

Overview of the flaws of the ongoing investigation of the death of Temirlan Machalikashvili

1. General Introduction

Human Rights Education and Monitoring Center (EMC)¹ protects the interests of Temirlan Machalikashvili, whose life was deprived as a result of a special operation conducted by the State Security Service in the village of Duisi (Akhmeta Municipality) on December 26, 2017, and his family members on the national level, as well as before the European Court of Human Rights. Application for the European Court of Human Rights is preparing in partnership with European Human Rights Advocacy Center (EHRAC) based in London, UK². Investigation at the national level is being carried out under the Investigation Unit of the Prosecutor's Office, in relation to the death of T. Machalikashvili. Investigation concerns the allegedly committed acts of the State Security Service (hereinafter SSG) employee under the subparagraph "c" of Article 333 (3) of the Criminal Code of Georgia (abuse of power). The investigative process is being carried out with substantial legal flaws which indicates the formalistic nature of the investigation and significantly reduces the expectations of full and objective investigation. At the initial stage of the investigation, the EMC requested to analyze the case on deprivation of life in light of human rights standards, and, assess the measures taken to prevent and minimize violence at the stage of planning and conducting the special operation, beyond the issues of necessity and proportionality of the shooting, including the assessment of the expected risks, the scale of the special operation, the coordination of the process, the training of the Special Forces, assessment of the appropriateness of the instruction issued for them and the use of force regulations.

The ongoing investigation process is substantially flawed and does not meet the international standards of effective investigation. Among them, we, the lawyers of Temirlan Machalikashvili's family, do not have access to any information related to the activities of the SSG, which significantly limits the possibility of proper evaluation of the scale of the investigation. In spite of all our requests and utilization of all legal mechanisms,

¹Human Rights Education and Monitoring Center (EMC) is local human rights organization working on the issues related to social policy, equality policy, democracy and justice. More information regarding organization is available here: www.emc.org.ge; <https://web.facebook.com/EMCRIGHTS/>

²More information regarding organization is available at: <https://www.mdx.ac.uk/our-research/centres/ehrac>; https://web.facebook.com/EHRAC/?_rdc=1&_rdi

the Prosecutor's Office did not provide the lawyers the access to this part of the case materials. In the first stage of the investigation, conducting important investigative actions and collecting the evidence have been carried out by the SSG, in violation of the principle of institutional independence, which affects the validity of the evidence (including hand grenade), and in some cases there is a suspicion of falsification and destroying the evidence. Within the scope of investigation T. Machalikashvili's father, Malkhaz Machalikashvili, is not yet assigned as a legal successor of the victim. Specific investigative work, essential for learning the truth on this case, is still not conducted.

In this document we present the assessment of the deficiencies in relation to the ongoing investigation of deprivation of life of T. Machalikashvili and kindly ask for your timely and effective reaction within your mandate.

2. Problem of recognizing Malkhaz Machalikashvili as the victim's legal successor

Investigation Unit of the Prosecutor's Office, till this day, does not recognize Malkhaz Machalikashvili as a victim's legal successor and gives the possibility to the family members and the lawyers to get familiarized with the case materials only due to the high public interest.

On January 9, 2018, Human Rights Education and Monitoring Center (EMC) addressed the Investigation Unit of the Prosecutor's Office with the request to assign Tamerlane Mechanicsville a victim status. On January 16, 2018, after the death of Mechanicsville, EMC addressed the Prosecutor's Office with the request to recognize Malkhaz Mechanicsville as a victim's legal successor. However, both of the requests were rejected by the Tbilisi Prosecutor's Office in accordance with Resolutions of January 9 and January 18. The Prosecutor's Office based their decision on the presumed absence of proper grounds for the recognition of a victim's legal successor and asserted that various investigative/procedural actions in relation to the case have to be conducted, including the results of forensic, genetic, traction and ballistic examination.

Since the recognition of the victim's legal successor is related to the results of the procedural/investigation process, although EMC believes that the decision is unjustified, taking into consideration the best interests of the case, another request in relation to the recognition of the status was made on March 14, 2018. During this period, the results of the expert examination to determine the circumstances surrounding the case had already been known. According to the Prosecution's explanation the persons participating in the special operation were identified and questioned and the forensic medical examination concluded that December 26, 2017 firearm injuries inflicted upon Tamerlane Machalikashvili were directly related to the resulting death, which, naturally, referred to the damage to Malkhaz Machalikashvili and his family and created grounds for recognizing him as the victim's legal successor.

Despite this, our request was rejected by the Prosecutor's resolution of March 16, 2018 and the reason for refusal was that the investigation was in continuous regime and there was no legal basis for recognition of a victim at that time. The said Prosecutor's resolution remained in force by the decree of March, 27, 2018 of the Deputy Head of the Investigation Unit.

It should be noted that motivation of the Investigation Unit of the Tbilisi Prosecutor's Office is unsubstantiated with regard to the issue of recognition of Malkhaz Machalikashvili as victim's legal successor and contradicts the goals of the Criminal Code of Georgia, since, on the one hand, at the time all the investigative / procedural actions have already taken been conducted, the results have been known, the causal connection between the death of Machalikashvili and the action of a member of a special force has been established, and, on the other hand, it is important that the applicable legislation does not provide for standard for the recognition of the status of the victim or victim's legal successor other than the assumption of the incurring damage in case of offense.

In addition, the analysis of the existing legislation shows that in order to recognize the status of the victim or a victim's successor, it is not necessary to prove that the offence took place, since whether the criminal action took place is a matter of judicial assessment, and on the investigation stage the investigatory body takes into consideration the assumption of the offense. It should be noted that, according to the applicable criminal procedural legislation, identifying as the legal successor of the victim is the only way to get acquainted with the case materials and monitor the investigation process. Even though M. Machalikashvili has the possibility to get acquainted with the parts of the criminal case which are not confidential, in accordance with the good will of the Prosecutor's Office, denial to recognize Machalikashvili as a legal successor of the victim creates certain legal problems, in particular, it complicates the court appeal process in relation to certain circumstances. Additionally, recognizing the status of the victim/legal successor of the victim also relates to the importance of the position of the victim/legal successor in the criminal law process, which includes the involvement of the victim/legal successor in the investigation process, in the monitoring of the the investigation process and the assessment of its effectiveness.

Considering all this, in light of the legal requirements and the results of the investigative / procedural actions, it is unclear as to why M. Machalikashvili is not recognized as a victim's legal successor.

3. Denial to access the case materials consisting state secrets

Criminal case of T. Machalikashvili's deprivation of life includes materials containing the state secrets, and Malkhaz Machalikasvhili's lawyers do not have an opportunity to access those materials, based on the argument that they do not have the clearance to do so.

In order to access the materials, on February 14, 2018, EMC submitted a request to the Investigation Unit of the Prosecutor's Office and asked for the full access to the materials containing the confidential information. However, by the decision of March 3, 2018 of the Tbilisi Prosecutor's Office, EMC's request to gain access to the case materials containing state secrets was rejected, with the argument that the applicant did not submit a permit issued by the State Security Service on accessing the materials containing state secrets, in accordance with Article 20 of the Law of Georgia on State Secrets.

Although the EMC considered the motivation of the Prosecution Service unsubstantiated, in accordance with the best interests of the case, in order to apply for the mentioned permit, on 16 March 2018, we addressed the SSG and requested individual permit in accordance with Article 20 of the Law of Georgia on State Secrets on materials containing the state secrets in the criminal case N043261217801 of the Investigation Unit of the Prosecutor's Office. In relation to this, in accordance with the State Security Service's Decree of April 23, 2018 we were refused to grant permission for individual access, on grounds that there was no state agency or legal entity having access to state secrets. This decision is appealed by EMC in the Court.

EMC believes that the State Security Service's and the Prosecutor's decision not to allow Malkhaz Machalikhvili's attorneys to gain access to the materials containing the state secrets is unjustified and illegal, as the Law of Georgia on State Secrets provides for the possibility of individual access to state secrets in the existence of relevant conditions **by the physical persons utilizing appropriate protective mechanisms for their professional and service needs**. In this case, in the scope of the investigation of the death of T. Mechanicshvili, we should consider attorneys as those persons who need information containing the state secrets as in order to effectively perform their professional duties, it is important that they have the opportunity to get acquainted with this information, to conduct its assessment and, if necessary, to submit specific requirements to the investigative body in order for them to effectively conduct investigation.

The verbal explanation provided by the investigative body established that the case materials essentially include the testimonies of the Special Forces officers who were at Machalikhvili's residence and were involved in the shooting on December 26, 2017. Gaining access to these testimonies is important for the victims in order to monitor investigation process and realize their own procedural rights.

Testimonies of the Special Forces clearly indicate important circumstances for the legal consequences of the case and before gaining access to this information, lawyers and independent experts do not have the opportunity to analyze the explanations made by the Special Forces, to assess their compliance with the established factual circumstances, to assess how effectively and correctly the investigation is underway and consequently, to put forward relevant requests in relation to the investigation. Additionally, it should be noted that EMC requests the Investigation Unit of the Tbilisi Prosecutor's Office to study in detail the following: 1. Legal acts regulating the terms and conditions of use of force by the Special Forces; 2. Copy of

the decision made by the SSG regarding the special operation conducted on December 26 and other relevant acts related to the special operation. 3. The statements of the employees of the Station Security Service responsible for planning and implementation of the special operations; 4. Copies of documented reports on the use of force by the Special Forces, which they were supposed to submit to their superiors in accordance with the principles of the United Nations on the use of force and firearms³.

It is noteworthy that the said legal acts in the case are also confidential and lawyers do not have the opportunity to assess whether the planning, decision making and the implementation of the special operation were in compliance with the established standards. The complete restriction of access to the materials deprives the family from examining the most important circumstances of the investigation, essentially limits their effective control over the investigation and the possibility to have any real trust.

4. The problem of institutional independence and destroying/falsifying the evidence

One of the most important shortcomings of the said criminal case is the fact that the most important investigative actions at the first stage of investigation, as well as the evidence gathering process conducted by the SSG, the interested party, took place in violation of the institutional independence standard, some evidence has been destroyed, or there is suspicion about their falsification.

The standard of institutional independence of the investigation in this case implies the protection of the principle of the investigative jurisdiction referred to in Article 35 of the Criminal Procedure Code of Georgia. According to the article, the investigative jurisdiction is defined by the Order No. 34 of the Minister of Justice of Georgia (July 7, 2013) on "Criminal Case Investigative and Territorial Jurisdiction Issues." In accordance with Articles 2 and 3 of the said Order, the investigation of the offense committed by the employee is conducted by the Investigation Unit of the Prosecutor's Office. Investigation in accordance with the Criminal Procedure Code of Georgia implies obtaining the evidence related to the crime, which is carried out by specific investigative actions. Accordingly, investigative activities, under principle of the investigatory jurisdiction, should be conducted by the investigative body that has the right to conduct a criminal investigation. Otherwise, the investigative actions will be considered to be conducted by the unauthorized person and the evidence obtained will be considered as illegal. Additionally, the principle of institutional independence is essentially linked to a comprehensive, full and objective investigation, which requires the removal of the investigative unit employees from the investigation process which may be in some way related to the case and have the interest in the results of the case. Considering the subjective interests of the agency employees who could be related to the case, the specified procedure provides the possibility for impartial

³ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

investigative actions, minimizes the risks of concealing / falsifying the evidence and creates the basis to conduct the objective investigation.

In this situation, the criminal case materials prove that after the Special Forces team member of the State Security Service fired at T. Machalikashvili and wounded Machalikashvili was taken to the hospital, investigators of the SSG carried out investigative actions in the bedroom and in the house. In particular, Malkhaz Machalikashvili's house was searched and mobile phones, computer processors were seized, and a hand grenade was removed from the Temirlan Machalikashvili's bedroom, a grenade which, according to SSG, Temirlan Machalikashvili tried to activate, which led to him being shot at. Together with the above mentioned, the mobile phone owned by Temirlan Machalikashvili and presumably the headphones were removed.

Conducting investigative actions by the SSG employees, after they fired at T. Machalikashvili, violates the principle of institutional independence as the agency has become an interested person after the agency employee fired a shot, which may interfere with the conduct of the investigation. Consequently, the validity of the evidence obtained by the investigatory activities carried out by such an interested person can be questioned. Also considering that for about three hours the actual control over the house was exercised by the State Security Service employees and T. Machalikashvili's family did not have the opportunity to control their actions.

It is important that the Employees of the State Security Service did not immediately submit the collected evidence to the Investigation Unit of the Prosecutor's Office and submitted them only after two months, together with the results of the already conducted expert examinations.

It should be noted that, since the initial stage of the investigation, EMC has been putting forward the issue of State Security Service submitting the evidence from the investigative activities conducted on December 26, 2017 to Investigation Unit of the Prosecutor's Office. On 26 January 2018, another extensive and substantiated statement was submitted to the investigative body, requesting that evidence is transferred to the Prosecution Service and attached to the criminal case materials. **In spite of our requests, the investigative body only addressed the State Security Service on February 8, 2018 with the above-mentioned request, which was satisfied after about 10 days.**

The SSG violating the principle of institutional independence of the investigation indicates the falsification of the hand grenade and shows that the assumption that T. Machalikashvili resisted the arrest is unsubstantiated. In particular, the materials of the criminal case in question have not yet identified where the hand grenade was originally placed. The photographs in the case file somewhat determined that a hand grenade, which was detonated by the employee of the State Security Service, was placed on the left side of the bedroom, however the search orders by the SSG do not specify where the grenade was originally located.

To determine this, the lawyers of Machalikashvili requested the Explosive Ordnance Disposal Specialist to be questioned and to get acquainted with the information provided. According to the Investigation Unit of Tbilisi Prosecutor's Office, the specialist was questioned, but the information provided is not available to us by the argument of the existence of materials containing state secrets. Additionally, the results of the expert examination carried out on the hand grenade and the fact that SSG exercised control over the Machalikashvili's house for several hours strengthens the suspicion whether the grenade in the T. Machalikashvili's bedroom even existed. According to the dactyloscopic examination ordered by the State Security Office, fingerprints found on the hand grenade, which was allegedly taken from the Machalikashvili's house, are insufficient for identification, and there are no fingerprints at all on the firing mechanism. According to the biological expertise conclusion, identical material of Machalikashvili's genetic profile identified on the grenade is a blood sample. It should be noted that the emergence of genetic profile on the hand grenade is not difficult, as it has already been mentioned, for 3 hours after the shooting, the State Security Service employees were controlling the house and they could freely transfer genetic profile of Machalikashvili on the hand grenade.

The known factual circumstances of the case show that the arguments that Machalikashvili held the grenade or that he resisted the arrest are unsubstantiated. In particular, the family members and the lawyers were not presented with any evidence that directly indicates T. Machalikashvili owned the grenade. In addition, according to the case materials, the trace of the bullet shot at Machalikashvili is found on the head of his bed, which, with high probability, indicates that Machalikashvili was lying on his bed at the moment of the shooting and renders the possibility of resistance. It should be noted that a proper complex examination is ordered to confirm these factual circumstances, the results of examination will be made publically available in the nearest future.

According to the conclusions of the investigative actions and expertise conclusion submitted to the Tbilisi Prosecutor's Office by the SSG, biological, dactyloscopic and ballistic examinations were ordered by the SSG and during the ballistic examination, in accordance with the State Security Service request, a test was performed on the grenade, which resulted in it being destroyed. Accordingly, the Prosecutor's Officer no longer has the possibility to conduct expert examination of the said grenade. It should be noted that in this case, the determination of the validity of the hand grenade had no legal significance, and consequently the fact that it was destroyed once again indicates the self-interest of the State Security Service and their interest of obstructing the investigation.

It is important that one of the problematic circumstances in the case is that the bullet shell was not extracted on the scene, which effectively complicated the analysis of the shooting distance. Shell was submitted to the Investigation Unit of the Prosecutor's Office only about two months later. As explained by the State Security

Service, the problem of seizing the shell from the scene was related to the damage of a part of the weapon, which led to the bullet getting stuck in the machine gun. After changing the damaged part of the weapon and the firearm was transferred to the ballistic expertise, which resulted in changes in the ballistic examination results. In particular, due to absence of shell, it was impossible to determine the distance of the shooting and the weapon's ballistic expertise could not determine if there were any specific details of the firearm damaged.

Considering this, the issue of falsification of evidence naturally has to be put forward, which affects the legal consequences of the investigation and indicates the personal interest.

5. Problem of conducting separate investigative actions and obtaining evidence

In the criminal case to be examined, under the framework of the investigation by the Investigation Unit of the Prosecutor's Office of Tbilisi, EMC requests the review of the lawfulness of use of force during special operations against Machalikashvili on December 26, 2017, under which the investigative body should examine in detail the planning stages of the investigative actions conducted on December 26, 2017 by the State Security Service in relation to T. Machalikashvili. Specifically, the persons and agencies responsible for carrying out the investigative action should be identified, what their strategy was like, whether they had sufficient coordination with each other, why the decision was made to carry out the investigative action in this form and why the issue of conducting the action in other environment was not discussed.

In order to evaluate the investigative actions it is important that investigating body examines whether the persons responsible for the decision had any reasonable information that had become the basis for conducting the investigative action in this manner. Therefore, the investigative body must examine whether the State Security Service had any justified information that the persons in relation to whom the investigative action was to be carried out had the possibility to resist with firearms and whether the information was verified. In addition, it is important to identify whether, during the planning of investigative action, the agency worked on the issue of minimizing risks and whether the instructions on the use of minimally coercive mechanisms had been issued.

In the absence of such information in particular, when the investigating body does not have any idea how realistic is the offensive resistance by the perpetrators, they do not have the possibility to accurately assess the conditions of the investigative action, which may increase the risks of a mistake by the implementing persons, which in turn affects the issue of lawfulness and criminal liability.

When studying the lawfulness of force used against Temirlan Machalikashvili, it is important that investigative body studies the adequacy of the training of the participants of the investigative actions, instructions given to them and the adequacy of the actions of the Special Forces members during the investigative actions. In particular, according to Article 23 of the Law of Georgia on "State Security", during the investigative actions,

the person is authorized to use firearms and special means only if they have undergone special training and according to paragraph 6 of article 26 "Active use of firearms against person should be preceded by verbal warning and then a warning shot. A warning shot may not be carried out if necessary." The same article also provides for the possibility of a shot without warning, which is essentially related to the urgent self defense and extreme necessity. Because of the rules set out in the above-mentioned Articles, the investigative body should examine in detail whether or not the persons carrying out the investigative actions have been trained, when they were trained and what was the methodology. At the same time, it should be assessed whether there was a possibility of the preliminary warning before the gunshot against Machalikashvili and whether the warning took place, the clarification of the abovementioned detail is even more important, considering that according to the family members who were present there, the members of the Special Forces fired immediately, without preliminary warning. It is also important to assess whether the members of the Special Task Force received instruction in the process of conducting the investigative action and what are the legal regulations for issuing the instructions.

In assessing the investigative action and the responsibility of specific individuals, important information can be provided by the reports of the responsible persons after the completion of the investigative actions, in particular under Article 26, paragraph 10 of the Law of Georgia on State Security: "The employee shall be obliged to promptly inform immediate supervisor and the prosecutor in case they utilize active firearms." Consequently, EMC sought to study these reports, which would allow the investigating body to assess the development of the action, the causes of the concrete action and question the reliability of the relevant persons in case of incompatibility of the facts recorded in the report with the factual circumstances of the case.

Despite the above mentioned instructions for the investigative body and despite many requests by the EMC, we are still not aware if the identified issues have been studied and what are the results.

In addition to the lawfulness of the special operation, the investigative body has not yet studied the mobile and headphones owned by Temirlan Machalikashvili. As already mentioned, the cell phone was removed on December 26, 2017 from the T. Machalikashvili bed-room by the employees of the State Security Service. However, this item has not yet been submitted to the Investigative Unit of the Prosecutor's Office and has not been examined. In particular, the victim does not know whether there are traces of blood on Machalikashvili's mobile phones, what is the size of the traces, what kind of micro particles are left on it and etc.

The photographs confirm that there were also headphones in the bed, and its location and the fact, which is also confirmed by the investigation, that T. Machalikashvili shared funny videos on social networks several minutes before the incident, creates an assumption that T. Machalikashvili used the headphones and could

not hear the members of the Special Forces entering in. In spite of existence of this version, the investigative body has not yet studied this issue, also considering that headphones had not been removed as part of the investigation and according to the family members of T. Machalikashvili, they have not seen the item afterwards.

It is important, that the issue of providing urgent medical assistance to the wounded T. Machalikashvili is problematic and not properly studied.

According to the information provided to EMC by LEPL „112” on February 8, 2018, calls were made to 112 at 04:17:12, 4:20:55, 4:30:25, 4:37:46 and 4:43:27 in the Omalo village of Akhmeta municipality (which was changed, and the place of requesting assistance was identified as Duisi) to request emergency medical assistance. The letter of February 6, 2018 of LEPL "Emergency Situations Coordination and Urgent Assistance Center" notes different times, according to which, on December 26, 2017, they received information requesting urgent medical assistance at the village of Omalo of Akhmeta Municipality at 04:18 and at 04:26 Akhmeta Emergency Medical Assistance brigade on its way met with unconscious young man, with a head wound, who at 04:34 was transported to „Unimedi Akhmeta Regional Hospital” LTD. Considering the time differences, if Temirlan Machalikashvili received urgent medical assistance at 04:26 and was taken to the hospital at 04:34, then why the calls requesting immediate medical assistance were made to LEPL “112” at 4:30:25, 4:37:46, 4:43:27 am is unclear. We requested the investigative body to verify the information and provide audio recording from "112", but we have not received any explanation yet.

6. Violation of presumption of innocence and absence of access to case files of the ongoing investigation under article 331¹

As it is known already, in parallel to investigation about deprivation of life of Temirlan Machalikashvili State Security Services conducted investigation regarding the alleged commission of the acts foreseen by article 331¹ of the Criminal Procedure Code. The special operation in T. Machalikashvili's home was conducted precisely due to his alleged connection to this criminal act; however, his detention did not take place and neither were charges pressed against him. Despite the fact that T. Machalikashvili was not charged, statements made by the State Security Services disseminated through media outlets, without assumption pointed to criminal act of T. Machalikashvili and presented him as a criminal in a declaratory manner, which was a serious violation of the fundamental principle of presumption of innocence. EMC has filed a complaint in court on behalf of the family. According to our assessment, declaratory statements about his guilt, as well as publishing fragmented information was an attempt to cover up the crime committed against Temirlan Machalikashvili and his family and to dehumanize the victim.

It has to be noted, that after hospitalization of Temirlan Machalikashvili he was under intensive police supervision in the hospital ward, however, according to the statement of the Prosecutor's office, he was not a detainee, due to which lawyers did not have access to criminal case files concerning charges against Temirlan. Despite a number of requests by EMC, up until now the progress of investigation against Temirlan is unclear and accordingly, family members are deprived of the possibility to get familiarized with the case files, which concern Temirlan's guilt. In these circumstances, we monitor fragmented information spread by media, which is aimed at creating Temirlan's image as a criminal, however these materials seem to be evidently unsubstantiated. Several weeks ago, information spread by media outlets⁴ revealed that in the framework of the ongoing investigation by the State Security Services regarding aiding and abetting terrorism, the content in the phone of T. Machalikashvili was studied in the U.S. According to information disseminated, T. Machalikashvili communicated with A. Chataev and in the conversation with an unknown person through an application installed in the mobile phone, he discussed blowing himself up, and in the mobile phone he kept photos of persons detained and liquidated during the special operation on Salosi avenue on November 21-22. Despite the fact, that before spreading this information through media outlets, lawyers requested transfer of Temirlan Machalikashvili's phone and examination of it by Tbilisi Prosecutor's investigative unit, this request was not granted and only after media spread the information did the investigative authorities allow lawyers of the family to get access to the content in the phone. Access to case materials revealed details about the case, which may point to lack of substantiation for Temirlan's guilt in the framework of the ongoing investigation concerning aiding and abetting terrorism. Namely, first it has to be noted, that the information that lawyers were provided with and had access to do not include concrete information, which may relate to communication with relevant persons, calls, text messages etc. and may point to communication of T. Machalikashvili with A. Chataev and aiding and abetting terrorism in any form. In contradiction to the information spread by the media regarding telephone calls between A. Chataev and T. Machalikashvili, up until now investigative authorities and State Security Services have not presented any document, including telecommunication data which would attest to this kind of communication. In the presented materials, there is not any information about any type, including day-to-day ordinary communication between T. Machalikashvili, Sh. Borziev, A. Soltakhmadov or other persons charged with aiding and abetting terrorism. It has to be noted that the presented materials do not include data after December 25, 2017, among others audio file sent to friends by Temirlan through a mobile application on December 26, 2017 at 03:39 a.m.

Furthermore, it has to be noted that the text message conversation, according to information spread by media initially, was with a person, whose telephone number could not be identified. The files show that the conversation is with a friend who is a girl and major part of the content concerns common acquaintances, details of everyday life, sport and films. As for the information spread by media regarding the so-called

⁴ <https://imedineews.ge/ge/video/7993/temirlan-machalikashvilis-teleponis-egspertiza-dasrulda>

"Istishkhadi", after being familiarized with the whole content, it became clear that the conversation concerned a video, where blowing up of a car is depicted and the context of the video, as well as the phrase used in Kisti dialect characteristic to Duisi population indicated attitudes of self-irony and humor. Discussion of such issues by a young boy in an everyday, ordinary conversation may be indicative of a social problem, however, this conversation does not relate to A. Chataev and persons affiliated with him in any way and neither does it indicate a real intention of committing a crime.

State Security Services undertook inspection of data in the phone of T. Machalikashvili and translation of the content in it with the help of a translator. However, revision of the translated materials, which was done by EMC with the assistance of an invited translator indicates problems of translation and irrelevant use of the separate translated phrases. Major part of the translation presented by State Security Services is characterized by significant mistakes, on some occasions antonyms are used instead of the words' actual meaning, which significantly changes the sentence and its sense. Due to the above, obviously, the flawed translation questions its adequacy and requires that the investigative authorities ensure new and correct translation.

It has to be noted additionally that the photos of Sh. Borziev and A. Soltakhmadov, found in the mobile phone of T. Machalikashvili do not automatically indicate his support of terrorism, as family of T. Machalikashvili has many times explained, they knew Borziev and Soltakhmadov, which indicated the possibility of T. Machalikashvili having photos with those persons. However, this does not simultaneously imply that he had knowledge about these persons' identity and that he was himself implicated in a crime in any form.

It follows from the above, that periodic dissemination of information about the ostensible guilt of Temirlan, particularly of information, which is essentially distorted and unsubstantiated, violates presumption of innocence and harms family members of the deceased.

With regard to damage inflicted on the family of T. Machalikashvili, it has to be noted that they were ill-treated on December 26, 2017, during the special operation, indicated by several circumstances: 1. Special operation started at night, and concerned persons who were sleeping, for reasons unknown to them and without any explanation from the outset. Special task force officers forced family members of T. Machalikashvili to lay down, had guns pointed at them and did not allow to move. Because of this action, Aiza Margoshvili fainted and was unconscious for several minutes⁵, while Nata Machalikashvili in this position could see and hear how her brother was shot, which caused anxiety and suffering⁶. 2. Special task force

⁵ See above under Factual Circumstances;

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officers completely isolated family members, controlled them in an aggressive and degrading manner and did not allow them to leave the room approximately between 4 a.m. to 10 a.m. They were under surveillance by an armed person, they were not allowed to use bathroom, and therefore Elene Machalikashvili had to pee in front of family members and other persons unknown to her. 3. Temirlan Machalikashvili was shot in the presence of his family members and despite number of requests by them, they were not informed about the health condition and whereabouts of their family member, when they assumed with a high probability that he was wounded. Condition of Nata Machalikashvili has to be noted as she though in the dark saw how his brother was shot, without warning and any communication and she understood that he may have been seriously wounded. Further, she had to see emotional state of her family members, had to calm them down, care about their health, which inflicted additional psychological damage on her and caused her suffering. 4. The circumstances deteriorated health condition of Elene Machalikashvili and as a result, she had an epileptic seizure. Despite the fact that she is a senior person, was in a severe condition, and her resistance was ruled out, officers for a considerable time refused to provide medical assistance to her and did not allow to use bathroom even when they realized that she had a serious health condition. 5. After the special task force officers left their home, family members saw the bedroom of T. Machalikashvili full of blood and learned about the health condition of their family member only in the hospital.

Measures of control and restrictions used by special task force officers towards family members was not proportionate and clearly exceeded those permitted in the absence of resistance. It has to be noted that the court had issued an order regarding the detention of T. Machalikashvili and search of his home. Accordingly, these measures had to comply with the legal regime set by Criminal Procedure Code of Georgia in relation to conduct of investigative measures, based on which proportional coercive measures may be used only in case of resistance.⁷ In this case, it is established that the family of T. Machalikashvili did not resist in any way and only asked for information about their son's health condition. It has to be noted, that persons present at the scene may be prohibited to leave or to communicate with each other, however, necessity of this has to be established. As family of T. Machalikashvili did not resist, their mobile phones were confiscated, it is not clear what the necessity was for prohibiting use of a bathroom or instructing to leave the house after some period.

It follows that the situation and conditions were degrading to the family of T. Machalikashvili and caused their mental and psychological suffering, which constituted an act foreseen by 144³ of the Criminal Procedure Code. Accordingly, EMC addressed investigative unit of Tbilisi Prosecutor's office with the request of determining appropriate responsibility for the actions, however, the investigative unit only interrogated family members and still has not decided to start an investigation.

⁷ Paragraph 7 of article 111 of Criminal Procedure Code

1. Conclusion and Requests

Taking into account all of the above facts, it is evident that investigation on the facts of deprivation of life of Temirlan Machalikashvili is ongoing with significant shortcomings and does not satisfy fundamental principles of effective investigation. On the one hand, Temirlan Machalikashvili's case turned out to be symptomatic of the essentially security oriented policy in the Pankisi Gorge undertaken by the state for years, which implies labelling local population for the most part as sources of threats and using harsh and intensive police control and disciplining measures. On the other hand, it illustrates the challenges with the institutional mandate of the State Security Services, characterized by conflicting/incompatible competences and concentration of power. Considering the scale of human rights violations and its social effects in the case, we believe it is important that the Government pays due regard to the ongoing investigation.

Corresponding to the above violations, EMC urges

The Government of Georgia

1. To conduct effective, objective and timely investigation of the case concerning deprivation of life of Temirlan Machalikashvili and to identify criminal responsibility of those persons, who did not properly plan and carry out the special operation in the home of Temirlan Machalikashvili, as well as those who committed alleged crimes of falsifying and destroying evidence;
2. That the Chief Prosecutor personally undertakes supervision of the case concerning deprivation of life of Temirlan Machalikashvili for ensuring independent and effective investigation and addresses the respective Prosecutor in writing with substantiated instructions;
3. To ensure access of lawyers representing Temirlan Machalikashvili's family to case files of the ongoing investigation, which qualify as classified information;
4. To ensure that a meeting with Temirlan Machalikashvili's family and their lawyers takes place timely to discuss the shortcomings in the investigation.

The Parliament of Georgia and its respective committees

1. To acknowledge serious social effects of the case regarding deprivation of life of Temirlan Machalikashvili for the Pankisi Gorge, engage in examination of human rights violations in the activities of State Security Services and the Prosecutor's office in relation to this case and ensure effective parliamentary supervision over their activities, among others, summon representatives of those authorities and hear their reports;
2. that the Human Rights Protection and Civil Integration Committee prepares legal assessment and relevant recommendations on the case regarding deprivation of life of Temirlan Machalikashvili;
3. to recognize serious adverse consequences of the essentially security oriented state policy in the Pankisi Gorge and the problem of distrust between the population of Pankisi Gorge and state

institutions after the case of Temirlan Machalikashvili⁸ and give directive instructions to respective bodies for administering policy in the Gorge;

4. that the Human Rights Protection and Civil Integration Committee, as well as the Legal Issues Committee organize a meeting with Temirlan Machalikashvili's family and leaders of the Pankisi Gorge population, organizing of which can also be undertaken by EMC.

Prime Minister of Georgia

1. to acknowledge serious social effects of the case regarding deprivation of life of Temirlan Machalikashvili for the Pankisi Gorge, engage in examination of the activities of State Security Services and the Prosecutor's office in relation to this case and consider the political and social significance of the case, as well as to personally undertake supervision over the case;
2. to recognize serious adverse consequences of the essentially security oriented state policy in the Pankisi Gorge and the problem of distrust between the population of Pankisi Gorge and state institutions after the case of Temirlan Machalikashvili and give directive instructions to respective bodies for administering policy in the Gorge.

State Security Services

1. Recognize and cease violation of the fundamental principle of presumption of innocence against Temirlan Machalikashvili;
2. To ensure access of lawyers representing Temirlan Machalikashvili's family to case files of the ongoing investigation under subparagraph "c" of paragraph 3 of 333 of the Criminal Procedure Code, which qualify as classified information;
3. To ensure access of Temirlan Machalikashvili's family and their lawyers to all case files, which relate to Temirlan Machalikashvili in the case of aiding and abetting terrorism;
4. Recognize serious social effects of the repressive special operation carried out in the Pankisi Gorge in contradiction to human rights standards and closely observe human rights and equality principles in their activities in the Gorge, furthermore base its policy in the Pankisi Gorge on approaches of social and political inclusion instead of control and punishment;

⁸ On this issue see: <https://emc.org.ge/ka/products/pankisi-spetsoperatsiis-shemdeg-represiuli-politikis-sotsialuri-da-emotsiuri-shedegebi>