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# Prevention and Forms of Torture and Ill-Treatment



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## Contents

Introduction .....	3
Methodology.....	5
Key findings .....	6
Forms of torture and ill-treatment .....	8
Introduction .....	8
Beating as a form of torture and ill-treatment .....	9
Psychological violence as a form of torture .....	12
Forced abortion as a form of torture .....	14
Video recording as the prevention of torture and police protection .....	16
Investigation of torture/ill-treatment cases .....	19
The State Inspector Service.....	27
Setting up the Service .....	27
Staffing the Investigative Unit.....	28
Conclusion and recommendations.....	32
Annex .....	34
1. The case of A.G. and G.B. ....	34
2. The case of P.F.....	35
3. The Case of Z.M (deceased) .....	36
4. The Case of R.M.....	36
5. The case of B.M (a minor) .....	37
6. The case of B.Kh .....	37
7. The case of L.S (a minor) .....	38
8. The case of G.M.....	39
9. The case of M.T .....	40
10. The case of G.P. ....	41
11. The case of inmate V.F. ....	42
12. The case of inmate M.L .....	43

## Introduction

GYLA has been implementing the project "Combating Torture and Ill-treatment in Georgia, Armenia and Ukraine" together with the Center for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT) since 2018. The project aims at preventing torture and inhumane treatment in Georgia, Armenia and Ukraine. The project strives to develop appropriate mechanisms and strengthen the capacity of civil organizations in terms of documenting the cases of torture and improving the rehabilitation services offered to victims.

GYLA presented reports in 2016<sup>1</sup> and 2019,<sup>2</sup> in which the organization, based on the cases litigated by GYLA from 2013 to 2018 as well as various public information, analyzed how promptly and effectively the state responds to, identifies and punishes perpetrator law enforcement officers for alleged wrongdoings.

There have been no systematic cases of torture and ill-treatment in recent years, yet committing this type of crime by law enforcement officers still remains a problem. The reports of NGOs<sup>3</sup> and a number of reports prepared by the Public Defender of Georgia, including report 2019,<sup>4</sup> have focused on cases of ill-treatment committed by police officers in Georgia.

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<sup>1</sup> GYLA Report "Crimes allegedly committed by law enforcement officers and the state's response to them." Available at: <https://bit.ly/30ZEcJW> [Last viewed: 05.03.2020].

<sup>2</sup> GYLA Report "Prevention of Ill-treatment and Response to the Occurred Facts", available at: <https://bit.ly/2UmDHIB> [Last viewed: 05.03.2020].

<sup>3</sup> Report of Georgia's Democratic Initiative "The gaps in the investigation of the facts of ill-treatment Conducted by Law Enforcement Officers and legal status of the victims in Georgia," available at: - <https://bit.ly/2SeRK0o> [Last viewed: 05.03.2020].

The research by Human Rights Education and Monitoring Center- "Ill-treatment Prevention in Police Work;" Available at: - <https://bit.ly/2ShG1hp> [Last viewed: 05.03.2020].

<sup>4</sup> Public Defender Report "Effectiveness of investigation on Criminal Law Cases of Ill-Treatment," available at: - <https://bit.ly/3942x48> [Last viewed: 05.03.2020].

The purpose of this report is to identify based on various research methods the forms of torture and ill-treatment perpetrated by law enforcement officers in Georgia and to assess the effectiveness of the State Inspector Service and the staffing of its Investigative Unit.

The process of elaboration of the report<sup>5</sup> revealed that most frequently violence occurs during arrests, transportation and interrogations of detainees in police units.<sup>6</sup> GYLA-handled cases included one case with a victim who had his hand broken,<sup>7</sup> four cases involving physical and psychological violence (beating/threatening, blackmail, verbal abuse), three cases of psychological pressure (pressure, threatening), one case of sexual violence, and one case of forced abortion by police officers.<sup>8</sup> Physical and psychological violence was also identified through the interviews with convicts detained in a special penitentiary facility.<sup>9</sup>

As in previous years, it is still problematic for law enforcement agencies to properly classify incidents, conduct investigations within reasonable timeframes, and recognize survivors of ill-treatment as victims. The creation and enactment of the State Inspector Service have been positively assessed, yet the adoption of the current edition of the Law “On State Inspector Service” limiting the Inspector’s mandate cannot earn a positive evaluation.

The report is followed by recommendations for relevant agencies. GYLA hopes that the findings and recommendations presented in the report will be applied to prevent ill-treatment and facilitate a timely and unbiased investigation of incidents.



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<sup>5</sup> The report does not include the analysis of ill-treatment cases identified in connection with the events of 20-21 June 2019. For this, please see the study conducted by GYLA “Beyond the Lost Eye,” available on the website: <https://bit.ly/2RTEAWd> [Last viewed: 05.03.2020].

<sup>6</sup> This has been identified in cases litigated by the GYLA as well as other lawyers as a result of the interviews of two inmates in a penitentiary facility.

<sup>7</sup> The case of G.M. arrested at the protest rally on 18 November 2019; See Annex №8

<sup>8</sup> The cases of sexual violence and forced abortion committed by police officers did not occur during their official duty hours; however, their official position was a contributing factor to the crime, see Annex №9, the case of M.T and №10 the case of G.P.

<sup>9</sup> The Annex №12 – the case of M.L and №11- the case of V.F;

## Methodology

For the purposes of the report, ten criminal cases litigated by GYLA in 2019 were analyzed. The cases were looked at from the perspective of specific forms of ill-treatment, person/persons conducting ill-treatment, the problem of granting a person the victim status, and the issues related to rendering final decisions into inhuman treatment cases.

GYLA requested from the Office of the Prosecutor General of Georgia, the Supreme Court, five City Courts, the State Inspector Service information relating to crimes falling within the scope of Articles of the Criminal Code of Georgia such as torture,<sup>10</sup> threats of torture,<sup>11</sup> degrading or inhuman treatment,<sup>12</sup> abuse of official powers;<sup>13</sup> exceeding official powers,<sup>14</sup> providing an explanation, evidence or opinion under duress;<sup>15</sup> interference with and/or disorganization of the activities of a penitentiary facility or liberty restriction facility<sup>16</sup> from 1 January 2019 to 1 October 2019.

With the view to identifying current challenges, GYLA developed a questionnaire to conduct interviews with victims into the cases handled by GYLA, a victim's legal successor in one case (the victim died), two inmates of a penitentiary facility seeking GYLA's assistance and four lawyers dealing with ill-treatment cases.

The report analyzes national legislation and international standards concerning torture and ill-treatment, including decisions of the European Court of Human Rights.

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<sup>10</sup> The Criminal Code of Georgia, Article 144<sup>1</sup>

<sup>11</sup> The Criminal Code of Georgia, Article 144<sup>2</sup>

<sup>12</sup> The Criminal Code of Georgia, Article 144<sup>3</sup>

<sup>13</sup> The Criminal Code of Georgia, Article 332, par 3, subparagraphs "b", "c"

<sup>14</sup> The Criminal Code of Georgia, Article 333, par 3, subparagraphs "b", "c"

<sup>15</sup> The Criminal Code of Georgia, Article 335

<sup>16</sup> The Criminal Code of Georgia, Article 378, par 2.

## Key findings

**The analysis of the cases litigated by GYLA, public information, and data obtained through the interviews has revealed as follows:**

- The analysis of the cases litigated by GYLA showed that in 2019 law enforcement officers generally resorted to beating as a form of torture/ill-treatment, and psychological violence, forced abortion,<sup>17</sup> and rape were reported as well in single cases, respectively.<sup>18</sup>
- A victim<sup>19</sup> into one of the cases handled by GYLA and an inmate in a penitentiary facility<sup>20</sup> noted in an interview that they attempted suicide after being pressurized. This indicates the severity of the psychological consequences of torture/ill-treatment.
- In the cases litigated by GYLA, the investigations into torture/ill-treatment cases, regardless of their severity, most often are initiated under Article 333 of the Criminal Code (60%).<sup>21</sup>
- The investigation into a majority of the cases of alleged ill-treatment was launched by the Office of the Prosecutor under Article 333 (91%) of the Criminal Code, which envisages exceeding official powers.<sup>22</sup>
- In the cases of inhuman treatment, the rate of granting the victim status is still very low, in particular, only in two out of ten cases handled by GYLA the persons were known as victims.<sup>23</sup>

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<sup>17</sup> The case of M.T. Annex №9

<sup>18</sup> The case of G.P. Annex №10

<sup>19</sup> The case of M.T. Annex №9

<sup>20</sup> The case of V.F. Annex №11

<sup>21</sup> Six out of ten criminal cases litigated by GYLA are being investigated under the said article.

<sup>22</sup> According to the information provided by the Prosecutor General's Office, the investigations under Articles 144<sup>1</sup>, 144<sup>3</sup>, 333(3) of the CC have been launched into a total of 265 criminal cases and 241 investigations under Article 333.

<sup>23</sup> Only two out of the ten high-profile cases handled by GYLA were recognized as victims. In one of the cases mentioned above, the charges were filed under Article 137, and in one case under Article 335.

- No one has been charged into the GYLA-litigated cases investigated under Article 333 of the Criminal Code of Georgia.
- The nine-month period statistics 2019, in particular, in terms of the investigations initiated under Article 333, paragraph 3 of the Criminal Code show that the overall rate of launching the prosecution is very low. In the investigations initiated by the Prosecutor's Office under Article 333, paragraph 3 (b), only three persons were prosecuted, which accounts for merely 1.6% of the cases.<sup>24</sup>
- The Prosecutor's Office rendered decisions refusing the victim status into ten cases concerning the crime envisaged under Article 333 of the Criminal Code of Georgia.<sup>25</sup>
- The decisions of prosecutors refusing the victim status were appealed in a court in seven cases.<sup>26</sup> Of the decisions appealed, only one was upheld by the court.
- 75% of the Investigative Unit of the State Inspector Service<sup>27</sup> is staffed by the employees of the Office of the Chief Prosecutor and the Ministry of Internal Affairs of Georgia.

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<sup>24</sup> The investigations under the aforementioned Article were initiated into 241 cases and only three persons were charged, which accounts for merely 1.6% of the cases.

<sup>25</sup> Letter №13/7765 of the General Prosecutor's Office of 4 November 2019

<sup>26</sup> According to the information provided by the Supreme Court, the decisions of prosecutors refusing the status of a victim have been appealed in Tbilisi and Rustavi City Courts, and Telavi and Zugdidi District Courts. GYLA has analyzed 10 judgments rendered by Tbilisi City Court relating to six persons, as well as one court ruling by Rustavi City Court. GYLA has not studied the rulings of the Telavi and Zugdidi District Courts regarding the appeal against the denial of the victim status.

<sup>27</sup> Nineteen vacant positions in the State Inspector Service were filled by 16 investigators, of whom 7 investigators had worked in the Prosecutor's Office prior to the appointment, 6 in the Ministry of Internal Affairs, 2 in the Ministry of Finance, 2 in the civil sector.

# Forms of torture and ill-treatment

## Introduction

Approaches to human rights have evolved and developed over time. As a result of this development, protection against inhuman and degrading treatment has been secured and guaranteed by the Universal Declaration of Human Rights<sup>28</sup> and relevant Articles of the Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>29</sup> Pursuant to these international acts, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. As per international standards, torture includes the four cumulative elements:

- Deliberate infliction of pain or suffering;
- Intensity;
- Direct or indirect participation of a state official;
- A specific purpose.<sup>30</sup>

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been ratified by Georgia and the Constitution of the country also guarantees protection against torture.<sup>31</sup> Torture, threats of torture and degrading or inhuman treatment are criminalized under the Criminal Code of Georgia as well.<sup>32</sup> Despite the existing legislative instruments, the use of torture or other cruel, inhuman or degrading treatment by law enforcement is still a challenge in Georgia, which ultimately results in gross violations of the rights of victims of torture.

The analysis of the GYLA cases revealed that physical and psychological violence (beating/threatening, blackmailing, verbal abuse) was the most frequently used form

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<sup>28</sup> United Nations Universal Declaration of Human Rights, Article 5

<sup>29</sup> UN Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3

<sup>30</sup> Human Rights Centre, University of Essex, The Torture Reporting Handbook, Second edition, 2015, p 20

<sup>31</sup> Constitution of Georgia, Article 9

<sup>32</sup> The Criminal Code, Article 144<sup>1</sup>, 144<sup>2</sup>, 144<sup>3</sup>

of inhuman treatment perpetrated by law enforcement officers, yet single cases of sexual violence and forced abortion were identified as well in 2019.<sup>33</sup>

### Beating as a form of torture and ill-treatment

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms prohibits torture and inhuman treatment, though not all forms of ill-treatment are considered torture. *Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3.* The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.<sup>34</sup>

The European Court of Human Rights in several cases considers beating by law enforcement officers of persons under their effective control as torture and, in some cases, ill-treatment. Hanging down a person with his hands on the back, beating is regarded as torture by the European Court of Human Rights in the case of *Aksoy v. Turkey*.

*Aksoy was taken in custody by Turkish law enforcers on charges of assisting in terrorism. According to the applicant, on the first day, he was interrogated and on the second and following days, he was subjected to torture. On the second day after the arrest, he was strung up by his arms in the form of torture known as "Palestinian hanging", torture by electrodes and during other days he was beaten repeatedly.<sup>35</sup> Aksoi was tortured by law enforcement officers for four days.*

In the above case, the Court held that this treatment could only have been deliberately inflicted; indeed, a certain amount of preparation and exertion would have been required to carry it out. It would appear to have been administered with the aim of obtaining admissions or information from the applicant. In addition to the severe pain which it must have caused at the time, the medical evidence shows that it led to a

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<sup>33</sup> Cases of sexual violence and forced abortion were not perpetrated by police officers during their official duties, although their official position is a contributing factor to the crimes.

<sup>34</sup> *Ireland v. UK*, (Application No. 5310/71) p. 162(1978)

<sup>35</sup> *Aksoy v. Turkey*, (Application No. 21987/93) 18.12.1996, p.14

paralysis of both arms which lasted for some time. The Court considers that this treatment was of such a serious and cruel nature that it can only be described as torture.<sup>36</sup>

The beating was considered a form of torture by the European Court in another case, namely, Maslova<sup>37</sup> and Nalbandov<sup>38</sup> v. Russia. The applicants complained that state officials had mistreated them during the interrogations and had not investigated the case effectively.

The European Court of Human Rights found the violation of Article 3 of the Convention in respect of both applicants. The Court referred to its decisions already taken,<sup>39</sup> noting that Article 3 covers one of the fundamental values of society and, as such, prohibits in absolute terms torture or inhuman or degrading treatment or punishment.<sup>40</sup>

The Court found that the combination of physical assaults against the applicants (beating on their heads, face and abdomen), and in particular, rape aimed at obtaining a confession, amounted to torture and constituted a violation of Article 3 of the Convention.<sup>41</sup>

In cases where there is violence against a detainee but not for confession, the court considers beating the detainee by law enforcers as a violation of Article 3 of the Convention, yet the actions are treated not as torture but as inhuman treatment. In the case of Mikiashvili v. Georgia, the European Court held that he was subjected to ill-

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<sup>36</sup> Id. p.64

<sup>37</sup> The person had the witness status in one of the cases. According to her, two police officers requested her to plead guilty. When the applicant refused to do so, they started shouting and threatened to bring criminal proceedings against her. They took her scarf and administered several blows with the scarf to her face. Then one of the police officers left the room and the other policeman locked the door from inside and continued psychological and physical coercion. In particular, he fastened the applicant's hands with handcuffs and administered blows to her head and face. He raped her and forced her to perform oral sex with him. A few hours later, Maslova was repeatedly raped by policemen. MASLOVA AND NALBANDOV v. RUSSIA, (Application: 839/02) 28.01.2008, P. 13,14,31

<sup>38</sup> A police officer in the police unit pushed him into a room in which there were two unidentified police officers. After that, he locked the door from the inside, hit him in his trunk several times, and put his scarf around his neck and started to strangle him. Id. p. 25,26,27

<sup>39</sup> Aksoy v. Turkey and Aydın v. Turkey

<sup>40</sup> MASLOVA AND NALBANDOV v. RUSSIA, (Application: 839/02) 28.01.2008, p.99

<sup>41</sup> MASLOVA AND NALBANDOV v. RUSSIA, (Application: 839/02) 28.01.2008, p.105,122

treatment by police officers.<sup>42</sup> In the given case, the applicant alleged that he had been beaten by police officers at the moment of his arrest and was beaten in police custody, in the pre-trial detention and prison.

*Mikiashvili was arrested by law enforcement officers for resistance to the police. As Mikiashvili notes, during his arrest, police officers seized him, knocked him to the ground and beat him, hitting him in his head, abdomen and back; they were beating him with batons, especially, he received many shots to his head.<sup>43</sup> Following his arrest, the applicant underwent an external medical examination upon which the report was drawn up by a doctor on duty indicating a large bruise on the left part of the applicant's forehead, a large bruise on the right temple, a large bruise near the left eye and cheekbone, a bruise and evidence of an injury that had bled on his lips, and large bruises on his neck and all over his back.<sup>44</sup> According to Mikiashvili, he was beaten in the pre-trial detention facility<sup>45</sup> and after sentencing he was beaten in prison<sup>46</sup> by the deputy chief of the prison hospital and six prison employees.<sup>47</sup>*

The Court referred to its previous decisions in the above-mentioned case and explained that according to the Court's case-law, Article 3 does not prohibit the use of force for the purposes of implementing an arrest. However, such force may be used only in indispensable situations and must not be excessive.<sup>48</sup> Based on the case files, the actions of the police officers, which resulted in the applicant having a large amount of hematoma on his forehead, temple, near his left eye and cheekbone, bruises and damages causing bleeding in his lip and large bruising on his neck and entire back, head injury and concussion, go beyond the proportional interference with the right and can be deemed as a form of ill-treatment conducted by police officers.

**Having analyzed the case-law of the European Court of Human Rights, it can be concluded that the police may use physical force proportionate and proportional to the conduct of an individual during an arrest. However, beating and inflicting physical**

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<sup>42</sup> MIKIASHVILI v. GEORGIA (Application: 18996/06) 09.01.2013

<sup>43</sup> MIKIASHVILI v. GEORGIA (Application: 18996/06) 09.01.2013, p.24,36

<sup>44</sup> MIKIASHVILI v. GEORGIA (Application: 18996/06) 09.01.2013, p.6

<sup>45</sup> MIKIASHVILI v. GEORGIA (Application: 18996/06) 09.01.2013, p.36

<sup>46</sup> He was found guilty under Article 353 (2) of the CCG and was sentenced to imprisonment.

<sup>47</sup> MIKIASHVILI v. GEORGIA (Application: 18996/06) 09.01.2013, p.45,52

<sup>48</sup> MIKIASHVILI v. GEORGIA (Application: 18996/06) 09.01.2013, p.70

**injuries on a detained person shall constitute a violation of Article 3 of the Convention and based on the severity, violence, nature of injuries, purpose and consequences of such an act, it may be regarded as torture or inhuman treatment committed by police.**

The cases handled by GYLA as well as the results of the interviews with prisoners and lawyers show that law enforcement officers most commonly resort to physical assault/beatings and/or psychological violence expressed in threats and verbal insults as a form of ill-treatment.

The scrutiny of the GYLA's cases has revealed that physical and psychological violence against the detainees occurred repeatedly; it was going on for some time, causing severe psychological and physical pain to the detainees.<sup>49</sup>

The violation of the right protected by Article 3 of the European Convention on Human Rights can be found in a case litigated by GYLA, which resulted ***in severe consequences of physical violence, such as hematomas, smashed teeth, etc.***<sup>50</sup> Regarding the case of R.M. who had been inflicted serious injuries, the investigation was launched by the Investigative Unit of the Tbilisi Prosecutor's Office under Article 333 (3) (b) of the Criminal Code of Georgia. Since July 2019, GYLA has been involved in the criminal case proceedings of R.M. and requested to have the person recognized as a victim, but to this day, R.M. does not have the status of the victim.

## Psychological violence as a form of torture

Torture involves not only methods that cause immediate physical pain but also the actions of law enforcement officers that may result in severe psychological suffering. Psychological methods of torture include long-term duress, direct threats of torture and ill-treatment against a person or his/her family members, threats of rape, etc.<sup>51</sup>

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<sup>49</sup> Annex №4- the criminal case of R.M., Annex №9 –the criminal case of M.T., № 11- the criminal case of V.F

<sup>50</sup> See Annex №4 - the criminal case of R.M

<sup>51</sup> Interights Manual for Lawyers "The Prohibition of Torture and Inhuman or Degrading Treatment or Punishment under the European Convention on Human Rights (Article 3)", 2006

In a number of decisions rendered by the European Court of Human Rights, psychological violence is considered as a form of torture. In the case of *Selmoun v. France*, the applicant alleged that he had been arrested by law enforcement officers for drug offences. Upon his arrest, he was subjected to various forms of ill-treatment by police officers. Selmoun claimed he was subjected to both physical and mental ill-treatment.<sup>52</sup>

In the given case, the Court held that an act that causes fear, pain and a sense of inferiority that can humiliate and offend a person or result in physical and moral degradation is absolutely sufficient to constitute inhuman or degrading treatment or to be treated as an act under Article 3.

Identification of psychological violence is quite difficult but the Istanbul Protocol<sup>53</sup> provides information on those factors that can help to identify mental violence. According to the protocol, widespread complaints of psychological violence include headaches, back pain, gastrointestinal symptoms, sexual dysfunction, muscle pain. Common psychological symptoms include depressive affect, anxiety, insomnia, nightmares, flashbacks, and memory difficulties.<sup>54</sup>

Psychological violence on an individual under effective state control is characterized by quite serious consequences. Any act or a combination of acts by a police officer during or after arresting a person that causes his or her moral suffering, humiliation, fear for his or her family members' safety shall be considered a violation of Article 3 of the Convention.

Psychological violence is one of the forms of torture/ill-treatment identified through the given study. Mental violence, in the cases conducted by GYLA as well in those identified through the interviews, is perpetrated in the form of threats and blackmail. ***Moral pressure,<sup>55</sup> maximum sentence, and the threat of arresting other family***

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<sup>52</sup> Selmouni v. France, p.82.91 (Application: 25803/94) 28.09.1999

<sup>53</sup> UN 2004 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, translated into Georgian in 2017

<sup>54</sup> Id. p170

<sup>55</sup> Annex №6- the case of B.KH;

Annex №11- according to prisoner V.F, police officers repeatedly warned him during the interrogation to think wisely as his young wife was waiting for him outside

**members are the forms of threats and blackmail that is most frequently applied by law enforcement officials.**

The consequences of psychological violence for the victims **in two cases litigated by GYLA** were dire. ***The alleged psychological violence by police officers resulted in the victims' suicide.***<sup>56</sup> In spite of the illegal actions conducted by police officers and the fatal results, ***the investigation was not initiated under articles of torture/ill-treatment into either of the cases.*** An inmate that we interviewed noted an attempted suicide due to the ill-treatment he was subjected to by law enforcers. According to the convict, he attempted to commit suicide in prison after being placed in a state of severe psychological pressure for a long period of time.<sup>57</sup>

### **Forced abortion as a form of torture**

Forced abortion and sterilization fall within the case-law of the European Court of Human Rights in the scope of the rights guaranteed under Articles 3 and 8 of the European Convention. Sterilization constitutes a major interference with a person's reproductive health status and bears on manifold aspects of the individual's personal integrity including his or her physical and mental well-being and emotional, spiritual and family life. However, the position is different in the case of the imposition of such medical treatment without the consent of a mentally competent adult patient, as it contradicts the requirement to respect human freedom and dignity. Moreover, according to generally recognized standards, sterilization may be legitimately performed at the request of the person concerned or for established medical purposes.<sup>58</sup>

***Article 39 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the so-called Istanbul Convention) prohibits forced abortion and sterilization.*** Forced abortion, under the Convention, means

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<sup>56</sup> Annex №7- the case of L.S and Annex №6 – the case of B.KH;

<sup>57</sup> According to the inmate, he was subjected to psychological violence during the interrogation, which impacted on him so severely that he was constantly contemplating suicide. He also needed medical treatment at a mental asylum for some time due to the sustained psychological violence;

<sup>58</sup> V.C. v. SLOVAKIA (Application: 18968/07) 08.11.2011

abortion on a woman without her prior and informed consent. After the ratification of the Istanbul Convention, Georgia assumed the responsibility for bringing the national legislation into conformity with the Convention.

Over the years, the state has taken certain steps in this regard, yet ***the obligation undertaken in terms of forced abortion has not been implemented yet.*** Article 133 of the Criminal Code of Georgia criminalizes only illegal abortion and Article 133<sup>1</sup> of the CC envisages the punishment for sterilization. There has been no provision in the criminal law for years that would criminalize forced abortion and coercion to abortion.

Sterilization in Georgia is punishable under the Criminal Code and ***it is important that the legislator must reflect the requirements of the Istanbul Convention as soon as possible, introduce relevant amendments to the Criminal Code and criminalize forced abortion and coercion to abortion.***

In one of the cases handled by the GYLA, the coercion to abortion was allegedly perpetrated by a law enforcement official and the investigative authorities classified the act under several articles of the Criminal Code,<sup>59</sup> but none of them is the provision covering forced abortion as the Criminal Code does not envisage such norms.

The above lack was identified not only in the case litigated by GYLA but also highlighted in the report prepared by Public Defender in 2019 regarding “Sexual and Reproductive Health and Human Rights National Assessment.”<sup>60</sup> The report focuses on cases of violations of reproductive health rights, ***which make it difficult for women to make a decision on abortion independently in the country.***<sup>61</sup>

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<sup>59</sup> Annex №9; The investigation into the case of M.T. is in progress under Articles 133, 126, 150, 151, 115, 372 of the Criminal Code of Georgia.

<sup>60</sup> The study is available on the website: <https://bit.ly/3aqvWX1> [Last viewed: 05.03.2020].

<sup>61</sup> According to the study, women in ethnic Azeri and Armenian communities are extremely limited in the ability to make independent decisions on reproductive issues. The issues related to abortion and other female reproduction matters are generally decided by husbands, mothers-in-law or other senior members of a husband’s family.

## Video recording as the prevention of torture and police protection

According to the National Committee for the Prevention of Torture and Inhuman Treatment, protective measures shall be taken upon an arrest. One of the ways of prevention is to video record a communication of a person with a police officer.<sup>62</sup> Technological means make it possible to carry out recording with body cameras; also cameras<sup>63</sup> with different functions can be placed in police vehicles.

The National Committee for the Prevention of Torture also highlights the importance of video/audio recording in the interrogation/interviewing process.<sup>64</sup> According to the Committee, *it is important to produce a continuous video recording during interrogation and to ensure that the interviewee has access to the recording when requested*. Audio and video recording of interrogation of a person under police control is an important safeguard against torture and inhuman treatment.<sup>65</sup>

A video recording showing the condition of a person during the arrest, interrogation/interview and transportation of a detainee *may serve as significant evidence of alleged ill-treatment by law enforcement officers and a security mechanism*.

Pursuant to law, patrol police are entitled to conduct audio-video recording. According to a decree of the Minister of Internal Affairs of Georgia, an audio-video recording shall be carried out by technical means in accordance with the procedure established by the legislation for the purpose of protecting public order and security, responding to

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<sup>62</sup> Penal Reform International, Detention Monitoring Tool “Video recording in police custody”, 2015, P. 2;

<sup>63</sup> Penal Reform International, Detention Monitoring Tool “Video recording in police custody”, 2015, P. 2;

<sup>64</sup> Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment- (CPT), 2017, P.16,23, available on the website: <https://bit.ly/3954Nsu> [Last viewed: 05.03.2020].

<sup>65</sup> UNCAT Implementation Tool 2/2017, “SAFEGUARDS IN THE FIRST HOURS OF POLICE DETENTION”, P.6 Julia Kozma and Asbjørn Rachlew in cooperation with DIGNITY – Danish Institute against Torture, “Combating Torture During Police Custody and Pre-Trial Detention”, 2018, P.11

violations, ensuring the rights of citizens and police officers and comprehensive and thorough investigation of offences.<sup>66</sup> The Minister's decree also determines the terms and conditions of storing recordings made by the patrol police. ***Any data obtained by a patrol-inspector with the help of the body camera attached to his/her uniform shall be placed and stored by the patrol-inspector in charge of that particular video camera on a dedicated server for thirty days.***<sup>67</sup>

Unlike the patrol police, the ***Law of Georgia "On Police" does not envisage any requirement or authority of a criminal police officer*** (most of whom detain, interview and/or transport individuals to a temporary detention facility - DMI) ***to wear body cameras***. According to the Law of Georgia "On Police", police officers are obliged to be equipped with a video camera only during special police control.<sup>68</sup>

***A significant challenge furthermore is the lack of video surveillance cameras on the inner perimeter of police stations, in interrogation rooms and the areas where alleged ill-treatment most commonly takes place.*** GYLA was talking about this problem in previous years<sup>69</sup> and the Public Defender has mentioned the above as a problem.<sup>70</sup> According to the reports prepared by the Ombudsman of Georgia and the Human Rights Education and Monitoring Center (EMC),<sup>71</sup> most police stations are not equipped with video surveillance cameras. In those police units which are equipped with CCTV systems, they are installed only at the entrance to the buildings.

***For the prevention of torture and ill-treatment, it is important to make it mandatory at the legislative level for law enforcement to conduct video recording from the***

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<sup>66</sup> Decree №1310 of the Minister of Internal Affairs of Georgia "On the Approval of the Instruction on Police Patrolling by the Patrol Police of the Ministry of Internal Affairs of Georgia," 15.12.2005, Article 14, paragraph 1, subparagraph "e";

<sup>67</sup> Decree №1310 of the Minister of Internal Affairs of Georgia "On the Approval of the Instruction on Police Patrolling by the Patrol Police of the Ministry of Internal Affairs of Georgia, 15.12.2005, Article 12<sup>1</sup>, paragraph 1;

<sup>68</sup> The Law of Georgia "On Police," Article 24, paragraph 5;

<sup>69</sup> GYLA's research "Prevention and Response to incidents of Ill-Treatment", 2019, pp.30,31, available on the website: <https://bit.ly/3cfiy9E> [Last viewed: 05.03.2020].

<sup>70</sup> Report of the Public Defender of Georgia on "The Situation of Human Rights and Freedoms in Georgia," 2018, p. 25, 63, available on the website: <https://bit.ly/2wvfJB2> [Last viewed: 05.03.2020].

<sup>71</sup> The study conducted by Human Rights Education and Monitoring Center(EMC) "Ill-treatment Prevention in Police Work" 2019, p. 43, available on the website: <https://bit.ly/2vRBDON> [Last viewed: 05.03.2020].

***moment of starting an interrogation of a citizen until its completion.*** To prevent degrading and inhuman treatment, it is recommended to equip all areas (police vehicles, police premises, and particularly interview/interrogation spaces) where detainees have to wait after their arrest with audio-video equipment. The provision of audio-visual recording not only prevents torture and ill-treatment of a person by law enforcement officers during effective police control but can also protect the police from false accusations of torture and ensure important evidence in case proceedings.<sup>72</sup>



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<sup>72</sup> Preventing Torture An Operational Guide for National Human Rights Institutions, 2010, P.33

## Investigation of torture/ill-treatment cases

In addition to the implementation of a number of preventive measures, international organizations call on states to carry out prompt and effective investigations into the facts of torture and ill-treatment. The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been specifically designed to investigate such cases.<sup>73</sup> According to the Istanbul Protocol, "the fundamental principles of any viable investigation into incidents of torture are competence, impartiality, independence, promptness and thoroughness."<sup>74</sup>

The Criminal Code of Georgia provides for special provisions on the investigation of torture, threats of torture and inhuman or degrading treatment. Along with the specific articles on torture/ill-treatment, the Criminal Code envisages the articles on the abuse of authority by an official or a person equivalent to him or her<sup>75</sup> and the punishment for forcing explanations, evidence and opinions.<sup>76</sup>

***The investigations into the cases of ill-treatment handled by the GYLA, despite the severe forms of the physical and psychological violence, were in most cases initiated under Article 333 of the Criminal Code, which envisages abuse of official powers. The investigation into six out of ten criminal cases under the GYLA's proceeding is conducted as per the aforementioned article.*** In single cases only litigated by GYLA, the investigation is being conducted under Articles 335, 115 and 137 of the Criminal Code and in one case under the combination of Articles 115, 126, 133, 150, 151 and 372 of the Criminal Code of Georgia.

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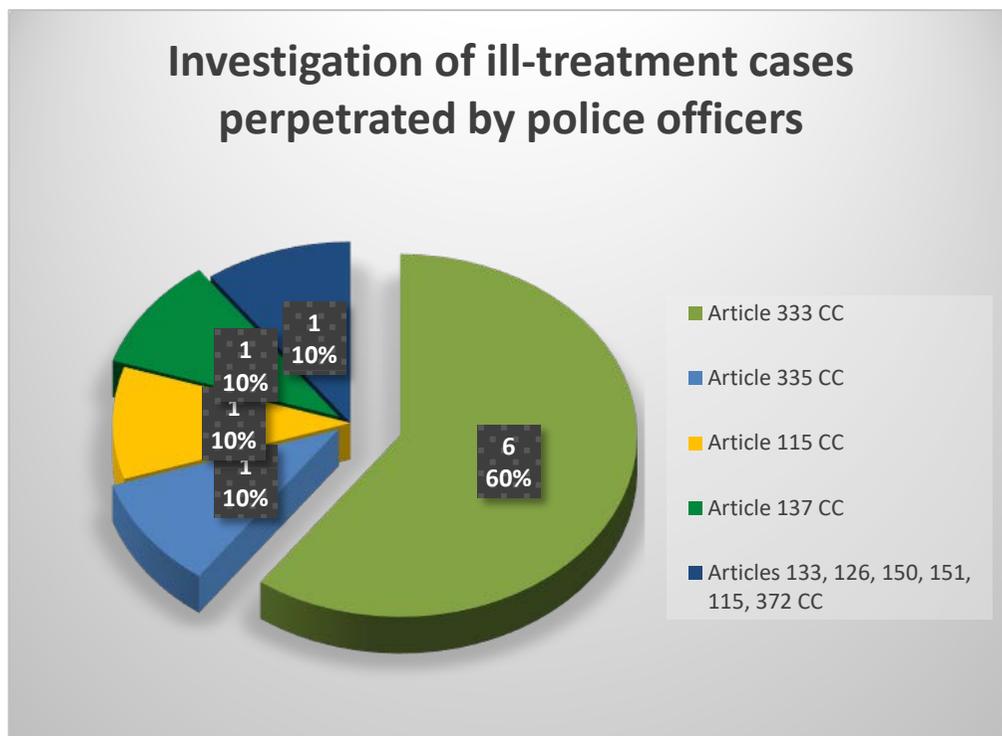
<sup>73</sup> Istanbul Protocol

<sup>74</sup> Istanbul Protocol, p. 73

<sup>75</sup> The Criminal Code, Article 333

<sup>76</sup> Id. Article 335

**Diagram №1** shows the rate of investigating the criminal cases managed by GYLA according to articles.



None of the cases litigated by GYLA in 2019 were investigated under Articles 144<sup>1</sup>-144<sup>3</sup> of the Criminal Code of Georgia. GYLA requested information about the investigations initiated under Articles 144<sup>1</sup>-144<sup>3</sup> of the Criminal Code from the Office of the Prosecutor General of Georgia.<sup>77</sup> In particular, the Chief Prosecutor's Office was requested to provide public information concerning crimes envisaged under Articles 144<sup>1</sup>-144<sup>3</sup>, Article 332(3) (b) and (c), Article 333(3) (b) and (c), Article 335 and Article 378 (2) of the Criminal Code of Georgia and/or a combination of these articles from 1 January 2019 to 1 October 2019, namely:

<sup>77</sup> GYLA's statement №8-04/247-19 issued on 11 November 2019

1. The number of cases and individuals in relation to which the investigation was launched;
2. The number of cases and individuals in relation to which the investigation was terminated;
3. The number of cases and individuals who were refused the victim status;
4. The number of ongoing cases where more than six months have elapsed since the initiation of the investigation and if the alleged survivors have been granted the victim status.

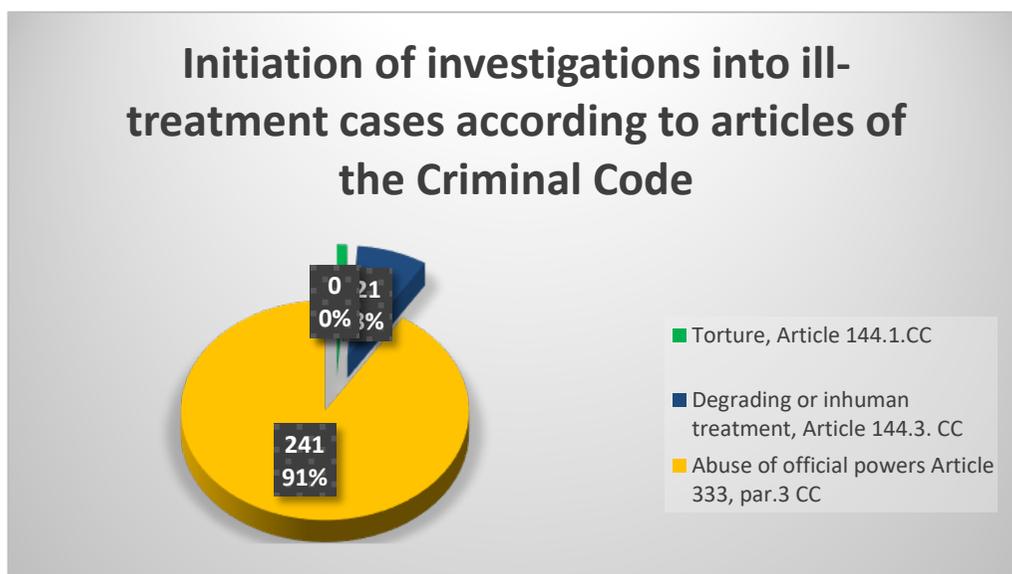
The fact that in most cases the investigations into alleged ill-treatment incidents are conducted under Article 333 of the Criminal Code has been also confirmed by public information retrieved by GYLA from the Office of the Prosecutor General of Georgia.<sup>78</sup>

**According to the statistics, a large number of investigations, namely concerning 241 cases, were launched under Article 333(3) (b) of the Criminal Code in 2019. The investigation under Article 144<sup>1</sup> of the Criminal Code was initiated into three cases. This year, none of the investigations has been launched under Article 144<sup>2</sup> of the Criminal Code, and 21 criminal investigations have been initiated under Article 144<sup>3</sup> of the Criminal Code.**

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<sup>78</sup> Letter №13 / 77665 of the Chief Prosecutor's Office of Georgia, dated 4 November 2019

## Diagram №2



In the event that an act of ill-treatment perpetrated by a public official or an equivalent is classified under Article 144<sup>1</sup> of the Criminal Code of Georgia, the law envisages imprisonment from nine to fifteen years as a punishment and in the case of classification under Article 333 (3) of the CC, deprivation of liberty from five to eight years.

***Accordingly, conducting an investigation under Article 333(3) of the Criminal Code may serve the purpose of imposing a relatively lenient punishment if it has been confirmed that the offence was committed by a law enforcement officer.***

Besides that the classification of severe physical and psychological violence perpetrated by law enforcement officers during arrests and/or interrogation/interviewing of a detainee as the power abuse is incorrect, the quality of conducting the investigations under this article is also worth noting: in particular, the length of investigations, granting the victim status and rendering the final decision (or presenting a charge in the case of the Prosecutor's Office).

***More than six months have passed since the initiation of the investigation in five of the GYLA-litigated cases, yet the GYLA's clients have not been known as victims so far.***<sup>79</sup>

GYLA has not received information as requested from the Prosecutor General's Office concerning the number of cases in relation to which six-month period has passed since the commencement of the investigation and if the persons have been known as victims. The Prosecutor's Office provided us with information on the number of refusals to the victim status. ***According to these data, the Prosecutor's Office refused to recognize persons as victims in 10 cases in 2019.***<sup>80</sup>

In order to analyze the application of the right conferred by the legislation to appeal in a court a decision of a superior prosecutor refusing the victim status<sup>81</sup> and current trends, GYLA retrieved from the Supreme Court of Georgia public information on the complaints filed with the Court regarding the refusal of superior prosecutors to grant the victim status.<sup>82</sup> Simultaneously, GYLA requested information from the City Courts on the number of appeals lodged with the courts regarding the decisions refusing the victim status and relevant court judgments.<sup>83</sup>

According to the information obtained from the Supreme Court of Georgia, ***a total of 13 complaints throughout Georgia were filed with the Court appealing against the***

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<sup>79</sup> In merely two cases out of the current ten cases, the beneficiaries have been known as victims. Both cases have been handled by the GYLA since December 2019. Information is available on the website: <https://bit.ly/37ERJZf> [Last viewed: 05.03.2020]. <https://bit.ly/2SDuY3s> [Last viewed: 05.03.2020].

<sup>80</sup> Letter №13 / 7765 of the Chief Prosecutor's Office of 4 November 2019

<sup>81</sup> The Constitutional Court upheld the complaint filed by GYLA to protect the interests of G.G. with regard to the unconstitutionality of Article 56(5) of the Constitution of Georgia and found the third sentence of Article 56(5) of the Constitution unconstitutional and the third sentence of paragraph 6 of the same Article unconstitutional with regard to Article 14 and Article 42, paragraph 1 of the Constitution. As a result of the amendments introduced to the Code in September 2019, the mentioned decision of prosecutors may be appealed in all categories of cases.

Constitutional Court Decision No. 2/12/1229, 1242, 1247, and 1299 in 2018, available on the website: <https://bit.ly/2VpWi74> [Last viewed: 05.03.2020].

<sup>82</sup> GYLA's statement №8-04 / 244-19 of 11 October 2019;

<sup>83</sup> GYLA's statement №8-04 / 241-19 of 11 October 2019 to Batumi City Court;

GYLA's statement №8-04 / 242-19 of 11 October 2019 to Rustavi City Court;

GYLA's statement №8-04 / 243-19 of 11 October 2019 to Kutaisi City Court;

GYLA's statement №8-04 / 245-19 of 11 October 2019 to Tbilisi City Court;

GYLA's statement №8-04 / 246-19 of 11 October 2019 to Poti City Court;

**decisions denying the victim status.**<sup>84</sup> Of these, ten were filed with Tbilisi City Court, one to Rustavi City Court, and 1-1 to Telavi and Zugdidi District Courts, respectively.

The analysis of the ten court judgments received from Tbilisi City Court (these ten court rulings concern six criminal cases) and one court ruling from Rustavi City Court,<sup>85</sup> a total of 11 judgments (rendered into seven criminal cases), revealed that in merely one case the appeal to invalidate the decision of the prosecutor refusing the victim status was granted.

**The analysis of the information provided by the Prosecutor's Office and the city courts shows that the majority of the decisions of the Prosecutor's Office refusing the victim status have been appealed in the court.**

**A complaint concerning the Prosecutor's Office refusal to recognize a person as a victim has been filed with the court in seven cases.**<sup>86</sup>

Conducting a prompt and effective investigation in cases of torture and ill-treatment is crucial, yet equally important is to render a final decision into such cases within reasonable timeframes. Delivering a final decision by the Prosecutor's Office means filing charges and bringing the case proceeding to the court. Out of ten criminal cases litigated by GYLA, in only two cases, the individuals were indicted,<sup>87</sup> of which one was charged with Article 335 of the CC and the other under Article 137 of the Criminal Code of Georgia.

The Prosecutor General's Office, along with the data on the initiation of investigations into the crimes envisaged by Articles 144<sup>1</sup>, 144<sup>3</sup>, 333 (3) (b) and (c) of the Criminal Code of Georgia from 1 January 2019 to 1 October 2019, also provided us with the information on the initiation of prosecution under the above articles.

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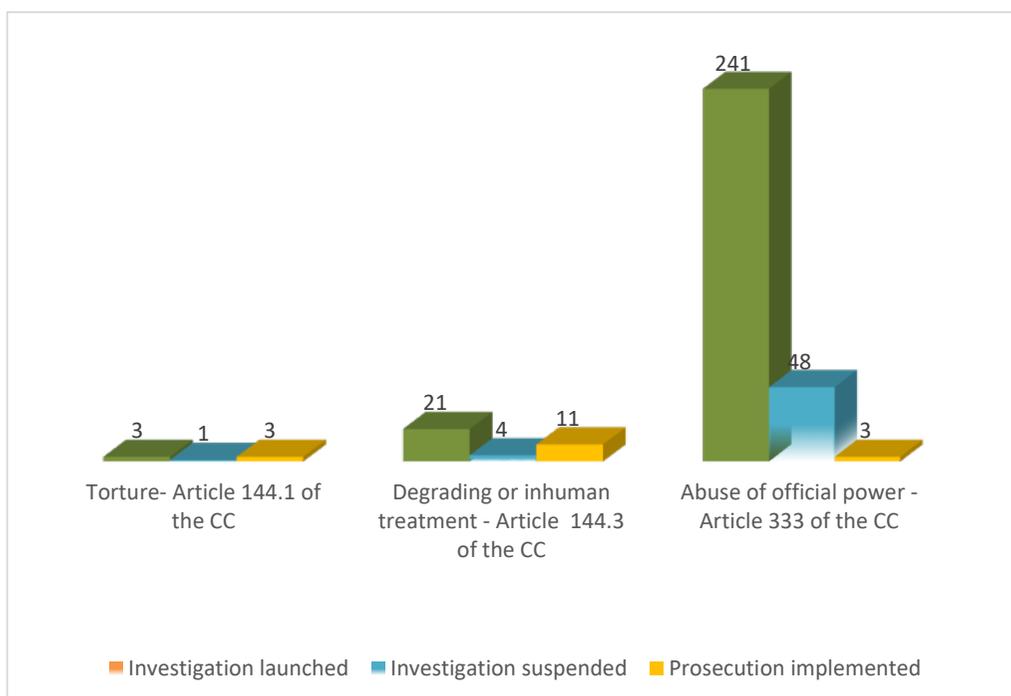
<sup>84</sup> Letter №3 128019 of the Supreme Court of Georgia dated 25 October 2019

<sup>85</sup> Eleven judgments in seven criminal cases rendered by Tbilisi and Rustavi City Courts have been studied. Judgments rendered by Telavi and Zugdidi districts have not been studied.

<sup>86</sup> The seven cases do not include the complaints filed with Telavi and Zugdidi District Courts regarding the refusal to the victim status, as the GYLA have not studied these complaints;

<sup>87</sup> See Annex №7 and №10;

**Diagram №3** - The data of the nine-month period 2019 showing the rate of the initiation, termination of investigations and conducting prosecution by the Prosecutor's Office under Article 144<sup>1</sup>, Article 144<sup>3</sup> and Article 333(3) of the CC.



**As per the information provided by the Prosecutor's Office, only three persons were prosecuted in the investigations initiated under Article 333(3) (b) of the Criminal Code, which amounted to merely 1.6% of the cases. The low rate of prosecution against the background of a large scale of investigations can be said to be critical.**

Having analyzed the cases litigated by GYLA, public information and court rulings on the complaints concerning the refusal to the victim status, we can conclude that there

are still challenges in terms of appropriate classification of inhuman treatment cases, effective investigation within reasonable and effective timeframes, recognition of victims and prosecution. In the availability of specific provisions, opening investigations into ill-treatment cases under Article 333(3) of the Criminal Code that provides for a more lenient sentence than the specific provisions raises doubts whether this serves the purpose of alleviating the responsibility of law enforcement authorities.



# The State Inspector Service

## Setting up the Service

For years, the necessity for creating an independent investigative mechanism has been indicated by multiple actors,<sup>88</sup> including civil society organizations.<sup>89</sup> ***The demand for setting up an independent investigative mechanism stemmed from shortcomings in the investigations of crimes committed by law enforcement officers in the country.*** The need for an independent investigative mechanism was also highlighted in the Association Agreement signed between Georgia and the European Union and its accompanying Association Agenda 2014-2016.<sup>90</sup>

Although the Ministry of Justice of Georgia ***did not accept important recommendations concerning the draft law on State Inspector Service***, non-governmental organizations were actively expressing their readiness to cooperate with the Parliament of Georgia and presented their views to elaborate the draft law.<sup>91</sup>

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<sup>88</sup> The draft law on an independent investigative mechanism, available at: - <https://bit.ly/31Cf6kQ> [Last viewed: 05.03.2020] <https://bit.ly/31Cf6kQ>

The Appeal of the Coalition for Transparent and Independent Judiciary to the Committee of Ministers of the Council of Europe in 2017, available at: <https://bit.ly/37Ypu8N> [Last viewed: 05.03.2020].

The joint statement prepared by the Coalition for Transparent and Independent Judiciary and the Public Defender regarding the Independent Investigative Mechanism, available at: <https://bit.ly/2S0zGbo> [Last viewed: 05.03.2020].

The assessment by the Coalition for Transparent and Independent Judiciary of the State Inspector Service, available at: <https://bit.ly/2S1NxxZ> [Last viewed: 05.03.2020].

<sup>89</sup> Thomas Hammarberg, Human Rights Report, 2013, available at: <https://bit.ly/2UtvmtB> [Last viewed: 05.03.2020].

Public Defender of Georgia, Special Report “The Practice of Investigation of Alleged Crimes by Law Enforcement Officers, Legislative Regulations and International Standards of Effective Investigation, 2014, Available at: <https://bit.ly/2RZWms6> [Last viewed: 05.03.2020].

<sup>90</sup> National Action Plan for the Implementation of the Association Agenda between Georgia and the European Union 2015, available at: <https://bit.ly/2GVh32h> [Last viewed: 05.03.2020]

<sup>91</sup> Comments prepared by the Coalition for Independent and Transparent Judiciary on the Draft Law on the State Inspector Service, available at: <https://bit.ly/2UxH8wb> [Last viewed: 05.03.2020].

After years of an active battle, the Law “On State Inspector Service” was approved on 21 July 2018 and instead of the Personal Data Protection Inspector, the State Inspector Service was created entitled to investigate cases of ill-treatment.<sup>92</sup>

*The establishment of the State Inspector Service is a step forward, yet it is still a problem that some important issues remain beyond the mandate of the Inspector, such as the lack of the investigative powers over crimes committed by the Chief Prosecutor of Georgia, the Minister of Internal Affairs and the Head of the Georgian Security Service.*<sup>93</sup>

It is also problematic that the Inspector’s investigative jurisdiction covers not all crimes committed by law enforcement officials but only offences envisaged under Articles 144<sup>1</sup> –144<sup>3</sup>, Article 332(3)(b) and (c), 333(3) (b) and (c), Article 335 and/or Article 378 (2) of the Criminal Code.<sup>94</sup>

***Equipping the State Inspector Service with investigative powers only cannot be assessed positively either.*** According to Article 22 of the Law “On State Inspector Service,” procedural management and supervision shall be implemented by the Prosecutor’s Office and the latter shall be entitled to prosecute the cases investigated by the State Inspector Service.<sup>95</sup>

## Staffing the Investigative Unit

The Law “On State Inspector Service” determines the timeframes and obligation to initiate investigations into crimes falling within the competence of the State Inspector and the power to appoint that particular number of investigators required to fulfill the requirements of the law. Nonetheless, the said timeframes were changed several times and were finally determined by 1 November 2019.<sup>96</sup> Until 1 November 2019, the State

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<sup>92</sup> The Law of Georgia “On the State Inspector Service,” Article 19

<sup>93</sup> The Law of Georgia “On the State Inspector Service,” Article 3, paragraph 1, subparagraph “h”

<sup>94</sup> The Law of Georgia “On the State Inspector Service,” Article 19, paragraph 1;

<sup>95</sup> The Coalition for Transparent and Independent Judiciary, statement, available at: <https://bit.ly/31vLXYr> [Last viewed: 05.03.2020].

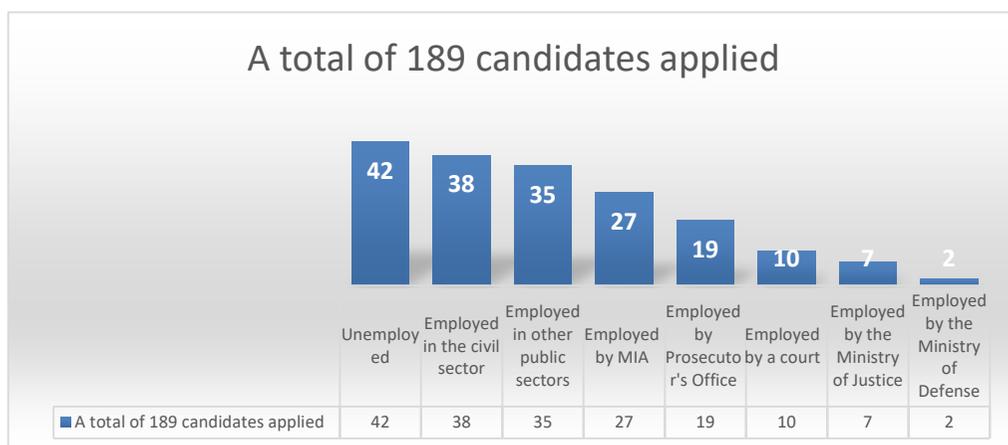
<sup>96</sup> The Law of Georgia “On the State Inspector Service,” available on the website: <https://bit.ly/2SGkRei> [Last viewed: 05.03.2020].

Inspector Service had been required by law to appoint the necessary amount of investigators. For the purposes of the report, GYLA requested from the Inspector Service public information<sup>97</sup> about the number of applications submitted for the vacant positions of the investigator, the place of employment of applicants at the moment of submitting applications and the final results of the competition.

**According to the reply received from the State Inspector Service, a vacancy was announced for 19 investigator positions, with 16 investigators eventually appointed (84%).**

The competition was open, along with those employed in various public sectors, to individuals from the civil sector and unemployed persons at the moment of applying for the State Inspector vacancy.

**Diagram №4** provides information on the percentage of applications submitted by persons employed in different sectors in comparison to the total number of applications.



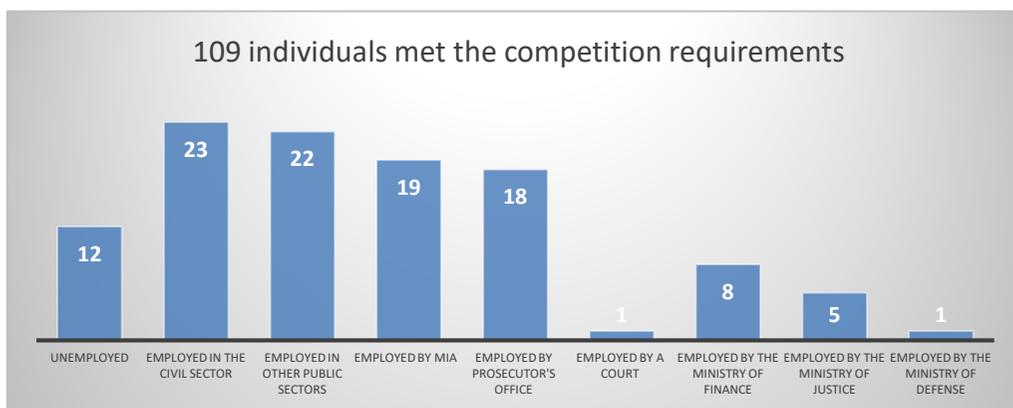
The shortlisted applicants who managed to meet the requirements of the competition were 109 (58%) and they were allowed for the written test stage.

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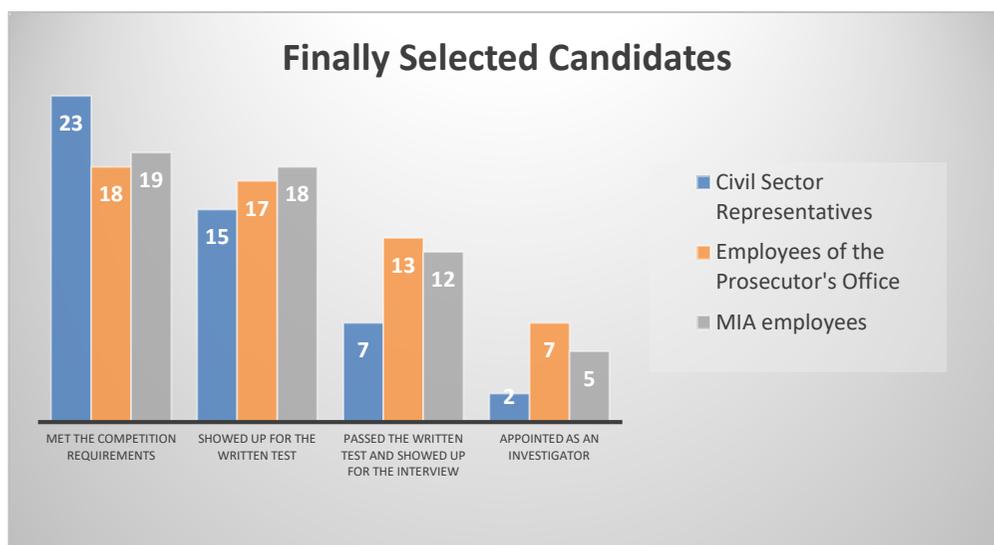
An explanatory note attached to the Draft Law of Georgia “On Amendments to the Law on State Inspector Service” available on the website: <https://bit.ly/2P4wSb6> [Last viewed: 05.03.2020].

<sup>97</sup> GYLA’s Statement 3-04/256-19 dated 27 November 2019;

**Diagram №5** provides the information on the number and percentage of the employed candidates in different sectors that were among 109 candidates who passed the first stage and were shortlisted for the written exam.



**Diagram №6** reflects the ratio of applicants employed by the Prosecutor's Office, MIA, and the civil sector at various stages of the competition and the final number of candidates selected for the position of the Investigator.



None of the contestants who were unemployed, working in other public sectors, employed in the judiciary system, the Ministry of Justice and the Ministry of Defense were hired by the State Inspector Service.<sup>98</sup> *As a result of the competition, the Investigative Unit of the State Inspector Service was mainly staffed by employees of the Chief Prosecutor's Office and the Ministry of Internal Affairs, as well as two employees of the Ministry of Finance and two persons from the civil sector.*

The State Inspector Service, as an independent investigative mechanism, was created to resolve the doubts regarding the work of the Prosecutor's Office with respect to investigating the cases of ill-treatment. Composing 75% of the Investigative Unit of the State Inspector Service with employees of the Office of the Prosecutor General of Georgia and the Ministry of Internal Affairs, among them an investigator of the Tbilisi Prosecutor's Office was appointed as an investigator in the State Inspector Service, who failed to investigate torture /ill-treatment related to I.Kh, the case litigated by GYLA,<sup>99</sup> can undermine the public trust towards the State Inspector Service.



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<sup>98</sup> The Letter SIS 71900006877 of the State Inspector Service dated 12 December 2019

<sup>99</sup> GYLA's Statement regarding the appeal into the case of I.KH to the European Court of Human Rights, available on the website: <https://bit.ly/2Prlwhx> [Last viewed: 05.03.2020].

The case of Irakli Khoperia is under consideration by the European Court of Human Rights. Case - KHOPERIA v. GEORGIA (Application 24736/19) 20.05.2019

## Conclusion and recommendations

Despite the actions taken by the state over the years, the cases of torture and ill-treatment and response thereto remain a challenge. The report shows that physical and psychological violence is most frequently used by law enforcement officers as a form of torture/ill-treatment. Inhuman treatment is most common during arrests, transportation and interrogation of detained persons in police stations.

Although only one case of forced abortion was reported in the course of the preparation of the report, it still shows that the State should bring national legislation into conformity with the Istanbul Convention as soon as possible.

Proper classification of facts of torture and ill-treatment by investigative authorities, conducting effective investigations within reasonable timeframes, granting the victim status to survivors and prosecution of perpetrators remains a major challenge.

The eventual enactment of the State Inspector Service and the timely initiation of investigations into cases falling within its scope have been highly appreciated, yet the adoption of the current edition of the Law “On State Inspector Service” limiting the Inspector’s mandate cannot earn a positive evaluation.

***With the view to addressing the identified problems, GYLA deems it important that relevant agencies should take the following recommendations into consideration:***

### For Parliament of Georgia

- Introduce amendments to the Criminal Code, bringing it in line with Article 39 of the Istanbul Convention and criminalize coercion to abortion and forced abortion.
- Amend the Criminal Procedure Code to make conducting an audio-video recording of the interrogation or interview in an investigative body mandatory.

### For the Ministry of Internal Affairs

- Ensure that a police officer communicates with citizens with his or her body camera on.
- Ensure the technical maintenance of vehicles and equipment used by the police and relevant departments so that the police can produce a video recording of the entire period of effective police control of citizens.

### For the Prosecutor's Office

- Cases of torture/ill-treatment should be classified under relevant articles corresponding to each perpetrated act.
- Investigate/supervise cases of alleged torture/ill-treatment committed by law enforcement officers within reasonable timeframes.
- In the above cases, ensure that victims of alleged crimes are granted the victim status and informed about the progress of the case proceedings.

### For the State Inspector Service

- The Investigative Unit of the State Inspector Service should be staffed with those investigators whose impartiality is not doubted upon their appointment.
- Ensure a prompt, effective and impartial investigation of cases of torture and ill-treatment.

# Annex

## 1. The case of A.G. and G.B.

**GYLA has been litigating the case since January 2019.**

On 27 October 2018, in the evening hours, the above-mentioned individuals were traveling in a car within Zugdidi District when police officers from the MIA Senaki District Police Division demanded the vehicle to stop. ***As soon as the car stopped, police officers forced G.B. out of the vehicle and physically assaulted him.*** While G.B. was physically abused, A.G. managed to phone his wife, K.G. as well as S.B., who lived on the same street and asked them for help. He himself was begging the police officers to stop violence against G.B.

The violence by the law enforcers was witnessed by several persons, including two minors. The abuse of power by police officers continued even after the accused was transported to the police unit, which has been confirmed by the defendants and their family members. Their family members could hear A.G. and G.B. yell in the police unit. As the witnesses noted, they could also hear police officers verbally insulting the detainees.

The criminal case is being investigated by the Samegrelo-Zemo Svaneti Regional Prosecutor's Office under Article 333 of the Criminal Code of Georgia. Several persons have been interrogated into the criminal case, yet the minors have not been interviewed so far. Moreover, the District Prosecutor's Office failed to remove A.G.'s clothes he was wearing at the moment of his arrest. A.G. and G.B. **have not been known as the victims to this day.**

## 2. The case of P.F.

**GYLA has been litigating the case since March 2019.**

P.F. worked together with his wife on G.T.'s farm. In May 2018, the relationship between P.F. and his employer G.T got tense, so P.F and his wife decided to leave the farm. Upon leaving the job, P.F., without telling anything to G.T., seized a hunting rifle owned by I.T, G.T's brother. As P.F said he did it allegedly for self-defence purposes (he needed the firearm to protect himself against wild animals).

The farm owners, G.T and I.T, reported to the police the loss of the hunting rifle. In May 2018 (several days after leaving the farm), police arrested P.F. and his wife, N.F., in Tbilisi. The investigator of the case E.A, the Deputy Chief of Tetrtskaro Police Division and another district inspector transported P.F and N.F in a car from Tbilisi.

Near the village of Ponichala, investigator E.A. stopped the car. The Deputy Chief of Tetrtskaro Police Division asked N.F out of the vehicle. For several minutes, G.T and the Deputy Chief of the Tetrtskaro police division were talking near the police car (G.T. and the Deputy Chief of Tetrtskaro police are friends). Having finished the conversation, G.T approached the vehicle where P.F, the investigator E.A and the district inspector were sitting.

***G.T. got into the car, in particular, in the rear seat where P.F was sitting. Upon getting into the car, G.T punched severely P.F several times in his head area and verbally insulted him. Neither the Tetrtskaro police chief nor his deputy, the investigator, district inspector reacted to the violence perpetrated by G.T. against P.F.***

Once he finished beating P.F, G.T got out of the vehicle, exchanged a few words with the deputy chief of the Tetrtskaro police division and returned to his own car. P.F was taken to a pre-trial detention facility.

The investigation into the fact of beating P.F was launched under Article 333(3) (b) of the Criminal Code of Georgia, but criminal prosecution has not been initiated against any person and **P.F has not been recognized as a victim**. According to the Kvemo Kartli District Prosecutor's Office, investigative activities are still in progress.

### 3. The Case of Z.M (deceased)

**GYLA has been involved in the case of Z.M since April 2019.**

**Z.M, a citizen of the village of Kachreti, Gurjaani Municipality, *was physically and verbally assaulted by police officers ,causing the deterioration of his health. As a result of the inflicted injuries, Z.M died in Ghudushauri Medical Facility on 15 April 2019.***

The Kakheti Regional Prosecutor's Office is currently investigating the case under Article 333(3) (b) of the Criminal Code of Georgia.

As of today, **no legal successor of Z.M has been known yet.**

### 4. The Case of R.M

**The case of R.M. has been litigated by GYLA since July 2019.**

On 31 March 2019, R.M was arrested ***by police officers who allegedly punched and kicked him in his head and torso areas upon the detention. As a result of the aforementioned violence, he had his teeth smashed, developed a hematoma over his eye*** and suffered from pain in his head. After all this, R.M. was taken to a temporary detention isolator where his injuries were recorded. R.M. provided a comprehensive report to the investigative authorities and the General Inspector on the violence perpetrated against him.

The Investigative Unit of the Tbilisi Prosecutor's Office initiated an investigation under Article 333(3) (b) and as of today, investigative activities are in progress. **R.M has not been known as a victim.**

## 5. The case of B.M (a minor)

**GYLA has been handling the case of B.M since August 2019.**

In August 2019, K.F approached the Telavi office of GYLA and declared that B.M., his minor neighbour residing in the village of Vejini, Gurjaani Municipality, was transferred by police officers to the MIA Gurjaani District Police Division for questioning. The applicant reported that *the police officers were pressurizing B.M to obtain his "confession;" namely, law enforcers were coercing B.M to admit to murdering certain V.M.* Having beaten and hinging B.M head down out the window, the police officers managed to obtain the confession of murdering the person. A few days after the confession, the so-called murdered man was found alive.<sup>100</sup>

The Investigation Unit of Kakheti Regional Prosecutor's Office is conducting the investigation. The investigation is in progress under Article 333 of the Criminal Code of Georgia.

As of today, **B.M has not been known as a victim.**

## 6. The case of B.Kh

**GYLA has been litigating the case since December 2019.**

In May 2019, an investigation was launched against B.KH (the person died as a result of suicide) into an illegal cutting of trees.

As far as B.KH, according to his brother, knew he was going to be charged unlawfully, he was forced to cross the border and leave the country. Several months following the initiation of the investigation, B.KH returned to Georgia and after the cooperation with the police, *a plea agreement was signed sentencing him to deprivation of liberty,*

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<sup>100</sup> B.M's interview, available on the website: <https://bit.ly/2VNYt4C> [Last viewed: 05.03.2020].

***which was counted as a suspended sentence. A few days after the completion of the court trial, B.KH committed suicide.***

According to his family members, ***police officers were compelling B.KH to cooperate with the investigative body and admit to the illegal logging of 400 cubic meters of trees, which the deceased would not agree to.*** After the completion of the trial, the police officers repeatedly phoned B.KH every day and summoned him to the Jvari police station. As B.KH's mother said, he was summoned to the Jvari police unit twice per day.

**On the day of his death, B.KH told his brother, N.KH that the pressure perpetrated by law enforcers morally destroyed him. Within several hours after this conversation, B.KH committed suicide leaving behind a letter in which he accused certain police officers of inciting him to suicide.**

The investigation into the criminal case was launched under Article 115 of the CC. Despite the contents of the letter, the criminal case had been investigated for months by the body which the deceased was blaming for the incitement to suicide. It was only in December 2019 after the GYLA's involvement in the criminal case that the investigation was re-initiated by the competent body – Samegrelo-Zemo Svaneti Regional Prosecutor's Office. So far, the investigative authorities have not been able to charge anyone and identify a victim's legal successor.

## **7. The case of L.S (a minor)**

**GYLA has been involved in the case of L.S since December 2019.**

On 11 December 2019, L.S, a minor, allegedly committed suicide. On 10 December 2009 (approximately between 17:00-23:00) and 11 December (approximately 11:00-12:00), ***L.S was subjected to psychological violence by officers of the Didube-Chughureti Police Department.***

The juvenile was inflicted on psychological violence (the police officers threatened him that his brother would be expelled from school because of him; they threatened him with wringing his neck as they did to other offenders) and forced the juvenile to plead guilty. The psychological violence by the police officers was so intense and severe that the juvenile wept and asked for urgent medical assistance but he was not provided with the one.

As a result of the pressure and coercion, L.S felt so depressed and insecure that he allegedly committed suicide.

**On 12 December 2019, based on the GYLA's application, the Investigative Unit of the State Inspector Service initiated an investigation into the coercion to evidence.**

**As of today, M.CH, the investigator, has been charged under Article 335(1) of the Criminal Code.**

## **8. The case of G.M**

**GYLA has been handling the case of G.M since December 2019.**

On 18 November 2019, while G.M was taking part in a protest rally near the Parliament buildings, he was hit by water cannon leaving him with serious damages; in particular, he had his hand broken.

Currently, the State Inspector Service is investigating the case under Article 333(3)(b) of the CC. **G.M has not been known as a victim.**

## 9. The case of M.T

**GYLA has been litigating the case of M.T since January 2019.**

M.T had been in a romantic **relationship with T.O., the Chief of Zestafoni District Police Department**, since 2017. In spring 2018, M.T suspected that she was pregnant. A few days later, after the medical examination, M.T told T.O. of her pregnancy. **Several days after learning of her pregnancy, M.T and T.O met with each other and T.O told M.T to have an abortion because her pregnancy would interfere with his career plans, but M.T refused.** After that, T.O was trying to talk M.T out for several days, but with no avail.

Once T.O became convinced that M.T was not going to have an abortion, he resorted **to threatening and coercing her to an abortion.** T.O threatened to kill her, harm her and her family members and damage her health. He even physically assaulted M.T.

In May 2018, T.O phoned M.T and told her that his employee, R.KH, would arrive in a car to bring her to see him. On the same day, as instructed by his friend, a police officer, **R.KH lured M.T into a vehicle and drove her to Kutaisi to have an abortion. The whole way R.KH was exerting psychological pressure on M.T,** threatening to cause serious problems if she refused to an abortion. Upon the arrival at the clinic, M.T told a doctor that she was not planning to have an abortion and that she had become a victim of coercion. **Having said that, M.T ran out of the clinic and found the shelter in a nearby shop, but upon leaving the shop, R.KH caught her. He forced her into the vehicle and drove her to the riverbank. In a few minutes, T.O showed up. T.O physically assaulted M.T, forcing her to have an abortion.** After that, they returned to the same clinic again, where M.T again declared that she did not want an abortion.

T.O, owing to his influence, managed to persuade both the chief physician and the doctor performing the procedure to carry out an abortion on M.T; Ultimately, M.T was given anesthesia and abortion.

**Due to constant threats and humiliation, M.T experienced so much stress that she even attempted to kill herself, in particular, she took a large number of pills that sent her to be unconscious, but doctors managed to save her.**

The case is currently being investigated under Article 133(1), Article 126(1), Article 150 (2) (a), Article 151(1), Article 115, and Article 372(2) of the Criminal Code. **Despite GYLA's numerous requests, Manana Talakhadze has not been known as a victim.**

## 10. The case of G.P.

**GYLA has been involved in the case of G.P since November 2019.**

On the evening of 26 November 2019, G.P was contacted via a social network by **A.D, a criminal police officer of the MIA Chkhorotsku District Police Division**, and asked for her contact details. G.P gave him her phone number because she knew him. She had communicated with A.D previously when she was involved in a criminal case conducted by the Chkhorotsku police division. On the morning of 27 November, A.D. contacted G.P on her phone number and asked her to come to Chkhorotsku to meet him regarding a certain case. G.P. refused as she was preparing to give a public lecture. **A.D insisted on her arrival, otherwise threatened her that everyone would know certain details of her personal life.**

**G.P met A.D, who threatened and forced her to engage in oral sex with him, and then threatened her that if she talked about it to anyone she would go into serious troubles.**

After A.D left, G.P reported the incident to 112 and requested help. Within a few minutes after calling 112, she was approached by employees of the **Senaki District Police Department who took her to the police unit where she was held until nine o'clock in the evening so that no investigative activities were carried out.** On the next day, the applicant was contacted by the District Prosecutor's Office where she was being interrogated throughout the day and only in the evening they started conducting other investigative actions.

**G.P has been known as a victim in the criminal case and A.D was charged with Article 137 (rape) of the Criminal Code of Georgia.**

## 11. The case of inmate V.F.

GYLA interviewed prisoner V.F who declared that he was arrested in February 2013, during the night hours, in his relative's apartment, Tbilisi. The police officers did not inform him of the reason for his arrest. He was handcuffed and forced into a police vehicle. On the way from the place of his detention to the police station, **a police officer physically assaulted V.F in the police car, namely, punched him in the head several times.**

Upon the arrival at the police station, V.F was verbally insulted and told that he was well aware of what he had done and why he was brought to the police. **According to V.F, after urging the police for an explanation for his detention, they again told him that he knew very well that he was taken in custody for a burglary he had supposedly committed together with his friends and it would be better for him to plead guilty.** Once V.F refused to admit to the crime he had not committed, the police started punching him even more severely. **The police officers first beat V.F. in his face and head areas; however, having seen that with these actions they would not obtain the confession, they stripped him off his socks and started beating him on his foot soles.**

After repeated battery, the police officers allowed V.F. to meet his father in the police unit, who told V.F that the police were pressurizing him and the father asked V.F. to plead guilty. After meeting with his father, **the police officers appeared again and warned V.F that unless he pleaded guilty his father would be also arrested and moreover, he was warned to be prudent as his young wife was waiting for him outside.**

**As a result of the physical and psychological violence, V.F admitted to the crime indicated by the police.** The physical and psychological violence inflicted by the police officers had left a severe impact on V.F. After beating, he developed movement difficulties for some period. **Furthermore, after being placed in a penitentiary facility, he attempted to commit suicide.** As V.F. said, he was found unconscious by the staff of the detention facility, after which he was provided with medical care. According to V.F, **his mental state was so appalling that he was serving his sentence for seven months in Khoni psychiatric asylum.**

As V.F noted, the **investigation** into the crimes committed against him **is underway**, though he has not been informed of an article and whether he has been known as a victim.

## 12. The case of inmate M.L

We interviewed **M.L who became a victim of physical and psychological violence in 2016**. In June 2016, he was stopped by the police while driving on the Tbilisi-Leselidze-Senaki highway. According to M.L, **once he stopped the car, police officers rushed to the vehicle door and pulled him out by force. While dragging him out, the police officers were verbally insulting him and one of them even hit him with a firearm handle in his cheek and temple area.**

As M.L said, once he was forced out of the car, the police officers found a narcotic drug in his pocket, placed it in an unsealed envelope and drove him to the police station.

According to the prisoner, **he was physically and verbally assaulted both on the way to the police station and inside the police unit. The officers were telling him that unless he admitted to owning the drug, his condition would worsen and he would spend the rest of his life in prison.**

The physical violence was expressed in repeated beating and punching him in his head. **M.L noted in the interview that he had sustained physical injuries as a result of the violence, including in the area of his temple and ear, and bruises to his body.** The aforementioned injuries were documented during the medical examination conducted in the pre-trial detention.

**According to M.L, police officers were spitting at him in the yard of the penitentiary facility №8.** As a result of the physical and psychological violence, M.L felt devastated. According to M.L, he was undergoing through medical treatment for some time due to the mental violence he sustained in prison.

*According to the inmate, an investigation into the crime committed by the police against him was initiated on the basis of the appeal submitted by the Public Defender of Georgia under Article 333 (3) of the Criminal Code. In August 2019, he was interrogated within the investigation but has not been known as a victim so far.*

