

VAGUE PROSPECT FOR RESTORING JUSTICE

EVALUATION OF THE WORK OF
THE DEPARTMENT OF THE
PROSECUTOR'S OFFICE FOR
INVESTIGATIONS OF THE
OFFENSES COMMITTED DURING
LEGAL PROCEEDINGS



2021



HUMAN RIGHTS CENTER

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The Analytical Document was prepared with the financial support of the US National Endowment for Democracy (NED). Opinions expressed in the Analytical Document are of HRC and do not necessarily represent those of the donor. Therefore, NED is not responsible for the content of the text laid here.



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INTRODUCTION

Until 2012, torture, inhuman, degrading treatment, forcible transfer of property and illegal confiscation of assets in Georgian penitentiary facilities and police stations was a systemic problem and a pattern of governing the country for years¹.

In 2012, through the Parliamentary Elections, one of the main election promises of the Georgian Dream coalition, which came to power, which also largely determined the results of the elections at that time, was the so-called restoration of justice, preventing law enforcement officers from committing crimes, ending illegal surveillance and wire-tapping practices, and so on.

Therefore, after the change of government, tens of thousands of citizens filed complaints with various agencies, including the Prosecutor's Office, the Parliament of Georgia, the Ministry of Internal Affairs and other state agencies, requesting investigations into similar criminal offenses committed before 2012. The applicants mainly demanded the restoration of violated rights, the punishment of the offenders and the return of the confiscated assets.

Beside local civil society organizations², international organizations and experts also spoke openly about the need for a mechanism to address gaps in justice. Following the victory in 2012 Parliamentary Elections, the winning forces considered the creation of an interim government commission to investigate shortcomings in the administration of justice as one of the main mechanisms for restoring the rule of law and justice. For many victims, exactly this became a hope that setting up a commission will enable them to conduct an impartial investigation into their cases and exercise their rights to a fair trial. Nevertheless, for years the promise remained merely a promise, and the creation of the commission to investigate the gaps in the justice system was delayed. Eventually, the government of the Georgian Dream coalition refused to set up the commission on the grounds that the State would not be able to pay large compensations to the victims. However, in response to the protests in the part of the public due to the delay in the process, the government took the initiative to establish a department within the system of the Prosecutor's Office of Georgia for investigations of the offenses committed during the legal proceedings conducted by the Prosecutor's Office.

The creation of the Department was announced by the then Prime Minister Irakli Gharibashvili in December 2014. In his statement³, PM noted that the review process had been

¹see Survey of Torture and Inhuman Treatment Practices in the Georgian Penitentiary System (2003-12): http://www.osgf.ge/files/2014/publications/OSGF_Report_GEO_PRINT.pdf

²see: Statement by the Coalition for Independent and Transparent Justice from March 4, 2015: <https://idfi.ge/ge/statement-on-the-initiative-to-investigate-crimes-committed-in-the-process-of-administration-of-justice>

³see: Statement of Irakli Gharibashvili: <http://www.tabula.ge/ge/story/91217-premeri-prokuraturashi-qonebis-dasabruneblad-departamenti-sheiqmneba>

finalized of applications formally filed with the prosecutor's office over the past two years regarding various types of illegally confiscated assets and that of the individuals who have been unlawfully sentenced to imprisonments in prison facilities or were victims of torture and ill-treatment. PM further noted that the Government of Georgia would do the calculation of the damage and ensure the subsequent payment of refunds.

On January 30, 2015, following the Decree of the Government of Georgia⁴, a new structural unit has been established in the Chief Prosecutor's Office of Georgia: the Department for Investigation of Crimes Committed during Legal Proceedings. Nevertheless, the operation of the Department, given the insufficient legal leverage, was only made possible after the legislative changes⁵ adopted in June 2016.

Despite the enthusiasm and positive expectations among a part of the public and human rights advocates caused by the creation of the Department, it soon became clear that the activities of the Department did not fully meet the expectations of the society and ultimately the purpose of its creation: to restore "justice and law" for all individuals infringed in their rights.

In order to raise awareness among the public of the activities of the Department, to increase the number of applications to Human Rights Center (HRC) and, in general, to evaluate the activities of the Department, HRC carried out the monitoring of the activities of the Department in 2017-2018, with the support of the Open Society Foundation, and in 2018, HRC presented to the public a research: "Monitoring the Activities of the Department of the Prosecutor's Office for Investigations of the Offenses committed during Legal Proceedings"⁶. Taking into account the findings of the research, and having identified existing legal or procedural gaps, further having analysed the judgments and based on the results of the monitoring of the court proceedings, HRC developed recommendations for the Chief Prosecutor's Office (which was subsequently renamed as the Office of the Prosecutor General), the High Council of Justice of Georgia and the Courts of Appeals, through which the process of restoring "justice and law" would become more foreseeable, tangible and effective.

The department is still operating, but the questions of the public remain unanswered, and

⁴see: Decree of the Government of Georgia from January 30, 2015:

<https://matsne.gov.ge/ka/document/view/2724425>

⁵ With the legislative amendments from 2016, Article 310 of the Criminal Procedure Code was supplemented with sub-paragraph "g", which substantially increased the role of the Department and made it possible to restore the rights violated during the proceedings based on a decision made by prosecutors. In particular, the Prosecutor's Office was granted the right to appeal to the Court of Appeals making it possible to review judgments which already have entered into legal force.

⁶see: "Monitoring the Activities of the Department of the Chief Prosecutor's Office for Investigations of the Offenses committed during Legal Proceedings", Human Rights Center, Tbilisi, 2018.

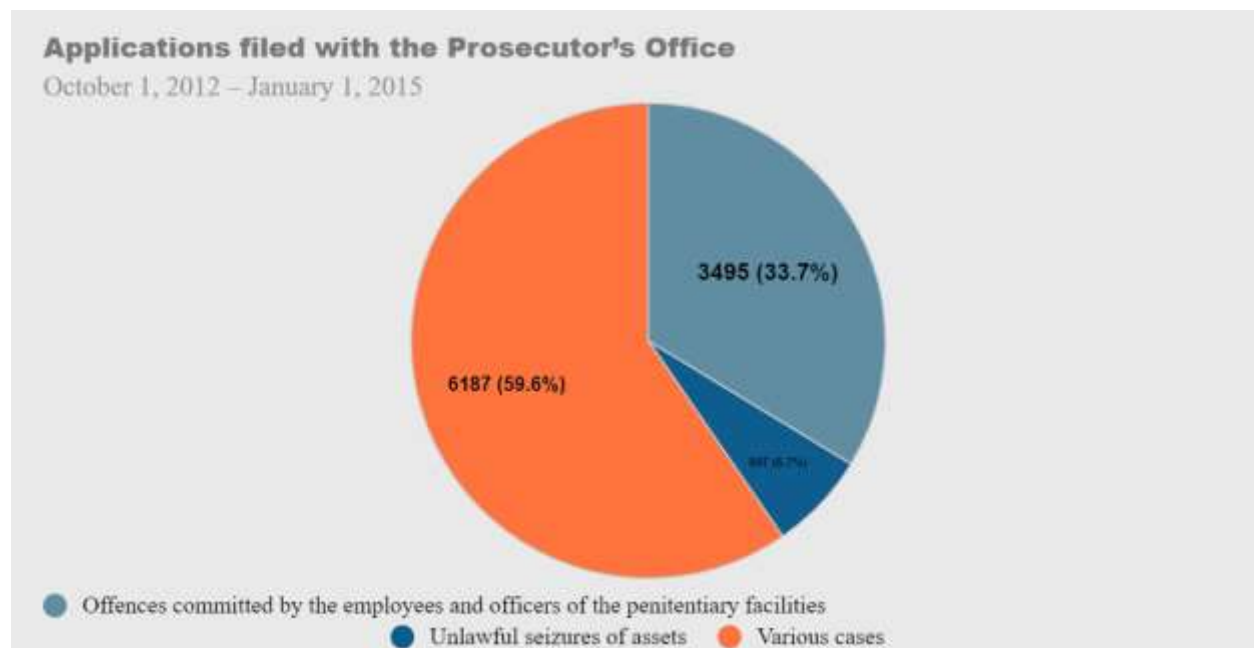
<http://hridc.org/admin/editor/uploads/files/pdf/hrcprep2018/reaserch-geo.pdf>

the hopes of the persons awaiting the restoration of their violated rights are becoming vaguer.

The purpose of this Analytical Document is to summarize the results of the research of HRC from 2018, and to reveal the extent to which the recommendations developed within the study were taken into account, on the one hand, and to evaluate the effectiveness of the Department following the statistical data available up to the date, on the other hand. Further, the purpose of the Document is to evaluate the activities of the Department as a result of the analysis of former and current cases HRC is working on, and to identify gaps, if any, that still exist, and to develop recommendations for addressing the gaps.

ACTIVITIES OF THE DEPARTMENT: STATISTICS

According to the information received from the Office of the Prosecutor General of Georgia⁷, from October 1, 2012 to January 1, 2015, a total of 52,530 complaints / applications were filed with the Prosecutor's Office of Georgia where the applicants were referring to the alleged unlawful actions on the part of civil servants committed against them or their family members. In 10,379 cases, the applicants requested investigations to be instituted into the specific facts. From these 10,379 applications, 3,495 referred to the offenses committed by employees and officers of penitentiary facilities, 697 applications referred to unlawful seizures of assets, and 6,187 applications were categorized under various cases.



⁷see: Public information requested by IDFI from the Prosecutor's Office of Georgia:
<https://idfi.ge/public/upload/courts/Prosecutors-Office-1313489.pdf>

According to the public information issued by the Prosecutor's Office of Georgia on March 6, 2015⁸, **criminal proceedings were instituted against 367 civil servants for the offenses committed before October 2012. Judgments of conviction were rendered against 147 persons, while judgments of acquittal were rendered against 29, while the mechanism of diversion was applied for 13 persons. In other cases, the proceedings are still pending.**

Following the legislative amendments introduced to the Code of Criminal Procedure on June 24, 2016, as of December 31, 2019, the Department for Investigations of the Offenses committed during Legal Proceedings had decided to approach the courts requesting to review the judgments against 79 convicts from where 18 had a status of political prisoner; the court had rendered judgments of acquittal against 69 persons and with regard the remaining convicts the hearings were still pending.

EVALUATION OF THE STRATEGY AND PLAN OF THE GENERAL PROSECUTOR'S OFFICE OF GEORGIA IN THE CONTEXT OF THE ACTIVITIES OF THE NEW DEPARTMENT

In recent years, the prosecution system has undergone reorganization number of times. First, following the amendments enacted in 2013, the function of criminal prosecution was completely removed from the Minister of Justice and assigned to the Chief Prosecutor. Under the reforms carried out in 2015, the competences to make decisions on the selection, appointment and dismissal of the Chief Prosecutor was assigned to a collegiate body, the Prosecutorial Council. In 2016, an Advisory Board was set up in the Prosecutor's Office, the main purpose of which was to hear the issues of incentives for and disciplinary actions against the employees of the Prosecutor's Office of Georgia. Under the amendments to the Constitution, after 2018 Presidential Elections, the Prosecutor's Office of Georgia was removed from the executive branch and became an independent agency, accordingly the Chief Prosecutor's Office was transformed into the Office of the Prosecutor General⁹. It is clear that in parallel with the increase in institutional independence, the challenges faced by the Prosecutor's Office have also increased.

Article 29 of the Organic Law of Georgia on the Prosecutor's Office is aimed at supporting the strategic development. Pursuant to paragraph 1 of the above Article, in order to develop the prosecution system, the Prosecutor General shall approve the Strategy and Action Plan for Development of the Prosecutor's Office for every subsequent 6 years.

The evaluation of the strategic documents of the Prosecutor's Office is important insofar as

⁸ Ibid:

⁹see: Organic Law of Georgia on the Prosecutor's Office (2018), Articles: 1, 6, 10 and 19.

<https://matsne.gov.ge/ka/document/view/4382740?publication=5>

these are the documents that can assess the trends in development of the Prosecutor's Office in the new reality. Especially when one of the significant components of the Strategy of the Prosecutor's Office of Georgia (for 2017-2021) is to increase the efficiency of the investigation of the offenses committed during legal proceedings¹⁰.

In the format of the Analytical Document, a detailed analysis of the strategic documents of the Prosecutor's Office is not fully possible; However, in this case, the eighth direction of the second goal of the Action Plan of the Prosecutor's Office of Georgia (increasing the effectiveness of the fight against certain crimes) is of special importance to us, which is to increase the efficiency of investigating crimes committed during legal proceedings. Although, the Action Plan does not fully meet the challenges in this regard and requires additional measures to achieve the goals set out in the strategic documents, in this case, we will still try to draw some conclusions by assessing the indicators that are already envisaged in the Plan and needed to achieve the goals.

According to the Action Plan, to measure the performance of the eighth direction of the second goal (Section 4.8), two indicators are presented: 1. The rate of initiation of criminal prosecution for the offenses committed during legal proceedings; 2. The number of prosecutors working on the offenses committed during legal proceedings and their workload.

Indicator 1

Based on the public information requested from the General Prosecutor's Office of Georgia¹¹:

- In 2016, the Prosecutor's Office launched an investigation into 71 cases of the alleged offenses committed during legal proceedings, of which 25 cases were cleared (coerced seizure of assets, battery and torture). Out of the 13 civil servants attainted, criminal proceedings were instituted against 4 persons, with regard to the remaining persons, discretionary powers have been exercised.
- In 2017, the Prosecutor's Office launched an investigation into 54 alleged offenses of the same type and cleared 35 cases: 20 cases of compelled confiscation of assets and 15 cases of battery and torture. Of the nine civil servants attainted, against 6 persons the criminal prosecution was instituted.
- In 2018, the Prosecutor's Office launched legal proceedings concerning 38 cases of alleged offenses from which 24 facts of coerced confiscation of assets were cleared, however, no criminal prosecution was instituted concerning the above facts.
- In 2019, the Prosecutor's Office launched an investigation into 79 cases of alleged

¹⁰see: Strategy of the Prosecutor's Office of Georgia (2017-2021), paragraph 4.8 "Increasing the efficiency of the investigation of the offenses committed during legal proceedings", p. 22

<http://pog.gov.ge/page/default/prokuraturis-strategia-1>

¹¹ Letter N 13/65991 of the General Prosecutor's Office of Georgia of November 25, 2020 to Human Rights Center.

offenses committed in the course of legal proceedings, of which 80 cases of coerced confiscation of assets were cleared, while in terms of none criminal prosecution was instituted.

From the information presented, it is clear that the number of cleared cases and attained persons is much higher than the number of persons prosecuted, which raises a question, as the perpetrators of such offenses are civil servants. According to the additional information provided by the Prosecutor's Office, the number of attained persons exceeds the number of persons charged with the offenses, as the rest of the persons cooperate with the investigation, which becomes the basis for applying discretionary powers. Consequently, it is unclear why no criminal proceedings were initiated against any of the persons in 2018 and 2019. Therefore, the eighth direction of the second goal cannot be considered accomplished in full.

Indicator 2

The second indicator determines the number of prosecutors working directly on the cases of the offenses committed during legal proceedings and the workload of the prosecutors.

Based on the information provided to HRC by the Office of the Prosecutor General of Georgia on November 25, 2020¹², up to the date, there are overall 19 persons employed in the Department investigating the offenses committed during legal proceedings. A Head of Department, a Deputy Head of Department, 7 prosecutors, 6 investigators, 3 coordinators and an advisor. According to the research conducted by HRC in 2018, the number of people employed in the Department at that time was 24¹³. From the employees of the Department, 10 prosecutors were appointed by the Chief Prosecutor of Georgia (including the Head of the Department and the Deputy Head of the Department), 3 major case investigators, 5 superior case investigators (including 2 persons selected through internal competition on the recommendation of the Disciplinary Board). It is unclear why the number of employees in the Department was reduced.

According to the information provided by the Prosecutor's Office, within the scope of operations of the new Department, the assessment of the workload of the prosecutors is also in place serving as a necessary mechanism for the proper functioning of the Department. However, the problem stems from the non-availability of guidelines or a methodology or an order of the Prosecutor General which would be needed to facilitate the full achievement of the goals under the second indicator. Therefore, it is necessary to develop an appropriate regulated system. As of 2018, none of the indicators shows the full achievement of the goals set in terms of the fight against the offenses committed during legal proceedings. Therefore, this mechanism can be considered

¹²see: Letter N 13/65991 of the Office of Prosecutor General of Georgia from November 25, 2020 addressed to Human Rights Center.

¹³ Letter N13 / 14840 of the Chief Prosecutor's Office from February 28, 2018.

as partially implemented.

In view of the above, it can be said that an important challenge to date is to effectively investigate the offenses of torture and ill-treatment, and also the offenses committed during legal proceedings, and to prosecute criminally the alleged perpetrators. Further, in order to prosecute criminally in an efficient manner, it is necessary to employ specialized prosecutors and investigators on cases that are particularly complex, which according to the results of the study remains a problem.

AMBIGUITY OF CRITERIA FOR THE ADMISSION OF CASES TO LEGAL PROCEEDINGS

As part of the monitoring carried out by HRC in 2018, the researchers were studying the activities of the Department in different directions and were identifying gaps in the practice. The results of the study, beside the analysis of the legal framework and the study of court decisions, were also based on interviews with the professionals in the field and the examination of the cases on which HRC is working.

One of the main findings of the study was the problem of clarity and specificity of the legal acts regulating the activities of the new Department, which in turn negatively affected the trust to the process.

Therefore, among other recommendations, HRC called on the Chief Prosecutor's Office to specify the categories of cases falling under the scope of activities of the Department for Investigations of the Offenses committed during Legal Proceedings through developing a document (guidelines) on the selection criteria for such cases. Further, HRC also called on the Department to write down the preconditions for admitting or rejecting the cases for legal proceedings that would have contributed to the transparency of the Prosecutor's Office and would have avoided bias and partiality in the activities of the Department.

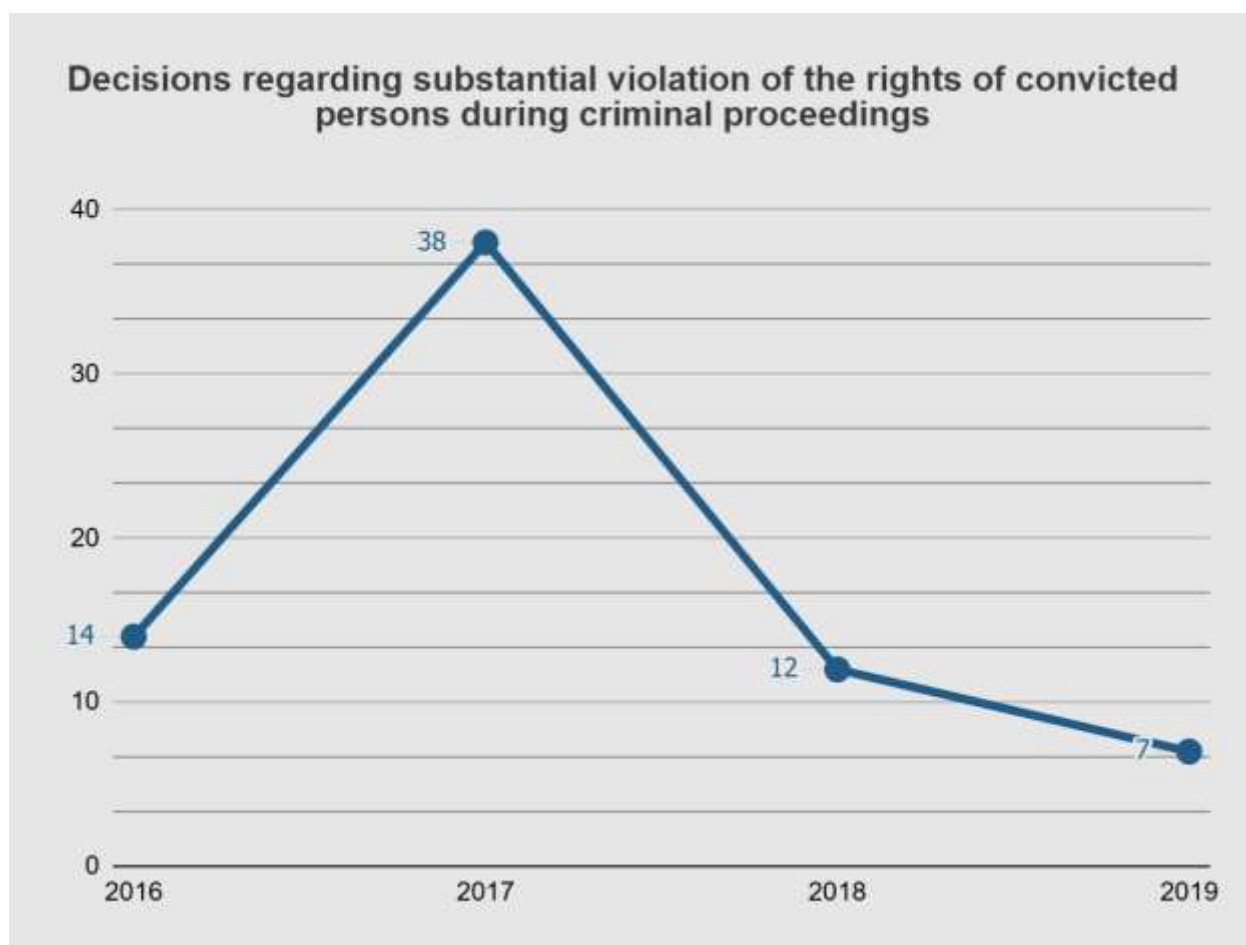
On the background of failure to take on the recommendations, the Department is still guided by the general rules under Article 110 of the Criminal Procedure Code which is not enough to meet the standard of foreseeability given the Department's mandate.

Thus, the question of the objective observer remains unanswered: how impartial is the case selection process under the conditions where the criteria for accepting cases are not written in advance and the admission of cases for legal proceedings depends only on general principles. Moreover, the absence of specific criteria for accepting a case cannot rule out an unsubstantiated refusal to review the case due to the newly discovered circumstances.

TRENDS IN THE APPLICATION OF DECISIONS OF PROSECUTORS BY YEARS

According to the General Prosecutor's Office of Georgia¹⁴, as a result of the work undertaken by the Department, during 2016-2019, decisions were made against overall 71 persons regarding substantial violation of the rights of convicted persons during criminal proceedings. Since 2017 the figure is steadily decreasing while in 2019 the figure was the lowest.

Within the reinvestigations into the cases of conviction as provided for by the Criminal Code of Georgia for different categories of offenses, the Department shall make the decisions on substantial violations of the rights of the convicted persons during the criminal proceedings conducted against the convicted person.



The results of the research carried out by HRC in 2018, made clear that the above decisions by the prosecutors shall be made on the cases of different categories of offenses provided there

¹⁴see: Letter N 13/65991 of the Office of Prosecutor General of Georgia from November 25, 2020 addressed to Human Rights Center.

are verified facts of human rights violations. The decisions concern the offenses against humans and health as well as the malfeasances, financial and other crimes committed against the State. In this respect, the types or categories of specific crimes still do not prevail.

Moreover, during 2016-2019, approximately 54% of the decisions were adopted in 2017 (38 of the 71 decisions). As for the data for 2019, only 7 such decisions have been adopted (10%). Data analysis shows that the trend to adopt the decisions has been steadily declining since the establishment of the Department. Against the background of the fact that many cases are still uninvestigated, the question of the criteria by which the Department has selected these 71 cases remains unanswered.

An analysis of the available statistical information clearly shows the declining trend in adopting the decision by the new Department on substantial violations of human rights in the course of legal proceedings. Further, against the background of the fact that the persons abused in terms of human rights have been waiting for the restoration of justice since the establishment of the Department, the non-transparency of the activities of the Department and the ambiguity of the criteria raises more questions in the public about the effectiveness of the Department.

RETURN OF COERCIVELY CONFISCATED ASSETS

One of the most important components of the process of restoring "law and justice" was the return of the illegally confiscated assets to the victims.

By Decree N1044 of the Government of Georgia from May 25, 2015¹⁵, the issue of returning illegally confiscated assets to the affected individuals was determined. *The scope of the subordinate legal act is to return to the victims only the assets that is on the State balance at the time of adopting the decision.*

From the annual Report submitted to the Parliament of Georgia by the Prosecutor's Office of Georgia on May 15, 2020¹⁶, we acknowledge that:

In 2015-2019, the Department for Investigations of the Offenses committed during Legal Proceedings identified 171 cases of coerced confiscation of assets. Since the Department was set up, out of 335 persons recognised as victims until December 31, 2019, the Ministry of Economy and Sustainable Development of Georgia returned to 256 persons movable and immovable assets of the value of approximately GEL 53,500,000 following the summary decisions by the Prosecutor's Office.

¹⁵see: Decree N 37 of the Government of Georgia from May 25, 2015:

<https://www.matsne.gov.ge/ka/document/view/2858361>

¹⁶see: The Prosecutor's Office of Georgia, Report N13/25416 of the Prosecutor General of Georgia from May 15, on the Activities of the Prosecutor's Office of Georgia in 2019, P. 35 -37.s

http://www.parliament.ge/ge/ajax/downloadFile/136661/1-6475_prokuratura_angarishi

THE MINISTRY OF ECONOMY AND SUSTAINABLE DEVELOPMENT OF GEORGIA HAS RETURNED MOVABLE AND IMMOVABLE ASSETS WORTH OF APPROXIMATELY GEL 53,500,000., INCLUDING:

133 plots of land with a total area of approximately 2 560 000 sqm
6 residential apartments
2 cottages
Office and commercial premises
Enguri Medical Complex JSC
Akura Wine Factory
Hotel and swimming complexes in Gori
36 areas of Shovi recreation and retreat center
2 air planes and 13 helicopters
80 vehicles
Golden items
A painting by Pirosmani
Antique books and other assets

Beside the property on the State balance sheet, because much time has elapsed since the crime was committed, it is important to study the cases where a particular movable and immovable assets have a *bona fide* purchaser and the assets are not on the State balance sheet.

Based on the public information obtained from Prosecutor's Office within the scope of the research carried out by HRC in 2018¹⁷, in the cases where the illegally confiscated property is not on the State balance and the property has a *bona fide* purchaser or is depreciated, the aggrieved person shall seek reimbursement of the damage through the court administrative and civil proceedings.

As mentioned above, the statistics on the return of illegally seized assets as shown in the annual Report of the Prosecutor's Office, were drawn only from the movable and immovable assets existing on the State balance sheet. In such cases, because the State returns the confiscated assets to the victim without application to the court, the alleged affected persons did not have to prove the fact of confiscation of the assets through the court proceedings.

According to the information obtained by HRC, other types of statistics that would have

¹⁷ Letter N13/35336 of the Chief Prosecutor's Office from May 11, 2018 addressed to Human Rights Center.

given us a broader picture and would have presented the rate of applications to the courts and the results of such applications are not as a rule produced. Moreover, the information requested from the courts in 2018 revealed that the rate of such applications to the courts were not recorded at all at that time.

By all means we can positively assess the practice of the State envisaging the return in a simplified manner of the seized assets to the affected persons in the case the specific criminal facts are confirmed and where the assets confiscated from the persons affected is on the State balance.

However, it is significant that the work of the Department is not only limited to investigating the cases of unlawful seizure of property where the assets unlawfully confiscated are still on the State balance sheet. Unfortunately, the current trend induces us to assume that the effectiveness of investigations by the Department is linked to the existence of the seized assets in State ownership. Such practice fails to meet the goals of setting up the Department and still leaves the violated rights of many persons without proper response.

THE CASES ON WHICH HRC IS WORKING

HRC provides legal aid for the cases where the persons with violated rights are requesting for many years that within the scope of the new Department the persons would be recognized as victims because of crimes committed against them and the cases would be investigated, further the assets seized from them coercion or in deceit would be returned, which was actually the purpose of creating the Department and the sole direction of its activities.

Some of the cases on which HRC was working were successfully completed. However, on other cases, despite similarity and/or match of the factual circumstances of the case, further on the background of availability of particular facts to admit the case, the persons with violated rights were unjustifiably denied the status of a victim as well as denied the review of the case due to the newly discovered circumstances. These cases concern the facts of unlawful seizure of assets and that of the violence, which at the same time include battery and torture, inhuman and/or degrading treatment, coercion, and all other crimes where civil servants or persons equal to them were attainted. All the same, despite the requirement that the cases involving exactly such crimes should be given a priority within the activities of the new Department, in the cases under the consideration of HRC and notwithstanding the repeated appeals by HRC, the Department does not provide effective and timely investigations and does not grant the persons the status of a victim. While, the positive outcome on particular cases raises some questions. In particular, it is quite vague based on what criteria and by application of what grounds that are necessary to substantiate the refusal to admit the case, the persons with violated rights are refused

the status of a victim and restoration of the violated rights.

Therefore, in advance of setting up the Department for investigating the offenses committed during legal proceedings, part of the public including human rights organizations were advocating for establishing the body rectifying the gaps in justice beyond the Prosecutor's Office. The reason for this was that the causes of the many problems within the justice system that needed to be addressed were lying inside the prosecution. The same opinion was shared by the high-ranking officials of that time, who often referred in their public statements that the core of the problems in the justice system in the past came from the prosecution system, as the Prosecutor's Office exerted pressure on the judiciary.

Therefore, reviewing the applications regarding the gaps in justice by the agency within the prosecution system was from the outset considered by the part of the public as an inefficient mechanism for resolving the issue.

This skepticism was further confirmed by the fact that the majority of the persons employed within the prosecution system of Georgia at the time of creating the Department were already working in the system before 2012. According to data from 2015, out of 814 workers employed in the prosecution authorities by that time, 558 persons were appointed to the office before October 1, 2012 from which 319 were prosecutors. After October 1, 2012, the number of employees in the agency was 256 from which 127 were prosecutors.

Further we shall discuss the following 4 cases on which HRC is working:

1. *The case of David Adeishvili*

Davit Adeishvili owned 50% of shares of Leon LLC and was acting in the capacity of a director of the same company. The company was engaged in the import and distribution of goods from several leading trading companies (SONY, YAMAHA) manufacturers of household appliances. The company had an annual turnover of approximately USD 3 million. Late on the night of August 20, 2009, the financial police officers of the Revenue Service of the Ministry of Finance arrived at the house of Davit Adeishvili and asked him to accompany them to the Financial Police. Upon arrival to the Financial Police, Adeishvili was interrogated and charged with fraud and later with receiving a credit by deceit (Article 208 of the Criminal Code). The Financial Police fraudulently, with the help of E.E. a business partner of Davit Adeishvili who turned out to be a relative of the head of the financial police at that time, registered on itself 100% shares in Leon LLC. Davit Adeishvili who was accused of fraud found himself to be a victim of fraud on the part of the Financial Police and the Prosecutor's Office. From the beginning, the allegations were absurd as no evidence of direct or even indirect nature was available in the case file. For the whole 9 months, Davit Adeishvili pleaded not guilty to all the charges. Because of this, two persons entered penitentiary facility №8 to see Adeishvili threatening that if he did not

sign the plea agreement problems would be created to his two sons. The unlawful investigative actions against Davit Adeishvili on the part of the investigative agency were led by Irakli Shotadze, the investigating prosecutor of the case, who was later appointed as the Chief Prosecutor of Georgia. Davit Adeishvili perceived the threat as real, after which he signed a plea agreement and paid a fine of GEL 30,000. On February 5, 2013, based on the formal written request of Davit Adeishvili, Tbilisi Prosecutor's Office launched an investigation into criminal case №010050413803 on the fact of abuse of official authority by the investigating officers during the investigation of the case, an offense under Article 332(1) of the Criminal Code. The investigation has been going on for 5 years in the Prosecutor's Office, however as yet no one has been arraigned.

In this case, the Chief Prosecutor's Office refused to recognize Davit Adeishvili as a victim. HRC has repeatedly appealed to the Chief Prosecutor's Office of Georgia to reinterview Davit Adeishvili¹⁸. Further, HRC appealed to the General Inspection of the Chief Prosecutor's Office, however all letters sent by HRC were left unresponded. Moreover, a letter was sent to Bakur Abuladze, the head of the General Inspection of the Chief Prosecutor's Office of Georgia, however HRC has received no response in this case either.

Taking into consideration that Davit Adeishvili was finally denied to be recognised as a victim by a court ruling in January 2019 and the investigation as yet carried on in an ineffective manner, HRC filed an application with the European Court of Human Rights to restore the violated rights¹⁹.

HRC requests up to the date that the Prosecutor's Office recognize Davit Adeishvili as a victim, and that the ongoing criminal probe to be carried out in an effective manner so that the perpetrators can be brought to justice in due time. Further, it is significant that the investigative agency identify the liability of Irakli Shotadze, the former Chief Prosecutor, both in terms of the offense committed immediately against Davit Adeishvili and in terms of procrastinating on the investigation of the offense.

2. The case of Bakur Kighuradze

A businessman Bakur Kighuradze was detained by law enforcement officers on July 13, 2010. By the judgment from March 7, 2011, Tbilisi City Court found him guilty of espionage under Article 314(1) of the Criminal Code of Georgia and sentenced him to 9 years of imprisonment. The judgment was upheld by all courts of higher instances.

On November 5, 2010, after three months of his arrest, the Ministry of Internal Affairs

¹⁸see: Public Appeal of Human Rights Center: **The Chief Prosecutor's Office to investigate the alleged Involvement of the Ex-Chief Prosecutor in the coerced Assignment of Assets of the Businessman:**

<http://www.humanrights.ge/index.php?a=main&pid=19728&lang=geo>

¹⁹see: Press release by Human Rights Center: <http://www.humanrights.ge/index.php?a=main&pid=19862&lang=geo>

released the information about Bakur Kighuradze informing the public about operation *Enver*. On this day, the Ministry informed the public about 15 persons who were accused of espionage. Among them was Bakur Kighuradze. The law enforcement officers did not mention that he was arrested several months earlier. Moreover, as the family of Kighuradze stated referring to his defence counsel, the case of Kighuradze had nothing to do with operation *Enver*. The court judgment rendered against Bakur Kighuradze does not mention anything about the participants of the "Enver case".

Bakur Kighuradze, recognized as a political prisoner by the Parliament of Georgia, was acquitted by Tbilisi Court of Appeals in June 2018. By the judgment rendered by the Court of Appeals, the judgment of conviction delivered against Bakur Kighuradze on March 7, 2011 was reversed and a new judgment of acquittal was delivered. A lawyer of HRC was serving as a defence counsel to Bakur Kighuradze in the court.

The new Department of the Prosecutor's Office reinvestigated the case of Bakur Kighuradze, afterwards the Prosecutor's Office filed a motion with the Court of Appeals to review the case²⁰. The judgment of the Court of Appeals established that the judgment rendered in the case of Bakur Kighuradze was based on false and illegally obtained evidence, therefore, a new judgment of acquittal was rendered in favor of Bakur Kighuradze.

HRC assesses in positive terms the work undertaken by the new Department in this case and consequently the restoration of justice in favor of Bakur Kighuradze. Further, HRC believes that in cases where there is sufficient evidence and clear factual circumstances about the offenses committed against specific individuals, the new Department should immediately respond in legal terms and launch a process of restoration of justice. Acknowledging the pertinence and adhering to a reasonable timeframe for the admission of the cases to the proceedings is even more important when, over a long period of time, the chances of establishing factual circumstances relevant to the case and obtaining relevant evidence are minimized, making it virtually impossible for the person with violated rights to achieve justice.

However, the refusal of the new Department to accept other cases similar to the above case, clearly reveals the relevance of the problem with regard to the specific criteria for accepting and redistributing the cases while in other cases of persons with violated rights the persons affected are not recognised as victims and their cases are not reviewed.

In the research carried out in 2018, HRC also emphasized the lack of criteria and an abstract approach calling on the Prosecutor's Office to develop a document (guidelines) and to specify the categories of cases and the criteria for selecting the cases within the scope of the Department for Investigations of the Offenses committed during Legal Proceedings. However, this problem is

²⁰see: information: <http://www.humanrights.ge/index.php?a=main&pid=19147&lang=geo>

still unresolved hindering the restoration of justice and leading to fair criticism from the victims towards inefficiencies of the activities of the new Department and to their suspicions that there are signs of selective justice in admitting the cases to the proceedings.

3. The case of Vakhtang Maisaia

Vakhtang Maisaia, Doctor of Political Science, Professor of Politics and Military Expert, was tried in January 2010. He was accused of espionage: collecting, storing and transmitting information, data and information containing secrets of Georgian State. Further, providing to NATO intelligence services during 2008 Russian-Georgian armed conflict (*The case files and also the judgment read as follows: military intelligence of the Slovak Republic, Central Intelligence Agency (USA), etc.*), with confidential information of the State of Georgia (*However, even according to these documents, it is very vague as to which of these special services Vakhtang Maisaia was accused of providing the information, and in terms of evidence, only a souvenir badge of "Soviet CGB" is attached*). This fact was revealed after the partial disclosure of the details of the case, which was previously concealed by the Georgian intelligence services. Maisaia was sentenced to 20 years of imprisonment. In January 2013, Vakhtang Maisaia was released with a status of a political prisoner.

The case of the former political prisoner, Vakhtang Maisaia, has been under investigation in the new Department since 2013. The Prosecutor's Office has not yet recognised Vakhtang Maisaia as a victim and has not applied to the court to review the unlawful judgment of conviction against him. Since 2013, the new Department has been responding to the formal written requests by the defence counsel by saying that an investigation is underway. Because the charges are of espionage, the criminal case files are marked as "classified". This fact significantly complicates the legal rehabilitation of the former political prisoner²¹. Further, Tbilisi Prosecutor's Office is investigating the facts of torture and inhuman treatment exerted on Vakhtang Maisaia and coercively compelling him to confess on the part of the officers of the counterintelligence service and penitentiary facility and also the fact of attempt of his liquidation in 2009-2012. The investigation has been underway since 2013, however so far no results have been reached in the case of Vakhtang Maisaia. As yet, the State Security Service of Georgia does not provide the Chief Prosecutor's Office with the documents required by the law for this case either.

4. So called case of Kintsvisi

On the morning of May 26, 2011, officers of the Ministry of Internal Affairs (MIA) detained a group of 24 persons in the vicinity of Kintsvisi Monastery. The reason for the arrest was a conspiracy to change the constitutional order of Georgia. The special operation was widely

²¹see: The Appeal by Human Rights Center **to declassify the cases of political prisoners tried of espionage:** <http://www.humanrights.ge/index.php?a=main&pid=18625&lang=geo>

covered on television and video footage of weapons allegedly seized during the special operation was disseminated. High-ranking officials of MIA stated in the reports that the detainees were preparing an armed coup d'état. The further development around "Kintsvisi case" is a matter of concern. In particular, on the website of MIA: www.police.ge, initially the information on the special operation in Kintsvisi was reporting that an armed grouping of 24 persons had been detained and during the detention the accused opposed the police... However, later on such information was not available at the website of MIA, while, which is more surprising, the Prosecutor's Office completely denies the fact of Kintsvisi special operation. At the court hearing the case of the accused, the representative of the Prosecutor's Office stated that there was no special operation in Kintsvisi and the accused were detained not in Kintsvisi but in Tbilisi. Even under the above circumstances, a judgment of conviction was rendered against 24 persons from where, through intimidations of and psychological impact towards family members, with 22 persons plea agreements were reached and 2 persons were judged on merit. According to the criminal case files, the term of detention of Nikoloz Gogvadze, the leader of National-Religious Movement, and other defendants commenced not from the moment of their arrests in Kintsvisi, but from the moment they were brought to Tbilisi Main Police Department. After having examined the case files, it was revealed that in fact Nikoloz Gogvadze and other defendants were indeed detained in Kintsvisi, however the special operation was conducted with serious violations as no reports and other documents had been drawn up at the spot. These documents were drafted by the police in Tbilisi the next day, on May 27, and the facts were presented in the manner as if they had been detained at the time when they arrived to Tbilisi Main Police Department. According to the case file, 24 persons were not forcibly brought from Kintsvisi to Tbilisi Main Police Department, but they voluntarily came to the Police Department "in the status of witnesses".

According to initially disseminated reports, the detainees had a whole arsenal of weapons and were preparing for an armed coup d'état. According to the case files presented at the court, only one of the 24 detainees, Mikheil Tsilikashvili, had a firearm, who is a former police officer currently convicted. Tsilikashvili an officer of a security service and was legally entitled to carry a firearm. No other weapons were mentioned in the case files. The prosecution could not answer the question posed at the court proceedings: If the defendants did not have any weapon, how would they go for an armed coup d'état? The detainees suffered severe bodily injuries, especially Nikoloz Gogvadze who was battered and tortured. According to the accused persons, this fact is clearly evident in the video of the confession which was promptly disseminated by the national broadcasters.

It should be noted that Nikoloz Gogvadze was interrogated from 12:00 pm of May 26 until 6:10 am of May 27. At 6:12 pm the investigator arrested him as the accused person. Earlier, the same investigator reported that the detainee had bruises on his face and body, and had some

pelvic injuries. At the trial, Besarion Kartsivadze, the defence counsel of Nikoloz Gogvadze asked the investigator why he would have interrogated the prisoner in such a condition. The investigator replied that the accused had no evident injuries during the interrogation. All the same, in the report drawn up before the interrogation, the investigator himself had mentioned these injuries.

It is disturbing that besides Gogvadze, the bodily injuries and traces of torture were also evident on other accused persons. Eventually, all detainees except Gogvadze and Keshelava signed a plea agreement with the Prosecutor's Office. However, according to the defence counsels, no particular relief was felt by any of the accused.

All of the accused were conditionally sentenced in supplementary punishments: one accused was sentenced to three years of imprisonment, and the majority were sentenced with 4 to 5 years of imprisonment.

On August 12, 2011, the court proceedings of the cases of Nikoloz Gogvadze and Oleg Keshelava were ended. Gogvadze was sentenced to 12 years of imprisonment on two charges: the conspiracy and illegal carriage of a firearm, and Oleg Keshelava was sentenced to 8 years of imprisonment. Nikoloz Gogvadze pleads not guilty. Finally, all 24 individuals were released as political prisoners in January 2013.

The investigation into the case began in two departments of the Office of the Prosecutor General of Georgia. One of the departments was investigating the facts of battery and torture exerted on the detainees, while the new Department was investigating the case in terms of reviewing the unlawful judgment of conviction.

It should be noted that on June 27, 2020, the European Court of Human Rights rendered a judgment on the case: "Nikoloz Gogvadze v. Georgia". The court found that Georgia violated Article 3 (prohibition of torture) of the European Convention as the applicant had been ill-treated by law enforcement officers and, at the same time, the State had failed to ensure an effective and timely investigation into the incident.

In the given case, the ECtHR also found a violation of the procedural part of Article 3 of the European Convention. According to the Court, the investigation that began in June 2011 was still going on after almost 8 years. The investigation carried out by the investigative authorities during this period was characterized by complete inaction for several years. In particular, for almost 18 months after the start of the investigation, the only action taken by the investigating authorities was to interrogate the applicant. In December 2012, the investigating authorities resumed their investigative actions, including questioning witnesses and the applicant.

The mentioned active phase ended in April 2013, and for three years, until May 2016, the

investigating authorities remained inactive. In May 2016, the case was handed to the Chief Prosecutor's Office, but nonetheless, the period of inactivity continued for the next 1 year.

The State could not provide a convincing argument as to what caused the failure to act on the part of the investigating authorities. The ECtHR also emphasized that the shortcomings of the investigation, namely that the investigating authorities did not conduct a medical examination of the applicant, despite the fact that he had suffered numerous bodily injuries since his arrest; Up to the date, the unit of the special forces that carried out the special arrest operation has not been identified, therefore, not a single officer involved in the Kintsvisi special operation has been interrogated; The investigation into the fact of ill-treatment exerted on the applicant lasted for 8 years where the investigating authorities has failed to identify even a single person liable.

The European Court ordered Georgia to pay to the applicant EUR 10,000 in non-pecuniary damages.

In the judgment by the ECtHR, there are identified all legal defects of substantial character directly affecting the judgment of conviction rendered against Nikoloz Gogvadze. However, stemming from the fact that the ECtHR is not competent to adjudicate the issues of availability and legitimacy of alleged offenses (save the exceptional cases), but the Court is only to verify the smooth and full use of legal remedies by a person under the European Convention on Human Rights at the national level, the State shall be obliged to investigate the case objectively and effectively and to prove the issue of the innocence of the victim under respective judgment. In this particular case, the very reason for setting up the Department within the prosecution system investigating the offenses committed during legal proceedings was to reinvestigate such cases and to restore justice for persons with violated rights. Therefore, the new Department is obliged to recognize Nikoloz Gogvadze as a victim, to conduct a thorough reinvestigation and to appeal to the Court of Appeals in order the Court of Appeals to adopt a judgment reversing the conviction of the person and declaring the conviction unlawful.

Since 2015, the Prosecutor's Office has not granted status of a victim to any person, nor has it applied to the court for a review of an illegal conviction against such persons.

Finally, 12 former political prisoners of so called Kintsvisi case appealed to the Court of Appeals in 2018 and requested to review the judgment due to the newly revealed circumstances and render a new judgment of acquittal. The Court of Appeals has started to hear the petitions by the former political prisoners, which can be considered as an important decision of the judiciary in this case. Moreover, it is a paradox of justice in this case that at the court proceedings the prosecutor of the new Department of the Prosecutor's Office was present supporting the previous charges for months and stating that he would await for the judgment by the judge. This fact in a way indicates to a conflict of interests, when on the one hand an investigation has been

launched in the new Department based on the applications by the political prisoners in so called Kintsvisi case and on the other hand, the prosecutor of the new Department defends all the way the old accusations in the proceedings ongoing in the Court of Appeals.

HRC which represents the defense, has for years called on the Prosecutor's Office to grant a status of victims not only to the 12 former political prisoners that are parties to the proceedings in the Court of Appeals, but also to all 24 defendants in the case, as human rights abuses at the stage of initial criminal investigation are identified in cases of all of them.

The Prosecutor's Office of Georgia partially took into account the appeal by HRC only after the parties presented their closing arguments to the court at the summary session of the proceedings and it became clear that in a fair trial the prosecution would lose the case. Therefore, following the closing argument (November 2020) by the lawyer of HRC, the Prosecutor's Office has granted the status of victims to 12 persons parties to the proceedings and refused to support the old allegations in the court.

After the motion of 12 former prisoners was granted by the Court of Appeal, the Department of the General Prosecutor's Office for Investigations of the Offenses committed during Legal Proceedings activated the investigation of the so called Kintsvisi case. Granting the status of victims to 12 former political prisoners at this stage is late, however it has beneficial effects on their legal rehabilitation. Moreover, HRC continues to appeal to the Department to grant a status of victim to 12 other convicted persons, as well as to conduct timely and effective investigations, which on the one hand means establishing objective truth in the case and on the other hand identifying and prosecuting the perpetrators.

CONCLUSION

The absolute majority of the problems identified by the research of HRC from 2018 are still relevant and the recommendation are not fulfilled in the activities of the Department of the Prosecutor's Office for Investigations of the Offenses committed during Legal Proceedings.

The rate of launching new investigations is still low and does not meet the needs for the restoration of justice for the persons with violated rights, the reasons for this remain the non-availability of guidelines and specific criteria. This actually hinders the process of restoring in rights for alleged victims. Furthermore, the criteria for selecting cases are still unknown to the public, which still leaves unanswered questions about the bias in the activities of the Department. As time goes on, the prospect of restoring justice for the persons with violated rights becomes increasingly vague.

Despite the fact that the legal regulations do not restrict the activities of the Department to a

specific period of time, 100% of the cases are still limited to investigating the offenses committed during the legal proceedings before 2012 Parliamentary Elections.

Further problems stem from the level of efficacy of the operations of the Department in relation to the goals and objectives set out in the Strategy and Action Plan of the Office of the Prosecutor General of Georgia, evident in the fact that there is a lack of prosecutors and investigators specialized on the cases of particular complexity.

HRC would still remain as an active supporter of all steps taken by the State to address the gaps in justice and, at the same time, to promote the protection of the rights of the persons with violated rights to a higher standards and to restore justice. To achieve this objective, it is necessary to implement the following recommendations:

RECOMMENDATIONS

✓ In order to ensure the principles of democratic statehood, justice and equality, it is necessary for the investigative and criminal prosecution authorities to separate themselves from the political processes and not to allow subjective, heterogeneous approaches to specific cases;

✓ The Action Plan and Strategy of the Prosecutor's Office should be planned in coordination with various agencies and with the involvement of civil society organizations. The Strategy should respond to all the challenges faced by the Prosecutor's Office and the indicators needed for the implementation of Strategy should be more foreseeable and specific.

✓ It is essential that the activities of the Department are consistent with the substance of the unified Strategy and Action Plan of the Prosecutor's Office and that information on the implementation of the activities is available to all stakeholders;

✓ To specify the categories of particular cases within the scope of activities of the Department of the General Prosecutor's Office for Investigations of the Offenses committed during Legal Proceedings and to develop the criteria for selecting cases in the form of a document (guidelines);

✓ The Department should pay more attention to cases of torture and ill-treatment. To define preliminary criteria that would ensure a uniform approach to all cases of torture and ill-treatment;

✓ The activities of the Department of the General Prosecutor's Office for Investigations of the Offenses committed during Legal Proceedings should not be limited to the particular period of time in deviation from the legislation and the Department is to investigate the offenses committed during the legal proceedings after 2012;

✓ The investigation of the cases of illegally confiscated assets should not depend on

the existence of the confiscated assets on the State balance sheet and in all specific cases the State should ensure a full and objective re-investigation and payment of compensations to the persons affected through alternative means.