PREVENTION OF CRIME

Risk Related to Police Control

PREVENTION OF CRIME
(RISK RELATED TO POLICE CONTROL)

Human Rights Education and Monitoring Center (EMC)

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Introduction

Present report describes and assesses the legal regime in the field of crime prevention and police powers. Preventive police measures are one of the most important, widely spread and relatively new areas of police activity. The preventive police system implies a set of measures that lead to the prevention and repression of crimes or offenses and implies carrying out of actions of various intensity by the police. The goal of the Prevention System is to detect and neutralize the threat before its realization, and for safeguarding this important public good the legislation enables to interfere with human rights and freedoms with intensity of various degrees.

In 2013 the Parliament of Georgia adopted a new law on Police. In contrast to the previously existing legislation, the Parliament for the first time specified the full list of mechanisms available to the police for the purpose of prevention of crime. The new legislative regulation allowed the police to expand the area of contact with the citizens, including applying to such measures as: police raid, stopping of person, his identification, summon to police etc. Besides, the right to communicate with the citizen within the preventive measures was given to virtually all subdivisions of the Ministry of Internal Affairs, which further increased the intensity of interaction between the police services and citizens. Unfortunately, official statistics on interaction of the police with citizens for the prevention purposes, which would have allowed for more detailed research of the scope of police control, is not accessible.

As a result of amendments entered into the law in 2013, the crime prevention system has been formed in such a way, that the process was not seen in the light of unified state policy and strategy, which would have balanced the functions of the law enforcement and other public institutions in this area. Thus, it turned out that the main responsibility of crime prevention was moved to the Ministry of Internal Affairs. Such distribution of liabilities and responsibilities created the threat of large-scale police control, which is supported by a large number of preventive measures enacted by law, which by their nature and real content are of repressive character and promote vast interference by police. In addition, the risks from preventive police activities are largely linked to the abstract character of the possible threat, which needs to be averted, which increases the danger of wrongdoing and arbitrariness on behalf of the police.

In present report the Human Rights Education and Monitoring Center (EMC) continues to analyze the complexity of crime prevention, and seeks to describe and evaluate in detail the grounds and purpose of police preventive measures, as well as the applicable standards and experience of other countries in given area, overview the guarantees of protection of citizens during interaction with police, and forms of supervision and control over preventive activities of the police. The document also assesses the general legislative and institutional framework in which the police

operates and highlights the risks associated with risky expansion of police control through the implementation of preventive police measures.

The report was prepared by the Human Rights Education and Monitoring Center (EMC) with the financial support of Open Society Foundations. The organization expresses gratitude towards all individuals and organizations engaged in the work on present document.

Methodology of the Research

In the course of elaboration of the report were employed several methods and sources of information. The findings presented in the document are based primarily on the analysis of the legislative framework, which implies assessment of the current normative base and past amendments to the relevant legislative and sub-legislative acts.

Analysis of the legislative framework is based on the standards set out in the Constitution of Georgia, including the standards defined in the decisions of the Constitutional Court of Georgia and analysis of existing legislative framework. Also, the international standards and judicial decisions in the field of human rights, relevant to the research subject, have been analyzed for the purpose of preparation of the report.

In the course of the research, the authors have also studied the experience and legislative environment of several countries. Selection of countries was conducted on the basis of a number of criteria. The authors of the report made special emphasis on the study of German legislation, as the authors of the legislative reforms implemented in 2013 based their model on the legal system operating in Germany. In conjunction with the German legislation, the German judicial practice and academic materials were analyzed, which critically overviews police preventive system currently in force Germany. In addition, the authors of the study examined the experiences of those countries, which are characterized by the high intensity of implementation of police preventive measures, such as the UK and the United States. However, different risks and characteristics of public and state security in these countries should be taken into consideration. The authors of the research also examined the experience of those countries, who have conducted significant reforms in the police system in recent years, including Serbia, Bosnia, Montenegro and others.

The authors of the report have also analyzed all important policy documents, strategies or action plans, which are in line with the state policy of crime prevention. Numerous research papers, articles and other academic works have been studied, on the basis of which the authors of the report have identified critical attitude towards police activities in different countries and contexts.

While working on the document, the authors applied to relevant public agencies with request of provision of public information, as well as studied official information available in open sources. Also, workshops and individual interviews were held with local and international organizations, academic circles, former judges, working on given issues. Major part of results presented in the document are also based on the analysis of the review of strategic cases , under consideration of administrative organs and the common courts, which was conducted by EMC.

Brief Description of the Research

Prevention of crimes and their consequences is a complex and multidimensional task, that goes beyond competencies of only the police and criminal justice system, and is a combination of a number of measures aimed at long-term goals. Establishment of an effective and humane crime prevention system requires development of the state policy, aimed at overcoming the causes of crime, social factors and other factors that promote crime. In the sphere of crime prevention policies the right balance in different state institutions (including law enforcement and other institutions) is important for the prevention of unreasonable and excessive use of strengthened law-enforcement mechanisms, which promote to increase of police control, and possibility of repressions by police towards certain groups.

Analysis of the crime prevention system in Georgia has revealed, that the country does not have a common policy and strategy to prevent crime, and in these conditions, a large portion of power and mechanisms are concentrated in the hands of law enforcement agencies. The police are using preventive policing measures to prevent crime, which includes eleven specific police mechanisms defined by the Law of Georgia on the Police, adopted in 2013. Thus, when it comes to the current crime prevention system of Georgia, this largely includes the police preventive mechanisms. Obviously, the crime prevention system, which is largely responsibility of the police, is by far more rigid and repressive, not focused on long-term changes and overcoming factors, promoting crime. Consequently, it is predominantly in confrontation with specific individuals, who are associated with potential crimes, and not directed against the criminal actions themselves. As a result of analysis of the police prevention system, it also becomes clear, that the major part of the police measures as envisaged by the legislation, are targeted at offences of any gravity, including minor administrative offences. Thus, the legislation significantly enhances the possibility of police interference in private life and freedom of individuals on the ground of public safety and order. Such broad interference in the rights of persons is promoted by the fact that the grounds for carrying out police actions are general and, as a rule, are targeted at abstract threat. Apart from the fact, that on the level of general policy, the legislation allows the police to implement large-scale police control, detailed legal grounds for direct interaction with a citizen are not specified, which thereby increases the possibility of arbitrariness by the police. In the context of the scope of police control it is also important to note, that virtually every subdivision of the Ministry of Internal Affairs has the possibility of direct contact with a citizen for preventive purposes.

Analysis of the grounds for implementation of police preventive measures also identifies another issue on the agenda, that relates to the use of preventive measures as a response to the crime. Preventive measures are significantly different from the mechanisms of response to crime (investigative mechanisms) from the standpoint of protection of citizens' rights, as well as the quality of control and supervision over these measures, including the nature of prosecutorial and judicial

control. Thus, mixing of investigative and preventive functions is a significant problem. However, the analysis of the legislation indicates that the use of separate preventive measures defined by the Law on Police is allowed even if there is information about the offense or violation. Such formulation of the law indicates the legislature's will to give police the opportunity to respond to the offenses already committed by applying to preventive mechanisms, which as has been stated, envisages limited control over the police and less safeguards for a citizen.

On the background of large-scale police control, it is important to analyze the rights, that the legislature gives to the addressee of the police interference. The analysis of the relevant articles of the Law on the Police indicates, that the protection of citizens' is unreasonably limited on the background of intensive police intervention. As noted above, most of the sub-units of the MIA are authorized to carry out police preventive measures, including those units, that may not be wear uniform, which ordinary citizens can recognize. Therefore, it is especially important during each interaction of a citizen and police to have information regarding the official, with whom he has to communicate. Unfortunately, the law does not impose on the policemen absolute obligation of presenting himself to the addressee of the police intervention. This certainly increases the risk of problems between the citizen and the police, including the risk of disobedience by the citizen, which will enable the police to use more severe police measures.

It should also be taken into consideration that only two cases, out of eleven preventive measures defined by the legislation, the police is obligated to explain the reasons and grounds for the interference in the protected right. Considering that police preventive measures envisage direct contact with the citizen, and in particular cases involve intensive intervention, it is important that the addressee has information on the grounds for the use of restrictions imposed on him, which is inadequately defined by the legislation.

In the course of contact with the police, documenting of the police action is an important guarantee for protection of the rights. Unfortunately, the law only establishes the obligation to prepare a protocol by the police only in case of three police measures. At the same time, the law does not indicate the time and date of preparation of the protocol, and the obligation of the police to furnish the copy of the protocol to the addressee of the policing measure. It is also a problematic, that most of the police units are not equipped with video cameras at the time of contact with the citizen. The obligation to document a police measure with a camera attached to the uniform is stipulated by law only during the police raid.

One of the components of the guaranteed rights is provision of explanation on the ways and deadlines for appealing against the police action. The analysis of the law makes it clear, that the information about the possibility of appeal can be provided only in two cases. In addition, it is not specified whether the citizen is informed about the ways and deadlines for appealing.

The inefficient system of control and supervision over police activities also creates a serious problem in preventive police actions. Two forms of supervision over the activities of the police were studied during the course of preparation of the report: internal control by the General Inspections of the Ministry of Internal Affairs and administrative supervision through administrative complaints and administrative action.

According to the information obtained from the Ministry of Internal Affairs, statistical information on violations committed in the course of conducing of prevention measures and disciplinary proceedings related to such violations is not available. However, analysis conducted by the EMC on the issue of disciplinary complaints and internal disciplinary proceedings in the General Inspection of the Ministry of Internal Affairs revealed, that the acts of regulating activities of the General Inspection contain a lot of drawbacks, and do not define detailed procedures, terms, and guarantees for protection of a citizen and an employee. EMC applied to the Administrative Collegium of Tbilisi City Court regarding the three disciplinary cases, but it turned out, that judicial control over activities of the general inspection was ineffective. Even in case of conducting of ineffective disciplinary review within the General Inspectorate, the court does not consider that it is within its competence to review such proceedings and order conducting of new disciplinary review. In addition, the court explains, that certificates or conclusions prepared by the General Inspection are intermediate acts, whereas in the case of preparation of the certificate it is clear, that the disciplinary proceedings are completed and no further act is issued. In this way, the court virtually restricts addressee of the police action from being able to defend his rights through applying to the court.

As regards administrative supervision, EMC analysis indicates, that the process of conducting of administrative consideration of complaints, submitted in regard to police preventive measures is largely of formal character, and as a rule, no oral hearing are held to review the complaint. Also, it is problematic for a citizen to properly identify the person, authorized to consider the complainant, especially in cases, when the person towards whom police measures were conducted, has no information which department of MIA does the officer represent, with whom he had interacted, and where he can file a complaint. The proceedings in the Common Courts System also indicate, that classification of individual preventive police actions as an individual legal-administrative act and as other type of acts creates special problems. The law does not explicitly define the legal nature of each of the measures, which constitutes difficulties in practice and is a significant obstacle for a citizen from the standpoint of assessment as to what type of action should be initiated in the court. Analysis of internal disciplinary mechanisms and administrative supervision system indicates, that the system of control over preventive activities of the police is weak and ineffective.

I Part

Chapter 1.
General Notion of Prevention of Crime

In the modern world, along with the rise of crime as a result of globalization, special importance is given to the prevention of crime and a new understanding of police functions within the scope of prevention.

Crime prevention involves attempts of state and private persons or institutions, programs and measures aimed at preventing or minimizing of crime as public phenomenon or individual manifestation and mitigation of results of such crime. That is why it is not considered as a part of the criminal justice system, but is viewed as an issue, which needs broader control, which goes beyond police, criminal and penal justice systems and is expressed in social, situational and third level prevention. The first one is of general nature and is aimed at social, educational, cultural and other policies, not centered on specific groups, and envisages participation of different actors, institution, educational institutions, and stipulates for elaboration of different policies, which shall promote to creation of such conditions, that shall prevent derivative and criminal actions. In this case, the policy of the state is less restrictive and the long-term goals are based on the policy oriented towards social changes.

Situational prevention of the crime is already aimed at hindering crime and the law enforcement body plays a key role here. In this case, the purpose of crime prevention is affecting the threat of potential crime and violations. Situational prevention focuses on specific groups, individuals and circumstances when the risk of offending or becoming a victim is high. It is directly or indirectly aimed at preventing crime, thus strengthening the sense of security in the society. The State policy is characterized by high intensity of interference with human freedom during situational prevention and focuses on the adoption of instant results.[1] Third level prevention is focusing on prevention of reoffending, and re-socialization and rehabilitation of the offender.[2]

It is important that the state has a comprehensive policy and a strategy document in relation to prevention of crime, which shall coordinate activities of various public agencies responsible for crime prevention and shall define long-term plan for achieving of crime prevention. In the course of implementation of all the three forms of crime prevention, it is important to ensure participation of public, cooperation between the state institutions and non-governmental organizations, engagement of the private sector, as well as setting up of special institutions on crime prevention, engagement of independent actors and criminal law-enforcement bodies, implementation

1 Vakhushti Menabde, Counter-terrorist State – Emergency Situation of Current Times, page 124.

2 Erich Marks/Wiebke Steffan, Prävention braucht Praxis, Politik und Wissenschaft, 2014, pages 66-68.

of scientific research in the sphere of crime prevention, and focus on this issue through media, as committing of a crime is provided by many reasons and at different levels of the target groups different measures are required.[3]

As has already been noted, the police pays major role in the area of situational prevention of crime, although it is only one of the links within overall system of crime prevention, which is composed of public as well as non-governmental institutions. Among different bodies, responsible for crime prevention function the most problematic are law-enforcement bodies. The reason for this is the possibility of broad interference into the freedom of individual on the grounds of abstract threat.

One of the key functions of modern law-enforcement agencies is prevention of crime.[4] For the state it is more important to avert possibility of actions, posing threat to the public order from the very initial stage, rather than implement repressive investigative actions at a later stage in regard to unlawful acts and their consequences.[5] For this reason the police has been granted relevant authority, and taking into consideration the nature of preventing of crime, the police can act on the ground of possibility of general threat, not to allow possible deviation from the law. The notion of prevention of crime implies interference into the root cause of crime, and not the freedom of individual. In those cases, when the law enforcement bodies when applying to preventive measures act against individuals, and not the cause of the offence, such preventive measures become repressive by their nature, allowing the state to interfere into the right of freedom and inviolability of large number of individuals, and does not exclude the possibility of total interference, as these actions can be directed against unlimited number of persons.[6]

Vesting of broad powers to the law enforcement bodies for the prevention of crime by the state caused massive human rights violations soon after initial introduction of the American model into practice, and in the 1990s this caused massive dissatisfaction of citizens. The US focus on crime prevention was based on the so-called New York City zero-tolerance strategy, which stipulated for stopping and control of people in public spaces in order to prevent minor offenses.[7] Given model of crime prevention, which was based on the „broken window theory[8]" and was

3 Article 2, paragraph 2 of the founding document of the European Network for Crime Prevention" (2009/902/JHA) [available at: https://goo.gl/ov8Rhm last accessed: 12.09.2017]

4 Levan Izoria, policing law, page 320.

5 Jürg-Beat Ackermann, Zusammenarbeit von Polizei und Staatsanwaltschaft im Schnittbereich von Gefahrenabwehr und Strafverfolgung, page11.

6 Vakhushti Menabde, Counter-terrorist State – Emergency Situation of Current Times, page 123.

7 Sandra Born, Kommunale Kriminalprävention in einer Großstadt, 2009, page 77.

8 The theory of Wilson and Ceyling, according to which response to the crime is the prerequisite for avoiding its further spread - if the window of the house is broken and will not be repaired on time, then all the windows of the house will be broken. If timely measures against vandalism, prostitution, graphite and other offenses in the streets are not conducted, it will be the signal, that no one will carry responsibility for this, which shall strengthen the sense of vulnerability and fear of crime in citizens.

aimed at reduction of crime through police presence and proactive poling actions, the New York City police had the right to stop passersby, require their identification and conduct frisking, if it had reasonable suspicion that a person has committed, or shall commit criminal offence or violation. The broad use of so called stop and frisk acquired discriminatory character towards ethnic minorities (black and Latin American population) and large-scale human rights violations were taking place.[9]

In the framework of the crime prevention, granting a wider authority to the law enforcement body in the modern world, especially after 11 September 2001, is happening on the grounds of the threat of terrorism in order and for the purpose of preventing potential and large-scale damage from terrorism.[10] The threat of terrorism is the basis for modern understanding of the relationship between human freedoms and security, as the expansion of authority of the executive power and the restriction of human freedoms in the name of ensuring security is justified by the state by the argument of the threat of terrorism. Under these conditions, implementation of preventive measures by the law enforcement agencies on the grounds of prevention of the abstract threat of terrorism means, that every citizen is considered to be a potential source of danger and, consequently, becomes a target of observation and control by the state even when they are full of law-abiding citizens.[11] In such cases the presumption of innocence is not important for the state any more, and in some cases a citizen should himself prove to the law enforcement bodies, that he is innocent.[12]

Historic and modern approaches to crime prevention, established in the conditions of the threat of terrorism contain the risk of interfering with the basic human rights and freedoms in favor of public safety. Consequently, it is important to study Georgian legislative regulations related to crime prevention, the scope of the powers of law enforcement authorities and the interrelation between preventive activity and human rights within the context of safety of the state.

UN Resolution 2002/13 on “Promotion of effective crime prevention measures” interprets the concept of crime prevention as unity of strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes.[13]

9 George Szpiro, Schranken für New Yorks Polizei, [available at: https://www.nzz.ch/reduzierte-anwendung-von-stop-and-frisk-1.18233069, last accessed: 12.09.2017]

10 Anna Hofmann/Bontje Zängerling, Innere Sicherheit und Präventionsstaat, page.1, [available at: http://fzk.rewi.hu-berlin.de/doc/sammelband/Innere_Sicherheit.pdf, last accessed: 10.09.2017]

11 Ibid, pages 3-4.

12 Ibid, pages 3-4.

13 UN Resolution 2002/13 on Promotion of effective crime prevention measures, paragraph 1.

According to the constituent document (2009/902 / JHA) of the European Crime Prevention Network, crime prevention includes all activities, aimed at implementation of direct restrictive measures for crime prevention, or implementation of strategies and measures to reduce the likelihood of crime for the purpose of overcoming the sense of insecurity of the population through joint actions of law enforcement agencies and civil society.

Both definitions of crime prevention focus on the complexity of the task and consider related activities of the law enforcement bodies only as one of the components of the crime prevention. In the process of planning and implementation of the state policy on crime prevention it is important to distribute responsibilities to various public institutions and private actors, which shall exclude concentration of power in the hands of law enforcement, and preclude intensive intervention in the freedom of citizens' rights. The signs of this are revealed in the present study as a result of analysis of Georgian legislation concerning crime prevention.

Chapter 2.

Current Strategies and Policies of Crime Prevention in Georgia

For the purpose of assessment of approach of the state in regard to crime prevention we considered policy and strategy documents of different public agencies. Such analysis revealed that the state does not have a unified policy document in regard to crime prevention. Implementation of preventive measures for the purpose of combating crime is mainly possible through policing measures and strategy and policy of implementing of other type of measures is rather ineffective or weak.

- The strategic plan of LEPL is of general character and stipulates for measures of first level, namely, increasing of public awareness, popularization of healthy lifestyle, increase of engagement of different civil society groups in the sphere of crime prevention, work with risk groups and control over delinquent behaviors, although the plan mainly focuses on tertiary prevention of crime, which implies rehabilitation and re-socialization of offenders. The strategy pays special attention to diversion of minor offenders and development of mediation program. It should be noted, that LEPL's crime prevention strategic plan makes special focus on the minor offenders.

- Order N275 of the Ministry of Interior Affairs of May 25 of 2017 on Approval of community Oriented Policing Concept views prevention of crime as unity of those policing strategies and measures, which differently from traditional policing activities are aimed at reduction of crime through implementation of different initiatives, and as one of the tools for attaining of this goal is introduction of the institute of Community Oriented Policing. Given concept directly states, that the fear of police response to crime/offence is the only mechanism of prevention of offending, which makes it impossible to establish relationships between the society and the law enforcement, which would be built on trust and partnership. The concept sees as one of the solutions to this problem development of strategy of planning of preventive measures, which the law-enforcement bodies shall follow in the course of implementation of preventive measures. The concept is also envisaging organizational changes for the purpose of increasing of trust of the population towards police. This implies setting up of a new structural unit within the Patrol Police Department, which shall be responsible for implementation of the elements of Community Oriented Policing and shall be staffed with new officers, who shall enjoy more autonomy in their decision-making. The above-referred officers shall replace the institute of district inspectors. The development of norma-

tive framework, envisaged by the concept, which shall define the preventive measures to be implemented, is a welcome fact. But it should be noted, that the concept does not specify the authority of police in the area of crime prevention, and police remains the repressive institution with the function of control over society, thus undermining the possibility of building of relationships between the police and public, which would be based on trust, thus improving the rates of prevention.

- The National Strategy of the MIA for fighting against crime for the period of 2017-2020 provides for separate mechanism for combating "criminal world", drug trafficking and cyber crime. For the first time the strategy focuses on prevention activities and measures focused on increasing of public awareness in the sphere of fighting against crime, as well as improvement of professional skills of law-enforcement staff and identification of current problems through analysis-based police activities.

- The strategy of the Inter-agency Coordinating Council in the sphere of the criminal justice reform, adopted in 2016, also deals with the crime prevention. In the introduction to the strategy as one of the priorities of the Government of Georgia is stated effective prevention of crime, reduction of the levels of crime and ensuring of public order and security within the framework of the criminal justice reform. The strategy stipulates for introduction of individual approaches towards rehabilitation, re-socialization and crime prevention, which are the activities to be implemented on the tertiary level of crime prevention. Despite this it can be noted, that future action plans, based on the strategy are mainly providing for strengthening of police prevention measures. The strategy has a separate chapter, dedicated to police and crime prevention, and as one of priority directions of MIA is strengthening of investigative and preventive function of the police for the purpose of ensuring of crime prevention, quick response to offences and ensuring public order and security by police.

- The Criminal Justice Reform Strategy, adopted in 2016, along with increasing of preventive authority of police considers it important to increase the role of the Public Prosecutor's Office in the prevention of crime. The document envisages development of crime prevention strategy and action plan and unified policy through active engagement of different law-enforcement bodies and conducting of relevant survey, planning and implementation of preventive measures, monitoring over their implementation, as well as amending legislation for the purpose of attaining of set goals.

- The Public Prosecutor's Office can play important role in crime prevention, being the only body, which has direct link with investigative bodies and courts. In its strategy for the years 2017-2021 it is directly stated in regard to crime prevention, that par-

ticipation of public in given area is extremely limited. According to the strategy, the preventive measures to be implemented by the Public Prosecutor's Office are planned by the central office, and the plans are further provided to the local structural units. In the course of such planning of preventive measures the specificity of relevant regions are not sufficiently taken into consideration. According to the same strategy, representatives of the society are not sufficiently involved in planning and implementation of preventive measures. There are no mechanisms, which would allow public to initiate, plan and implement preventive measures. Preventive measures are not elaborated on the basis of scientific approaches. Representative of scientific circles are factually not engaged in development of mechanisms of crime prevention. At current stage there is no data-base, standards and evaluation mechanisms in the area of preventive measures. Consequently, law-enforcement bodies have no opportunity for identification of most effective preventive measures.

The overview of the strategy reveals, that in conditions of unavailability of unified and comprehensive policy of crime prevention, this function is mainly performed by law enforcement bodies, and for the purpose of its implementation are mainly used preventive policing measures. Also, fragmentary approach to crime prevention and strengthening of police preventive function is not in compliance with UN and EU provisions in given area.

There is no comprehensive state plan, envisaging less restrictive long-term goals and measures for crime prevention, oriented towards social changes. Instead, the Georgian legislation is focused on policies, oriented towards immediate results, which is mainly reached through intensive interference of law-enforcement bodies into the human rights of individuals.

In the above referred strategies the pronounced role of the law-enforcement bodies is even more evident after consideration of relevant provisions of the Law of Georgia on Police, which vests the police with broad preventive policing authority. It should be noted, that till 2013 the legislation regulating activities of the police was not defining the rules and grounds for preventive policing. The law was not stipulating for any specific mechanisms available to the law enforcement bodies. According to the Law of Georgia on Police, adopted in October of 2013, the key function of the police is ensuring public order and prevention of threats, which can undermine it. The police implements this function through conducting of preventive policing, which is envisages timely identification and elimination of threats undermining interests of the society and directed against public order.[14] The amendments entered into the Law of Georgia on Police in 2013 define the type

14 Ketevan Giorgishvili, specificity of police preventive activities, page 79.

of each preventive measure and the rules of their application.[15] The law provided for 12 preventive policing measures, 10 out of which are directed against specific offences, their investigation and prevention. Law of Georgia on Police also stipulates for possibility of use of operative and investigative measures by policeman, which cannot be directed against general prevention of offences and violations, due to the narrow character of these measures, as they are focused on specific circumstances.

Transfer of the above referred policing instruments and operative-investigative functions to the law-enforcement bodies is clearly indicating of repressive character of the preventive policing and is promoting to intensive interfering into the human rights on the grounds of prevention of even minor crimes, or abstract threat. Current model of preventive policing is pretty far from social preventive policing and is oriented towards attaining of short-term immediate results. According to the same law in the process of implementation of its activities the police should respect the human rights.[16] Such provision of the law confirms, that the lawmaker considers it as priority task of the police to ensure security, and protection of human rights is only one of the principles, related to attaining of this goal. In the course of implementation of these duties arises natural collision between the public safety and the freedom of an individual, and violation of this right is not excluded for the purpose of safeguarding public safety.[17]

Current preventive policing, provided by the law is in confrontation with individuals, and not the causes of crime, which is occurring at the expense of excessive interference into the rights and freedoms of citizens as a result of high concentration of power within the law-enforcement bodies.

15 EMC, The Policy of Invisible Power – Analysis of the Law-enforcement System, page 43, [available at: https://emc.org.ge/2015/06/18/samartaldamcavi-sistemebis-kvleva/, last accessed: 10.09.2017]

16 Article 9 of the Law of Georgia on Police.

17 Vakhushti Menabde, Counter-terrorist state – Emergency Situation of Current Times, page 118

Chapter 3.

Preventive Policing Mechanisms in the Legislation of Georgia

Present chapter overviews those mechanisms, stipulated by the legislation of Georgia, which are used by the police prior to committing of offence, and represent so called pre-investigative measures. The pre-investigative activities of the police, which is also referred to as proactive action (in German literature) is gradually causing dilution of the demarcation line between the criminal procedural actions and policing, as the pre-investigative measures are of repressive character, and implies measures targeted towards identification of offences, which have not been committed yet, when the police does not have accurate and reliable information regarding the persons, who have criminal intent. Despite the above, the police applies to measures, which by their nature are applied to criminal offences, to every citizen, thus causing gross interference into the human rights, as all individuals are considered as potential offenders.[18]

To preventive mechanisms, stipulated by law, can be allocated preventive authority of the police, i.e. standard policing measures, which are provided in Chapter IV of the law. As "preliminary investigation" mechanism can also be considered operative activities of the police. The Law of Georgia on Police envisages operative activities as part of preventive measures, and contains provisions on operative-investigative activities. As pre-investigative activity can be considered activities of the district inspectors, who focus on collection of information for the purpose of prevention of crime.

According to article 3 of the Law of Georgia on Police, "The Police of Georgia ('the Police') is a system of law enforcement agencies under the Ministry exercising executive power, which within the scope of its authority, provided by the legislation of Georgia, caries out preventive measures and responds to offences to ensure public security and legal order". Given provision lists among authority of the police the function of response to offences, as well as prevention of offences and public security, although it does not provide for response to crime.

According to paragraph 5 of article 5 of the same law, "the Criminal Procedure Code and other relevant normative acts of Georgia shall specify legal forms of police responsive actions to offences".[19] Thus, the law delimitates the authority of identification, suppression and investigation of offences, from the authority of prevention and investigation. The latter is mentioned as one

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18 Löwe/Rosenberg, die Strafprozessordnung und das Gerichtsverfassungsgesetz, pages 41-43.

19 The Law of Georgia on Police, paragraph 5 of article 5.

of functions of police in article 16 of the Law of Georgia on Police, and vests the police with the authority of implementation of preventive measures. Subparagraph "d" of the same article stipulates for detecting of offences and lawfully responding to crime and other offences on the basis of the authority granted by the Criminal Procedure Code of Georgia, the Administrative Offences Code of Georgia, and other normative acts.

On the basis of these provisions the law delimitates preventive and repressive functions, which in its turn is related to the proactive measures, provided by the Law on Police, and reactive measures, provided by the Criminal Procedure Code. Proactive and reactive response to certain events implies implementation of specific measures before the fact of offence, and after the fact of committing of offence.[20] Differently from repression, prevention does not imply intensive interference into the human rights, as proactive actions, implemented within the framework of prevention do not have specific target, and such measures are not related to specific offences. Despite this, whole range of preventive measures, stipulated by the law by their character are close to repressive measures, implemented by police in the event of specific offences.

Current model of crime prevention is problematic due to abstract character of preventive policing and the risk of establishing police control over citizens through implementation of preventive measures on the basis of very general grounds, when citizens do not enjoy sufficient procedural guarantees to protect their rights. Georgian model of preventive policing is causing criticism due to the fact, that Georgia law provides for broad intervention into rights not only for the purpose of prevention of terrorism or especially grave threat, but also for the purpose of prevention of any minor offence and/or violation.

Preventive policing tools, provided by the law can be used for preventive, as well as investigative purposes, which means, that the citizens have less guarantees of protecting their rights, as in case of preventive policing measures there is no supervision by the Prosecutor's Office, and the judicial control is envisaged only after completion of implementation of preventive policing measures. Such regulation allow discretionary actions within the police system, especially taking into consideration, that the legislation grants to law enforcement bodies the authority to use preventive, as well as criminal justice measures. Consequently, it is important to delimitate preventive measures, targeted towards forecasting of threat by police and implementing relevant measures on the basis of obtained information, from investigative actions, provided by the Criminal Procedure Code.

20 Vakhushti Menabde, Counter-terrorist state – Emergency Situation of Current Times, page 122

3.1. Policing Measures, Provided by the Georgian Law

Article 18 of the Law of Georgia on Police lists those crime preventive measures, which can be conducted only in the event, when public security and legal order are under threat. According to the same article, the Police shall carry out responsive measures to offences according to other legal acts (legislation of Georgia on administrative offences, criminal law, and other normative act). Such systematization of preventive measures confirms, that the key function of the police is prevention.[21] Listing of standard preventive measures in the law is aimed at specifying authorities of the police and reduction of the risk of violation of human rights through establishing factual and legal preconditions of interference.

Article 18 of the Law of Georgia on Police stipulates for 11 preventive policing measures:

a) interviewing a person;
b) identifying a person;
c) inviting a person;
d) carrying out frisk and examination of a person;
e) carrying out special inspection and examination;
f) carrying out special police control;
g) ordering to leave a place and prohibiting entrance to a certain territory;
h) restricting a person or a vehicle from moving or restricting actual possession of an item;
i) using self-operating photo (radar) and video equipment;
j) developing and using technical means;
k) carrying out operative investigative measures.

The above referred standard preventive measures in some cases are directed towards prevention of offence, while other are used for identification of already committed offences. In the first case, although prevention of possible threat and crime is perceived to be within the scope of preventive actions of the police, it is not clear as to how it can be differentiated whether actions of the police implemented at the stage of intent of crime, or its preparation are of preventive, or repressive character.

For example, according to article 22 of the Law on Police frisking can be conducted, when there are reasonable grounds to believe that the item or vehicle is where a crime may be committed, and it is necessary to conduct a frisk and search to prevent a crime. Also, for the purpose of prevention of offence or administrative violations, restrictions can be imposed on ownership of items or movement of persons and vehicles. Apart from the abovementioned, according to the Law

21 Levan Izoria, Police Law, page 144.

on Police special police control of a person, an item, or a vehicle shall be conducted if there are reasonable grounds to believe that a crime or other offence has been, or will be committed.[22] The response of police to already committed offences is of reactive character, and relevant measures are implemented in accordance with the Criminal Procedure Code.

> Current regulation of given issues poses a lot of questions on the one hand as to how can actions of police be of preventive character even for the purpose of averting of offence, if planning and preparation of whole range of offences and their suppression is falling within the scope of regulation of the Criminal Procedure Code; on the other hand, it is not clear, how can police respond to already committed offences by applying to preventive measures, as provided by the Law on Police.

Taking into consideration the fact, that amendments entered into the Law on Police in 2013 are largely based on German regulations of police law, it is interesting to consider German example and analyze where is the line between preventive and investigative functions.

German legislation, in the same manner as Georgian legislation, does not delimitate clearly the preventive measures, conducted for the purpose of avoiding of threat, from investigative measures. Similarity of measures of preventive policing, provided by laws of German Federal Lands with coercive measures, provided by criminal procedural law becomes especially obvious in case of such measure, as identification of a person and frisking, which according to legislation of some of the lands can be conducted even in case of absence of suspicion towards certain person or in regard to some criminal act. The above referred measure is known in the police action as a raid, and expediency of such measure is substantiated only by indication to threat related to some location. Given provision is quite vague. In given case the purpose of identification of a person and frisking is largely of investigative nature, as such measure is targeted towards identification of offences and perpetrators. Consequently, given regulation increases the scope of interference of the state into protected rights, and a citizen becomes an object of police suspicion by the mere fact of presence at some suspicious location. This gives rise to serious doubts in regard to legal basis of given regulation.[23]

German judiciary practice distinguishes police measures as preventive or repressive depending on the fact, whether there is sufficient grounds for suspicion, to initiate investigation as provided by the Criminal Procedure Code (Anfangsverdacht §152 StPO). According to substantiation of the court, in case of unavailability of such suspicion persecution is not initiated, and conducted

22 Law of Georgia on Police, article 24.

23 Kühne, Strafprozessordnung, page 238.

measures are of preventive character.[24] There are sufficient grounds for initiating of investigation, when there is a specific criminal action, which by its type, time and location is of such concrete nature, that investigation can consider it. This standard does not necessarily mean that police should possess knowledge regarding possible perpetrators, although information on type, time and location of offence can be compensated by information on the possible perpetrator, if the criminal act itself is not precisely described. In the event of sufficient suspicion for initiation of investigation the requirement of presence of concrete criminal act is more important, than in case of standard defined in regard to preventive measure. i.e. in case of suspicion of possible threat.[25]

It should be noted, that differently from Georgian regulations in German police law the line between preventive and repressive policing measures is drawn taking into consideration the stage of potential criminal action. Namely, preparation of a criminal act is within the scope of preventive policing, as according to German law preparation of criminal act, as a rule is not subject to punishment by criminal law, and the Criminal Code extends only to the attempt of committing of specific grave offences.[26] In Georgian reality such differentiation is not possible, as preparation of crime in whole range of cases is already grounds for initiation of criminal investigation, although according to the Law on Police preventive measures are also applicable to such actions.

3.2. Operative-investigative actions

Whole range of pre-investigative measures are also provided in the Law of Georgia on Operative-investigative Activities, provisions of which according to article 29 of the Law on Police are applicable in the event of implementation of operative-investigative actions.

One of the purposes of operative-investigative activities, as well as standard policing measures is protecting of human rights and freedoms and public order. For attaining of this purpose following measures can be conducted overtly or covertly: interview a person, collect information and conduct surveillance; carry out a test purchase; carry out a controlled delivery; examine objects and documents; identify a person; obtain electronic communication identification data and other measures provided by law.[27]

Paragraph "a" of Article 3 of the same law states, that one of purposes of operative-investigative activities is identify, suppress and prevent a crime or any other unlawful act; while para-

24 Decision of the Federal Administrative Court of Germany of November 23 of 2005 [available at: http://www.bverwg.de/entscheidungen/entscheidung.php?ent=231105U6C2.05.0, last accessed on 09.09.2017]

25 Mohr Siebeck, Kriminalpräventionsrecht, page 78.

26 Eser, in : Sachönke/Schröder, Strafgesetzbuch, 28.Aufl. 2010, vor § 22 Rdn. 13.

27 Article 7 of the Law on Operative-investigative activities.

graph "b" provides for identification of a person who prepares, commits or who has committed a crime or other unlawful act. In the first case the task of identification, suppression and prevention of offence is of general character, while in the second case operative-investigative measures are targeted against a person, who has already committed an offence, or is attempting to commit an offence.

As legal basis for conducting operative-investigative measures can serve the instruction of the prosecutor, or of the investigator with the consent of the prosecutor, on the conduct of an operative-investigative measure when there is a duly received report or notification that a crime or any other unlawful action is being prepared, or is in progress or has been committed, and which requires the conduct of an investigation, but there are no elements of a crime or of any other unlawful action that would be sufficient to commence an investigation.[28] Given provision indicates that there is a vague delimitation between the measures implemented by police, and investigative measures and the problem of differentiation of pre-investigative and investigative measures. As grounds for initiation of investigation serves provision of information to prosecutor or investigation in written, oral, anonymous or some other form.[29] Given norm provides for information on already committed offence, or planned offence, if the preparation of specific offence is punishable by law. Consequently, it is not clear, as to when the notification or report on offence is not sufficient for initiation of investigation, but is sufficient, to conduct operative-investigative measures.

Current police preventive system is also problematic, as it is not implemented only by one designated agency, which would be responsible for implementing this function. According to Georgian legislation the authority of implementation of preventive measures is granted to several units of MIA, consequently, it is impossible to say, as to which agency is responsible for effective implementation of preventive measures.

According to information provided by MIA, the following unit under the Ministry have the authority to implement preventive measures: the Central Criminal Police Department, the Special Tasks Department, the Department of Pipeline Protection, the Facilities Protection Department, Migration Department, General Inspection, the Patrol Police Department, Territorial Organs of MIA, LEPL Security Police Department, and the subordinated agency of MIA- Border Police.[30]

Taking into consideration, that these agencies have radically different direction of activities, there is the risk, that these services shall implement preventive policing in different ways. At

28 Article 8 of the Law on Operative-investigative activities.

29 Article 101 of the Criminal Procedure Code of Georgia.

30 Letter №01701189486 of MIA.

the same time, there is the risk, that preventive policing can interfere into the authority of investigation, or to put it in other words, preventive policing measures can be implemented for the purposes of investigation. This is further promoted by the fact, that agencies implementing preventive functions are at the same time responsible to conduct investigation, and the law does not set clear boundaries between these two functions. Some preventive measures by their character are rather similar to investigative actions (for example, interviewing of a person), while in the event of superficial search this measure can easily turn into specific measure – frisking.

The fact, that by legislation as one of preventive measures is also considered operative-investigative activity,[31] is problematic because if operative-investigative actions are associated with cover measures, and direct contact with the citizen is minimal, preventive policing measures mean direct contact with a citizen and overt measures. Consequently, effective implementation of these two activities quite often requires radically different professional skills from a policeman. Although, as has already been noted, current legislation and institutional arrangements do not provide for such specialization and according to information provided by MIA,[32] all agencies implementing preventive measures (except for migration department) at the same time have operative-investigative authority.

In such conditions it is extremely difficult to specialize the staff of relevant agency in the sphere of preventive measures and build its capacities, to ensure that in parallel to effective implementation of preventive functions for attaining legitimate aims there is no unjustified and unlawful interference into the rights of citizens.

3.3. Activities of a District Inspector

Setting up of the institute of district inspectors within the system of MIA in 2005 was aimed at introduction of community oriented approach based on trust. Within the functions of the district inspectors, subordinated to the Patrol Police Department was overseeing and response to administrative violations, settling of family conflicts, population census and direct communication with population. From 2006 the district inspector service was transferred into subordination of the criminal police, while later to the district inspectors was also added the authority of conducting of operative and investigative activities. Current institute of district inspectors, which initially was supposed to be community oriented and focused on prevention of crime, in practice implements operative and investigative activities. Within the

31 Article 18, paragraph 1, sub-paragraph „k“ of the Law of Georgia on Police.

32 Letter N SSG 1 17 02088162 of MIA.

competencies of given service is identification and prevention of offences, their investigation and/or operative-investigative activities, as well as other activities, provided by the law[33]. The district inspector service implements operative-investigative activities for the purpose of identification of offences and other unlawful actions and their prevention and the district inspectors are responsible to maintain district registries on the territory assigned to their supervision. In the registry is entered the information on those persons, who have been systematically disturbing public order, who prepare, commit, or have committed offences or other unlawful actions, or in regard to whom preventive measures need to be conducted.[34]

Instead of establishing trust based relations with public and be oriented towards the needs of communities the activities of a district inspector are at the same time targeted towards prevention of offences, investigation and implementation of operative activities, which hinders establishment of trust-based relations and obtaining of necessary information which would promote to prevention of crime.

Also, it is problematic that for the purpose of prevention of crime district inspectors have the authority of implementation of operative-investigative activities not only for preventing of serious offences, but for preventing of minor offences as well, and such measures can be conducted on the general grounds, which is related to high risk of gross interference in the rights of citizens.

33 Order №153 of the Minister of Interior of March of 2013 on Approval of the Rules Regulating Activities of the detective-investigator, detectives‘ assistant and district inspectors.

34 Order №875 of the Minister of Interior of August 26 of 2005 on Approval of the Instruction on district services of the territorial bodies of MIA.

Chapter 4.
Conclusions and Recommendations

As a result of overview of the state policy and strategy, as well as regulations related to prevention of offences, it can be concluded, that the key bodies, responsible for prevention of offences are the law-enforcement bodies, which also have the authority of implementing repressive measures for the purpose of prevention of offences. Policing measures are quite often focused not on suppression of grave offences, but identification and prevention of minor offences, and such measures can be implemented on the abstract grounds, which provides opportunity for interference into the rights of citizens, without equipping them with effective procedural guarantees.

Consequently, for the purpose of attaining the goals of crime prevention and at the same time proper safeguarding of human rights, the following is expedient:

- Elaboration of unified state policy and strategy, which would be less restrictive and oriented towards long-term goals and social changes, which would introduce balanced approach and coordination of measures to be implemented by different institutions.
- Increase of engagement of non-governmental organizations in elaboration of crime prevention policy;
- Clear delimitation of preventive and investigative functions of the law enforcement bodies by law, including limitation of use of preventive measures at the stage of preparation and attempt of offence;
- Limitation of use of specific preventive measures in regard to already committed offences;
- Limitation of use of specific preventive measures in regard to offences;
- Reformation of the institute of district inspectors and removing of the operative-investigative function for the purpose of ensuring building of trust-based relations with public;
- Specification of abstract ground for conducting of preventive measures in the law for the purpose of avoiding of discretionary authority of the law-enforcement bodies;
- Reduction of the subordinated agencies of MIA, which have the authority of implementation of preventive measures and retaining of this function only under those agencies, which do not have the functions, not compatible with preventive policing.

II Part

Chapter 1.

Grounds of Implementation of Preventive Policing Measures

As has been noted in previous chapters, preventive measures, stipulated by the Law on Police, adopted in 2013 quite often are of repressive character, which causes interference in the human rights. It is clear, that the mere fact of interference into some specific rights cannot be considered as problematic, as quite often the law enforcement bodies have legitimate purpose to do so. Despite this, it is important to ensure, that each interference is proportionate and at the same time, the unjustified interference into the rights by the police should be reduced to the minimum.

According to the reasoning of the Constitutional Court of Georgia "General grounds for interference in the right and at the same time insufficient guarantees for protection of the citizens' rights directly promotes to the risk of discretionary actions by the police. In such cases it is more difficult to effectively review the proportionality of interference, the necessity of which is stressed by the Constitutional Court in its numerous decisions."[35] It becomes clear from the reasoning of the Constitutional Court of Georgia that it is necessary on the one hand, that he law clearly defines the grounds for interference in the right, while on the other hand, citizens should be equipped with the effective mechanisms of protection, to avoid any unjustified interference by the police in their rights.

Each preventive measure has specific grounds, and the problem of justified interference in the rights is of different severity, depending on the relevant preventive mechanism, applied by the police. Despite this, key criteria can be identified, on the basis of which specific ground for interference into the right can be assessed. Namely:

1) Forseeability – whether the law provides for comprehensive and uniform environment for citizens and law-enforcement representatives (especially in those conditions, when failure to obey lawful requirements of the law-enforcement representatives is punishable by law, it is important for citizens that the grounds for forcible communication with police are stated clearly);

2) Legitimate purposes for interference in the constitutional rights – apart from the fact, that the law should be formulated clearly, it is also important that the purpose of interference in the rights is legitimate. The legitimate purposes should also be provided clearly by the law;

35 Decision of the Constitutional Court of Georgia of October 24 of 2012 on the case "Georgian Young Lawyers Association and citizen Tamar Chugoshvili v. the Parliament of Georgia", §8.

3) Proportionality – given criteria is extremely important when assessing police activities, as quite often doubts arise in regard to the necessity of interference into the rights. It is clear, that every policing measure may not be the most effective means of reaching the goal, but the most important is that the law enforcement should apply to the least restrictive measure, to minimize interference in the rights.

Below is provided the overview of the key grounds for implementation of preventive measures, stipulated by the Law on Police.

1.1. Information Necessary for Implementation of Policing Functions

The Law on Police grants authority to the law enforcement bodies to conduct interview of a person, to summon him to the police agencies for interviewing him, if there are sufficient grounds to presume, that he possesses information, which is necessary for implementation of policing function. Interviewing of a person (when the purpose is not identification of a person, but obtaining of specific information regarding offence or violation) is of voluntary nature, and this implies short interaction between the law-enforcement representative and a citizen.[36] As to the summoning of a person, participation in given measure is also of voluntary character, and the only difference is, that communication between the police and a citizen occurs on the premises of a law-enforcement agency, and the length of stay of a person in such agency should not exceed 4 hours.[37]

It should be noted, that in the course of defining the grounds for these 2 preventive measures the law does not specify what is implied under the term "implementation of a policing function" and whether it is necessary, that the function to be implemented by the police is directly related to the addressee of this measure, or specific offence or violation.

The Law of Georgia on Police lists such general functions, as avoiding threats to public order and security.[38] The Law also provides detailed descriptions of specific functions of police.[39]

36 Article 19, paragraphs 2 and 3 of the Law of Georgia on police.

37 Ibid, article 21.

38 Ibid, article 16, paragraph 1 of the Law.

39 Protecting human rights and freedoms; protecting legal and natural persons from offences against their property; carrying out preventive measures to avoid and avert crime and other offences; detecting and lawfully responding to crime and other offences on the basis of the authority granted by the Criminal Procedure Code of Georgia, the Administrative Offences Code of Georgia, and other normative acts; protecting and controlling the legal regime of the state border and maritime space of Georgia; analyzing crime and other offences, expected threats, risks, and challenges and proposing a strategy for combating crime; carrying out activities related to permits, licenses, and registration; ensuring traffic safety; ensuring protection of the parties of a criminal procedure; combating, preventing, and suppressing illegal migration and ensuring fulfillment of other requirements under the legislation of Georgia; carrying out search-rescue operations; exercising the powers granted by the legislation of Georgia during state of emergency or martial law; responding to and addressing emergency situations; conducting of expert-criminalistic activities; placing of persons, who committed offences, as well as persons detained or arrested for administrative violations in temporary detention isolators.

It is clear, that police has broad competencies and as noted in the previous chapter, the majority of divisions of MIA responsible for implementing policing activities do not have only one specialized sphere of activities (for example, combating crime, road, safety, or obtaining and processing of information related to crime).

In such conditions granting the law enforcement bodies with the function of implementing measures, which would restrict the rights only on some general grounds cannot be considered as legitimate reason for interference into the rights.

In given case there is a problem of forseeability of law as well. „The Constitutional Court noted on numerous occasions the importance of the principle of legal state, some elements of which are reflected in the numerous provisions of the Constitution of Georgia. Apart from this, there are some elements of a legal state, which may not be directly provided by relevant provisions of the Constitution, but nonetheless, are no less important, as the principle of legal state cannot be adhered to without such elements. One of the elements of such legal state is the "principle of forseeability".[40] „For the purpose of implementation of the state functions, provided by the Constitution (paragraph 1 of article 5 of the Constitution) the legal norms should be so comprehensive and clear, that it should preclude any possibility of its subjective or discretionary interpretation".[41] As has been stated above, in given case the term "implementation of police functions" is of such general character, that it allows for broad interpretation and poses the risk of discretionary interference of police in the rights.

General grounds for interference in the rights and insufficient guarantees to protect the rights of citizens directly promotes to the risk of arbitrary interference by the police. In such conditions it is also difficult to assess proportionality of interference in the rights, and the Constitutional Court has indicated to the need of such assessment on numerous occasions".[42]

1.2. Information on Crime or Offence

Special police control (so-called raids) is one of the most challenging type of prevention measures. The reason for this is not only an excessively wide scope of the measure, when a person and an object in the specific area is subject to the inspection by the law enforcement officers, but also the fact that for its conduct the legislation defines general basis, such as sufficient grounds to believe that a crime or an offense has been committed or will be committed.

40 Ketevan Eremadze, Balance of Interests in a Democratic Society, page 132.

41 Ibid, page 136.

42 Decision of the Constitutional Court of October 24 of 2012 on the case "Georgian Young Lawyers' Association and the Citizen Tamar Chugoshvili v. the Parliament of Georgia", §8.

Within the framework of the special police control, interference with the freedom of particular persons does not require substantiation, because it is assumed that any person is subject to inspection, as long as the person is in the area, where a crime/offense[43] of any category has been committed or is planned to be committed. Consequently, within the framework of the measure a form of micro-emergency situation is created, in which interference with the right of any person in the territory selected by the police is justified on abstract grounds.

As noted, special police control may be based on information on crime or offense of any gravity, or the possibility of their commitment in the future. Consequently, notwithstanding the minor nature of the crime or offense, such information already represents the basis for the implementation of special police control, within which the police can restrict the rights of any person entering the particular territory. The area of activities of the special police control (raid) may cover the whole country and its duration may exceed two days.[44] In carrying out the measure, a police officer shall not be required to justify in any way the inspection of a person because the police officer has the right to act in the territory, and any person or object who stays at the mentioned territory is subject to control.

The existence of such a low standard for initiating a measure, within which the rigid interference in the rights of persons of a wide circle becomes possible, clearly indicates that the balance between public and private interests is not observed.

It is impossible to justify based on proportionality test the restriction of the right to freedom and private life by territorial principle, when the legitimate interest in a particular case may be a minor offense, such as littering roads, polluting sea and so on.

In this case, there is also a problem of foreseeability, since the law does not explicitly limit the area and duration of the action of the Special Police Control, nor does it indicate what the substantiation of the order for the measure should be. Consequently, there is a risk that the circle of citizens under police control will not be connected with a specific crime or offense, and this circle actually encompasses a substantial number of individuals.

It is noteworthy that the use of such a strong measure by the police might be legitimate and proportionate in some cases, but it must have an exceptional character and be directed against a particular danger of crime or to eliminate an extraordinary criminal situation.

43 EMC, the policy of invisible power-the analysis of law enforcement system, p. 47, [available at: https://emc.org.ge/2015/06/18/samartaldamcavi-sistemebis-kvleva/, access date: 10.09.2017]

44 See decrees of the Minister of the Internal Affairs on the implementation of measures, [available at: https://goo.gl/bfYh53, access date: 12.09.2017]

In the United Kingdom, the police have similar powers for the purposes of combat against terrorism. But in 2011 in the United Kingdom it was necessary to define police powers more specifically. In particular, so-called Code of Practice was published about the "Terrorism Acts" (this act allowed the British law enforcement authorities to frisk all persons in a specific area, regardless of a reasonable suspicion against the person), which was a manual against terrorism. The reform was a result of the decision made in 2010 by the European Court of Human Rights on the case Gillan *against Great Britain*.[45]

In this case, the European Court of Human Rights found that there had been a violation of Article 8 of the Convention on the grounds that the applicants were subject to stopping and frisking by police on the basis of the "Terrorism Acts" (Article 44-47). According to this Act, 1) Senior Police Officer had the right, if he considered it necessary, in order to prevent terrorism, to instruct the uniformed policemen who were subordinated to him, to stop and frisk any citizen in a certain territory; (2) Granting such a right to the uniformed policemen required approval by the state secretariat, 3) Although the purpose of the measure was to identify such items that could have been used for terrorism purposes, it was not obligatory for the stopping and frisking to be based on the assumption that a person would have such items; 4) A person who disobeyed this measure might be subject to arrest or a penalty or both.

The Court explained that although the duration of suspension and frisk of the applicants did not exceed 30 minutes, freedom of movement was completely restricted to both of them. They were forced to remain in the area where the frisk was conducted; otherwise, they could have been arrested. In view of all these circumstances, the Court considered interference with the right to be disproportionate and established a violation of Article 8 of the Convention.[46]

Following the decision on the basis of an amendment made to the law, Article 47A appeared in the law, under which a senior official of the police is prohibited from issuance of special decrees for a particular territory (which without a substantiated suspicion grants to the employee the right to stop and frisk a person in a particular territory) unless the following conditions are met:

1) There is a reasonable doubt that a terrorist attack will be carried out;
2) The authorized person considers that:
a) Such a measure is necessary to prevent a terrorist act;
b) The territory specified by the decree is not much greater than it is necessary to avoid an act;
c) The duration of the order is not more than it is necessary to avoid an act;

45 Gillan and Quinton v United Kingdom, ECHR, 2010.

46 Gillan and Quinton v United Kingdom, ECHR, § 57, 2010.

It was also determined that issuing a decree to determine a particular area could not be based on a general and abstract threat to terrorism. That is, the legislature clearly defined avoiding of what threat required conduct of preventive measures (preventing a terrorist act) and indicated that the threat should be specific and not general.

1.3. Possible Violations of Competences of Investigation

not quite clearly distinguished from criminal investigations and investigative activities, which is primarily because quite a number of preventive measures more resemble the investigative actions.

For example, Article 19 of the Law of Georgia "On Police" states as one of the preventive measures the interrogation of a person which is voluntary and, along with other grounds, the law enforcement officers may carry them out in such circumstances, when a person is still on the scene of the crime. At the same time, an interrogation is one of investigatory actions[47] envisaged by the Criminal Procedure Code and for its implementation the legislation defines different procedures and standards, including that the person to be interviewed has more legal guarantees - in particular, he/she has the right to demand a lawyer, the right not to testify against himself/herself and/or close relatives, at the same time, a report must be drawn up on such interview.

Another police measure within the scope of which the boundary between the police prevention and investigation may be violated, is a frisk and examination. This measure somewhat resembles a criminal investigative action – a search (or a personal search), although it is obvious that the slightest interference with the latter involves human rights. In one of its decisions, the Constitutional Court of Georgia explained that "frisk can be carried out by touching clothes, as well as by means of technical devices. An act that requires revealing of "invisible" parts of clothes and removing one's clothes cannot be considered a frisk. It is natural that such actions represent a more severe form of interference with the private life and, thus, by the intensity of interference with the right they are equal to the search envisaged by the Criminal Procedure Code."[48]

From the aforementioned explanation, we can conclude that the Court itself does not deny the similarity of the two measures. At the same time, the legislation allows the law enforcement officers to turn a frisk into a search in case of an urgent necessity, if the basis for the search arises during the inspection. [49] Given that in case of a frisk the police officer has to satisfy a lower quality standard of proof, than in case of a personal search, the law enforcement

47 Criminal Procedure Code of Georgia, Article 113.

48 Decision of April 11, 2013 of the Constitutional Court of Georgia on the case "Citizens of Georgia-Levan Izoria and David-Mikheil Shubladze vs. the Parliament of Georgia", §72.

49 Paragraph 10 of Article 22 of the Law of Georgia "On Police".

officer may first conduct a frisk with the purpose of a search (when the police does not have reasonable grounds to conduct a search), and then turn this measure into a personal search on the grounds of emergency.

Such action by the police is more expected, given that, in conjunction with other circumstances, the legislator indicates sufficient grounds for conducting a frisk:

- The possession of an item by a person whose transfer is restricted or threatens his/her or others life and health;
- The presence of a person whose freedom is illegally restricted in the means of transport;
- The possession of such an item by a person that must be taken off.

The listed reasons clearly indicate an offense or the connection with the offense, and therefore, in such circumstances the law enforcement officer must act with investigative competence. Georgian legislation requires law enforcement officers to immediately start investigation, if there is information about the crime and all their subsequent actions should be carried out within the framework of the investigation.[50] However, as noted above, the Law "On Police" gives the police an opportunity to act beyond this competence and instead of mandatory initiation of the investigation, obtain substantial information important for the investigation by the actions subject to less control (prosecutorial supervision and judicial control do not apply to the preventive measures by the police).

There are two main grounds for an interview and a frisk of a person in the UK:

1) The law enforcement officer must have a genuine suspicion that he/she will find the item whose search was the purpose of the inspection;

2) There must be objective, factual grounds for the doubt that the item will be discovered. A similar conclusion should be made by a discreet person based on identical facts, information or intelligence.[51]

The inspection should be carried out at the same place where a person was stopped and prior to the commencement of the action the law enforcement officer should provide the following information to the person:

50 Criminal Procedure Code of Georgia, Article 100.

51 A Revised Code of Practice for the exercise by: Police Officers of Statutory Powers of stop and search Police Officers and Police Staff of requirements to record public encounters (the Code regulates examination of a person or checking of a vehicle by the police officers without their arrest).

- The subject is stopped for the purpose of verification;
- The name of the law enforcement officer and the name of the law enforcement department, which he/she represents;
- Legal powers exercised by the law enforcement officer;
- Clear definition:
    - of the item which is the aim of the inspection and frisk;
    - facts, information or intelligence, or specific behavior of a person causing reasonable suspicion for the conduct of the action.

In addition, the person has the right to receive a copy of the inspection protocol.[52]

In connection with the issues of constitutionality of stopping and search, the case of the US Supreme Court against *Terry O'Hayo* is exemplary. Here the Court explained that in this case the legitimacy and proportionality of the action should be assessed by the balance of interests of the discovery/solving a crime and inviolability of the individual. At the same time, in connection with the frisk the interests of the police and not the society are involved, to prevent the threat of physical injury (i.e., a policeman carries out a frisk for his/her own safety). Seizure of the item as a result of the frisk will be allowed only if any item/object is found to be a weapon or when a reasonable suspicion for arrest arises.[53] Thus, in order to ensure that frisks are legitimate, first of all, it is necessary to carry out arrest on the basis of a reasonable suspicion, after which the same standard applies which indicates to the existence of a threat.

It should also be noted that the new law "On Police" provides a broader basis for the police to conduct a frisk. If according to the old law (the Law "On Police" was abolished after the enactment of the new law, in 2013), the law enforcement officer had the right to conduct a frisk only for personal safety purposes[54], the acting law defines the following grounds for the same measure: a) possession of an item posing threat or an item carrying of which is limited (what is meant by the term "limited" is not clear, the law does not define it); b) presence of a person at the territory subject to a special regime, or 3) his/her stay at such territory, where persons illegally staying at the territory of Georgia gather, wanted individuals are hiding or an offense may be committed (in future).[55]

52 Ibid, paragraph3.8.

53 Sibron v. New York, 392 U.S. 40, 64 and 67 (1968). In Sibron case, the court follows the Terry Standard, that a frisk should only be done when a policeman considers that his/her or others life or health are threatened.

54 Paragraph 4 of Article 91 of the Law of Georgia of 1993 "On Police".

55 Paragraph 2 of Article 22 of the Law of Georgia "On Police".

Chapter 2.

Guarantees of Protection of Citizens

2.1. The Standards Defined by the Constitutional Court of Georgia for Preventive Policing

The Constitutional Court of Georgia has not had any extensive practice in the police preventive measures. Furthermore, the Court has only had the opportunity to examine the intensity of interference with the framework of the police measures and the constitutional guarantees that the citizens should be equipped with at this time.

In the case "Citizens of Georgia - Levan Izoria and David-Mikheil Shubladze vs. Parliament of Georgia" the applicants challenged the provisions of the Law of Georgia of 1993 "On Police", according to which law enforcement officers had the right to stop and frisk citizens on the basis of a reasonable suspicion. The plaintiffs claimed that the disputed provisions imposed abstract basis restricting the right, when arbitrariness of the police was not secured and, at the same time, the disputed norms (stopping citizens by the police) by the level of interference with the right are equal to arrest, due to which the addressees of the action should have the same guarantees of protection provided for by the Constitution with regard to the arrested person.

According to the position of the plaintiffs, the term "frisk" defined by the law "On Police" at that time was vague and did not allow for the possibility of separation from the personal search. The applicant believes that a frisk could have been conducted so that it could cause a serious interference with the personal life of an individual, which can be evaluated in respect of Article 20(1) of the Constitution of Georgia (inviolability of private life).

This case is interesting in many directions, but the complete analysis of the discussions developed by the Constitutional Court does not represent the subject of the research. For the purposes of the research, it should be noted firstly that the Constitutional Court has reviewed the constitutionality of the stopping of a person in relation to paragraph one of Article 18 of the Constitution (inviolability of freedom of a person) and the constitutionality of the frisk was evaluated in relation to paragraph one of Article 20 of the Constitution (inviolability of private life). It is of interest to assess the disputed norms in relation to the provisions of the constitution, as the court faced the need to define –what intensity of interference with the right to freedom and inviolability of private life is implied by the arrest and frisk. In addition, the subject of the subsequent discussion should be the scope of application of constitutional guarantees to the addressee of the measures, envisaged by Articles 18 and 20 of the Constitution.

In its judgment, the Court notes that stopping must be distinguished from arrest because it is a short-term measure and involves a more light interference with the right, as the law enforcement officer does not have any further authority over a citizen during the stopping. The frisk also, which the court also distinguished from the search - as a light measure, requires additional grounds - an immediate threat to a police officer.

As for the constitutional guarantees to be applied to the addressees of stopping and frisk, the Constitutional Court has indicated that the stopped person does not enjoy the same guarantees as the person during an arrest or a detention. In particular, according to Article 18(5) of the Constitution, a person upon a detention or an arrest shall be informed of 1) his/her rights and 2) the grounds for restriction of freedom; 3) upon detention or arrest, he/she may request the assistance of a counsel which must be satisfied. The Constitutional Court does not specify in its decision whether a stopped person shall enjoy or not any of the listed guarantees, if equipping of any stopped person with all three above-mentioned guarantees would be unreasonable and unjustifiably huge responsibility of the State.[56]

As, according to the definition of the Court, stopping means lighter interference with the right of freedom than a detention or an arrest, the Constitutional Court "withdrew" this measure from the judicial control and worked out a judgment, that carrying out preliminary or post-factum judicial control for each stopping will also be unreasonable.

In the light of the fact that the Court did not apply to the addressee of the stopping any of the guarantees or judicial controls set out in Article 18, paragraph 5, and neither judicial control, the only criterion by which the constitutionality of stopping can be evaluated in relation to paragraph one of Article 18, is the proportionality of interference with the right and in this case the court ruled that the disputed norm addressed the proportionality test.

As for the frisk, in this case, the court has made a distinct border between this measure and the personal search provided for by the Criminal Procedure Code and indicated that in the first case, the intervention in the right is much easier. At the same time, the Constitutional Court did not specify in this case, that despite the light interference with the right, the principle defined by Article 20 of the Constitution does not apply to the interference with the right, according to which interference with the right is allowed on the basis of a court permit or in case of an urgent necessity. Furthermore, the Court has clearly explained that the frisk can freely fall within the "urgent necessity", since the only basis for its conduct is the threat posed on the police officer, and in this case the imposition on the law enforcement officer of the obligation to obtain a court permit would be unreasonable.

56 See decision of the Constitutional Court of Georgia of April 11, 2013 on the case "Citizens of Georgia - Levan Izoria and David-Mikheil Shubladze vs. Parliament of Georgia", § 50-54.

In this case problematic is the fact that the court did not discuss how to conduct a judicial control of frisk under the circumstances of "urgent necessity", whether the post factum judicial control should be automatic, on which side the burden of proof of its legality and justification (or contrary) should be imposed-on the performer of the action or the addressee. It should be taken into consideration that the court itself has stated that "the urgent necessity does not exclude the necessity of judicial supervision, but it will only change its time."[57]

2.2. Duty of the Policeman to Present Himself to Citizens

In the framework of the preventive measures by the police, law enforcement officers actively interact with the citizens and interference with the rights of individuals occurs with different intensity. Therefore, it is important to analyze the extent to which the addressees of the measures exercise sufficient guarantees of protection. First of all, it should be noted that the Law of Georgia "On Police" does not impose on law enforcement officers an absolute obligation to introduce themselves during a direct contact with the citizens. According to the law, if the identification of a policeman is not possible by the external features, the latter has the obligation to submit an identification document, if it does not interfere with the performance of the police functions.[58]

The abovementioned rule has three major deficiencies: 1) many different types of agencies[59] within the system of the Ministry of Internal Affairs have an authority to carry out preventive measures and these agencies simultaneously work in operative-searching and other directions. Consequently, there are risks that representatives of particular agencies were not obliged to wear uniforms (identifiable by other people). In such circumstances carrying out of the measures restricting the rights, so that the addressee of the measure does not have the perception as to who restricts the right, significantly increases the risk of conflict situation and restricts the right of the citizens to take advantage of the guarantees granted by the law; 2) a policeman shall be released from the obligation to present an identification document on such abstract grounds, as interference with the performance of the police functions. This record is more common and it provides a wide range of interpretations. 3) The police officer is obliged to present only the document certifying the authority, which does not imply the name and surname of a particular law enforcement officer, as well as the information about the agency (department, service) he/she represents.

57 Ibid, § 63.

58 Paragraph 3 of Article 18 of the Law of Georgia "On Police".

59 According to the letter (№01701189486) of the Ministry of Internal Affairs of Georgia, the preventive measures are implemented by the following agencies under Ministry of Internal Affairs: Central Criminal Police Department, Special Affairs Department, Pipelines Protection Department, Objects Protection Department, Migration Department, the General Inspection, Patrol Police Department, the territorial bodies of the Ministry, LEPL-Security Police Department, sub-agency under the Ministry-Border Police of Georgia.

Without the abovementioned information, a citizen lacks an effective possibility to appeal an action of a particular law enforcement officer to provide relevant information about presumed violations against him/her to the general inspection or other agencies. At the same time, if a person does not have a clear perception that his authority is restricted by a law enforcement officer, there may be resistance and disobedience to the policeman's request that gives the police officer the basis for the arrest and imposing of an additional penalty.

The European Court of Human Rights has repeatedly discussed the obligation of a law enforcement officer to conduct self-identification in order to make a citizen feel that interference with his/her rights is performed by an authorized subject. In the case *Mamedov vs. Azerbaijan* the court found violation of Article 5 of the Convention and pointed out that the police acted neglecting the principle of good faith and arbitrarily when it used arrest against a citizen because he did not obey their legal requirements. The court's argument was based on the fact that the law enforcement officials did not reveal their identity and authority, the lawfulness and grounds of their claim to the citizen and disobedience to this requirement was actually not the cause, but the reason for the detention of the citizen.[60]

2.3. Explanation of the Grounds for Implementation of a Measure

To minimize the risk of arbitrary and unlawful exercise of authority by the police, the law enforcement officer must have an obligation to explain the circumstances and basis for the particular preventive measures applied by him, based on which the officer made a decision to interfere with the right.

> The Law "On Police" defines in two out of eleven preventive measures the obligation of the law enforcement officer to explain the basis and circumstances to the addressee of the measure, based on which interference with the right occurs.

According to Article 19 of the Law, which regulates the rules and procedures of police inquiry, the basis for the use of the measure should be explained to the person, unless it hinders the police in performing functions imposed by this Law. Obviously, the imposition of the mentioned obligation on the law enforcement officers during the interview of citizens deserves a positive assessment, but it should also be noted that the police is more likely to avoid its fulfillment - indicating to the fact of performance of police functions. Article 21 of the Law, which regulates the invitation of a person in a police establishment for interview, imposes an imperative obligation to explain the basis for the invitation to the person. This record will equip a citizen with strong guarantees and provide less opportunity for the arbitrary actions of law enforcement officers.

60 Gafgaz Mammadov v. Azerbaijan, 60259/11 §62, 103-108.

As for the rest of the police preventive measures, its addressees have no opportunity to receive a definition of the basis on which a particular measure takes place and, consequently, based on which circumstance the rights of their liberty or private life are violated. Obviously, all police activities (e.g. operative-investigative activities) do not necessarily mean direct contact of the citizen and the law enforcement officer and their main essence is the secretiveness, when the police might not have the obligation to make such notification, but the Law of Georgia "On Police" does not envisage any activity, which directly means interference by the police with the rights of individuals, including violation of inviolability and personal life and it is necessary for the citizens to receive information as to which circumstance became the basis for the interference with their right.

> Explanation of the grounds for the preventive measures to the citizens is also important for strengthening trust in the police and for the citizens not to resist the police, which may result in application of more severe police mechanisms.

This problem is even more acute when different police measures are becoming similar to each other and citizens do not have the knowledge and qualifications to distinguish them and consequently, exercise the rights. In such a situation, the police can also place other police measures under one measure, for example, during frisk and examination, interview a person and thus receive information. Moreover, during frisk and examination (as well as during "raid") citizens have actually restricted freedom of movement and they are under effective control of the police.

2.4. Mandatory Documentation of a Preventive Measure

The law of Georgia "On Police" envisages only three cases when the law enforcement officers should compile a mandatory protocol-during identification of a person, when inviting the person for the interview and during examination and frisk. In other cases, the law enforcement officers do not have an obligation to compile a formal document, describing the basis for a particular measure, the time and place of its implementation, its course and remarks of the addressee of the measure.

The obligation to draw up a protocol significantly reduces the risk of arbitrariness by law enforcement officers, as it will at least provide transparency and justification of the actions of the police. At the same time, the addressee of the measure is more informed about the procedure taken against him and, if he/she has a desire to appeal the actions of the police, the protocol may be of decisive importance in such case to prove his/her position. The obligation to draw up a protocol promotes the adoption of fair decisions by the police and, therefore, the growth of confidence towards it in the society.[61]

61 Stop watch, "Carry on Recording", Why police stops should still be recorded, p.3, [Available at:: http://www.stop-watch.org/uploads/documents/WhyRecordingIsStillImportantBriefing.pdf, date of access: 12.09.2017]

As it was noted, the police has the obligation to draw up a protocol only in three cases and in this regard, such important measures are neglected as interview of an individual, special police control and so on. At the same time, when the police have the obligation to draw up a protocol, the law does not say when the protocol should be drawn up - before the commencement of the measure, or after it is completed. The law also does not indicate whether a copy of the protocol should be automatically delivered to the addressee of the measure automatically, or the copy of the protocol should be submitted upon the request of the addressee or the addressee of the measure has no opportunity to receive copies of protocols at all.

Shoulder cameras can be considered as one of the effective means of documenting the police measures, however, the legislation provides for the obligatory use of the shoulder cameras by the police only in case of special police control (raid). [62]

At the same time, all agencies implementing preventive measures (including special police control) are not equipped with shoulder video devices and in this case it is unclear how employees of such agencies carry out their obligations under the law. There are no general rules/methodologies for the use of video devices, procedures for processing information received in this way, and the limits of their access by external persons (including the addressees of police measures), etc.

The legal flaws and vagueness regarding documenting police activities significantly increases risks of arbitrary and unjustified restriction of rights by the police.

In the light of police prevention measures, in most cases a citizen alone faces several law enforcement officers, it is necessary that each guarantee granted to him/her to be so clearly defined in the legislation that the citizen can actually exercise them.

Proper documenting of law enforcement activities is also important for the efficient supervision by the senior officers over the subordinated officers. In the UK a supervising officer is obliged to continuously control the stopping measures carried out by the law enforcement officer subordinated to him and the compliance of stopping measures with the law. The control can be carried out by direct supervision, examination of protocols or an interview of the officer.[63]

As for the US, for example, police officers in New York and Philadelphia are obliged to fill in a special form (form N75-80a) on stops and frisks, which aims at the description of the number

62 Paragraph 5 of Article 24 of the Law of Georgia "On Police".

63 A Revised Code of Practice for the exercise by: Police Officers of Statutory Powers of stop and search Police Officers and Police Staff of requirements to record public encounters, § 5.

of conducted measures, as well as assistance of police officers for them to better determine when there is a reasonable suspicion for the relevant action and when there is not.

California Normative Act Racial and Identity Profit Act of 2015 (RIPA 2015) provides for the monitoring mechanisms of stops and frisks by law enforcement officers. In particular, to avoid the subjective and arbitrary assessment of the situation by the police officer, the above-mentioned act will list the following circumstances that should be described for each stop/inquiry, in order to monitor and adequately respond to the mentioned risks:

1) The date, time and place of stops and interviews;
2) The reason of stopping;
3) The result of the stopping, such as inaction, warning, quoting legislation, seizure or arrest of property;
4) In case of a warnings or quotation of legislation, the relevant warning or illegal action;
5) If arrest took place, the offense, which was the basis for it;
6) Racial, ethnic, sexual orientation or average age of the person...
7) The actions carried out by law enforcement officers during the stop/interview:
a. Whether the consent of the person was requested;
b. Whether the law enforcement officer looked for belongings and if yes, what was the basis for this and what kind of evidence or contraband goods were discovered;
c. Whether any item was seized by the law enforcement officer and what kind of an item it was.

2.5. Explanation of Rights

As noted above, the addressees of police preventive measures in some cases do not exercise sufficient safeguards for protection and it is natural that the law does not envisage the obligation to explain rights to the addressee of the measure in all cases. It can be said that an exception in the Law "On Police" is reference to the obligation of law enforcement officers to explain to the citizens the basis for the conduct of preventive measures. (As it was noted, such an obligation exists only at the time of a frisk and invitation of a person for an interview). When inviting a person, the police officer is also obliged to explain to the person that coming to the police office and leaving it is voluntary.[64]

> The police officer is obliged to explain the right to appeal preventive measures to a citizen only in two cases.

64 Paragraph 3 of article 21 of the Law of Georgia "On Police".

The law enforcement officer has such a commitment in case of a frisk and examination and special inspection and examination.[65] However, the law does not specify that the right to appeal should be explained to the citizen, if information on the agency and term of appealing the police actions should also be provided to a citizen. Citizens cannot receive explanation of their own rights for such intensive measures, as special police control, interview of a person, identification (which in turn means processing data of a person by means of various technical devices).

Obviously, one of the important means for the protection from arbitrariness of law enforcement officers is appealing their actions (including through court). However, as mentioned in the previous chapters, the “Law on Police” equips citizens with insufficient protection guarantees from the initial phase, be it the absence of obligation to compile compulsory protocols of the events and transfer of copies of protocols to citizens, provision of insufficient information to the addressees of the actions, or information as to who performs particular actions (a name and a surname of the officer, his/her position), as well as grounds for their performance and explaining the rights of a person only in exceptional cases, makes the mechanism of appealing thoroughly inefficient, as the citizen does not have an opportunity to obtain sufficient information on their rights during interaction with the police, demand from the police performance of obligations imposed on them and prove to the relevant authority that his/her rights were violated during the preventive measures by the police.

65 Ibid, paragraph 7 of Article 22 and paragraph 7 of Article 23 of the Law.

Chapter 3.
Conclusion and recommendations

The analysis of preventive measures by the police indicates that the grounds for their conduct are general and abstract, which gives unduly wide discretion to the police and unreasonably extends the limits of the relationships of the police and citizens, as well as increases the level of the police control. The existence of high-intensity police measures is not balanced with appropriate legal guarantees. The addressee of the police measures, as a rule, in exceptional cases exercises the right of explaining the rights to him/her, documenting the police actions, introducing themselves by the police. The lack of legal guarantees increases the risk of arbitrariness on behalf of the police during the prevention measures by the police.

It is important to create a balanced, humane and free from arbitrary actions police preventive system:

- The grounds for preventive measures by the police shall be defined specifically, when the risks of arbitrary explanation of norms will not exist and the limitation of rights will be proportionate to the legitimate aim of the law;

- The exceptional circumstances, in particular the information about the perpetrators of a particular public danger or the existence of an extraordinary criminal situation, shall be defined as the basis of special police control;

- Carrying out preventive measures should be impossible on the grounds that are actually related to the crime and criminal investigation. Police prevention should be distracted from the investigation and should aim at achieving different goals;

- Law enforcement officers prior to the commencement of preventive measures should have an absolute obligation to introduce themselves to citizens, to present their identity, position and authorities;

- In addition to the exceptions, the police must have an obligation to explain to the addressee of preventive measure the grounds for conducting the measure and the specific objective circumstances based on which the rights of a citizen are restricted;

- Law enforcement officers should be obliged to document prevention measures by the police in various forms. At the same time, a copy of the protocol drawn up on specific measures shall be automatically transferred to the addressee without additional requirements or procedures (including taking a person to the police department);

- All employees of the Ministry of Internal Affairs, who have direct and indirect contact with the citizens within the police preventive measures, must be equipped with a shoulder video camera, which will record preventive measures on compulsory basis. At the same time, the rules and standards for the unified use of this technical means should be developed;

- A citizen must receive complete information about the right to appeal preventive measures against him/her, as well as details regarding the term within which to appeal a particular measure and where to appeal it;

- Internal monitoring system of police prevention measures, as well as the procedure for the development of comprehensive statistics should be created.

III part

Chapter 1.

Principles of Oversight over Activities of the Police

Fundamental principles, accountability and transparency of democratic police require the police to be open for the supervision over its actions.[66] Accountability involves the existence of an internal and external control system, which ensures the exercise of the authority by the police in accordance with the highest standards and imposing liability for undue performance of functions. The aim of the supervisory system is to prevent the police from improper exercise of powers and avert improper control of the police by political forces and, most importantly, increase public trust and strengthen police legitimacy. The obligation of accountability of the police means that the police consents to the possibility of receiving questions on the actions and decisions made by it and receives the consequences that may follow confirming the commitment of an offense or a crime by it.[67]

According to the European Code of Police Ethics, the police should be accountable to the state, citizens and their representatives. The state control over the police measures must be distributed among legislative, executive and judicial authorities. State agencies should ensure effective and impartial procedures for reviewing complaints or statements against the police.[68]

In spite of a series of institutional reforms implemented in the Ministry of Internal Affairs in recent years, many issues that are important for many systems or society remain unresolved. Adequate and effective response to the possible crime/misconduct by the law enforcement agencies is still a serious problem.

According to the Law of Georgia "On Police", a person who believes that his/her rights and freedoms are violated by a police officer shall be entitled to appeal to a higher official, prosecutor's office or court in accordance with the legislation of Georgia.[69]

As regards the specific rule of appealing preventive measures, according to the legislation, the measure, which is carried out in the form of an individual administrative-legal act or real act, shall

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66 OSCE, Good Practices in Building Police-Public Partnerships, p. 24, [available at: http://www.osce.org/secretariat/32547?download=true, date of access 08.09.2017]

67 UNODC, Handbook on police accountability, oversight and integrity, p.9 [available at: http://www.unodc.org/, date of access 08.09.2017]

68 European Code of Police ethics, Recommendation Rec(2001)10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and explanatory memorandum, §61 [available at: https://polis.osce.org/node/4711, date of access: 08.09.2017]

69 Article 56 of the Law of Georgia "On Police".

be appealed according to the procedure established by the administrative legislation of Georgia, in an administrative body implementing the measure, if in this agency there is a superior official of the official who carries out the measure. The police action of a senior official is appealed to a higher administrative body. The decision regarding the complaint is subject to review by the General Courts of Georgia according to the rule of administrative proceedings.[70]

The Law “On Police” also establishes the mechanism of internal control over the police and other employees of the Ministry and grants this authority to the General Inspection of the Ministry of Internal Affairs.[71]

Proceeding from the above, there are several forms of supervision of the preventive measures carried out by an official of the Ministry of Internal Affairs: administrative supervision, which includes the administrative complaint and administrative proceedings in the courts and the second, the internal control of employees by General Inspection of the Ministry of Internal Affairs.

The objective of this Chapter is to evaluate the mechanisms of supervision and control of preventive measures based on international recommendations, existing legislative and statutory acts, public information and specific cases[72].

70 Ibid, Article 56.

71 Ibid, Article 57.

72 On the basis of citizens’ request, EMC applied to the General Inspection of the Ministry of Internal Affairs with regard to 3 cases, and requested to issue a written individual administrative-legal act on the stopping of a citizen in one of the cases.

Chapter 2.
Administrative Oversight

By adopting a new Law "On Police" and increasing preventive functions of the police, Georgia has imposed a large portion of responsibility for the prevention of crime on the police and equipped it with restricting, repressive powers, exercise of which grants to the police the right of rude interference with the basic rights and freedoms of a person. In view of this, it is critical to establish effective, clear and accessible rules for appealing preventive measures.

Despite the fact that the accountability principle covers not only the complaints/applications review system, the effective mechanism that exercises the public trust, represents an important indicator of high standards of accountability and helps the police to reinstate or increase public confidence index.[73]

2.1. Administrative Complaint

The main features of the constitutional state are that the interested party has the opportunity to request a review of the decision.

Before the appeal to the court, the legislation obliges a person to submit a single complaint with the superior official. The rule for reviewing an administrative complaint is provided for by the General Administrative Code, according to which the agency which reviews the complaint must thoroughly examine the applicant's request to conduct oral review and to ensure the participation of the author of the complaint in it.

The administrative complaint has three main functions: 1. administrative complaint as a means of protection of rights; 2. the possibility of self-control by the administrative bodies; 3. provision of relief to courts. In comparison with the suit, the administrative complaint has the advantage that, in the course of administrative proceedings, the complaint is validated with the expediency of the decision.[74]

> Considering the general practice of reviewing the administrative complaints filed by the EMC, it may be said that the complaint at the Ministry of Internal Affairs is a formality, despite demanding participation in the administrative proceedings when submitting a claim, in most cases the oral session is not held.

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73 UNODC, Handbook on police accountability, oversight and integrity, p.43 [available: http://www.unodc.org/, access date: 08.09.2017]

74 Paata Turava, Natia Tskepladze, Administrative Law Guidance, p. 123.

It is noteworthy that on the website of the Ministry, there is a public information page, but it does not include the following information provided for by the Appendix of the Government Resolution:[75]

- Information about heads of all structural units/territorial entities of the Ministry (in case of legal entities of public law - their heads and deputies): name, surname, photo, biographical data;

- Addresses of all structural units/territorial entities, email addresses and phone numbers. The website does not include information useful for the public, such as the location of patrol police offices – in the graph "necessary information" there is a place for a map, though it does not contain the required information;[76]

Consequently, for a person who wants to submit a claim, practical difficulty is identification of a person authorized to review an administrative complaint and submit the complaint at the relevant address. These risks are much higher when appealing measures carried out on the basis of authority, when only verbal contact can be established between a police officer and a person, while for the person it is unknown which structural unit the person is subordinated to and who is his immediate supervisor.

In this case, the solution is submission of an administrative complaint in the name of the Minister of Internal Affairs of Georgia, but it can result in dragging the process of review of the claim, as writing a complaint and its submitting to the relevant structural unit requires additional time, while time count of the review of the appeal by an authorized person will start from the date of its submission.

It is noteworthy that public information provided by the Ministry of Internal Affairs to the EMC, according to which the legal department of the Ministry of Internal Affairs and Tbilisi Police department of the Ministry of Internal Affairs, have not had any administrative claim on preventive measures by the police in the period from 2013 to May 2017 inclusive, and as to the Patrol Police department of the Ministry of Internal Affairs, according to the information of the Ministry, the department does not carry out processing of the mentioned statistic data, but according to their information, from the second quarter of 2016 to May 2017 inclusive, the Patrol Police department did not review any administrative claim on preventive authorities either.[77] The correctness of the mentioned data is put in question by another letter[78] from the Ministry of Internal Affairs, which states that in the legal department of the Ministry of Internal Affairs, 1 administrative complaint was filed against police actions in 2016.

75 See http://police.ge/ge/contact-us, [the data is evaluated as of 08.09.2017]

76 EMC, TI, assessment of the quality of transparency of the Ministry of Internal Affairs, p.22 [available: https://emc.org.ge/2017/04/25/emc-255/, date of access: 08.09.2017]

77 Letter № MIA 81701676924 of the Ministry of Internal Affairs of Georgia.

78 Letter № MIA 01701189486 of the Ministry of Internal Affairs of Georgia.

2.2. Administrative Action

The Law of Georgia "On Police" links the rule of appeal the preventive measure through the court directly to the legal form of the measure. Given that the administrative procedural legislation[79], defines certain types of claim taking into account legal acts or actions, it is important to establish in what case we have an individual administrative legal act when exercising preventive powers and when the preventive measure carried out by the police is a real act. The Law of Georgia "On Police" makes a general definition of the fact that preventive activities by the police are carried out through the use of legal forms of the activities of the administrative body defined by the Administrative Code-administrative and legal act and administrative real act.

The legislation does not indicate which event is considered as an individual administrative legal act and which the real act is. Consequently, for the person with the desire to appeal against the preventive measure it is not clear what kind of claim should be filed in each particular case.

It is interesting to note the legal nature of interviewing by one person with preventive powers, which is one of the preventive measures to avoid the threat and prevent violation of public safety and order. Paragraph one of Article 19 of the Law "On Police" provides comprehensive legal grounds for the use of the mentioned measure and obliges the addressee of the measure of the police to present an identity document.

To consider the preventive measure by the police as an individual administrative-legal act, it should necessarily include elements of the notion in formal and legal terms. The legal definition of an individual administrative-legal act provides for the possibility of dividing it into four parts. The elements of the notion are: a) administrative body; b) on the basis of an administrative legislation; c) individual legal act; d) establishes, replaces, terminates or confirms. Taking into account these components and Article 19 of the Law of Georgia "On Police", interviewing a person is an individual administrative-legal act, as it contains four main elements envisaged by subparagraph "d" of Article 2 of the General Administrative Code of Georgia: a) Police is an administrative body, when it carries out preventive measures; b) A person is interviewed on the basis of administrative legislation, in particular on the basis of Article 19 of the Law "On Police"; c) Preventive measures have their specific addressee; d) Interviewing of a person has a well-regulated legal nature. It establishes an obligation of a person to present to the police information about his/her identity. For the purpose of determining the person's identity, the person is stopped, which caus-

79 Articles 22-24 of the Administrative Procedure Code of Georgia.

es the restriction of his/her right to move[80]. Consequently, an interview of a person represents an individual administrative-legal act issued in oral form and not a real act.

In one of the cases conducted by the EMC, Tbilisi Court of Appeals made a contrary definition, which did not define the mandatory nature of stopping and interviewing in paragraph one of Article 19 of the Law of Georgia "On Police" and considered interviewing to be a management activity, real act, implemented by an administrative body[81].

In accordance with paragraph 2 of Article 51 of the General Administrative Code of Georgia, at the request of the interested party also, if the individual administrative-legal act restricts the legal rights and interests of the person, as well as in other cases directly provided for by the law, the oral individual administrative-legal act must be drawn up in writing within 3 days after its issuance. On interviewing one of the citizens, EMC was guided by this record, applied to the Ministry of Internal Affairs with reference to the relevant factual circumstances and requested to issue in the written form an oral individual act on interviewing.

The Ministry of Internal Affairs similized drawing up a protocol to issuing an administrative-legal act and excluded the possibility of writing an individual administrative-legal act in case the legislation does not define the obligation to compile the protocol.

This is, of course, a wrong approach. The protocol is designed to describe the circumstances of the measures taken. The existence of the protocol facilitates the identification of a person carrying out the event, defining the factual circumstances which is the basis for the preventive measure, i.e. the protocol is a descriptive document.

As for the individual administrative act, the individual administrative and legal act within the system of public administration of a constitutional state, as a legal form of public administration, has an important feature: to avoid the threat posed to the public security and order, the police carries out preventive measures, provided for by the Law of Georgia "On Police". These measures have a general nature in this law, they are aimed at a number of possible future cases and at a circle of indefinite persons. To carry out police measures towards a circle of individual persons and to regulate particular cases, an individual administrative and legal act is issued. This form of activity assigns to a measure by the police an individual, specific nature[82].

80 Levan Izoria, Court of Appeals, p. 31-35.

81 Judgment of Tbilisi Court of Appeals of May 23, 2017.

82 Levan Izoria, Court of Appeals, p.30.

Consequently, it is important for the legislation to define the legal nature of each particular event and thus, indicate a particular way to file a case in a court for a person who wants to appeal an action.

As for the number of cases on preventive powers reviewed by the court, according to the information of the Ministry of Internal Affairs, the Ministry was a defendant in 4 cases of the disputes of the mentioned category, 2 of which have not been satisfied, in 1 case the proceedings were terminated, while 1 complaint, based on withdrawal of the complaint by the plaintiff, remained unconsidered by the court[83].

EMC requested the indicated solutions/judgments. As a result of the analysis of the descriptive part of the first of them, we can say that the dispute is not connected with the preventive measures by the police, and is not relevant for the purposes of the present research, as the plaintiff demands during criminal investigation, the reimbursement of material and moral damages due to illegal suspension at the impound lot of his/her vehicle, taken for the purpose of conducting an expertise[84]. As to the second decision, in this case, the claim, the same, as in the first case, is compensation of moral and material damages and carrying out disciplinary proceedings against patrol inspectors, for the identification of illegal actions and adequate response. The Court considers that resolving the issue of response to the disciplinary offense by patrol inspectors and imposing disciplinary responsibility falls within the discretionary power of the Ministry of Internal Affairs, which grants freedom to it to select several acceptable decision out of several decisions relevant to the legislation. It is noteworthy that in discussing the lawfulness of the exercise of discretionary powers, the court only discusses the legitimate aim, proportionality and necessity of the implemented action and does not focus on the applicant's reference to the unethical behavior[85] of the employees of the MIA. As for the third case submitted by the City Court, this is a litigation of the EMC, which is discussed in the first part of this subsection.

83 Letter №MIA 817 01681900 of the Ministry of Internal Affairs of Georgia

84 Decision of February 28, 2017 of Tbilisi City Court.

85 Decision of January 21, 2016 of Tbilisi City Court.

Chapter 3.
Disciplinary Control

Disciplinary procedures are related to the behavior of employees employed in the police system. As they are public officials, it is considered that disciplinary procedures should fall within the sphere of the administrative law[86].

Generally, disciplinary penalties are related to improper performance of official duties and are a general term for a violation committed by a police officer which according to the national legislation does not belong to the criminal justice. Disciplinary and criminal proceedings differ procedurally from each other. For example, in case of any signs of criminal offense, in order to impose responsibility on the police, the standard of proof of reasonable assumption must exist, and in the context of disciplinary proceedings it is enough to prove that there has been misconduct allegedly committed by a person who was subject to the disciplinary process[87].

According to the European Code of Police Ethics, the applications/complaints against the police should be studied and investigated under impartial procedures. "The police investigates the misconduct/offense", this is a question that usually leads to suspicions about impartiality. Consequently, the state should develop a system that is not only impartial, but also seen by the public as impartial, and thus gain trust of the public[88].

While the police has direct contact with citizens during exercise of preventive powers, it is important that their behavior and their duties should be appropriate and consistent with legislation and ethical norms.

According to OSCE Guidelines on "Democratic principles of the activities of the police", the police must demonstrate professionalism and honesty to gain trust of the public. Proceeding from the need for determining limited resources and prioritized actions, the police enjoys discretionary powers when enforcing the law. However, the discretionary powers of the police are permitted and desirable when it is legitimate for the purpose of justice, and is in compliance with professional ethics. The Code of Ethics should reflect the highest ethical values that should be

86 UNODC, Handbook on police accountability, oversight and integrity, p.39 [available at: http://www.unodc.org/, access date: 08.09.2017]

87 Ibid, p.39.

88 European Code of Police ethics, Recommendation Rec(2001)10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and explanatory memorandum, p.69 available at: https://polis.osce.org/node/4711, date of access: 08.09.2017]

expressed in the restrictions imposed by the police. In its work, the police must show the highest degree of honesty, willingness to resist the temptation of abuse of power and the loyalty to values.

The ethical norms are always considered to be so-called Soft law, because in most cases, they are not strictly and imperatively defined in the normative acts. Consequently, development of the Code of Police Ethics is only an initial step required to elaborate a strategy for its execution, proactive monitoring and reaction to violations discovered as a result of monitoring. In case of non-fulfillment of these stages, the quality of effectiveness of the Code of Ethics is very low.

If the Police Code of Ethics defines the behavior of the police and, the rules of treatment of particular individuals, the basis for the disciplinary responsibility of the employees of the Ministry, types of penalties, the rule of imposing and removal of disciplinary penalties to/from employees shall be determined by the disciplinary statute approved by the decree of the Minister of Internal Affairs[89].

Identification of facts of violation of ethics, disciplinary norms in the system of the Ministry, inadequate performance of official duties and revealing the facts of committing particular unlawful acts and relevant response is one of the main functions of the General Inspection of the Ministry of Internal Affairs.

According to the information of the Ministry of Internal Affairs[90], the General Inspection does not maintain statistical information on the violations by the police in the implementation of preventive measures and imposed charges. As for general data, from January 1, 2013 to May 31, 2017, the General Inspection of the Ministry of Internal Affairs imposed 9531 disciplinary penalties on the employees of the Ministry.

Comparatively detailed regulations of the General Inspection activities are defined by the Regulations approved by the Minister of Internal Affairs (hereinafter referred to as the "Regulation").

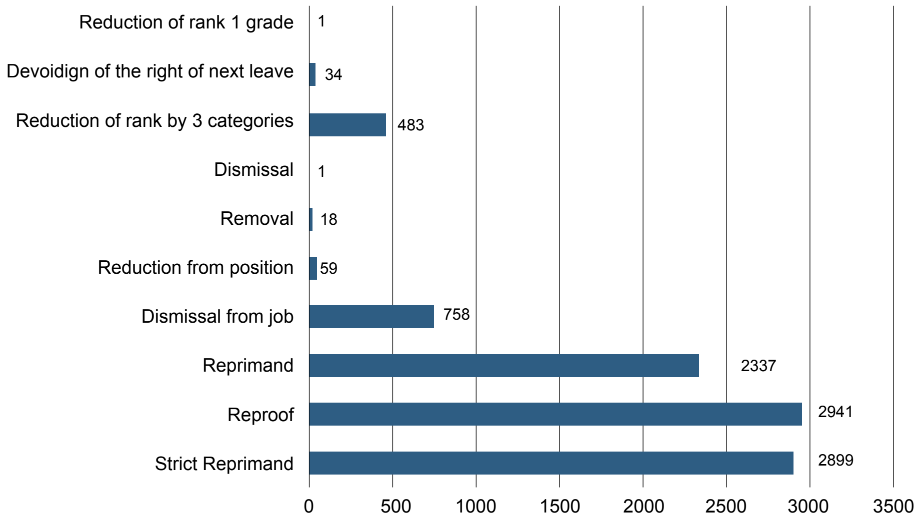
According to the provisions of the General Inspection, the basis for conducting official inspection is the information received on the offence and disciplinary misconduct committed by the employee of the Ministry (including operational information), written or oral statements of citizens and employees of the Ministry, in the forms of complaints and reports, private judgments of courts, notifications and materials received from the state and administrative bodies, as well as from legal or physical persons[91].

89 Regulation of General Inspection of the Ministry of Internal Affairs of Georgia, Article 9.

90 Letter №81701957652 of the Ministry of Internal Affairs of Georgia.

91Regulation of General Inspection of the Ministry of Internal Affairs of Georgia, Article 9.

Imposed disciplinary sanctions



A regulation generally contains information on the rule of conducting an inspection and indicates the only possible way to solve the conflict of interests and to the powers of an employee of the general inspection: receive any information on a case conducted by it, enter the administrative and service buildings, facilities and units of the Ministry without any hindrance[92].

The regulation does not specify a particular list of procedures by which the general inspection should be guided when performing official inspection, the regulation does not indicate the main guidelines of the activities of the inspection either.

Since the General Inspection has a role that differs from the role of other departments, specifically, performance of internal control is assigned to it, it is not clear whether principles set out in Article 8 of the Law of Georgia "On Police" apply to it.

The drawbacks in the activities of the General Inspection were clearly demonstrated during the process of review of several applications submitted to the General Inspection of the Ministry of Internal Affairs by the EMC, including, that by one application the EMC substantiated the disciplinary misconduct by the officers of the MIA when carrying out preventive measures and demanded an official examination.

92 Ibid, Article 9.

Although the written or oral application of a citizen is one of the grounds for conducting an official examination, the regulation does not define the timeframes for the review of the application and official examination. Consequently, the applicant does not know within what period of time the application is to be expected to be answered, or after the expiration of what period of time he/she has the right to request an answer. According to the period of review of an application submitted to the General Inspection by the EMC, it can be said that the General Inspection does not have the established practice for the uniform terms for official inspection, in case of two applications, the respondent is informed about the answer after about a month and a half, and it would take approximately two months and a half to study the circumstances indicated in the third application.

The regulation does not mention a standard of proof based on which the General Inspection should make a final decision. In addition, the text of the regulation does not contain even the indication that the General Inspection is obliged to carry out official inspections in a thorough, complete and objective manner. For example, in one of the cases of the Ministry of Internal Affairs, from the materials of the official inspection provided to EMC, through the court it is made clear that when preparing the final statement, the General Inspection relied on explanations of only two policemen and other additional evidence was not obtained, which would confirm or reject the violations indicated by the applicant. While the police officer has direct interest in the results of the official examination, the explanations given by him should not be decisive in resolving the matter.

The statute does not specify the role of the author of the application in the process of official inspection, there is no norm that regulates the communication of the General Inspection and the applicant after submitting the application. In two cases, the General Inspection did not invite applicants and other persons who have relatively detailed information, and in one of the cases, the author of the application, as well as a person who was directly witnessing the events indicated in the application.

The General Inspection of the Ministry of Internal Affairs is not obliged to notify the applicant about the actions carried out by him/her during the official inspection. In regard to the materials of the official examination, in all three cases the applicant was refused to hand over the materials of the official inspection, and Article 99 of the General Administrative Code of Georgia was indicated as the grounds for refusal and it was explained that the information requested by the applicants was an intra-agency documentation.

According to the regulation, a statement of a conclusion is issued for the results of official inspection, which are approved by the head of the General Inspection[93]. There is no separation,

93 Regulation of General Inspection of the Ministry of Internal Affairs of Georgia, Article 9.

in which case the conclusion and not the statement is issued. Taking into account the results of the communication with the General Inspection and official examination, it can be said that the conclusion is issued when the General Inspectorate recommends a disciplinary action against the employee, and a statement is issued when as a result of an investigation by the General Inspection, no violations are identified.

The statement sent to the applicant contains one sentence and it is unsubstantiated, it does not include reference to the appealing mechanisms. The rule of appealing is not determined by the regulation of the General Inspection of the Ministry of Internal Affairs.

As for the conclusion prepared by the General Inspection, despite the fact that based on the notification which the representative of EMC made on the hotline, according to the information of the Ministry of Internal Affairs, the employees were subjected to a disciplinary penalty, the General Inspection refused[94] to convey the conclusion to the applicant. This means that the applicant has no access to the substantiation, based on which the statement was drawn up not only in case of failure to confirm the offence, but also in case of confirming the offence the applicant has no opportunity to familiarize himself/herself with the substantiation, on which the General Inspection relied when imposing a penalty.

It is noteworthy that the assumed offender does not benefit from the effective guarantees of the protection, the disciplinary statute envisages only explanations by the employee[95]. At the same time, the disciplinary body gathers information and materials to prove the possibility of a person's misconduct, and at the same time establishes the final conclusion - whether or not the misconduct occurred. Accordingly, the same body is manifested as "prosecution" as well as a decision-maker. Risks emerge that political leaders may have influence on particular police workers, including manipulating this defective process to ensure fulfillment of certain orders. On the other hand, such a vague and faulty system of disciplinary liability may be the basis for the use of disciplinary sanctions against a separate police officer to further blackmail him/her. Consequently, there is a risk that the vague regulation of disciplinary liability will encourage the syndrome of impunity, which may be the basis for further influence on the police[96].

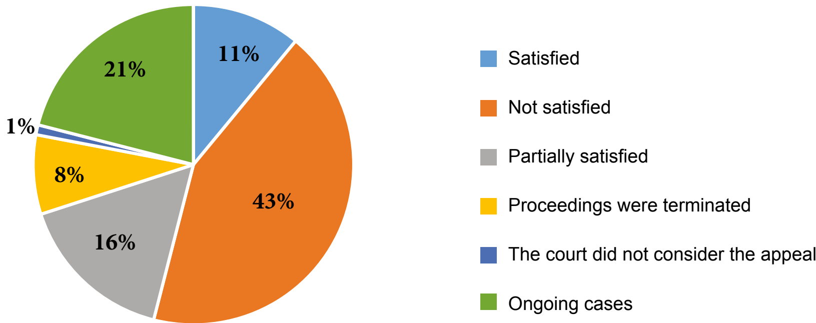
According to the information of the Ministry of Internal Affairs, the order on imposing a penalty, issued from January 2013 to May, 2017 inclusive, has been appealed by the employees of the Ministry of Internal Affairs 63 times[97].

94 Letter №MIA61701280192 of the General Inspection of the Ministry of Internal Affairs of Georgia.

95 Disciplinary Statute of the employees of the Ministry of Internal Affairs of Georgia, Article 4.

96 EMC, Political Neutrality in Police System, p. 47-48, [available at: https://emc.org.ge/2016/09/05/emc-128/, access date: 08.09.2017]

97 Letter №81701957652 of the Ministry of Internal Affairs of Georgia.



According to the information of the Ministry of Internal Affairs[98], the General Inspection is guided by up to 13 subordinate acts besides the regulation when carrying out the official inspection, which are mainly aimed at prohibiting the conduct of specific actions by the employees. For example, the employees of patrol units moving in official cars are prohibited to carry mobile phones, audio-video and/or photography equipment, except for the shoulder cameras[99], when performing their official duties; The employees of the Ministry are prohibited from driving vehicles in a state of intoxication[100]; also, the employees of the Patrol Police Department of the Ministry are prohibited from submitting their official ID cards when performing official duties[101].

While the issues envisaged by these subordinate legislative acts are defined by the Code of Ethics of the Police of Georgia and the decree of the Minister on the Approval of conduct instruction of some employees of the Ministry of Internal Affairs of Georgia, the need to address these issues in a chaotic manner, by means of separate subordinated acts, is incomprehensible.

As for the judicial control of the activities of the General Inspection, within the term of one month after submitting resolutions by the General Inspection of the MIA, EMC with regard to 3 cases, requested from the Administrative Board of Tbilisi City Court and through the court, the materials of the official examination and instructing to perform a new official examination. It is noteworthy, that within the request to transfer materials the defendant, without the contextual review of the issue, submitted at a private session of the court and handed over to the plaintiff the materials of the official examination. Consequently, if at

98 Letter № 31701422470 of the Ministry of Internal Affairs of Georgia.

99 Decree №201 of March 19, 2015 of the Minister of Internal Affairs of Georgia.

100 Decree №26 of January 17, 2013 of the Minister of Internal Affairs of Georgia.

101 Decree №497 of June 6, 2010 of the Minister of Internal Affairs of Georgia.

the first private session of the court, it will be considered possible to transfer materials of the MIA without any discussion of this issue, the initial refusal of the General Inspection is problematic and unsubstantiated.

The court allowed a claim to proceed, but the proceedings were suspended at the private session of the court. At this stage review of a private complaint on this case is already completed.

> The definitions of the courts of the first and second instance, according to which the statement, as well as the conclusion issued by the General Inspection are so-called interim acts, which cannot be appealed due to their legal nature.[102]

Thus, such conclusion, as well as the statement from the head of the administrative body, should be assessed and completed by issuance of a legal act within the framework of the appropriate legal proceedings. It is noteworthy that in the circumstances of such interpretation, the court restricts the citizen from appealing the statement of the General Inspection through the Court.

The text of the regulation of the Inspection of the Ministry of Internal Affairs is completed with a record under which a relevant statement or conclusion is prepared by the General Inspectorate for the results of the official inspection, which is then approved by the head of the General Inspection. The regulation does not contain information on further steps after the approval of the statement or the conclusion. Proceeding from the definitions received on the basis of written communication, there is a reason to believe that the conclusion that contains a recommendation about the application of the disciplinary penalty may be followed by issuance of a decree, but in case of the statement, no further document is issued on the basis of its approval. After submitting the statements, the EMC requested the summary substantiated decisions, bit according to the information received from the Ministry of Internal Affairs, the conclusion and order are not issued in these cases. Therefore, it can be said that the statement does not represent a so-called interim act based on its essence, as it is not followed by issuance of a legal act and this ends the review of the application/complaint submitted by the person.

> Definitions of the court of the first instance are problematic and noteworthy, according to which the complaint of assignment of a new official examination goes beyond the limits of review by the Common Courts according to the rule of administrative proceedings and the dispute does not proceed from the administrative law, consequently, is not subject to the law of administrative law and therefore is not subject to the court. The Court of Appeals fully agrees with the above-mentioned definition.

102 Judgment of November 15, 2016 of the Administrative Board of Tbilisi City Court.

> The Court does not consider the case of refusal by the General Inspection to carry out a new official examination subject to the review by the Administrative Board. [103]

The Court clarified that the refusal of the General Inspectorate has informative nature, and therefore, the court cannot conduct proceedings in the court on the invalidity of the document of the mentioned category. The dispute over the issue will be continued by the EMC in the Court of Appeals by way of filing of a private complaint.

103 Judgment of July 17, 2017 of the Administrative Board of Tbilisi City Court.

Chapter 4.
Conclusion and Recommendations

Based on the above mentioned, it is clear that there is no effective mechanism for supervising preventive measures by the police. The administrative supervisory forms and internal disciplinary control of the officers of the Ministry of Internal Affairs has drawbacks, which cannot be balanced by the judiciary, which cannot see what role it may have in the dispute between the citizen and the Ministry of Internal Affairs.

Therefore, it is advisable to ensure mechanisms of effective, transparent and accountable supervision over the preventive measures:

- Publication on the web page of the information about the heads of all structural units/territorial bodies of the Ministry of Internal Affairs, as well as addresses, e-mails and telephone numbers of all structural units/territorial bodies;
- Conduct of comprehensive administrative proceedings related to the administrative complaints and substantiation of the decision taken on the basis of the examination and evaluation of all the circumstances relevant to the case;
- Clearly defining the legal form of each preventive measure at the legislative level;
- Processing and proactive publication of the statistical data on the violations revealed by the General Inspection of the Ministry of Internal Affairs in the course of preventive measures and the imposed charges;
- Regulating the activities of the General Inspection by means of clear and specific procedural norms; (including terms, stages, a standard of proof, forms of obtaining evidence, etc.);
- Ensuring the involvement of the author of the application/notification in the process of the study of the application and provision of information about the circumstances revealed during the official examination;
- In case of failure to prove misconduct, submitting substantiated documents to the applicant;
- Creating efficient mechanisms of appealing the results of the official examination and writing them in the legal acts.