Investigation should start based on Ivane Merabishvili's allegations

As it is publicly known according to the December 16 allegations made by Ivane Merabishvili, some unknown individuals took him away blindfold from the penitentiary on a vehicle to the unknown direction on December 14.

As Merabishvili reports, he was brought allegedly to the penitentiary department, where the Prosecutor General and one other individual met him. Merabishvili says that the Prosecutor General demanded from him to cooperate on Zhvania's case and to submit Saaakashvili's bank accounts, in return he promised assistance in leaving the

country. Otherwise the prosecutor threatened with creation of unfavorable conditions in prison and arrest of Merabishvili's friends.

Following Merabishvili's statement, hot discussion was held on initiation of investigation on the mentioned issue. Government representatives alleged that the statement was unrealistic and no investigation should start (only some officials declared about the necessity to start an investigation). We have heard the explanations that it is the discretion of the prosecution whether to start investigation or not and it depends on the Prosecution's choice. We would like to voice our position about the issue once again:

1.According to Article 100 of the Criminal Procedure Code,"***In case of receiving information about offence, the investigator and the prosecutor shall launch investigation***." In addition, Article 101 of the Code provides more details: " ***information about the offence that was submitted to the investigator or the prosecutor, or was revealed during the criminal proceeding or was published in mass media may serve as the basis for launching the investigation***."

We would like to highlight, that according to the legislation of Georgia, **the prosecution has no choice** and it should start investigation. Article 100 of the Criminal Procedure Code provides explicitly the obligation. Moreover, the issue of starting the investigation does not depend on who considers the allegations containing the elements of offence real and who does not! We regret that we have to make such plain interpretations...

Furthermore, necessary prerequisite for exercise of the obligation shall not be submission of Ivane Merabishvili's or any other individual's official application to the investigative organ. As Article 101 of the Criminal procedure Code provides, the obligation to launch investigation arises even in case of dissemination of such information in mass media.

2.Debates of the high government officials about the start of investigation, is nothing but discussion whether the prosecutor's office shall fulfill its legitimate obligation or not (?!) We opine that high state officials should not debate on the issue. Moreover, it is impermissible and dangerous to make interpretations that infringe clear

requirements of the Georgian legislation.

3. We would like to respond to the statement of the Minister of Corrections and Legal Assistance of Georgia reporting that if investigation does not start, video recording will not be available.

The legislation of Georgia provides otherwise, namely according to the Para 8 of the resolution #34 (July 7, 2013) of the Ministry of Justice of Georgia on "Determination of the Territorial and Investigative Jurisdiction of the criminal cases", "***Investigators of the Investigative Unit of the Ministry of Corrections and Legal Assistance of Georgia investigate… the offences that have taken place on the territory of the institutions under the penitentiary department.*** "

Information provided in Merabishvili's statement (if it is true), does not indicate only on the General Prosecutor's alleged criminal conduct. Generally, it is impossible to take away a prisoner from the penitentiary establishment to other territory without involvement of the employees of the penitentiary department. In view of above, investigation should start by the investigator of the "***Investigation Unit of the Ministry***" (rather than the investigator of the prosecution) based on the part of the statement where participation of the penitentiary employees is highly possible and that has happened on the territory of the establishment under the penitentiary department. As mentioned already, the obligation is provided in the resolution of the Ministry of Justice, which needs to be fulfilled by the Ministry of Corrections and Legal Assistance of Georgia. We consider inadmissible the Ministry's indifference in finding out whether its staff has committed the offence or not.

Therefore, whether prosecution starts investigation or not, the Ministry of Corrections and Legal Assistance of Georgia is not only authorized, but also obliged to launch an investigation. Moreover, it should be added that **if the Ministry is eager to see the video recordings and considers start of investigation as a pre-requisite, the problem can be solved very simply: the Ministry should carry out its obligation, start investigation and see the recording**.

Conduct of high officials of the prosecutor's office and the Ministry of Penitentiary who are obliged to start an investigation and refrain from doing so, might also contain elements of the offence (for example "Neglect of Official Duties", Article 342 of the

Penal Code of Georgia).

Refraining to start the investigation or its delay, or allegation that it is impossible to see the video recordings reinforces the doubts that I. Merabishvili's allegations are real.
We opine, that firstly the government should be interested in determination of the truth. If Ivane Merabishvili's statement is false it is easy to check. Answers on the questions should be provided by the effective and impartial investigation.

In view of above, we call on the Prosecutor's Office and the Ministry of Corrections and Legal Assistance of Georgia to start investigation immediately. Furthermore, we appeal all high officials to observe requirements of the Georgian legislation and to refrain from making the statements that contradict it.

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Article 42 or the Constitution
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