unit. In the frames of official oversight, the Minister can find invalid the decision made by the head of the General Inspection[188]. Obviously, this does not apply to the reports submitted by the unit about the disciplinary issue, about sanction or about exemption from liability. Nevertheless, the Minister can easily intervene in the process of case study, delegate the roles, assign specific tasks to the employees of the Inspection unit etc. Moreover as mentioned above the most important lever over the units is the sole authority over staffing of the units and dismissal of the employees.

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182 - Police Governance :European Union Best Practices, DCAFhttp://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add8.pdf pg. 29, Last updated on: 05.03.2015.

183 - Same document, p 30.

184 - See: http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add8.pdf pg. 29, Last updated on:

185 - See: http://www.policeombudsman.org/About-Us/History-of-the-Office#sthash.uGExPZyo.dpuf Last updated on: 05.03.2015.

186 - See: http://publicappointments.cabinetoffice.gov.uk/wp-content/uploads/2015/01/150112-IPCC-Candidate-Pack-Final.pdf pg.6; Last updated on: 05.03.2015

187 - See: http://www.comitep.be/EN/index.asp?ID=Faq Last updated on: 05.03.2015.

188 - Law Of Georgia On The Structure, Formation And Order Of Activity Of The Government Of Articles 32. 33

In case of Prosecutor's Office the Prosecutor General assigns the general inspector and other employees[189]. Prosecutor General also performs oversight[190] ; he/she issues individual binding provisions and also changes or cancels unjustified or illegal acts issues by the subordinates.

In order to analyze the level of independence of General Inspection units, it is important to review the nature of decisions made by them. Apart from the fact that the there is a high possibility of the ministers and the prosecutor to influence the operation of the units, the units are not functionally independent. Findings submitted by the inspections are recommendations; the proposals submitted to the Minister (Prosecutor General) are not of binding nature. Therefore the Minister and Prosecutor General make sole decision over accepting the findings or not, as well as about imposing certain sanctions or not. The head of the unit is not obliged to justify his/her decision when he/she does not accept the proposal of General Inspection. These settings limit the independence of General Inspection and it provides ground for making political decisions. The disciplinary process becomes even more unforeseeable and nontransparent due to unjustified decisions and weakens the public trust.

> *Findings submitted by the inspections are recommendations; the proposals submitted to the Minister (Prosecutor General) are not of binding nature.*

General Inspection within the above listed ministries do not have separate budget, they are financed from the general budget of the system, which is defined by the Ministers and Prosecutor General.

1.2. Accountability of General Inspections

General Inspections of above listed structures are obliged to present their activity report only to the respective Ministry. General Inspection units of Prosecutor's Office and the Ministry of Probation and Corrections submit activity report twice a year and Ministry of Internal Affairs submits annual activity report respectively to the Minister of Internal Affairs, to the Prosecutor General and to the Minister of Corrections and probation. The head of General Inspection Unit is responsible for submitting the report. The report should provide statistical data concerning significant drawbacks of the system; about the violations revealed and should specify the amount of damage caused to the government. The reports should also specify the number of cases that may be redirected to the law enforcement agencies for further follow-up.

In regards to the accountability and openness to the public, there are no special regulations for General Inspections. Their operation cannot be characterized as transparent, since their reports are not public; neither they are obliged to publicize the decisions about the cases. Another reason for their covertness can be the fact that they do not operate as separate entities, distanced from the Ministry and therefore, they do not have separate requirements of accountability and openness. They, as regular department of the Ministry, are only accountable to the Minister. It is important to note, that accessibility to the rules and methods of the units are limited. Until March 2015, the statute of General Inspections of Ministry of Internal Affairs was a confidential document; this is the document that regulates procedural issues of this unit.

1.3. Basis for Disciplinary Liability

Law of Georgia on public service defines three general types of disciplinary faults: a) culpable neglect or improper performance of official duties b) damage to the property of the institution or culpable creation of danger of such damage; c) indecent behavior (culpable behavior) against generally accepted ethical norms or intended to discredit an official or an institution[191]. Certainly law enforcement agencies have different specifics as compared to

189 - Statute of General Inspection of Prosecutor General. Articles 6, 9.

190 - ibid. Article 5

191 - Georgian Law on Public Service, Article 78.

other public institutions; nevertheless internal regulations of all three institutions define relatively similar type's disciplinary faults.

In the prosecutorial system the basis for disciplinary liabilities are mainly defined in the code of ethics of employees of the Prosecutor's Office and internal regulations. Those documents regulate the principles of personnel relation in regard to the colleagues, media, and external persons and with the parties of a criminal case. The documents also specify the terms for exercising official authority and other.

Both, the code of ethics and internal regulations are issued as decrees of Prosecutor General. Prosecutors do not participate in defining the content of those documents. Prosecutor's Office can be an exception in this regard among the other players. Disciplinary rules of lawyers and judges are defined by self-governing bodies (General council/ Conference).

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It is interesting that ethical norms of prosecutors include obligation of the prosecutor to respect presumption of innocence[192]. It seems obscure in what conditions or intensity prosecutor is obliged to protect the presumption of innocence, while it is not defined what it means for a Prosecutor, representing a public prosecutor to violate the presumption of innocence. It is neither specified to which rank of prosecutors does this restriction applies. (Prosecutor of the specific case - supervising prosecutor or the Prosecutor General) It is also ambiguous if the prosecutor can make statements to the media or to the public about the culpability of a person and if there are any exceptions in this regard.

None of the legal acts mentioned above define the types of relation between prosecutor and his/her supervisor. In particular, extent and right of supervising prosecutor to intervene, at what extent is his/her command binding, how the command is given and other. Code of Ethics only generally defines that external interference in the affairs of the prosecutor is impermissible. But the prosecutor can share his/her experience to the colleague if his/her qualification requires it[193].

Disciplinary liabilities of the personnel of the Ministry of Probation And Corrections is defined by the Code of Ethics and Conduct of correction officers in the penitentiary system. The document includes the same violations as the Law on Public Service and specifies the issues characteristic to this service, such as: ethics of treating the accused/convicted persons, personal responsibility for the execution of the order and other. It is positive that the code clearly regulates the obligation of the officer for whistleblowing in case of any corruption in the system, which is followed by special guidelines[194].

Ethical and disciplinary standards of high-ranking officers of the Ministry of Internal Affairs are set by the Police Code of Ethics. It is worth noting that the preamble of the code of ethics together with other issues clearly presents and highlights the importance of public attitude towards the police activities. It clearly states that, effectiveness of the Ministry is proportional to the degree of cooperation with the public and to the level of trust that police officers earn. Moreover, the code defines the rules concerning the use of force and firearms, rules of investigation and presumption of innocence, rules of treating the detainees and other.

It should be noted that according to the Code of Ethics and internal disciplinary regulations, employees shall not be held responsible for refusal of fulfilling illegal orders from the Minister; nevertheless, in any case he/she is obliged to obey the order. Taking into account the fact that the grounds for misconduct are not unified and codified, they

192 - Code of Ethics of employees of the Prosecutor's Office, Article 9, subsection 2.

193 - Code of Ethics, Article 12.

194 - Code of Ethics for the employees of the penitentiart system of the Ministry of Corrections and Legal Assistance, Article 5.

are ambiguous. Giving reference to the order of Minister is not enough, since order may require difference types of conduct and it may also not be introduced to all the employees[195].

1.4. Disciplinary Proceedings

In all three structures, disciplinary procedures are carried out through inspection that can be initiated based in the notice about employee's misconduct, written or oral complaint from the citizen, court decision, or information received on hotline number and other. The following terms of inspection are determined in the Ministry of Corrections and Prosecutors Office, period of inspection is one month, which can be extended to three month, however in neither case, the grounds for extension are specified. Internal regulations of the Ministry of Internal Affairs does not specify the terms of inspection. It also has to be noted that, during internal disciplinary proceedings the citizen/aggrieved is only considered as an informer, accordingly he/she does not participate later in the process. Internal inspection mechanism serves as a defendant of his/her interests. Where it is possible to bring an employee of the system to trial.

The head of the General Inspections makes decision over starting an official inspection. The officers of the inspection are authorized to request relevant information from public agencies, enter relevant buildings / institutions, call for and request to provide explanatory note from any employee of the system as well as to the person who has possibly committed a disciplinary offence.

The fact that person in the Ministry of Corrections, who potentially committed a disciplinary offence, has right to refuse to give explanation to the inspection services[196], is definitely a positive step. Whereas, for the employees of the Prosecutor's Office and of the Ministry of Internal Affairs, it is obligatory to answer the questions of an inspection officer and to provide comprehensive information.

While inspection process, any request can be appealed by the employee, he/she can appeal to Prosecutor General or to the minister of corrections and Internal Affairs. Commissioner for human rights in the Opinion concerning Independent and Effective Determination of Complaints against the Police indicates, that if criminal proceedings or disciplinary action arises as a consequence of a complaint there must be sufficient safeguards in order to protect the rights of the police officer complained against[197].

On the other hand, the standards established by the European Code of Police specifies that "in the case or disciplinary proceedings, some system permit a superior officer to appoint an hoc disciplinary panels whose composition the defendant may have right to challenge[198].

It is obvious that Georgia model of appeal is bound to be ineffective. If the aforementioned officials are responsible for staffing and general supervision of the activities, institutionally it is not justified for the Minister (Prosecutor General) to act as an impartial arbitrator.

Based on the evidences collected during the inspection, the General Inspection determines, whether there are enough grounds for holding the person disciplinary liable. General Inspection submits report concerning the case to the Minister (Prosecutor General in case of Prosecutors Office), which should describe and assess the important factual circumstances regarding the case. Final decision is made by the Minister/Prosecutor General. The report does not have a binding character, Minister/Prosecutor General can, upon sole discretion, neglect factual findings and assessments presented in the report and disagree with the recommendations of the General Inspection regarding specific disciplinary liability of an employee.

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195 - Counsil of Europe Committee of Ministers, Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics, p.2.

196 - Statute of the General Inspection of the Ministry of Corrections and Legal Assistance, Article-9, paragraph "a".

197 - Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police; 12 March 2009, CommDH(2009)4; ¶61

198 - Handbook on police accountability, oversight and integrity CRIMINAL JUSTICE HANDBOOK SERIES UNITED NATIONS New York, 2011, p. 40.

If the inspection reveals signs of criminal offence, inspection unit shall forward the case with additional materials and annexes to the investigative body of the relevant jurisdiction. The major shortcoming in this regards is the clause in the Statute of General Inspection, which states that for forwarding the case file to relevant law enforcement body, it is required to have consent from the Minister[199]. Transfer of information obtained regarding the offence to the investigative body, should not require agreement or permission from the political figure.

Article 4 of the Ministry of Internal Affairs disciplinary regulation is controversial, at one hand it states that an employee can be held disciplinary liable by his/her immediate supervisor or superior officer. However, the article also allows that considering the content and intensity of the offence, the supervising officer of the employee who has committed the offence can also be held disciplinary liable. Neither the regulation nor any legal act specifies, in what cases the superior officer is held responsible, therefore due to such obscure probability of liability, it is less possible that officials impose disciplinary responsibility against their subordinates, as their own disciplinary liability might take place as well.

It has to be noted that, unlike other structures, in the Ministry of Internal Affairs, the decision of imposing sanctions is not solely decided by the Minister, in certain cases the sanctions can also be imposed by the deputy ministers, by the heads of the territorial structural units of the ministry, by the heads of legal entities of public laws and governmental sub-units. Nevertheless, above mentioned officials are not authorized to respond to any type of offence, they can only impose relatively mild sanctions.

While disciplinary proceedings are in progress, relevant officers are not equipped with sufficient legislative advantages, which can be considered as a systemic shortcoming. While official supervision and during the process of decision making by the Minister/Prosecutor General, the person suspected in misconduct is not involved. There are no relevant legislative guarantees for the accused person to defend his/her position.

It has to be considered that the disciplinary unit (General Inspection) represents the body who carries out disciplinary proceedings, collects information regarding the case and at the same time it provides recommendations and based on the study makes final conclusions about the against the employee. These circumstances rule out the existence of a neutral body/person where the person accused and the disciplinary body itself can defend their positions. It is similar to the system of the court, but there supreme council of justice is an accuser and the disciplinary board is an independent arbitrator, and the judge holds guarantees to defend himself, he/she can even have a right to use legal assistance of a lawyer.

Despite the fact that in the cases of Internal Ministry, Ministry of Probation and the Prosecutor's Office the final ring of the disciplinary responsibility process is the Head of the Agency, he or she cannot be considered neutral and independent subject. The Minister makes decisions on staffing of general inspections and carries overall management over them. Thus, it is less likely that the Minister can play a role of an independent arbiter in these structural arrangements.

These circumstances rule out the existence of a neutral body/person where the person accused and the disciplinary body itself can defend their positions.

In addition it is unclear, what are the evidentiary standards that regulate the work of General Inspections during the case adjudication. In particular, what amount or type of evidence is sufficient to prove the disciplinary offence. Moreover, none of the internal regulatory acts of the structures under discussion provide information about which party is responsible for providing evidences and generally, what is the involvement of the parties in the disciplinary proceedings. It is unclear which body carries out disciplinary proceedings, to which body the employee of the system should defend him/herself and who is the final decision maker.

199 - Statute of the General Inspection of the Ministry of Corrections and Legal Assistance, Article-9, aparagraph "L".

1.5. Appeal against Disciplinary Liability

Out of all three structures under discussion (Ministry of Internal Affairs, Prosecutor's Office and Ministry of Corrections and Legal Assistance), only the regulatory acts of Prosecutor's Office indicates that decision of disciplinary proceedings can be appealed. According to the act prosecutor can appeal against the order about the sanctions imposed within a month[200]. For the employees of the Ministry of Corrections and Legal Assistance and Ministry of Internal Affairs, Law on Public Service applies, which also sets one-month period to appeal the decision in court[201].

Despite the fact that certain statutory regulations are in place about appealing against the order imposing the sanctions, the law is quite obscure regarding appeals against the report of General Inspections. None of the regulations specify, if one can appeal against the report only, or it should also include the final decision. It is unclear if it is possible to present new evidences to the court, or the court only considers the materials provided by the General Inspection. Neither is defined the barden of proof among the parties and the possible frames of court decision.

It must be noted that disciplinary processing is in fact a relation between an employee and an employer and it cannot be considered as a special kind of administrative legal proceedings. Disciplinary process is based on different principles, in which the main parties are the ones who have potentially committed the offence - the body implementing prosecution and the official decision maker. It is a special and specific form of proceedings, but in this case there is no mechanism for appeal similar to the ones that exist in courts and lawyers' organizations[202] and when the case is judged by the judge of the administrative chamber.

Moreover, legislation does not ensure the rights of a citizen/informer to appeal against the initial decisions made while disciplinary proceedings. It may be about termination of proceedings by the General Inspection due to insufficient evidences regarding the offence. Although the citizen has only the right of informer and he/she does not represent any party of the process, he/she is interested in effective and unbiased operation of liability system against public servants. The citizen can practice good governance principles if he/she is able to control or influence the improper/biased disciplinary proceeding, which means that, system should be providing the possibility to appeal relevant decision/action of corporative interests to the impartial arbitrator.

Chapter 2. Criminal Liability

2.1. Investigative Jurisdiction

In the law enforcement liability system, criminal liability mechanisms are crucial. In particular it means existence of bodies that carries out unbiased and impartial investigation and prosecution against the employee of the system. From the perspective of general jurisdiction it has to be underlined that investigative unit operates in all three structures and their competences are determined by the Minister of Justice[203].

According to the order of the minister, investigator of the Ministry of Internal Affairs has competence to carry out criminal investigation. In addition the order specifies that the offence committed by the officer of Prosecutor's Office, police officer or other military person of a special rank, is investigated by the criminal investigator of Prosecutor's Office. Investigative jurisdiction of Ministry of Internal Affairs also includes investigation of malfeasance that is revealed by MIA structures (including offence committed by the personnel of the Ministry). On the other hand, Ministry of Corrections and Legal Assistance investigates the cases related to violation of the rules of serving the sentence, or the offences committed in the subunits of department of corrections, including those that were committed by the personnel of the penitentiary system.

200 - Georgian Law on Prosecutor's Office, Article 38, section 15.

201 - Georgian Law on Public Service, Article 127.

202 - European choice of Georgia/the Concept of the Reform of the Prosecutor's Office – Fair and Effective Prosecutor's Office, p. .39

203 - Decree of the Ministry of Justice N34 (July 7, 2013) about investigative and territorial jurisdiction of criminal cases.

To sum up, investigative units of the Prosecutor's Office and MIA has competence to investigate the offence committed by law enforcement officers (personnel of Prosecutors Office, MIA and Ministry of Corrections and Legal Assistance). However, the offence committed by the officers of Corrections system, in addition to above-mentioned two structures, is also investigated by the Ministry of Corrections and Legal Assistance. As a result, there is a competition between the prosecuting authorities over investigative jurisdiction.

At first glance, the vagueness concerning the rules of competence of investigative bodies defined by the order of the Minister is eliminated by the order itself. Each ambiguity of this type is resolved in favor of Investigative service of Prosecutor's Office. However, Criminal Procedural Code allows the prosecutor general and his/her trustees to forward the case from one investigative body to another, regardless of the established rules of jurisdiction. In this settings, if Prosecutor General or his authorized person (The law does not specify the ranking) decides so, he/she can forward the case to the investigative unit of the structure, employee of which has possibly committed the offence[204]. In the given situation the conflict of interests arises during the investigation process and the controversy between the Criminal Procedural Code and the order of the Minister of Justice does not create ground for unbiased investigation. This is the result of the fact that the issue of jurisdiction is not defined in the legislation; another reason is the authority of the Prosecutor General and his subordinate prosecutors to forward the case from one investigative unit to another. This kind of legislative settings does not provide any ground or institutional guarantee for unbiased and effective investigation.

Another subject of discussion is the legitimacy of the investigation regarding the offence committed by the representatives of law-enforcement structures that are carried out in the frames of that system. Vagueness of jurisdiction rules, authority of the prosecutor general to derogate from those rules, also direct dependency of investigative bodies to the respective ministries and partnership experience between the investigative and prosecution bodies, creates doubts that it is difficult to solve the systemic problem of impunity which cannot be handled by traditional investigative and prosecution bodies. It is important that alternative system is created, which is independent from the investigative and prosecution structures and is not subordinate to the executive government.

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Creation of alternative and independent mechanisms is linked to the systemic problem that can transform into the impunity syndrome not only in the investigative structures, but also in the structure of Prosecutor's Office. This problem was discussed in several local or international research documents. Criminal liability system of law enforcement officers is criticized in the special report of Public Defender[205]. It reviews investigation of potential offences committed by law enforcement officers in 2013. Report by Thomas Hammarberg also refers to ineffective response mechanisms to the offences of law enforcement officers and about the syndrome of impunity[206]. To the mentioned recommendations responds the draft law on the creation of an independent investigative mechanism prepared by local and international experts. The draft law provides for the mechanism the transfer of the right of investigation as well as the prosecution. In addition, the mechanism is given exclusive jurisdiction over certain crimes, as well as the predominant jurisdiction over other types of crimes, when there is a reasonable suspicion that an objective and impartial investigation or/and prosecution cannot take place and there are conflicts of interest[207]. The content of the draft law responds to the full extent to the experience and modern threats, which is

204 - Letter from Prosecutor's office, May 20, 2015, N13/32426

205 - See Report: http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/saxalxo-damcvelis-specialuri-angarishi-efeqturi-gamodziebis-sakitxebze-2014-weli.page, Last updated on 25.05.2015.

206 - GEORGIA IN TRANSITION (Report on the human rights dimension: background, steps taken and remaining challenges) p.14

207 - See: http://www.osgf.ge/files/2015/Draft_Law_-_Independent_Investigation_Mechanism_(GEO).pdf , Last updated on 25.05.2015.

associated with a systemic problem of impunity in the country.

2.2. Investigative Unit of Ministry of Internal Affairs

Number of units in Ministry of Internal Affairs have authority to carry out investigation, nevertheless, only General Inspection has the competence to investigate the violations within the system of the Ministry[208]. Previous chapters of this research refer to the problem of direct subordination of this unit and terms of its reference. However, the problems become more acute during the actual process of the investigation, it is important to discuss the issue in this regard.

As previously noted, General Inspection practically is not distanced from the central governance of the Ministry. Similar to other departments of the Ministry, the Minister has full authority over this unit. Inexistence of distance between the General Inspection and the Ministry, including other department of the ministry, creates close collegial relations between the personnel, therefore it becomes less possible that the inspection will be able to carry out objective and unbiased investigation.

The issue of initiation of the investigation is also problematic. Given the conditions that General Inspection makes the choice between disciplinary proceedings and investigation and the Minister has full authority over the decisions made by the inspection, it is difficult to imagine that the inspection will be able to maintain different position from the political and structural leadership. It will be also difficult to initiate the investigation over the cases, which might incur damage to the Minister and to certain political figures.

Granting the power to make a choice between disciplinary proceeding and implementing an investigation to the General inspection can be problematic in other way as well. For example, In case of an offence committed by the officer of the system, it is possible to carry out official inspection; during the inspection the alleged offender has little legislative guarantees. The investigation will be initiated only after sufficient information has been collected. It is obvious that in these settings General Inspection cannot ensure effective and unbiased operation, while inappropriate interventions in the operation of the unit are not prevented.

2.3. Investigative Unit in the Ministry of Corrections and Legal Assistance

There is only one investigative unit in the penitentiary system, its functions include investigation of the violations committed by the accused/convicted, by the officers of the ministry and the offences committed on the territory of the penitentiary system.

Institutional independence of this unit is also problematic. The minister assigns and dismisses the heads of the department, head of the unit, investigators and the specialists[209]. The minister is also authorized to reject the acts adopted by aforementioned officials based on their unreasonability[210]. Which allows him/her to intervene in the operation of the unit without any justification.

Institutionally it is problematic, that one units carries out investigation regarding possible violations committed by the convicted/accused and by their supervisors. The officers of investigative unit may develop sense of solidarity towards the officers of the penitentiary system that may breach the adequacy of investigation.

2.4. Investigative Unit of the Prosecutor's Office

Apart from the investigative department of the Prosecutor's Office, General Inspection is also authorized to carry

208 - Statute of MIA, Article 10, paragraph "C" .

209 - Statute of the Investigative Departmet in the Ministry of Corrections and Legal Assistance, Article 7.

210 - Ibid. , Article 5, section 2, subsection "F"

out investigation and criminal prosecution regarding the cases that take place within the system. As mentioned above, Prosecutor General exclusively decides the issue of personnel recruitment, including chief of inspection. Moreover, due to the hierarchical nature and principle of autocracy in the system, the officers are obliged to fulfill all the instructions issued by the Prosecutor General.

As in the case of the General Inspection of the Ministry of Internal Affairs, implementation of disciplinary proceedings and investigation by one unit should be assessed negatively. Besides, General Inspection of the Prosecutor's Office can support the accusation and criminal prosecution in the court. Therefore, all the stages of criminal proceedings are implemented by single unit, before investigation, it is authorized to inspect the workplace of an officers, request explanations from them and etc. Under these conditions, personnel of the Prosecutors Office may encounter with serious problems regarding effective protection of their rights. Due to insufficient independence of the unit, it is less possible that General Inspection strictly acts according to the principles and makes objective decisions over the cases that involve officers of the given system.

Chapter 3. Conclusion and Recommendations

We have discussed in previous chapters the importance of effective liability system in the law enforcement bodies in General. It has to be pointed out that the existing negative public attitude towards the system is mostly generated by ineffective disciplinary and criminal prosecution mechanisms. Eventually it creates the impunity syndrome among the personnel of the system. As a result, disciplinary and criminal assaults take place on regular basis.

Negative public attitude is natural towards the prosecution bodies and regarding the internal disciplinary principles, given the reality, were decisions made by the departments of the law enforcement system, and the procedures and specifics of activities are classified and not accessible for external entity. Disciplinary and criminal prosecution authorities are not factually separated at all from the executive management of relevant ministries or Prosecutor's Office. Due to inexistence of relevant independence and autonomy, it is impossible for the department to make important decisions, especially in regard to high-level officials.

Considering all the above, it is important to change the liability model in the system and revise the disciplinary liability mechanisms of law enforcement officers:

➢ Isolation of disciplinary authorities from the leadership of the structure that will eliminate intervention of the Minister /Prosecutor General in operations of the departments;

➢ It is important to separate the bodies taking decisions about disciplinary investigation, prosecution and adjudication of case, also to establish independent and neutral body, which will take decisions on the basis of the evidence presented by a prosecution and defense sides and will not be the prosecutor itself.

➢ Change the procedures of appointing staff members of disciplinary authorities and annulment of exclusive competence of the minister in this regard. Alternatively, requirement of disciplinary department personnel through participatory procedure, that is open for public

➢ Increase independence of the Chief of departments. Clearly specify by law the grounds for dismissing or downgrading the department heads;

➢ The issue of staffing certain departments and similar operational issues should not be handled on the level of the Minister/Prosecutor General, it should be the competence of the Chief of department;

➢ In order to increase the credibility of General Inspections and transparency of their actions, it is important to introduce external liability mechanisms. The later can be achieved through strengthening parliamentary control. Also through periodic public reporting or publishing the decisions in encrypted form.

➢ To ensure objective and impartial disciplinary proceedings, it is crucial to develop such mechanism, where disciplinary authorities and the officers who have possibly committed the offence are equally equipped with ad-

vantages, have possibility to obtain relevant evidences and have equal rights to defend themselves in front of the third, neutral party;

➢ Meanwhile the procedures of disciplinary proceedings and length should be defined by law, as well as, mandatory evidentiary standards for the decision made by relevant body concerning the disciplinary charge;

➢ The grounds for disciplinary liabilities should be specified. It is also important to define the forms of hierarchical subordination, particularly, in which cases an official can be exempt from the duty to fulfill the order/command from the supervising officer and in which cases He/She will be exempt from liability by refusing to fulfill such an order;

➢ It is crucial to protect the interests of an offence victim by providing information. An offence victim should be granted the right to appeal against the decision on stopping the disciplinary proceedings;

➢ Effective and impartial mechanism should be created to appeal against the decision on charging disciplinary liability, the mechanism should include content revision of the conclusion submitted by the General Inspection, checking the legality of disciplinary proceedings and other;

➢ The system of the criminal responsibility must become the inseparable part of the systemic reform of law-enforcement bodies. The independent investigative mechanism should be created in the country as a result of the reform[211];

➢ It is important that the aspiration of the draft law prepared by the experts was shared, based on which the independent investigative mechanism will not subordinate to the executive body and will not fall under the current investigative and prosecution bodies. The independent investigative mechanism will have investigative as well as prosecution authority. The mentioned body will act under the accountability of the parliamentary control. Independent investigation body should be created to regulate the issue of criminal liability, and it should not be subordinate body to the executive government or part of the current investigation or prosecution structures. It should have an authority to carry out investigation, as well as, criminal prosecution. The independent investigative body should be accountable to and operate under the supervision of the Parliament.

211 - It should be noted, that According to the section 6.6. "Governmental agenda on protection of Human Rights (fro 2014-2015 years) "State already has an obligation regarding this matter.

Part 7. Accountability System

Chapter 1. The Prosecutor's Office

Unlike other State sub-agencies, the Prosecutor's Office is not under the Government's control and supervision[212]. Although, the Prime Minister, as the Head of the government, periodically hears the information from the Chief Prosecutor regarding the activities of his office[213]. This information shouldn't contain any issues connected to specific criminal cases. This mechanism of hearing the information from the Prosecutor is not new to Georgian reality and up to 2013, the current president also exercised this authority, although neither old nor the existing edition of the law, define the legitimate reason for hearing this information. This model of accountability is in fact non-effective given the circumstances, that the Chief Prosecutor has no responsibility towards the Minister of Justice, without the right to name the candidate; the Prime Minister has no authority to decide the issue of relieving the Chief Prosecutor of his duties. The legislation doesn't envisage any other kind of intervention from the Prime Minister in the work of Prosecutor's Office.

As for the competence of the Minister of Justice, due to the fact that the Prosecutor's Office remains an integral part of the Ministry of Justice[214], the Minister of Justice still retains few important powers, which are connected to the institutional structure of this body. Although, after the changes adopted in 2013, the Minister's authority to regulate or interfere with the activities of the Prosecutor's Office, were significantly limited[215]. The changes made the accountability of the Prosecutor's Office towards the Minister logically impossible to fulfill.

In the given situation, the Prosecutor's Office is only accountable to the Parliament[216]; the Chief Prosecutor, based on his or on Parliaments initiative, submits information about the activities implemented by his office. The procedure of hearing the information from the Chief Prosecutor is regulated by the official regulation of the Parliament[217], according to which, based on the request by the parliamentary committee or fraction, by the majority of votes of attendees of the session, but no less than one fifth of the total number, the Parliament has the right to decide to invite Prosecutor General to the plenary session. Based on the information received from the Prosecutor, the Parliament has an authority to adopt a decree or a resolution, though none of these two documents have any direct binding power over the bodies of prosecution. In case of request, the Prosecutor General is also obliged to attend the Parliamentary committee, investigative or other temporary commission session, respond to the questions posed at the session and submit written activity report.

In light of the fact that parliamentary control over the prosecutor's office is minimal, the categorical judgment about effectiveness of the existing model is difficult. However, as an overall assessment it should be noted that this model is not flexible and it has several defects[218]. In particular, parliamentary minority has only theoretical chance to use noted mechanism, at the same time parliamentary control does not provide sufficient response levers, It is not defined how general should be the chief prosecutor's information and whether an information on particular

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212 - Article 5 of the Georgian Law on the governmental structure, authority and activity regulations.

213 - Article 50 of the Georgian law on Prosecutor's Office

214 - Ibid, Article 1.

215 - The issue of appointing and dismissing from the post of Chief Prosecutor is an exception, it falls under the competence of the executive government

216 - Article 49 of the Georgian law on Prosecutor's Office.

217 - Article 206 of the Parliament Regulations.

218 - (In frames of the study the authors have requested public information from the Parliament about number of times chief prosecutor has presented an activity report to the Parliament and what information did the report contain, the official response noted that according to the legislation the Prosecutor General is not accountable to the Parliament, and therefore, he has not presented report at plenary sessions since 2009, see; A letter form staff of Georgian Parliament N1107/24 (09.02.2015).

criminal case should be disclosed. The mechanisms of controlling the activities of the Prosecutor's Office should be analyzed systematically and its accountability to the executive and legislative authorities should be structured in such a manner that on the one hand it does not obstruct the independence of the body, on the other hand it has a lever to verify the compliance of the activity of General Prosecutor's Office with the legal norms adopted by the Parliament and also with the general criminal policy developed by Executive Branch.

The existing accountability model towards the Parliament is just a formality. On the one hand, submitting report based on the initiative by the Prosecutor, doesn't fit into the general model of the accountability, in which the official has an institutional obligation to submit report of implemented activities. On the other hand, hearing the information based on the request from the Parliament doesn't entail any chances of response. The only advantage the parliament exercises in this case is the creation of temporary investigation commission[219]. It must be noted that up to now, Prosecutor General of Georgia has never initiated to independently present activity report, without the request from the Parliament.

Chapter 2. The Ministry of Internal Affairs

The Ministry of Internal Affairs, like other Ministries, is accountable to the government[220]. The Prime-Minister, as the Head of the government, coordinates and controls the work of other members of the government and from his side is accountable towards the parliament about the work of the government[221]. The accountability of the Ministry of Internal Affairs means that the Minister of Internal Affairs submits the report of the Ministry's activities to the Prime-Minister[222].

With regards to accountability, parliamentary control is also important[223]; it envisages the accountability of the government as a whole, as well as, of its separate members, in this case of the Minister of Internal Affairs, towards the parliament. Progress report about the state program is submitted to the Parliament by the Prime Minister in the first week of fall[224]. The parliament has the right to request special report from the Prime Minister and the latter is obliged to submit it, within 15 days.

The parliament has the right to invite a member of the Government based on the request from a committee or a fraction (the procedure has been described in the subchapter about the accountability of the Prosecutor General). It is also possible for a member of the parliament to pose a question to the member of the government (in this case, the Minister of Internal Affairs), in this case, the addressee of the question, is obliged to reply to the Parliament in writing within 15 days[225]. Based on the received information, the Parliament has right, based on the vote of the majority, to initiate official liability procedures of certain governmental officials to the Prime Minister[226].

One of important means of parliamentary control is creation of temporary investigation commission and impeachment of the Government. The grounds for creation of temporary investigative commission may be to investigate and respond to the offences committed by State agencies or public officials[227]. The given mechanism is especially important with regards to accountability of the Ministry of Internal Affairs, when the named agency is the key

219 - Article 55 of the Parliament regulations.

220 - Article 2 of the statute of the Ministry of Internal Affairs.

221 - Article 8 of the Georgian Law on the government structure, authority and activity regulations.

222 - Paragraph 20 of the statute, article 20, part 2, sub paragraph "t"

223 - Ibid, section 1.

224 - Article 205 of the Parliament Regulations.

225 - Ibid. Article 221.

226 - Article 59 of the Constitution of Georgia.

227 - Article 55 of the Parliament Regulations.

investigative body, although it often fails to react adequately to the offences committed by the employees of the system[228]. The procedures[229] , impeachment, are too complicated and time-consuming, therefore neither this mechanism seems effective for the implementing effective parliamentary control.

Chapter 3. Findings and Recommendations:

Accountability system of Prosecutor's Office and the Ministry of Internal Affairs cannot be characterized, as a sufficiently systemic and clear, public is not provided by the comprehensive and clear information about the activities of these structures. The level of public trust depends on the existence of well-established accountability system. While the public is not properly informed about the activities of the system and the questions from the public are left unanswered, lack of transparency and becomes even more problematic and it lays grounds for misused of power and nondemocratic management principles.

Considering the above-mentioned threats, it is important to:

➢ Re-define the accountability system of reformed Prosecutor's Office, including the responsibility of Prosecutor General to present the information about the activities of the structure to the paliriament in statutory periods or upon the innitiative of the parliament;

➢ Accountability of the Prosecutors Office towards the Government should be excercised in the light of fulfillment the criminal policy. Howoever, Prosecutor's Office should provide infomration to the Parliament about the functioning of the system and its general provisions;

➢ Prosecutor's Office should have legal safeguards agains the influence of the parliament and government over certain criminal cases;

➢ Accountability of reformed Ministry of Internal Affiars and Security sevrices towards the parliament, which implies definition of reporting periodicity by law and creation of specially designated committee[230];

➢ Accountability mechanisms, should communicate the information about the activities of the system to the public[231];

➢ Create a system withing which it will become possible to submit the documents to the parliament regarding secret information of Security services and other structures, providing proper procedures and format to ensure appropriate accountability, implementation and also confidentiality of information.

228 - Country Reports on Human Rights for 2013/ p.10-11. See: http://www.state.gov/documents/organization/220492.pdf, last updated on : 25.05.2015.

229 - Article 81 of the Constitution of Georgia.

230 - Recommendation Rec 2001 (10). The European Code of Police Ethics. Paragraph -19.

231 - Ibid. Paragraph 59