

JUST SATISFACTION OF VICTIMS OF TORTURE AND INHUMAN TREATMENT; COURT PRACTICE



2019

The report below describes the cases of just satisfaction of the victims of torture, inhuman and degrading treatment from the side of penitentiary and police officers based on court rulings and existing challenges in this field.

Human Rights Center processed the cases, where convicted people are victims of torture and inhuman treatment as well as people, who were subjects of torture, inhuman and degrading treatment from the side of the officers of penitentiary establishments and the Ministry of Internal Affairs.

It is well known that before 2012 Parliamentary Elections, the convicted people were subjects of systematic torture, inhuman and degrading treatment in the penitentiary establishments in Georgia. Under the new governance, the respective state bodies took responsibility to effectively investigate the facts committed before 2012. The Parliament of Georgia passed resolution in 2016 “Resolution on Legal Assessment of Torture and Inhuman Treatment Facts in 2004-2012 and on the Absolute Prevention of Similar Facts in Future.”¹

It is noteworthy that regardless the abovementioned responsibilities, the new authority failed to ensure legal rehabilitation of violence victims to restore their breached rights. Considering the fact that torture significantly affects physiological and health conditions of a person, the State still has not elaborated the policy to ensure psycho-social rehabilitation of the torture victims.

The cases processed by Human Rights Center revealed that the HRC created precedent based on which the victims of torture may receive compensation via judicial litigation.

International norms of human rights prohibit torture in any circumstances. The practice of torture and cruel, inhuman and degrading treatment, as well as fight against it and effective investigation is still a systemic challenge in Georgia.

Regardless number of systemic and legislative reforms, the respective bodies of the government still could not ensure:

- to determine and establish effective measures for the rehabilitation of torture and cruel treatment victims;
- results-oriented documenting of the facts that could guarantee to make torture and cruel treatment facts public, in the sake of best interests of justice and for effective investigation, to impose responsibility on the people who committed them;

¹ See the resolution of the Parliament <http://www.parliament.ge/ge/ajax/downloadFile/48014/5432-II%E1%83%A1%E1%83%90%E1%83%A0%E1%83%90%E1%83%90%E1%83%93%E1%83%90%E1%83%9B%E1%83%98%E1%83%90%E1%83%9C%E1%83%A3%E1%83%A0%E1%83%98%E1%83%9B%E1%83%9D%E1%83%9E%E1%83%A7%E1%83%A0%E1%83%9D%E1%83%91%E1%83%98%E1%83%A1> (available only in Georgian)

- creation of legislative and practical database by the State in compliance with the international standards and effective investigation, to rehabilitate victims and to prevent torture and inhuman treatment facts in future;
- impartial and comprehensive investigation by competent, independent investigative bodies;
- and the government failed to ensure lawful compensation for torture and inhuman treatment victims.

The inmates of penitentiary establishments no longer complain about torture and inhuman treatment but violent and ill-treatment facts still happen during detention from the side of police officers. It is noteworthy how the respective investigative bodies respond to similar facts, how they trust the victims' testimonies when they complain about torture and violence and whether the investigative bodies collect evidence in due respect of impartiality and objectivity.

The European Court of Human Rights clarified in the case "Ribic vs Austria" that the State is responsible for any individual in prison, as they are under full control of the state. If the prisoner is injured during the imprisonment, the Government shall provide evidence, which will be adequate response to the applicant's statement particularly when the claimant presents the medical documentation. The Court noted that any action against imprisoned person, use of any physical force against him/her, that was not necessary response to the action of the inmate, degrades him and violates the Article 3 of the Convention. Fight against crime and non-arguable complicity of this fight shall not become ground to restrict physical inviolability of an individual.

Human Rights Center states that the main challenge is that victims, who were subjects of torture and inhuman treatment before 2012, still have not received adequate compensation from the state and their legal rehabilitation is dragged out for years.

The analytic document below describes the cases of adequate compensation of torture victims and provides short legal analysis of the cases processed by HRC as well as legal and practical peculiarities of the process, which is related with paying the compensation to the victims through court litigation.

1. THE CASES OF CONVICTED PEOPLE, WHO WERE SUBJECTS OF TORTURE AND INHUMAN TREATMENT IN PENITENTIARY ESTABLISHMENTS

➤ CASE OF T.R

For years, Human Rights Center defended the convicted T.R, who served his term in penitentiary establishment # 6, and was victim of torture and inhuman treatment in the prison that

significantly affected his health conditions. As a result of torture, his eyesight worsened and needed surgical operation.

Human Rights Center appealed all respective bodies with regard to T.R's torture and inhuman treatment fact and requested investigation and adequate response to those facts.

On May 17, 2013, the convicted was declared victim of torture in the prison by the personnel of penitentiary establishment # 6. In accordance to the victim declaration, in prison # 6 the convicted person was beaten and tortured as a result of which he received physical and moral damage. With the legal advocacy of HRC, the victim received 20 000 GEL as compensation.

➤ CASE OF D.G

Convicted D.G was victim of inhuman treatment and torture in penitentiary establishment for years that significantly damaged his health.

On August 5, 2013 D.G. was declared victim of torture in prison by the personnel of penitentiary establishment # 6. In accordance to the victim declaration, in prison # 6 the convicted person was beaten and tortured as a result of which he received physical and moral damage.

As a result of physical and psychological torture his eyesight worsened and needed surgical operation on the leg. He needs operation on the jugular vertebra and backbone. At the same time, it is important to note that the applicant cannot take full medical examination because of financial problems.

Currently, the Tbilisi City Court is processing the claim of D.G about the compensation.

➤ CASE OF L. TCH

HRC defends legal interests of the convicted L.Tch, who was declared victim of torture and inhuman treatment from the side of prison personnel in two criminal cases. For years, convicted L.Tch was victim of inhuman treatment and torture in the penitentiary establishment that significantly affected his health.

The Tbilisi City Court satisfied the appeal of HRC and ordered the Ministry of Corrections to pay 60 000 GEL to L.Tch as moral compensation for torture and inhuman treatment.

The judgment of the city court was appealed in the Tbilisi Appellate Court.

➤ CASE OF P.F

During years, personnel of the penitentiary establishment # 16 tortured and psychologically intimidated convicted P.F that significantly affected his health.

Based on the torture victim declaration, he was early-released from prison on December 31, 2015.

HRC appealed the Tbilisi City Court to reimburse his damage caused by torture. *The Tbilisi City Court satisfied the claim of the applicant and ordered the Ministry of Corrections to pay 5 000 GEL as compensation to P.F. The court judgment was upheld by the Supreme Court of Georgia too.*

➤ CASE OF V.N

Human Rights Center worked on the case of convicted V.N. On May 8, 2013, the Kvemo Kartli regional prosecutor's office declared him victim of the crimes committed by the officers of the penitentiary department. The crime was punishable under the Article 144³ Part II – “a”, “b”, “d”, “e” and “f” of the Criminal Code of Georgia, which refers to the torture and inhuman treatment of a person that caused suffering from physical and psychic pain. The victim claimed 270 000 GEL as compensation for the damage.

On July 14, 2017 the Tbilisi City Court ordered the Ministry of Corrections to pay 5 000 GEL as compensation for moral damage to the victim.

On March 29, 2019 the Tbilisi Appellate Court upheld the decision of the city court.

➤ CASE OF G.J

Human Rights Center defends interests of convicted G.J, who was declared victim of torture and inhuman treatment by the prison officers in two criminal cases, which occurred in 2008-2011. For years, G.J was victim of inhuman treatment and torture in the penitentiary establishment.

In the court, convicted G.J requested to compensate his damage caused by torture and inhuman treatment and Human Rights Center represented him in the court.

The Tbilisi City Court satisfied the appeal of Human Rights Center and ordered the Ministry of Corrections to pay 25 000 GEL to the victim as moral compensation.

2. COMPENSATING THE VICTIMS, WHO WERE TORTURED, INHUMANLY TREATED AND DEGRADED BY POLICE OFFICERS

➤ CASE OF B.R

HRC defended legal interests of B.R, whom on November 24, 2014 the Tbilisi City Court declared victim of inhuman and degrading treatment from the side of former senior officials of the MIA. HRC appealed the Tbilisi City Court, where applicant requested compensation of her physical damage in the amount of 30 000 GEL and 50 000 GEL for moral damage. The City Court determined shortcoming in the application and stated that the applicant had to pay the court duty for her claim of the compensation for moral damage.

In accordance to the Article 5 Part I – “h” of the Law of Georgia on State Duty a claimant shall be released from the payment of state duty in the common courts for claims for compensation of material damages incurred as a result of a crime. Sub-paragraph “e” of the same article states that in the common courts the claimants are released from the payment of state duty for claims on compensation of damages caused by mutilation or other damage to human health, as well as by the death of a breadwinner. Accordingly, the Article 5 – “e” of the Law does not specify compensation for physical and material damage. So, in accordance to this provision of the law, the claimant shall be released from the state duty.

Human Rights Center has processed many other cases, where applicants claimed for material and moral compensation for their damage both in the city and appellate courts. In all those cases, the claimants were released from the payment of state duties. It is noteworthy that all of them were male prisoners while the court changed its approach with regard to female claimant. It is necessary to establish common practice in the court towards all convicts and prevent all forms of discrimination against claimants.

Considering fact that the claimant could not afford payment of the state duty for 50 000 GEL compensation, the shortcoming in the appeal was corrected and the claimant claimed only 10 000 GEL as a compensation for moral damage. She had to pay 300 GEL as a state duty for her claim.

In December 2018, the Tbilisi Appellate Court upheld the August 18, 2018 judgment of the Tbilisi City Court, based on which the Ministry of Internal Affairs was ordered to pay 5 000 GEL to B.R to compensate the moral damage caused by inhuman treatment².

² See article about B.R’s case at <http://www.humanrights.ge/index.php?a=main&pid=19513&lang=eng>

➤ CASE OF L.G

With July 22, 2013 edict, the Chief Prosecutor's Office of Georgia declared L.G victim of the dispersal of May 26, 2011 protest demonstration by riot police officers of the MIA, who used disproportionate physical force and special weapon against demonstrators that caused physical and moral pain of L.G.

On March 5, 2018, the Tbilisi City Court ordered the Ministry of Internal Affairs to pay 2 500 GEL to the victim as a compensation for moral damage.

On June 7, 2018 the Tbilisi Appellate Court upheld the decision of the first instance court as well as the Supreme Court of Georgia, where the MIA appealed the judgments of the law instance courts.

➤ CASE OF ZH. G

Zh.G, based on the July 22, 2013 edict of the Chief Prosecutor's Office of Georgia, was found victim of the dispersal of peaceful demonstration in the Rustaveli Avenue by riot police officers on May 26, 2011, who used disproportionate physical force and special weapon against demonstrators that caused physical and moral pain of Zh.G.

On December 7, 2017, the Tbilisi City Court ordered the MIA to pay 5 000 GEL to Zh.G as a compensation for moral damage.

On September 20, 2018 the Tbilisi Appellate Court upheld the decision of the Tbilisi City Court but the MIA appealed the Supreme Court of Georgia and requested to annul the decision of the previous instances of court.

The Supreme Court is still considering the cassation of the MIA.

➤ CASE OF M.G

On July 22, 2013 the chief prosecutor's office granted victim status to M.G for the moral and physical damage, which he received as a result of the dispersal of May 26, 2011 protest demonstration, when riot police officers of the MIA used disproportionate physical force and special weapon against protesters.

On February 1, 2018, the Tbilisi City Court satisfied the appeal of Human Rights Center and ordered the MIA to pay compensation for moral damage to M.G in the amount of 5 000 GEL. On November 30, 2018 the Appellate Court upheld the decision of the city court.

The MIA appealed the decision of the Appellate Court in the Supreme Court and requested to annul the judgment.

➤ CASE OF G.G

G.G, based on the July 22, 2013 edict of the Chief Prosecutor's Office of Georgia, was found victim of the dispersal of peaceful demonstration in the Rustaveli Avenue by riot police officers on May 26, 2011, who used disproportionate physical force and special weapon against demonstrators that caused physical and moral pain of F.G.

On October 12, 2017 the Tbilisi City Court ordered the MIA to pay compensation for moral damage to G.G in the amount of 30 000 GEL.

On September 14, 2018 the Tbilisi Appellate Court upheld the decision of the city court.

The MIA appealed the Supreme Court and requested to annul the imposed payment of the compensation. On March 21, 2019 the Supreme Court upheld the decision of the previous instances of the court and ordered the MIA to pay 30 000 GEL to the victim.

Human Rights Center calls on the respective state bodies: to support all attempts for the legal rehabilitation of the victims of torture and inhuman treatment, where the victims appeal the court and claim just compensation for their material and moral damages. The evaluation by the court and established practice is important for determination the conformity between the incurred damage and compensation.

Based on the analysis of the processed cases, HRC states that:

- it is essential that all crimes committed by government or public officials were investigated and punished accordingly;
- it is necessary to restore the rights of all victims and to rehabilitate them in the conditions of fair trial;
- it is important not to drag out the compensation-granting process for years and the State shall implement its responsibilities and not hinder legal rehabilitation of torture and inhuman treatment victims artificially.