



CRIMES ALLEGEDLY COMMITTED BY LAW ENFORCEMENT OFFICERS AND THE STATE'S RESPONSE TO THEM

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Tbilisi, 2016

Georgian Young Lawyers' Association

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**ANALYSIS OF CASES LITIGATED BY THE GEORGIAN
YOUNG LAWYERS' ASSOCIATION**

The project is made possible by the generous support of the American People through the United States Agency for International Development (USAID). The contents are the responsibility of Georgian Young Lawyers' Association and do not necessarily reflect the views of USAID, the United States Government or EWMI.



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Was edited and published
in the Georgian Young Lawyers' Association
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1. Introduction

This report aims to analyze how effectively the government responds to the crimes allegedly committed by law enforcement officers, detects and punishes responsible persons, based on the relevant cases litigated by the Georgian Young Lawyers' Association.

It is important to timely reveal crimes committed by law enforcement officers and respond properly in order to eliminate the problem of impunity, which is related to the commission of crimes by officials who are granted the right to fight these crimes, as well as to support the trust and respect of the society to the country's law enforcement system. The European Court of Human Rights underlined the importance of punishing the law enforcement personnel if they commit any crime in the case of "Enukidze and Girgvliani v. Georgia".¹

The Public Defender of Georgia in his special report of 2015 indicates the deterioration of the situation connected with the abuse of power and ill-treatment by the law enforcement personnel recently, which states that "the issues discussed in the report reveal the deterioration of the situation of ill-treatment of detained people by the police in 2015 as compared to 2014."²

Thomas Hammarberg, an EU special adviser on legal reforms and human rights, speaks about the need of creating an independent and effective system to review complaints against the law enforcement personnel. In the report published in 2014, he underlines the need of creating an independent and unbiased body on the facts of human right abuse by the law enforcement personnel in order to minimize the deplorable results of the investigation of cases by colleagues.³ Similar instructions are outlined in the recommendations given to Georgia in the frame of the European Neighbourhood Policy Programme.⁴ Increasing the accountability of law enforcement bodies and democratic supervision over them, creation of professional, effective, thorough and independent mechanisms to respond to claims against police and prosecutors is an obligation undertaken under the Agenda of the Association Agreement between Georgia and EU.⁵ The need of creating an in-

¹ Enukidze and Girgvliani v. Georgia, No 25091/07, §243, 274.

² Public Defender of Georgia, Situation in the Bodies under the Ministry of Internal Affairs of Georgia, 2015, p. 13

³ Hammarberg, GEORGIA IN TRANSITION Report on the human rights dimension: background, steps taken and remaining challenges, p.22

⁴ Implementation of the European Neighbourhood Policy in Georgia Progress in 2014 and recommendations for actions, joint staff working document, http://eeas.europa.eu/enp/pdf/2015/georgia-enp-report-2015_en.pdf, p.7

⁵ Implementation of the European Neighbourhood Policy in Georgia Progress in 2014 and recommendations for actions, joint staff working document, http://eeas.europa.eu/enp/pdf/2015/georgia-enp-report-2015_en.pdf, p.5

dependent investigative mechanism for the investigation of possible crimes committed by the law enforcement personnel is also stressed by non-governmental human rights organizations and the Public Defender.⁶

2. Methodology

The report analyzes 21 cases litigated by the Georgian Young Lawyers' Association from 2013 till today. The facts and the assessment of the cases are provided based on the conditions until July 1, 2016. The report was prepared based directly on the materials of cases, analyzing the information acquired from case lawyers and outlining the trends revealed in the cases.

The cases analyzed in the report deal with the facts occurred in Tbilisi and different regions of Georgia. In particular, four cases are being/have been proceeded in Tbilisi, two in Zugdidi, five in Telavi, two in Batumi, two in Ozurgeti, two in Dusheti, three in Kutaisi and one case in Rustavi.

19 cases reflected in the report deal with the law enforcement personnel employed within the system of the Ministry of Internal Affairs of Georgia and their actions, 1 case deals with the employee of the Prosecutor's Office and 1 with the employees of the Department of Environmental Supervision.

The cases mostly concern violence and other facts of the exceeding of official powers by the representatives of law enforcement bodies in the course of detention⁷, as well as the incidents of physical and psychological pressure on witnesses/defendants.⁸ In some cases, the cases relate to the facts of persons' death caused by the actions of police officers.⁹ Other possible violations of law by the representatives of law enforcement bodies have also been recorded, such as neglect of official duties,¹⁰ violations of law in the course of detention¹¹, illegal detention,¹² etc.¹³

The given report consists of the following parts: introduction, revealed findings, analysis of problems, and recommendations. A brief description of the analyzed cases is also included in the report.

⁶ Public Defender, 2015 Parliamentary Report, p. 10

⁷ See Appendix for the cases of R.P., G.K., Sh.Z., G.T., N.B., E.Dz., T.G., T.M., and G.V., P.K., L.Sh., V.L. and G.S.

⁸ See Appendix for the cases of E.T., N.B., T.G. and M.M.

⁹ See Appendix for the cases of D.k., L.A., G.K., S.J. and M.M.

¹⁰ See Appendix for the case of S.J.

¹¹ See Appendix for the cases of V.L. and R.P.

¹² See Appendix for the case of T.G.

¹³ See Appendix for the cases of B.K. and R.J.

3. Key findings

The following key findings were revealed while analyzing 21 cases being litigated by the Georgian Young Lawyers' Association that relate to the crimes allegedly committed by the law enforcement officers:

- Investigations of cases on the complaints of biting and other facts of violence by law enforcement officers start indeed, but mostly the investigations are conducted inefficiently, which is manifested by the delay of investigations or other drawbacks.
- In most of the cases, the victims of crimes committed by law enforcement officers were denied granting the status of a victim.
- The victims of crimes committed by representatives of law enforcement bodies are granted the status of a witness in the proceedings of cases on those crimes and therefore they have not access to information related to the investigations.
- Persons who claim that they were subjected to biting and other facts of ill-treatment by the law enforcement officers, in a number of cases due to resistance and disobedience to law enforcement officers, bear an administrative and legal responsibility, and in some cases criminal prosecution has been initiated against them.
- When dealing with administrative or criminal cases of resistance to law enforcement officers, the decision is made based on the identical testimonies of police officers and the facts are not investigated properly.
- The testimonies of police officers are granted high standards of trust and the reliability of such testimonies is not doubted by the court.

4. Analysis of the problems

4.1. Ineffective investigations of cases on crimes allegedly committed by law enforcement officers

The analysis of the cases presented in the report clarifies that investigations of the cases on the complaints of biting and other facts of violence by law enforcement officers start indeed, but mostly the investigations are conducted ineffectively. The inefficiency is manifested by the unreasonable delay of the investigations as well as by other drawbacks existing in the investigation process.

Based on the criminal cases instituted against the law enforcement officers, which are represented in this report the investigation of 9 of them was delayed¹⁴, in 3 cases other features of ineffective investigation are revealed¹⁵,

¹⁴ See Appendix for the cases of R.P., Sh.Z., G.T., L.A., G.K., E.Z., T.G., V.L., and G.S.

¹⁵ See Appendix for the cases of L.Sh., D.K. and R.P.

and 1 of them was featuring both delay and inefficiency of the investigation¹⁶, and in 1 case, that involved the investigation of two different facts, the investigation of one of those facts was ineffective.¹⁷ The efficiency of the investigation of 2 cases initiated in 2016 was not evaluated because a short period of time passed after the investigation had been initiated and because no information about the investigative actions could be accessed.¹⁸ As for the other 5 cases, the issue of investigating the crimes committed by law enforcement officers has not been raised.¹⁹

Discussing more specifically, the investigation of three cases, in particular the cases of G.S., M.M. and V.L. represented in the report started in 2013. The investigation of one of these cases, in particular the case of M.M. was terminated in March 2016, and the rest are still being investigated. Notably, the investigation of the case of R.P. was launched on the basis of his application in 2014, which has yielded no results till today. The investigation of represented seven cases started in 2015, though no criminal prosecution, granting of the status of a victim or any other result was achieved.²⁰ Only one of the represented cases, in particular the case of willful murder of S.J., was timely investigated and taken to court. The court found the law enforcement officer guilty and sentenced him to appropriate punishment. Although the case of murder of S.J. was investigated in a timely manner, other alleged crimes revealed in this case (such as neglect of official duties) are still being investigated since 2015 without any results.

The time frames mentioned above are unreasonable for the investigation of crimes and indicate the inefficiency of the investigation. Although one, two and in some cases three years has passed since the start of the investigation, neither concrete results have been shown by the investigation, nor anybody has been charged with the crimes under investigation.

The case of L.Sh.'s should also be noted, as the investigation began in January 2014 and certain results were achieved in March 2014. However, such prompt response cannot be considered as an effective investigation, since the results of the investigation entailed the termination of the investigation and some of the evidence, witness testimonies and other circumstances were not taken into account, which, if taken into account, could lead to completely different results.

As for other features of an ineffective investigation, D.K.'s case should be noted. A police officer, allegedly being under the influence of alcohol, knocked

¹⁶ See Appendix for the case of M.M.

¹⁷ See Appendix for the case of S.J.

¹⁸ See Appendix for the cases of B.K. and G.K.

¹⁹ See Appendix for the cases of E.T., N.B., L.Kh., M.G., R.J., T.M., and G.V.

²⁰ See Appendix for the cases of G.T., L.A., G.K., E.Dz., Sh.Z., T.G. and S.J.

down D.K. by his car, who was riding a bicycle. D.K. died of injuries caused by the accident on the 28th day following the accident. It should be noted that the investigation was initiated with an erroneous definition, although it was possible right from the beginning to give it a correct course. This was a car accident (a crime provided for in Article 276 of the Criminal Code of Georgia), but the investigation was initiated with a definition: intentional less grave bodily injury (Article 118 of the Criminal Code of Georgia). This fact resulted in delayed investigative actions and, presumptively, in the destruction of important evidence.

Features of an ineffective investigation are also present in the case of M.M., as the investigation of this case was initiated and conducted for a month by an unauthorized body. Since the case of M.M. was presumptively connected with criminal actions of a police officer, the investigation of the case should have been conducted by the Prosecutor's Office, rather than by the Ministry of Internal Affairs of Georgia, a system within which the crime was allegedly committed. According to paragraph 2 of the Annex (Investigative and Territorial Investigative Jurisdictions for Criminal Cases) to the Order No 34 of the Minister of Justice of Georgia of 7 July 2013 (On Determining Investigative and Territorial Investigative Jurisdictions for Criminal Cases), the investigation of the cases on the commission of crimes by police officers falls within the investigative jurisdiction of the Prosecutor's Office. The investigation of the case by the Investigation Department of the General Inspection of the Ministry of Internal Affairs of Georgia, and the preliminary evaluation about non-existence of the elements of crime cast doubt on the independence, efficiency and credibility of the conducted investigation. It should also be noted that the investigation of M.M.'s case was terminated in March 2016 so that the witness had been suggested by his family and who had communicated with M.M. shortly before his death was not interrogated. The witness allegedly possessed valuable information for the investigation. Also, the prosecution did not interrogate the police officers who had a first contact with M.M.

P.K.'s case should also be noted, in connection with which charges were brought against a certain person after repeated applications by the victim and his lawyers, but the investigation was not comprehensive and effective because this severe injury caused to the victim was left out of the investigation and a legal evaluation was not made. The investigation revealed only one person's criminal responsibility, though the victim states he was abused by two police officers.

Although the Criminal Code of Georgia does not define specific deadlines for the investigation of criminal cases, it states that the deadlines shall be reasonable.²¹ The reasonability of a deadline shall be determined indi-

²¹ Criminal Procedure Code of Georgia, Article 103

vidually, based on the circumstances of the case and taking into account how the efficiency and importance of the case are prioritized during the investigation and whether the investigation is delayed by the inactivity of investigative bodies.

Timely investigation of bodily injury cases is crucial for effective investigation, as the traces of injuries disappear over time and the obtaining of evidence becomes impossible. The importance of timely investigation of such cases was underlined by the European Court of Human Rights in connection with the “Mikiashvili v. Georgia” case. The court stated in this decision that the delayed launch of the investigation is incompatible with the obligation of timely investigation, as there is a risk of disappearing of evidence of ill-treatment over time and the injuries will heal.²² Concerning the “Garibashvili v. Georgia” case, the court underlined the need of prompt investigation of the facts of ill-treatment by state bodies. The decision specifies that the investigation should be prompt and the relevant bodies should respond to the complaints in an appropriate period of time.²³

Also, on the “Enukidze-Girgvliani v. Georgia” case, the European Court of Human Rights states that the investigation should be conducted effectively, which means that, based on it, relevant facts should be established and offenders should be identified and punished. Any drawbacks during the investigation impeding the identification of facts or criminals point out that an appropriate level of efficiency was not ensured.²⁴

4.2. Unreasonable Refusal to Grant the Status of a Victim

In 15 out of 16 cases of crimes allegedly committed by law enforcement officers, the victims of the alleged crimes were refused the status of a victim.²⁵ In other 3 cases out of 5 we were representing the defendants’ party²⁶, and in 2 cases the victims did not apply to an investigative body with the demand to initiate an investigation.²⁷

As for the Georgian Young Lawyers’ Association, in 11 cases out of the above mentioned 15 cases there was enough evidence to grant the victims the status of a victim,²⁸ but they were unreasonably refused. As for other 4 cases,

²² Mikiashvili v. Georgia, No 18996/06, para.78

²³ Garibashvili v. Georgia, No 118030/03, para.63

²⁴ Ogur v. Turkey, No 21594/93, para.88; Enukidze and Girgvliani v. Georgia, No 25091/07, para.242.

²⁵ See Appendix for the cases of D.K., B.K., R.P., G.K., Sh.Z., G.T., L.A., G.K., E.Dz., T.G., S.J., V.L., M.M. and G.S.

²⁶ See Appendix for the cases of N.B., L.Kh., M.G., T.M. and G.V.

²⁷ See Appendix for the cases of E.T. and R.J.

²⁸ See Appendix for the cases of D.K., R.P., G.K., G.T., L.A., G.K., S.J., L.Sh., V.L., M.M. and G.S.

we do not have enough information about the course of investigation to evaluate whether the person should have been granted the status of a victim or not.²⁹

The cases related to the facts of death of individuals are especially problematic. In such cases, it is particularly important to timely grant the family members of victims the status of a legal successor in order to have access to the information about the course of investigations.

In the case of M.M., no close relative of the victim was granted the status of a legal successor, even though the victim committed suicide the next day after being interrogated at the Ministry of Internal Affairs, whereas the expert examination revealed the traces of injury on the dead body. The time of infliction of the injury corresponded to the time of M.M.'s detention at the police station. Nevertheless, none of the relatives of the victim was granted the status of a legal successor and the family members are not able to appeal the decision of the termination of the investigation, as according to legislation only the victim is allowed to make an appeal.³⁰

The case of L.A. is noteworthy, as he was forced to take 3 pills of a strong diuretic with the purpose of checking for drugs, which shortly caused the death of the person. Despite the fact that the investigation was launched in 2015, L.A.'s wife has not been recognized as a victim yet, therefore she does not have any information about the investigation the death of her husband.

A similar problem is identified in the case of D.K. A police officer, allegedly being under the influence of alcohol, knocked down D.K. by his car, who was riding a bicycle. D.K. died of injuries caused by the accident on the 28th day following the accident. Although there is the police officer's confession, and different investigative actions were held, no member of D.K.'s family has been recognized as a legal successor of the victim.

G.K.'s case is specifically noteworthy, where a scared 15-year old chased by the patrol police died in the car accident. According to his family members, the victim was left behind dying on the spot by the police officers. None of his family members has been recognized as a legal successor of the victim.

The problem of the refusal of recognizing victims is revealed in other 10 cases as well, although most of them contain the expert conclusion about the injuries inflicted to the victims and other evidence.³¹

According to the Criminal Procedure Code of Georgia, a victim is a natural or legal person, and the State, that has incurred moral, physical or mate-

²⁹ See Appendix for the cases of B.K., Sh.Z., E.Z., and T.G.

³⁰ Criminal Procedure Code of Georgia, Article 106 (1¹)

³¹ See Appendix for the cases of B.K., G.K., G.T., T.G., V.L., G.S. and R.P.

rial damage directly as a result of a crime.³² According to the legislation of Georgia, in order a victim of a crime couldn't enjoy the rights granted by the Criminal Procedure Code of Georgia, the prosecutor shall recognize him as a victim by issuing a decree. Only afterwards will the person be able to obtain information about the course of the investigation and view the materials of a criminal case, as well as appeal the decision of the prosecutor on the termination of the investigation.

If a victim of a crime is refused by the prosecutor to be recognized as a victim, the victim may apply to the court and appeal the refusal only in the case of a particularly serious crime.³³

As the investigation of the cases on flogging and ill-treatment by law enforcement officers began with Article 333 of the Criminal Code of Georgia, which refers to the exceeding of official powers and is not a particularly serious crime, the victims are in fact deprived of any legal right to appeal against the decisions of refusal to grant the status of a victim.

Without holding the above mentioned status, the victims are actually left without any rights: they have no access to information on the investigation of the case, they are absolutely unaware of the materials of the case, or they have no information about the progress of the investigation or about whether or not appropriate investigative actions have been carried out or at least whether or not the investigation is in an active phase.

According to international standards, victims of a crime enjoy certain rights during criminal proceedings, which include the right to be treated with compassion and the respect of their dignity,³⁴ and their involvement in the proceedings of the investigation to the extent that is necessary to protect their legal interest.³⁵

The European Court of Human Rights explains in many cases the need of protecting the rights and interests of victims in an appropriate manner. The victims of crimes have the right to access information on their role in the proceedings and on the limits, deadlines and progress of criminal cases, especially in the case of particularly serious crimes. In particular, they have the right to be informed about criminal prosecution or the decisions of refusal to conduct criminal prosecution and about appeals or the decisions of refusal to accept appeals, and have access to the materials of the case.³⁶

³² Criminal Procedure Code of Georgia, Article 3(22)

³³ Criminal Procedure Code of Georgia, Article 56(5)

³⁴ Article 4, UN Declaration on Victims of Crime.

³⁵ Hugh Jordan v. the United Kingdom, ECtHR judgment of 4 May 2001, appl. no. 24746/94, §109.

³⁶ Kelly and Others v. the United Kingdom, №30054/96, 4 August, 2001, § 118-136; Gorou v. Greece, №12686/03, 20 May, 2009, § 36-42.

4.3. Imposition by Law Enforcement Bodies of Administrative/Criminal Responsibility on Victims of Crimes Allegedly Committed by Law Enforcement Officers

Persons, who claim that they have been subject to beating or other kind of ill-treatment by law enforcement officers, in most cases are detained by police officers according to Article 173 of the Administrative Offences Code of Georgia, which refers to disobedience to police officers. However, in some cases a criminal prosecution is initiated against them according to Article 353 of the Criminal Code of Georgia, which refers to resistance, threatening or violence against the protector of public order or other representative of the authorities.

The given problem is especially actual if we take into consideration that the facts are not investigated in an appropriate manner when imposing administrative or criminal responsibility on the person and the responsibility is imposed only based on the testimony of police officers. As a rule, the court unconditionally trusts the testimonies of the representatives of law enforcement bodies and shares their views almost in all cases.³⁷

In 4 cases presented in this report, persons were detained administratively according to Article 173³⁸, and in 2 cases a criminal prosecution was initiated according to Article 353 of the Criminal Code of Georgia³⁹. Two cases of the report should also be noted, one of which brings charges against the person according to Article 373 of the Criminal Code of Georgia, which refers to false denunciation⁴⁰, and another one brings charges against the person according to Article 120 of the Criminal Code of Georgia, which refers to intentional less grave bodily injury.⁴¹

P.K.'s administrative offence case should be noted, in which the court delivered the decision based only on the administrative offence report and the detention report and the explanations by the persons who drew up the reports. The court did not take into account P.K.'s position only on the ground that the offender always tried to evade responsibility. However, the court expressed high credibility to the words of the detaining police officer only on the ground that this person had professional skills and could adequately evaluate facts. It should also be noted, that at the court session P.K. demanded the retrieval of video materials depicting his detention from the patrol police department. The court relied only on the response of police officers about non-existence of a video tape and did not try to officially request this

³⁷ See Appendix for the cases of R.P., G.K., G.T., T.M. and G.V., V.L. and G.S., and P.K. and V.L.

³⁸ See Appendix for the cases of G.K., G.T., P.K. and G.S.

³⁹ See Appendix for the cases of L.Kh and M.G., and T.M. and G.V.

⁴⁰ See Appendix for the case of N.B.

⁴¹ See Appendix for the cases of V.L.

evidence from the Patrol Police Department, although the video tape existed and was retrieved within the frame of another defense.

It should also be noted that in two out of the presented cases, in particular the cases of G.K. and G.S., at the hearing of administrative offence cases, the accused persons confirmed the fact of committing an offence, but later they claimed that the confirmation was not true and was caused by different factors, for instance, by having no defense lawyers, by being under great psychological pressure, or by being scared and confused, which was a result of flogging and other kind of violence committed towards them by law enforcement officers. In such cases, it is important for judges hearing administrative offence cases to be actively interested in asking appropriate questions or establishing comprehensively and objectively the facts of the case by obtaining evidence from both parties, and to not just accept the confessions of offenders as evidence. In addition to the confessions of alleged offenders in given cases, an administrative responsibility was imposed based on two collected evidence, in particular the detention report and the verbal explanation of the detainer.

G.T.'s case should be evaluated positively, in the course of which the judge of first instance comprehensively and appropriately examined the materials of an offence case, asked the parties and the witnesses proper questions, based on which a whole range of contradictions and gaps were revealed, and eventually terminated the administrative offence case due to those contradictions and gaps. Contrary to this, the Court of Appeals overruled the decision and G.T. was recognized as an administrative offender.

One can observe a similar situation with criminal cases. T.M. and G.V.'s cases were provided by testimonies of only 4 police officers and of the victim, who is also an employee of the Border Police, but the court considered the testimonies of the above mentioned persons being sufficient and did not take into account the evidence of the defense, and the accused persons were found guilty. The verdict also referred to the evidence proofing the guilt of the accused person, which was deemed inadmissible by the judge of the pre-trial hearing.

R.P.'s criminal case should also be noted, as the court placed great trust in the testimony of the police officers and declared that the police officers understand their public and civic duties and they give testimonies not by virtue of their rights, but because of their moral and statutory obligations, the violation of which may entail the application by the State of compulsory measures against them. Notably, during the appellate review of R.P.'s prosecution case, a new witness appeared, who stated that he had committed the crime of which R.P. was accused; however, the witness was not examined by the court.

L.Kh. and M.G.'s criminal cases should also be noted. Charges brought against

L.Kh. and M.G.by the Prosecutor's Office are completely based on the testimonies of the employees of the Environmental Supervision Office, whereas the testimonies of the defendants and other witnesses, as well as other existing evidence, are neglected.

The problem of unsubstantiated accusation has been identified in V.L.'s case as well, in which the main evidence of the prosecution is the testimony of the victim, who is a former police officer. Notably, V.L. is accused of inflicting intentional less grave bodily injury to the victim, though according to the expert conclusion represented in the materials of the case, V.L.'s injuries are more severe than those of the victim. By contrast, positively should be noted the decision of the judge of the first hearing in the course of this criminal case, who considered the defendant's detention illegal and specified that he would not rely on the testimonies of the police officers, which were dubious and unpersuasive and so identical that contained the same spelling mistakes.

Needless to say, the Georgian Young Lawyers' Association does not exclude the fact that the persons, who brought claims against law enforcement officers for the violation of their rights, might have committed administrative offences or criminal crimes, but the cases presented and analyzed in the report present a reasonable doubt that the administrative or criminal responsibility is the outcome of improper investigation of the facts.

This malpractice established with administrative offence cases hinders the proper establishment of the factual circumstances in criminal cases proceeded against the representatives of law enforcement bodies. The unsubstantiated establishment by the court of the fact of resistance to a law enforcement officer in administrative cases makes it almost impossible in the future to prove the crime committed by the law enforcement officer when detaining a person and to justify the demand of compensation for damages.

As for criminal cases, the existence of practice of demonstrating by judges of great credibility mainly to the testimonies of police officers and making of decision based on them directly contradicts the criminal procedure Legislation, according to which no evidence has a pre-established power.⁴² All evidence is subject to examination through the test of eligibility, credibility and relevance according to the above mentioned article, irrespective of whether the source of this evidence is a police officer or a defendant.

A similar opinion is observed in the decision of the European Court of Human Rights on the case "Mikiashvili v. Georgia". The decision criticizes the mistrust of the national court to the complainant's words related to ill-treatment and the demonstration of special credibility to the police

⁴² Criminal Procedure Code of Georgia, Article 13(1)

officer's testimony without any grounds. The European Court of Human rights considered that the credibility of the testimonies of police officers in such cases should also be brought into question.⁴³

5. Recommendations

For the Prosecutor's Office of Georgia

- The crimes allegedly committed by law enforcement officers should be investigated promptly and effectively.
- The practice of unsubstantiated refusals to grant the status of a victim to the victims of crimes should be prevented. The granting of the status of a legal successor of the victim in the cases that deal with the death of a person is of a specific importance.
- The Prosecutor's Office should ensure access of interested persons to information on the investigation of crimes allegedly committed by law enforcement officers in order to eliminate doubts about the conduct of investigations in a biased and non-objective manner.

For the Ministry of Internal Affairs of Georgia

- The Ministry of Internal Affairs of Georgia should ensure a prompt and effective response to the cases of ill-treatment and exceeding of official powers by the employees of the Ministry.
- The Ministry of Internal Affairs of Georgia should adhere to the rules of investigation jurisdictions and immediately transfer the cases of crimes allegedly committed by law enforcement officers to authorized bodies.

For general courts

- General courts should increase the standards of proof for the cases of crimes allegedly committed by law enforcement officers and should not solely rely on the testimonies of police officers while making decisions.
- The testimonies of law enforcement officers should not be considered as unconditionally credible evidence.

For the Parliament of Georgia

- The Parliament of Georgia should make amendments to the relevant articles of the Criminal Procedure Code of Georgia, according to which the decision of refusal to grant a person the status of a victim may be ap-

⁴³ Mikiashvili v. Georgia, No18996/06, para.82

pealed only in the case of particularly serious crimes, and apply similar provisions to the cases of less serious and serious crime.

- The Parliament of Georgia should ensure establishing an appropriate legal framework for creating an independent and effective investigative mechanism for crimes allegedly committed by law enforcement officers.

6. Appendix

6.1. D.K.'s case

From G.K.'s statement it appears that he called his son D.K. on the mobile phone on 9 February 2016, who told him that he was cycling on the way home. A few minutes later, the police officer M.Ch., who lived in the same village, arrived by car to G.K.'s house. As G.K. came out he saw his unconscious son lying near the car door. The police officer told G.K. that he found his son drunk, lying on the road, and put him in the car and brought home.

At G.K.'s request, one of his relatives dialed 112 immediately and told the emergency service about D.K.'s situation. In a few minutes, D.K. was transferred to the hospital by an ambulance vehicle, where he spent 28 days unconsciously and died as a result of the different severe injuries.

G.K. states that his family became aware of the fact that after D.K.'s death the police officer M.Ch. turned himself at the Zugdidi Regional Office of the Ministry of Internal Affairs of Georgia and declared that he hit D.K. by his car, and the latter received different bodily injuries.

The incident is being investigated according to Article 276 of the Criminal Code of Georgia by the Samegrelo-Zemo Svaneti District Prosecutor's Office, who interrogated M.Ch. and other witnesses. Different kinds of expertise have also been scheduled. Irrespective of the above, G.K. has not been recognized as a legal successor of the victim.

It is determined from G.K.'s statement that not more than 30 minutes have passed from the car accident until the ambulance was called. An important factual circumstance is that after bringing him home M.Ch. took the unconscious victim out of the car and dragged him through the garden.

The Samegrelo-Zemo Svaneti Regional Office of the Ministry of Internal Affairs of Georgia became aware of the incident after the call was made to 112. It should be mentioned that initially the investigation was launched and continued for one month according to Article 118 of the Criminal Code of Georgia, though there was a family member's statement about the car accident, and the damages on D.K.'s bicycle gave rise to suspicion as to the car accident. As the investigation went in a wrong direction, the place of the accident was not examined in a timely manner, which possibly hindered obtaining evidence important for the case.

6.2. B.K.'s case

B.K.'s statement reveals that the employees of the Kvareli Regional Office of the Ministry of Internal Affairs visited him at home in February 2016 and asked him to come out. In a few minutes B.K. went out to the street where he saw three other crews of police officers. The crews had a vehicle carrier with B.K.'s private car on it. Needless to say, B.K. got interested in the reason why his car was being transferred, but he did not get any answer from the law enforcement officers. Furthermore, he is still not aware of the reason, though he assumes it was done because of the political persecution against him. In addition, the law enforcement officers abused B.K. and his wife verbally and physically. In particular, the law enforcement officers used obscene words and pushed B.K.'s wife, who fell into a brook in the street and slightly injured her foot.

At this stage, the criminal case is launched at the Kakheti District Prosecutor's Office and the investigation is being conducted. At this stage neither anyone has been brought charges, nor has B.K. been recognized as a victim.

6.3. G.K.'s case

From G.K.'s statement it appears that he visited his friend at the office in Telavi in the evening of 27 February 2016. His friend was absent from the office. His friend's colleagues told him that his friend was in the nearby café-restaurant, where an acute conflict occurred. Having obtained this information, G.K. went to the café to get information about his friend, but he only found police officers at the given address. He asked the police officers about the circumstances and enquired after his friend, but instead of giving an answer the police officers abused him verbally and physically, detained him and took him to a temporary detention facility. On the next day, G.K. was presented to the Telavi Regional Court for committing an offence provided for in Article 173 of the Administrative Offences Code of Georgia. The court imposed an administrative penalty on him in the amount of GEL 250. After becoming familiar with the materials of the case, it is determined that the decision of the court was based on the administrative offence report and the oral explanation of the author of the report, which were presented as evidence. G.K. admitted the fact of committing an offence, though, as he later stated in a private talk, his confession was due to the fact that he did not have a defense lawyer and he was scared and tense. This was the reason why he evaded telling truth in the court and admitted having committed the offence.

After having consulted with the Georgian Young Lawyers' Association, G.K. had medical check-ups and received a health certificate about the condition of his health and injuries. According to this certificate, G.K. had some bodily injuries and complained of pain.

At present, the criminal case has been launched and the investigation is being conducted by the Kakheti District Prosecutor's Office, but as G.K. has not been recognized as a victim he is deprived of the possibility to view the materials of the case and receive information on the course of the investigation.

6.4. E.T.'s case

From E.T.'s statement it appears that she is a citizen of Nigeria and resides in Tbilisi together with her fiancé. In January 2016 she became aware of the fact that a criminal case had been launched against her fiancé, but she was not aware of the article under which the investigation was being conducted. E.T. could only obtain information that her fiancé possessed several forged passports and this was the reason of initiating an investigation against him. Her fiancé left Georgia during the investigation, which caused problems to E.T. In particular, she states that she is under psychological pressure of the prosecutor, who threatens and insults her on the telephone and demands cooperation in connection with her fiancé's case. E.T. says that the prosecutor threatened her that if she did not provide investigation with the current abode of her fiancé, she would be also brought charges as a participant in a crime. E.T. cannot understand what her fault is and what exactly her fiancé is accused of.

6.5. Sh.Z.'s case

From the convicted Sh.Z.'s letter it appears that he was detained on 28 March 2015 by the employees of the Khelvachauri Regional Office of the Ministry of Internal Affairs of Georgia and of the Batumi City Administration. During the detention, the police officers abused Sh.Z. physically and verbally, did not allow him to hire a lawyer and make a telephone call, and shoot him with a gun in the right leg and tortured him with an electric shocker.

As the letter of the convicted contained the elements of the alleged crime, it was sent by the Georgian Young Lawyers' Association to the Prosecutor's Office of the Autonomous Republic of Ajara and the General Inspection of the Ministry of Internal Affairs in March 2015 with the request of launching an investigation.

On the basis of this letter, on 2 April 2015 the Prosecutor's Office of the Autonomous Republic of Ajara launched an investigation of the fact of the alleged exceeding of official powers by law enforcement officers in relation to Sh.Z., according to Article 333(3)(b). The investigation of this criminal case is still being conducted. Sh.Z. has not been recognized as a victim and is deprived of the possibility to view the materials of the case and to evaluate the course of the investigation.

6.6. G.T.'s case

Based on the information provided by G.T. it is established that he was with his friends in one of the open bungalows at the Ganmukhuri Beach on 2 August 2015. At about 11:00 p.m. a police officer in civil clothes came to them and demanded G.T. and his friends to cease having a birthday party and break up. For non-compliance with the demand, G.T. was detained on 3 August 2015 at 00:05 a.m. according to Article 166 (Disorderly conduct) and Article 173 (Non-compliance with a lawful order or demand of a law enforcement officer or commission of any other illegal act against such person) of the Administrative Offences Code of Georgia.

The administrative case of G.T. was terminated twice in the first instance court, as the fact of an administrative offence was not confirmed. However, the Kutaisi Court of Appeals eventually declared G.T. as an offender and the latter was imposed a fine in the amount of GEL 250. The Georgian Young Lawyers' Association requested the trial records for the court, which reveal that the testimonies of the witnesses on G.T.'s case are contradictory and mutually exclusive. Five police officers were interrogated in connection with the case and all of them stated that they had used proportional power during the detention, although none of them could answer the question what was meant by the term 'proportional power'. Also, there is a contradiction between the testimonies of the police officers and one witness who is not a police officer. The police officers stated themselves that they were dressed in civil clothes, but one of the witnesses of their side assured that during G.T.'s detention he figured out police officers by their police jackets, which is less convincing, taking into account that this fact happened in August. It should also be noted that the witnesses - three police officers and one civil person - appeared only at the repeated hearing of G.T.'s case in the first instance court and they were not mentioned in the administrative offence report or oral explanation of the author of the report. The police officers' explanation as to how the civil witness was found is also contradictory. Despite other principal contradictions in the case, the court of appeals still accepted the evidence and G.T. was recognized as an administrative offender.

The documents provided by G.T., in particular the reports of an administrative detention, of external examination in the temporary detention facility and of primary examination in the Zugdidi Republican Hospital, reveal that G.T. had different bodily injuries. It should be noted that because of the injuries G.T. was first taken to the hospital and not to the temporary detention facility. Furthermore, his condition was so severe that the ambulance crew was called repeatedly in the same evening. Based on the report of the Outpatient Clinic of the Zugdidi Referral Hospital dated 4 August 2015, G.T. suffered from a collarbone linear fracture, swelling, and the limitation of motion of the left shoulder joint. The medical certificate also specified that the condition of the patient was severe and he needed a traumatologist's consultations.

On 4 August 2015⁶ the investigation was launched in connection with the alleged exceeding of official powers by the police officer in the course of G.T.'s detention at the Investigation Department of the Samegrelo-Zemo Svaneti District Prosecutor's Office in line with Article 333(3)(c) of the Criminal Code of Georgia. According to the explanation of the Prosecutor's Office, certain investigative actions were taken, including the interrogation of G.T. as a witness and a forensic medical expertise was scheduled. Despite numerous appeals and requests, G.T. has not been recognized as a victim yet.

6.7. L.A.'s case

M.J. states that on 17 June 2015 her husband L.A. was deceptively taken by police officers for the drug test. As L.A. was not able to urinate, the police officers made him take 3 pills of a strong diuretic. L.A. was not under the influence of drugs and, therefore, he was released. As L.A. came home, he told his wife that he was forced to take 3 pills of a diuretic for the purpose of urinating at the police office and that he did not feel well. Shortly he died.

The investigation is being conducted in connection with this case at the Kutaisi Regional Prosecutor's Office in line with Article 115 of the Criminal Code of Georgia. L.A.'s wife has not been recognized as a legal successor of the victim and till now uses the status of a witness. To find out the reason of death, an expertise has been scheduled, the results of which are not known yet.

6.8. N.B.'s case

N.B.'s statement reveals that in the course of his detention on 16 October 2015 the employees of the Signaghi Regional Office abused him physically, in particular they flogged him. N.B. was brought charges according to Article 381 of the Criminal Code of Georgia, which refers to failure to comply with court decisions. He states that he is deprived of the right to drive (and his driving license has been seized), whereas, according to the prosecution's version, he was seen at the steering wheel on the day of the incident. N.B. denies this fact and says that he was not driving a car. N.B. is also brought charges according to Article 373(2) of the Criminal Code of Georgia, which refers to false denunciation. N.B. applied to the Kakheti District Prosecutor's Office regarding the fact of physical and verbal abuse by law enforcement officers. As the investigation of this case was terminated, he was also accused of false denunciation of law enforcement officers.

N.B. explains that the police has a hostile attitude towards him, which was caused by the fact that the court acquitted him in connection with the case of disorderly conduct in the past. He assures that in 2013 the police planted drugs on him in revenge, which resulted in his conviction under Article 260(2). Based on this judgement, he was deprived of the right to drive.

N.B. says that his friends who are with him on the day of incident are regularly interrogated as witnesses by law enforcement officers, in the course of which they are put under pressure. The result of such interrogation is the testimony of one his friends stating that N.B. was driving a car. N.B.'s statement reveals that the above mentioned person still has not sued the law enforcement officers for the violence, as he is afraid that the police officers might not forgive him and chase him in the future.

Nowadays, the case of N.B. is at the stage of substantive hearing, in particular the evidence provided by the prosecution is being examined. As for the fact of N.B.'s physical abuse by the law enforcement officers, the investigation was being conducted, but it was terminated on 10 November 2015 due to the absence of the elements of crime.

6.9. L.Kh. and M.G.'s case

L.Kh. and M.G.'s statement reveal that on 6 November 2015 the Mtskheta Regional Prosecutor's Office brought charges against them according to Article 353(2) of the Criminal Code of Georgia, which refers to resistance to the protector of public order or other representative of the authorities. According to the prosecution's version L.Kh. and M.G. resisted to the employees of the Department of Environmental Supervision.

Defendants do not plead guilty and state that there was no resistance, but the employees of the Department of Environmental Supervision abused them. They abused them physically as well as threatened them with weapons. The medical examination report about the types and degree of bodily injuries of the defendants are presented in the materials of the case, according to which the defendants have minor injuries of their corpora, in the form of bruises and scratches. The materials of the case contain a video tape with the recorded incident. The video tape shows clearly that the initiators of the incident are the employees of the Department of Environmental Supervision who abused the defendants physically and verbally. Also it is unclear what kind of duties were performed by the employees of the Department of Environmental Supervision and why they were at the place of incident. The case is now in the Mtskheta Regional Court and is at the stage of substantive hearing.

6.10. R.J.'s case

R.J. states that on 23 September 2015 between 9:00 and 10:00 a.m. the employees of the Guria Main Regional Department of the Ministry of Internal Affairs of Georgiamade a search in his house, in the course of which they removed 11 units of cartridges unknown to R.J., who says that the cartridges were planted on him. Notably, in the course of the search the rights provided

for by the Criminal Procedure Code of Georgia were violated, in particular, based on the information provided by R.J., no court decision or prosecutor's resolution on the urgent necessity of the search was produced. He does not know whether the search was carried out by a court decision or the prosecutor's resolution. Also, he was not informed of the right of handing over the items voluntarily, which were specified in the court decision or resolution. After the search was completed, R.J. was not given the search report either.

With the help of the Ozurgeti Office of the Georgian Young Lawyers' Association, R.J. applied to the Head of the Ozurgeti Regional Administration and demanded the search report of 23 September 2015 carried out in his house, but R.J. was refused on the ground that the acceptance of the copy of the search report was confirmed by signature and it may not be handed over repeatedly.

R.J.'s case is at the stage of investigation now and he uses the status of a witness in the case.

6.11. G.K.'s case

The citizen G.G.'s statement reveals that in the evening on 29 June 2015 his grandson, a 15-year old G.K., was riding his friend's motorcycle in Telavi, as he was chased by the patrol police. Apparently, G.K. was scared and turned to different lanes at a high speed, and he turned the lights off in order to escape from the police. Therefore, he was not able to see the road and crashed into the tractor standing in the street. According to the information provided by the family member, he was left behind by the police officers at the place of accident and did not render him any help. A 15-year old G.K. dies immediately after he has been transferred to the hospital. G.K.'s family provided mass media with the video recorded by the camera mounted on one of the facilities at the place of incident, which clearly shows the chase.

The members of G.K.'s family doubt that the investigation will not be conducted objectively and properly as the case is connected with the punishment of the patrol police officers, and that the offenders will be punished.

The criminal case was launched according to Article 276 of the Criminal Code of Georgia, which refers to the violation of traffic safety rules or rules for operating transport. Nobody has been brought charges formally yet, and none of the family members of the dead person has been recognized as a legal successor of the victim. According to the oral explanation of the prosecutor the case is being actively investigated, but as none of the members of G.K.'s family has been recognized as a legal successor of the victim, they are deprived of the possibility of viewing the materials of the case.

6.12. E.Dz.'s case

The written letter of request of the convicted E.Dz. reveals that in the course of detention criminal actions were committed by law enforcement officers took, in particular E.Dz. points out that he was detained unlawfully and he was abused physically and verbally during the detention. As E.Dz.'s letter contained the elements of the alleged crime, it was sent to the Prosecutor's Office by the lawyer of the Georgian Young Lawyers' Association.

The investigation was launched on 9 March 2015 in connection with the fact of the alleged physical and verbal abuse by law enforcement officers against E.Dz. in the course of the detention, according to Article 333(3)(b) of the Criminal Code of Georgia. A whole range of investigative actions were taken in connection with the criminal case and the investigation is still being conducted. As E.Dz. does not possess the status of a victim, the Prosecutor's Office did not satisfy the application of the lawyer of the Georgia Young Lawyers' Association for studying the materials of the case.

6.13. T.G.'s case

T.G.'s statements reveals that on 15 December 2015 the Terjola police officers unlawfully detained three persons of minor age. The mentioned persons were held in detention from 10:00 p.m. to 5:00 a.m. During this period, T.G. was abused physically and verbally, was demanded to make a confession to a non-existing crime and to cooperate with the investigation. He says he was also threatened that he would be planted on stolen goods and would be taken to court.

It is important to note that by that time T.G. was 14 years of age. In the course of detention his mobile phone was seized and he was not allowed to make a call. Notably, one of the persons detained together with T.G. was 13 years of age, and neither administrative nor criminal responsibility is provided for him according to the legislation.

Now the Chief Prosecutor's Office of Georgia is investigating the case which was launched according to Articles 147 (Intentional illegal detention or arrest) and Article 333(3) (Exceeding of official powers using violence or by offending the personal dignity of the victim) of the Criminal Code of Georgia. Charges were not brought against anybody yet, neither were T.G. and two other persons recognized as victims.

6.14. T.M and G.V.'s case

T.M and G.V.'s statement reveals that they were detained in Dusheti in September 2014 because of the resistance to police officers and physically abusing L.U., in particular being accused of flogging.

T.M. and G.V do not confess to the crime and state that they did not carry out any kind of criminal actions against L.U. and did not resist to the police officers. According to their statement, the police officers abused them physically and detained them without any reason.

In March 2015, a substantial hearing was held. Notably, the opinion of the prosecution was only supported by the 4 police officers and the victim L.U., who is also an employee of the Border Police. Except for the testimonies of 4 police officers and one material evidence, which did not prove any circumstances and was not examined properly, the prosecution did not present any other convincing evidence. The court did not accept the arguments of the defense and did not take into account the evidence presented by the defense, for example, the report of detention of T.M., which specifies that he had multiple injuries of the head and corpus area. Also, in the report of withdrawal of T.M.'s clothes it is pointed out that the clothes were completely stained with blood. Furthermore, the 4 witnesses declared that T.M.'s head, hands and clothes were blood-stained as they came to the place, and despite this he resisted to the police officers and tore one of the police officer's t-shirt, but no trace of blood was found on the police officer's clothes. Also, the testimonies of the witness of the defense and the victim L.U. are contradictory. In the course of interrogation, L.U. stated he was sober, but the witness of the defense confirmed the fact of taking of alcohol by L.U.

The court decision was actually based on the testimonies of L.U. and 4 police officers, and the verdict specified the evidence that was earlier considered inadmissible by the judge of the pre-trial hearing. T.M and G.V. were eventually found guilty in crimes under Articles 125(1) and 353(2) of the Criminal Code of Georgia. The court of appeals dismissed the appeal, and the Supreme Court declared the appeal inadmissible.

6.15. R.P.'s Case

The letter of the prisoner R.P. reveals that on 23 August 2014 he was detained in Zugdidi by the employees of the Ministry of Internal Affairs of Georgia on a charge of burglary. In the course of detention the police officers exceeded their official powers and inflicted bodily injuries to R.P. The injuries are confirmed in the external examination report issued by the temporary detention facility, the health certificate issued by the Zugdidi Hospital and the external examination report issued by the penitentiary facility, as well as in the medical examination report issued by the Regional Expertise Department of Western Georgia.

The investigation of the above mentioned fact was launched on 4 September 2014 by the Zugdidi Regional Prosecutor's Office in line with Article 333 of the Criminal Code of Georgia. From the launching of the investigation till now R.P. repeatedly applied to investigative bodies with the request to be

recognized as a victim, but he has not been granted the status of a victim yet. As a result, he is not aware of the investigative actions taken in the frame of the investigation.

It is important to note the events that developed around the case of burglary which was brought against R.P. As R.P. and the eyewitnesses declare, R.P. was not detained at the place of incident, but at the other place, and was taken to the place of incident after the detention. Also, R.P. did not have with him any incriminating material evidence, which was withdrawn after his personal search. Notably, the first instance court did not accept the testimonies of the witnesses of the defense and prioritized the testimonies of the police officers presented by the prosecution citing that the police officers understand their public and civic duties and they give testimonies not by virtue of their rights, but because of their moral and statutory obligations, the violation of which may entail the application by the State of compulsory measures against them. Notably, during the appellate review of R.P.'s case, a new witness appeared, who stated that he had committed the crime of which R.P. was accused; however, the witness was not admitted to the court hearing. The decision of the first instance court was remained intact by the appeal and cassation courts, and R.P. was found guilty of burglary and sentenced to imprisonment for the term of 5 years.

After having studied the materials of R.P.'s case, the Tbilisi Office of the Georgian Young Lawyers' Association decided to apply to the European Court of Human Rights regarding the violation of Articles 3 (prohibition of torture) and 6 (the right to a fair trial) of the Convention. The complaint will be sent to the European Court of Human Rights in July 2016. At the same time, the Georgian Young Lawyers' Association will apply to investigative bodies to obtain information about the course of the investigation.

6.16. P.K.'s case

P.K. states that on 31 August 2014 he was detained by the police for the action provided for by Article 173 of the Administrative Offences Code of Georgia, which refers to non-compliance with a lawful order or demand of a law enforcement officer. The administrative court found P.K. guilty and fined him in the amount of GEL 600. Notably, the court relied only on the administrative offence report, the report of detention and the oral explanations of the persons who drew up the reports. The court did not take into account P.K.'s position only on the ground that the alleged offender always tried to evade responsibility, and expressed high credibility to the words of the detaining police officer on the ground that this person had professional skills and could adequately evaluate facts. It should also be noted that at the court session P.K. demanded the retrieval of video materials depicting his detention from the patrol police department. The court relied only on

the response police officers about non-existence of a video tape and did not try to officially request this evidence from the Patrol Police Department, although the video tape existed and was retrieved within the frame of another defense. The above mentioned evidence became the reason for resuming P.K.'s administrative case.

P.K. states that he was flogged by the police officers in the course of detention, in particular 2 police officers pushed him to the ground and injured him with their fists, kicks and batons. P.K.'s physical injuries are specified both in the medical examination report and the report of an expert examination. The report of an expert examination states that he had multiple injuries on his head and other parts of the body, including face, which were caused by a blunt subject, and he had abrasions on both arms and his 5th and 7th ribs were fractured.

With the help of the Georgian Young Lawyers' Association, P.K. applied to the General Inspection of the Ministry of Internal Affairs of Georgia. According to the information provided by the Ministry of Internal Affairs, the police officers involved in the flogging were reprimanded.

After multiple appeals on P.K.'s case by the lawyer of the Georgian Young Lawyers' Association, P.K. was recognized as a victim and one of the police officers involved in the incident was brought charges and his case is now being reviewed in the first instance court according to Article 333 of the Criminal Code of Georgia, which refers to the exceeding of official powers. However, it should be noted that charges were brought against the police officer only in connection with one episode of his actions and P.K.'s severe injuries, such as fractured ribs, which is confirmed by the report of an expert examination, remained beyond the interests of the investigation. The other police officer's action was also left beyond the legal evaluation, who was not brought charges as his guilt was not confirmed.

The Georgian Young Lawyers' Association protects P.K.'s interests in the criminal case, as well as in the administrative litigation related to the compensation for the damage caused by unlawful detention and bodily injuries, which is at the stage of substantial hearing. The Georgian Young Lawyers' Association also sent the complaint to the European Court of Human Rights and litigates with regard to unlawful detention, inhumane treatment and inefficient investigation of the case.

6.17. S.J.'s case

At the stage of the investigation and the court hearing, the Kutaisi branch of the Georgian Young Lawyers' Association was protecting the interests of P.T., a legal successor of the victim S.J.

On 25 July 2014 a drunk local police inspector of the Zestaponi Regional Of-

fice of the Ministry of Internal Affairs of Georgia fired a standard service gun of “Jericho” model five times from a short distance in the direction of his ex-wife S.J., and injured her in the areas of the knee, chest and left hand, which caused S.J.’s immediate death.

According to the report of the stationary forensic psychological and psychiatric expert examination, S.S. was not mentally disabled. He was not in need of stationary compulsory psychiatric care. The same report states that he was in the state of physiological affect. However, contrary to this the report of forensic psychological-narcological expert examination by the Commission states that he was not in the state of physiological affect.

The Kutaisi City Court took into account the report of expert examination by the Commission and found the accused guilty according to Articles 11¹ and 108 of the Criminal Code of Georgia and sentenced him to imprisonment for the term of 11 years, which was appealed by both parties at the Kutaisi Court of Appeals. By the decision of the Kutaisi Court of Appeals dated 12 July 2015, the verdict of the Kutaisi City Court remained in force. The verdict also remained in force by the decision of the Supreme Court.

Although S.J.’s murderer was found guilty and the relevant punishment was imposed, this case contains other problems.

Before her death, S.J. notified several times (three times) the law enforcement bodies – both the Ministry of Internal Affairs of Georgia and the Regional Prosecutor’s Office - about the violence and threats by her ex-husband. However, none of her applications was followed by a relevant response. The facts have not been investigated properly, no restraining order was issued, and the investigation was not launched. As a result, S.J.’s ex-husband caused her mortal wounds with a firearm on 25 July 2014.

The Tbilisi Office of the Georgian Young Lawyers’ Association provides the mother of the dead S.J. with legal support to litigate at the European Court of Human Rights with regard to failure of the law enforcement bodies to act and their irrelevant response. Also, with the help of the Georgian Young Lawyers’ Association, the mother of dead S.J. has won an administrative dispute against the Ministry of Internal Affairs of Georgia and the Prosecutor’s Office. By the judgement of 24 July 2015, the Administrative Board of the City Court ruled that there was a direct causal connection between the failure of law enforcement bodies and S.J.’s death, and the above mentioned bodies were imposed to pay compensation for damage.

Also, on the basis of the request of the Georgian Young Lawyers’ Association on 17 February 2015 regarding the failure of the law enforcement bodies, the investigation was launched at the District Prosecutor’s Office of Western Georgia according to Article 342(1) of the Criminal Code of Georgia in connection with the fact of neglect of official duties by the employees of the Zestaponi Regional Office of the Ministry of Internal Affairs of Georgia. How-

ever, the mother of the dead S.J. has not been recognized as a legal successor yet, as well as charges were not brought against anybody.

6.18. L.Sh.'s case

The explanation of the convicted L.Sh. reveals that on 24 December 2013 he was detained in his friend's house and was searched personally. In the course of detention, the law enforcement officers abused him physically and verbally, which was expressed in flogging and threatening. He was not allowed to contact the lawyer and his family after being transferred to the police office building.

As the letter of the convicted contained the elements of the alleged crime, the lawyer of the Georgian Young Lawyers' Association applied to the Prosecutor's Office of Georgia on 17 January 2014. On the basis of this application, the investigation was launched, but it was terminated in March 2014 due to the absence of the elements of crime.

One of the reasons of the termination of the investigation was the report of an expert examination, according to which the injuries were inflicted to L.Sh. earlier than on the day of incident. However, in contrast to this, an alternative expertise was carried out on the basis of the medical documentation presented in January 2014, which revealed that the medical examination of L.Sh. was improper and incomplete and that is why the expert was deprived of the possibility to comprehensively evaluate the extent of injuries on L.Sh.'s body. The expert also specified that the injuries were inflicted to L.Sh. on the day of incident, rather than earlier. The report of this expertise was submitted to the investigative bodies and the resumption of the case was requested, but the request was not satisfied.

It should also be noted that there was a testimony of the witness, in which he specifies that he could hear the law enforcement officers physically abusing L.Sh. The testimonies of the law enforcement officers contradict each other, because two of them specified that physical power was not used, whereas others said that proportional power was used due to resistance. The proportional power and resistance were not mentioned in the search report, and they were later legitimized by the court. The investigator's testimony and the report of an expert examination are also contradictory. All the above mentioned facts raise doubts that the case was investigated properly and the termination of the investigation was based on the proper examination of the facts.

6.19. V.L.'s case

V.L.'s statement reveals that on 27 October 2013 he was detained because of the attack on a police officer. Charges were brought against him for in-

flicting a lightbodily injury to the deputy head of the Rustavi Department of the Ministry of Internal Affairs of Georgia. As he and other witnesses state, the factual circumstances were completely different and V.L. was not the one who attacked, but he was a victim of the violence by police officers. The violence against V.L. and existing injuries are confirmed by the expertise conducted by independent experts, according to which V.L. suffered from a closed crainocerebral trauma, cerebral concussion, fractures of facial bones and skull base. According to the report of an expert examination, V.L.'s injuries are severe and dangerous for life. As for the victim, according to the report of a medical expert examination, he also has some injuries, in particular the bruise of an ear shell, hematoma of the left eye and bruise of an upper lip, but compared to the extent of V.L.'s injuries they were evaluated as light injuries. It should be noted, that in the course of detention there were procedural gaps, due to which the judge of the first hearing released V.L. from detention, and the judge of the pre-trial hearing recognized the detention report as inadmissible evidence.

At present, V.L.'s case is being reviewed by the first instance court. Notably, the primary evidence of the prosecution is the affected witness himself and no other conclusive evidence was presented during the court proceedings.

As for the fact of V.L.'s flogging, in this regard the investigation was launched by the Prosecutor's Office according to Article 333 of the Criminal Code of Georgia. V.L. has not been recognized as a victim in this case. According to the Prosecutor's Office, they are waiting for the completion of the case of prosecution of V.L., in order to transfer the case of his flogging into an active phase.

6.20. M.M.'s case

The statement of the family members of the deceased M.M. reveals that in the morning of 5 July 2013 M.M. was taken from his office by law enforcement officers to the building of the Tbilisi Main Department of the Ministry of Internal Affairs of Georgia, where, according to the official version, he was interrogated as a witness. After the interrogation, M.M. underwent the drug test, which did not prove the use of drugs by him. Having left the building of the Tbilisi Main Department, M.M. told his wife and friends about the pressure put on him and stated that he was forced to sign the testimony against his friend G.M. He also mentioned that he was summoned to the police office again. The next morning M.M. told his friend that he did not want to live any more after this incident and was going to commit suicide. Later he was found hung near the Tbilisi Sea.

Notably, M.M.'s dead body was examined at the initiative of the investigative body, but the expert was not able to find any other traces of injuries apart from those caused by the hanging. At the initiative of the family, an alterna-

tive expertise was conducted afterwards. As a result of this expertise, an injury was revealed, which corresponded to the time spent at the police office. The expert stated that M.M. was injured by “a heavy, blunt subject” shortly before his death.

The doubt about pressure on M.M. is strengthened by the fact that in his testimony he specifies the fact of using drugs 10 days before the interrogation, but the use of drugs was not confirmed by neither the drug test nor the expert examination.

The General Inspection of the Ministry of Internal Affairs of Georgia conducted an investigation in connection with the fact of driving M.M. to suicide for one month. This investigation revealed that employees of the Criminal Police Department did not abuse the deceased person physically or verbally. Notably, the investigation should have been conducted by the Prosecutor’s Office, rather than by the Ministry of Internal Affairs of Georgia, a system within which the alleged crime was committed. The preliminary evaluations spread by the Investigation Department of the Ministry of Internal Affairs General Inspection at the stage of investigation give rise to doubts as to the independence, efficiency and credibility of the conducted investigation. According to paragraph 2 of the Annex (Investigative and Territorial Investigative Jurisdictions for Criminal Cases) to the Order No 34 of the Minister of Justice of Georgia of 7 July 2013 (On Determining Investigative and Territorial Investigative Jurisdictions for Criminal Cases), the investigation of the cases on the commission of crimes by police officers falls within the investigative jurisdiction of the Prosecutor’s Office.

After the Ministry of Internal Affairs of Georgia, the case was transferred to the Prosecutor’s Office. Despite multiple requests and applications by the family members of the deceased M.M. one of the most important witnesses, who was with M.M. shortly before his death, was not interrogated. Also, the prosecution did not interrogate police officers who had a first contact with the M.M. In March 2016 the Prosecutor’s Office terminated the investigation of the case. In the prosecutor’s resolution about the investigation it is stated that there was no case of driving to suicide.

As neither the mother of M.M. nor his wife were recognized as legal successors of the victim, they were deprived of the possibility to appeal the decision of termination of the investigation according to the procedure provided for by the procedure legislation.

6.21. G.S.’s case

G.S.’s statement reveals that on 20 June 2013 he was in Telavi with his brother and 2 acquaintances, near the theatre, as he went behind the theater to urinate. At that time police officers came and abused him physically

and verbally (which was expressed in flogging him with fists and kicks) on the ground that G.S. and his companions had been cursing at the so called "dogs" (slang term for 'a police officer'). Later G.S. was detained, handcuffed and forced into the car where he was beaten by other police officers all the way. After this, he was transferred first to the Telavi Regional Office, where physical and verbal abuse continued. Furthermore, as G.S. states, he was not allowed to contact the lawyer despite his multiple requests. Afterwards, he was transferred to the Signaghi temporary detention facility. As a result of physical violence he had multiple bruises on his body.

On 20 June 2013, the Telavi Regional Court recognized G.S. as an administrative offender for resisting police and was fined a penalty in the amount of GEL 400. As G.T. stated at the court proceedings, he agreed with the verdict. This was caused by his extremely severe psychological condition and fear of police officers.

On 21 June 2013, G.S. applied to the Telavi Regional Prosecutor's Office and the General Inspection with the request to launch an investigation on the fact of flogging. On 22 June 2013, G.S. was interrogated by the Telavi Regional Prosecutor's Office and was sent for an expert examination for the establishment of the extent of injuries on his body.

As of today, the investigation is still being conducted at the Kakheti Regional Prosecutor's Office in connection with the fact of the abuse of G.S. physically and verbally by the employees of the Telavi Regional Police Office. G.S. has not been recognized as a victim and is deprived of the possibility to view the materials of the case and obtain information about the current investigation.