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Communication of the Public Defender of Georgia  
Tsintsabadze group v. Georgia (Application No. 35403/06)  
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

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## Introduction

1. The Public Defender of Georgia hereby submits to the Committee of Ministers (hereinafter CM) the communication on the execution of judgments of the Tsintsabadze Group v. Georgia (Application No. 35403/06), pursuant to 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.

2. Since at the time of preparing this communication, the Government has not submitted an action report we are deprived of the opportunity to respond to it and this submission mainly refers, but is not limited, to the decision of the Committee of Ministers (CM) adopted at 1428<sup>th</sup> meeting in March 2022 (CM/Del/Dec(2022)1428/H46-12) and provides information on the implementation of general measures by the Government of Georgia in the course of the execution of the judgements of the Tsintsabadze Group.

## Decision of the Constitutional Court of Georgia on dismissal of the State Inspector

3. In paragraph 6 of the latest decision adopted at 1428<sup>th</sup> meeting, the CM noted the authorities' explanation that the State Inspector's Service (SIS) was replaced by two agencies, expressed nevertheless profound concern over the recent developments resulting in the dissolution of the former SIS, called the authorities to give serious consideration to the impact of these measures on the independence and effectiveness of investigations and to put in place solid guarantees for remedying any adverse effect thereof.<sup>1</sup> Further, the CM noted "the challenge to the constitutionality of this legislation pending before the Constitutional Court of Georgia".<sup>2</sup> In this connection, the Constitutional Court delivered a judgement finding a violation of Constitution only in the normative content (of the disputed law) according to which State Inspector and her deputies were to be removed from their positions without being offered an equivalent position or just compensation.<sup>3</sup> The Court did not consider disputed provisions abolishing the State Inspector's Service to be unconstitutional.<sup>4</sup> In contrast, the OSCE/ODIHR found that the abolition of the State Inspector's Service was hasty, ignored international standards, posed a threat to rule of law and effective functioning of independent institutions and constituted a dangerous precedent capable of influencing the quality of human rights protection and investigations of ill-treatment and death of detainees in Georgia.<sup>5</sup> The PDO considers that the decision to

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<sup>1</sup> Decision adopted at 1428<sup>th</sup> meeting (DH), March 2022), CM/Del/Dec(2022)1428/H46-12, §6.

<sup>2</sup> Decision adopted at 1428<sup>th</sup> meeting (DH), March 2022), CM/Del/Dec(2022)1428/H46-12, §6

<sup>3</sup> N1/9/1673,1681 judgement of the Constitutional Court of Georgia adopted on November 17, 2022 in the case of "Londa Toloraia and the Public Defender of Georgia against the Parliament of Georgia".

<sup>4</sup> N1/9/1673,1681 judgement of the Constitutional Court of Georgia adopted on November 17, 2022 in the case of "Londa Toloraia and the Public Defender of Georgia against the Parliament of Georgia".

<sup>5</sup> Opinion of the ODIHR on the Legislative Amendments on the State Inspector's Service of Georgia, Opinion Nr.: GEN-GEO/436/2022, Warsaw, 18 February 2022, page 2, available at: <https://bit.ly/3ZK7KrU> [last accessed 05.04.2023].

abolish the State Inspector's Service could have an irreversible chilling effect on other independent bodies.

### Challenges faced by the Special Investigation Service in terms of effectiveness and independence of the investigation process

4. Regarding the legislative and other measures envisaged to strengthen the independence and effectiveness of the Special Investigation Service (hereinafter SIS) replacing the former State Inspector's Service, the Public Defender submitted proposals to the Parliament during the preparation of amendments to the legal framework of the SIS in May and November 2022.<sup>6</sup> The Public Defender welcomed certain positive changes, such as: the power of the SIS investigators to enter penitentiary establishments without obstacles; the ability to address a prosecutor with a proposal to effectively use special protective measures; increase of the SIS investigative jurisdiction with respect to investigation into crimes in case of the ECHR violation found by the European Court as well as into alleged facts of intentional unlawful detention or imprisonment, abuse of/exceeding official powers, forgery by an official and forgery of evidence if these facts are revealed within an investigation being conducted by the SIS.<sup>7</sup>

5. In spite of these positive changes mentioned above, the Public Defender's proposal expressed concern that the draft amendments did not envisage guarantees recommended by the OSCE/ODIHR and the former State Inspector to strengthen the SIS institutionally and to ensure effective investigations.<sup>8</sup> Unfortunately, the changes adopted by the Parliament do not include such guarantees either. In particular, the SIS investigative jurisdiction has not been extended to cover crimes committed by the Prosecutor General, the Minister of Internal Affairs and the Head of the Security Service.<sup>9</sup> Moreover, intentional killing, infliction of serious harm to health, violence, rape, trafficking and threat committed by prosecutors remain excluded from the SIS jurisdiction.<sup>10</sup> It is unclear why prosecutors should be excluded from the remit of the institution for such serious crimes. PDO fully shares the statement of OSCE/ODIHR that - no one should be excluded prima facie from investigation into allegations of serious human rights violations. While these are serious gaps in the SIS jurisdiction, the latter has been expanded to encompass crimes such as, encroachment upon freedom of speech and violation of the right to private life committed by any individual, and crimes related to elections when such crimes are

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<sup>6</sup> N15/4736 Proposal of May 4, 2022 and N15/11047 Proposal of November 3, 2022 issued by the Public Defender of Georgia.

<sup>7</sup> N15/4736 Proposal of May 4, 2022 and N15/11047 Proposal of November 3, 2022 issued by the Public Defender of Georgia.

<sup>8</sup> N15/4736 Proposal of May 4, 2022 and N15/11047 Proposal of November 3, 2022 issued by the Public Defender of Georgia.

<sup>9</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 43.

<sup>10</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 43.

committed by law enforcers. The extension of the SIS mandate risks diminishing the attention and priority placed on serious crimes committed by law enforcement and may decrease the effectiveness of investigations.<sup>11</sup> Moreover, the SIS has not been allocated additional resources despite the extension of its mandate. Notably, the SIS pointed to its increased workload resulting from the expanded mandate.<sup>12</sup> It addressed the Parliament with a legislative proposal to determine its jurisdiction anew so that the latter will cover investigations only into crimes corresponding to the aims and resources of the SIS.<sup>13</sup> Despite all the recommendations, the Parliament did not remove the aforesaid redundant crimes from the SIS mandate.<sup>14</sup>

6. The amendments to the SIS legal framework also failed to include guarantees needed for effectiveness of investigations and recommended by the former State Inspector Service as well as the Public Defender.<sup>15</sup> In particular, the relevant legislation does not provide for: review by the Prosecutor's Office of the SIS request regarding transfer of cases within a shortened timeframe and a prosecutor's obligation to substantiate her/his decision (on the request); decrease of length of the timeframe for review of a substantiated proposal by the SIS to carry out an investigative/procedural action and a prosecutor's obligation to substantiate her/his decision (on the proposal); additional guarantees to ensure gathering, protecting and storing evidence in a timely manner and without hinderance and the obligation to justify refusal in case of incompliance with the SIS request; the authority of the SIS to enter temporary detention centers without limitations, obstacles and a special permit.<sup>16</sup>

7. As to the functioning of the SIS in practice, the study by the PDO of several criminal cases investigated or under investigation by the SIS reveals that investigations mostly meet the standards of effectiveness.<sup>17</sup> Interviews conducted by the SIS investigators are aimed at obtaining all the information needed and investigators mostly try to carry out investigative actions timely so that delays do not hinder gathering of evidence.<sup>18</sup> Although no systemic or repetitive problems have been observed, there are still some noteworthy shortcomings in investigations. In particular, the SIS tends to interview police officers alleged to have

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<sup>11</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 44.

<sup>12</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 44; The 6 Months' Activity Report of the Special Investigation Service, 2022, pages 5 and 36, available at: <https://bit.ly/40LfU12> [last accessed 05.04.2023].

<sup>13</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 44; The Special Investigation Service Addressed the Parliament of Georgia with the Proposal Regarding the Implementation of The Recommendation of The European Commission, available at: <https://bit.ly/3MiT1dD> [last accessed 05.04.2023].

<sup>14</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 44; The 2022 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, pages 61, 72.

<sup>15</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 44; N15/4736 Proposal of May 4, 2022 issued by the Public Defender of Georgia.

<sup>16</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 4445.

<sup>17</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 36.

<sup>18</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 36.

participated in the commission of a crime and other officials after obtaining all of the other evidence.<sup>19</sup>

8. Based on all of the above, PDO believes that the law in force cannot fully ensure institutional strengthening of the Special Investigation Service and at the same time, does not include sufficient guarantees to ensure effectiveness of investigations conducted by the SIS.

### §7 of the CM Decision – granting victim status

9. The latest CM decision “called upon the authorities to rapidly take concrete and effective steps for improving the legislation and/or practice on granting victim status”.<sup>20</sup> In this connection, positive steps have been taken to improve protection of victim rights. In 2022, the Special Investigation Service issued an order granting probable victims the right to familiarize themselves with case materials during an investigation even before officially receiving the victim status.<sup>21</sup> Moreover, a council for reviewing the complaints of victims in life infringement cases was established at the General Prosecutor's Office of Georgia.<sup>22</sup> The council is empowered to review victims’ complaints regarding the effectiveness of investigation in life infringement cases and prepare a recommendatory decision for the Prosecutor General. One of the main objectives of the council is to establish intensive communication with victims and inform them. Although the establishment of this council is generally welcome, its mandate is limited to receiving complaints only from those who have already officially received the victim status in ongoing investigations into cases of infringement of the right to life. Thus, those individuals, who have not received the official victim status despite their requests, cannot apply to this council.

10. Despite the positive measures mentioned in the previous paragraph, the practice of recognition as victims in criminal cases is still inconsistent. In some cases, the victim status is granted as soon as the (identity) probable victim becomes clear whereas, in most cases, victim status is granted after receiving expert opinions and (sometimes) launching prosecution of a specific individual.<sup>23</sup> Thus, from year to year, citizens continue to address the PDO with claims that they have sustained damages due to specific criminal acts and possess no information about ongoing investigations due to delays in officially granting them the victim status.<sup>24</sup>

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<sup>19</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender’s Office, page 37.

<sup>20</sup> Decision adopted at 1428th meeting (DH), March 2022), CM/Del/Dec(2022)1428/H46-12, §7.

<sup>21</sup> The Procedure For The Familiarization With Criminal Case Materials To The Interested Citizens Has Been Enacted In The Special Investigation Service, available at: <https://bit.ly/3ncM7Tn> [last accessed 05.04.2023].

<sup>22</sup> The presentation of the council for reviewing the complaints of the victims of life infringement cases has been held in the General Prosecutor’s Office of Georgia, available at: <https://bit.ly/3TH7HeP> [last accessed 05.04.2023].

<sup>23</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender’s Office, page 162.

<sup>24</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender’s Office, page 162.

## §9 of the CM Decision – classification of relevant criminal offences

11. The latest CM decision also asks for information on “further targeted measures to avoid the possibility that classification of criminal offences permits lenient penalties and prescription”.<sup>25</sup>

In this connection, the criminal cases studies by the PDO reveal several occasions when ill-treatment committed by the officials was classified under a general provision of the Criminal Code. This practice is caused by a legislative shortcoming in the Criminal Code. In particular, the specific legislative definition of ill-treatment contained in the specific/concrete provisions (articles 144<sup>1</sup>-144<sup>3</sup>) covers (overlaps with) the criminal actions under more general provisions of subparagraphs “b” and “c” of paragraphs 3 of articles 332 and 333 of the Criminal Code (abuse of official powers and exceeding official powers by using violence or weapon and by offending the dignity). Moreover, the formulation/wording of other articles (article 335 – providing explanation, evidence or opinion under duress, article 378(2) - coercion of a person placed in a penitentiary institution into changing evidence or refusing to give evidence) are also problematic. Thus, the government must comprehensively criminalize ill-treatment only under specific provisions (articles 144<sup>1</sup>-144<sup>3</sup>) and must exclude the possibility of classification of crimes of ill-treatment under other provisions/articles to ensure the preventive effect of criminalization. To this end, subparagraphs “b” and “c” of paragraphs 3 of articles 332 and 333, article 335 and paragraph 2 of article 378 must be removed from the Criminal Code without decriminalizing criminal actions contained therein.

## The absence of video recordings as a guarantee against ill-treatment

12. The PDO has repeatedly recommended that making video recordings by body cameras of policemen and in police vehicles and storing the recordings for reasonable time must become obligatory.<sup>26</sup> The PDO has also repeatedly recommended to fully equip police stations with infrastructure for video surveillance, to ensure that video surveillance covers all those places where detainees may be held/placed and to ensure uninterrupted audio and video recording of questioning an arrested person.<sup>27</sup> However, these recommendations remain unfulfilled. On the contrary to the recommendations, the number of video cameras

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<sup>25</sup> Decision adopted at 1428th meeting (DH), March 2022), CM/Del/Dec(2022)1428/H46-12, §9.

<sup>26</sup> Communication from an NHRI (Public defender of Georgia) (21/01/2022) in the case of Tsintsabadze group v. Georgia (Application No. 35403/06); The 2021 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, pages 59-60, available at: <https://bit.ly/3m26PW5> [last accessed 05.04.2023]; The 2022 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, page 80.

<sup>27</sup> Communication from an NHRI (Public defender of Georgia) (21/01/2022) in the case of Tsintsabadze group v. Georgia (Application No. 35403/06); The 2021 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, page 60.

in most police facilities visited by the National Preventive Mechanism in 2022 was significantly decreased instead of increasing them.<sup>28</sup>

13. Video recordings are neutral and important pieces of evidence needed for effective investigation of ill-treatment. Unfortunately, unavailability of/lack of access to video recordings remains a serious challenge in the police system as well as in penitentiary establishments. It has become a tendency of the Ministry of Internal Affairs (MIA) to state that recordings of neither police body cameras nor video surveillance in police buildings are available or stored due to technical issues or other various reasons.<sup>29</sup> On multiple occasions, the PDO addressed the MIA to archive relevant video recordings and show them to the PDO's representatives but the MIA replied that the requested recordings were not found on the hard drive of the video recorder and police officers were not equipped with body cameras.<sup>30</sup>

14. As to the penitentiary system, there were several cases in 2022 (similar to previous years) when information about possible violations could not be obtained and reviewed due to unavailability of video recordings.<sup>31</sup> In the so called "prison watchers" case, for example, the PDO had received information about illegal activities of prisoners with privileges in the informal hierarchy of governance and the alleged involvement of the administration in the N2 penitentiary establishment.<sup>32</sup> To verify this information, the PDO requested the relevant unit of the Special Penitentiary Service several times to archive and provide video recordings made by video surveillance in specific cells and halls of the N2 penitentiary establishment.<sup>33</sup> According to the answers received, archiving of (requested) video recordings was impossible due to a technical problem in the period from February until December 2022.<sup>34</sup>

### **Informal hierarchy in penitentiary establishments**

15. As indicated in the previous communications,<sup>35</sup> one of the main factors contributing to inmates' ill-treatment remains the informal hierarchy of prisoners in semi-open penitentiary establishments. Such hierarchy is characterized by physical and psychological

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<sup>28</sup> The 2022 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, page 57.

<sup>29</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 31.

<sup>30</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 32.

<sup>31</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 96.

<sup>32</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 98.

<sup>33</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 98.

<sup>34</sup> The 2022 Activity Report of the Department of Criminal Justice of the Public Defender's Office, page 99.

<sup>35</sup> Communication from an NHRI (Public defender of Georgia) (21/01/2022) in the case of Tsintsabadze group v. Georgia (Application No. 35403/06), §§6-22; Communication from an NHRI (Public Defender's Office of Georgia) (23/10/2020) in the Tsintsabadze group of cases v. Georgia (Application No. 35403/06), §§14-21. <sup>44</sup> The 2022 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, page 12.



violence among prisoners.<sup>36</sup> In its report, the CPT noted that a number of inmates confirmed to the existence of the hierarchy and the collection (or rather extortion) of money (from prisoners but more often their families) for the illegal prisoners' fund ("obshchak"); It seemed clear that there was a tacit understanding from both the management and members of the prisoner hierarchy that any "misbehaviour" and any internal conflicts between inmates should first of all be dealt with informally, between prisoners (and without formally involving the administration).<sup>37</sup>

### Placement in de-escalation rooms as a practice equal to ill-treatment

16. Apart from the informal governance, realization of the right to complain is hindered by censorship imposed on complaints by penitentiary establishments and practice of punishment/reprisals.<sup>38</sup> One of the forms of punishment is placement in de-escalation rooms – a practice which equals to ill-treatment according to the PDO's assessment.<sup>39</sup> The PDO received several complaints regarding placement of prisoners in de-escalations rooms for inappropriate purposes, with the goal of punishing them.<sup>40</sup> Moreover, prisoners were held in de-escalation rooms and solitary (safe) cells for lengthy time periods in contravention of the CPT and PDO recommendations to not to place prisoners in such spaces for more than 24 hours.<sup>41</sup>

### Shortcomings in detection and documentation of cases of ill-treatment

17. Finally, the PDO would like to note shortcomings in detection and documentation of cases of ill-treatment in penitentiary establishments. Detection and documentation of such cases is still hindered by the criminal subculture/informal governance, unconfidential environment for meetings between prisoners and doctors, flawed practice of documentation by doctors, lack of independence of and trust in medical personnel and the

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<sup>36</sup> The 2022 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, pages 50-51.

<sup>37</sup> The 2022 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, page 51; Report to the Georgian Government on the ad hoc visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 24 May 2021, §12 and §20.

<sup>38</sup> The 2022 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, page 49.

<sup>39</sup> Communication from an NHRI (Public defender of Georgia) (21/01/2022) in the case of Tsintsabadze group v. Georgia (Application No. 35403/06), §4.

<sup>40</sup> The 2022 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, page 35.

<sup>41</sup> Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, CPT/Inf (2019) 16, Strasbourg, 10 May 2019, § 94, available at: <https://rm.coe.int/1680945eca> [last accessed: 05.04.2023]; The 2022 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, page 35.

obligation to receive a prisoner's consent for medical examination.<sup>42</sup> In terms of the latter issue, the current regulation does not allow a doctor to fill out a special form to indicate injuries if a prisoner does not give the doctor an informed consent.<sup>43</sup> In such cases, the doctor is not obliged to inform the Special Investigation Service about existence of injuries.<sup>44</sup> Thus, ill-treatment may remain undocumented and unreported in cases when a prisoner is subjected to ill-treatment but refuses a medical examination when leaving, returning to or arriving in a penitentiary establishment.<sup>45</sup>

## Conclusion

18. In order to effectively execute Tsintsabadze Group cases, the PDO reiterates some of its recommendations to the Government of Georgia from the previous recommendation as well as submits new recommendations. In particular, the PDO calls on the Government of Georgia to:

- Amend the Order N633 of the Minister of Justice of Georgia of November 30, 2020 to determine that a prisoner's consent to medical examinations is not a precondition for notifying the Special Investigation Service if a doctor suspects violence when a prisoner is being transferred from, returned or admitted to a penitentiary establishment.
- Amend the the Order N633 of the Minister of Justice of Georgia of November 30, 2020 to oblige a doctor to offer medical examination to a prisoner again, within 24 hours, if injuries to visible parts of a prisoner's body are not visible and the prisoner refuses medical examination when being transferred from, returned or admitted to a penitentiary establishment.
- Ensure uninterrupted audio and video recording of questioning an arrested person in several police agencies in a pilot mode;
- Install video surveillance systems everywhere in police departments, divisions and stations where an arrested person or a person willing to give a statement may be held/kept.
- Adopt legislative amendments to include crimes committed by the Prosecutor General, the Minister of Internal Affairs and the Head of State Security Service within the mandate of the Special Investigation Service
- Adopt legislative changes to extend the mandate of Special Investigation Service to cover certain crimes committed by prosecutors (crimes under articles 108, 109, 111, 113-118, 120-124, 126, 126<sup>1</sup>, 137-139, 143-144, 150-151<sup>1</sup> under the Criminal Code)
- Adopt legislative amendments to include in the remit/jurisdiction of the Special

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<sup>42</sup> The 2022 Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia, page 43.

<sup>43</sup> The 2022 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, pages 42-43.

<sup>44</sup> The 2022 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, page 43.

<sup>45</sup> The 2022 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, page 43.

- Investigation Service only those crimes which correspond to its main mandate (remove crimes under articles 153-159 and 162-163, 164<sup>4</sup> from its remit/jurisdiction).
- Change the law to provide/introduce:
  - review by the Prosecutor's Office of the SIS request regarding transfer of cases within a shortened timeframe and a prosecutor's obligation to substantiate her/his decision (on the request);
  - decrease of length of the timeframe for review of a substantiated proposal by the SIS to carry out an investigative/procedural action and a prosecutor's obligation to substantiate her/his decision (on the proposal);
  - additional guarantees to ensure gathering, protecting and storing evidence in a timely manner and without hinderance and the obligation to justify refusal in case of incomppliance with the SIS request;
  - the authority of the SIS to enter temporary detention centers without limitations, obstacles and a special permit.