



**Monitoring of the Activities of the  
Department of the Chief Prosecutor's Office of  
Georgia for the Investigation of Offenses Committed  
in the Course of Legal Proceedings**



2018

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**The report was prepared by the Human Rights Center**

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Non-governmental organization the Human Rights Center, formerly the Human Rights Information and Documentation Center (HRIDC) was founded on December 10, 1996 in Tbilisi, Georgia. The HRIDC aims to increase respect for human rights, fundamental freedoms and facilitate the peacebuilding process in Georgia. To achieve this goal, it is essential to ensure that authorities respect the rule of law and principles of transparency and separation of powers, to eliminate discrimination at all levels, and increase awareness and respect for human rights among the people in Georgia.

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- Human Rights House Network; [www.humanrightshouse.org](http://www.humanrightshouse.org)
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## ❖ Introduction

This report details the monitoring of the activities of the CPO Department for the Investigation of Offenses Committed in the Course of Legal Proceedings. The study aimed to analyze the activities of the Department in relation to legislation and practice and to elaborate respective recommendations which will promote the effective work of the Department.

Before 2012, torture, inhuman and degrading treatment in penitentiary establishments and police units, seizing and illegal extortion of property, had been systemic problems for years and was in fact a style of state governance<sup>1</sup>. Citizens filed thousands of complaints to different bodies of the Prosecutor's Office, Parliament of Georgia and other state bodies with the request to investigate the abovementioned crimes committed before 2012. The citizens requested restoration of their breached rights and justice. Effective investigation into facts related to killings, torture, inhuman and degrading treatment was and still is a systemic problem<sup>2</sup>.

After the government changed in Georgia, the date of the pledged "restoration of justice" was postponed several times<sup>3</sup>.

Not only local but international organizations and experts spoke about the necessity to establish a mechanism for the eradication of miscarriages of justice. The Government initially considered creation of a commission on miscarriages of justice, but soon changed its position, claiming the State could not afford to pay large compensations to the victims<sup>4</sup>.

In March 2015, a structural unit was added to the Chief Prosecutor's Office – the Department for the Investigation of Offenses Committed in the Course of Legal Proceedings, which, before the legislative amendments adopted in July 2016, did not have relevant leverage to adequately respond to the breached rights of citizens in the course of legal proceedings. Consequently, in accordance with the 2016 legislative amendments, when sub-paragraph "g<sup>1</sup>" was added to Article 310 of the Criminal Procedure Code of Georgia, the role of the Department was significantly increased and restoration of the breached rights in the course of legal proceedings

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<sup>1</sup> See the Practices of Torture and Inhuman Treatment of Prisoners in Georgia, Survey (2003-2012) at [http://www.osgf.ge/files/2014/publications/OSGF\\_Report\\_ENG\\_PRINT.pdf](http://www.osgf.ge/files/2014/publications/OSGF_Report_ENG_PRINT.pdf)

<sup>2</sup> See the 2015 Parliamentary Report of the Public Defender of Georgia <http://ombudsman.ge/uploads/other/3/3891.pdf>

<sup>3</sup> See information <https://old.civil.ge/geo/article.php?id=26669>;  
<http://old.civil.ge/eng/article.php?id=26739&search=>

<sup>4</sup> See information <http://old.civil.ge/eng/article.php?id=26739&search>

became real – based on the decree issued by the prosecutor, an unprecedented fact in the modern Georgian justice system.

Regardless of the initial expectations, to date many cases are still uninvestigated where systemic violations of human rights were observed. At the same time, it is unclear what types of case receive priority status or based on which criteria the Department selects cases for re-investigation. This raises questions about the work of the new department of the CPO.

This report presents an analysis of the legislation related to the work of the Department and pays attention to the miscarriages or gaps in the legislation in this regard. Through trial monitoring and analyses of court judgments, the Human Rights Center (HRC) tried to determine the ongoing process of the restoration of breached rights and to understand the tendency of current practices; which category and how many cases are being processed by the new department and based on which concrete criteria cases are accepted and distributed for further proceedings. The report also analyzes the decrees passed by the prosecutor on human rights violations in the course of legal proceedings and the criminal cases processed in court in accordance with Article 310 sub-paragraph “g<sup>1</sup>” of the CPCG. At the same time, together with the extraordinary character of this process, the role of the judge is also assessed when the principle of adversarial proceedings is not met.

With diverse methods of monitoring used, it was possible to determine both pros and cons in the activities of the Prosecutor’s Office and to elaborate recommendations for the improvement of the work of the Department.

## ❖ **Research Methodology**

This report was prepared based on information obtained and analyzed through a variety of methods. It aimed to study the work of the Department of the CPO for the Investigation of Offenses Committed in the Course of Legal Proceedings, to identify miscarriages and, through recommendations, to promote improvement of the work of the Department.

The Human Rights Center evaluated the work of the Department with the following methodology:

### ➤ **Study of the normative-legal base**

In order to determine legislative miscarriages, the normative-legal base regulating the work of the department investigating crimes committed in the course of legal proceedings was analyzed. At the same time, with a descriptive and systemic

clarification method, all relevant legislative acts were analyzed that are used by the Department in its work, namely:

- the Criminal Code of Georgia;
  - The Criminal Procedure Code of Georgia;
  - The Law on the Prosecutor's Office of Georgia;
  - Order N 62 of the Minister of Justice issued on February 13, 2015;
  - Decree N 1044 of the Government of Georgia issued on May 25, 2015.
- **Request for public information and analysis**

One of the main parts of the study was analysis of public information requested from the Chief Prosecutor's Office, common courts and the Public Defender's Office. For the purpose of the study, the organization requested and analyzed a variety of statistical information provided by the Department.

➤ **Request and analysis of court judgments and prosecutor resolutions**

In the course of the study, the HRC requested court judgments from the Tbilisi and Kutaisi Appellate Courts on cases reviewed based on a motion from the new department. Consequently, the study relied on the analysis of judgments in over 29 criminal cases which were reviewed by the appellate and supreme courts of Georgia (Article 310 sub-paragraph "g<sup>1</sup>" of the CPCG).

In order to represent the issue from different perspectives, the study also includes analysis of the resolutions passed by the prosecutors on substantial violations of citizens' rights in the course of legal proceedings in 17 criminal cases.

➤ **Cooperation with the Public Defender**

For the purpose of the project, HRC and the Public Defender's Office signed a memorandum of cooperation. Throughout the project, HRC requested from the CPO copies of decrees but the Department refused first the Center's and then the Public Defender's request to issue copies of the decrees "in respect of case interests." Afterwards, in the frame of the memorandum, upon the petition of the HRC, PDO requested copies of the decrees from the court and all documents were provided in cyphered form.

➤ **Working meetings**

In the frame of the study, working meetings were organized with the investigators and prosecutors of the new department of the Chief Prosecutor's Office, with the lawyers, with the Chairperson of the Supreme Court and Chairperson of the Criminal Cases Panel of the Tbilisi Appellate Court, with the Chairperson of the Georgian Bar Association, Deputy Public Defender, representatives of non-governmental organizations and the criminal law working group of the Coalition for an Independent and Transparent Judiciary.

➤ **Individual interviews**

For better analysis of the work of the Department, the HRC conducted interviews throughout the country. In the frame of the study, prosecutors and investigators of the new department, 50 lawyers and 50 victims were interviewed based on a specially elaborated questionnaire.

➤ **Monitoring of three cases litigated by the HRC**

For the purpose of the study, the HRC analyzed three out of 25 cases litigated by the organization's lawyers in accordance with Article 310 "g<sup>1</sup>" of the CPCG. Two of them referred to beating, torture, inhuman and degrading treatment of prisoners, and one forced extortion of property and other facts of coercion. Monitoring of these cases was one of the mechanisms used for observing and studying the work of the new department.

➤ **Trial monitoring**

To study the cases processed based on Article 310 sub-paragraph "g<sup>1</sup>" of the CPCG in the courts, and to identify the peculiarities of these proceedings, monitors observed 11 trials in the Tbilisi Appellate Court. The court proceedings conducted with regards to re-consideration of past judgments in accordance with Article 310 sub-paragraph "g<sup>1</sup>" of the CPCG were analyzed and a report about each trial was prepared. The monitoring findings were then used in the study.

## ❖ **Chapter I - Analysis of legislative base and practice**

- **The need to create a new department**

Due to the systemic character of torture and inhuman treatment and extortion of properties in 2004-2012, the Department for the Investigation of Offenses Committed in the Course of Legal Proceedings of the CPO was established in 2015<sup>5</sup> for the restoration of breached rights and justice. The Prosecutor's Office of Georgia received thousands of applications from citizens about alleged acts of torture, inhuman and degrading treatment, coercion and extortion of property in the course of legal proceedings, resulting in the need to establish this department.

With the establishment of the new department, it was necessary to introduce relevant amendments to the Criminal Procedure Code of Georgia<sup>6</sup>. The main purpose of the legislative changes was to widen the basis for review of the enforced judgments based on newly discovered circumstances and to simplify the

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<sup>5</sup> See [http://pog.gov.ge/eng/news?info\\_id=627](http://pog.gov.ge/eng/news?info_id=627)

<sup>6</sup> The author of the bill: the Parliamentary Committee on Legal Issues created a working group, which was composed of the representatives of the Chief Prosecutor's Office of Georgia, Supreme Court of Georgia, Georgian Bar Association, Tinatin Tsereteli Institute of State and Law and the Georgian National Academy of Science.



admissibility of these cases for the restoration of breached rights, which would guarantee stronger human rights and an increased level of justice. At the same time, it aimed to create a legal framework for the authority of the Prosecutor's Office to identify guilty persons even when it is not possible; to enable the Prosecutor's Office to determine violations of the legal rights of a convicted person in the course of legal proceedings through the decree.

The implemented legislative amendment enabled the Prosecutor's Office to appeal the Appellate Court with the request to revise judgments which have entered into force. In 2016, sub-paragraph "g"<sup>1</sup> was added to Article 310 of the CPCG. According to the amendments, the following was determined: *if the new investigation identifies substantial violation of a person's rights in the course of legal proceedings, which was not known when passing the initial judgment and alone or/and with other estimated circumstances these prove the innocence of the convicted person or commission of a crime less grave than that for which the person was convicted, it will become grounds for reviewing and reconsidering the judgment in the court based on the newly found circumstances.*

The law does not estimate the time-frame for the review of judgments based on the newly found circumstances<sup>7</sup>. The motion for the review of judgments is filed with the Appellate Court in written form, which enables the victim to have his/her enforced judgment reviewed in the Appeal Court and with the new judgment the person will have his/her breached rights restored.

In accordance with the Criminal Procedure Code<sup>8</sup>, the right to file a motion for a judgment review due to newly found circumstances can be enjoyed by:

- **the prosecutor,**
- **the convicted person and/or his/her defense lawyer;**
- **in the case of the death of the convicted person, by his/her legal successor and/or his/her defence lawyer.**

*Filing a motion should not impede the execution of the judgment.*

The cases are considered in the Appellate Court in accordance with the existing norms of trial on merits in the case. As a result of a trial on merits, the court either upholds the previous judgment, amends it or annuls it and passes a new judgment. The law enables any individual to lodge a cassation lawsuit against the decision of

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<sup>7</sup> Restrictions refer to the instances regulated under Article 310 Paragraph "e" and "e1" of the CPG

<sup>8</sup> See Article 312 paragraph 2 of the CPG

the Appellate Court. The Cassation Court reviews the lawsuit without considering its admissibility.

On May 25, 2014, the Government of Georgia issued Decree N 1044<sup>9</sup> **“about the activities to be implemented by the Public Law Legal Entity - National Agency of State Property within the auspices of the Ministry of Economics and Sustainable Development of Georgia.”**

In accordance with the Decree, the National Agency of State Property [NASP], in case of a court judgment or a final decision from the Prosecutor’s Office which has entered into force<sup>10</sup>, upon the petition of the Chief Prosecutor’s Office, for the compensation of concrete damage, assigns the state property in the form of direct procurement at a symbolic price to a person who was forced to give up his/her property to the state (abandon, gifted, etc). This regulation refers to the cases when privatization of movable or/and immovable properties via direct procurement may be initiated by the NASP and which were extorted in favor of the State except cases when the property has been sold by the time the respective court judgment enters into force or/and the “appeal” is lodged, or/and is assigned under the right of use (in case of immovable property) or/and is not subject to privatization. In instances when illegally extorted property is no longer state property, has a bona fide purchaser or has been demolished, the victim requests compensation via administrative and civil law litigation in the court<sup>11</sup>.

If the property has a bona fide purchaser who has acted in accordance with the law, the purchaser becomes the legal owner of the property; the Civil Code defends the institute of the purchaser and she/he is inviolable. Upon the court judgment, the victim has the right to request compensation as the State is liable for damages inflicted by a state administrative body, as well as by its officials or other public servants in the course of discharging their official duties.<sup>12</sup>

- **Analysis of the legislative base, public information and practice**

In the frame of the study, all relevant legislative acts were analyzed which were applied by the Department of the Chief Prosecutor’s Office for the Investigation of Offenses Committed in the Course of Legal Proceedings, namely:

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<sup>9</sup> See <https://www.matsne.gov.ge/ka/document/view/2858361?publication=0> (available only in Georgian)

<sup>10</sup> resolution on finding a person [or his/her legal successor] victim; resolution on refusal to start criminal prosecution; resolution on termination of the criminal prosecution; resolution on termination of criminal case investigation.

<sup>11</sup> Letter N 13/27598 of the Chief Prosecutor’s Office, April 16, 2018

<sup>12</sup> See Article 208 of the General Administrative Code of Georgia  
<https://matsne.gov.ge/en/document/download/16270/18/en/pdf>

- The Criminal Code of Georgia<sup>13</sup>;
- The Criminal Procedure Code of Georgia<sup>14</sup>;
- The Law of Georgia on the Prosecutor's Office<sup>15</sup>;
- Order N 62 of the Minister of Justice issued on February 13, 2015<sup>16</sup>;
- Decree N 1044 of the Government of Georgia issued on May 25, 2015<sup>17</sup>.

When considering the legislative acts regulating the work of the Department, it is necessary to pay attention to Order N 62 of the Minister of Justice issued on February 13, 2015, which approved the regulations of the Department for the Investigation of Offenses Committed in the Course of Legal Proceedings at the Chief Prosecutor's Office and created a new structural unit within the Chief Prosecutor's Office, which represents the Chief Prosecutor's Office when executing its duties. The mentioned regulations, together with other normative acts, are one of those main by-laws which are applied by the Department.

The regulations determine the general objectives of the Department, duties and responsibilities of the Head and Deputy Head of the Department, as well as of the employees.

In accordance with the regulations, the Department acts in due respect of the principles of lawfulness and justice objectivity, impartially and in political neutrality. The regulations determine the main goal of the Department, which aims to start criminal prosecution against **alleged offenses committed in the course of legal proceedings, including torture, inhuman and degrading treatment, forced extortion of property or other facts of coercion**<sup>18</sup>.

The same regulations state that the Department conducts comprehensive investigation and starts criminal prosecution into cases determined by the Chief Prosecutor of Georgia. Regardless, this provision in the Order, Article 2 paragraph "a" of the regulations, raises some questions with regards to the subordination of the cases. It is unclear based on which instruction, criteria and principles and based on which circumstances the Chief Prosecutor of Georgia examines the cases when he/she forwards the criminal cases to the Department for reinvestigation.

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<sup>13</sup> See Criminal Code of Georgia <https://matsne.gov.ge/en/document/download/16426/157/en/pdf>

<sup>14</sup> See Criminal Procedure Code of Georgia <https://matsne.gov.ge/ka/document/download/90034/64/en/pdf>

<sup>15</sup> See the Law of Georgia on the Prosecutor's Office <https://matsne.gov.ge/en/document/download/19090/7/en/pdf>

<sup>16</sup> See Order N62 of the Minister of Justice <https://www.matsne.gov.ge/ka/document/view/2728207?publication=0> (available only in Georgian)

<sup>17</sup> See Decree N 1044 of the GoG <https://www.matsne.gov.ge/ka/document/view/2858361>

<sup>18</sup> See Article 2 paragraph "a" of Order N 62 of the Minister of Justice

The regulations provided by the Public Defender reveal that within his/her authority, the Chief Prosecutor issues the resolution on assigning a criminal case for re-investigation and forwards it to the new department. **When assigning a case to the new department, the Chief Prosecutor acts in accordance with Order N 62 of the Minister of Justice and Article 33 Part 6 sub-paragraph "a" of the Criminal Procedure Code of Georgia**<sup>19</sup>.

At the same time, it is unclear whether the Department investigates and starts criminal prosecution for all assigned cases or selects some of them based on concrete criteria. Likewise, it is not known whether the Prosecutor's Office applies to any other document apart from the regulations. This obscurity raises questions in connection with case selection and acceptance.

In order to clarify this existing obscurity and answer these questions for the purposes of the study, the HRC held an official meeting with representatives of the Department<sup>20</sup>. Questions were asked about the fields of activities of the new department, criteria and selection rules for accepting the cases under investigation. **Representatives of the Department confirmed that there are no written criteria on the acceptance and selection of cases.**

- **Employees, criteria of recruiting new employees and case distribution rules**

The prosecutor and investigator directly determine impartial investigation into individual criminal cases, a quality that significantly affects the effectiveness of the investigative system. It is necessary to pay attention to the criteria of recruiting new employees in the department and rules of case distribution. Case distribution has crucial importance to ensuring a transparent, effective, impartial and trustworthy investigation.

According to the provided public information, the Department of the Chief Prosecutor's Office has limited human resources considering the number of cases under its jurisdiction. By February 28, 2018, the Department had 24 employees<sup>21</sup>, namely:

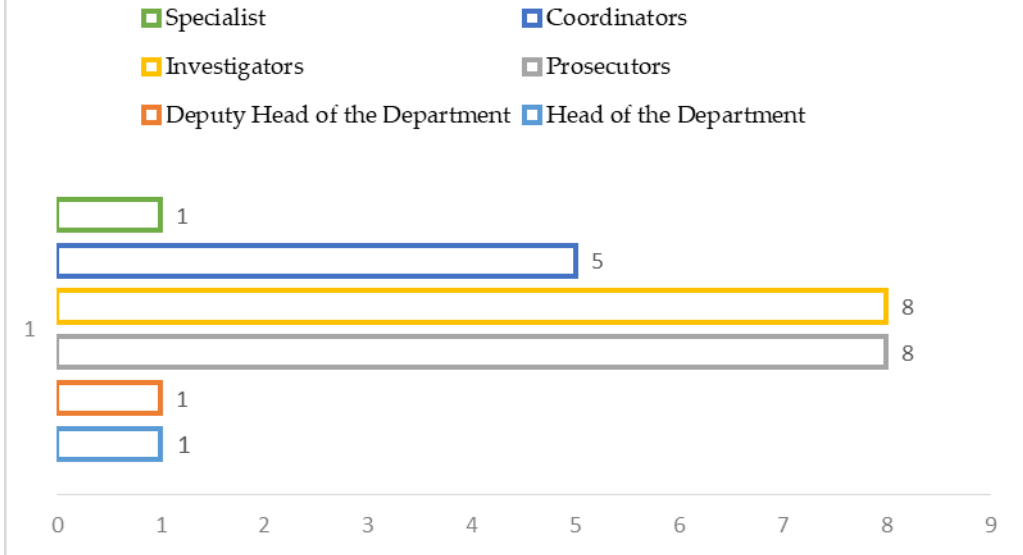
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<sup>19</sup> "In accordance with the investigative jurisdiction task, a certain law-enforcement body or investigator with the investigation of a criminal case can transfer a case from one investigator to another. The Chief Prosecutor of Georgia or a person authorized thereby may, regardless of the investigative jurisdiction, withdraw a case from one investigative authority and transfer it to another investigative authority; remove a subordinate prosecutor from the procedural guidance on the investigation and assign his/her functions to another prosecutor".

<sup>20</sup> See the information at <http://www.humanrights.ge/index.php?a=main&pid=19460&lang=eng>

<sup>21</sup> Letter N13/14840 of the Chief Prosecutor's Office, February 28, 2018

## Employees working in the Department



The employees of the Department were selected in accordance with the general rules regulated by the law. During the selection of the employees, priority was given to those applicants who had not been mentioned in any complaints-applications from citizens with regard to their professional activities<sup>22</sup>. In addition to that, during the meeting, the Head of the Department noted that the majority of their employees was selected from the circle of interns working in the Prosecutor’s Office in 2011, 2012 and 2013. As for the criteria, based on which the prosecutors and investigators were selected in the Department, the Head of the Department said this issue was regulated by Article 31 of the Law of Georgia on the Prosecutor’s Office<sup>23</sup> and referred to those requirements which need to be met by the candidates for the positions of prosecutors and investigators in the Prosecutor’s Office. In the Department, the Chief Prosecutor’s Office has appointed 10 prosecutors (including the Head and Deputy Head of the Department), three chief investigators of particularly important cases, and five investigators of particularly important cases (two of them selected through internal competition and based on the recommendations of the Council on Disciplinary Issues).

Considering the objectives of the Department, transparency and impartiality in the selection process of the employees is very important. In this light, it is necessary to

<sup>22</sup> Ibid

<sup>23</sup> See the Law of Georgia on the Prosecutor’s Office of Georgia <https://matsne.gov.ge/en/document/download/19090/7/en/pdf>

consider the issue of conflict of interest during the selection process in order to avoid subjective and non-transparent procedures with regards to concrete cases.

To prevent this, the acting Criminal Procedure Code of Georgia determines circumstances and rules for excluding participation in criminal proceedings and recusal in Chapter VIII. If there is any circumstance excluding the participation of any party in the criminal proceeding in accordance with the CPCG<sup>24</sup> and recusal is not declared, the parties can request his/her recusal, namely: a motion to recuse an investigator may be filed with a prosecutor, or a motion to recuse a prosecutor may be filed with the superior prosecutor<sup>25</sup>. Thus, it may be concluded that in case of conflicts of interest or partiality, the acting law provides legislative regulation which allows for the elimination of this gap in cases of well-grounded assumption.

In accordance with the provided public information<sup>26</sup>, in the course of investigation into criminal cases in the Department, no parties have ever motioned to recuse an investigator/prosecutor. This means that, to date, the selected candidates have not demonstrated a subjective approach towards the processed cases.

By September 10, 2018, the Department was working on the investigation of 444 criminal cases which refer to offenses committed before 2012. The Head of the Department distributed those cases among investigators and prosecutors equally<sup>27</sup>. **Each investigator and prosecutor is in charge of about 55 cases.**

Considering the obtained statistical data, it should be noted that case distribution is a problem due to the large number of cases, and this may negatively impact on the effective investigation of the cases. As for the criteria for recruiting employees, although it is regulated at the legislative level, considering the peculiarities of the Department's activities, the personnel selection procedure should be more transparent to ensure high public trust, as the prosecutor and investigator are the individuals who must ensure impartial investigation. Further, investigators and prosecutors must have adequate knowledge and experience in the field of human rights.

- **Statistical indicators of the cases processed by the Department**

According to the current data, the Department of the Chief Prosecutor's Office for the Investigation of Offenses Committed in the Course of Legal Proceedings is investigating 444 criminal cases. 49 of them refer to alleged facts of beating, torture,

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<sup>24</sup> Article 59 of the CPCG

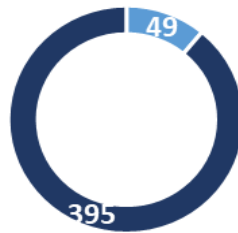
<sup>25</sup> Article 63 of the CPCG

<sup>26</sup> See Letter N13/68938 of the Chief Prosecutor's Office, September 10, 2018

<sup>27</sup> See Letter N13/35336 of the Chief Prosecutor's Office, May 11, 2018

inhuman and degrading treatment, 395 of them refer to alleged offenses committed in the course of legal proceedings, such as extortion of property or other acts of coercion.

**The new Department of the Prosecutor's Office is investigating 444 criminal cases which refer to alleged offenses committed before 2012**



- Criminal cases about alleged acts of beating, torture, inhuman and degrading treatment
- Acts of forced extortion of property and other acts of coercion

Analysis of the statistical data reveals that 89% of the criminal cases (395 cases) processed by the Department refer to the forced extortion of property and other facts of coercion; and the remaining 11% of cases (49 cases) refer to alleged acts of beating, torture, inhuman and degrading treatment.

The Department conducts comprehensive investigation and criminal prosecution **into the cases determined by the Chief Prosecutor of Georgia**. In this light, particular attention should be paid to the criteria or transparency of the practice based on which a re-investigation is launched into the alleged acts of forced extortion of property. It is curious based on which criteria concrete persons or offenses are selected for re-investigation.

During the meeting with the HRC, representatives of the new department stated that since its establishment, 56,000 applications had been forwarded to the Department for review. The majority of these were duplications of one and the same applications filed to different state bodies. According to official information, an estimated 8,000 complaints/applications have been filed to the Department since its establishment.

At the same time, it is questionable based on which criteria the new department selected 49 cases from thousands of filed cases which refer to alleged acts of

beating, torture, inhuman and degrading treatment. The exact number of applications filed to the Prosecutor's Office is also unclear: the information was requested from the new department, but the Prosecutor's Office did not respond to the organization's letter.

If the Prosecutor's Office refuses to review a case, the applicant can individually appeal to the court based on Article 310 of the CPCG. However, this possibility cannot ensure effective use of the mechanism for the restoration of justice, as, when an application is accepted, the state investigative structures start procedures with their resources and in accordance with legal mechanisms which are elaborated by the State in the course of litigation. However, in case of denial, the alleged victim is left alone to face the state bureaucracy and needs to individually collect new evidence or facts of an alleged offense committed in the past as it is the obligation of the State in the view of the principle of legal state. Adding sub-paragraph "g<sup>1</sup>" to Article 310 of the CPCG aimed to remove this barrier in the process of restoration of the victim's rights.

**The abovementioned statistics reveal that the Department is focused on property issues and less attention is paid to the cases of torture and inhuman treatment. It is curious based on which criteria the concrete cases were selected by the Department from thousands of torture cases.**

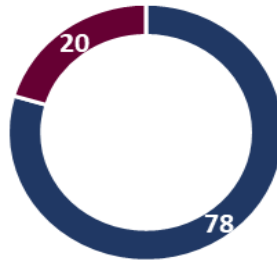
- **Statistical indicator of crime resolution**

As a result of the Department's work, 78 facts of forced extortion of property and 20 facts of beating-torture, inhuman treatment and violence were solved. Charges were brought against 43 public servants; discretionary power was used against 27 and resolution on the refusal to start criminal prosecution against them was issued.

A decree on the refusal to start criminal prosecution against four persons was issued due to death, and criminal prosecution started against 12 persons, including senior government officials on the charge of professional offense. A guilty verdict was passed against 10 persons. 158 persons were declared victims but **31 were refused victim status in the criminal cases processed by the Department on the claim that, based on the obtained evidence, there was no factual or legal basis to find the applicant guilty.**



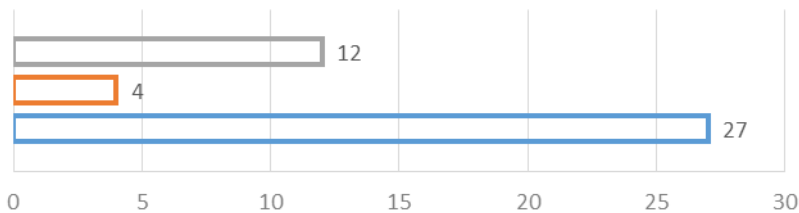
### The number of cases solved by the Department as a result of the conducted activities



- Forced extortion of property
- Beating-torture, inhuman treatment and violence

### Charges were brought against 43 public servants

- Criminal prosecution started against 12 persons including senior government officials, 10 of whom were found guilty
- Resolution on the refusal to start criminal prosecution was issued on 4 persons due to their death
- Discretion on the refusal to start criminal prosecution was used on 27 persons



[Resolution on finding a person victim 158](#)

Since 2016, as a result of the work of the Department, resolutions about substantial violation of the rights of convicts in the course of legal proceedings were issued against 59 persons. The issued resolutions refer to the humiliation of human dignity and honor, right to personal freedom and inviolability of the

convicts. Based on the decrees, the CPO filed motions to the Tbilisi and Kutaisi Appellate Courts to review the guilty judgments against those persons and as a result of reviewed motions, 47 convicts were acquitted<sup>28</sup>. Other persons are still having their cases processed.

- **Criteria for accepting cases**

The Department acts in accordance with the regulations of the Department of the Chief Prosecutor's Office for the Investigation of Offenses Committed in the Course of Legal Proceedings, approved based on Order N 62 of the Minister of Justice issued on February 13, 2015. The regulations do not preliminarily determine the conditions for which the Department accepts or rejects criminal cases.

With regard to the issue, the HRC requested public information about the document regulating the acceptance and rejection of cases for review. **The provided information<sup>29</sup> states that the Department acts in accordance with Article 101 of the Criminal Procedure Code of Georgia**, according to which the grounds for initiating an investigation are the information provided to an investigator or prosecutor, information revealed during criminal proceedings, or information published in the media.

The obligation to initiate an investigation is determined by Article 100 of the CPCG, according to which, when notified of the committing of an offense, an investigator and prosecutor are obliged to initiate an investigation.

In comparison with the criminal proceedings, the initiation of an investigation is not a discretionary power. Consequently, if the information contains signs of an offense and this information is not anonymous, an investigator and prosecutor are obliged to commence an investigation.

Article 101 of the CPCG generally defines the grounds for the initiation of an investigation and does not define the criteria for the acceptance or rejection of cases. It should be taken into consideration that the Department of the Chief Prosecutor's Office, due to its objectives, can investigate only specific cases, which means it cannot investigate all crimes. In this situation, Article 101 of the CPCG cannot completely ensure the regulation of case acceptance or rejection, as the normative context of this article has a general character. In this light, an objective observer may ask – how impartial can the case selection process be in a situation

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<sup>28</sup> Letter #13/68938 of the Chief Prosecutor's Office, September 10, 2018

<sup>29</sup> Letter #13/35336 of the Chief Prosecutor's Office, May 11, 2018

when case acceptance criteria are not preliminarily defined and depend only on general principles? Due to the absence of concrete criteria, a victim may receive unverified refusal to review his/her case based on newly found circumstances.

Regulation of the criteria for the acceptance or rejection of cases by the new department will make the case selection process more predictable and will secure the false expectations of society and interested parties.

The information provided by the Department reveals that the rejection of cases depends on a lack of sufficient evidence, which is a very subjective evaluation as it is carried out by the prosecutor who is put in charge of that concrete case. Considering the circumstances that each prosecutor and investigator is in charge of an average 54 cases, which is an incredibly high number (also affecting the effectiveness and result of the investigation), we can assume that, regardless of the context of the case and provided evidence, the case may be left uninvestigated due to insufficient human resources.

The cases of two beneficiaries of the HRC verify this assumption, who, with the legal aid of HRC lawyers, appealed to the Department with the request to review their cases, but the Department refused to consider their cases with no explanation for the refusal given.

*With regard to one of the cases, the HRC lawyer appealed to the Department in 2016 and requested a review of the judgment passed on June 11, 2012. Considering the altered testimony of the victim and amended testimonies of the questioned witnesses, based on Article 310 sub-1*

*person or their lawyer considers that the altered position of the victim is a newly found circumstance, in accordance with the law determined by Articles 310 and 312 of the CPCG, the defense also has the right to appeal to the Appellate Court and request a review of the judgment. As for sub-1*

*appeal to the court, there should be evidence which proves the substantial violation of the investigator of the Department cannot satisfy your request to initiate investigation into the*

According to the assessment of the HRC, the abovementioned demonstrates that the refusal of the Prosecutor's Office is unverified as we had the altered position of a victim and amended testimonies of witnesses, who had previously given false testimonies against the convicted person in the process of the investigation as a result of oppression. Regardless, the Department did not start an investigation. Analysis of the requested decrees from the new department in the process of the

study reveals that in different cases, the decrees of the prosecutor about substantial violation of rights in the course of legal proceedings relied on the altered testimonies of old witnesses or information provided by new witnesses. In this case, it is not clear which criteria needs to be met by the case to identify the fact of human rights violation in the course of the legal proceedings. At the same time, it is noteworthy that it took the Department almost seven months to study and consider the above application.

With regard to the second case, with the legal aid of the HRC lawyer, a citizen appealed the Department on July 7, 2016 and it took 18 months to consider his application and finally, on February 23, 2018, the Chief Prosecutor's Office refused the citizen a re-investigation of his case and a refusal to review the guilty judgment.

In the abovementioned application, the victim stated he was the victim of an arbitrary conviction and, based on various arguments and on the information he obtained, the victim highlighted systemic crimes and that he had been a victim of one of those crimes. In his application, the arguments relied on circumstances which were unknown when the guilty judgment was passed and consequently the court had not considered them at the time. In this case, the victim, together with the reconsideration of his case, requested a repeat investigation to reinforce his arguments with the new circumstances. Thus, in order to reveal the truth in his case, it was necessary to conduct a new investigation, as he alone could not conduct the investigation. Without this evidence it was pointless lodging an independent appeal to the court based on Article 310 of the CPCG.

The refusal of the Prosecutor's Office to start a new investigation into the case was based on the fact that the application did not provide any newly found circumstances from which the prosecutor could accept the case<sup>30</sup>. This argument cannot be considered acceptable as in his application the person noted that one and the same person – "Eka" was mentioned in criminal cases against several different persons who were arrested in the same period of time, and "Eka" was the source of the narcotic substances mentioned in those cases. Also, it is underlined that all cases were processed by one and the same prosecutor, the same judge and the same state-funded lawyer. It is natural to presume that a new investigation could obtain all relevant evidence to prove the abovementioned allegations which made up the main claim in the application. Analysis of the Prosecutor's Office refusal reveals that they expected ready evidence in the application and that the provided information alone was not enough to initiate an investigation. However, review of other cases demonstrate that the Prosecutor's Office takes responsibility for

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<sup>30</sup> Letter N 13/64365 of the Chief Prosecutor's Office

collecting new evidence once it accepts the case and it becomes the basis of their resolution of the substantial violation of a person's rights. It once again demonstrates the need to have clear case selection criteria in order to prevent double standards and avoid partial activity in the Prosecutor's Office.

The Department must regulate this important issue as, when it does not have a document regulating the case selection process, subjective, ungrounded and non-transparent procedures may originate; at the same time, the case acceptance and investigation initiation is the sole responsibility of the Department's prosecutor, without any preliminarily elaborated guidelines.

- **In this light, categories of the cases to be processed by the Department must be made more concrete and case selection criteria should be elaborated in the form of a document (guidelines) that will be open and available for all interested persons. Regulation of tasks will promote the impartiality of the Department's activities and will exclude doubts about the partiality of the Prosecutor's Office.**

- **Use of diversion and plea agreement mechanisms**

For the goals of the research, HRC requested public information about the criminal cases processed by the Department, whether the Prosecutor's Office had used diversion<sup>31</sup> and plea-agreement<sup>32</sup>.

Study and analysis of the obtained information revealed that the new department rarely uses diversion and plea-agreement mechanisms and most often conducts trials on merits.

In accordance with the information provided by the Prosecutor's Office<sup>33</sup>, the Department of the Chief Prosecutor's Office for the Investigation of Offenses Committed in the Course of Legal Proceedings used diversion with regard to three persons as a pre-condition for admitting the crime and their cooperation with the investigation. As the Prosecutor's Office clarified, the level of their cooperation with and assistance to the law enforcement body was higher than the public interest of criminal prosecution against them. Also, according to their statement, when the diversion institute is applied with regard to adults, the protocol for the proposed diversion is signed and after the conditions of the protocol are met, the prosecutor issues a decree on the refusal to start criminal prosecution against the

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<sup>31</sup> Article 168<sup>1</sup> of the CPCG

<sup>32</sup> Article 210 of the CPCG

<sup>33</sup> See the Letter N13/73321 of the Chief Prosecutor's Office, September 26, 2018

person or terminates the ongoing criminal prosecution. The decision of the Prosecutor's Office to use the diversion institute relied on the abovementioned circumstances.

**In accordance with the obtained information, all three cases referred to crimes punishable under Article 333 Part I and Article 218 Part II sub-paragraph "b" of the Criminal Code of Georgia. In the process of diversion, the prosecutor took the same approach to all three cases.**

At the same time, with the use of discretionary power against 27 former public servants, the Prosecutor's Office did not start criminal proceedings and terminated investigation against four public servants due to their deaths<sup>34</sup>.

A prosecutor, based on the evidence collected during the investigation, which is enough for a verified assumption that the accused person committed the crime, is authorized to start criminal prosecution or find a person guilty or cancel the charge. Both the launch and termination of the criminal proceedings during the investigation are the special competence of the prosecutor when he/she acts in respect to public interests<sup>35</sup>.

The Criminal Procedure Code determines the basis on which to terminate the investigation or/and not to initiate a criminal prosecution under Article 105 Part 3, which states that a criminal prosecution may also not be initiated or may be terminated if it contradicts the guidelines of the criminal policy<sup>36</sup>. These principles, as a result of the amendments to the procedural legislation, are public and consequently the law-maker obliges the prosecutors, together with the Procedure Code, to defend a much higher standard of transparency when applying it.

Here, the important circumstance is how the prosecutor verifies the public interest of the discretionary power applied and how the cases of the mentioned 27 public servants differed from other cases against whom criminal prosecutions were not begun. It is not clear whether the concrete persons remain in their positions or whether they had their authority suspended during the ongoing investigation.

The Department of the Chief Prosecutor's Office for the Investigation of Offenses Committed in the Course of Legal Proceedings used plea-bargains with regard to two persons for the following crimes: Article 143 of CCG (illegal restriction of freedom) and Article 333 of the CCG (abuse of professional power).

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<sup>34</sup> See Letter N13/14840 of the Chief Prosecutor's Office of Georgia, February 28, 2018

<sup>35</sup> See Article 16 of the CPCG

<sup>36</sup> See Article 105 of the CPCG

**Based on the abovementioned circumstances, it is necessary for the Department to conduct its work transparently – in the process of not initiating criminal prosecution, when using diversion, and plea-agreements. A homogenous practice should be established in order to minimize the risk of partiality in the use of procedural mechanisms by prosecutors.**

- **Time-framing of the Department’s activities**

It is necessary to pay attention to the time-framing of the Department’s activities.

The Department of the Chief Prosecutor’s Office, in the process of its activities, follows regulations which do not specify the years the committed offenses need to be investigated within by the Department. The regulations state that the Department investigates alleged facts of crimes committed in the course of legal proceedings including torture, inhuman and degrading treatment, forced extortion of property or other facts of coercion. As for the time-frame (the years when the offenses were committed), is not mentioned in any document. Consequently, **both the creation and functioning of the Department, as well as the alleged crimes under its jurisdiction, are not time-framed. This means the Department is authorized to investigate crimes allegedly committed in the course of legal proceedings not only before but also after 2012.**

Regardless of the abovementioned normative regulations, requested information<sup>37</sup> revealed that the Department is processing 444 criminal cases which refer only to crimes committed in the course of legal proceedings before October 2012, including torture, inhuman and degrading treatment, forced property extortion or other facts of coercion.

It is noteworthy that many offenses committed after 2012 have also become topic of high public interest, whereby public officials have allegedly committed crimes. The received public information demonstrates that the Department does not respond to facts of alleged crimes committed after 2012. This situation raises suspicions that the processes are politicized. **At the same time, the existing practice contradicts the principle of equality as the Department investigates only alleged crimes committed before October 2012 while applications regarding alleged crimes committed after October 2012 receive no reaction.**

The time-framing of the Department’s activities with a concrete political period (2012), of course raises questions over the partiality, political neutrality and equality.

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<sup>37</sup> Letter N13/35336 of the Chief Prosecutor’s Office, May 11, 2018

In a similar situation, in order to ensure democratic statehood, justice and the equality principle, it is necessary to separate the investigative and criminal prosecution bodies from political processes and prevent subjective, unequal approaches to cases of concrete themes.

- **Restitution of Extorted Property**

Restitution of extorted property is regulated by Decree N 1044 of the Government of Georgia issued on May 25, 2015<sup>38</sup>. Analysis of this decree shows that the by-law is applied only in the case of restoration of a property whose owner is the State. In parallel to studying this decree, the HRC requested public information from the Department with regards to property restoration issued when the property has a bona fide purchaser and is not owned by the State. It was curious how the extorted property is restored in such a situation. In accordance with the received public information<sup>39</sup>, when the State is not the owner of the extorted property and the property has a bona fide owner or has been demolished, the victim must appeal to the court to claim compensation in accordance with the administrative and civil laws.

**After the Department solved the facts of illegal extortion of property, 149 victims had their properties returned to them at a cost of around 44 million GEL.**

After the Department solved the facts of illegal extortion of property, 149 victims had their properties returned to them at a cost of around 44 million GEL; among them: 80 cars, 21 agricultural plots, 6 flats, two resort-houses, office and commercial spaces, Telavi based wine-factory Akura, a Gori-based hotel and swimming pools, the territory of a boarding house in Shovi, two airplanes and 13 helicopters, alongside other movable and immovable properties.

As the analysis of the public information showed, the State was the owner of the abovementioned properties. Thus, there was no need for anybody to appeal to court for compensation as the **State returned the extorted properties to the victims without the court once the Department determined the fact of forced extortion of the property as a result of investigation.** In such a situation, there is no need to confirm the fact of forced extortion of the property via court proceedings.

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<sup>38</sup> Decree N1044 of the Government of Georgia <https://www.matsne.gov.ge/ka/document/view/2858361> (available only in Georgian)

<sup>39</sup> Letter #13/27598 of the Chief Prosecutor's Office, April 16, 2018



- The State approach to returning extorted property to victims when the property is owned by the State should be evaluated positively once the concrete fact of offense is confirmed; the victim does not face any obstacles from the State to getting back the extorted property. Such an approach promotes the process of the elimination of the breached rights- the main objective and pre-condition of the creation of the Department in the Prosecutor's Office.

- **Tendency of applying the prosecutor's decrees according to years**

At present, the Department is investigating 444 criminal cases. Among them, since the opening of the Department of the Chief Prosecutor's Office for the Investigation of Offenses Committed in the Course of Legal Proceedings, the Department has issued decrees on criminal prosecution against 59 persons for violation of the rights of convicted persons in the course of legal proceedings<sup>40</sup>. These decrees were issued for various categories of criminal offenses in the frame of a repeated investigation. Namely, these cases refer to the crimes punishable by 28 different articles of the Criminal Code of Georgia.

Analysis of the provided information reveals that the new department of the Chief Prosecutor's Office issues decrees for different categories of offenses related to human rights violations. The decrees refer to crimes against citizens and their health, against the State; to official misconduct, and financial and other crimes. In this regard, types or categories of concrete crimes do not prevail.

At the same time, about 60% of the decrees were issued in 2017 (34 out of 58 resolutions), while in 2018, only 9 decrees were issued (9%). The high number of issued decrees in 2017 might have been caused by investigations launched in 2016. The tendency in 2018 underlines the decrease of such decrees. With a large number of uninvestigated cases, it is still unclear based on which criteria the Department selected the abovementioned 59 cases.

In order to assess the context and verification of decrees on the substantial violation of rights of a convicted person in the course of legal proceedings, the HRC requested copies of the decrees. The Chief Prosecutor's Office did not provide the organization with the requested information, claiming that the decrees contained personal data, though the organization had agreed to receive ciphered personal data. Based on the memorandum between the HRC and the Public Defender's Office, the PDO provided the Center with the ciphered decrees on 17 cases. Among them was: a decree on forwarding the criminal case for further investigation, a

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<sup>40</sup> See Letter #13/14840 of the Chief Prosecutor's Office of Georgia, September 10, 2018

decree on finding a person victim, a decree on the substantial violation of rights of a convicted person in the course of legal proceedings, a decree on separation of the criminal case, and in some cases –decrees on granting the victim assignee’s status and on imposing a charge.

**The decrees on substantial violation of the rights of a convicted person in the course of legal proceedings** are of equal structure and the main legal argument of their issuance tends to be the same.

In terms of the structure, the decree is divided into eight parts:

- ✓ **the introduction** specifies the article of the CCG, based on which the investigation into an alleged offense is launched. Having studied the mentioned 17 decrees, HRC found that in the majority of cases (namely in 82% of the cases) the investigation started under Article 333 Part I of the CCG, which applies to the abuse of power by public servants.
- ✓ **next** is an examination of factual circumstances, where the essence of the case and the breached right(s) are described. This part is individually presented in different cases, considering the context of each case.
- ✓ **in the conviction part**, the essence of the case is presented in detail and chronologically, as are the factual circumstances of the case, which were the basis for the old judgment, as well as witness statements and old judgments of different instances of the court regarding the concrete cases.
- ✓ The next part describes the **evidence** which was grounds for the **guilty judgment** against the person. In this section, all old evidence is reviewed in detail which became grounds for the judgment in the concrete case.

The next part describes **the evidence obtained as a result of the new investigation and estimated factual circumstances**, which indicate alternative evidence obtained by the new investigation and unknown during past court proceedings. Consequently, passing the old, incorrect judgment was not an issue of responsibility of the initial judge but of concrete public officials who hindered comprehensive and impartial investigation into the case.

In accordance to the Article 82 Part I of the CPCG, the evidence shall be assessed in the view of its relevance, admissibility and validity in relation to the criminal case. The pieces of evidence are evaluated in all stages of the litigation and describe the entire legal proceeding. Evaluation of the

evidence is comprehensively done only by the Court. The evidence shall cumulatively meet all three requirements and if any of them is missing, the evidence may not be taken into account when passing the judgment. Often the new investigation determines that the evidence, which became ground of the guilty judgment, was faked or was indirect and could not meet the criteria of evaluation.

In some cases, judges did not enjoy their right to appeal the Constitutional Court to prevent passing of unfair judgment.

Regardless above-stated, it should be positively evaluated that the miscarriages in the process of legal proceedings are eradicated without the humiliation of the judiciary system's reputation. On the other hand, it should be viewed as a prevention of judiciary mistakes, which may encourage judges to expect their incorrect judgments to result in concrete legal results that negatively impact their future professional careers. The evidence obtained through the new investigation sometimes relies on the altered testimonies of the old witnesses and/or testimonies of new witnesses who were not questioned in the past for various reasons, though they possessed important information about the case. The newly found circumstances often become grounds for annulling old witness testimonies or other evidence, and the prosecutor issues substantially different decrees regarding the case.

- ✓ In all decrees, legal argumentation when indicating the **principle of evidence evaluation and standard beyond reasonable doubt** are substantially equal and standard, reinforced by Article 40 Part 3 and Article 7 of the Constitution of Georgia, and articles 5, 82 and 13 of the CPCG. The legitimacy of a decision passed based on information provided in the first five parts of the decree is verified by the abovementioned provisions of the law, which is substantially correct because presumption of innocence and standard beyond reasonable doubt, as essential procedural guarantees, are milestones of the legal state and are guaranteed by Article 40 of the Constitution of Georgia. Further, it is essential to mention Article 72 Part 2 of the CPCG, as the constitutional standard of validity does not include only indication of the inadmissibility of suspicious evidence (suspicion of falsification of evidence or loss of essential details shall be excluded), but also requires confirmation of a significant factor circumstance based on double-checked information obtained only from a trustworthy source. In this light, the use of Article 72 Part 2 of the CPCG is important, according to

which a piece of evidence is inadmissible “if it has been obtained in accordance with the procedure established under this Code but a reasonable doubt has not been refuted that it has been replaced, or that its properties have been substantially changed or that the evidence remaining on it has substantially disappeared.” This provision includes the requirement/obligation to examine the authenticity of the evidence.

- ✓ The principle of the inviolability of personal honor and dignity, guaranteed by the Constitution of Georgia and Criminal Code, as well as by international conventions and case law of the European Court of Human Rights, **are mentioned as arguments to re-consider the guilty judgments of the convicts and their human rights violations in the resolutions.** In the examined decrees, determination of the fact of substantial violation of human rights is connected with the fact that the significant circumstances and facts for making a decision were unknown when issuing the initial judgment on the case. The fact of human rights violation was estimated only based on the new evidence obtained as a result of a new investigation.
- ✓ Following all the above-stated sections, the last is the **resolution of the prosecutor**, regarding whether the right to freedom, honor and dignity of the person was violated in the concrete case.

- **Problematic issues in the decree**

One particular decree was interesting: the October 27, 2008 judgment by which the Tbilisi City Court found T.B. guilty under Article 338 Paragraph 3 “b” and “e” of the Criminal Code of Georgia.

The new department of the Chief Prosecutor’s Office accepted the case and started re-investigation. The evidence obtained in the frames of the new investigation determined that there was no direct evidence in the case files which could confirm bribe-taking by T.B. beyond reasonable doubt. The Department issued a decree on the substantial violation of the convicted person’s rights and appealed to the Tbilisi Appellate Court to review the criminal case. T.B was wanted throughout this period.

The Tbilisi Appellate Court denied the prosecution the motion and stated that “in this particular case, the motion of the prosecutor was not considered to be a newly found circumstance for the review of the judgment in accordance with the Criminal Procedure Code of Georgia, as the Tbilisi City Court’s criminal cases panel passed the verdict against T.B. in absentia on October 27, 2008, a fact that was not appealed

in the appellate court. Consequently the litigation into the case is as yet unfinished.”

This ruling was appealed in the Supreme Court and the latter accepted it; the Cassation Court sent the case back to the Tbilisi Appellate Court, which on May 14, 2018, passed a judgment of acquittal.

The Supreme Court, in its April 7, 2017 ruling, indicated that there was a decree of the CPO prosecutor in the case files which proved that the right to honor and dignity inviolability of the convicted person (Article 17 of the Constitution of Georgia) had been substantially breached in the course of the legal proceedings, proven by the new evidence obtained in the course of the new investigation.

With it, the Supreme Court gave a chance for the decree of the Prosecutor’s Office, which was issued based on Article 310 sub-paragraph “g<sup>1</sup>” of the CPCG, to be accepted by the appellate court in all circumstances. By such a decision, the chamber does not restrict the prosecution and enables it to implement its duties in accordance with the law, the precondition being acceptance of the motion and trial on merits of the case in court. It is logical, as in such situations, when the principle of adversarial proceedings is not respected and the prosecution requests the violation of rights of a convicted person to be determined, and presents new evidence to prove it obtained as a result of a new investigation, the court must evaluate the new evidence in relation to the old judgment and hold a trial on merits before passing the new judgment.

In case of absence of principle of adversarial proceedings, when only the prosecution is party in the trial, an independent and strong judicial institute must be the guarantee of impartiality and objective judgment into the cases selected by the Prosecutor’s Office for review. As the case selection criteria is not determined, and it may be carried out by the Prosecutor’s Office or state subjectively, the judge should ensure a legal and fair decision regarding the case during a trial on merits in the court. On the one hand, it is not good that with such lack of criteria, cases may go uninvestigated where the rights of the person were violated in the course of legal proceedings; but on the other hand, the case selection should necessarily meet the criteria of Article 310 – “g<sup>1</sup>” of the CPCG and the prosecutor should respect the high standards of human rights when making a decision rather than the narrow interests of an individual.

## ❖ Chapter II - Trial Monitoring

### • Trial monitoring in the Appellate Court

In the frames of the project, two monitors monitored trials in the Tbilisi Appellate Court. **They observed the hearings of the prosecutor's decrees filed to the court in accordance with Article 310 – “g<sup>1</sup>” of the CPCG**, which referred to the substantial violation of human rights of convicts in the course of the legal proceedings of their criminal cases, which was unknown at the moment the initial judgment was passed.

The Human Rights Center addressed the department of the CPO and the Tbilisi Appellate Court to provide them with the schedule of the trials when the cases relevant to Article 310 – “g<sup>1</sup>” of the CPCG were to be reviewed<sup>41</sup>. Having received the requested information, the lawyer-monitors observed 11 trials over six months in the Tbilisi Appellate Court.

**Considering the peculiarities of Article 310 – “g<sup>1</sup>” of the CPCG, the trial monitoring aimed to assess compliance of the court hearings in the Appellate Court with the acting Criminal Procedure Code of Georgia.** Namely, the monitors observed the following issues: the role of the judge in the process of case examination; whether equality of arms and principles of adversarial proceedings were respected; rule of direct and verbal examination of the evidence; right to fair trial; principles of serving justice in a timely manner and publicity of trials. During the trial monitoring, the monitors received information about what kind of offenses were processed in the Appellate Court.

As a result of analyzing the information obtained from the trial monitoring in the Appellate Court, it was revealed that the Prosecutor's Office had filed motions to the court for the review of judgments mostly for the following crimes punishable under the CCG: **fraud, tax evasion, hooliganism, espionage, conspiracy or rebellion intended to change the constitutional order of Georgia through violence, abuse of official power, assault on a police officer, misappropriation, and waste.**

The monitoring revealed that the CPO had not filed any motion to the Appellate Court regarding reviewing cases related to offenses committed in the course of legal proceedings after 2012. This fact reinforces the argument that the Prosecutor's Office is focused only on the investigation of crimes committed before 2012 in the course of legal proceedings.

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<sup>41</sup> See letter of the Chief Prosecutor's Office, January 25, 2018

**It is important to note that all trials in the Tbilisi Appellate Court were held in compliance with the norms estimated by the CPCG and no significant procedural violations were observed.**

The state prosecution questioned all victims in the Appellate Court, who described the physical and psychological oppression they had endured from the investigative bodies before 2012. At the same time, they often indicated being forced to confess to crimes as a result of intimidation regarding their family members or other forms of oppression.

During the trials, the state prosecution had invited those persons as witnesses before the court who had made false testimonies during the investigation process and in the court against the convicts. According to the statements of the questioned witnesses, they had made false testimonies under blackmail and intimidation; they were compelled to obey the instructions and give testimony as preliminarily dictated to them by an investigator or prosecutor.

The judge both verbally and in written form introduced the witnesses to their rights and responsibilities in accordance with the acting CPCG. All witnesses pledged in accordance with the law. At the same time, the court clarified to the witnesses that they had the right not to give testimony to the court which could blame them or their close relatives in committing a crime. Those people who did not know or knew little of the state language were provided with an interpreter. Former advocates of the convicted were questioned as witnesses during the trials, having been directly engaged in the legal proceedings of the victims.

All evidence directly and indirectly related to the cases was examined during the trials. Both witnesses and victims were heard during the court proceedings.

The court hearings were conducted without substantial violation of the CPCG, which should be evaluated positively but while recognizing that those concrete issues which were identified as a result of the monitoring cannot be ignored, namely: cases relevant to Article 310 – “g<sup>1</sup>” of the CPCG, in terms of procedural norms, are not compliant with the acting Code – more precisely so with the principle of adversarial proceedings. At the same time, the problem was identified in terms of serving justice in a timely manner as the proceedings were dragged out due to the “functionless” institute of reserve judges.

In accordance with Article 85 Part 3 of the Constitution of Georgia, litigation is conducted in due respect of equality of arms and the principle of adversarial proceedings. Article 9 of the CPCG states the same. Upon the commencement of criminal prosecution, criminal proceedings should be carried out based on the

equality of arms and principle of adversarial proceedings, “but it does not work at the investigation stage of the criminal proceeding, which is conducted with the engagement of only one party until the investigative body identifies the defendant, and criminal prosecution is begun against a concrete person.” Conducting the investigation independently, the parties present the obtained information to each other five days before the court hearing. The main essence of the principle of adversarial proceedings is that evidence-collection, search for witnesses, bringing said witnesses to court and presenting the evidence is the competence of the prosecution and defense. At the same time, a judicial proceeding is adversarial if the parties can actively and equally ascertain the validity of their position, bring their arguments, clarify facts and present evidence. The court supervises the conduct of the parties and ensures that the parties respect the rules of court proceedings.

The unity of the abovementioned actions ensures the defense of the adversarial proceedings; otherwise the court hearings are in conflict with the acting law.

During trials on merits, the court, which is prohibited from independently obtaining and examining evidence proving the accusation, as it is from assisting the defense, must rely on the evidence presented and examined by the trials when making its decision.

The pre-condition of court proceedings to be commenced based on Article 310 – “g<sup>1</sup>” of the CPCG, is the decree of the prosecutor based on a substantial violation of the person’s rights in the course of legal proceedings.

The Constitutional Court also pays attention to the significance of the rights of the defense in the model of adversarial proceedings and clarifies that “with the guaranteed right to defense, the Constitution aims to prevent conviction of a person as a result of unfair legal proceedings. In the frame of adversarial proceedings, it can be achieved by granting equal opportunity to the parties to obtain and present evidence.” The monitoring revealed that the principle of adversarial proceedings was not respected in the court. Even an impartial observer can see this problem, as the prosecution and defense usually have an agreed position during the court hearings which means the defense shares the position of the state prosecution. In most cases, only the evidence presented by the prosecution is examined during the trials. However, conducting the proceedings in this manner, conditioned by the character of the case as the Prosecutor’s Office has presented the decree on the substantial violation of a person’s rights, it is impossible for the prosecution and defense not to have a preliminarily agreed



position. This is a result of the fact that during the investigation, evidence obtained by both parties has the same goals.

As the monitoring showed, the judge passes the verdict based on examination of the evidence considered by the prosecutor when issuing the decree. In this light, respect of the principle of adversarial proceedings is almost impossible. The main interest of the Prosecutor's Office is to defend the victim's rights and to present valid evidence proving the innocence of the victim<sup>42</sup>. It clearly indicates that the "prosecution" serves the interests of the defense. The fact that in most cases the defense does not have a lawyer in the court reinforces this allegation. The role of the judge is also very important during hearings, as they act like arbiters. Regardless of the fact that instead of the prosecution, representatives of the Prosecutor's Office act as defense at the hearings, the monitors could not detect signs of inquisition in the activities of the judges. The judges try to conduct the trial in accordance with the acting law to at least formally respect the principle of adversarial proceedings.

In accordance with Article 25, Part 2 of the CPCG, a court should be prohibited from independently obtaining and examining evidence that proves the guilt or supports the defense. The collection and presentation of evidence is the responsibility of the parties. In exceptional cases, a judge may, after obtaining consent of the parties, ask clarifying questions if it is required to ensure the conducting of a fair trial. The monitoring revealed that if it is deemed necessary to ask clarifying questions, the judge explained the need for the question, aiming to assist the parties to realize the necessity of the question so that the parties did not perceive it as interference in the principle of adversarial proceedings.

Considering the above, we can conclude that we observed completely different and "extraordinary" court proceedings rather than trials built upon the principle of adversarial proceedings. The "extraordinary" court proceedings were substantially different from standard criminal case hearings, where the defense and prosecution sides are rivals. Thus, the cases to be considered under Article 310 sub-paragraph "g" of the CPCG cannot be evaluated as justice built upon the principle of adversarial proceedings as justice is adversarial when the parties have actively and equally ascertained the validity of their positions, and bring their arguments, clarify facts and present evidence.

The general goals of the criminal procedure code are restoration of legal order together with the realization of the state authority and ensuring a process relevant

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<sup>42</sup> In the cases processed before 2012, which are now reconsidered in the Appellate Courts, current victims were convicted.

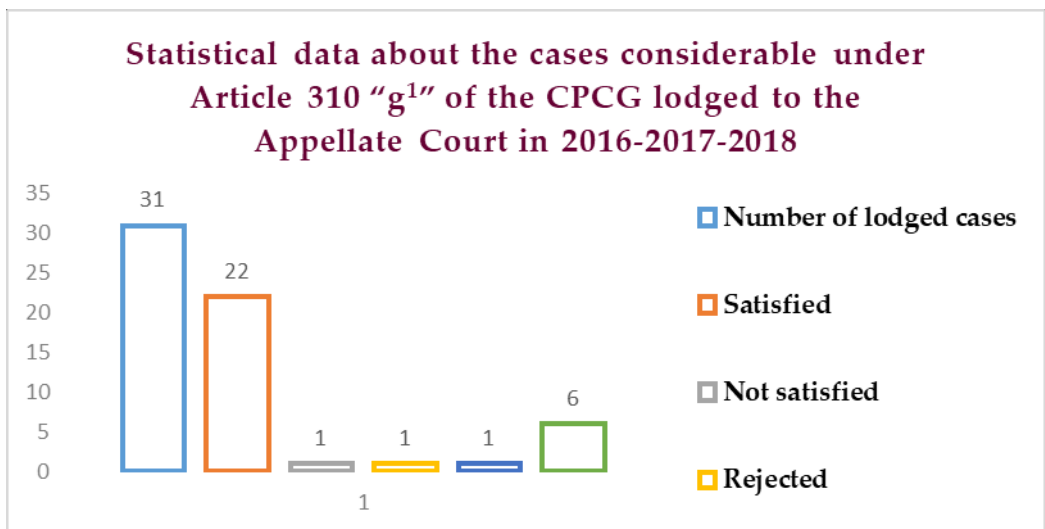
to the legal state. Realization of the legal order must ensure restoration of the breached rights and can be achieved only with the enforcement of the court judgment. Further, it includes cases where leaving the enforced judgment without revision is obvious injustice. Thus, the court judgment entered into force may be revised due to newly found circumstances as an outcome of the idea about the legal state and as an exception.

In 2016, a clarification note about the legislative amendments made in Article 310 of the CPCG stated that the new mechanism created an opportunity to effectively eradicate the legal miscarriages made in the course of legal proceedings in order to increase the effectiveness of justice and to defend human rights. Consequently, regardless of the Articles 9 and 25 of the CPCG, in the frame of this specific proceeding, deriving from the principle of adversarial proceedings, guaranteed by the procedural law of Georgia, should not be evaluated as a violation. Furthermore, with the amendments in Article 310 of the CPCG, the authority of the Department was significantly increased, which created an effective mechanism with which to eliminate the mistakes made when passing court judgments. Namely, with the new edition of Article 310 of the CPCG, regardless of the court judgment on a criminal offense, upon the resolution of the prosecutor, the court may consider the substantial violation of human rights in the course of the legal proceedings, praised for being an effective defense of human rights.

During the monitoring, the problem of serving justice in a timely manner was identified, demonstrated by dragged-out hearings and the functionless institute of reserve judge. In accordance with Article 183 of the CPCG, cases should be heard with the same composition of court. If a judge is not able to participate in the proceedings, he/she should be replaced by another judge of the same court, except when a reserve judge is appointed. The trial monitoring revealed that Article 184 of the CPCG is a “dead article” as during the six months of monitoring, the judge was replaced in only three cases out of 11 monitored ones and an almost-finalized court hearing was restarted as no reserve judge had been appointed in any of the cases. Such a situation promotes dragged-out proceedings and contradicts the principle of serving justice in a timely manner.

For the goals of the research and accumulation of statistical data, the organization requested public information from the Tbilisi and Kutaisi Appellate Courts about the number of cases where judges were replaced and reserve judges were appointed in court proceedings in the criminal law panels of the courts for cases to be considered under Article 310 sub-paragraph “g<sup>1</sup>” of the CPCG from 2016 to present. The Tbilisi Appellate Court did not answer. The Kutaisi Appellate Court

informed us that from 2016 to present<sup>43</sup>, seven motions for the review of the past judgments had been filed to their court and full-acquittal judgments were passed in four cases, while the court was still processing the remaining three, with a final judgment yet to be passed. Among those seven cases, the reserve judge was appointed in only one case. However, the Kutaisi Appellate Court did not provide the HRC with full information as the letter did not clarify how many judges had been replaced during the proceeding of the concrete case and how many case proceedings were restarted. In the Tbilisi Appellate Court, as of September 18, 2018, 31 motions had been filed, 22 of them were satisfied, one was not satisfied, one was rejected and six cases are being processed.



Former Chairwoman of the Supreme Court of Georgia, Nino Gvenetadze, and Chairman of the Criminal Case Panel of the Tbilisi Appellate Court, Levan Tevzadze, also spoke about the problem of the reserve judge institute during their meeting with HRC representatives. They noted it is not easy to predict which case will need a reserve judge. According to their statement, in order to increase trust towards the court, a reserve judge should attend all hearings into the case so that she/he can objectively assess the case. At the same time, one of the reasons the institute of the reserve judge was “functionless” was an overload of cases in the courts and insufficient number of judges, so excluding the appointment of reserve judges at all proceedings. However, these arguments contradict Article 8 of the CPCG regarding a fair trial and serving of justice in a timely manner.

<sup>43</sup> See letter N490-2/10 of the Kutaisi Appeal Court, September 24, 2018

Article 6 of the Convention on Human Rights and Basic Freedoms stipulates the same. The European Court of Human Rights does not consider that overloaded prosecutor's offices and courts justifies dragged-out legal proceedings and states that in accordance with the Convention, the Member States are obliged to organize their legal system in such a way that the requirements of Article 6 Paragraph 1 of the Convention are met, including conducting court proceedings within a "reasonable time." Regardless of the fact that the abovementioned issue is regulated by national law and the same is clarified by the ECtHR, dragged-out proceedings are still a problem today. The monitoring revealed that the functionless institute of a reserve judge is a real problem for victims whose cases are processed in the appellate courts. Considering the peculiarities of the case, the court should ensure processing of the cases within a reasonable time-frame and restoration of the function of reserve judge so as not to drag out court hearings when judges are replaced, making it necessary to re-start court proceedings. In order to eradicate this problem, it is necessary to increase the number of judges. At the same time, the court chairperson should appoint reserve judges in large-volume and complicated criminal cases from the very start so that the reserve judge can observe the ongoing court hearings. If a main judge is changed, the reserve judge should replace him/her. This regulation will unconditionally eradicate the problem of dragged-out hearings and ensure timely restoration of breached rights.

- **Analysis of the information received from interviews with criminal law advocates and victims**

In order to present a practical assessment of the activities of the new department of the Prosecutor's Office, the HRC conducted individual interviews with 50 acting lawyers in criminal law who had direct cooperation with the Department both at the stage of investigation and at the court proceedings. Throughout the project duration, 50 persons were questioned who hold victim status, as well as persons who expect the Prosecutor's Office to resolve issues on their victim status. Each interview was conducted face-to-face based on a preliminarily elaborated questionnaire.

The majority of the interviewed advocates defended the interests of the victims before the new department (in the investigative body).

According to the information provided by the lawyers, they had appealed to the Department of the CPO for the Investigation of Offenses Committed in the Course of Legal Proceedings with regard to cases of arbitrarily convicted and property-extorted citizens. The CPO had finalized processing of the cases on behalf of their

clients and the Appellate Court was now processing them. The advocates stated that based on the evidence and newly found circumstances in the frame of the new investigation, the Prosecutor's Office had issued decrees with regard to the convicted persons about the substantial violation of their rights in the course of the legal proceedings. Based on those decrees, the CPO sent motions to the Tbilisi or Kutaisi Appellate Courts to review the judgments due to the newly-found circumstances.

A number of the lawyers agreed with the fact that the criteria for accepting a case for review was not prescribed in advance and mentioned Order N 62 of the Minister of Justice, issued on February 13, 2015, which clarifies the objectives of the Department. Having said that, some of the lawyers believed that the CPO was processing the cases in accordance with the objectives of the Department in a way that was unacceptable for the majority of lawyers and stated they believe it to be a problem.

The majority of the interviewed lawyers stated they had applied/filed a complaint to the Department in 2015.

The Department started consideration of their applications about 2-4 months later<sup>44</sup> No concrete time frame for the consideration of filed applications is regulated by any normative act.

The lawyers were unhappy with the fact that **the CPO's refusal to accept their application/complaint often goes unverified.** At the same time, they mentioned instances when the CPO had accepted the applications, but no procedural activities were conducted with regard to them. This was noted as one of the most significant problems, as investigation should commence in a timely manner and the respective investigative activities should be conducted within a reasonable time-frame. Dragged-out processes create problems for obtaining new evidence or witnesses. Thus, dragged-out actions negatively impact the case of the concrete applicant.

The advocates complained about the dragged-out court proceedings as a result of replacement judges. They said they believed the role of the reserve judge should be reinforced to allow the victim timely restoration of his/her breached rights.

The position of the interviewed victims was not significantly different from the assessments and information provided by the advocates. Those found guilty in cases processed in the Appellate Court said they were unhappy with the fact that

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<sup>44</sup> NOTE: the terms are not the same, as the interviewed lawyers named different dates, including a one-year difference.

their case proceedings had been dragged out. They also mentioned that often judges are replaced, leading to almost-finalized court proceedings having to be restarted. Another topic of discontent was the period of consideration for their applications/complaints filed to the CPO; some of them complained about the “passive work” done by the Department.

With the analysis of the information provided by the advocates and victims, we can conclude that the issue related to the criteria of acceptance of cases is problematic; late commencement of investigation hinders obtaining evidence; and results in dragged-out court proceedings due to having judges replaced.

### ❖ Chapter III - Analysis of the court judgments

- Analysis of the court judgments and inhomogeneous practice

After a decree on the substantial violation of a person’s rights in the course of legal proceedings is issued, based on Article 310 subparagraph “g<sup>1</sup>” of the CPCG, the Prosecutor’s Office sends a motion to the Tbilisi or Kutaisi Appellate Courts with the request to review the criminal case.

If the motion passes the stage of admissibility, the court appoints a trial on merits. Only in one case of the analyzed cases did the Tbilisi City Court refuse to conduct a trial on merits, claiming that the criminal proceeding in this concrete case had not yet been finalized<sup>45</sup>. However, review of this case was halted by a cassation. The Supreme Court, with its ruling<sup>46</sup>, sent this case back to the Appellate Court for repeat consideration.

The abovementioned precedent in the Supreme Court recommends the Appellate Court consider all motions filed in accordance with Article 310 of the CPCG. Consequently, after this Supreme Court ruling, the analysis of the practice demonstrated that the motions filed to the appellate courts in accordance with Article 310 “g<sup>1</sup>” of the CPCG never faced any issues overcoming the stage of admissibility<sup>47</sup>.

During the main sessions, the Court should substantially examine all newly-found evidence, which becomes grounds for accepting the motion for the substantial violation of the convicted person’s rights.

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<sup>45</sup> February 14, 2017 ruling of the Criminal Case Panel of the Tbilisi Appellate Court.

<sup>46</sup> Ruling N 25ac-17 of the Supreme Court of Georgia, 2017

<sup>47</sup> Letter N490-2/10 of the Kutaisi Appeal Court, September 24, 2018

The extraordinary character of this process is created by the fact that the parties of the trial are the state prosecution on the one hand and the convicted person on the other: both parties have a substantially equal position except in cases where the prosecutor requests partial acquisition of the person, though even in such cases the positions remain alike. Consequently, in such a process, the parties are formally represented as demonstrating almost equal positions. In fact, the principle of adversarial proceedings is not followed, making the comprehensive examination of evidence by the court particularly important in order to establish the truth.

Analysis of the 24 judgments of the appellate courts revealed that in just 2/3 of the cases, more precisely in 16 cases, the criminal cases panel took the abovementioned circumstance into account and comprehensively examined the evidence. In the other eight cases, the judges conducted ordinary trials, where the parties were represented physically and not formally and acted in accordance with Articles 73 and 220 of the CPCG. These figures are even more problematic with regard to four cases requested from the Kutaisi Appellate Court, in three of which the judge acted in accordance with the abovementioned articles and did not comprehensively examine the evidence. It once again underlines the inhomogeneous character of the existing practice and different approaches of the judges.

Article 73 of the CPCG lists those facts and circumstances which are accepted as evidence for court hearings without preliminary examination. This article mentions any circumstance for which the parties reach agreement. Article 220 of the CPCG stipulates that during trial on merits, the court approves the list of that evidence on which the parties have reached agreement.

The problem is that in the court proceedings ongoing in accordance with Article 310 "g<sup>1</sup>" of the CPCG, no principle of adversarial proceedings is being followed. Consequently, the state prosecution and victim, who have the same position, easily agree on evidence that substantially degrades the role of the judge - the active controller who should pass a new verdict on the case or uphold the previous judgment.

- **The Practice of the Supreme Court with Regards to Article 310 of the CPCG**

Analysis of three rulings of the Supreme Court in the frame of the project revealed that all three cases differed and the judgment of the Chamber was developed in different directions. As mentioned above, in one of the cases, the Chamber issued a ruling on the admissibility of one of the cases in the Appellate Court in favor of the victim.

In the second ruling<sup>48</sup>, the convicted person was the applicant and had requested a review of his case in accordance with sub-paragraphs “g” and “g<sup>1</sup>” of Article 310 of the CPCG. Here, the clarification of the Chamber with regard to sub-paragraph “g<sup>1</sup>” is important for us. The Cassation Court accepted the appeal, as it relied upon sub-paragraphs “g” and “g<sup>1</sup>” of Article 310 of the CPCG. However, with regard to sub-paragraph “g<sup>1</sup>” of Article 310 of the CPCG, the Court did not satisfy the claim of the applicant as the prosecutor’s decree was not provided in the course of the proceedings, i.e. the decree on the substantial violation of his rights in the course of legal proceedings, unknown when passing the initial judgment which could, together with other evidence, prove the innocence or lower the guilt of the convicted person for the offense for which he/she was convicted.

The third case referred to the cassation appeal of the Appellate Court’s refusal by the prosecutor. In this ruling<sup>49</sup>, the Chamber did not agree with the judgment of the Appellate Court and concluded that regardless of the fact of planting a narcotic substance, conviction of the victim for illegal purchase-possession of narcotics was suspicious and there was no unity of evidence which could be evaluated as a basis to terminate criminal liability against him. The Supreme Court based its judgment on Articles 132 and 503 part 2 of the CPCG which relies on the principle of *in dubio pro reo* and is envisaged in Article 40 Part 3 of the Constitution of Georgia.

It is important to note that the Chamber did not consider the allegation about the politically motivated persecution of the applicant (prosecutor) and convicted person, stating of their cassation claim that there was no evidence in the appeal to prove this allegation. Regardless, as the prosecutor’s decree and the new evidence could not prove the conviction, the Chamber satisfied the cassation appeal. This decision delivers significant recommendation to the appellate courts to base their decisions not only on concrete circumstances but also to consider the lack of verified conviction based on standards beyond reasonable doubt in each case.

Such practices of the Supreme Court may be viewed as the factor determining the high statistical indicator of positive judgments in the appellate courts. We may also assume that the scope of Article 310 “g<sup>1</sup>” of the CPCG is unlimited with regards the violation of concrete rights and the court may consider any case where the Prosecutor’s Office will conclude a substantial violation of rights in the course of legal proceedings. It once again underlines how necessary it is for the Prosecutor’s Office to have clear criteria for accepting a case and for the commencement of a

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<sup>48</sup> Ruling N6ac-18 of the Supreme Court of Georgia June 19, 2018

<sup>49</sup> Ruling N 80ac-17 of the Supreme Court of Georgia March 13, 2018



repeat investigation, in order not to make restoration of legal order questionable by the revision of judgments which have entered into force.

## ❖ Conclusion

Analysis of the legislative base regulating the work of the new department of the CPO, trial monitoring and interviews with advocates and victims, as well as examination and analysis of court judgments and prosecutors' decrees, revealed both pros and cons within the work of the Prosecutor's Office and judiciary authority.

The study revealed that considering the peculiarity of the work of the Department of the Chief Prosecutor's Office for the Investigation of Offenses Committed in the Course of Legal Proceedings, it is necessary to improve the existing normative basis and to establish a holistic practice which will promote the effectiveness and transparency of the Department's activities.

The study demonstrated a low rate of review of cases and re-investigations in the CPO as a result of a lack of guideline principles and concrete criteria, hindering the process of the restoration of victims' rights and raising questions.

In the frame of the study, it was identified that the CPO follows different standards when considering the admissibility of cases. The existing practice raises reasonable doubt over partial approaches towards case proceedings.

A problem was observed in the courts with regard to serving justice in a timely manner, a result of the functionless institute of reserve judge. In order to resolve this problem, the number of judges should be increased so as to raise the effective functioning of the judiciary system.

The trial monitoring revealed that when the court is reviewing the prosecutor's decrees filed in accordance with Article 310 "g<sup>1</sup>" of the CPCG, the trials are not conducted in due respect of the principle of adversarial proceedings. The monitoring revealed that the defense and the prosecutor have the same position during the trial, meaning that the trials are not in fact adversarial.

The work conducted by the CPO with regard to those criminal cases on which decrees were issued on the substantial violation of rights, is worth highlighting. The position of the prosecutor in the appellate court needs underlining, where the state prosecution tries to acquit the victim (who was convicted in a criminal case before 2012) and convince the court to pass a judgment of acquittal based on the presented evidence.

HRC welcomes all steps taken by the State to eradicate the miscarriages of justice, to defend human rights and to reconstitute breached rights. In this view, the general goal of the Department of the CPO for the Investigation of Offenses Committed in the Course of Legal Proceedings should be assessed positively, but the problems in the system should not be left without attention, the eradication of which is important for justice and for the unconditional defense of human rights.

### ❖ Recommendations

The legislative, practical and theoretical analysis of the issues raised during the study exposed key problems which need to be most urgently addressed by the Department of the CPO for the Investigation of Offenses Committed in the Course of Legal Proceedings and the judiciary authority. In this light, the HRC has elaborated concrete recommendations, whose fulfillment is vital for the eradication of the identified problems:

#### **Chief Prosecutor's Office**

- The categories of the cases to be processed by the Department of the CPO for the Investigation of Offenses Committed in the Course of Legal Proceedings should become more concrete and the case selection criteria elaborated in the form of guidelines;
- To increase the number of Department personnel to make the investigation more effective and to prevent any dragging out of investigative procedures due to lack of human resources;
- To make the personnel selection procedure more transparent, qualification requirements for the prosecutors and investigators to be recruited in the new department of the CPO should be determined, as should criteria for accepting them for the post;
- The Department should pay more attention to cases involving torture and inhuman treatment. Preliminary criteria should be determined in order to ensure a holistic approach to all cases of torture and inhuman treatment;
- Cases of alleged crimes committed by law enforcement officers should be defined as a priority category among cases to be considered by the new department of the CPO;

- The new department should have preliminarily elaborated criteria for accepting or rejecting cases in order to promote the impartiality of the Department's work and exclude partiality of the CPO;
- To conduct the work of the new department of the CPO transparently – in the proceedings related with not initiating the criminal prosecution, diversion of conviction and plea-bargain into criminal cases. To achieve that, it is necessary to establish a holistic practice in order to minimize the partial application of the plea-agreement mechanism by the prosecutor;
- To ensure democratic statehood, justice and equality, it is necessary to separate the investigative and prosecution bodies from political processes and to prevent subjective, non-holistic approaches towards concrete cases;
- The new department of the CPO should investigate offenses committed in the course of legal proceedings after 2012.

#### **High Council of Justice of Georgia:**

- It is necessary to increase the number of judges in the judiciary system to ensure the processing of cases within a reasonable time frame.

#### **Appellate Courts:**

- It is important to ensure a reasonable time-frame for trials and to restore the function of the reserve judge to prevent any dragging out of court proceedings. If the judges are replaced, restarting almost-finalized court proceedings should be avoided;
- Reserve judges should be appointed from the very beginning of the court proceedings of criminal cases which are of large-volume and/or a complicated character. This allows the reserve judge to observe all stages of the proceedings.