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**Communication of the Public Defender of Georgia**

MERABISHVILI v. Georgia (application no. 72508/13)

Made under Rule 9(2) of the Rules of the Committee of Ministers for the Supervision  
of the Execution of Judgments and of the terms of Friendly Settlements

## Introduction

1. The Public Defender's (Ombudsman's) Office of Georgia (hereinafter PDO) presents this submission pursuant to Rule 9.2 of the Rules of Committee of Ministers for the supervision of the execution of judgment. This submission is communicated for the supervision of the execution of judgment for consideration at the next meeting.
2. The Committee of Ministers last examined the implementation of the Court's judgment in the case of *Merabishvili v. Georgia* in March 2021. At the meeting, the Committee of Ministers reiterating the gravity of the findings of the Court under Article 18 and bearing in mind the continuing concerns related to the ongoing investigation, called on the authorities once again to implement reforms aimed at further enhancing the independence, effectiveness and accountability of the prosecution service, through building on the steps already taken in the context of the 2018 constitutional changes and giving further effect to the relevant Council of Europe recommendations; as well as by broadening the investigative remit of the State Inspectorate's Service to encompass cases in which the European Court found a violation of Article 18.
3. This submission refers to the Government's Action Plan (25/06/2021) and provides information on the implementation of individual and general measures by the Government of Georgia in the course of the execution of the present judgement.
4. With this submission the Public Defender's Office of Georgia, based on concrete cases studied by the PDO, would like to further illustrate that de-politicization and autonomy of the prosecution service is still a significant challenge in the country. In addition, PDO will update the Committee on the challenges faced by the State Inspector Service in terms of effectively performing its mandate.

## General measures:

5. According to the Government's Action Plan (25/06/2021) the number of significant general measures have already been carried out subsequent to the alleged removal of the applicant (in 2013, then the Prosecutor General has been also replaced) and thus the recommendations of the Venice Commission referred by the Committee in the Notes of the Agenda of the 1398th meeting, 9-11 March 2021 (DH) go beyond the scope of *Merabishvili* case. Public Defender of Georgia disagrees with this assertion.
6. The government's Action plan (25/06/2021) does not respond to the question put by the CM in its last decision of March 2021 as to how the independence of the ongoing investigation is ensured by a division of the Prosecutor General's Office, in particular given the findings of the Court as regards the previous investigation carried out by that office under the same leadership in 2016-2017.
7. It is also noteworthy that none of the two normative acts referred by the Government in its action plan (the Rule on Recruitment and Promotion of Prosecutors and the Rule on Internship at the Prosecution Service ") issued by the General Prosecutor of Georgia in 2020 address the number of issues that were referred by the Venice Commission and which are still in place. In particular, Venice Commission outlined a number of possible legislative changes for the authorities' consideration, including a more balanced composition and enhanced powers of the prosecutorial council, as well as further improvement of the constitutional provisions concerning the appointment of the Prosecutor General.

8. Hence, PDO considers that further measures are still required to strengthen the independence and accountability of the prosecution service. Such measures, as indicated in the Notes of the Agenda of the 1398th meeting, 9-11 March 2021 (DH), could aim to ensure that the prosecutorial council, which is the body established for ensuring the independence, transparency and efficiency of the centralised and hierarchical prosecution service, is equipped with the appropriate composition and the necessary powers to effectively implement this new Constitutional role, including in terms of balancing the powers of the Prosecutor General (for example, as regards the career management and ethics of prosecutors, internal independence of prosecutors, accountability of the prosecution service). Specific safeguards for ensuring the internal independence of prosecutors (such as the obligation of the superior prosecutor, including the Prosecutor General, to provide instructions in written form, the right of the subordinated prosecutor to draw attention to the illegality of an instruction received, to express dissenting opinions attached to the files, to ask for the reassignment of a case) could be included.

### Independence of the Prosecutor's Office

9. In previous communication<sup>1</sup> the Public Defender of Georgia comprehensively addressed the problematic aspects of the 2016-2018 constitutional reforms of the Prosecutor's Office.

As it was noted in the submission, PDO and the Coalition for an Independent and Transparent Judiciary<sup>2</sup> share same concerns in their assessment of the prosecution reform,<sup>3</sup> stressing that the adopted legislative amendments do not address critical issues that create major challenges for the system; primarily, the politicization of the composition of the Prosecutorial Council and excessive authority of Prosecutor General.

10. In the following paragraphs PDO will illustrate the concrete examples of the politicization of the Prosecutor's Office by providing brief descriptions of the high profile cases from recent years:

### The Case of Temur Abazov

11. At the beginning of 2020, the public's attention was caught by the acquittal of Temur Abazov, the former Mayor of Marneuli Municipality. Temur Abazov was accused of putting a person in an inhuman and degrading condition and then organizing the public distribution of video footage of this action.<sup>4</sup> At the final stage of the trial, the Prosecutor's Office suddenly dropped one of the two serious charges brought against

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<sup>1</sup> 1398th meeting (March 2021) (DH) - Rule 9.2 - Communication from an NHRI (Public Defender's Office of Georgia) (01/02/2021) in the case of Merabishvili v. Georgia (Application No. 72508/13)

<sup>2</sup> Coalition for an Independent and Transparent Judiciary was formed in April 2011. Currently it unites 40 member NGOs. The goal of the Coalition is to consolidate the efforts of legal professional associations, legal rights NGOs, business associations, and media into a joint advocacy for an independent, transparent and accountable justice system.

<sup>3</sup> The Coalition for an Independent and Transparent Judiciary Assesses the Prosecution Reform Results - available at: <<https://bit.ly/3soyCyh>>

<sup>4</sup> According to the charges, this was manifested in forcing the victim to abuse verbally his spouse during a live broadcast, then urinate in a glass and wash his face with his own urine

him, namely organizing the distribution of footage, depriving the court of the opportunity to discuss this serious crime and, in fact, facilitating Temur Abazov's acquittal. The reasoning of the prosecutor's office was the following: Temur Abazov had committed both actions with one common intent due to which the first crime fully covered the episode of organising, storing and disseminating of the recordings.

12. The Public Defender does not agree with the reasons adduced by the prosecutor's office when dismissing the charges of dissemination of recordings. Neither the provisions of the Criminal Code nor the logical analysis of the above actions indicate that inhuman and degrading treatment implies a constituent element of dissemination of recordings of that treatment. Public dissemination of a recording depicting inhuman and degrading treatment further deepens the severe moral suffering experienced by a victim and causes his/her secondary victimisation, which is why this action is punishable as a separate, independent crime by the Criminal Code.
13. It should be noted that the judge also observed in the judgment that abovementioned two crimes do not cover each other.<sup>5</sup> The court found that there was insufficient evidence in the case to prove inhuman and degrading treatment while it was impossible to examine the dissemination of video recording depicting the degrading treatment as this charge had been dismissed by the prosecution and acquitted Temur Abazov.
14. It is particularly alarming that the prosecutor's office, at the final stage of the court trial, by dismissing the charges without any justification, deprived the court of the possibility to examine this grave crime and virtually contributed to the acquittal. Moreover, as a result of the dismissal of charges, due to the *non bis in idem* principle, restoration of justice is excluded for the future as well. By such an action of the prosecutor's office, the positive aspect of the prohibition of ill-treatment was not implemented for the victim that implies effective investigation and criminal prosecution of those responsible and not shading them from prosecution.<sup>6</sup>

#### The case of cartographers

15. On 7 October 2020, Natalia Ilichova, a member of the Border Police Department of the Ministry of Internal Affairs and Iveri Melashvili, Chief of Demarcation and Border Relations Service of the Ministry of Foreign Affairs were arrested on the charge of attempting to transfer Georgian territories.<sup>7</sup> The prosecution's theory of the case was that these two individuals who were formerly members (experts) of a State Commission for Delimitation and Demarcation of the Georgia-Azerbaijan Border put Georgia under the risk of surrendering its historical land of about 35,000 hectares.
16. Before the start of judicial proceedings, on 25 February 2020, the Public Defender sent its *amicus curiae* brief to the Tbilisi City Court on this matter. The Public Defender highlighted the principle of legality was at stake. The PDO noted that the evidence collected by the prosecution also does not prove the defendants had malicious intent while they acted as experts.

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<sup>5</sup> Judgment of the Rustavi City Court of 12 February 2020

<sup>6</sup> Annual Report of the Public Defender of Georgia 2020, p.64. Available at: <https://bit.ly/36PE4jT>

<sup>7</sup> The Criminal Code of Georgia, Article 308, par 1.

17. In view of the body of evidence the prosecution has collected by the time of hearing the case on merits by the court, PDO believes conviction of Melashvili and Ilichova contradicts the legality principle because there is nothing in their conduct capable of turning normal expert work into a crime.
18. The opening of a criminal investigation into this case coincided with the pre-parliamentary election period. Although the defendants were not political officials, their criminal case soon became a major matter of political debate and mutual blaming. The Public Defender's examination of the criminal case file and analysis of the ongoing events showed that the criminal prosecution initiated against Iveri Melashvili and Natalia Ilichova might be based on political or other non-legal motives, which, coupled with other shortcomings in the actions of the Prosecutor's Office, outweighed any legal motives in this case.<sup>8</sup> In making this assessment, the Public Defender relied on the standards of Article 18 of the European Convention on Human Rights.<sup>9</sup>

### The case of Lasha Tordia

19. Another example of politicized prosecution is ineffective investigation in 2017 of the incident involving a physical attack on the Auditor General on 13 May 2017. According to the statement of Auditor General L.T., former Chief Prosecutor Otar Partskhaladze,<sup>10</sup> together with other persons accompanying him, physically attacked him regarding an issue related to official duties.
20. The examination of criminal case files by the PDO revealed that criminal prosecution against two defendants was progressing under a less severe paragraph of the relevant provision of the Criminal Code. Although the facts of the case should have been described rather as "violence committed by a group of people" (paragraph 11 of Article 126 of the Criminal Code), the investigation ended up with charging the two individuals under paragraph 1 of Article 126, which means the same crime but committed by a single perpetrator. Eventually only one individual – M.Ch. – was convicted in February 2021, while Otar Parskaladze, former Prosecutor-General, was acquitted.
21. It should be pointed out that, in the event of a crime committed by two or more perpetrators, it is not necessary for each perpetrator to perform the same conduct as other accomplices; it suffices when a person directly engages in the commission of a crime along with another person and, for example, helps another perpetrator expose a victim to a vulnerable condition or reduces a victim's ability to resist. This, in fact, was what Otar Parskaladze committed together with M.Ch according to Auditor General L.T statement.
22. The Public Defender is of the view that, contrary to what facts of the case suggested, charges were brought under a wrong and less severe provision of the Criminal Code and that was done intentionally in order to reduce the likelihood of convicting former Prosecutor - General Otar Partskhaladze.
23. Another issue we observed about the case was procrastination. Among other factors hindering investigation was that it took a phonoscopy and videoscopy forensic expert one year and five months to produce a forensic report on the video footages. Forensic

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<sup>8</sup> Public Defender's Amicus Curiae Brief on Cartographers' Case. Available at: <https://bit.ly/3eCFG4X>

<sup>9</sup> Annual Report of the Public Defender of Georgia 2020, p.109. Available at: <https://bit.ly/36PE4jT>

<sup>10</sup> He is the same Chief Prosecutor who was accused by Ivane Merabishvili in his application (72508/13) for having him covertly removed from his cell to question him.

examination of the video footages at the Public Law Entity “Levan Samkharauli National Forensics Bureau” was ordered on 8 June 2017. It wasn’t until 5 November 2018 that the Bureau issued its report. During this period, it is safe to say that the investigation halted pending forensic examination and no other investigative actions were carried out. It was obvious that the case was problematic from the very beginning and at the end it ended with shading the perpetrators from the justice.<sup>11</sup>

### Challenges in terms of effectiveness and independence of the investigation process

24. To further illustrate the shortcomings in terms of independence and effectiveness of the Prosecutor’s office, it should be also mentioned that the Public Defender’s Office scrutinised eight cases in 2020<sup>12</sup> where the prosecutor’s office had instituted investigation based on prisoners’ applications alleging commission of crimes by the criminal underworld in prison and representatives of the administration acting as their protector or complicit by omission.<sup>13</sup> The purpose of this examination was to assess to what degree the authorities investigate alleged criminal incidents related to the criminal underworld in prisons; how timely and comprehensive the investigative actions are and to what extent they identify possible perpetrators and alleged incidents that fall under the Criminal Code.<sup>14</sup>
25. This examination revealed that prosecutorial authorities of Georgia discharge their powers inadequately and their investigative actions are punctuated with serious shortcomings. The conclusion is that the state/investigative authorities are not motivated to respond effectively or punish perpetrators.
26. Despite reported crimes (threats, beatings, extortion, economic crimes, abuse of power, etc.) and the duty to start an investigation, the prosecutor’s office would refuse to institute proceedings and refer the issue to be examined by the Inspectorate General of the Ministry of Corrections.<sup>15</sup> The latter having no investigative powers would limit its activities to an official enquiry. It should be pointed out that the investigative jurisdiction of the Inspectorate General, considering the institutional independence, did not include investigating alleged incidents of crime committed by the staff of the penitentiary establishments’/penitentiary service. This approach of the prosecutor’s office failed to give prisoners a sense of security and the willingness to cooperate with

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<sup>11</sup> Annual Report of the Public Defender of Georgia 2020, p.113. Available at: <https://bit.ly/36PE4jT>

<sup>12</sup> Out of these eight cases, three are closed criminal cases (they concern events of 2013-2015); one case is pending (concerns the events of 2020); three cases are completed official enquiries (they concern alleged events of 2017-2018); and one case is a pending official enquiry (concerns the events of 2020). Accordingly, case files of six closed cases could be studied fully and case files of two pending cases could be studied partially as the Public Defender’s Office has limited statutory powers in terms of accessing case files in pending investigation/proceedings.

<sup>13</sup> Annual Report of the Public Defender of Georgia 2020, p.40. Available at: <https://bit.ly/36PE4jT>

<sup>14</sup> For years PDO has been vocal about the existing informal rule in penitentiary institutions where convicted persons who have close relations with the administration, enjoy certain influence over other prisoners and, if needed the administration uses them to “sort out problems” with other prisoners (complaints filed during a hunger strike, expression of dissatisfaction in another form or conflict situations, etc.). Members of the criminal underworld move freely within the establishment, control prisoners, enter cells and physically assault disobedient prisoners. Whoever disobeys their orders is marginalized.. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) also voiced its concerns on the existing influence of the informal prisoner hierarchy in penitentiary institutions in the monitoring report of 2018. Report available at: <https://bit.ly/3irhsvH> In May 2021, CPT conducted ad hoc visited Georgia for the assessment of situation in semi open type prisons (where criminal subculture is especially prevalent) - <https://bit.ly/3zpqw4>

<sup>15</sup> Now General Inspection of the Ministry of Justice.

- the investigation. Furthermore, it turned out that an investigation was instituted only with regard to the incidents that resulted in either death or torture of a prisoner.
27. In terms of investigations conducted by prosecutorial authorities, numerous shortcomings were identified even in those cases where an investigation was instituted and various individuals, inter alia, personnel and even directors of penitentiary establishments were prosecuted/convicted.
  28. In a number of cases, actions imputed to both prisoners and prison staff were qualified under lenient provisions of the Criminal Code. In most cases, the investigation completely overlooked the possible involvement of the prison staff in the crime even though it had been alleged by the main actors of the case and even by some officials of the penitentiary system that prison staff were involved. The investigative authorities did not even question high-ranking officials of the penitentiary system (apart from prison administration) and failed to conduct necessary investigative actions in this regard. This was despite the fact that a representative of the penitentiary system alleged that staff members and the management of the then Penitentiary Department were responsible for granting privileges to the so-called prison-watchers.
  29. In terms of investigation into the deaths of prisoners in the penitentiary it is noteworthy that in 2020 the Public Defender's Office looked into 17 criminal cases<sup>16</sup> from the period of 2015-2018 concerning deaths of prisoners. Investigations in these cases were ceased on the ground that investigative authorities did not detect elements of crime. Conducted examination revealed that investigations into the deaths of prisoners would be launched and conducted by the Investigative Department of the Ministry of Corrections – a body lacking institutional independence. None of the cases that PDO studied was investigated by the Prosecutor's office. According to our assessment, there had been delays in conducting some important investigative actions such as extraction and inspection of video footages, interviewing a deceased prisoner's co-inmates and doctors, etc.
  30. Moreover, based on examination of the case materials PDO's expert (doctor) revealed serious shortcomings in terms of quality of medical services provided to prisoners in the penitentiary, however investigative authorities would not get interested in the quality of medical services provided and whether the deaths had been caused by inadequate or belated medical treatment. Investigation also would not determine whether the medical personnel acted negligently. In some cases, the investigation did not obtain medical documentation of deceased prisoners. When inquiring into the medical services provided to the prisoners, the investigative authority would only confine itself to obtaining a forensic medical report, which it would then use to prove the death did not involve any violence and thus there was a ground for ceasing investigation.<sup>17</sup>
  31. All the above mentioned cases clearly shows that prosecutor's office acted in an ineffective manner when they were investigating cases by themselves, or supervised investigation or when they were aware of the facts but transferred the case to other agency. In the above mentioned cases, there was clear interest of not having effective investigation in order to shad crimes committed by state representatives.

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<sup>16</sup> Four of the cases concerned alleged suicides, while 13 other cases involved sudden deaths due to deteriorated health of the prisoner.

<sup>17</sup> Annual Report of the Public Defender of Georgia 2020, p.30. Available at: <https://bit.ly/36PE4jT>

32. In February, 2021, the authorities presented information to the CM on the planned reform for the separation of investigative and prosecutorial functions to ensure effectiveness and independence of investigations. Discussions on this reform has been ongoing since 2018 however no legislative changes have been initiated to this date. The fundamental reform of the investigative system in the country is urgent and the government has to speed up the process. However, PDO shares the concern of the Secretariat of the Department for the execution of the European Court's judgments that this reform will not serve the execution of this judgement and systemic shortcomings related to the present case if the Prosecutor's office will still have the authority to investigate such cases.<sup>18</sup>
33. It should be highlighted that at 1398<sup>th</sup> meeting, in March 2021, the authorities were called to broaden the investigative remit of the State Inspector's Service to encompass cases in which the European Court found a violation of Article 18. The Government was invited once again to clarify the possibilities for the investigative remit of the State Inspector's Service back in October 2020. Unfortunately no specific updates or plans for further action has been presented by the government in this regard in the Action plan (25/06/2021).

#### Challenges faced by the State Inspector's Service of Georgia

34. Procedural guidance and supervision of cases investigated by the State Inspector's Service, as well as criminal prosecution, is carried out by the Department of the Prosecutor's Office of Georgia for Procedural Guidance over Investigation in the State Inspector Service, which reports directly to the Prosecutor General of Georgia and supports public prosecution in the court.<sup>19</sup>
35. Under the current law, the State Inspector's Service is largely dependent on the prosecutor in the investigation process. The investigator of the Service makes decisions independently from the prosecutor on issues such as: launching an investigation, determining qualification at the outset of the investigation, investigation strategy, investigative and procedural actions to be carried out without the consent of the prosecutor, their sequence, and involvement of an alleged victim in the investigation. However, as other investigative agencies, it lacks the ability to make important decisions without prior consent or permission of the prosecutor.<sup>20</sup>
36. In addition, the prosecutor has the right to change qualification of the crime at any time and give written instructions to the investigator on conducting investigative actions. Once the investigation is launched, the prosecutor may, at any time, change qualification assigned by the investigator to the criminal case. In 2020, the prosecutor changed qualification of the crime in 14 criminal cases: 5 of them - at the beginning of the investigation, and 9 - after several investigative and procedural actions. This power is often not exercised by the prosecutor in criminal cases pending before the State Inspector's Service; However, there are cases when the investigator has a different opinion regarding the qualification assigned by the prosecutor in a criminal case, especially when the prosecutor changes the qualification at the beginning of the

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<sup>18</sup> 1398<sup>th</sup> meeting, 9 – 11 March 2021 (DH) – Notes. Available at: <https://bit.ly/3Bjda1U>

<sup>19</sup> Report on the activities of the State Inspectors Service 2020. Available at: <https://bit.ly/3AKlg3g>

<sup>20</sup> *Ibid.* p. 158



investigation, prior to conducting any investigative and procedural actions. Accordingly, the investigator is compelled to investigate a criminal case with a qualification with which he disagrees.<sup>21</sup> It needs to be noted that State Inspector Service (Independent Investigative Mechanism) was created to have independent investigation of those crimes that were under the jurisdiction of the prosecutor's office. High level of dependence and their instruction, contradicts the very reason why independent agency was set up.

37. In terms of initiating criminal prosecution in the criminal cases into which investigation was launched in 2020, it is noteworthy that the Deputy State Inspector, in accordance with the Law of Georgia on the State Inspector's Service, applied to the superior prosecutor with substantiated proposal to bring charges against concrete person, as the collected evidence indicated that a particular person had committed a crime. The prosecutor rejected the proposal and gave the investigator a written instruction to carry out additional investigative actions. Since the State Inspector considered that the probable cause standard on initiating criminal prosecution was met in the mentioned case, she submitted substantiated proposal to the Prosecutor General on the expediency of initiating criminal proceedings against the aforementioned person. The Prosecutor's Office once again rejected the substantiated proposal of the State Inspector.<sup>22</sup>
38. In terms of institutional Independence it should be pointed out that for an effective investigation of certain crimes committed by the representatives of law enforcement bodies, by an official, or a person equal to an official, first of all, the investigative agency of the State Inspector's Service must have a high degree of independence granted by the law. Despite institutional independence, current legislation does not provide for sufficient guarantees of functional independence of the Service. Unlike other investigative bodies, certain power of the State Inspector's Service does not bring practical results (for example, the right to apply to a prosecutor with a reasoned proposal on the expediency of conducting an investigative action). **Consequently, the State Inspector's Service works without effective legislative leverage to investigate crimes committed by the employees of the law enforcement bodies equipped with legislative and technical means.**<sup>23</sup>
39. In view of the above, it is necessary to take prompt and effective legislative steps, first of all, in the direction of separation of investigative and prosecutorial functions. It is also necessary to equip the State Inspector's Service with effective mechanisms that will reduce its dependence on the decisions of other agencies and make the evidence-gathering process more efficient (e.g. unhindered access to penitentiary establishments and temporary detention isolators, the legal obligation to provide information on alleged offences in a timely manner, to set a tighter deadline for the review of letters sent by the Service, etc.). The State Inspector's Service has prepared a legislative proposal that addresses most of the challenges reviewed in the report.<sup>24</sup>

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<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.* p.161

<sup>23</sup> *Ibid.* p.183

<sup>24</sup> *Ibid.*

40. The Public Defender considers that it is important to equip the State Inspector with prosecutorial functions in order to eliminate above described challenges and to guarantee its effectiveness and independence.<sup>25</sup>

#### Video surveillance in the penitentiary institutions

41. We would like to furnish the Committee with the information regarding one of the aspect of the general measure implemented by the Government of Georgia in the process of execution of judgement in Merabishvili case. In particular, PDO welcomed the extension of the 5-day-timeframe to 30 days for storing the video surveillance recordings in the penitentiary establishments, however, it should be noted in addition that in terms of processing of electronic surveillance data collected in penitentiary institutions number of serious shortcomings are still in place.
42. On 22 January 2020, the Public Defender requested the State Inspector<sup>26</sup> to look into the legality of publication by the Minister of Justice of video recordings on 21 January 2021 at a hearing of the Parliamentary Human Rights Protection and Civic Integration Committee. The Public Defender also requested that the State Inspector examine and assess the Justice Ministry's regular practice of retention of video footages. By decision no. 1/100/2020, on account of illegal disclosure of the video recordings, the Office of the State Inspector fined both the Ministry of Justice and the Special Penitentiary Service finding that both agencies had breached the Law on Personal Data Protection
43. Additionally, the Public Defender's Office was notified that, based on the Public Defender's request, the State Inspector decided to evaluate the legality of processing electronic surveillance data in penitentiary institutions.
44. On 31 December 2020, the Public Defender was informed that the Office of the State Inspector examined (through a confidential proceeding) legality of the processing of electronic surveillance data in penitentiary institutions by the Special Penitentiary Service revealing a number of violations. In regard to the shortcomings identified, the State Inspector issued 9 (nine) instructions and 7 (seven) recommendations to the Special Penitentiary Service. PDO has access to this instructions and recommendations and it is important to have them fulfilled. Their implementation will prevent further abuse in future.
45. PDO has also addressed the shortcomings in terms of video surveillance practice in the penitentiary institutions.<sup>27</sup> It is worth noting that the members of National Preventive Mechanism does not have access to the video surveillance cameras during their monitoring and also are not entitled to inspect the existing recordings. This represents a significant challenge in terms of performing our duties.

#### Individual measures:

46. In terms of implementing individual measures in the present case the PDO addressed various shortcomings in the process of the reopened investigation in the previous

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<sup>25</sup> Annual Report of the Public Defender of Georgia 2018, p.67. Available at: <https://bit.ly/3ze7Vij>

<sup>26</sup> "The Public Defender of Georgia requests the State Inspector to examine the legality of the conduct of the Minister of Justice available at <<https://bit.ly/38QUQ3N>>

<sup>27</sup> Available at: < <https://bit.ly/2SZbEkd> >

communications. In particular, the PDO noted the insufficient involvement of the victim in the investigation, namely not taking adequate steps to conduct facial composition and then allow Mr. Merabishvili to participate in the identification process of the alleged suspects still remain; insufficient inquiries regarding the phone records of G.G. and I.M.; and non-questioning of some witnesses named by I.K.

47. On July 1<sup>st</sup>, 2021 the representatives of the PDO studied the case files of the investigation regarding the alleged removal of Mr. Merabishvili from the N9 penitentiary facility and examined the investigative measures conducted since the last visit on January 18, 2021.
48. During the last few months, the investigation has questioned some new witnesses including the judges and the prosecutors participating in the trial of Mr. Merabishvili in 2014. Moreover, G.G. and I.M. were asked if they were willing to participate in an identification procedure to which they both declined. Despite these efforts the questions regarding the effectiveness of the investigation remain.
49. The PDO once again stresses the importance of allowing Mr. Merabishvili to identify the clear persons of interest of the investigation – G.G. and I.M. The fact that an identification procedure still has not been conducted despite Mr. Merabishvili providing visual clues of the possible perpetrators shows a clear lack of willingness of the investigation to meaningfully involve the victim in the proceedings. While G.G. and I.M. refused to participate in the identification procedure as they consider Mr. Merabishvili to be holding a grudge against them, the investigation can still offer Mr. Merabishvili to identification procedure using photographs – as provided by the art. 131.5 of the Criminal Procedure Code of Georgia.
50. To summarize, since October 1, 2019 the representatives of the PDO have studied the case files 6 times, monitoring the progress and the intensity of the investigation. Since then a number of investigative measures have been conducted, including the ones the PDO requested (re-questioning of G.G. and I.M. for instance). Nevertheless, as the investigation has suffered from various flaws, especially regarding the thoroughness and the timely manner of the investigation, it cannot be regarded as fulfilling the obligations before the Committee. Lack of determination of the investigative body shown in the non-questioning of major witnesses, not reacting to the crucial objective information regarding G.G. and I.M. and insufficient involvement of the victim in the proceedings has severely undermined the possibility of any meaningful result.