

TSINTSABADZE GROUP OF CASES

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The present communication addresses **3 key problems** at the national level:

- (1) the abolition of the State Inspector's Service (SIS) in December 2021;
- (2) the strengthening of the criminal subculture in the penitentiary establishments;
- (3) the national legislation's failure to preclude granting an amnesty or pardon by State officials who are responsible for grave human rights violations.

The abolition of the State Inspector's Service (SIS)

*On December 30, 2021, the Georgian Parliament, in a peremptory manner, without previous consultations with the SIS and/or other stakeholders, including civil society, and despite sharp criticism from local civil society organizations and Georgia's partner states, adopted legislative amendments according to which **the State Inspector's Service is abolished** in its current form and two new offices are created, which will be responsible for protecting personal data and investigating crimes against law enforcement.*

Also, the term of office of the current State Inspector is terminated, indeed in spite of the fact that she (Londa Toloraia) was elected by the parliament until 2025.



The creation of SIS served to address a key issue stemming from the ECtHR judgments, highlighted by the CM on a number of occasions within the Tsintsabadze Group of Cases

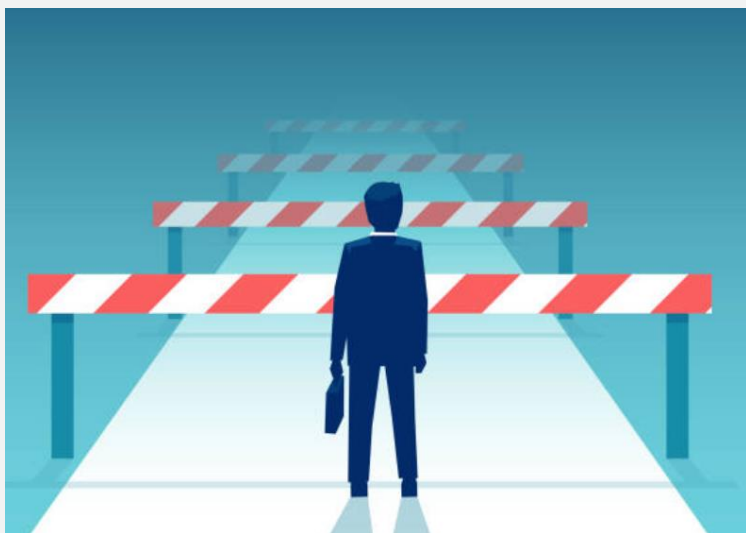
The challenges remain the same



These amendments were evaluated by the civil society and international stakeholders as a “planned attack by the Georgian Dream authorities on yet another independent body, the State Inspector’s Office, [and a] breach of the independence of and trust in the institution.”

- ❑ This is also evidenced by the fact that no investigative capacities has been improved and the challenges remain the same. In particular,
 - I. the lack of jurisdiction as regards high-ranking officials;
 - II. The problems related to its investigative jurisdiction;
 - III. the continued control of the Prosecutor’s Office over the investigation process and an exclusive power to conduct the prosecution;
 - IV. the lack of authority to conduct investigation of certain categories of crimes;
 - V. The problems related to the unhindered access of the State Inspector’s Service staff to penitentiary institutions and temporary detention facilities.

Furthermore, various legal factors, which hinder the effective, institutionally and practically impartial investigation of cases of ill-treatment remain the same, in particular:



- I. the deficiencies related to correct classification of cases;
- II. the legislative shortcomings related to the existing hierarchical and institutional subordination.
- III. the shortcomings related to audio-video surveillance of communication of law enforcement authorities and citizens/detainees;
- IV. the shortcomings related to the processing of documentation in police stations;
- V. the shortcomings related to the exercise of the right to take photographs in penitentiary institutions by the Public Defender of Georgia, as well as members of the Special Prevention Group also remain the same.
- VI. the number of issues related to right of victims also remain unresolved, in particular,
 - the problems related to the effective participation of a victim in legal proceedings;
 - The shortcomings related to granting the status of victim;
 - The shortcomings related to appealing the decree on termination of investigation/prosecution and on the rejection of the instigation of a prosecution;
 - the failure to inform the victim about the criminal proceedings;
 - The effective legal aid for the victims of ill-treatment.

Tsintsabadze v. Georgia – Criminal Subculture in the Penitentiary System



- ❑ The judgment clarifies that *“The Court, in general, is not oblivious to the well-known illicit practices prevailing in Georgian prisons at the material time and of the consequent fear amongst ordinary prisoners of either mafia bosses or prison administrations...”* (§ 89).
- ❑ When within the scope of the Tsintsabadze Case, the Court focused on the existence of a criminal subculture in prisons and the challenges related to it, it is vital for the State to take effective measures to eliminate such non-formal governance in the penitentiary system, which in turn will in future help to prevent cases similar to the Tsintsabadze case.
- ❑ Increased influences of the criminal subculture in penitentiary institutions endanger the physical and psychological inviolability of prisoners, and, remarkably, the prosecutor’s office usually does not respond appropriately or effectively to crimes committed by criminal subcultures and the employees of penitentiary institutions. This undermines the principle of the rule of law, as well as puts a group of prisoners in danger, who are not the part of the criminal underworld.

Use of amnesty / pardon for grave crimes committed by the state authorities



***Mako Gomuri, 18 years old, lost the eye on June 20, 2019,
during the Anti-Occupation Rally Dispersal***

- In ***Vazagashvili and Shanava case***, which is one of the cases in the Tsintsabade Group, the Court noted with regret that ***“the domestic legislator, when enacting the Amnesty Act, did not apparently give a due consideration to the need to punish serious police misconduct with unbending stringency.”***

Recent Developments

- On June 20-21, 2019, the Ministry of Internal Affairs (‘MIA’) failed to manage escalating tensions during the protest and did not resort to communication, negotiation and dialogue mechanisms to properly control and de-escalate the confrontation caused by a small segment of protesters. Instead, the MIA used extensive, unlawful and disproportionate force against protestors. ***At least 138 civilians were injured.***
- In September, Amnesty Law was adopted with regards to June 20 cases. The application of an amnesty to state agents who have committed violations of inhuman or degrading treatment (regardless of whether they are properly qualified as crimes at the national level) is itself contrary to Article 3 of the Convention, as it will preclude the investigation into such crimes and lead to impunity of those accountable. Such an outcome makes the safeguards generated by the prohibition of ill-treatment illusory and will have a chilling effect on those individuals considering exercising their peaceful enjoyment to freedom of assembly.

Recommendations for execution of general measures



- The authorities **should ensure** the independence of the Special Investigation Service (legal successor institution of SIS in the field of investigation). They should provide it with the mandate to eradicate:
1. The lack of jurisdiction as regards high-ranking officials and the prosecutor's office;
 2. The problems related to its investigative jurisdiction;
 3. The continued control of the Prosecutor's Office over the investigation process and its exclusive power to conduct the prosecution;
 4. The lack of authority to conduct investigations into certain categories of crimes; and
 5. The problems related to the unhindered access of the State Investigation Service staff to penitentiary institutions and temporary detention facilities

Recommendations for execution of general measures



- All necessary measures **should be** carried out in a timely manner to reduce the level and influence of criminal underworlds and tackle ‘informal governance’ in Georgian prisons, including with the engagement of civil society and other stakeholders. To that end, a plan and strategy should be developed, which will provide for detailed measures to be taken by the state. Furthermore, the number of prison employees should be increased, and they should be provided with appropriate continuing education for their professional and educational development.
- The legislative changes **should be** made, which would in future preclude granting an amnesty or pardon to State officials who are held to be responsible for grave crimes committed against life and health, as well as torture, inhuman treatment, and punishment.

*THANK YOU
FOR YOUR
ATTENTION!*

QUESTIONS?