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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

Introduction

1. The Public Defender of Georgia hereby submits to the Committee of Ministers (hereinafter the 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. This submission refers to the decision of CM adopted at the 1492th meeting in March, 2024 (CM/Del/Dec(2024)1492/H46-14) and provides information on the matters mentioned in the decision. The present communication also comments on/replies to the Action Plan dated 31/03/2025 (Hereinafter AP) submitted by the Government of Georgia and assesses the implementation of general measures by the government in the course of the execution of the judgements of the Tsintsabadze Group.

Mandate of the Special Investigation Service and effectiveness of its investigations paragraph 5 of the CM Decision

3. The last decision of the CM encouraged the authorities to "...to consider taking additional measures for strengthening the independence and effectiveness of the SIS, including by further aligning its remit with the institution's primary role of investigating serious human rights

violations committed by state agents and by ensuring a stronger independence of the SIS from the prosecutorial authorities.”¹

4. The PDO has reiterated the same recommendation in both its reports and prior communications to CM. Despite these recommendations directed to the state by the CM and the PDO, there remain crimes within the investigative jurisdiction that do not directly pertain to the primary functions of the SIS.² Furthermore, the jurisdiction of the SIS continues to raise concerns, as it does not encompass crimes committed by the Prosecutor General, the Minister of Internal Affairs, or the head of the State Security Service of Georgia.³ Nonetheless, following the amendments enacted in May 2024, the SIS is now authorized to investigate crimes committed by prosecutors.⁴ It is regrettable that many of the other recommendations articulated in previous communications by the PDO have yet to be fulfilled.⁵

5. To this end, the latest Action Plan (hereinafter: AP) presented by the government, largely reiterates the information described in the previous AP.⁶

6. The Committee of Ministers has clearly encouraged the authorities to strengthen the independence of the SIS from prosecutorial authorities.⁷ To this end the PDO issued multiple recommendations to the authorities most of which still remain unfulfilled. In particular, the authorities failed to ensure 1) the review by the Prosecutor’s Office of the SIS request regarding transfer of cases within a shortened timeframe and imposition of an obligation on a prosecutor to substantiate her/his decision (on the request); 2) decreasing the length of the

¹ Decision of CM adopted on 1492nd meeting (12-14 March 2024) (DH) - H46-14, para. 5, available at: <https://rb.gy/05r4m5> [last accessed 07/04/2024]

² The Law on Special Investigation Service, Article 19, 1(d) available only in Georgian; Communication of the Public Defender of Georgia Tsintsabadze group v. Georgia (Application No. 35403/06) para. 3. available at <https://rb.gy/in8n5r> [Last accessed 07/04/2024]

³ The 2024 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, p. 73, available at <https://rb.gy/tjc30a> [last accessed 07/04/2025]

⁴ Action Plan (31/03/2025) Communication from Georgia concerning the case of TSINTSABADZE v. Georgia (Application No. 35403/06) para. 325; available at: <https://rb.gy/bu45g6> [last accessed 07/04/2025];

⁵ Communication of the Public Defender of Georgia Tsintsabadze group v. Georgia (Application No. 35403/06) p. 11 available at <https://rb.gy/in8n5r> [last accessed 07/04/2024] The 2024 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia p. 57 available at <https://rb.gy/tjc30a> [last accessed 14/04/2025]

⁶ Comp. Action Plan (31/03/2025) Communication from Georgia concerning the case of TSINTSABADZE v. Georgia (Application No. 35403/06) para. 321-322, 324, available at: <https://rb.gy/bu45g6> [last accessed 07/04/2025]; Action Plan (24/01/2024) Communication from Georgia concerning the case of TSINTSABADZE v. Georgia (Application No. 35403/06) para. 341-342, available at: <https://rb.gy/4fyzxe> [last accessed 07/04/2025]

⁷ Decision adopted at 1492nd meeting (12-14 March 2024) (DH) - H46-14, para. 5, available at: <https://rb.gy/05r4m5> [last accessed 07/04/2024]

timeframe for a review of a substantiated proposal by the SIS to carry out an investigative/procedural action and imposing an obligation on a prosecutor to substantiate her/his decision (on the proposal); 3) introduction of additional guarantees to ensure gathering, protecting and storing evidence in a timely manner and without hinderance and imposition of the obligation to justify refusal in case of incompliance with the SIS request.⁸ To sum up, the SIS still has limited powers, since it is legally and practically dependent on the Prosecutor's Office when carrying out its investigative mandate.

Effectiveness of investigations on allegations of police brutality

7. It is noteworthy that in the AP the Government indicates its success in the fight against torture and ill-treatment citing various international and regional human rights bodies, including, the report of the Council of Europe Commissioner for Human Rights in 2025.⁹ In opposite to the Government's assertion the brutal police crackdowns of peaceful demonstrations throughout 2024 suggest otherwise. The PDO notes that instances of human rights violations, revealed throughout a week of protests, especially their scale and severity suggests that demonstrators have been subjected to systemic ill treatment from police units.¹⁰

8. The PDO notes that the alleged ill-treatment by law enforcement officers including torture and inhuman and degrading treatment, of participants including journalists, politicians in certain time of periods, during both the spring and winter protests of 2024 was systemic and, in certain cases, widespread.¹¹ In addition, numerous reports were disseminated through the media regarding acts of violence committed by violent groups against private individuals. Such a widespread nature of police violence as well as inaction of police units on site created a climate of general impunity.¹²

9. Considering these events, it is regrettable that the investigation ongoing in the SIS is ineffective.¹³ In fact, it is episodic and revolves around the isolated members of police units while the focus should be the entire chain of command.¹⁴ As a result of these issues, none of

⁸ Communication of the Public Defender of Georgia Tsintsabadze group v. Georgia (Application No. 35403/06) p. 12 available at <https://rb.gy/in8n5r> [last accessed 07/04/2024]

⁹ Action Plan (31/03/2025) Communication from Georgia concerning the case of TSINTSABADZE v. Georgia (Application No. 35403/06) paras. 319-320; available at: <https://rb.gy/bu45g6> [last accessed 07/04/2025];

¹⁰ The 2024 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, p. 77-79, 81,82, available at: <https://rb.gy/tjc30a> [last accessed 07/04/2025]

¹¹ The 2024 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, p. 77-79, 81,82, available at: <https://rb.gy/tjc30a> [last accessed 07/04/2025]

¹² *ibid*, p. 78

¹³ *ibid*, p. 79

¹⁴ *ibid*.

the officers involved in the violence have been prosecuted or convicted.¹⁵ This is particularly concerning, especially in cases where police officers were not wearing protective gear and could be easily identified. In contrast, several hundred protesters were detained based on the Administrative Misdemeanor Code. Dozens of detained were talking about illegal confiscations of phones and personal belongings.¹⁶

10. However, the PDO also notes that the investigative process is being obstructed by the state agencies and private bodies as they refuse to give the SIS the video surveillance footage and recordings of portable communication devices.¹⁷ The reasons adduced to such responses are often mutually exclusive and less convincing.¹⁸

11. Moreover, one of the aspects that objectively hinders the investigation is that the police units dispatched to disperse the demonstrators are unidentifiable as they do not carry any distinctive insignias.¹⁹ This problem was underlined by the ECtHR in *Tsaava and Others v. Georgia* where the Court noted that when the “... authorities deploy masked police officers to maintain law and order or to make an arrest, those officers should be required to visibly display some distinctive insignia, such as a warrant number. The display of such insignia would ensure their anonymity, while enabling their identification and questioning in the event of challenges to the manner in which the operation was conducted.”²⁰

12. Hence, the PDO notes that although there are some difficulties that are beyond the control of the SIS they do not show sufficient diligence to comply with the effective investigation standard established by the Court’s Article 3 jurisprudence.²¹

Classification of Offences paragraph 7 of the CM Decision

13. In the previous communication submitted to the CM, the PDO mentioned a legislative shortcoming of the Criminal Code negatively affecting crime classification in practice.²² In particular, the definition of ill-treatment contained in the specific/concrete provisions (articles

¹⁵ *ibid.* p. 78

¹⁶ *ibid.* p. 78-79

¹⁷ *ibid.* p. 79

¹⁸ *ibid.* p. 85

¹⁹ *ibid.* p. 78

²⁰ The Judgment of the European Court of Human Rights delivered on May 7th 2024 on *Tsaava and Others v. Georgia*, App. 13186/20 para. 223

²¹ The 2024 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, p.84-85 available at <https://rb.gy/tjc30a> [last accessed 07/04/2025]

²² Communication of the Public Defender of Georgia Tsintsabadze group v. Georgia (Application No. 35403/06) para. 4-6 available at <https://rb.gy/in8n5r> [last accessed 07/04/2024]

144¹-144³) covers (overlaps with) the criminal actions under more general provisions of subparagraphs “b” and “c” of paragraphs 3 of articles 332 and 333, article 335 and paragraph 2 of article 378. The PDO argued for removal of the latter provisions without decriminalizing criminal actions contained therein in order to ensure a correct classification under only specific norms and to avoid improper penalties.²³ Unfortunately, no amendments have been adopted to this end.

14. Apart from the legislative shortcoming, it should be noted that all the cases originated from the police violence during the above-mentioned protests, have been classified as exceeding official powers using violence or weapon (Article 333, 3(b).²⁴ The PDO notes that classifying such acts by general article of the Criminal Code does not reflect the nature, intensity, scale, and severity of the violence that the victims have been subjected to by the police units.²⁵

15. Furthermore, beyond the context of the mentioned demonstrations, the PDO observes the general trend that the alleged crimes of ill treatment committed by ordinary police officers and employees of penitentiary facilities are mainly being investigated under Article 333 (Exceeding Official Powers) of the Criminal Code of Georgia.²⁶

16. To this end, the latest AP attaches great importance to the Qualification Guidelines elaborated by the SIS and to illustrate its success provides that only 14 investigations were initiated under Article 144³, paragraph 2 of the CCG.²⁷ Two of these cases were transferred to SIS for reinvestigation pursuant to final judgment of the European Court of Human Rights.²⁸ The PDO underlines that this statistics does not reflect the general approach of the SIS on classification of crimes or address the recommendations of the PDO in this regard.

Safeguards for preventing ill-treatment paragraph 8 of the CM Decision

Video/audio recording of interaction between the law enforcement agents and individuals

²³ *ibid*, para. 4

²⁴ The 2024 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, p.81 available at <https://rb.gy/tjc30a> [last accessed 07/04/2025]

²⁵ *ibid*;

²⁶ The 2024 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia p.75 available at <https://rb.gy/tjc30a> [last accessed 07/04/2025]

²⁷ Action Plan (31/03/2025) Communication from Georgia concerning the case of TSINTSABADZE v. Georgia (Application No. 35403/06) para. 333-335 available at <https://rb.gy/bu45g6> [last accessed 07/04/2025];

²⁸ *ibid*, para. 335

17. The last decision of the CM “encouraged...the authorities to strengthen the safeguards for preventing ill-treatment, among others by increasing the scale and effectiveness of video/audio recording of interaction between the law enforcement agents and individuals.”²⁹

18. There have been no significant improvements in this regard since the PDO’s last communication.³⁰

19. As regards to the AP presented by the government, it does not respond to the core thrust of the Committee’s focus. In fact, in the first part of its response the government limits law enforcement agents with the SIS personnel while in the second part it outlines the functions of LEPL Public Safety Command Center “112” that has no investigative authority.³¹ In the similar vein it outlines the rights of detainees in temporary detention facilities and the fact that they are visually monitored.³² Yet, the AP does not address any other aspects implicitly identifiable in the paragraph 8 of the CM decision and does not respond any recommendations of the PDO.³³

20. Apart from the effective video-audio recording between law enforcement authorities and citizens, properly documenting the instances of alleged ill-treatment as well as the trust between doctor and patient are very important tool to prevent inhuman and degrading treatment. To this end, the principle of confidentiality between doctors and patients is often violated in prison settings since a prison guard is always present at the meeting despite the level of threat coming from the prisoner concerned.³⁴ Moreover, the prison doctors are not independent as they are employed within the prison system and not that of general system governing healthcare in the country.³⁵

²⁹ Decision of CM adopted on 1492nd meeting (12-14 March 2024) (DH) - H46-14, para.8 available at <https://rb.gy/05r4m5> [last accessed 07/04/2024]

³⁰ Decision of CM adopted on 1492nd meeting (12-14 March 2024) (DH) - H46-14, para. 8 available at <https://rb.gy/05r4m5> [last accessed 07/04/2024]; Communication of the Public Defender of Georgia Tsintsabadze group v. Georgia (Application No. 35403/06) para. 10 available at <https://rb.gy/in8n5r> [last accessed 07/04/2024]

³¹ Action Plan (31/03/2025) Communication from Georgia concerning the case of TSINTSABADZE v. Georgia (Application No. 35403/06) para. 336-337; 338-339 available at <https://rb.gy/bu45g6> [last accessed 07/04/2025];

³² *ibid*, para. 342.

³³ *ibid*, para. 336-344; Communication from an NHRI (Public Defender of Georgia) (25/04/2023) in the case of TSINTSABADZE v. Georgia (Application No. 35403/06) para. 18, available at: <https://rb.gy/0yj2pz> [last accessed 14/04/2025]

³⁴ The 2024 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, p. 57, available at: <https://rb.gy/tjc30a> [last accessed 07/04/2025]

³⁵ *ibid*, p. 58

21. The PDO points out that the above-mentioned overall situation affects the prisoners' trust towards doctors which may result in the lack of sincerity and complete cooperation during the medical checkup. Naturally, this aspect negatively affects the preventive role of proper documentation in ill treatment cases. The informal involvement of privileged inmates (so-called "watchers") in the management of certain penitentiary institutions also impede the inmates to cooperate with the monitoring bodies, speak up and be truthful when they are subjected to ill treatment.³⁶

22. As regards the police stations and the Ministry of Internal Affairs' system, out of 132 cases examined by the National Preventive Mechanism 12% of detention protocols do not contain the injuries suffered by the detainee when they are clearly documented in the medical records of Temporary Detention Facilities.³⁷ This leads to presumption that the detainees suffered injuries while being under control of the state.³⁸ Moreover, in 40% of those 132 cases medical personnel at temporary detention facilities provided either incomplete documentation of injuries or there was no documented description of them at all.³⁹

Placement in De-escalation Rooms

23. In previous communications the PDO have consistently described the practice of placement of prisoners in de-escalation rooms and assessed it as a form of ill-treatment.⁴⁰ Unfortunately, this practice is still in place.⁴¹ Unfortunately, the authorities still have not fulfilled the recommendations of the PDO and CPT to decrease the term of placement into the de-escalation rooms from 72 to 24 hours.⁴² Similarly, the internal regulations still do not include the obligation to justify the necessity of the placement in de-escalation rooms and solitary confinement cells as last resort measures and to use other, less restrictive means.⁴³

³⁶ *ibid*, p.64

³⁷ *ibid*, p.59

³⁸ *ibid*.

³⁹ *ibid*.

⁴⁰ Communication of the Public Defender of Georgia Tsintsabadze group v. Georgia (Application No. 35403/06) para. 16, available at: <https://rb.gy/in8n5r> [last accessed 07/04/2024]; Communication from an NHRI (Public Defender of Georgia) (25/04/2023) in the case of TSINTSABADZE v. Georgia (Application No. 35403/06), paragraph 16. available at <https://shorturl.at/hhGsO> [last accessed 07/04/2025]

⁴¹ The 2024 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, p. 42 available at <https://rb.gy/tjc30a> [last accessed 07/04/2025]

⁴² *ibid*, p.49; Communication of the Public Defender of Georgia Tsintsabadze group v. Georgia (Application No. 35403/06) para. 17 available at <https://rb.gy/in8n5r> [last accessed 07/04/2024];

⁴³ *ibid*.

24. Moreover, as there is an elevated risk of self-inflicted injuries while being in the de-escalation rooms, the PDO consistently recommends the authorities to create a safe environment in those cells including by using soft material to furnish floors and walls there.⁴⁴

25. Unfortunately, the practice of unreasonable placement in de-escalation rooms as well as almost unimpeded placement of the same prisoner was still in place in 2024.⁴⁵ Moreover, prisoners are routinely placed there for a maximum available term.⁴⁶ Yet, the most alarming was the placement of a juvenile offender in such room.⁴⁷ It contravenes the best interests of a child, the aims of Juvenile Justice Code and the spirit of the UN Convention on the Rights of the Child to place juvenile offenders in solitary confinement or de-escalation rooms, especially for a lengthy period of time, when there are no proper conditions.⁴⁸

Informal Governance in some Penitentiary Institutions

26. The NPM monitoring indicates that the informal hierarchy of prisoners in some cases is still an unresolved problem. Privileged prisoners with a high-ranking status in the hierarchy of the so-called criminal world can exert influence on other inmates and, therefore, the prison administrations use them to settle relations/conflicts. The challenges in this regard are well-documented in the previous communication of the PDO and there have been no updates since then.⁴⁹

Recommendations

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

- Ensure through systemic monitoring/supervision by the Monitoring Department of the Special Penitentiary Service that the practice of lengthy placement of prisoners in de-escalation cells is studied and reactive measures are undertaken to prevent ill-treatment of prisoners.

⁴⁴ The 2024 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, p. 49 available at <https://rb.gy/tjc30a> [last accessed 07/04/2025]

⁴⁵ *ibid*, p. 48

⁴⁶ *ibid*.

⁴⁷ *ibid*, p. 48

⁴⁸ *ibid*.

⁴⁹ Communication of the Public Defender of Georgia Tsintsabadze group v. Georgia (Application No. 35403/06) para. 15 available at <https://rb.gy/in8n5r> [last accessed 07/04/2024];

- Amend the Criminal Code of Georgia to comprehensively criminalize treatment/actions prohibited by article 3 of the ECHR only under specific provisions (articles 144¹-144³) of the Criminal Code. Thus, actions currently criminalized under subparagraphs “b” and “c” of paragraphs 3 of articles 332 and 333, article 335 and paragraph 2 of article 378 must be criminalized only under the specific provisions. Thus, 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.
- 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 amendments to include in the remit/jurisdiction of the Special Investigation Service only those crimes which correspond to its main mandate (remove crimes under articles 153-159 and 162-163, 164⁴ from its remit/jurisdiction).
- Ensure that the SIS effectively investigates the cases originated from the allegations of police/special forces brutality during 2024 protests. In particular:
 - o Ensure that the investigation is ongoing under the special Articles of the Criminal Code of Georgia dealing with inhuman and degrading treatment and torture.
 - o Ensure that the investigation is focused to analyze the full picture of events and examine the possible criminal liability of the whole chain of command and their subordinates.
- Ensure that every member of the police special forces units under the Special Tasks Department is equipped with identifying insignia and regulate, by normative act, the mandatory use of such insignia.
- Change the law to provide/introduce:
 - o review by the Prosecutor’s Office of the SIS request regarding transfer of cases
 - o within a shortened timeframe and a prosecutor’s obligation to substantiate her/his decision (on the request);
 - o 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);
 - o 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;

- 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