



LIQUIDATION OF THE STATE INSPECTOR'S SERVICE IN THE NAME OF REORGANIZATION

Legal Analysis

2022

HUMAN RIGHTS CENTER



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GENERAL OVERVIEW

On December 25, 2021, the State Inspector and the employees of the State Inspector's Service learned from media¹ that the Parliament of Georgia had initiated the bill to abolish the State Inspector's Service and to create two new institutions instead. The bill was drafted non-transparently, in conspiracy and without any consultations with the interested parties. Neither the State Inspector's Service nor the international organizations and field specialists had information about the bill and its initiation.

Not to mention difficult political developments in the country, the Government of Georgia coincided the initiation of the bill and its expedited hearing in the Parliament with the New Year holidays, when majority of the representatives of the international organizations and diplomatic missions had left the country for holidays; the acting State Inspector was on maternity leave. The decision contradicted the Constitution of Georgia², and the Georgia's obligations in front of the international bodies and aimed to interfere in the activities of the independent institution.

Civil society organizations³ and international partners⁴ expressed their concerns with regard to the activities of the Georgian Dream in relation with the State Inspector's Service because of their interference in the independence of the institution. The Administration of the President of Georgia also disseminated the statement. In her statement of December 27, 2021, the President of Georgia noted that proposing without prior consultation and expediting consideration on abolishing an independent state institution, the State Inspector Service, is unacceptable. The President also stressed out that the agency of a woman director on maternity leave in the midst of the New Year holidays is being abolished with no prior warning. Salome Zurbashvili mentioned in her statement that for her, as a woman President, the treatment of the woman head of the Service, Londa Toloraia, equally unacceptable. Also, according to the President's assessment, while the country is in such a difficult polarized situation, making such decisions causes ambiguity and leads to questions in society, and this is detrimental to the depolarization process⁵.

After the mentioned statement of the President of Georgia, everybody expected her to veto the bill. However, the President did not use her constitutional power and did

¹ See: Information – the Position of the State Inspector and the State Inspector's Service to be abolished; <https://bit.ly/3B8iLfs>

² See the Article 25, Paragraph 1 of the Constitution of Georgia: "Every citizen of Georgia shall have the right to hold any public office if the individual meets the requirements established by legislation."

³ See the Statement of the CSOs <http://www.hrc.ge/332/eng/>

⁴ See the Statement of the US Ambassador Kelly Degnan <https://bit.ly/3uBIY2n>; See the international outcry on the initiated abolishment of the State Inspector's Service: <https://bit.ly/3JaKfQK>

⁵ See the Statement of the President of Georgia: <https://bit.ly/3pE2NBv> [27.12.2021]

not veto the Law on the State Inspector, which abolished the Service as a result of what the head of the agency and her deputies were resigned. In accordance with the January 13, 2022 statement of the President of Georgia, there have been, and still are, different opinions on these changes, but this measure does not contain a categorical legal objection. The abolition of the Service and the establishment of new structures do not in themselves provide a basis for the return of the bill with remarks by the President. Consequently, the President signed the draft amendments to the Law on the Abolishment of the State Inspector's Service⁶.

The State Inspector⁷ expected the President to veto the bill; the CSOs⁸, Public Defender⁹ and opposition political parties called on the President to veto the bill¹⁰.

Although the Parliament of Georgia demonstrated rigid position with regard to the vetoing of the bill¹¹, the veto of the President of Georgia could have been an important step to strengthen the independent institutions and elected officials in the country to ensure more legal guarantees for them. Besides that, if motivated remarks had been submitted, the Parliament of Georgia should have been obliged to reconsider the decision, which was made in conspiracy and in an expedited manner, and to ensure the adoption of the reforms-oriented law.

On December 30, 2021, the Parliament of Georgia approved the bill on the abolishment of the State Inspector's Service at the third hearing, based on which the Service will terminate functioning from March 1, 2022¹².

Instead taking efforts to empower the State Inspector's Service, the Parliament abolished the Service that diminishes the possibilities to empower the human rights oriented independent institutions and elected officials in the country and creates the threat to the democratic development of the country.

On February 2, 2022, the Public Defender of Georgia petitioned the OSCE/ODIHR to evaluate the law on the abolishment of the State Inspector's Service. As the Public Defender has submitted the constitutional lawsuit to the Constitutional Court, she requested to prepare the legal conclusion in the frame of expedited procedures. On February 18, 2022, the OSCE/ODIHR presented its legal opinion, where the introduced amendments were criticized and also, it recommended to suspend and then terminate the enforcement of the law.

⁶ See the Statement of the President of Georgia: <https://bit.ly/35MvVzA> [13.01.2022]

⁷ See the publication of the Radio Liberty/Free Europe: <https://bit.ly/3rEwLac> [04.01.2022].

⁸ See the Statement of the CSOs: <http://www.hrc.ge/334/eng/> [06.01.2022]

⁹ See the statement of the Public Defender: <https://bit.ly/3HHHHJl> [29.12.2021].

¹⁰ See the Statement of the CSOs: <http://www.hrc.ge/334/eng/> [06.01.2022]

¹¹ See: "If it happens, we will override the veto – MP Kadagishvili about the abolishment of the inspector's service" <https://bit.ly/3HEZiSD>

¹² See more information: <https://bit.ly/3Ba6KIY> [30.12.2022]

According to the OSCE Office for Democratic Institutions and Human Rights, contrary to international standards, the abolition of the State Inspector's Service by the Parliament was hasty and was not preceded by prior consultations. According to the organization, this decision is a dangerous precedent as it poses a threat to the rule of law and effective functioning of independent institutions. The legal opinion reads that the legislative change and its outcome may affect the quality of human rights protection in the country, as well as investigation of cases of ill-treatment and death of prisoners, as the effectiveness of an independent institution is at stake, while the mandate of an investigative body is extended to crimes that had not been covered by the jurisdiction of an independent body so far (without increasing the relevant financial resources).

The OSCE Office for Democratic Institutions and Human Rights recommends that it is necessary to suspend the law and eliminate shortcomings in the legislative process; If the law is not suspended, the mandate of the Inspector and Deputies of the Inspector should be extended and they should be allowed to complete their term of office; the OSCE Office for Democratic Institutions and Human Rights agrees with the Public Defender's multi-year recommendation that an independent investigative mechanism should have the power to investigate acts allegedly committed by high officials (Prosecutor General, Minister of Internal Affairs, Head of the Security Service) and prosecutors¹³.

CREATION OF THE STATE INSPECTOR'S SERVICE

Local and international organizations, independent experts, among them the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)¹⁴, former Human Rights Commissionaire of the Council of Europe Thomas Hammarberg¹⁵ and Independent Human Rights Consultant Maggie Nicholson¹⁶ reported about the necessity to create independent, impartial and effective mechanism to investigate the facts of ill-treatment committed by law enforcement officers in Georgia.

The law was adopted based on the international obligations assumed by Georgia to implement effective reforms to fight against ill-treatment, namely to properly implement the obligations defined in the 2017-2020 agenda of the Georgia and EU

¹³ See more information at: <https://bit.ly/3IMXFTo>

¹⁴ See the Report of the CPT on the Visit in Georgia (May 10, 2015) p. 17 and 21, <https://bit.ly/3uBKkI>

¹⁵ See: Thomas Hammarberg, Georgia in Transition, September 2013, P. 44 <https://bit.ly/3vGF6wy>

¹⁶ See: Maggie Nicholson, Report on the Progress of the 2014-2020 National Strategy on Human Rights Protection and Recommendations on Future Approaches, (March, 2017); p. 5 , 23 and 27; <https://bit.ly/3uTZJVF>

Association Agreement¹⁷. At the same time, the 2016-2017 the Human Rights Action Plan¹⁸ of the Government of Georgia adopted based on the Resolution N 338 of July 21, 2016, as well as the 2017-2018 Action Plan of the GoG¹⁹ to fight against Torture, Inhuman, Cruel and Degrading Treatment or Punishment envisaged the obligation to create the independent investigative institution.

In the end, as a result of 2018 reform, instead the Inspector on the Protection of Personnel Data, the State Inspector's Service was created and it held the function of the Personnel Data Protection Inspector one hand, and the authority to investigate concrete crimes on the other hand. The State Inspector's Office started implementation of the investigative functions from November 1, 2019 based on the Law on the State Inspector's Service adopted by the Parliament of Georgia²⁰. It is worth to mention that the Law on the State Inspector's Service was adopted in July, 2019. However, the investigative authority of the Service was to be initially launched from January 1, 2019, then the term was postponed until July 1, and finally it was launched on November 1, 2019.

The CSOs several times criticized the postponed enforcement of the investigative authority of the Inspector, particularly critical they were after the June 20, 2019 events in Tbilisi, when because of the delay, the State Inspector did not have respective authority, and the prosecutor's office of Georgia was entitled to investigate the facts of alleged abuse of power by law enforcement officers during the dispersal of large-scaled peaceful demonstration in Tbilisi on June 20, 2019. The State Inspector was authorized to investigate the facts of alleged abuse of power by law enforcement officers only after November 1, 2019²¹.

Creation of the State Inspector's Service, an independent investigative body, regardless the miscarriages in the law regulating the work of the Inspector's office, was positively evaluated by local and international organizations.

THE MANDATE OF THE STATE INSPECTOR'S SERVICE

Pursuant with the Law of Georgia on the State Inspector's Service, the institution performed its activities in three directions:

a) control the legality of personal data processing;

¹⁷ See: the Action Plan of the Government of Georgia, 2016-2017 years: <https://bit.ly/3BcFmDS>

¹⁸ See: the Human Rights Action Plan of Georgia (2016-2017); <https://bit.ly/3BcFmDS>

¹⁹ See: 2017-2018 Action Plan of the GoG to fight against Torture, Inhuman, Cruel and Degrading Treatment or Punishment: <https://bit.ly/3gyOUQ7>

²⁰ See the Law of Georgia on the State Inspector's Service: <https://bit.ly/34N8rJX>

²¹ See: The Parliament of Georgia postponed the activation of the investigative authority of the State Inspector's Office for the fourth time: http://coalition.ge/index.php?article_id=212&clang=1; [03.07.2019]

- b) control the secret investigative actions and activities implemented in the central bank of electronic communication identification data;
- c) impartial and effective investigation of crimes committed by the representative, servant or affiliated person of the law enforcement body²².

In 2018, after the State Inspector's Service was created and it acquired the function of investigation, the control mechanism on secret investigative actions, in comparison with the control mechanism acting before 2018, was regulated differently. Namely, before 2018, the Personal Data Protection Inspector was authorized to control the legality of secret investigative actions of any investigative body. After the State Inspector's Service was established and it acquired the investigative function, two bodies were authorized to control the legality of secret investigative actions – the State Inspector's Service and the Supreme Court of Georgia. The supervisor judge of the Supreme Court of Georgia was authorized to control the legality of secret investigative actions as due to the conflict of interests it was inadmissible to authorize the institution responsible for secret investigative action to control legality of the secret investigative actions²³.

Although the Law on the State Inspector's Service, which was adopted in 2018, because of limited mandate and power of the inspector failed to comprehensively implement his/her duties, enforcement of these amendments was very important.

MAIN PURPOSE OF THE LEGISLATIVE AMENDMENTS

In accordance with the legislative amendments, from March 1, 2022 the State Inspector's Office and the position of the State Inspector was abolished. The State Inspector, her first deputy and deputies were resigned; the labor agreements were terminated with the other employees of the State Inspector's Office²⁴.

Instead the State Inspector's Office, the Special Investigative Service and the Office on the Protection of Personal Data will be created. The former will be authorized to investigate crimes committed by certain state servants; the latter will be authorized to control legality of processing the personal data and to control the activities conducted in the central bank of electronic communications identification data.

Besides that, in accordance with the authors of the bill, the newly created investigative office will have wider investigative subordination and besides the crimes under the jurisdiction of the current state inspector, they should be

²²The law fully excluded the competence of the inspector to investigate the crimes allegedly committed by the Minister of Interior and by the Head of the State Security Service of Georgia.

²³ See: The Coalition's Opinion on the Initiative to Create a State Inspector's Office: <https://bit.ly/3tvPnsG>

²⁴ See: the Law of Georgia on the State Inspector's Office <https://bit.ly/3vHzCBx>

authorized to investigate the crimes punishable under other articles of the Criminal Code of Georgia. In the contrary to that, the legislative amendments do not offer us any contextual innovations; 2 new bodies will be established instead of the State Inspector's Office and their investigative jurisdiction will be widened only very lightly.

The amendments do not offer any innovations with regard to the prosecutor's office of Georgia either. In the contrary to that, pursuant with the legislative amendments, the officers of the prosecutor's office will not be subjects of the investigative mandate of the Service. Instead empowering the State Inspector's Office, the Parliament of Georgia returned the authority of criminal prosecution to the Prosecutor's Office that significantly weaken the operative independence of the State Inspector's Office.

ASSESSMENTS OF THE PROBLEMS RELATED WITH THE LEGISLATIVE AMENDMENTS

1. The innovations envisaged in the legislative amendments

There are only two innovations envisaged in the legislative amendments:

- a) Several articles of the Criminal Code of Georgia, which are almost never applied in the context of abuse of official power, will be added to the jurisdiction of the new Special Investigative Service. At the same time, the new articles will not be applied with regard to the officers of the prosecutor's office, neither to other public servants. Consequently, only the law enforcement officers, whose alleged crimes were already under the jurisdiction of the State Inspector's Office, fall under the interest of the new office. It is interesting that the authorities of the State Inspector's Office to control the processing of the personal data, to control the secret investigative actions and activities in the central bank of the electronic communications identification data will be completely assigned to the newly established Service on the Protection of Personal Data. As for the investigative authorities, few more articles of the Criminal Code of Georgia were added to the subordination of the Special Investigative Service²⁵. In terms of the investigative authorities, it is significant to mention that besides the increased number of the articles under interest of the new office, no other changes were introduced and the Special Investigative Service was equipped with the same authorities and regulations as the Special Inspector's Office had.

²⁵ Namely: The crimes punishable under the Articles 108, 109, 111, 113, 118, 120, 124, 126, 1261, 137, 139, 143, 144 and 150 -1511 of the Criminal Code of Georgia, if they were committed by the representative of the law enforcement bodies (except prosecutor's office) and crimes punishable under the Articles 153, 159, 162, 163 and 1644.

b) In accordance with the new bill, in fact, the Office was not reorganized but liquidated. From March 1, 2022 the State Inspector's Office and the position of the State Inspector were abolished. Also, from March 1, 2022 the first deputy and deputies of the Inspector were resigned from their positions²⁶. It was particularly alarming precedent as empowerment of the independence and inviolability of the state officials is still a serious challenge. At the same time, when the head of the independent office, who was elected for 6-years term, is resigned without any preliminary warning and well-grounded arguments against her professional performance, in parallel with her conclusions made with regard to the ill-treatment facts of the third president of Georgia Mikheil Saakashvili, many questions are raised about the political motives of this decision.

State Inspector Londa Toloraia took up her office on July 3, 2019. Her term was due to expire in 2025. Consequently, she had reasonable expectation that she would stay on the position for 6 years. Nevertheless, based on the decision of the Parliament of Georgia, her authority was terminated 2 years and 8 months later, thus violating the Article 25 Paragraph 1 of the Constitution of Georgia – the right to be protected from ungrounded dismissal from the occupied position²⁷. Besides that, the legislative amendments aim to divide the State Inspector's Office into two offices – the Personal Data Protection Service and Special Investigative Service that means the office, which was created in 2019 for the State Inspector, will not exist. Implementation of the authority guaranteed under the second sentence of the Article 25, Paragraph 1 of the Constitution of Georgia also means that the citizen of Georgia shall implement her/his duties within the preliminarily agreed term. In this particular case, the authority of the state inspector was completely terminated that was a discriminative act too. With this action, the guarantee under the Article 25 Paragraph 1 of the Constitution of Georgia was infringed.

The practice of the Constitutional Court of Georgia in regard with this issue is interesting. For example, on April 15, 2014, in the Paragraph 27 of the Chapter II of the judgment on the case Davit Kandelaki vs. the Parliament of Georgia, the Constitutional Court noted: *"Constitutional standards to protect the applicable rights of this or that state office may be emanate from its constitutional status. Besides, necessity for high constitutional standard may be linked with the peculiarities of implemented activities, as the defined type of state office, through its content and purpose requires special constitutional protection. In case of absence of such guarantees, constitutional and legal guarantees of certain state offices would acquire fictitious character."* The Paragraph 28 of the same

²⁶ See the Law of Georgia on the State Inspector's Office, Article 27¹ Paragraph 1, <https://bit.ly/3oDnJrS>

²⁷ See the Article 25, Paragraph 1 of the Constitution of Georgia; <https://matsne.gov.ge/en/document/view/30346?publication=36>

judgment reads that “requirements to ensure independence of the actions of the public official stems from the interest of efficacy of the activities on the one hand, and from the constitutional rights of an individual to carry out his/her activities on the occupied position without any interference, on the other hand.” Paragraph 29 of the same judgment reads: “Nevertheless the fact whether or not the Constitution of Georgia directly established concrete timeframes for the exercise of activities of a person when holding a state position, in case of pre-term termination of his/her authority, the legislature should corroborate the public interest that conditioned the necessity to restrict the right.”

However, the Parliament of Georgia did not provide similar justification of its decision. Besides, it is also problematic that the legislative mechanism was not created, which could give right of choice to the state inspector – to continue her activities as a head of the Personal Data Protection Office or a head of the Special Investigative Service until her timeframe on the position would have expired while the mentioned institutions will perform the same activities.

In parallel to that, existence of the independent body, which will control the legality of processing the personal data, is positive obligation of the state pursuant with the Article 8 of the European Convention on Human Rights²⁸. As for the requirement on the independence of the investigative body responsible to investigate the torture, inhuman and degrading treatment stems from the positive obligations under the Article 3 of the Convention²⁹.

Pre-term termination of the state inspector’s authority has side effects on the prohibition of ill-treatment guaranteed under the Article 9 of the Constitution as well as on the right to personal privacy guaranteed under the Article 15 of the Constitution of Georgia. The authority of the State Inspector’s Office was to investigate the facts of torture, inhuman and degrading treatment. The Article 9 Paragraph 2 of the Constitution of Georgia requires to ensure independence of similar investigative body. Also, the Article 15 of the Constitution demands the Executive Government to ensure independence of the State Inspector’s Office considering the fact that the latter controlled the legality of the personal data processing and secret investigative actions. Similar independence is questioned when the authority of the State Inspector was terminated pre-term³⁰.

c) The Article 28¹ Paragraph 2 of the Law of Georgia on the State Inspector’s Office is also problematic, which entitles the Parliament of Georgia to elect the head of

²⁸ See: Judgment of the European Court of Human Rights on the case: M.G. v. the United Kingdom [24/12/2002]. <https://bit.ly/3rFbrRj>

²⁹ See: Judgment of the ECtHR on the case: AFFAIRE BARBU ANGHELESCU c. ROUMANIE [05/01/2005]. <https://bit.ly/3Bg85bg>

³⁰ See: Londa Toloraia vs Parliament of Georgia, constitutional lawsuit, January 28, 2022; <https://bit.ly/3BaSaul>

the Special Investigative Service until July 3, 2025. The head of the Special Investigative Service will implement part of those duties (*namely, investigation of the crimes committed by the representative of law enforcement body, officers or persons equal to them*) that the State Inspector had to implement until July 3, 2025. This provision is problematic in relation with the Article 25 Paragraph 1 of the Constitution of Georgia because from March 1, 2022 the State Inspector Londa Toloraia will no longer be the head of the institution, which will investigate the crimes committed by the representative of law enforcement body, officers or persons equal to them.

It is worth to mention that on February 4, 2022 the government commission, which had to select the head of the Personal Data Protection Service, interviewed applicant candidates and then presented three candidates to the Prime Minister – Kakha Magradze, Lela Janashvili and Tamar Alpaidze.

Reportedly, the candidates failed to meet the basic requirements on education and professional independence necessary for the position of the head of the Personal Data Protection Service; consequently it was necessary to announce the competition repeatedly. Furthermore, the candidates could not demonstrate required level of independence when answering the questions – one of the candidates even stated that the head of the service should agree some issues with the prosecutor's office³¹. According to the current information, the PM presented two candidates on the position of the head of the Personal Data Protection Service to the Parliament of Georgia for approval, regardless the remarks of the commission members³².

2. Subjects of Special Investigative Service

The investigation competence of the Special Investigative Service, like previous model, targets concrete service people, who may commit the crime and their list is defined in the Article 3 of the Law of Georgia on State Inspector's Service (*from 2022, the Law on the Special Investigative Service*).

In accordance with the law, investigative subordination of the Investigative Service pervades: *the concrete crimes committed by 1. Officer; 2. Equal to officer; 3 representative of the law enforcement body*. Accordingly, exclusion of the senior officials of the law enforcement bodies, particularly of the Minister of Interior and Head of the State Security Service from the subordination of the Special Investigative Service is still a problem.

³¹ See: statement of the Rights Georgia, 2022.05.02.: <https://bit.ly/3LlqRT4>

³² See: statement of the Rights Georgia, 2022.10.02: <https://www.rights.ge/en/advert/70>

Although the risks related with the Minister of Interior and the Prosecutor General of Georgia are balanced based on the impeachment procedure regulated under the Constitution of Georgia³³, it is problematic that the legislation/procedure is not clear for example in case of the impeachment of the prosecutor general, which institution is authorized to conduct the investigation.

3. Restricted Competence of the Special Investigative Service

Like the State Inspector's Service, the newly established Special Investigative Service has restricted competence. Namely, the fact that the investigator cannot make decision to conduct important investigative activities hinders comprehensive and impartial investigation and it is the case for the new service too, as the investigator of the new office will again need the approval from the prosecutor.

The same situation is with regard to the secret investigative actions. When investigating the crimes committed by officers, the secret investigative activities are one of the important actions. In similar cases, often, the investigator and the prosecutor have different views and the prosecutor makes final decision.

Besides that, like the State Inspector's Service, the newly established office does not have right to make decision to question the person as a witness in front of the magistrate judge. The prosecutor is again the authorized person to make similar decision. While the biggest part³⁴ of the investigative and procedural activities of the Service falls on the interrogation of witnesses and it is problematic to bring police officers to the investigative body, the dependence on the other state body significantly hinders the investigation.

4. Alleged Political Motives

The State Inspector's Service found several violations with regard to the events related with the treatment of the convicted third president of Georgia – Mikheil Saakashvili. Namely, the Service examined lawfulness disclosing the information on October 8, 2021 by the Special Penitentiary Service about the products purchased in the store of the penitentiary establishment and taken by Mikheil Saakashvili; lawfulness of disclosing data on the vital signs of Mikheil Saakashvili by the Special Penitentiary Service on October 10, 2021; lawfulness of disclosing the information about the food ration by the Ministry of Justice of Georgia and the Special Penitentiary Service on November 5 and 6, 2021; lawfulness of obtaining and disclosing the photo (depicting food supplements taken by Mikheil Saakashvili) and

³³ See: Article 48 Part 1 of the Constitution of Georgia: <https://matsne.gov.ge/en/document/view/30346?publication=36>

³⁴ For example, 60% of the investigative and procedural activities of the State Inspector's Service in 2020 was interrogation of the witnesses. See the Activities Report of the State Inspector's Service, 2020 <https://bit.ly/3gzXiiz>

the video material (depicting facts of taking food by Mikheil Saakashvili) by the Special Penitentiary Service on November 6, 2021; lawfulness of obtaining and disclosing the video depicting the fact of leaving the Penitentiary Establishment N12 by Mikheil Saakashvili, the video depicting his placement in the Penitentiary Establishment N18 and audio-video recordings depicting the events that took place in the reanimobile used for the transfer of Mikheil Saakashvili from the Penitentiary Establishment N12 to N18 on November 8 and 1, 2021.

The State Inspector assessed each case of obtaining and disclosing personal data of Mikheil Saakashvili individually and found³⁵:

- 1) By disclosing the information (on October 8, 2021) on products (natural juices, honey) purchased and consumed by Mikheil Saakashvili in the store of the penitentiary establishment, the Special Penitentiary Service violated the principles prescribed by paragraphs “b” (data may be processed only for specific, clearly defined lawful purposes) and “c” (data may be processed only to the extent necessary for achieving lawful purpose) of Article 4 of the Law on Personal Data Protection which as well constitutes an offence enshrined in Article 44 of the same law.
- 2) Disclosure of the information by the Special Penitentiary Service on October 10, 2021, about the vital functions of Mikheil Saakashvili (blood pressure, pulse, oxygen saturation, glucose level) was lawful. While the information about severe deterioration of Mikheil Saakashvili’s health condition was spread and his private doctor disclosed the information about his health state, the means used by the Special Penitentiary Service to provide the public with general information about the vital indicators of Mikheil Saakashvili was deemed as a proportionate means for meeting the public interest.
- 3) By disclosing the information about the food ration of Mikheil Saakashvili (on November 5 and 6, 2021), the Ministry of Justice of Georgia and the Special Penitentiary Service violated the principles enshrined in paragraphs “b” (data may be processed only for specific, clearly defined lawful purposes), “c” (data may be processed only to the extent necessary for achieving lawful purpose) and “d” (data must be valid and accurate and be renewed if necessary) of Article 4 of the Law on Personal Data Protec-

³⁵ See the State Inspector’s Decision on the Lawfulness of Obtaining and Disclosing Personal Data of the Third President of Georgia Mikheil Saakashvili, [2021-12-07]. <https://personaldata.ge/en/press/post/7757>

tion, which as well constitutes an offence prescribed by Article 44 of the same law.

- 4) By disclosing the video recordings depicting the fact of Mikheil Saakashvili taking food at the medical point and the photo materials depicting certain food supplements (on 6 November 2021), the Special Penitentiary Service violated the principles enshrined in subparagraphs “a” (data may be processed fairly and lawfully, without prejudice to the dignity of the data subject), “b” (data may be processed only for specific, clearly defined lawful purposes), “c” (data may be processed only to the extent necessary for achieving lawful purpose) and “d” (data must be valid and accurate and be renewed if necessary) of Article 4 of the Law on Personal Data Protection which at the same time constitutes an offence prescribed by Article 44 of the same law.
- 5) By disclosing the video recording depicting the fact of leaving the Penitentiary Establishment N12, the video recording depicting his placement in the Penitentiary Establishment N18 and audio-video recordings depicting the events that took place in the reanimobile used for the transfer of Mikheil Saakashvili from the Penitentiary Establishment N12 to N18 (on November 8 and 11, 2021), the Ministry of Justice and the Special Penitentiary Service violated the principles enshrined in paragraphs “a” (data may be processed fairly and lawfully, without prejudice to the dignity of the data subject), “b” (data may be processed only for specific, clearly defined lawful purposes), “c” (data may be processed only to the extent necessary for achieving lawful purpose) and “d” (data must be valid and accurate and be renewed if necessary) of Article 4 of the Law on Personal Data Protection which at the same time constitutes an offence prescribed by Article 44 of the same law.

By the decision of 03 December 2021, the State Inspector’s Service deemed the Ministry of Justice of Georgia and the Special Penitentiary Service as administrative offenders for unlawful disclosure of personal data of the third President of Georgia Mikheil Saakashvili. The Ministry of Justice was deemed an administrative offender for two administrative offences prescribed by Article 44 of the Law of Georgia on Personal Data Protection (violation of data processing principles), while the Special Penitentiary Service was deemed an offender for six administrative offences set forth by the same Article, for which they were both imposed fines and were instructed to delete/remove the video recordings, video-audio recording and photo materials con-

taining personal data of Mikheil Saakashvili from their official webpages and pages on social media (Facebook).

The decision of the State Inspector's Service was appealed by the Special Penitentiary Service at the Tbilisi City Court on 17 December 2021, while the instruction issued by the State Inspector on deletion of the video recordings, audio-video recording and photo materials containing the personal data of Mikheil Saakashvili was not fulfilled.

The decision of the State Inspector's Service was substantiated in respect of all of the episodes, was based on the best international practice and standards and domestic legislation regulating persona data.

On January 17, 2022, the Tbilisi City Court finished examination of the appeal of the Special Penitentiary Service and announced the ruling based on which the decision of the State Inspector to fine the Special Penitentiary Service was annulled. Before that, the Tbilisi City Court passed another decision on January 11, 2022, based on which the fine imposed by the State Inspector on the Ministry of Justice was also annulled³⁶.

THE CASE LITIGATED BY HUMAN RIGHTS CENTER

Case of V.T.

On April 17, 2020, at about 17:00 pm, when emergency situation was in force in Georgia because of COVID pandemic, V.T. was riding a bike nearby the Shindisi Highway # 26 in Gori. Having entered the yard of the residential building, he saw officers of the Gori municipal department of the Ministry of Internal Affairs were in the service cars in the yard; they had arrested V.T's neighbors and filling out administrative fine protocols. When V.T. rode by them one of the police officer pointed at him saying something to his colleague and cursed. After a verbal controversy, V.T realized that police officers were behaving illegally, he took out his mobile phone and started video-recording of the incident. The police officers got very aggressive, three of them attacked V.T. and physically and verbally assaulted him; they tried to grab the phone.

After the police officers seized the phone from V.T, he said he was ready to accompany them to the police office. However, the officers forcibly placed him in the car and took to the Gori district police office. The victim stated that he became victim

³⁶ See the statement of the State Inspector <https://personaldata.ge/en/press/post/7824>, [2022-01-07]

of physical violence and verbal insulting in the car too. Namely, the police officers slapped him in the face and threatened with breaking his backbone.

At the building of the Gori district police station, V.T. was beaten with legs; one of the officers attacked him from the back, hit in the neck and threw him down. When V.T. got up the officer again hit him. Afterwards, he was shackled and threatened with more severe form of beating.

The same police officers carried V.T. upstairs where there were no video cameras. He was again ruthlessly beaten in the room and then left there during 4 hours. Although beaten V.T. asked for the doctor's help, because he had unbearable pains, nobody called doctor. Nobody gave him a painkiller; he was not allowed to call his family or/and the lawyer; the officers were cursing him, threatening with killing, were appealing on his health conditions that they had learned from V.T. before detention.

On April 17, 2020, V.T. was placed in the temporary detention setting of the Shida Kartli and Mtskheta-Mtianeti Regional Department of MIA. The same police officers demanded V.T. to take off cloth before placing in the detention setting to check whether he had bruises on the body.

When he was brought to the temporary detention setting V.T. stated that he was beaten by police officers and asked for the doctor and lawyer. On April 18, 2020 the doctor-therapist of the detention setting Tamar Tatrishvili recommended that V.T. needed consultation with the traumatologist.

3-4 hours after V.T. was placed in the detention setting, the medical emergency brigade arrived at the detention setting and he was taken to the medical clinic Gormedi, where he became subject of violence again. The victim said that about 8-10 police officers used to enter the reception room, where he was alone; they were insulting him and tried to take him back to the temporary detention setting.

At the very first hearing of his case in the court V.T. protested his unlawful detention and physical and verbal assault on him by police officers during and after the detention. The judge called on the representative of the MIA to start examination based on the detainee's statements. Victim V.T. was released from the temporary detention setting, and the Gori District Court terminated criminal proceedings against him based on June 26, 2020 ruling on the case #4/230-20. The court concluded that the examination could not prove that V.T. really committed the offence he was accused of.

On June 15, 2020, HRC several times appealed the Prosecutor General's Office of Georgia to start investigation into the alleged crimes committed by the police officers and to obtain the recordings from the camera installed inside and outside the premises of the Gori district police station. The prosecutor's office replied that they could not obtain the recordings and stopped examination of the appeal. On November 10, 2020 HRC appealed the Tbilisi City Court and requested to change the November 2, 2020 resolution and to grant victim status to V.T so that he and his legal representatives had access to the criminal case files and enjoy all other procedural rights of the victim. The Tbilisi City Court did not satisfy the claim of Human Rights Center on November 17, 2020.

On July 21, 2020 Human Rights Center petitioned the State Inspector's Service with regard to the case.

On October 28, 2020, with the letter #SIS22000017643, the State Inspector's Service notified Human Rights Center what kind of investigative activities were conducted and will be conducted by their office. Human Rights Center still does not have information about the evidence obtained by the SIS in the frame of their examination of the case, as V.T. has not received the victim's status so far.

Human Rights Center sent application to the European Court of Human Rights on behalf of V.T. It is interesting that after the application was sent to the ECHR, Human Rights Center's lawyers were invited to the SIS, where the recognition procedures were conducted and V.T. recognized those police officers, who had verbally and physically assaulted him.

It is alarming that none of the police officers were punished for the astonishing facts they had committed. V.T. still does not have victim status and does not have access to his case files.

The limited mandate of the State Inspector described in the case of V.T. demonstrated those challenges which hindered the SIS to effectively and timely conduct comprehensive and impartial investigation. The necessity to get approval from the prosecutor to commence all significant investigative actions restricted the State Inspector's Service to independently conduct the investigation – hindered their effective investigation and evidence-gathering procedures. Therefore, it was necessary that the investigative body had authority to independently solicit the court to commence investigative and procedural actions.

It is important issue for all investigative bodies. However, it was particularly important for the State Inspector's Service as it investigated the alleged crimes

committed by the officers of the law enforcement bodies and other public servants. Creation of artificial barriers from the side of the respective state bodies is still a main challenge that deprives the institution to properly defend the human rights.

CONCLUSION

Local and international societies know that ill treatment, abuse of office power and unlawful investigation procedures in the Georgian law enforcement and penitentiary institutions had been the practice in Georgia for years. Failure to launch investigations into the alleged crimes committed by the officers of the law enforcement and penitentiary institutions, ineffective and faulty investigations, dragged out medical expertise, frequent negligence from the side of responsible officials, delayed procedures of collecting the evidence and other problems worsened the critical situation in the field. Systemic violation of human rights by law enforcement officers and impunity syndrome underlined the need to create independent investigative body.

Finally, in 2018, the Parliament of Georgia passed the law on the State Inspector's Office, which assigned the function of the independent investigative mechanism to the State Inspector's Service, and the prosecutor's office was authorized to conduct procedural supervision of the Service. Regardless legislative miscarriages, which were often criticized by the nongovernmental organizations, from November 1, 2019 to present the activities of the State Inspector's Office and the investigations they carried out satisfied the requirements of timing, comprehensiveness and accuracy that significantly improved the level of the human rights protection in the country.

As for the legislative miscarriages, regardless many petitions, the Parliament of Georgia did not implement any reform to strengthen independence and effectiveness of the SIS. In the contrary, in the end of December 2021, the Parliament justified its decision to abolish the SIS by stating that uniting the functions of the personal data protection and investigation within one institution caused conflict of interests and created risks for the protection of personal data. The argument was that with this initiative they would fulfill the 2018 recommendation of the NGO sector to create independent investigative service.

It is interesting that the Parliament of Georgia failed to detect the conflict of interests in 2018. Accordingly, regardless many appeals of the CSOs, many recommendations were rejected by the authority. The recommendations of the nongovernmental organizations became interesting for the government only during the acute political situation and developments around Mikheil Saakashvili's arrest, when the State

Inspector's Service, as an independent state institution, implemented its duties only in compliance with the law and international obligations.

It is also alarming that the Parliament of Georgia abolished the State Inspector's Service for the sake of personal data protection while since May 2019, the Parliament of Georgia has not reacted to the bill on the Protection of Personal Data, which aims to establish high standard of the personal data protection in Georgia. The new bill drafted in accordance with the international standards has been pending before the Parliament for more than 2 years; at the same time, in 2021, the State Inspector's Service submitted the detailed and critical report of its 2020 annual activities to the Parliament of Georgia but nobody heard it in the legislative body.

To sum up:

- *Legislative amendments were introduced in conspiracy and in expedited manner, without engagement of the State Inspector's Service, field specialists, international organizations and local civil society;*
- *The timing of initiating the bill and expedited consideration of the bill coincided with the New Year holidays when absolute majority of the representatives of the international organizations and diplomatic corps were not in Georgia;*
- *The timing of submitting the bill to the parliament and expedited manner of its examination coincided with the maternity leave of the State Inspector. She went to the Parliament of Georgia to attend the hearing of the bill directly from the maternity house after she had learned about the decision of the parliament to abolish her Office from media;*
- *The initiated bill did not change the law regulating the State Inspector's Service;*
- *The Parliament of Georgia failed to justify the expedited manner of initiating and hearing the bill;*
- *The bill elaborated by the Parliament does not empower the two newly established services and does not create guarantees on the independence of the heads of those institutions;*
- *No effective mechanism was added to the new Special Investigative Service to more effectively investigate the crimes committed by officers;*
- *No challenge was taken into account, which were underlined in the reports of the State Inspector's Service;*

- *The new law does not improve the personal data protection in Georgia and the bill drafted in accordance with the European standards of the personal data protection has been pending in the Parliament of Georgia for more than 2 years;*
- *The law provisions about the resignation of the State Inspector and her deputies were alarming. It contradicts the Article 25 of the Constitution of Georgia and violates the positive obligations of the state in accordance with the right to the prohibition of ill treatment and right to privacy guaranteed under the Constitution of Georgia and the European Convention on Human Rights;*
- *The developments around the State Inspector's Service, the decision on its abolishment contradicted the Constitution of Georgia, violated human rights and aimed to interfere in the activities of the independent institution;*
- *This process, as a precedent, undermines the independence of all elected officials, creates a feeling of instability and is an oppression on their professional activities.*