POLITICAL NEUTRALITY IN THE POLICE SYSTEM

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(Policy Documents, Legislation and Practice)

Human Rights Education and Monitoring Centre (EMC)
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PART 1: ABOUT THE RESEARCH

Chapter 1: Introduction

With this research, Human Rights Education and Monitoring Center (EMC) continues to identify and analyze institutional problems within the law enforcement, inhibiting the creation of an effective police system based on the respect of human rights. The research aims to create basic document on protecting neutrality principle in police entities, which has been one of the major challenges in recent years. In fact, doubts on politicizing the system creates mistrust and nihilism towards police structures and its activities, which in the end, reflects negatively on the political system, democratic processes and the relations between the police and the society.

Despite individual reforms of the recent years, complete depoliticization of the police system is not achievable, as it is also proven by the results of this research. The existing situation derives, in big part, from repudiating/not recognizing the problem, hindering the process of including the critical reforms in the agenda. Moreover, the depoliticization of the police is often reduced to the good will of the heads of police (or the governing group in pe

Among the institutional changes of the recent years, the most important reform has been the separation of State Security Service from the Ministry of Internal Affairs in August 2015. However, the reform did not have a systemic nature and was not sufficient to achieve a political neutrality in the newly established entity and to create similar perception in the society.[1]

The research aims to create a framework document explaining and validating the position of the authors of the research related to the risks and the causes of politicization in the police system. Establishing a governmental apparatus distanced from the party politics, and especially creating a culture of operational independence in the law enforcement system, is explicitly related to the political will and decision. However, the political will has to be expressed in initiating and fully implementing institutional reforms in the first place.

The results of the research proves that fragile and unstable state of the police in terms of political neutrality is in fact related to the lack of institutional independence, problems with the organizational management, malfunctioning personnel policy, maintaining problematic policing instruments and ineffective mechanisms to address arbitrary behavior of the police officers. The project team hopes that the findings and systemic recommendations will be considered by the government and the Ministry of Internal Affairs, creating the basis for a large-scale reform in this direction.

The research was implemented by the Human Rights Education and Monitoring Center

1. *https://emc.org.ge/2015/05/05/emc-is-shefasebebi-shss-s-reformaze/*

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The project team also expresses gratitude towards partner and donor organizations, as well as individuals involved in the project

Chapter 2: Major Findings and Tendencies

Today, the police is equipped with a number of legal leverages, which allows arbitrary behavior and these mechanisms are not under adequate control. In the meantime, subjects of certain police measures are not equipped with complete rights guarantees. While the police system is sharply centralized and the risks of politicization of the entity is high due to problems with organizational arrangement (for instance, influencing individual police officers through the manipulation of personnel policy), the existence of similar problematic police instrument further increases the risks of using them for political purposes. Separate instruments will be discussed in relevant chapters of the research. Here, we would like to note that, any instrument, not being under an adequate internal or external control, allowing the arbitrary behavior or the abuse of power by the law enforcement, is not only a tough policing instrument, but also an important political leverage since, as it was mentioned above, there is no sufficient culture in the police system for distancing from party policy and protecting political neutrality, which is often expressed in public positioning of the heads of the institution.

In general, it should be noted that during the research, no systemic problems were detected on part of the police in terms of disproportional and gross abuse of the power towards political opposition, leaders of political parties and their representatives. Also, throughout the research no obvious disproportional and gross abuse of power was identified during arrests and interruption of protests and manifestations organized by the opposition parties. However, the reason might be the fact that no frequent protests were organized during the research period.

Unlike political groups, police was demonstratively repressive toward civil activists and activist groups in general. The incidents took place when the activists were protesting the government’s policy and/or the events related to the interests of the former prime minister - Bidzina Ivanishvili.

Innertive responses from the police to violent cases initiated/provoked and carried out by individuals/private groups, including against political opposition, can be considered to be an important negative tendency. In individual instances, activities of these aggressive groups were organized and nonspontaneous. Under these conditions, insufficient effectiveness of the police in the process of preventing, investigating and providing legal responses to the

cases of violence deserves further criticism

Despite the fact that there was no direct involvement of the law enforcement in the violence against political groups (political opposition), insufficient responses to individual and local cases of violence and their further dissemination significantly damaged political environment and processes in the country and created some kind of altered sense of “political violence”.

Therefore, we can discuss the following tendencies as a part of the monitoring:

- Throughout the research no systemic problems of violence were detected on part of the police against political opposition, their leaders and active members;
- No facts of police involvement through the abuse of power and the prevention of the activities organized by the political opposition was identified during the monitoring process;
- Research found the use of explicitly repressive police force against individual activists/ social groups;
- The research also found inertness and the ineffectiveness of the police towards the violence against political and civic groups. In general, the violence occurred on part of individuals and in some cases left the impression of organized occurrence.

The research also identified those policing instruments, which, in its form and nature are problematic legal mechanisms and create the risk of arbitrary action and abuse of power in the hands of the police. 10 case studies conducted within the framework of the research illustrated that those policing instruments are:

- Arbitrary and groundless transfer of individuals to drug testing;
- Using low standards of administrative detention;
- Broad definition of offences and disobedience, etc.

One of the main findings of the research is flawed personnel policy, illustrated by the unlimited power of the political leadership of the ministry - Minister of Internal Affairs (MIA) - in managing personnel policy, which creates the possibility for the political figure to manipulate with the available instrument. On the other hand, defective and non-transparent personnel policy, also based on opaque norms where the Minister’s competencies are also broad, creates fertile grounds to influence police officers. As the research illustrated, insufficient independence of internal disciplinary mechanisms (MIA’s general inspection) is especially problematic, as well as the recruitment of MIA staff, promotion and relocation mechanisms, insufficient legal regulation of bonus system and the vast authority of the Minister in this process.

The analysis of the political documents in the research indicates that at this stage the government does not have a clear vision to achieve a functional independence of the police and to reduce the risks of political influence.

The discourse analysis conducted within the framework of the research also illustrated that in the depoliticization process of the police, the heads of the Ministry mean the refusal to use the governmental resources for party-political ends. However, it is clear that declaring the refusal to use the police resources for party interests, still does not imply the protection of the political neutrality at the factual level, since the abovementioned principle is not reinforced with relevant institutional guarantees. In the meantime, as the number of cases discussed in this research illustrated, officials in the police are positioned as politically interested figures.

Chapter 3: Research Methodology

Researching a political neutrality of the police is a complicated and complex task. In order to do a comprehensive study and analyse the issue of protection of political neutrality by the law enforcement, the project team determined four main direction of observation/ monitoring:

- Analysing formal texts;
- Researching police practice;
- Researching perceptions;
- Analysing public positioning.

Researcher sociologist was actively supporting the project team in elaborating the research methodology, who also helped to determine the necessary instruments and mechanisms to implement the research in these directions.

Determining political neutrality

Universal and comprehensive or normative definition of the police politicization is not available in standing law. Therefore, the project team elaborated those chief indicators/ features, that would enable to determine the signs of politicization in police action.

In the first place it shall be noted that, for the purpose of the project, the project team defines political neutrality as a mechanism of functional independence, which implies the decision making/acting independently from individuals without their involvement within the competencies of the police.

Functional independence also might encompass independence from internal as well as from external factors. Among internal factors, it is important to protect individual police officer's activities from departmental supervisors, including organizational structures through effective instruction system. In terms of external factors, possible threats from outside the police system is noteworthy. It is clear that independence does not dismiss a police officer from responsibilities to conform processual requests, or as an investigator, act under the supervision of a prosecutor.

In individual practical cases, to assess the police officer's political neutrality two circumstances need to be considered:

- Is the police officer neglecting the responsibility and
- Is it possible that it is conditioned by political motives

Breaking the law (neglecting the responsibility) might occur when the police does not fulfill/ refuses to fulfill its legal responsibility. Failing to fulfil/violating the responsibility might be expressed in **action as well as in inaction**, likewise in abusing the authority granted through legal discretion, or in the excess use of power.

Therefore, when discussing the violation of political neutrality, it is important that the violation of legal norms is present. Within the same context, it is important to consider the cases whereas a law enforcement officer thoroughly follows the laws and uses specific limiting measures, while in other similar cases applies substantially different measures and practices. In these cases, there might be a case of double-standard on part of the law enforcement officer

As for the political motives, in order to assess a specific action/inaction of a police officer in terms of political neutrality,at least one of the indicators of politicization must be present, indicating the possible political motives of the action.

Of course, doubtless assertion of political motives of action is impossible. Therefore, the criteria presented below are only the indicators for the project team that indicates the existence of possible political motives. Moreover, the more indicators are present at the same time, higher the risk of politicization in a given case.

Indicators of police politicization

As there is no universal and comprehensive or normative definition of the police politicization in the existing law, the project team elaborated the factors, whose presence might indicate the signs of politicization in specific cases. The project team relies on and considers the following circumstances while assessing political motives:

- **Object** - addressee of the police officer's activity (action/inaction). For instance, the

object of violation of law, violence, abuse of power or the excess use of power from the police officer. While discussing the addressee, it is important to determine the degree of political activity of the individual. Whether or not the individual is a member of any of the political groups, or is an activist or affiliated with any political groups is considered in similar cases. Also the individual's patrimonial or other kind of relationship with specific political power/it's leader/representative, which might become the reason of interest, is considered.

- **Activity** - Action of an individual, subject of violence, abuse of power or in general misused authority on part of police (if the event took place). Political content and power of this action. For instance, if the protest, demonstration, performance or activity. The extent to which this activity (directly or indirectly) is directed against or in support of any of the political power, which might become the reason of interest, is considered.

- **Expression** - Language/terminology used by the police during the action, verbal attack/ assault by the police or the expression of sympathy toward any political groups/its leaders.

- **Public Statements** - Assessments related to any specific public events/facts made by political figures, high ranking public officials or other influential individuals/representatives of political elite. Similar public statements might precede police activities or might be made post factum.

- **Double Standard** - different/diverse action of the police in identical circumstances. And on the contrary, identical response from the police in entirely different context, not corresponding to the context. The existence of double standard can be discussed if police has completely different approach/practice to the situation analogous to the occurring event, while using different approaches in similar cases. Similar actions of the police might derive from any one or more of the four abovementioned factors.

3.1. The Analysis of Formal Texts

1.1 Political documents and researching normative field

In order to analyse the government's strategic outlook and the measures planned for institutional reform of the police, the project team studied two important political documents:

- 2016-2020 Criminal justice reform strategy and action plan

- 2016-2017 Action plan of the Government of Georgia on the protection of human rights.

Additionally the project team studied normative field, that should illustrate the issues related to the protection of political neutrality in the police in a complex manner.

Unlike other directions of the monitoring, the aim of the analysis of the normative is to allow the project team to study those legal bases, that exist in the legal system of Georgia for the political neutrality of the police.

Moreover, the project team aims to not only describe the legal reality, but to provide a well grounded illustratration on how thorough, effective and suitable is the existing reality, how clearly and explicitly are the concept, principles and requests of political neutrality are formulated.

In addition, it is important for the project goals not only to describe and analyze normative material, but to check the applicability and the pertinency of Georgian legislative framework to the best practice cases existing in the sphere of political neutrality and functional independence of police.

For the goals of the normative field research, the project team worked on and analyzed the principle standing acts including provisions for regulating police system that relate to the organizational structure of the police, its internal arrangement and management, as well as the personnel policy.

1.2 The study of the intradepartmenal acts

To analyze normative reality, those intradepartmental acts are also studied that are used to put specific legal norms in practice. Similar analysis helped the project team to assess real, normative and practical significance of existing legal regulation.

The project team requested public information from relevant public entities to find out additional necessary material.

The requested and analyzed information includes, but is not limited to the following topics:

- The decisions of the heads of the Ministry regarding the relocation of staff and human resource management in the system of the Ministry
- Acts on promoting and demoting staff, their reasons and justifications
- Materials on disciplinary legal proceeding, grounds for prosecution, measures of responsibility and general statistical indicators
- Internal instructions and directions regulating specific policing measures.

1.3 Comparison with the recommendations in the policing field

Police code of ethics and the legislation regulating police activities were analyzed against the standards and recommendations existing in the field of police.

The project team collected all the urgent and relevant material elaborated by the international

organizations, research organizations or international non-governmental organizations, considered to be authoritative sources in the field of police law.

Existing legislation in the police system of Georgia was assessed against the following documents:

- OSCE Guidebook on Democratic Policing
- European Code of Police Ethics elaborated in the form of the recommendations of Committee of Ministers
- Handbook on Monitoring Freedom of Peaceful Assembly
- Guidelines on Human Rights Education for Law Enforcement Officials
- Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police

3.2. Researching Policing Practice

Researching the execution of policing practice was conducted in two directions:

Policing during public assemblies/demonstrations

- The practice of detaining/arresting individuals through drug related offenses.

The project team studied the two types of events in cases, where one or more principal criteria of politicization was presumably identified.

Considering frequent interactions between police and citizens and lack of resources for the research, observation on demonstrations and drug testing was conducted on selective basis, where the possible political background was of importance, which was rested based on the 5 criteria identified above.

Clearly, the limited resources of the project team ruled out the research and the study of every possible case of violating the principle of political neutrality. It was also almost impossible to analyze every event similar to the cases described in the research, where the abuse of power of police officers was potentially detected.

Principal instruments of the research:

The project team conducted the research in the two directions using the following instruments:

- Interviews with (potential) victims - interviews with victims will be conducted using the predetermined formal interview guidebook. Victims are considered to be not only the ones with the formal status, but any individual/legal entity, for which there is a reasonable

doubt was a victim of police's politicized action.

- Photo-Audio-Video material in media - similar material was used in cases, where it allowed the identification of the author and the verification of the reliability of the content. Meanwhile, circumstances identified in the material would be considered reliable, if they were confirmed by information obtained from other sources.
- Observing/describing assemblies/manifestations - the main instrument for this direction was elaborated by the external expert, who prepared the "Observation Guidelines". The guideline presents information on describing a manifestation and its progress in general, as well as interaction between law enforcement and citizens, police intervention in the demonstration, restrictive measures taken, etc.
- Monitoring the cases of drug-related offenses - while studying similar cases, the project team analyzed available material. In order to receive additional information, individuals involved were questioned using predetermined questionnaires.
- Studying/analyzing materials of disciplinary proceedings - the project team requested the information from the MIA related to internal disciplinary proceedings on the possible cases of misconduct of the police officers.
- Studying/Analyzing materials of criminal proceedings - the project team also requested the information on possible cases of investigation on offenses possibly committed for political reasons.

3.3. Researching Perceptions

In order to thoroughly represent the issue of political neutrality in the police, it is important to not only observe the officers' activities and positioning in public sphere, but to study perceptions of individual officers. More specifically, how they relate to the duties assigned to them, how adequately do they perceive their public role, how is the subordination to high officials or the representatives of the ruling political party is understood by the employees.

Law enforcement officials' relation to the rule of law and order is also important. Naturally, they will identify themselves as the guarantors of public order. But interesting aspect is to what extent is the rule of law important to them and whether or not the respect of the law is pushed aside while dealing with complicated, important cases of violation of the law.

That is why the project team planned to conduct a perception research. For this specific purpose the qualitative research questionnaire was prepared. Using this questionnaire after surveying randomly selected employees, the project team was supposed to conduct the analysis of perception among police officers. Unfortunately, MIA refused to participate in the research in this form, which made it impossible to conduct interviews with the police

officers.

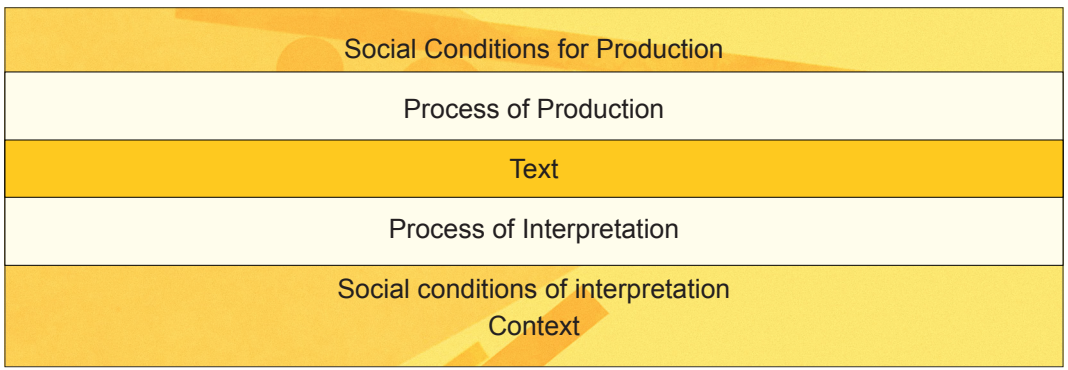
3.4. Discourse Analysis

The research aims to study the narratives of high officials in the police related to various cases and issues to establish the extent to which their discourses are politically neutral. For the research, cases that went beyond the institutional area of the police and became a matter of discussion in political and social sphere due to high public interest and importance were selected. Similar cases are sound means to research the extent to which the high officials of MIA go beyond their competencies and institutional framework established by the law and the code of ethics and the extent to which they get involved in political discussions.

It shall be noted that the research aimed to study the discourse at macro level, which involves the highest circles (ministers and deputy ministers) of the institution with hierarchical structure establishing discourse. However, discourse research happens at micro level as well, involving lower level representatives.

Critical Discourse Analysis was used for the discourse analysis of the research, which, on the one hand was directed to detect the structural inequality and on the other hand, to illustrate the influence of this inequality in reality. Critical Discourse Analysis (CDA) might be conducted using structural guidelines, as well as without it. For this research, well known British researcher - Norman Fairclough's approach was used, which implies partially structural working framework and three main stages of the analysis - description, interpretation and explanation.

The topics of analysis using the three stages looks as follows:



Desctiption stage encompassess the research of the text only, its formal analysis.

Interpretation stage analyses interrelation between the text and social interaction. It shall be emphasised that in the interpretation stage interactive process is meant, during which

the participants interpret texts and not the interpretation stage, during which the interpreter is already a researcher. The production process encompassess the formulation of text. Member's Resources (MR) influences the production process, as well interpretation. This concept unites the language capabilities of the members of interaction, self-expression, faith, values, knowlede, etc.

Explanation stage explores the interrelationship between interaction and context - scial determinants/conditions of the production of text and interpretation and social effects of all these. Social conditions can be divided into three levels - existing/occurring social environment, in which the interaction happens, the level of social institution, which creates wider scheme to conduct discourse and public level encompassing both of these.

Member's resources (MR) used for the production and interpretation of text is cognitive on the one hand, since they are accumulated in the mind and on the other hand, social, since they are socially generated - they are formed through the influence of social interactions, distribution and inequality.

Description stage brings in various cognitive units in the analysis. These units are experiential, relationship based, expressive and communicative values of text (in the broad context), analyzing lexical and grammatical elements. Working framework of Fairclough studies these elements with corresponding questions. For instance:

What experiential value do the words have?

Experiential value is the experience and the knowledge of natural or social environment carried by the author of the statement.

Subquestions of the first question are:

- What kind of classification scheme (of action or event) is used;
- Is there an ideology involved in the text;
- Is "rewording" or "overwording" occurring;
- What kind of relationship exists in ideologically essential meanings of words (synonyms, antonyms, hyponym)

What kind of relationship based value do the words have?

- Relationship based value are the signs of social relationships in these words.
- Are there euphemistic expressions?
- Are they clearly expressed as formal or informal?

What kind of expressive value do the words have?

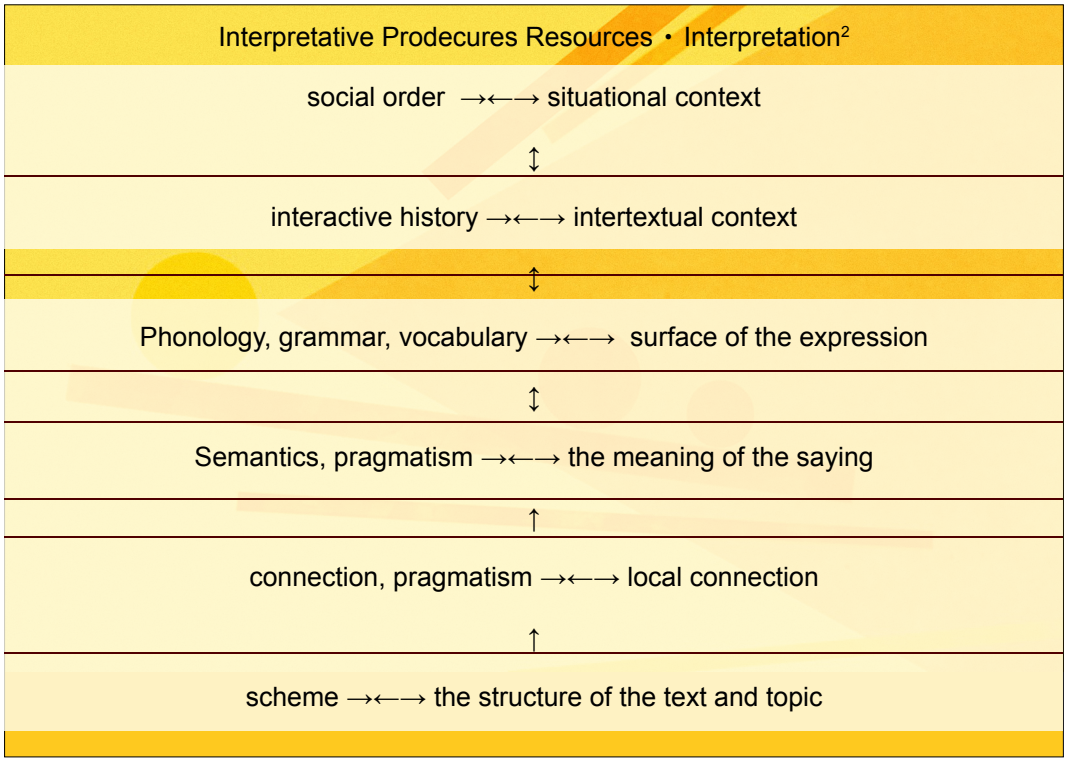
Expressive values are the indicators used by the producer of the word to assess the reality, in which he/she acts. Relationship between these values and social elements are as follows:

- Experiential values → knowledge, faith
- Relationship based values → social relationships
- Expressive values → social identity

Experience is related to content, relationship - to the positioning of participants of communication, expression - with the subject itself.

The working framework also uses grammatical questions, that studies the structure of the expression of the participant and questions studying the logic, that identifies logic within the sentence and as well as at textual and intertextual level.

Interpretative analysis is divided into 6 elements, that can be used in the process of analysis, like the cognitive units



2. *This category implies the variables for the interpretative analysis*

The first two elements (**social order** and **interactive history**) are the interpretation of the context, while the remaining four - of the text. In the middle, the spheres mark those resources that are used for interpretation. Arrovs indicate the interrelationship between the elements.

Surface of the statement/expression - formulating a statement (in a broad context) based on the knowledge of the language. Generally speaking, this is the process, in which a participant creates comprehensible information using specific signs (phonemic or graphic).

Meaning of the statement/expression - Semantic or pragmatic aspect of the member's resources. Semantic is the member's ability to use the meanings of words in a combined manner to create an overall meaning. Pragmatic encompasses colloquial acts, that uses statements/expressions. Examples of colloquial acts are making a statement, making a promise, warning, threatening, advising, etc.

Local connection - connections that are established within the text. Connection encompassess formal connections (analyzed in the descriptive stage) as well as the connections built on implicit assumptions and ideology between expressions/statements.

The structure of the text and topic - On the one hand this element implies the unity of the whole text and those patterns that determine this unity (for instance, a participant of a phone call uses different structure of a conversation from a face-to-face conversation) and on the other hand those summarizing statements, that are the goals of the text and that should stay in the minds of the other members of the interaction.

The listed variables are formulated according to the questions of the textual analysis.

During the interpretation stage, those assumptions, conclusions and truths, that are implicit to the member and are part of their discourse and resources, come up on the surface. The analysis of the power relations, inequality or ideological contents inside those conclusions and assumptions are part of the explanation stage.

Explanation stage aims to display social factors of discourse, processes, structures determining its features, as well as feedback - displaying those social effects that are the product of the discourse.

Variables that come into the stage of explanation looks on the scheme as follows:

As it was already mentioned, situational determinant/effect [3] is the effect/influence of the ongoing situation. Institutional determinant/effect is a wider layer, that influences institution scheme or vice versa, implies it. Societal determinants/effects are the influence of general public layer.

Explanation stage tries to find the answers to the following questions: which power relations shape the discourse at situational, institutional and societal level; what share of the member's resources are ideological elements; how does the discourse affect at situational, institutional and societal levels?

The given guideline and its variable can be used fully or partially. This is determined by the acts of conversations, schemes and forms of the texts used for the analysis.

Moreover, researchers might select two strategies - first to follow the step-by-step analysis offered by the text. Or second - follow the structure of the text and use the appropriate variables from different stages of the analysis.

Chapter 4. Monitoring and the Main Impediments to Conducting the Research

The monitoring of the police was conducted in Tbilisi and Kakheti. The observation period of the practice of the police included July 2015 and June 2016 (official announcement of the elections). Relevant chapters of the research includes the facts and events unfolding during this period. Similar methodology clearly excluded the documentation and the study every possible case of the violation of political neutrality of the police across Georgia. Therefore, the research shall be read keeping these limitations in mind. Additionally, it shall be considered that it is the first attempt to research the issue of protecting political neutrality in the police system and there is no previous research conducted using this methodology enabling us to compare the results. Therefore, the research team lacks the possibility to present a comparative analysis or retrospective view on improving or worsening situation. However, based on the research methodology and results, it can be concluded that the problems of politicization in the police system are acute, which is related to the institutional

3. *Implied is the society as a united social system and not a separate social element*

reasons described in the research. Thereby, considering the limited mandate and resources of the research, the studied cases cannot act as a generalized indicator of the protection of political neutrality in the police system. It shall be discussed along the problems described in various chapters of the research.

Various kinds of problems arose for the research team during the research. In the first place, it shall be noted that the project team could not resarch one of the main direction - the research of the perceptions of the police officers. As it was mentioned, special questionnaire was elaborated for this purpose. The authors of the research had communication with the representatives of MIA to enable surveying of randomly selected police officers efficiently using the resources of both parties. Unfortunately, the authors could not receive the approval from the Ministry to conduct a research in this direction in any form (of their preference).

Significant impediment was getting relevant official materials/documents from various public entities, as well as from individuals. More specifically, it was impossible to fully collect materials court/administrative proceedings on all of the researched/studied cases. Without case materials access to external individuals is limited. Receiving court orders from the court on specific individuals was also complicated due to personal data protection reasons. Therefore, the only real means to collect the case materials was the communication with "victims" and their lawyers. Unfortunately, almost none of the individuals or their lawyers involved in the case did not have complete case materials and were not able to pass them over to the research team. In general, circumstances and assessments described in the research are based on the analysis of concluding orders, interviews of the victims and other interviewees, information disseminated by the Public Defender, non-governmental organizations and other reliable sources, as well as the information received via media monitoring.

It was also not possible to timely receive statistical or other type of public information from public entities. In this direction, cooperation with MIA turned out to be complicated, since in addition to the delays, the Ministry frequently refused to issue requested information. The instances were the case materials of the disciplinary proceedings of the employees of the Ministry, rewarding forms used for rewarding officials and the amounts of rewards, justifications of the decisions regarding personnel, etc.

Chapter 5: Describing circumstances in the beginning and after the research

This chapter describes the general institutional, legal and factual reality, within which the research was initiated and implemented. In addition to the legal assessment of specific cases and the review of related institutional-legal framework, it is important to consider the general context in which the abovementioned events unfolded.

In the beginning (July 2015) and during the research period, the separation of State Security Services from the Ministry of Internal Affairs was an important reform. With this reform these two entities were technically separated from each other. However, the institutional problems existing in the Ministry before, still persist and there have been no substantial changes to establish coherent organizational management or to determine clearly the functions and competencies of specific entities within the structure of the Ministry.

Several important changes were related to the drug related offenses and legislation [4] regulating drug tests, as well as to the witness interrogation rules [5] that could influence the forms and intensivity of the relations between the police and citizens. More specifically, the obligation to testify in front of the investigative body was revoked. The basis for transferring individuals for drug tests were also limited. However, relevant chapters will discuss, the risks of police's arbitrary activities in the context of reformed institute of drug testing.

As for the leadership of the Ministry - after the reform in 2015, the Ministry was led by Giorgi Mghebrishvili. Former Ministry of Internal Affairs - Vakhtang Gomelauri was appointed as a head of the State Security Services. There were no significant changes in the leadership of the Ministry and higher circles during the monitoring process. However, during the project implementation period, several facts of the rotation and/or dismissal of the heads of the police in the region were detected. According to the information received from the Ministry, in January 2016 the heads of three regional police department left the job [6]. The authors of the research tried to verify the information by requesting public information from the Ministry. However this information has not been provided at the time of finalizing the study.

As already mentioned, the reform implemented in August 2015 separated the Ministry of Internal Affairs in two entities. State Security Services and the Ministry of Internal Affairs were detached from each other. Therefore, after this institutional reorganization, two separate entities were established to protect public safety, order and state security. As a result of the reform, both of these entities maintained almost identical functions and

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4. The order "on approving the instructions for transferring a person to find the fact of using drugs and/or psychotropic substances" The Order of the Minister of Defence N725, September 30, 2015

5. On Amending Criminal Law of Georgia December 18, 2015

6. Besik Amiranashvili - the head of the police department of the Ministry of Internal Affairs of the Autonomous Republic of Adjara was reassigned to the position of the first deputy of the Minister of Internal Affairs and was substituted by Lasha Gogniashvili. Koba Tsertsvadze - the head of the police department of the Minitry of Internal Affairs in Guria was reassigned to the position of deputy head of the police department of the Ministry of Internal Affairs in Shida Kartli and was substituted by Kakhaber Muradashvili. Ivane Zurabashvili - the head of the police department of the Ministry of Internal Affairs of Mtsketa-Mtianeti was taken under the personnel management of the Ministry of Internal Affairs and was assigned to the position of the head of the department of protecting the units of strategic importance at the center of special and extraordinary measures and was replaced by Dimitry Zurabishvili. The letter N331578 of the head of the Public Information Division of the Ministry of Internal Affairs' Administration, February 10, 2016

instruments (investigative competencies, operative-investigative activities and preventive measures), while their usage was dissociated by their goals (state security and public order).

Those departments that had analogous functions in MIA before were concentrated in the newly established State Security Service (the department of counter intelligence, state security agency, the center of counter terrorism, etc). State Security Agency was established by the political group that came into power after the parliamentary elections in October 2012 on the basis of previously existing Constitutional Security Department. There always were questions on the political climate and the possible influence of both, Constitutional Security Department and State Security Agency, on political processes. These questions were mainly derived from blurry responsibilities of these entities. Unlike other divisions of State Security Service, the functions of State Security Agency are not still clearly determined by specific conditions.

Newly established State Security Service of Georgia requires further observation and research. The research does not cover the issue of political neutrality in the State Security Service due to the research methodology and its limits. The project team did not observe the activities of State Security Service of Georgia. However, considering the institutional arrangement, broad mandate and closedness of this entity, there are numerous questions towards the risks of this entity's influence over the political processes. It shall be mentioned that the peculiar closedness of the State Security Services, the lack of external control mechanisms and the weakness of parliamentary oversight leaves the entity without adequate control.

As mentioned above, the monitoring methodology was limited by the following factors:

- The cases in question had to take place during the monitoring period;
- The cases had to take place in Tbilisi and Kakheti
- The cases had to be related to the issues such as using the right of assembly-manifestation by political groups and/or activists, and/or proceeding with the cases of drug related offenses against them.

Due to limited methodology, without describing broader picture and context, fully presenting the results of the research is impossible. Therefore, the project team decided to briefly describe those important events related to the police, that preceded and occurred along the monitoring process, yet, due to the abovementioned limitations of the methodology, were not incorporated in the research.

It shall be considered that the concluding stage of the monitoring coincided with the pre-election period, clearly increasing the possibility of politicizing processes on part of particular group and state institutions. Under these conditions, state apparatus was

particularly responsible to conduct activities with complete protection of political neutrality and to distance political groups from the agenda. Unfortunately, the activities of the law enforcement, and more specifically their inactivity, raised questions on numerous occasions. about protecting this principle implacably.

Important events during the monitoring process

1. During the monitoring process frequent cases of organized violence from specific groups were identified as a major problem. Exceptionally intensive were the specific groups' simultaneous attacks on the offices of United National Movement, [7] which left the impression of organized activities. For instance, in 2015, by the end of September and in October United National Movement's offices were attacked in 7 regions. The chronology, signature and the course of the attacks indicated on the broad scale predetermined and organized violence.

Number of non-governmental organizations [8] responded to the attacks with a special statement, where it was stated that "the reaction of the law enforcement and fulfillment of their legal duties was not uniform. There has been no adequate legal response to the illegal activities against the Constitutional Court of Georgia and individual judges. There was no, or minimal response to numerous cases of physical abuse of the members of the United National Movement. In parallel to this, arrests, criminal proceedings and pre-trial arrests of the participants of the protest supporting the broadcasting company Rustavi 2 have taken place. Violence and a threat of violence is a violation of law at any time, in which case the law enforcement entities are obliged to act adequately and effectively, yet without being selective. It is unacceptable for the law enforcement agency to act with double standards, since it creates doubts on the politicization of the system and the use of police for narrow party interests".

The same statement also informed that, along with the party activists of the Georgian Dream party, the representatives of villages and local self-governing entities participated in the attacks occurring as a result of the protests by the offices of United National Movement in the capital and almost all of the regions.

It has to be considered that the wave of violence proceeded the dissemination of video footages of torture on Ukrainian web pages, as well as public screening of these footages in Tbilisi and in Zugdidi, which could be attended by any of the bypassers in the street. As the information in the media indicated, the representatives of the local government

7. Available at: http://www.interpressnews.ge/ge/regioni/350765-quthaisshi-nacionaluri-modzraobisq-ofisi-tsithlad-sheghebes.html?ar=A (Accesseed on August 4, 2016).

8. Available at: https://emc.org.ge/2015/10/23/arasamtavrobota-gancxadeba/ (Accessed on August 4, 2016).

participated in the screening of the abovementioned video footages. [9] Unfortunately, there has been no timely response from the law enforcement to the cases of public screening, despite the fact that similar cases created real risks of violence, as it was later confirmed.

The analysis of the abovementioned facts in whole enabled the assessment, that the police was not called to prevent the violent confrontation, to prevent occurring violence in effectively and in a timely manner, and to provide further legal action. The inertness of the police was especially visible when the violence was directed towards the political opposition. Unfortunately, due to insufficient involvement and response, violent activities did not decrease and possibly provoked new cases. Unfortunately, the Prosecutor's Office denied to provide the information to the research team on what the responses to the attacks on the offices of United National Movement and public screenings of video footages of torture in the streets. Therefore, information about the investigation and the results of the investigaton are not available for the society.

2. During the monitoring process release of video footages of private life created the real risk of tensioning political situation and processes. In March 2016, video footage of intimate personal life and threats to numerous individuals were circulated on internet. Naturally, in the context of upcoming parliamentary elections, this process created a real risk of coercing/ blackmailing the society and influencing the political environment through illegal means.

As it is already known, the Prosecutor's Office is investigating the cases of secret surveillance and thousands of illegally obtained files. In August 2013, a "temporary commission working on illegal surveillance and secret recordings", established by the governmental order, passed over to the Prosecutor's Office a number of files for investigation. However, the final and complete results of the investigation are still unknown. Released video footages and the threats to release video footages on internet once again indicates the ineffectiveness of the investigation and the problem of impunity, encouraging new crimes in the sphere of protecting personal life.

The April 2016 decision of Georgia's Constitutional Court proved the existence of systemic and institutional challenges in this direction [10] according to which the acting system of secret surveillance was declared as unconstitutional. Blackmailing through secret recordings during the pre-election period significantly shattered the perspective of developing the processes in peaceful and democratic environment and created the sense of insecurity among the society. Unfortunately, investigation of systemic offences, as well as the issue

9. Available at: http://1tv.ge/ge/news/view/109330.html (Accessed on August 4, 2016).

10. Avalable at: http://constcourt.ge/ge/legal-acts/judgments/saqartvelos-saxalxo-damcveli-saqartvelos-moqalaqeebi-giorgi-burdjanadze-lika-sadjaia-giorgi-gociridze-tatia-qinqladze-giorgi-chitidze-lasha-tugushi-zviad-qoridze-aaip-fondi-gia-sazogadoeba-saqartvelo-aaip-saertashoriso-gamchvirvaloba-saqartvelo-aaip-saqar.page (Date of access on August 4, 2016).

of placing illegally obtained material on internet is still left open, which is an important challenge to the political environment in the context of October 2016 elections.

3. In addition to releasing the video footage of private life on internet, it has to be noted that politically and socially active individuals talk about illegal interference in private life, indicating that their communication was secretly surveilled and/or there were the risks of releasing secretly obtained material. [11] Especially disturbing was the statement of the Chair of the Constitutional Court, that secret photo and video footage was planned to be released against him. It has to be noted that the abovementioned statement was made, when the relationship between the Constitutional Court and the ruling majority was quite strained. However no adequate legal measures were taken in regard with this statement.

In addition to threats, the audio recordings of the conversations among politicians were in fact published on internet. [12] While the case of the broadcasting company Rustavi 2 was in an active phase of the court hearings, audio recordings of the phone call between the Director General of the company and the former president of Georgia - Mikheil Saakashvili was released. [13] Unfortunately, the results of the investigation of these cases, like the proceedings of other high-profile cases, is unknown up to this date. Therefore, the law enforcement still has not clarified for the society who stood behind this processes.

4. It also has to be mentioned that the release of the phone call records was ensued by the investigation initiated by State Security Service on October 24, 2015 on the bases of paragraph 315 of Georgia State Constitution, which implies plot to overthrow or to take over the state government. [14]

As it was indicated in the statement [15] of the Human Rights Education and Monitoring

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11. Available: http://liberali.ge/news/view/18807/gvaramia-khelisufleba-piradi-urtiertobebis-amsakhveli-kadrebis-gamoqveynebit-memuqreba

http://www.tabula.ge/ge/story/105364-papuashvili-tsulukiani-chemze-faruli-chanatserebis-gamoqveknebas-dazhinebit-itxovs

http://rustavi2.com/ka/news/25819 (Date of access on August 4, 2016).

12. Available: http://www.interpressnews.ge/ge/politika/351050-ukrainuli-vikiliqsi-saakashvili-sakhelmtsifo-gadatrialebas-gegmavs.html?ar=A (Date of access on August 4, 2016).

13. Available: http://liberali.ge/news/view/18996/ukrainuli-vebgverdi-savaraudod-gvaramiasa-da-saakashvilis-satelefono-saubars-aqveynebs (Date of access on August 4 , 2016).

14. Available: http://liberali.ge/articles/view/18899/susma-khelisuflebis-dasamkhobad-an-khelshi-chasagdebad-shetqmulebis-mukhlit-gamodzieba-daitsyo (Date of access on August 4, 2016).

15. Available: https://emc.org.ge/2015/10/27/emc-gancxadeba-gadatrialebaze/ (Date of access on August 4, 2016).

Center (EMC) after the investigation started, “it is especially important to inform the society about the circumstances of the case in a timely manner. Unfortunately, investigative bodies still have not verified the trustworthiness and the authenticity of the article published on internet. Audio, video or other kind of confirmation verifying the possible conversation described in the article is still not available. In these circumstances and while there are questions around the web-portal publishing the article, the doubts about the trustworthiness of the information, which is the basis of the investigation, is growing strong”.

It also has to be considered that, the investigation was also followed by law enforcement’s growing control on the broadcasting company, which was expressed in monitoring the company’s premises and installing surveillance cameras around its territory. [16] As it is already known, intensified surveillance of the territory of Rustavi 2 still continues. However, investigation does not release any information even after so many months have passed.

5. May 2016 interim elections of local self-governance [17] in several regions requires a separate mention, where the election day in Zugdidi’s Kortskheli polling station was marked with particular tension.

Mobilized individuals around the polling station, among whom were mostly sportsmen, used physical strength against the leaders of the United National Movement. [18] It has to be noted that before the incident media and social networks spread the information that a group of sportsmen were moving around. In addition to the information in the media, the materials published on social networks indicated that their mobilization had an organized character. Obviously, organized activity ruled out the possibility of spontaneous development of violence and indicated that the activities of the group had a predetermined.

Unfortunately, despite the existing information about the violent group, the police could not defuse the incident in a timely manner. Events unfolding after the incident and the delayed legal response to it deserves further criticism. The statement by the non-governmental organizations [19] read: “More than one week has passed after the violent confrontation in Zugdidi. However, it is still unknown to the society at what stage is the investigation, what kind of procedural and investigative measures were taken to obtain comprehensive information on the case and why the individuals involved in the violent activities are not yet legally charged. The abovementioned questions are even more legitimate, since the identification of those specific individuals was possible from numerous video footage, that is available to the public and shows the development of the confrontation.”

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16. http://www.rustavi2.com/ka/news/30013

17. Order N127/2016 of March 22, 2016 of the Central Election Committee of Georgia. Available at: http://cesko.ge/res/old/other/33/33118.pdf (Date of access: August 4, 2016).

18. Available at: http://www.interpressnews.ge/ge/regioni/380733-korckhelis-53-e-ubanze-fizikuri-da-pirispireba-mokhda.html?ar=A (Date of access: August 4, 2016).

19. Available at: https://emc.org.ge/2016/06/01/emc-72/ (Date of access: August 4, 2016).

During the incident, none of the individuals involved in the violence were arrested to prevent the escalation of the violent activities or the transition of the physical confrontation into more severe forms. Despite the footage released by the media and the testimonies of the witnesses, identification of the participants of the violence was possible in the shortest period of time. However, the first communication between the offenders and the law enforcement happened only couple of days later, after these individuals appeared in the investigative body and expressed the will to cooperate with the police. It has to be noted that during certain period of time, the investigation was based on the Article 125 of the Georgia State Constitution (beating) [20] , which is not an adequate classification considering the factual circumstances of the case. According to the assessment of the non-governmental organizations, [21] the activities were pre-organized by the group, whose violent activities went beyond beating and involved the signs of more severe offenses. "Rightful classification of the activity is important to enable an adequate legal response. Adequate classification is also important for the societal trust to exists toward the investigation and to enable the cooperation of specific individuals to the investigative bodies". After the joint statement from the non-governmental organizations, the qualification of the case was changed to the article 239 of the Georgia State Constitution (hooliganism). [22]

Following legal response to the case and its criticism is directed less to the police. However, for the systematic and complete assessment of the picture, it has to be noted that the Prosecutor's Office addressed the court to dismiss the accused on bail, and the court aggreed. [23]

To illustrate the application of contrasting and uneven standards of the case, it is important to remember the less violent incident in front of the building of Parliament in Kutaisi in November 2015, when couple of the youngsters confronted the member of the Parliament - Davit Lortkipanidze, during which the jacket of the MP was damaged and was followed by the arrest of three individuals. The prosecutor charged the detainees with hooliganism and asked to use imprisonment as a preventive measure. The court agreed, after which the individuals spent couple of months in the detention centre. [24]

Law enforcement's "liberal" reaction to the Kortskheli incident in relation to using preventive measure, does not indicate and should not be perceived as a reconsideration and the result

20. Available at: http://netgazeti.ge/news/116639/ (Date of access on August 4, 2016)

21. Available at: https://emc.org.ge/2016/06/01/emc-72/ (Date of access on August 4, 2016)

22. Available at: http://police.ge/ge/shss-m-kortskhelis-intsidentshi-monatsile-6-pirs-brali-tsaukena/9754 (Date of access on August 4, 2016)

23. Available at: http://netgazeti.ge/news/120542/ (Date of access on August 4, 2016).

24. Available at: http://liberali.ge/news/view/18557/deputattan-fizikuri-dapirispirebistvis-dakavebul-3-pirs-tsinastsari-patimroba-sheufardes (Date of access on August 4, 2016).

of liberalization of criminal policy. Especially at the time when the abovementioned incident was followed by the tightening of the relevant legislation in the criminal code,[25] while beating or other kind of violence in polling buildings, at the places of election committee or nearby, or during the pre-election agitation or pre-election campaign events was defined as a separate offense. [26] Despite the need to change the intensive use of preventive measure and its strictest form - imprisonment - had become a part of agenda on numerous occasions, the reconsideration of the policy has to be uniform and the application of preventive measure should not depend on the accused individual's membership of any party and/ or organization or association, as it was perceived to be the case of legal measures used against the individuals participating in Kortskheli incident.

25. See the Law of Georgia on amending the Criminal Code of Georgia https://matsne.gov.ge/ka/document/view/3322221#DOCUMENT:1;

26. Criminal Code of Georgia, Article 1621

Chapter 1: Review of Policy Documents

The policy documents reflect the government's long and short-term vision on implementing further reforms and those main activities that serve to erode existing deficiencies and improve the regulation on specific issues. Strategies and action plan must be based on the thorough institutional assessment and determination of proper priorities. Therefore, the analysis of political documents is essential to assess the government's systematic approach and vision, as well as the measures taken to respond to the existing challenges in the law enforcement system and to assess the general strategy.

In addition to the policy documents formulated at the national level, it is worth noting that the Association Agreement between Georgia and the European Union encompassess important topics related to the reform of law enforcement system. More specifically: increasing the accountability and the democratic oversight of the law enforcement entities, establishing professional mechanisms to review the complaints against police officers and prosecutors professionally and effectively, establishing comprehensive, independent and effective appealing mechanism, comprehensive professional retraining for the employees of the law enforcement agency on the issues of ethical standards and human rights. [27] Bringing the law enforcement system closer to international standards and taking effective steps towards this direction are also the obligations taken under the Association Agreement.

In terms of further reforming the law enforcement system, following two policy documents are important:

- 2016-2017 Action Plan of the Government of Georgia on the Protection of Human rights, that should reflect the approach based on human rights;
- 2016-2020 Criminal Justice Reform Strategy and Action Plan, that should be oriented on systemic and institutional issues.

Chapter 2: 2016-2017 Action Plan of the Government of Georgia on the Protection of Human rights

One of the major problems, exhibited in every chapter of the action plan is the government's vagueness on the existing situation for realizing each of the right, some kind of a starting point that would enable to assess the reference point of the government, under what problems and challenges does it continue to work toward each of the direction.

27. Available at: http://eeas.europa.eu/delegations/georgia/documents/eap_aa/associationagenda_2014_ka.pdf (Date of access on August 4, 2016).

Similar analysis/situational description toward every issue clarifies: 1. How does the government see the obstacles and the needs in terms of protecting/realizing every right; 2. Whether or not the government admits specific challenges and what are the main aspects of their solution; 3. What is the scale and system of the government for comprehending the problems/challenges; additionally, identifying the problem, admitting and setting their scale enables to select a starting point to measure the progress after the action plan is completed. [28]

The formulation of the goals, problems and activities determined by the action plan are often general and vague, not allowing to foresee the fulfillment of the obligation taken by the government during the set period, which makes it impossible to assess the adequacy of the problem and the activities and turns it into a template sheet, not having the resources to accommodate superficial/fragmented, as well as sizable and important changes or reform. [29]

The indicators presented in the plan are mostly technical and formal, not allowing to really measure effects. For instance, the indicator related to the amendment of the legislation is stipulated to be changes in specific legal act. With the existence of similar indicators, as one of the criteria of assessment, any changes in legal acts can be formally counted as fulfilling the task. [30]

For the research, it is especially important to assess the part of the action plan that relates to the Ministry of Internal Affairs. Major issues related to the police are united under the chapter on criminal justice and encompaassess just couple of the statues. It is important that the plan mentions retraining of the employees of criminal police, as well as strengthening the internal monitoring mechanisms on policing. However, the abovementioned measures are insufficient and implies that the government does not have a strategic vision in terms of political neutrality of the police. Unfortunately, the plan does not present or puts significantly weak emphasis on the issues such as:

Reform of the Ministry of Internal Affairs and improving internal structure

It shall be noted that the 2015 reform was not oriented on reforming the internal system of the police and institutionally improving internal structures. Therefore, there is a need to comprehensively study those challenges existing in the police system and inhibiting functioning of effective and accountable police mechanisms based on human rights. It is

28. EMC comments on the first draft of the 2916-2017 Action Plan of The Government of Georgia on the Protection of Human Rights, Avalibale: https://emcrights.files.wordpress.com/2015/11/emc-comments-on-action-plan.pdf (Acccessed on August 4, 2016).

29. Ibid.

30. Ibid

essential to assess those specific policing mechanisms that are problematic and increase the arbitrary activities of the police, also confirmed by the research.

Improving the responsibilities in the police system and increasing accountability

It is unfortunate that the plan does not adequately discuss the comprehensive reform of the system of responsibility among police officers. The idea of independent and effective mechanism reviewing complaints against police officers is limited to the issues of torture and mistreatment, substantially narrowing down the issue and leaving the formulation of effective policy to fight impunity without adequate response.

Chapter 3: 2016-2020 Criminal Justice Reform Strategy and Action Plan

Considering the fact that unlike the Action Plan on the Protection of Human Rights, the Criminal Justice Reform Strategy and Action Plan is oriented more on institutional issues, in order to strengthen political neutrality in the police system, it is important that the latter document included several ideas important for the reform, which is not sufficiently represented at this stage. Among those are:

Structure and Sharing of competencies

Separating Ministry of Internal Affairs from the State Security Services and establishing as a separate entity was an important decision. However, the reform implemented on August 2015 had more of a technical nature and considering their nature, those two entities were not divided in terms of their content.

There are still duplication of competencies among the units remaining under the Ministry of Internal Affairs, while number of units simultaneously fulfill incompatible functions. One of the examples is special police control, one of the preventive measures of the police, which, in practice is carried out by the patrol police officers as well as department of central criminal police and other entities. There are cases, when similar policing is done by the police officers masked and armed with special equipment, which is also incompatible with the preventive nature of the police. Duplication of competencies also complicate the process of observing the legality of policing, creating high risks of arbitrary police actions.

Independence of separate departments

Functional independence of specific units still persists to be a problematic issue. The competencies of the Minister are unlimited, while the heads of specific department do not

practice a sufficient degree of independence to conduct the work of the subordinated units independently and with respect of the political neutrality. It is important to strengthen the so-called middle circle and to distance specific departments from the central apparatus of the management, which has a political figure as a leader. It is necessary for the government to aim at increasing the operational independence of the police as one of the strategic directions.

Announcing the reform of criminal police in the strategy needs to be assessed positively. However, during the implementation of the reform, attention should be paid at increasing the effectiveness of the entity, as well as creating the mechanisms for its accountability and openness. Meanwhile, along with the separation of investigative and operative functions, preventive operative and policing measures and the entities carrying out these responsibilities should also be separated. It is important to oversee the preventive mechanisms of the police and their nature, to focus prevention by the police on social prevention and at the same time empower citizens with adequate security guarantees during the preventive measures.

Personnel Policy

As the research illustrates, the personnel policy is directly related to strengthening the poitical neutrality. Unfortunately, none of the action plans puts enough emphasis on these issues. The research illustrated that especially acute is the problem of establishing an effective disciplinary mechanism, that requires a thorough reform of the general Inspection. General Inspection has to be equipped with adequate independence to effectively prosecute individual employees.

In parallel to improving disciplinary mechanisms, its important to improve the mechanisms for rewarding, promoting or demoting employees to ensure that these procedures do not leave the possibility of manipulation and individual decision-making by the public official. The rules of selecting/reselecting and dismissing employees also require imrprovements. Selection/reselection and dismissal, as well as promotion or demotion has to occure through open, clear and just procedures, instead of individual decisions of a political figure.

Chapter 4: Conclusion

As it was already mentioned in the previous chapters, high political figures, as well as the leadership of MIA reduce the the issue of depoliticization of the police to subjective will not to profit from their authority and to refuse to use the law enforcement bodies for political purposes. It is clear that the management policy of specific officials is significant and

noteworthy, but in this case, without sufficient institutional changes and legal guarantees ensuring political neutrality, it is impossible to discuss complete political neutrality of the police.

The leadership of the Ministry frequently states that the police is an apolitical body. However, despite these statements, they do not present any concrete institutional reforms verifying that it is harder and less expected to use the police for illegal, political purposes today, than it was before. Even more noteworthy is the fact that the necessity of similar reforms are not even included in the political agenda and the proof of this are the strategic policy documents discussed in this chapter.

The analyses of the documents illustrates that the issue of strengthening the political neutrality is not perceived as urgent issue to be carried out in a short period/near future. The directions and activities identified in the action plans do not respond to the existing challenges in the police system and the government's vision, as an approach based on the respect of human rights and in terms of further institutional reform, is not grounded on the full identification of problems existing in the system. Unfortunately, policy documents do not mention any effective measures and activities to be implemented to address the systemic problems and the government's approach necessitates a review in this direction.

Trends and activities reflected in the action plans do not fully respond to the challenges existing in the police system and do not encompass the measures and activities needed to be taken to address specific systemic problems.

It is advisable to include in strategies and action plans tasks to respond to the sets of systemic problems and challenges related to the police. More specifically:

- Decentralization of the police system and increasing the role of professional leadership
- Reviewing the authority of the political leadership of the ministry in terms of policing measures and personnel policy
- Reforming internal structure and personnel policy, including the reform of recruitment, promotion, rewards, disciplinary, discharging systems;
- Planning a large scale reform of the department of the criminal police and the units carrying out operative activities;
- The analysis of the systemic reasons of the abuse of authority and excessive use of power and authority by the police officers and planning preventive policy
- Reforming the general inspection to ensure its independence.

- Establishing independent investigative mechanism, equipped with effective function of investigation and prosecution
- Reforming specific problematic policing mechanisms, including the practice of transferring individuals for drug testing and systemically reforming the sphere of administrative detention

PART 3: PERSONNEL POLICY IN THE MINISTRY OF INTERNAL AFFAIRS

Chapter 1: Recruitment

Discussing the importance of freeing police from political influence, Organization for Security and Co-operation in Europe (OSCE) notes that the independence of police is an important aspect of the supremacy of the law and the democratic arrangement of police should be free from political influence. Recruiting police on political motives must be eradicated, since similar practice undermines the trust of the society. [31]

Recruitment in the Ministry of Internal Affairs is regulated by the Police Law of Georgia and the order of the Minister of Internal Affairs on "Approving the rule of recruitment in the MIA". The recruitment of citizens in the police is carried out through a special competition rule. Individual might be appointed on a vacant position, if he/she is already recruited in the police (serves in the Ministry or is under the human resource unit of the Ministy) and possesses relevant special or army title. [32]

The organization of the competition is ensured by permanent special competition comittees, which are created by and complected by the Minister (except for the special competition committees of LEPLs). [33]

The main stages of appointment are as follows:

Receiving/selecting applications
Interviews
Checking health condition
Checking the level of physical training
Special inspection
Appointing for a trial period
Employing in the police

31. OSCE Mission in Kosovo, the Role of Capacity-building in Police Reform, 2005, pg. 20. Available: http://www.osce.org/kosovo/19789?download=true (Date of access on August 4, 2016)

32. Article 12 of the same order.

33. Article 21 of the same order.

Certain limits for recruitment in the Ministry are determined by the Minister [34], including exceptions. More specifically, with the approval of the Minister or other individual with an authority, due to public interest, it is possible to recruit an individual in the Ministry despite the fact that:

- Individual's health condition does not meet the required criteria of the position;
- While being recruited individual intentionally hid information or presentederroneous data.[35]

It shall be noted that, one of the obligatory and important stages of recruitment - special inspection - is not sufficiently defined at the normative level.

Due to the classified nature of special inspection, the methods and purposes of the mentioned inspection are unknown for persons with no access to stateclassified information.

According to the information provided by the Ministry of Internal Affairs [36], the objectives and the methods of special inspection are regulated by the classified order of the Minister of Internal Affairs and according to the Law of Georgia on State Secret, the access to the document is limited for those without an access to state classified infomation. Therefore, the aims and the methods of the special inspection are unknown. However, a negative

34. Is not recruited in the ministry

a) Individual convicted in an intentional offense;

b) Individual under the course of criminal prosecution;

c) Individual having having disabilities, as recognized by the court

d) Individual deprived the right by the cout to be assigned to the relevant position;

e) Individual whose health condition,does not meet the requirements attributed to the position, as proved by medical report of the Health Protection Unit

f) Individual who is diagnosed with alcoholism, drug abuse, toxicomany, mental or other deseases. The list of the deseases is compsed by the Ministry of Labor, Health and Social Protection and and The Ministry of Internal Affairs

g) Individual who communicates with parent, spouse, sister, brother, child or sister, brother, parents of the spouse under the direct official supervision after taking the assigned position

h) Claimant of other state's citizenship, except for the cases determined by the law or international agreement

i) Individual with negative results of special inspection

j) Individiual intentionally hiding information or presenting erroneous data during the recruitment process.

k) Individual that does not meet the rewuirements of this rule

35. Article 19 of the Order N995 of the Ministry of Internal Affairs, December 31, 2013

36. The Letter N1859260 of the Head of the Public Information Division of the Ministry of Internal Affairs administration, July 26, 2016

result of the abovementioned stage might reflect negatively on the candidate's recruitment in the Minsitry.[37]

Individual receiving negative assessment/result during special inspection are not recruited;

Individual assigned for a trial period might be dismissed from the position before the term is due based on the decision of special selection committee, in case impeding circumstances for the recruitment in the police arise as a result of the special inspection.

The analysis of the order of the Minister implies that there are a number of significant challenges in terms of the recruitment policy.

In the first place, the Minister's as a political figure's special authority in recruitment and the matters of personnel policy shall be noted. Range of issues are regulated by the orders of the Minister, instead of being regulated at the legislative level.

Moreover, while recruiting the personnel, the Minister has an exceptional authority to assign an individual not meeting the predetermined requirements, to a specific position.[38] According to the Rule of recruitment in the Ministry of Internal Affairs, considering the applicant's special knowledge, qualifications, skills, experience and/or other special circumstances, Georgian citizen might be allowed to participate in the selection process without having the certifying document of passing the program and/or course as it is determined by the order, also in cases defined by the abovementioned rule, without presenting the certifying document of completing higher education, with the approval of the Minister or an individual with relevant authority. In similar cases, applicant is obliged to pass special preparatory educational course and or special preparatory/retraining courses in the Academy as it is determined by the order. The individual will be dismissed from the position, if he/she cannot successfully complete the program and/or the course.[39]

Unfortunately proper material and procedural frameworks to ensure the protection of the process from political influences, are not defined at the normative level. This is especially important in cases, when the Minister's involvement is directly defined.

Another flaw is the ambiguity of the "Special Inspection" stage, creating the possibility of using the mechanism unjustifiably.

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37. Article 26, Order N995 of the Minister of Internal Affairs, December 31, 2013

38. Article 12, Section 7 of the same order

39. Article 25 of the same order

Chapter 2: Promotion and Relocation

According to the order of the Minister [40] relocating the employees on higher, equal or lower positions are allowed:

- During the promotion
- During the relocation of employee on a similar
- During the implementation of personnel-organizational measures
- Due to deteriorating health conditions, based on the report of medical committee of the health protection unit
- Due to the work-related interests
- Personal appeal
- According to the results of attestation
- Due to assigned disciplinary sanction

Relocation of the employee of the ministry is documented according to the order of the Minister or an individual with relevant authority, indicating the reasons for allocation.

The most problematic aspect of the abovementioned conditions are “interests related to the job” and relocating an employee based on this cause. The entry is rather vague and creates the risks of developing unfair practices. The issue is discussed individually, without involving professional or collegial body, by the Minister or the individual authorized by the Minister, which clearly creates the risks of politicizing the process. [41] It shall be noted that one of the major challenges of the personnel policy of the Ministry of Internal Affairs is the fact that there is no professional, collegial body, that would make important personnel policy decisions without involving political figures. General Inspection cannot be counted as one of these bodies, as it exists as one of the regular departments within the Ministry and is staffed by the Minister.

The Minister of Internal Affairs has an exclusive authority and makes individual decisions to appoint, relocate or promote an individual without having passed courses of special educational programs.

The legislation also takes into the consideration the special cases of assigning, relocating or promoting individuals, when the decisions are taken by the order of the Minister without passing the courses or special professional educational programs envisaged by the

40. Article 28 of the same order

41. Ibid.

relevant order. [42] This entry is also ambiguous, since the conditions authorizing the Minister to make exceptional decisions are not clearly identified. Despite the fact that, in similar cases, individual is required to pass relevant special professional educational program or promotional course, the problem is the Minister's - a political figure's disbalanced competencies in the personnel policy, clearly creating the risks for politicizing the entity.

Chapter 3: Code of Ethics of the police and Disciplinary Responsibilitiy

According to the OSCE's "Guidebook on Democratic Policing", to gain the public trust, police must demonstrate professionalism and good faith. Due to the necessity of managing limited resources and setting priorities, police enjoys a discretionary authority to put the law into practice. However, the discretionary authority of the police is allowed and desirable, when it is fair in regards to the purpose of justice and is compatible with professional ethics.

Ethical code must reflect highest ethical values, expressed in the limitations set to the police. With its work, the police must show the highest degree of good faith, readiness to counter the temptation of abusing the power and devotion to the values. [43]

European ethical code of police, approved by the committee of the ministers of the Council of Europe in 2001, envisages those values and standards that are essential in the modern democratic society. More specifically: the police must be functionally independent from other governmental bodies, while being fully responsible for its actions. Despite belonging to the executive branch of the government, the police, which is granted with the discretionary authority, shall be guided by the law, not take political directions and guarantee the functional independence while fulfilling its duties. Similar independence is an important sign of the supremacy of the law. [44]

New code of ethics of the police was elaborated and approved by the order of the Minister of Internal Affairs in 2013, defining issues such as: principles of policing, general rules of conduct, the rules of using force and firearms, the obligation of the police officer to respect impartiality and justice during every stage of investigation, interaction with detainees, responsibilities for breaking the code of ethics.

Ethical norms are always considered to be the so called soft laws of justice, since in most

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42. Article 79, Order N995 of the Minister of Internal Affairs, December 31, 2013.

43. OSCE, Guidebook on Democratic Policing, 2008, pg. 15. Available http://www.osce.org/secretariat/23804?download=true (Date of access on August 4, 2016).

44. The European Code of Police Ethics, Recommendation Rec(2001)10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and explanatory memorandum. Available at: http://polis.osce.org/library/f/2687/500/CoE-FRA-RPT-2687-EN-European%20Code%20of%20Police%20Ethics.pdf (Date of access on August 4, 2016).

of the cases, they are not strictly and imperatively defined in normative acts. However, in the presence of control mechanisms and liabilities for violating those laws, ethical codes become as compulsory as any other norm. The most effective mechanism for providing control is the monitoring mechanism that, instead of adopting repressive functions, should identify specific deficiencies, prevent them and implement measures aimed at improving its service. [45]

Therefore, elaborating the code of ethics of the police is only the starting point, which requires the implementation strategy, proactive monitoring and response to the deficiencies identified during the monitoring stage. Without implementing these measures, the effectiveness of the ethical code is very low.

Participation of the professional circle and the direct engagement of police officers in the process of elaboration and approval of the code of ethics is not ensured.

Considering the abovementioned nature of the code of ethics, the elaboration/approval procedures are specific. Since as a rule, the code applies to the individuals with specific professions and specialties, the representatives of these profession are also actively involved in the process of its elaboration (for example code ethics of judges and lawyers). The code of ethics of the police is elaborated and approved by the Minister of Internal Affairs. Despite the cat that the legal department of the Ministry is involved in the elaboration process, it cannot influence the content and cannot ensure proper participation of the representatives of the professional circle and the police officers. According to the code of ethics, the violation of the norms of the code leads to the disciplinary liabilities in accordance with the rule set by the Minister's order.

If the ethical code defines the rules of conduct for the police officers and the rules for treating specific individuals, the basis for disciplinary liability of the employees of the ministry, sanctions, proceedings and imposition and removal of administrative sanctions are determined by the disciplinary statute approved by the order of the Minister of Internal Affairs.

The immediate supervisor or the higher official may impose a disciplinary sanction in writing against the employee, presenting the supporting evidence of the misconduct. Depending on the essence and the gravity of the misconduct, [46] the immediate supervisor might as well become liable. [47]

Neither this statute, nor any other legal acts specify what type of misconduct might lead to

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45. Ethics and General Rules of Conduct in Civil Service, Available at: http://csb.gov.ge/uploads/etika.pdf (Date of access on August 4, 2016)

46. Article 4, Section 1, Order N989 of the Minister of Internal Affairs, December 31, 2013.

47. Section 11 of the same article.

the liability of the higher official (for instance to what extent should the higher official have known or have had the information about the misconduct of the employee under his/her supervision). Therefore, the risk of the possible liability makes it less likely for the supervisor to proceed with the disciplinary sanctions against the employee, as it will potentially lead to the disciplinary sanctions against the supervisor as well. [48] The measure weakens the proactive and effective control of the ethical norms on part of supervisors.

The following individuals have the authority to impose or remove administrative sanctions: the Minister of Internal Affairs, deputy ministers, the heads of the Ministry's structural divisions, the heads of the Ministry's territorial bodies, the heads of the LEPLs under the Ministry, head of the state subagency. [49]

Only the Minister can impose any kind of sanctions, while the rest can only use less severe sanctions.

Depriving the individual, against whom the disciplinary proceedings are imposed, from adequate legal protective mechanisms is one of the significant deficiencies. The person potentially engaged in the misconduct is not involved in the decision-making process about the disciplinary sanction to ensure the possibility of proving his/her innocence. Disciplinary statutes only implies the explanation of employee before the sanctions are imposed. Meanwhile, the disciplinary body collects the information and other material to prove the misconduct on the one hand, and at the same time concludes whether or not the misconduct took the place. Therefore, one and the same body is the "prosecutor" and the decision-maker at the same time. Considering the fact that there are no clearly identified and functional disciplinary procedures, the person involved in the misconduct does not have effective protection guarantees, there are the risks of political leadership influencing police officers, including manipulation with the existing deficiencies to get the orders executed.

On the other hand, vague and defective system of disciplinary responsibilities might be the basis for not using disciplinary sanctions against specific police officer to blackmail him/her hereafter. Therefore, there is a risk that the vague regulation of disciplinary responsibility might encourage the impunity syndrome, which can be the basis for influencing the police officer.

The existing system of disciplinary responsibilities is vague and defective. The procedures of disciplinary proceedings equips the political leadership with the possibility to manipulate police officers to ensure the execution of the order.

48. Human Rights Education and Monitoring Center (EMC), Policy of Invisible Power - Analysis of Law Enforcement System in Georgia, 2015. Pg.76. Available http://emc.org.ge/2015/06/18/samartaldamcavi-sistemebis-kvleva/ (Date of access on August 4, 2016).

49. Article 4, Section 2, Order N989 of the Minister of Internal affairs, December 31, 2013

The defects of the work of the General Inspection was clearly reflected in the review process of a number of statements submitted by the Human Rights Education and Monitoring Centre (EMC) to the General Inspection of the Ministry of Internal Affairs. [50] In their explanation, the representatives of the student movement Auditorium 115 discussed the illegal measures taken by the employees of the Ministry of Internal Affairs. Therefore, based on their statement, the General Inspection was supposed to start an investigation. Shortly after the investigation started, the General Inspection noted in a one sentence, ungrounded letter that based on the investigation, no disciplinary misconduct was verified. The letter did not include any indications of factual circumstances, that the General Inspection used to base its decision. In addition, the General Inspection of the Ministry of Internal Affairs did not call a number of declarants to receive explanation. Therefore, it is not clear, what measures were taken by the General Inspection to investigate the circumstances identified in the statement

During the job-related inspection, declarants and their representatives lack the possibility to learn about the materials related to the case and the specific measures taken by the inspection. Human Rights Education and Monitoring Centre (EMC) addressed the relevant entities and requested the copies of the case materials, reports, and concluding substantiated decision (in case they existed). However, the legislation does not say anything about equipping declarants and/or victim with similar procedural rights. Therefore, the victim/declarant does not have any real leverages to control the job-related inspection.

Appealing the results of investigation of General Inspection is also not regulated. The law does not determine the obligation to provide exhaustive information to declarant/victim on the circumstances outlined during the case proceedings and the arguments acting as the basis of the decision. When the issue of institutional independence of the General Inspection and its close ties with the leadership of the entity is critical, the effectiveness of the mechanisms for responding to the disciplinary misconduct is questioned. These risks are not balanced by adequate procedural guarantees, as the declarant/victim does not have a slight possibility to monitor the investigation process.

The fact that the degree of institutional independence of the General Inspection is low, points at the defects of the process. The Minister has unlimited authority to get involved in the work of General Inspection as much as in other departments and entities. General Inspection is staffed by the Minister and is accountable to the Minister. Meanwhile, the concluding reports prepared by this entity are recommendations in nature and the Minister has the authority to make final decisions, not to consider those conclusions and take the decision of different in its content. Minister is not obliged to provide explanations on the decisions either. Therefore, the final decision-maker in the case is not a collegial body, but an individual political figure.

50. Available: https://emc.org.ge/2016/06/17/emc-89/ (Date of access on August 4, 2016).

Since concluding reports produced by the General Inspection are recommendations in nature, the Minister of Internal Affairs has the authority not to consider those conclusions while making final decision and make entirely different decision without providing justification.

It is worth considering that the General Inspection is only accountable to the Minister - a political figure and the entity does not have any external accountability. Therefore, the information on its work is not available outside of the system [51], which significantly complicates external control of the entity and increases the risks of its politicization.

According to the guiding principles of OSCE, without external supervision mechanisms, the leadership of the police might benefit from freedom to not investigate or punish a misconduct, leading to ineffective control and strengthening of impunity syndrome among employees. [52] Impunity, as well as disciplinary punishment of employees through subjective and non-transparent procedures might act as a means to influence the employees of the police system, which, in its turn, might serve the fulfillment of political goals. This is the reason, why it is important to have a well-functioning and transparent accountability system, where the principles of just review process of the cases are ensured and where the employee feels safe from the subjectively conducted disciplinary proceedings in case of refusing to execute an illegal order.

While discussing the issue of issue of reviewing the complaints against police officers independently and effectively, the human rights commissioner of the European Council notes that independent and effective system of reviewing complaints is essential to gain and maintain the trust of the society toward the police, while also ensuring that mistreat and improper activities of the police are not left unpunished. [53]

In Northern Ireland, police ombudsman conducts any investigation of the police. All of the complaints are automatically sent to the office of the Police Ombudsmen and the investigation is not conducted, in any of the cases, by the police. [54]

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51. Human Rights Education and Monitoring Center (EMC), Policy of Invisible Power - Analysis of Law Enforcement System in Georgia, 2015. Pg.8

52. OSCE, Guidebook on Democratic Policing, 2008.

53. Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, 2009. Available at: https://wcd.coe.int/ViewDoc.jsp?p=&id=1417857&direct=true (Date of access on August 4, 2016)

54. DCAF, Police Governance: European Union Best Practices, 2011, pg. 31. Available at: http://www.dcaf.ch/Publications/Police-Governance-European-Union-Best-Practices (Date of access on August 4, 2016).

The police ombudsman is authorized to:

- Issue a recommendation to start criminal prosecution of the police officer or the employee of the police
- Issue a recommendation to impose disciplinary responsibility on the police officer or the employee of the police
- Issue a recommendation to impose disciplinary responsibility on the police officer or the employee of the police
- Recommend the police to improve its work
- Establish whether or not the evidence are sufficient to redress complaints

The recommendations of the police ombudsmen on criminal prosecution are sent to the Prosecutor's Office and the prosecutor decides the issue of criminal prosecution. Recommendation on disciplinary proceedings are passed to the Chief Constable. [55]

Additionally, in Belgium there are three main bodies to investigate policing activities: general inspection of federal and local police, committee "P" and the system of internal control. Their work is coordinated to ensure the control every segment of policing. [56]

The function of the general inspection of federal and local police is to ensure better functioning of police, compliance with the law and the protection of fundamental human rights. Its competencies include: inspection and auditing (every segment of its work, especially policing measures) to present recommendations for improving work and the policing practice; individual review of complaints; conducting administrative and preliminary criminal investigation.

The decision to appoint a general inspector is taken by the joint committee, that includes the Ministry of Internal Affairs and the Ministry of Justice. General inspection informs court entities and the Committee "P" on the decisions. Police does not have an access to the data of General Inspection, which is essential to ensure its independence. Decentralized directorates collect data and relevant information, are in contact with local entities, police units and decentralized federal entities, register applications and complaints, participate in mediation, auditing and inspection.

Each of the local police offices has its own department of internal control, that ensures the compliance of everyday policing to the standards and procedures, is responsible

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55. Police Ombudsman for Northern Ireland, Dealing with Complaints against the Police, pg.9. Available at: https://www.policeombudsman.org/getmedia/877d3ef8-dd44-4659-b575-1de517ad1bb1/Dealing-with-Complaints-Against-the-Police.pdf (Date of access on August 4, 2016).

56. Internal Control Systems- Comparative Models. Available at: http://www.osce.org/montenegro/138711?download=truen (Date of access on August 4, 2016).

for identifying and exposing unethical, unprofessional and criminal activities. However, similar department discusses only minor cases of misconduct. More serious and systemic violations are sent to the General Inspection or the Committee "P". [57]

Committee "P" is an independent and neutral body, that supports the legislative branch to oversee the activities of the executive branch. Committee "P" is the only external monitoring body, that oversees the work of the police and special inspection service, which is also an independent body. [58]

Considering the practice, the European Court of Human Rights established five main principles to effectively investigate those complaints against police officers that are related to the second (right to live) and third (prohibiting torture) articles of the European Convention on Human Rights:

- **Independence:** there shall be no institutional or hierarchical relationship between individuals involved in the proceedings and the officer against whom the complaint is filed. Practical independence also needs to be ensured; [59]
- **Competency:** During the investigation it shall be possible to collect the evidence related to the case and to determine if the policing activities violate the law. If the guilt is confirmed - determining sanctions; [60]
- **Responsiveness:** investigation shall be accelerated and conducted in limited time periods to support the rule of the law; [61]
- **Civic control:** procedures and the decision making process has to be open and transparent to ensure accountability; [62]
- **Ensuring the involvement of victim:** plaintiff has to be engaged in the process of reviewing the complaint to ensure the protection of his/her own legitimate interests.[63]

In addition, the abovementioned 5 principles are supporting guiding principles in the process of reviewing all the complaints. [64]

We present statistical information of the years between 2012-2015 on applications/appeals

57. Ibid.

58. Available at: http://www.comitep.be/EN/index.asp?ID=Intro (Date of access on August 4, 2016).

59. Ramsahai v the Netherlands; Bati v Turkey.

60. Nachova v Bulgaria; Aksoy v Turkey.

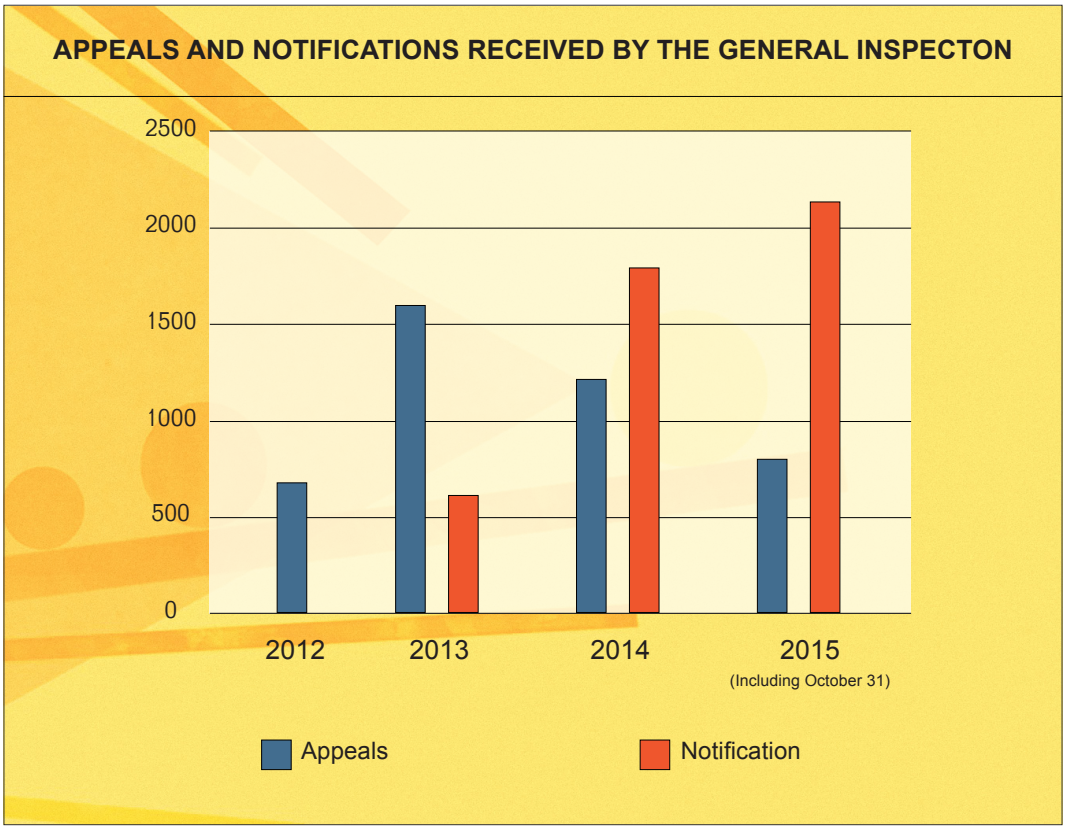
61. Isayeva v Russia; Aydin v Turkey.

62. Ognyanova v Bulgaria; Chitayev v Russia.

63. McKerr v UK.

64. Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, 2009.

received by the General Inspection of the Ministry of Internal Affairs and notifications received on a hot line, as well as the statistical information on the number and the types of disciplinary sanctions imposed by the General Inspection on the employees. [65] Between November 1, 2015 and July 1, 2016 the number of the cases of disciplinary misconduct detected by the General Inspection was 3030. [66] Between November 1, 2016 and July 1, 2016 1693 sanction was imposed on the employees of the Ministry. During this period the General Inspection received 434 application/appeal and 2492 notifications were received on the hot line. [67]

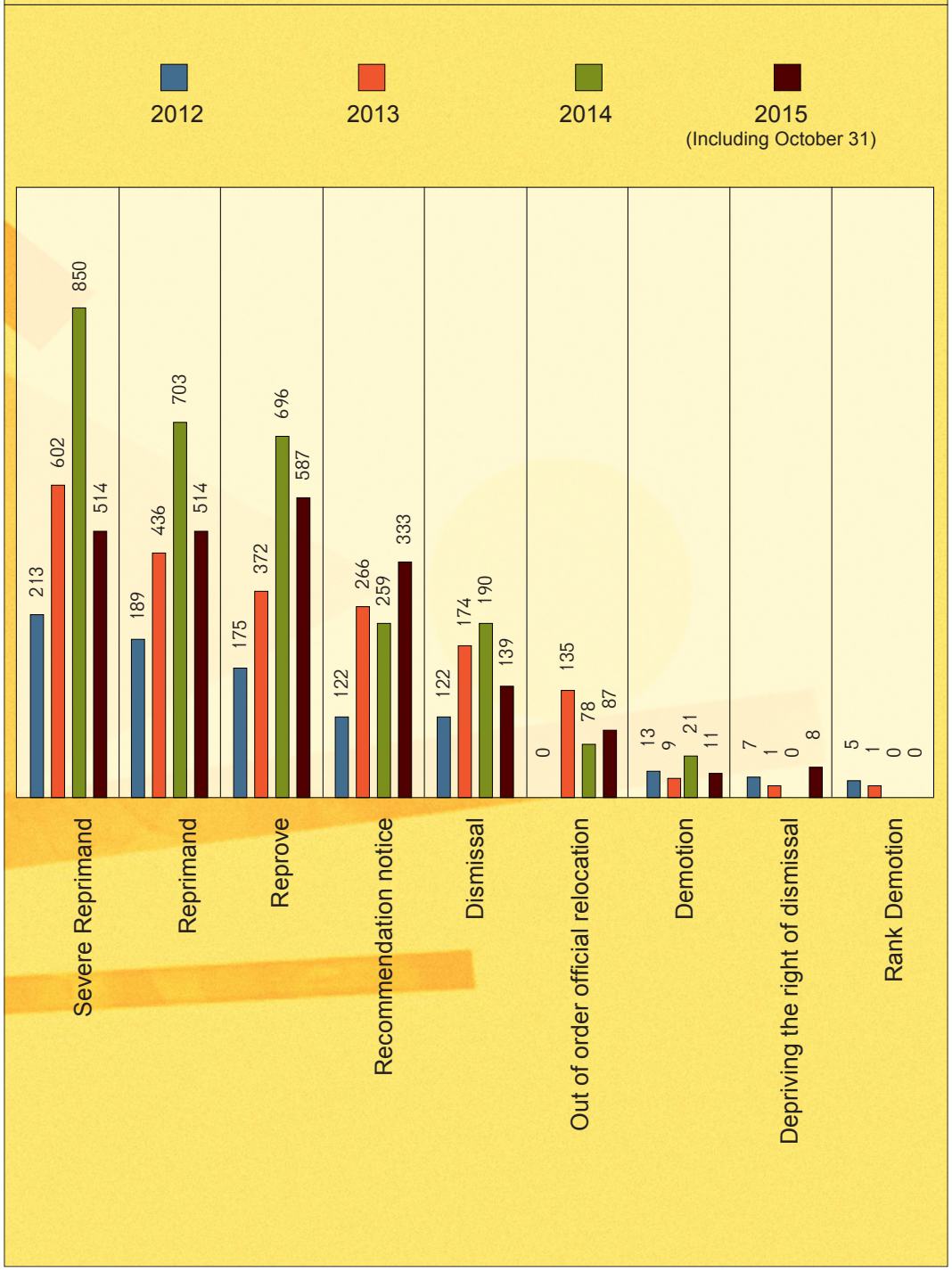


65. The letter N2670434 of the Head of the Public Information Division of the Ministry of Internal Affairs Administration, December 1, 2015

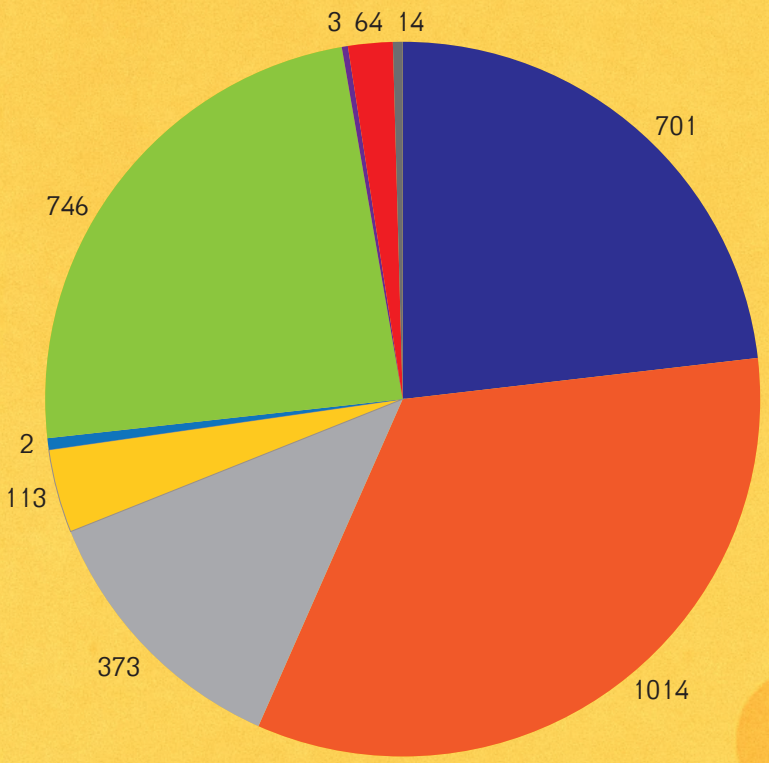
66. The letter N1817605 of the Head of the Public Information Division of the Ministry of Internal Affairs Administration, July 21, 2016

67. The letter N1817605 of the Head of the Public Information Division of the Ministry of Internal Affairs Administration, July 21, 2016

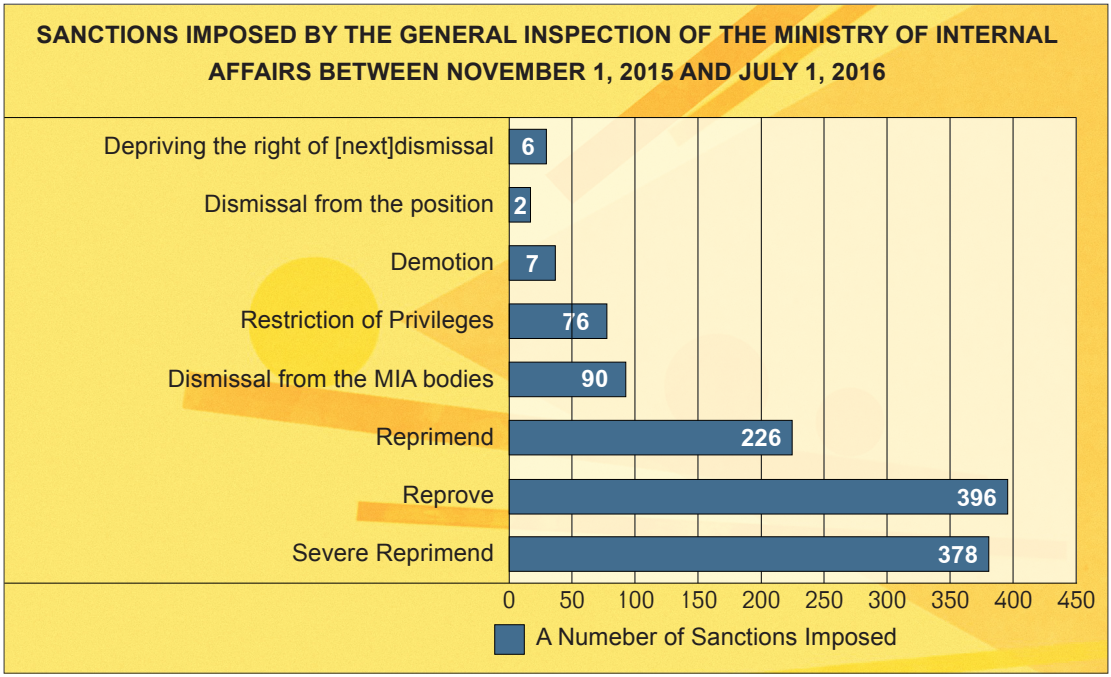
SANCTIONS IMPOSED BY THE GENERAL INSPECTION



BETWEEN NOVEMBER 1, 2015 AND JULY 1, 2016 3030 CASES OF DISCIPLINARY MISCONDUCT WAS DETECTED BY THE GENERAL INSPECTION



- Not fulfilling or improperly fulfilling the work-related obligations
- Negligently approaching the work-rekated obligations
- Causing a property damange of creating the risk of such damage
- Undignified action
- Doing business incompatible to work
- Ineppropriate activity
- Breaking the rules of dresscode
- Breaking the military discipline
- Breaking the work discipline



As the Council of Europe's Committee for the prevention of Torture and Inhuman or Degrading Treatment and Punishment states, during the disciplinary proceedings against police officers, the decision making group should consist of at least one independent member, but also notes that **it is preferable if the disciplinary proceedings are conducted by an independent body.** [68] OSCE, in the Opinion on the Draft Law on Police of Serbia notes that **there should be no institutional or hierarchical relations between the individuals reviewing the appeal and the individual presenting the complaint.** [69]

In Georgia, the abovementioned principles are practically ignored and the General Inspection does not possess substantive functional autonomy, its activities are controlled by the Minister and the final decisions on disciplinary proceedings are taken by the latter. As for the hierarchical principle, it is not entirely ensured, that the individual supervising the potential offender is entirely excluded from the disciplinary proceedings.

68. CPT standards - "Substantive" sections of the CPT's General Reports, 2015. Available at: http://www.cpt.coe.int/en/documents/eng-standards.pdf (Date of access on August 4, 2016).

69. OSCE, Opinion on the Draft Law on Police of Serbia, 2015. Available at: http://www.legislationline.org/ (Date of access on August 4, 2016).

Chapter 4: Dismissal

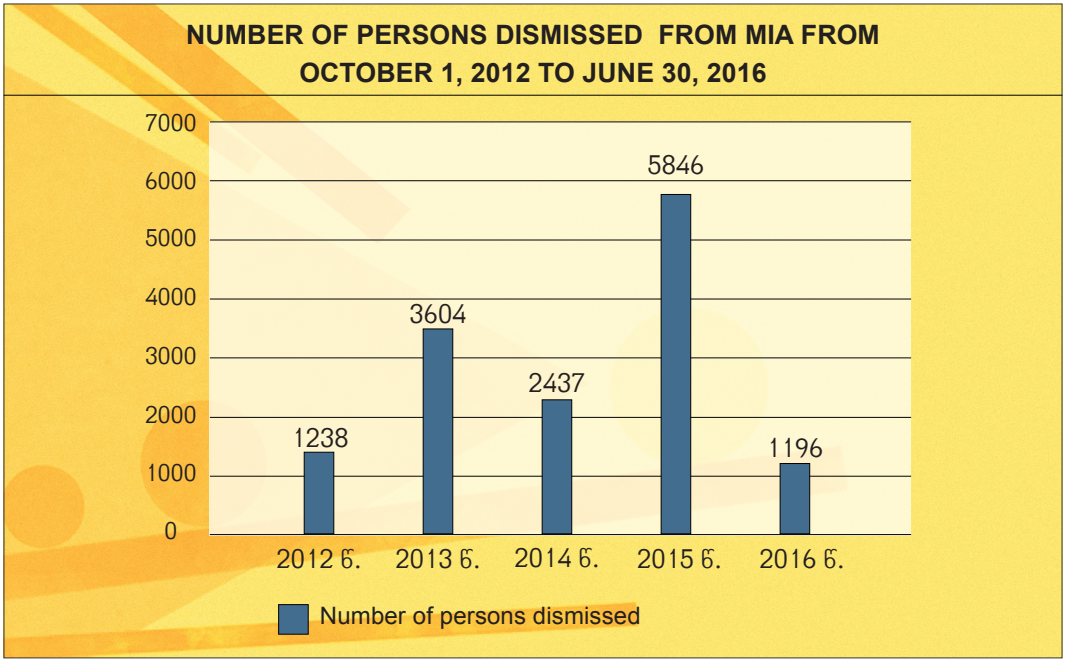
The issue of dismissal of personnel is also important for the analysis of personnel policy. The table below offers data received on the basis of freedom of information requests submitted to the MIA [70], regarding personnel changes in the Police Departments of MIA in Tbilisi and Kakheti in 2015, Patrol Police Department of MIA, and Central Criminal Police Department of MIA.

	Number of people employed	Number of people appointed	Number of people with disciplinary sanctions	Number of people dismissed
Tbilisi Police Department	1803	66	115	104
Kakheti Police Department	398	36	34	28
Tbilisi Main Division of the Patrol Police Department	1518	45	409	76
Kakheti Main Division of the Patrol Police Department	183	0	40	7
Central Criminal Police Department (Tbilisi)	438	23	16	27
Central Criminal Police Department (Kakheti Regional Division)	11	0	2	2

70. Letter N180342 of the Head of the Public Information Department of the Administration of MIA

The law determines grounds for dismissal. [71] The decision about dismissal of a police officer is made by the Minister or an authorized person and, in this case as well, procedural ambiguities are problematic. For instance, it is not specified whether in the case of job incompatibility, dismissal occurs via disciplinary procedures or by direct order of the Minister. In other cases, when staff reduction takes place or a specific unit is removed, the criteria for selection/dismissal of specific employees are ambiguous; it is similarly ambiguous whether professional criteria are taken into account in this process.

According to the information received from the MIA, [72] the number of personnel dismissed from October 1, 2012 to June 30, 2016 is as follows:



71. A police officer can be dismissed:

a) On the basis of a personal application;

b) During staff reduction or reorganization accompanied by staff reduction;

c) During a liquidation of a structural sub-unit;

d) Due to expiration of the period under human resources;

e) Due to approach of the maximum age of being employed;

f) Due to expiration of the length of service;

g) Due to a disciplinary misconduct or court ruling towards that misconduct entering legal force;

h) Due to job incompatibility;

i) Due to change of citizenship

j) Due to moving to another workplace;

k) Due to a health condition, according to a conclusion of a medical committee;

l) Due to recognition as missing or deceased;

m) Due to death;

n) For other grounds directly envisaged in the Georgian legislation;

72. Letter N1895807of the Head of the Public Information Department of the Administration of MIA

Chapter 5: Whistleblowing institute in the police system

According to the Police Code of Ethics, it is unacceptable for police officers to deliberately comply with an unlawful order or decree. In case of such an order, the employee should refuse to fulfill the task, report to the supervising authority about the mentioned and act within the scope of the law. Police officers who refuse to conduct unlawful actions do not face disciplinary or other sanctions. [73]

In this context, legal regulation of the whistleblowing institute is also important. The Law of Georgia "On Conflict of Interest and Corruption in Public Service" envisages regulations to protect whistleblowers, but also makes a predisposition that the issues of whistleblowing in the systems of Ministry of Defense of Georgia, Ministry of Internal Affairs of Georgia and the Special Security Service of Georgia are regulated through special legislation.[74] However, to this day, there is no comprehensive legislative basis in this direction. According to information submitted by the MIA, [75] in relation to regulation of whistleblowing, an internal administrative-legislative act is being prepared. Consequently, until the relevant normative acts are elaborated, the personnel of MIA is deprived of the possibility to raise issues of public interest and support elimination of systemic violations, as well as elimination and prevention of violations of general rules of ethics and behavior.

Regardless of the predisposition in the Law of Georgia "On Conflict of Interest and Corruption in Public Service," there is no special legislative act regulating whistleblowing in MIA.

The important role of whistleblowers in the process of preventing crime and strengthening democratic accountability and transparency is recognized by the Council of Europe. According to the recommendation[76] of the Council of Europe, the normative framework should reflect a comprehensive, coherent approach supporting the disclosure of information of public interest. The employer should not be able to use legal and contractual obligations to hinder disclosure of information of public interest or to use punitive measures towards a person. The identity of whistleblowers should be protected from disclosure and they should be able to benefit from the guarantee to fair trial. In addition, whistleblowers who make internal statements, as a rule, should be informed about the actions taken in response to the statement.

The recommendation of the Council of Europe also envisages important protection

73. Paragraph 2.9, Order N999 of December 31, 2013 of the Minister of Internal Affairs of Georgia

74. Article 2011, Law of Georgia "On Conflict of Interest and Corruption in Public Service"

75. Letter N1811626 of the Head of the Public Information Department of the Administration of MIA

76. Protection of Whistleblowers, Recommendation CM/Rec(2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014 and explanatory memorandum. Available at: http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2014)7E.pdf(Date of access: August 4, 2016).

guarantees: the whistleblower should be protected from any direct or indirect punitive measures from the employer, including: dismissal, temporary dismissal, demotion,

hindrance from career advancement, change of position on punitive grounds, decrease of remuneration, harassment or other types of discriminatory treatment. Importantly, a person should not lose protection guarantees with the sole motive of making a mistake, provided that the person had reasonable grounds or believing in the correctness of the disclosed fact.

According to the Compendium of Best Practices and Guiding Principles for Legislation of the Organization for Economic Co-operation and Development (OECD), [77] the main requirement of the legislation on the protection of whistleblowers is that disclosure of information should occur in good faith and on reasonable grounds. Therefore, protection guarantees do not apply when a person discloses incorrect information deliberately.

The mentioned document envisages the following mechanisms of protection:

- **Protection from punitive measures:** the legislation protecting whistleblowers should envisage comprehensive protection from punitive and discriminatory action
- **Cases of criminal or civil liability:** Legislation of certain countries envisages sanctions when an employee discloses information related to official classified information or national security; during the elaboration of legislation on the protection of whistleblowers, states can envisage exemption from criminal liability or application of protection guarantees in the event of protected disclosure, in cases when disclosure occurs via predetermined ways. For example, in the United States, if a whistleblower discloses information which is regarded as classified through law or orders due to the interests of national defense or international relations, such disclosure is prohibited by law and the whistleblower is unable to benefit from protection guarantees, except in cases when the information is given to the General Inspector or a special council.
- **Anonymity and confidentiality:** the majority of legislations for the protection of whistleblowers envisage the protection of the identity of the whistleblower, which is confidential if the whistleblower does not consent to disclose it.
- **Burden of proof:** the legislation for the protection of whistleblowers can put the burden of proof to the employer; therefore, the employer will have to prove that the actions against the employee are not related to the whistleblowing committed by that person. This is related to the difficulties which the employee might encounter while trying to prove that the punitive measures taken against him or her resulted from the disclosure of information, especially when such a responsive action can be poorly revealed and hard to prove.

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77. Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation. Available at: https://www.oecd.org/g20/topics/anti-corruption/48972967.pdf (Date of access August 4, 2016).

The mentioned document envisages the following recommendations for execution:

- **Supervision and execution units:** the legislation on the protection of whistleblowers can determine an independent organ that is authorized to accept and discuss appeals related to punitive, discriminatory, or disciplinary actions against a whistleblower;

  For example, Public Sector Integrity Commissioner is authorized to accept and discuss such appeals. If the fact of violation of the rights of the whistleblower is proved, the Public Servants Disclosure Protection Tribunal can determine damage compensation and use sanctions. In addition, the US legislation envisages that a special council (OSC) is authorized to discuss appeals regarding punitive measures towards whistleblowers.
- **Right to trial:** Considering the best practices, the legislation on the protection of whistleblowers should provide the rights to fair trial and appeal.

In addition, the legislation on the protection of whistleblowers, in most cases, envisages compensation of damage to whistleblowers.

Hence, according to international standards and experience of other countries, it is essential that relevant legislative guarantees exist for the protection of whistleblowers and that disclosure is encouraged. The non-existence of special regulations to regulate whistleblowing in the MIA system, as well as the non-existence of guarantees to protect whistleblowers negatively affects the accountability of the mentioned agency and hinders the disclosure of issues of high public interest.

Chapter 6: Incentive system and material guarantees

According to the OSCE Guidebook on Democratic Policing, the policies of appointment, distribution of duties and promotion should be free from discrimination in all forms. The selection and promotion of police officers should be transparent and based on the knowledge, skills, attitudes and reputation of the candidate and not the relations with a certain political group. [78]

The Law of Georgia “On Police” envisages forms of incentives for police officers for exemplary fulfillment of job duties, long and good service and fulfillment of tasks of special importance or difficulty.

A relatively detailed rule for incentives is determined in Order N989 of December 31, 2013 of the Minister of Internal Affairs, according to which incentives take place through the nomination of a direct supervisor of the unit or a supervising official. The nomination should

78. OSCE, Guidebook on Democratic Policing, 2008, pg. 34.

be accompanied with a characterization of the employee, indicating concrete, substantiated contribution, on the basis of which the person should be eligible for one of the forms of incentive. The mentioned order also determines persons with the right to incentive.[79]

The Minister of Internal Affairs is authorized to provide special salary supplements or compensations, one-time allowances or other mechanisms for social protection and exemption for employees through individual administrative-legislative acts. The mentioned statutory act contains no reference as to the grounds based on which the Minister uses the mentioned authority. In addition, through the Minister's legislative act, the servant may receive an apartment, house, facilities, and attached land in state property and under the Ministry balance for residential use. The servant of MIA who receives real estate on the Ministry balance can, as a lawful owner, obtain property rights on it on the basis of the motion of the Ministry. The purposes for transferring apartments, houses or other facilities under the Ministry balance to a servant as private property are also unclear. [80]

Incentives for employees by the Ministry are not based on clearly determined professional criteria, creating risks that the mechanism is used for manipulating police officers, which can also be represented in the attempts of exerting political influence.

The ambiguity of incentive systems raises politicization risks.

The rules for determining bonus amounts in public services is approved through Decree N 449 of the Government of Georgia of July 15, 2014. According to the mentioned rule, bonuses are given on the basis of assessment of the fulfilled work by persons employed in public services (if a work assessment system exists in public services) or of substantiation. The substantiation should include the amount of bonuses, its percentage relation to the remuneration of the person, and information of bonuses given to the person during the ongoing year.[81] Therefore, the Decree does not directly envisage the substantiation of exemplary fulfillment of duties by a person or his or her professional competence during the process of making decision regarding bonuses. In addition, according to the mentioned

79. The right to incentivize belongs to:

a) Minister of Internal Affairs

b) first deputy minister and other deputies;

c) heads of structural subunits of the Ministry;

d) heads of territorial organs of the Ministry;

e) Heads of Legal Entities of Public Law (applies on legal relations arising since April 1, 2016);

f) head of a state subunit agency.

80. Order N 997 of December 31, 2013 of the Minister of Internal Affairs of Georgia.

81. Article 3, Decree N449 of July 15, 2014 of the Government of Georgia.

rule, the amount of a one-time bonus received by a person employed in public service cannot exceed the remuneration of that person and the bonus can be issued once in a quarter.[82] However, exemptions are also envisaged, specifically: exemptions can be made through a motivated motion of a head of the public service, on the basis of a supervising official, and in the event of nonexistence of such an official (in the case of Legal Entities of Public Law, non-existence of a state supervision agency), on the basis of consent from the Prime Minister of Georgia. [83]

According to official information submitted by the MIA[84], salary supplements/bonuses issued in structural subunits of MIA of Georgia and territorial organs from January 1, 2015 to September 1, 2015 (during 8 months) amount to 41,960,487.16 GEL.

In addition, the table below includes the total amounts of remunerations, supplements, and bonuses issued in structural subunits of MIA of Georgia and territorial organs during 2015 and first quarter of 2016 [85]:

Total amount of remunerations, supplements, and bonuses	2015	1st quarter of 2016
Officials	36,046,558.37	6,493,607.50
Other employees	270,298,628.96	62,671,790.94
Freelance contract	11,333,948.14	2,501,031.40

Chapter 7: Summary

De-politicization of the police system and ensuring of political neutrality of each police officer in everyday activities is directly related to the normative base regulating appointment and dismissal of employees, procedures for disciplining employees and their incentives, as well as the degree of transparency and democracy of these procedures. The analysis above shows that the existing legislation does not envisage relevant guarantees to protect the mentioned processes from political influence. In addition, a large circle of issues is not

82. Article 5, Ibid.

83. Ibid.

84. Letter N2134370 of September 28, 2015 of the Head of the Public Information Department of the Administration of MIA

85. Letter N1744332 of July 14, 2016 of the Head of the Public Information Department of the Administration of MIA

regulated on the legislative level and the Minister regulates it through his or her own orders.

Taking into account the fact that external control mechanisms on police activity are limited, while internal regulations are ambiguous, the risks of influencing specific police officers and using this for political purposes increase, exceeding the inherent functions and features of the police, as a law enforcement unit responsible for public order.

The wide authority of the Minister, a political official, as well as his/her ability to make arbitrary decisions on certain issues, is problematic. An important shortcoming is the arbitrary decision of the issue of disciplining police officers, during which a political figure can disregard the recommendation prepared by the General inspection and make a different decision. Unfortunately, the MIA was unable to provide official statistics of the cases when the Minister changed the conclusion of the General Inspection and made a different decision. In addition, significant attention should be paid to the incentive system, since the remuneration and bonuses of public servants, especially, the representatives of law enforcement system, as a rule, attract special attention of the public, because the chances of influencing their independence and neutrality in this manner are high.

Due to all of the above-mentioned, in order to avoid risks of politicization, it is recommended to:

- Create a collegial unit staffed on professional grounds to make decisions related to personnel in the police system;
- Spare the legislative and statutory acts on police from ambiguous formulations;
- In the process of making decisions related to personnel, significantly decrease the involvement of political officials (Minister), especially during selection/appointment of employees of lower and middle levels, and professional heads of police;
- Systematize the norms regulating appointment, dismissal or transfer in a single document; it is also recommended to regulate this issue on the legislative level;
- Elaborate a strategy document for execution of the police code of ethics and monitoring and elaborate the code of ethics with direct involvement of police officers;
- Create a new notion of General Inspection, which will ensure independence of the organ from political management. An independent investigation mechanism should also exist to discuss appeals against the police;
- The involvement of the alleged actor of the misconduct should be ensured during disciplinary litigation; the person should have adequate legal guarantees;
- The procedural guarantees for realization of the author/victim of the application/appeal

and protection of legitimate interests should be ensured;

- An effective mechanism for appealing decisions of disciplinary sanctions should be created;
- The legal system of the whistleblowing institute should be regulated in the law enforcement system;
- Issues of incentives should be regulated by the law, rather than statutory acts, so that incentives on political grounds are prevented;
- Grounds for incentives should be determined clearly, the opportunities for arbitrary decision-making by the Minister should be decreased;
- Information on the incentives for employees of MIA should be available;
- A single guideline should regulate the issues related to the forms of incentive, its grounds and procedural stages.

PART 4: PROBLEMATIC POLICING INSTRUMENTS

Chapter 1: Introduction

Policing practice includes various aspects and is determined by directly applying normative acts, as well as the so-called indirectly applying legislation, documents of general policy and strategy for fighting against crime in certain periods. In addition to social and political contexts, policing practice is significantly influenced by the degree of effectiveness of the internal and external control mechanisms for the activities of law enforcers. All of these aspects, consecutively, determine the instruments used by police officers in everyday life, as well as the purposes towards which these instruments are used.

Power beyond the scope of effective control, in turn, increases the probability that police actions are not free from political motives. This argument is further substantiated by the circumstance that the number one police officer of the country, the Minister of Internal Affairs, is a political official. In the conditions of sharp centralization, the political vertical is strengthened, and considering the character and scope of power in the hands of the system, politicization of the police becomes especially risky. Individual units of the Ministry are tightly linked to the central governing unit of the Ministry and its political leadership. Functional autonomy of units with significant power and their distance from the political leadership circle is miniscule, which increases the risks of political influence on them. While the patrol and investigation units are in functional terms insufficiently distanced from the central government circle, in the case of political interest, it is possible to use these mechanisms for political purposes.[86]

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The purpose of this chapter is to reveal the main legislative shortcomings hindering, together with institutional problems, the protection of political neutrality in the police system, through individual case studies and analysis of identified problems.

The research on the execution of police power in practice was conducted in two directions: 1) monitoring of police behavior during public assembly/manifestations; 2) studying practices of detention/arrest of specific persons through drug crimes. Through monitoring, cases where possible political background was identified through observation were selected.

It should be noted that in the case of public assembly/manifestations, it is relatively easy to

86. Human Rights Education and Monitoring Center (EMC): Policy of Invisible Power: Analysis of the Law Enforcement System of Georgia, 2015. Pg. 18.

see political contexts, since by definition, public assembly and protest, as well as declaration of specific requirements towards the governing political party represents an act with a political character. As for drug crimes, selection of these as one of the directions of research is largely due to the problematic nature of drug crimes, including the ease of illegal use or abuse of power by law enforcers in relation to drug crimes. As the resent research and experience shows, [87] in certain cases, law enforcers used planting of drug substances or threats of drug crime accusation for the purposes of pressuring specific citizens or other ends.

During the process of monitoring throughout the project, ten cases were studied, in which alleged disregard of political neutrality of the police took place. It is important that, in general, problematic policing instruments were used not against political parties/political opposition, but towards activists and public groups who actively criticized either the policy of the existing government or the decisions related to the interests of the former Prime Minister, Bidzina Ivanishvili.

The cases studied throughout the research revealed the following main problems:

- Forced drug testing for discrediting or isolating a person for a certain period;
- Unjustified and arbitrary administrative detention;
- Unsubstantiated limitation of the right to assembly and manifestation;
- Incorrect definition of public order and morals, petty hooliganism and disobedience to police.

Even though the monitoring conducted within the scope of this project concerns the study of police system, while preparing the report, it is impossible to avoid the activities of the court and Prosecutor's Office, since the legislative acts issued by these institutions, in numerous cases, clarified police actions (for example, studying cases involving administrative detention by the police would not have been comprehensive without the analysis of court decisions). Therefore, the analysis of legislative acts issued by the mentioned institutions made it possible to reveal clearly the cases where the police acted with appropriate legal grounds, the factual circumstances their actions were based on, etc.

Chapter 2: Arbitrary transfer to forced drug testing

Study of the practice of detention/arrest of specific individuals through drug crimes in the monitoring period revealed two cases with possible political backgrounds.

87. See research of the Georgian Young Lawyers' Association: Cases of Criminal and Administrative Offences with Alleged Political Motive, 2012, pg. 76.

Factual Circumstances

1. In this case, the addressee of police actions was **Gega Gobejishvili, the now former delegate of the Football Federation.** On October 2, 2015, the night before the elections of the President of the Football Federation, at 20:50, Gobejishvili was detained on the basis of operative information, for offences envisaged by Article 45 of the Administrative Code of Georgia (ACG). [88] The conclusion of the Expert-Forensic Main Division of October 3, 2015 found the usage of drug substances by Gobejishvili. On October 3, 2015, the hearing of the case of administrative offence of Gobejishvili in the Administrative Cases Panel of Tbilisi City Court was opened at 15:54 and closed on the same day, at 16:07. According to the court ruling Gobejishvili was found guilty of administrative offences according to Article 45 of ACG and was subject to a penalty of 500 GEL as an administrative sanction.

Importantly, Gega Gobejishvili was a supporter of one of the candidates for presidency of the Football Federation, Revaz Arveladze, and was planning to vote for him during the elections too; [89] However, in the elections scheduled the following day of the court hearing, Gobejishvili did not benefit from the right to vote and another delegate was appointed instead. [90] Consequently, Leval Kobiashvili was elected as the new President of the Football Federation. [91] Reportedly, the current Minister of Energi, Kakhi Kaladze and, also reportedly, the ruling party as well, were interested in the candidature of Kobiashvili. [92] In relation to the factual circumstances of this case, it is also worth noting that as early as July 2015, the Vice Prime Minister of Georgia pointed to the necessity of the involvement of the state in the upcoming elections of the Football Federation. A family member of Gobejishvili also mentioned different facts of pressure, which aimed at changing the decision of Gobejishvili and his vote towards Kobiashvili's candidature. [93]

2. In this case, **Nata Pheradze, a civic activist and member of "Guerilla Gardening"**, was transferred to forced drug testing. She was transferred during the demonstration of May 7, 2016. The protest of civic activists that day was directed at several problematic issues: construction of Panorama Tbilisi, selling of 4 hectares of land of the Botanical Garden and auctioning of 30 hectares of land by the Tbilisi City Hall. According to organizers, all

88. Available at: http://1tv.ge/ge/news/view/108386.html (Date of access: August 5 2016).

89. Available at: http://www.radiotavisupleba.ge/a/pekhburtis-pederatsia/27285260.html (Date of access: August 5 2016)

90. Available at:http://rustavi2.com/ka/news/27956 (Date of access: August 4 2016).

91. Available at:http://netgazeti.ge/news/44440/ (Date of access: August 5 2016).

92. Available at:http://www.kvirispalitra.ge/sport/26260-vis-ufro-gavleniani-qomagi-hyavs-khelisuflebashi-anu-vin-gakhdeba-fekhburthis-federaciis-prezidenti.html?add=1&device=xhtml (Date of access: August 5 2016).

93. Available at:http://pirveliradio.ge/?newsid=55042 (Date of access: August 5 2016).

of these territories are related to the former Prime Minister, Bidzina Ivanishvili. [94] In her interview with the Human Rights Education and Monitoring Center (EMC), Nata Pheradze noted that the police acted with political motives and related her detention and transfer to drug testing to the orders of Bidzina Ivanishvili and the ruling party to crash the protests.

As noted above, the detention of Nata Pheradze and her transfer to drug testing was related to the events of the demonstration of May 7, 2016. Specifically, the activist group was demanding to enter the space, without passing which, the planned march would be impossible to take place safely, which, in turn, was impossible due to police cordon. The activists tried to go through the cordon, which was followed by the detention of two participants of the demonstration. To protest the detention, Nata Pheradze climbed the patrol police car; consequently, without any prior warning, the police used force to drag her down roughly from the car, dash her on the car and detain her. [95] According to the explanatory note of Nata Pheradze, she was taken to the yard of the MIA building on Noe Ramishvili Street in Tbilisi and was held in the car for three hours. Next, she was moved to another car and transferred to drug testing.

Legal Assessment

According to Paragraph I of Article 245 of the ACG, during administrative detention, the detaining officer is obliged to clarify to the detainee in a clear form during detention: a) administrative offence and grounds for detention; b) the right to attorney; c) the right to, if desired, inform any acquaintance of his or her, as well as the administration of his or her educational institution or workplace about the detention and location.

According to the explanatory note of Nata Pheradze, during her stay in the car, the detaining officer gave none of the clarifications envisaged in Paragraph I of Article 345 of ACG. Even though clarification on the rights of the person to be transferred to find illegal use of drugs and/or psychotropic substances by the relevant servants to the detainees is also required by Paragraph 5 of Article 4 of the instructions for transferring a person to find the fact of using drugs and/or psychotropic substances, Nata Pheradze was deprived of information not only on her rights, but also on the fact that she was being transferred to drug testing. On her question regarding the place she was being taken to and the grounds for the latter, she received an answer: “where necessary.” Pheradze only learned about drug testing after three hours, when she was moved to another car. She was not given information on her rights, but she herself was aware that she had the right to refuse to submit her biological material. After her refusal, in two hours, she was released on the basis of receipt.

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94. Available at:http://netgazeti.ge/news/111863/ (Date of access: August 5 2016).

95. Available at: https://www.youtube.com/watch?v=v4hcAiMwDdM (Date of access: August 5, 2016).

The conclusion mentioned that, according to external observation, she was not under the influence of drugs. [96]

It is important to note that in September 2015, the order of the Minister of Internal Affairs approved the instructions for transferring a person to find the fact of using drugs and/or psychotropic substances, [97] which had to clearly and unambiguously determine guidelines for the employees of MIA and elaborate effective appeal mechanisms. Article 3 of the instruction determines the circumstances for which the servant has the authority to take a person for testing in the forensic agency of the Ministry for the purposes of finding drug and/or psychotropic substance use.

Regardless of the attempt to comprehensively determine the grounds for involuntary drug testing and eliminate the risks of possible arbitrariness of law enforcers, attention should be paid to the Subparagraph C of Paragraph 1, Article 3 of the mentioned order, which envisages one of the grounds for transferring a person to expertise: "information obtained by operative-investigative actions according to the rules defined by the Georgian legislation or covert investigation, notification received by LEPL 112 of the Ministry, or information of an identified source given directly to the police about the illegal use of drugs and/or psychotropic substances by a person". The mentioned grounds are so wide and general that, in fact, enable the police officer to transfer citizens to drug testing with similar procedures as those existing before the instructions were approved. Transfer to expertise on the mentioned grounds is problematic, especially in the conditions when the information obtained on the basis of operative-investigative actions is not subject to judicial or prosecutorial control. E.g. a person, a "confidant" who gives information to police about the use of drug substances by another person, is not questioned by the court and his or her reliability is not examined. [98]

Reportedly, this was the exact circumstance used as grounds for transfer of Gobejishvili to drug testing. In the case of Pheradze, it is absolutely unclear, which factual circumstance gave the police officer reasonable grounds to presume that Pheradze used or was under the influence of drugs and/or psychotropic substances. One of the demonstrators against Panorama noted in an interview that: "Transfer ot Nata Pheradze to drug testing was absolutely unsubstantiated, since, like Nata Pheradze, others also acted to the end of hindering the patrol cars in the process of detention of demonstrators. Transfer of only

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96. Available at: http://georgianpress.ge/com/news/view/19835?lang=1 (Date of access: August 5, 2016).

97. Order N725 of the Minister of Internal Affairs of September 30, 2015 "on approving the instructions for transferring a person to find the fact of using drugs and/or psychotropic substances"

98. Available at: https://emc.org.ge/2015/10/02/ქუჩის-ნარკოტესტირების-ახ/ (Date of access: August 5, 2016)

Nata Pheradze to drug testing was directed at discrediting her authority as a leader of the organization."

Even though, as early as December 2015, the report of the European Commission to the Parliament and the Council noted that the legislation of Georgia ensures sufficient defense guarantees during random drug testing, [99] the existing legal framework and examples given above show that the risks of arbitrary use of powers for political purposes still exists during random drug testing.

In the case of Gobejishvili, his status (delegate of the Football Federation), circumstances prior to detention (statements of a high-level official in relation to Federation elections) and the detention episode itself (detention the night before elections on the basis of operative information) produce doubts that his transfer to drug testing was aimed at influencing events of political interest, which, in this specific case, was reflected in the isolation of the person with a position opposing that of the ruling party from the ongoing processes. In the case of Nata Pheradze, it is important to take into account the addressee of the protests of Pheradze and her supporters, the former Prime Minister, towards whom numerous demonstrations of Guerilla Gardening were directed. While analyzing this case, it should also be taken into account that the police, in fact, had no legal basis for transferring her to drug testing. Such coincidences of circumstances creates sensation that, in this case, transfer to drug testing was used for isolating and discrediting one of the demonstration leaders, which, in sum, aimed at crashing public protest.

Regardless of implemented changes, the risk of power abuse or arbitrary use of power for political purposes by police officers still remains.

The problematic aspects of transfer to drug testing are also highlighted in the 2015 Parliamentary Report of the Public Defender, which notes that courts do not research the grounds on which a person has been transferred to drug testing and the grounds on which the police officer presumed that the person had used drug substances. In the nonexistence of such grounds, arbitrary transfer of a person to drug testing is illegal, and evidence obtained illegally has no legal power. Acceptability of evidences obtained with disregard to obligatory preconditions envisaged by the law in the case should be questionable, however, this circumstance often remains beyond judicial vision. [100]

99. Fourth Interim Report on the Implementation of the Visa Liberalization Action Plan by Georgia, 2015, pg. 11. Available at: http://eeas.europa.eu/delegations/georgia/documents/news/2015/vlap4_geo_final_ka.pdf (Date of access: August 5, 2016)

100. Report of the Public Defender of Georgia on the Situation of the Protection of Human Rights and Freedoms in Georgia, 2015. Available at: http://www.ombudsman.ge/uploads/other/3/3512.pdf (Dace of access: August 5, 2016).

As for appealing the transfer procedure, in this situation, the legislation does not provide a person to effective protection guarantees in the court. The citizen has to prove that the police officer had insufficient grounds/information for transfer to drug testing. The police officer, in turn, merely has to prove that he or she had operative information about usage of drugs by a citizen. This is what the police officer's obligations are limited to. In the conditions when the trustworthiness and truthfulness of operative information is not adequately tested, citizens face great difficulties to prove their rightness. It should also be considered that, according to a widespread practice, the "presumption of good faith of law enforcers" usually works, which means that the court considers police officers' actions as legitimate and lawful until proven otherwise or until a reasonable doubt is raised about the lawfulness of the police officers' behavior. In these conditions, citizens are effectively powerless, unable to prove that their transfer was unsubstantiated and unjustified.

Chapter 3: Administrative detention with the motive of defacing the appearance of a self-governing unit

Regarding the issue of using legal measures by the police with the motive of defacing the appearance of a self-governing unit, the project team studied two cases. The researchers were interested in these two cases largely due to the addressees of police actions and the content of actions which led to police action.

Factual Circumstances

1. The case relates to Giorgi Rukhaia, an activist of "Tavisupali Zona," an organization actively supporting oppositional party "United National Movement" (UNM). More specifically, on November 21, 2015, the members of Tavisupali Zona placed a banner: "Freedom to Nika Narsia, Mirian Deisadze, Kakha Gabunia!" near the new road connecting the Heroes Square and Tamarashvili Avenue, with the request of releasing the members of Tavisupali Zona, detained during a demonstration in support of Rustavi 2. In the administrative offence protocol presented to the Tbilisi City Court, the grounds for detention of Giorgi Rukhaia on November 21, 2015, at 08:20 are identified as arbitrary placement of a banner and defacing of an inappropriate space with unidentified individuals.

During the court hearing, the representative of MIA noted that while fulfilling job duties, near the so-called new road next to the river Vere, he noticed several persons placing the banner. Among those was a person who visually resembled Giorgi Rukhaia, holding video camera and helping others to place the banner. The MIA officer, after unfruitful search for a road to climb the hill, returned to the new road, where he noticed Giorgi Rukhaia, standing next to the road and holding a video camera. He also added that due to long distance, he was unable to see the face of the person holding the video camera and recording the

placement of the banner, but presumed that the person and Giorgi Rukhaia were the same due to the following circumstances: 1) resemblance of physique and clothes 2) holding of a video camera 3) filthy clothes of Rukhaia.

2. The second case concerns the detention of Tamar Chergoleishvili, Editor of TV Tabula. It should be noted that Chergoleishvili often expresses critical views against Bidzina Ivanishvili, the former Prime Minister, and the ruling party. The former Prime Minister, Bidzina Ivanishvili, has on numerous occasions [101] pointed to the relations between TV "Tabula" and the UNM.

As for the factual circumstances of the case, Chergoleishvili was detained on October 16, 2015, due to placing of posters on a street light pole in front of the Opera House on Rustaveli Avenue, Tbilisi. On November 5, 2015, the Tbilisi City Court declared Chergoleishvili as an offender, but released her from administrative liability and only gave a verbal warning.

Legal Assessment

According to Part 1 of Article 150 of the ACG, placing of writings, drawings, symbols, etc., arbitrarily on facades, vitrines, fences, poles, trees, as well as placing of posters, losungs, and banners on places not allocated for these purposes and leaving of fences and buildings without painting represents an offence.

According to Article 237 of the ACG, an organ (official) has to assess evidence through own beliefs, which are based on the comprehensive, objective research of the compilation of all circumstances of the case.

The clarification of the Tbilisi City Court on the case of G. Rukhaia, that only physique, clothes and camera in the given case cannot be considered as sufficient evidence to identify the person, is to be appreciated. However, it should also be noted that before this, law enforcers assessed the factual circumstances of the case through different criteria and detained the person based merely on general identifying features.

Since the evidence presented before the court did not substantiate the conduct of offence covered by Part 1 of Article 150 of the ACG by Giorgi Rukhaia, the court did not discuss whether placing of a banner on a natural hill represents defacing of a self-governing unit. Whether video camera recording of the fact/action represents direct involvement in the action under question, due to which it would be possible to hold the person accountable, was likewise not discussed.

While discussing the case of Chergoleishvili, the Tbilisi City Court clarified that part 1 of Article 150 of the ACG unconditionally envisages administrative liability for arbitrary

101. Available at: http://www.tabula.ge/ge/verbatim/108760-ivanishvili-tabulas-ver-moxdeba-is-rom-she-macheron-da-dabrundes-dzveli-tash-fandura (Date of Access: August 5, 2016).

placing of posters on specific objects, including poles. Therefore, the court considered street lighting poles as protected goods. Chergoleishvili admitted the fact of placing the poster on the street lighting pole, however, she noted that her actions did not represent an offence, since other advertisements had already been placed on the pole and objectively, her actions did not deface the object. In addition, Chergoleishvili noted that freedom of expression represented a higher value than defacing of an already defaced pole.

The court considered that Article 150 of the ACG represents a proportional limitation to the freedom of expression, prohibiting placement of posters (regardless of their content) in places which are not allocated for this purpose. The court also declared that the limitation serves a legitimate aim – protection of the appearance of a self-governing unit from arbitrary intrusion and protection of public and social interests, rule of governance and public order.

Freedom of expression is a fundamental right of universal value, serving as the foundation for other rights. It is an essential condition for a valuable functioning of a democratic society. Paragraph 1 of Article 24 of the Constitution protects freedom of expression and dissemination of opinion not only in written and oral form, but "through other means." Their protection is equally ensured. These "means" include audio cassettes, laser discs, recording devices, images, gestures, symbols, posters, etc. [102] Certainly, freedom of expression should not be understood as a freedom existing beyond the law. Each subject is free until the realization of his or her rights does not hinder the rights of others. Limitation to this freedom by the state is justified when expression of opinion supports incitement of racial or national hatred, when the person enjoying the right expressed hatred or derogatory attitude towards ethnic, racial or religious groups, incites indecency, violence, etc. Freedom of expression should not represent threat to the democratic institutes of the society. Freedom of expression can be limited when it opposed human dignity. [103]

The banner placed on the hill of the so-called new road by Tavisupali Zona and the posters against Gasprom negotiations placed by Chergoleishvili on outdoor lighting poles did not contain content against others' rights and did not oppose human dignity. The clarification of the European Court of Human Rights, according to which, expression, even when it is offensive, shocking and concerning for a certain segment of the society, is protected under Article 10 of the European Convention on Human Rights and Fundamental Freedoms, is also interesting. [104] Moreover, the Convention protects not only the content, but also the forms of expression. [105]

The experience of Seattle, a city in the United States, is interesting. A 1994 legislative act

102. Comment on the Constitution of Georgia. Chapter 2, Citizenship of Georgia, Fundamental Human Rights and Freedoms, 2013. Pg. 257.

103. Comment on the Constitution of Georgia, 2013. pg. 259.

104. Handyside v. The United Kingdom.

105. Novikova v. Russia, p. 150

prohibited placement of signs, advertising papers and other items on lighting poles. In 2002, the Washington Court of Appeals declared the mentioned prohibition as incompliant with the Constitution with the motive of limiting freedom of expression, but gave the city the possibility to regulate the place, time, and form of placing temporary signs and posters independently. [106]

Clearly, placement of posters and banners represents one of the expression forms. The disposition of Part 1 of Article 150 of the ACF does not create a clear picture on where a person can, within the scope of the sphere protected under the freedom of expression, place different kinds of writings, drawings or symbols so that the action is not qualified as an administrative offense. The mentioned recording creates possibilities of different interpretation of the norm. When the court places a street lighting pole under the sphere protected under Article 150, the Public Defender clarifies in his special statement that the street lighting poles should not be implied under the list given in Article 150. [107] Wide definition of the norm creates the possibilities of unjustified interference in the sphere protected under freedom of expression.

To study judicial practices related to Article 150 of the ACG, Human Rights Education and Monitoring Center (EMC) requested information from Tbilisi City Court on court rulings by month from July 2015 to June 2016, where the existence of an offence envisaged under Article 150 was not found and litigation was stopped. The analysis of 13 rulings submitted by the Court show that the rulings have a banal character, and a large portion of their texts represents dispositions copied from the ACG Articles. In one of the rulings, it is noted that any space, which "is not allocated for these purposes" represents an object under the protection of part 1 of Article 150. Importantly, only in once case of those provided the judge did not consider the object where other writings and posters had already been placed as implied in the list envisaged in Article 150, and clarified that putting paint arbitrarily on a banner belonging to a club does not represent an administrative offence envisaged in Article 150 of the ACG.

While discussing the two above-mentioned issues, the detention of alleged offenders for

the mentioned action (defacing) and the lawfulness of this detention, are no less interesting than the scope of defining Article 150 of ACG. It can be noted singlehandedly that in both cases, the detention took place with harsh violation of the law, since law enforcers did not have the right to use coercive measures in the given cases.

According to part 1 of Article 244 of ACG, *in cases directly envisaged by legislative acts of*

106. Available at: http://www.seattle.gov/transportation/posteringrules.htm (Date of access: August 5, 2016).

107. Available at: http://ombudsman.ge/ge/about-us/struqtura/departamentebi/samoqalaqo-politikuri-ekonomikuri-socialuri-da-kulturuli-uflebebis-dacvis-departamenti/siaxleebi-jus/saxalxo-damcveli-plakatebis-gakvris-gamo-sami-piris-dakavebas-exmianeba.page (Date of access: August 5, 2016).

Georgia, to preclude an administrative offence, when all other measures are exhausted, to identify a person, to create a protocol of administrative offense, if protocols are necessary but impossible to fill in on the spot, to ensure timely and correct discussion of the administrative offense case and ensure the execution of the ruling on the administrative offense case, administrative detention of a person is allowed.

Subparagraph A of Article 246 of ACG determines the list of the types of offences, during the existence of which the organs of MIA, on the basis of grounds envisaged through part 1 of Article 244 of ACG, can detain the offender. The list does not include offences envisaged in Article 150 of ACG, meaning defacing. Therefore, in these two cases, the employees of MIA had no authority to detain the alleged offenders. Furthermore, usage of detention was not a proportional measure, since, due to the existing factual circumstances, the protocol of administrative offence could have been prepared without any hindrances. Administrative detention should be an exceptional measure and should be used only in certain cases, in the existence of clearly defined grounds, when no other measures can ensure timely and appropriate administration of justice and prevention of new offences. [108]

Regardless of amendments in the current edition of the Administrative Code of Georgia, arbitrary use of the provisions of the Code, including in politically sensitive cases, is still possible.

As early as 2012, the Human Rights Watch noted in its report that in the past, the Government of Georgia used the Administrative Code for arbitrary arrest and punitive measurement against citizens participating in assemblies and manifestations, as well as against certain political activists. [109]

Regardless of amendments to the existing edition of the Code, the main, fundamental issues were not revised, and therefore, the presented examples create a justified doubt that it is still possible to use mechanisms limiting human rights envisaged in the ACG for arbitrary, including political purposes, or in politically sensitive cases.

Chapter 4: Violating the right to assembly and manifestation with the motive of interfering the movement of motor vehicles

In relation to violation of the right to assembly and manifestation with the motive of interfering

108. Notes and recommendations prepared by the Coalition for Independent and Transparent Judiciary regarding administrative detention and arrest. Available at: http://www.coalition.org.ge/ge/article106/ (Date of access: August 5, 2016)

109. Human Rights Watch, Administrative Error – Georgia's Flawed System for Administrative Detention, 2012. Available at: https://www.hrw.org/sites/default/files/reports/georgia0112ForUpload.pdf (Date of access: August 5, 2016)

the movement of motor vehicles, EMC studied two cases with allegedly political motives in the monitoring period.

Factual Circumstances

1. While protesting the outcomes of interim elections in Sagarejo on October 31, 2015, police officers prevented the **members of the "Patriot Alliance"** party from setting up a tent. In this case, alleged political motive is clear, as the members of one of the opposition parties were the addressees of the illegal actions of the police. The leaders of the Patriot alliance required the annihilation of the outcomes of the interim election in Sagarejo, dismissal of the Ministers of Defense and Environment and implementation of electoral reform till the 2016 Parliamentary elections. [110]

The demonstration of the opposition party was not organized on the traffic lane, and the manifestation had peaceful nature. It should also be considered that the demonstration was ongoing in harsh climatic conditions. As the organizers of the demonstration stated, they were putting up tents in the morning as a patrol officer approached them and told them that they had no right to do that without a special permission. [111] It is unclear what the patrol officer meant in the special permission, or what legal basis the limitation of constitutional rights of the demonstrators was based on. The participants of the protest also note that law enforcers pointed to a meeting planned with representatives of an international organization that day and added that it would be better if the demonstrators did not meet the international delegation there. [112]

2. The second case relates to the detention of **Alexi Matchavariani, the General Producer of Tabula, one of the organizers of the demonstration "Stop Russia."** Also in this case, the detainee was a representative of the media outlet critical towards the government, and within the scope of the Stop Russia demonstration, the demonstrators demanded the ruling party to 1) stop the direct negotiations between Abashidze and Karasin; 2) conduct all negotiations with Moscow with the involvement of strategic partners and 3) adoption of a law against collaborationism by the Parliament. [113]

According to police officers involved in the case, through his actions, Alexi Matchavarini hindered movement of motor vehicles on the transport lane in a public space, refused to obey the lawful demands of the patrol police officer, concerning the removal of the

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110. Available at: http://www.radiotavisupleba.ge/a/sagarejos-archevnebis-shedegebi/27355692.html (Date of Access: August 5, 2016)

111. Available at: http://argumenti.ge/samartali/351--.html (Date of Access: August 5, 2016)

112. Ibid.

113. Available at: http://www.newposts.ge/?l=G&id=81429 (Date of access: August 5, 2016)

vehicle loaded with stage appliances from the territory adjacent to the Administration of the Government on numerous occasions, and disobeyed the police. The law enforcers noted during the court hearing that the phrase mentioned by Alexi Matchavariani, "shameful police," represented petty hooliganism. [114]

The ruling of the Tbilisi City Court on this case[115] did not find administrative offense. On the basis of the explanatory notes of the parties and a witness, as well as case materials, including the presented video material recorded on CD and DVD disks, the court considered that the fact of conducting administrative offense under Articles 166 and 173 of ACG by Alexi Matchavariani cannot be proven. On one hand, the mentioned ruling is to be appreciated, but on the other hand, it should also be noted that the ruling has a banal character and only briefly includes assessment/research of evidence.

Legal Assessment

The scope protected under Article 25 of the Constitution of Georgia includes the rights of assembly (manifestations) with political grounds, with political content and purposes, with public importance, or completely apolitical grounds.[116] Article 25 of the Constitution protects the right which gives an individual the possibility to choose the form, means, and place of expression based on own views. Specifically, the individual should have a legally guaranteed right to express own opinion publicly and peacefully in the part of street and in the manner that he or she considers appropriate. Expression of opinion is possible not only in speech, via statements, but also in silent form or through setting up of temporary constructions (which do not cover vehicle lanes). From the parts 1 and 2 of Article 25 of the Constitution, it can be read that organization of assembly or manifestation does not necessitate prior warning of government agencies, if it is not organized on places where people or vehicles move. Prior warning necessity is regulated by law, if assembly or manifestation is organized on a transport lane. "Prior warning" does not equal a permission system. [117]

The legislator defines the formal grounds for interfering in a protected public good: "law" in the nonexistence of which constitutional-legal interference is unjustified. Part 2 of Article 11

and Article 111 of the Law of Georgia "On Assembly and Manifestation" presents limiting norms for participants of an assembly. The legislator does not determine absolute rules to be used in all cases and prioritizes case-by-case discussion. Furthermore, the legislation points to the circumstances, considering which the decision should be made, including:

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114. Available at: http://ombudsman.ge/ge/news/saxalxo-damcveli-shekrebis-tavisuflebis-shezgudvis-faqtebs-exmaureba.page (Date of access: August 5, 2016)

115. Ruling of July 20, 2015 of the Administrative Cases Panel of the Tbilisi City Court.

116. Comment on the Constitution of Georgia 2013, pg. 283.

117. Comment on the Constitution of Georgia 2013, pg. 291.

intention, number of demonstrators and impossibility of benefitting from the right to assembly by other means, and consideration of public interest.

Expression of opinion also falls under the sphere protected by Paragraph 1 of Article 24 of the Constitution of Georgia. Opinion should be understood widely. It includes evaluating discussions (statements) and "factual circumstances" ("facts"), when they represent preconditions for the formation of an opinion. The concept of opinion includes any evaluating statements, which includes elements of judgment, attitude, or evaluation. "Opinion is a personal, subjective assessment of a person towards an event, idea, fact, or person." Therefore, the main characteristic of expression of opinion is the freedom to express evaluating opinions. Opinions are characterized by a subjective attitude of an individual towards own expressions. Opinion is that which the subject (individual) is thinking.[118] Therefore, the phrase "shameful police" represented a subjective assessment of police actions by Matchavariani. Clearly, this was a good protected by Article 24 of the Constitution and classification of an action as petty hooliganism for this phrase is unjustified and unsubstantiated. In one of the decisions, the European Court of Human Rights (Knadzhov v. Bulgaria) notes that even attempts of immediate crashing of insulting references or references containing provocation, as well as radical expression, are unacceptable through administrative sanctions.

As for the lawfulness of the demands of the policemen, due to the factual circumstances mentioned above, it is clear that the sound equipment and other technical equipment in the truck vehicle brought to the Government building by the organizers of the demonstration represented essential equipment for proper organization of the demonstration. The court ruled that the vehicle was not hindering the movement of transport vehicles. Therefore, the requirement of police officers to move the vehicle loaded with stage equipment from the territory adjacent to the Administration of the Government was inherently illegitimate, unjustified and unsubstantiated. The same can be noted regarding the limiting measures taken against the Patriot Alliance, when law enforcers asked the organizers to present permission, which the organizers were not obliged to present, having the right to benefit from the freedom of assembly and manifestation without it, including in such forms as setting up tents.

As a conclusion, it can be noted that the circumstances in both cases, including the initiators of protest and their organizational or partisan belonging, as well as protest addressees and political acuteness of the issues, creates grounds to believe that the political sensitivity

of these cases caused arbitrary and unreasonable use of legal levers in the hands of the police.

118. Comment on the Constitution of Georgia 2013, pg. 255.

Chapter 5: Wide interpretation of petty hooliganism and disobedience to a lawful request of a police officer

Policing instruments with the motive of petty hooliganism and disobedience to a lawful request of a police officer is related to unjustified and unsubstantiated limitation to benefitting from numerous constitutional rights. Throughout the project, EMC studied four cases where the detention of individuals the motive of petty hooliganism and disobedience to a lawful request of a police officer could be related to partisan or organizational belonging of detainees, criticism towards governmental circles during public gatherings or criticism of the policies of the ruling party.

Factual circumstances

1. During the protest demonstration near the business center of Bidzina Ivanishvili on September 19, 2015, addressed against the ruling political party and Bidzina Ivanishvili, police officers used policing/ rights violating measures towards **Lasha Tchigladze and Soso Mindiashvili, activists of Tavisupali Zona**, the organization supporting UNM [119]. Specifically, these persons were detained with the motive of disobeying lawful requests of police officers during the demonstration.

According to the protocol of administrative detention, the detention of Mindiashvili and Tchigladze was based on the violation of public order by these individuals, aggression expressed towards police officers and disobedience to lawful requests of police officers. Tchigladze and Mindiashvili themselves noted that the police officer himself tore the ensign from the uniform, which was later regarded by law enforcers as the offence committed by Tchigladze and Mindiashvili.

According to the members of Tavisupali Zona, after detention, the police took Tchigladze and Mindiashvili, with shackles on both hands and feet to the yard behind the MIA building on Noe Ramishvili street, where they spent the period from 8 pm to 3 am in a car. During this period, according to them, they had no opportunity to go to the restroom, drink water or contact a lawyer. When asked to slightly release the shackles on hands and feet, the policemen responded: “you’re from the Zone and you can endure this.”

After spending 7 hours in the car, Tchigladze and Mindiashvili were transferred to drug testing. The testing showed that the detainees were not under the influence of drugs. Approximately at 4 am they were taken to a pre-trial detention center. Before placement in the detention center, for approximately two hours, detainees had to wait standing near

119. While giving clarification on the factual circumstances of the case to Human Rights Education and Monitoring Center (EMC), Mindiashvili and Tchigladze noted that they are members of the United National Movement.

the entrance. At 11 am the next day, the detainees were taken to Tbilisi City Court, but due to rescheduling of the hearing, Tchigladze and Mindiashvili were released upon receipt. It should be considered that the reason for rescheduling was the failure of the police officers to present video material showing the offence for technical reasons. [120]

2. On July 19, 2015, the demonstration **No to panorama was followed by administrative detention of 10 individuals.** One of the motives for detention was the writing on a banner "Panorama my D…" during the demonstration, which was interpreted as petty hooliganism by the police. One of the addressees of police behavior noted during an interview: "Protest was related to the construction of the so-called Panorama project and was addressed against it. When you oppose the policies of the ruling group, events indirectly acquire political character, so any social action has a political connotation. The primary purpose of our organization is not to oppose a concrete political group, therefore, we try to distance ourselves from politics, but such actions are not free from the political background." Hence, the special mobilization of police officers and usage of radical policing instruments against numerous persons could point to the fact that the events taking place during the demonstration are related to the addressee of the protest (former Prime Minister), the political content of the activities and the criticism against the ruling political team.

Towards eight individuals detained, the protocol of offence was prepared for offences envisaged according to Article 166 of the ACG (petty hooliganism), while towards two others court hearings were conducted under Articles 166 and 173 of ACG (Disobedience to lawful demands of a police officer). According to the authors of the administrative protocol, administrative prosecution of ten demonstrators was due to the fact that Nata Pheradze and seven other demonstrators were holding papers with statements including offensive phrases, which were general, as well as addressed towards specific persons, and two participants of protest, Irakli Mgaloblishvili and Aleksandre Giorgadze, hindered police officers from fulfilling their duties and disobeyed numerous requests of police officers. Towards the two latter persons, the court ceased litigation with the motive of nonexistence of evidence. The behavior of 7 out of 10 detainees was assessed as petty hooliganism and they were fined for 100 GEL each as an administrative sanction.

3. Six activists were detained after a protest demonstration on May 7, 2016, against the construction of **Panorama Tbilisi**. The road to the territory where construction works were underway was blocked by a police cordon. The protest participants asked the police

120. Available at: http://www.tzona.org/post/tavisufali-zonis-wevrebis-sasamartlo-procesi-1-oqtombrist-vis-gadaido?search=20-01-2016 (Date of access: August 5 2016).

officers for a possibility to cross the territory to enter a public space.[121] While giving an explanation to EMC, one of the activists noted that the police fulfilled the duties of a private security company, and added that without crossing the territory given to Bidzina Ivanishvili as private property, [122] the planned march to the destination point would have not been possible safely. Konstantive Guruli considers the large number of police officers present on the demonstration as related to a political order and notes that the policemen pointed out different self-contradictory arguments behind the refusal to let demonstrators to the territory. Similar to the demonstration of July 2014, in this case as well, the unjustified and arbitrary use of legal levers by the police could be related to the addressee of the demonstration and protest expressed against the ruling political party.

It is also worth noting that in this case, the necessity of a cordon of law enforcement officers was not clear and the reasons behind limiting the right to enter the territory were likewise ambiguous. In relation to this issue, the Administrative Cases Panel of the Tbilisi City Court does not discuss the necessity of using policing instruments in the ruling of May 10, 2016 and merely points to the general provisions of Article 10 of the Law of Georgia "On Police," according to which a policing instrument should follow from the principles of the rule of law and statutory reservation.

4. The mentioned case concerns the protest against the transfer of a territory of the botanical garden to Bidzina Ivanishvili, organized by the members of UNM near the Tbilisi City Hall on April 27, 2016. After two days, on April 29, 2016, **David Naphetvaridze, head of the UNM Didube District Organization,** was arrested near his home with the allegation of verbal abuse during the demonstration. He was accused for an offense under Article 166 of ACG, specifically, according to the author of the protocol of administrative offense, the grounds for detention were cursing and unaddressed swearing.

On April 30, 2016, due to nonexistence of appropriate evidence on the case, [123] Naphetvaridze was released without sanctions. In this case too, the main legal problem was the excessively wide interpretation of petty hooliganism by the police officers. The court indicated in the ruling of April 30, 2016, that to qualify an action under Article 166 of ACG, it is essential for the violations to public order and peace of citizens to exist cumulatively.

Moreover, the action should be proven by irrefutable evidence, which, according to the court, was not presented in this case.

121. Available at: http://liberali.ge/articles/view/22430/video-qalaqi-chvenia-ara-panoramas--saprotesto-aqtsia-da-aqtivistebis-dakaveba (Date of access: August 5 2016)

122. Available at: http://www.interpressnews.ge/ge/sazogadoeba/378411-davith-narmania-botanikuri-baghis-mier-dathmobili-teritoria-kldovani-da-mechkheria.html?ar=A (Date of access: August 5 2016)

123. Available at: http://www.tzona.org/post/sasamartlom-davit-nafetvaridze-jarimis-gareshe-gaatavisufla (Date of access: August 5 2016).

Legal Assessment

In the examples above, there are several legal problems. Firstly, attention should be paid to detention procedures and the guarantees to be provided for the detainee. Article 245 of ACG obligates the detaining officer to clarify the administrative offence, grounds for detention, and right to attorney to the detainee. Regardless of the imperative request of the law, in the first case, these rights were not clarified to Mindiashvili and Tchigladze. According to their explanatory notes, the detainees were not given the possibility to contact a lawyer and have opportunities to benefit from the rights of adequate protection during litigation against them. All of the above clearly points to grave violations of the legislation.

By the ruling of October 13, 2015 on the same case, Tbilisi City Court, on grounds of insufficient evidence, considered the facts of offences envisaged by Articles 173 and 166 of ACG unsubstantiated. According to the court, Paragraph 1 of Article 12 of the "Instructions on the Rules of Patrolling by the Patrol Police Service of the Ministry of Internal Affairs of Georgia" approved by Order of December 15, 2005 of the Minister of Internal Affairs, the patrol police officer with mandate should have had the shoulder camera in order. The law enforcers failed to provide evidence of completing the obligation and also failed to present relevant recordings during the hearing. The court also noted that such recordings could have been presented via the video material recorded by the shoulder cameras of other officers present on spot, however, such information was not provided to the court either.

Within the scope of public assembly, the lawfulness and rationality of police actions should be assessed based on whether law enforcers take into account the obligatory rules of behavior generally defined for them. It should be considered that Paragraph 2 of Article 4 of the "Guideline instructions of behavior of servants of the Ministry of Internal Affairs of Georgia during assemblies and manifestations" envisages opportunity of negotiations with demonstrators in order to maximally avoid forceful intervention. According to Article 7 of the same instructions, before usage of coercive measures by the police, a relevant person is obliged to warn the participants of the assembly/manifestation in advance, give them reasonable time (at least 30 minutes) to obey a lawful request, except in the cases when such warnings are unreasonable or impossible in the conditions created.

Importantly, in the first case, Tchigladze and Mindiashvili were not given any indications to unlawful activities, were not warned and no attempts were made to negotiate with them before their detention. All of the above-mentioned shows that due to unlawful actions of police officers, the right to assembly and manifestation, guaranteed by the Constitution, was limited without justification. The motive for the mentioned limitation was related to the political activities of Tchigladze and Mindiashvili, addressees of the protest, and their content. The behavior of police officers and their expression towards detained persons is also considerable, since they pointed to the organizational belonging of the demonstrators.

Of utmost importance is the limitation of the right to expression according to the content of a specific banner or writing. According to the ruling of July 23, 2015 of the Administrative Cases Panel of the Tbilisi City Court, the inscription on a banner "Panorama my D…", falls under petty hooliganism envisaged by Article 166 of ACG, since general public order represents the subject of administrative-legal protection from petty hooliganism. According to the court, the latter implies the compilation of general social norms which provide for public peace and normal rhythm of life and are expressed in dignified behavior of citizens in public spaces. According to the court, by putting out the mentioned writing, the demonstrators "disregarded the society," The court did not share the position of the defendant regarding the fact that the mentioned writing fell under freedom of expression and considered that the writing "Panorama my D…" not only had a general character, bur was also directed at a specific person. However, the court did not discuss the concrete addressee of the slogan, whose honor dignity could have been infringed.

The court considered that the phrase "Panorama my D…" is an indecent phrase with obscene content, and it did not influence formation of opinion on the topic protested during the demonstration. The court also considered that "the phrase has no content and only attracts attention because of its obscene wording; the phrase has no political, cultural, educational or scientific value and gravely violates the ethical norms established in the wider society," therefore, by its suppression, the court could have protected public morale.

According to the decision of July 8, 2008 of the European Court of Human Rights against Hungary, which concerned the usage of a communist symbol, red star, during a demonstration, the court considered it unacceptable for the state to limit the freedom of expression by a norm of criminal law nature in the case when such a limitation is only due to negative emotions and the state has no other rational reasons for this limitation. To limit the freedom of expression, the court requests necessary social need from the state and indicates that the form of expression of an opinion should be evaluated according to its context and when a symbol can have multiple meanings, its narrow interpretation creates large room for unjustified limitation of freedom of expression. [124]

It should also be noted that the court evaluations towards the mentioned banner does not comply with the given international standards. Non-governmental organizations responded to the Tbilisi City Court ruling and indicated in their statement that: "The court failed to adequately assess the unjustified intervention of the police officers into the freedom of assembly and expression of detained persons. Therefore, what the Constitution of Georgia and the Law of Georgia "On Freedom of Speech and expression" considers as freedom of speech was regarded as an administrative offence. Through this decision, the standards of protecting freedom of expression, guaranteed by the Constitution and Georgia's

124. Available at: http://www.hrr-strafrecht.de/hrr/egmr/06/33629-06.php (Date of access: August 5 2016)

international obligations, which was also upheld by the practices of the common courts of Georgia, fell drastically." [125]

The statement, signed by ten non-governmental organizations, points to the practice of the European Court of Human Rights, according to which "freedom of expression protects not only the information which is accepted indifferently or considered neutral by other people, but also the idea and information which the society or its certain parts considers offensive, disturbing, or even shocking.[126] Considering that the slogan was used during a peaceful demonstration, which protested against the actions of the state and was used in relation to a topic of high public interest, aiming at attracting public attention to a grave problem, the writing could not have been regarded as obscene or as a legitimate reason for punishing citizens. Considering the importance of freedom of expression in a democratic society, it is unacceptable to create risks towards the idea of a plural, free public space by the state through limitation of freedom of expression on moral or ethical grounds.

It should also be noted that during the court hearings on the case, one of the main elements of petty hooliganism, violation of public order or peace of citizens, was not sufficiently evaluated or discussed. In the case of nonexistence of this element, the offence could not have taken place, however the court has no evidence as to the degree to which the writing violated order or created direct risks to peace of the society or citizens.

Study and analysis of court rulings of 2015 and 2016 related to petty hooliganism by EMC shows that the court rarely discussed the meaning of "Swearing in public spaces" given in Article 166 of ACG and leaves the general formulation of police officers without assessment.

The decision of November 10 2009 of the Constitutional Court sets high standards for freedom of expression and indicates that "freedom of expression is a right guaranteed by the legislation of Georgia, however, only legislative guarantees are insufficient for comprehensive realization of this right; it is necessary that the society itself is tolerant to the right of an individual to express own opinion freely and without fear. In a democratic society, people have the obligation to be patient to the opinions that they do not share or even consider morally unjustifiable. It is unacceptable for the moral norms or worldviews of one specific person or group of people to be dictated to other groups of the society through state institutions, including through the court."

The case of David Naphetvaridze is another clear illustration of the discussed legal problems, since he, as mentioned above, was arrested two days after the demonstration and it is unclear how the administrative detention fulfilled the role of ensuring litigation on

125. Available at: https://emc.org.ge/2015/07/31/არასამთავრობო-ორგანიზა-24/ (Date of access: August 5 2016)

126. Ibid.

an administrative offence. [127] Moreover, the motive for his detention was the obscene wording used by him on the demonstration two days before (this circumstance was not proven either).

While giving an explanation to EMC, Naphetvaridze noted that his detention took place by the mobilization for approximately ten law enforcement officers and the police, regardless of his insistence, refused to clarify the grounds for his detention. Naphetvaridze was first taken to a police unit, where the grounds for detention were clarified to him, and then was taken to a primary detention facility. He was released the next day, at approximately 12 pm, on the basis of a court ruling.

As for disobedience to a lawful request of a law enforcement officer, in one of the given cases, during the court hearing on the offence under Article 173 of ACG, the lawyer of the defendant indicated that the lawful request of a police officer had to be assessed on a case-by-case basis, including both the justification and lawfulness of the request itself, as well as disobedience to it. On this case, the court ruled that discussing the lawfulness of the specific actions of the police officers did not represent a subject of evaluation within the scope of the case under discussion. In the conditions of such definition of the norm, police officers have an unlimited space for action to ask a citizen to fulfill such actions that do not directly follow from the law.

In the ruling of November 27, 2015, the Administrative Cases Chamber of the Kutaisi Appeal Court makes a contradicting clarification in relation to the same legal issue; according to the ruling, while fulfilling job duties, the following standards are set for qualifying actions as disobedience to a lawful request of a law enforcement officer:

- The author of the request or an order should necessarily be a law enforcement officer;
- The request or order of the law enforcement officer should be lawful, based on a concrete legal norm, which gives the subject the right to request conduct or refrain from conduct of an action of a specific content from an individual;
- While giving a request or order, the law enforcement officer should be fulfilling job duties, and the request (order) should directly be related to the fulfillment of those duties;
- The person should manifest disobedience towards a lawful request or order.

EMC requested copies of two rulings per month from the Appeal Courts of Tbilisi and Kutaisi regarding the period of July 2015-May 2016, one of which proves the existence of offences envisaged by Articles 166 and 173 of ACG, and the other does not rule these

127. According to part 1 of Article 244 of ACG, administrative detention, together with other grounds, is an instrument for ensuring timely and due discussion of cases of administrative offense.

offences. Therefore, the analysis of the received rulings shows that judicial practices on such cases are inconsistent.

In relation to this issue, an example is German judicial practice, which is homogeneous in this regard and is based on strictly defined criteria. Specifically, disobedience of a police officer (military officer, court executioner, etc.) during fulfillment of a lawful action through violence or threat to violence or attack on the officer is punishable criminally according to Article 113 of the Criminal Code of Germany. The German legislation used the mentioned norm towards administrative offences as well as criminal actions. The legislator demands that the police officers' action is reasonable, which, according to interpretations upheld by practice, implies that the police officer is acting on tangible (factual, objective, relevant) and local reasoning and the action is based on predefined formal preconditions. [128] Together with the existence of lawful basis, the action of the police officer should be recognizable for the addressee of the norm as a reasonable action, considering its purposes, implementation and accompanying circumstances. [129] Furthermore, the court assesses in every case, how necessary and justified was the action of the police officer while using measures interfering in the protected rights of citizens. The Constitutional Court of Germany indicates to common courts to use a relatively strict standard for assessing the lawfulness (reasonableness) of police action in cases where actions of the police are directed at such important rights as the freedom of assembly. [130]

Chapter 6: Conclusion and recommendations.

Assessment of the ten cases discussed by the project team creates possibility to analyze the degree of functional autonomy of the police and its distance from political influences. It is important to take into account that in all cases analyzed, policing instruments are directed against political opponents or activists who express protest against the policy of the ruling party.

Existing regulations do not determine comprehensively the grounds for forceful drug testing and do not provide effective protection guarantees to individuals during appeal.

One of the problems identified after the analysis of cases studied is the unreasonable and unjustified transfer of citizens to forceful drug testing by police officers with the aim of temporary isolation or discreditation.

The cases of drug testing of Gega Gobejishvili and Nata Pheradze by police officers

128. Available at: http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2007/04/rk20070430_1bvr109006.html paragraph 37 (Date of access: August 5 2016) Available at: http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2007/04/rk20070430_1bvr109006.html paragraph 37 (Date of access: August 5 2016)

129. Available at: http://www.justiz.nrw.de/nrwe/olgs/hamm/j2016/3_RVs_11_16_Beschluss_20160225.html paragraph 9. (Date of access: August 5 2016).

130. Ibid. paragraph 38.

underline the necessity of amending and refining the existing legal regulations of random drug testing. Specifically, the unjustified use of drug testing is not prevented by the instructions of transferring a person for testing to find facts of using drugs and/or psychotropic substances, approved by the order of September 2015 of the Minister of Internal Affairs, since it considers *information obtained through operative-investigative activities or covert investigation activities, notifications to LEPL 112 of the Ministry, or information submitted directly to the police by an identified source* as one of the grounds for involuntary testing. This way, police officers retain the possibility for arbitrary action, and, certainly risks exist that such arbitrary action can be used for political purposes as well.

The problematic nature of the mentioned regulation of drug testing is highlighted also by the circumstance that the court cannot check the operative information that was used as grounds for forceful drug testing of a citizen. The appeal mechanism for citizens against the forceful drug testing is likewise ineffective and in this case, the appeal author is equipped with insufficient legal levers, since he or she bears the burden of proof to provide evidence on the nonexistence of appropriate grounds for drug testing. Simultaneously, the person would have to prove material and moral damage through a civil procedure, causing another additional difficulty. Towards police officers, the court often uses the "presumption of good faith," and trusts their actions, which, in the end, damages the already unequal situation of citizens.

Monitoring also revealed the problem of inconsistent definition of norms in the administrative code and unjustified and arbitrary use of administrative detention, which often represents the main source of limitation to the freedom of expression.

Monitoring revealed the problem of inconsistent definition of norms in the administrative code and unjustified and arbitrary use of administrative detention, which often represents the main source of limitation to the freedom of expression.

The examples of this are the detention cases of persons for defacing the appearance of self-governing units, during which law enforcers widely interpreted part I of Article 150 of the ACG. **The mentioned norm does not determine with sufficient clarity as to where, within the scope of the freedom of expression, an individual has the right to put up different writings, drawings, symbols, so that this is not qualified as an administrative offence. The content of the norm creates opportunities for inconsistent interpretation at the expense of limiting freedom of expression.**

The ambiguity of the norm disposition is supplemented by the blanket nature of court rulings in studied cases and insufficient discussion on relevant issues. In one of the rulings, the court considers any space "not allocated for these purposes" as an object under the protection of Part I of Article 150, and in Chergoleishvili's case, protection of the appearance of a self-governing unit and general protection of national and public order is

considered as a legitimate purpose for interfering into the freedom of expression. Such wide interpretation of the norm dangerously increases the risks of unjustified interference into a sphere protected by the freedom of expression. In this context, the usage of detention as a coercive measure for the mentioned offence is likewise problematic, since the defacing of the appearance of a self-governing unit does not fall under the list of offences given in Article 246, for which law enforcers have the right to use administrative detention.

The two cases discussed within the scope of this project identified the limitation of the right to assembly and manifestation by the police with the motive of interfering in the movement of transport vehicles. In this cases, the legal problem was related to unjustified limitation of the freedom of assembly by police officers, when law enforcers requested the organizers to comply with the orders and obligations which they were not required to comply with by the law.

Research showed that the wide and often unjustified use of disobedience to a lawful request of a police officer or petty hooliganism envisaged by the administrative code during public assemblies and manifestations is a problem.

The wide and often unjustified use of disobedience to a lawful request of a police officer or petty hooliganism envisaged by the administrative code during public assemblies and manifestations, often followed by unjustified detention of citizens, is problematic.

In the discussed cases, individuals were detained with the motive of disobedience to a lawful request of a police officer in 4 cases, and in three out of these four cases, the court did not find an administrative offence, due to nonexistence of sufficient evidence.

This case revealed the tendency where the lawfulness of the request of a police officer is not assessed with sufficient clarity and the legal or lawful grounds for the request are not indicated. Instead of proving disobedience of a convicted person to a specific lawful request or order, in the administrative detention protocol, police officers only indicate a banal phrase: “did not obey a lawful request of a police officer and manifested resistance,” without any description of concrete circumstances.

The excessively wide interpretation of this norm by police officers is followed by inconsistent judicial practice. In the case of Nata Pheradze, the court directly refused to assess the grounds for the lawful request of a police officer. However, the judicial practice studied by the project team showed that in certain cases, the court studies this issue and in order to consider requests and orders of law enforcers as lawful, it evaluates the existence of concrete norms, which give the police officers the right to request conduct of refrain from conduct of certain actions with a concrete content from a person.

In certain cases, the court also highlights 1) the necessity of fulfilling job duties by a law

enforcement officer while giving orders or requests, 2) the relation of the request to the job duties and 3) manifestation of disobedience of a person to the lawful order or request. Unfortunately, the lawfulness of the police officer's request is not always evaluated in this manner and the judicial practice is inconsistent, due to which the unjustified use of Article 173 of the ACG by police officers during public assemblies and demonstrations is not obstructed by adequate judicial control.

Research also showed the problematic nature of using administrative detention on instances of petty hooliganism envisaged by Article 166 of ACG. Incorrect interpretation of this norm and use of detention measures gravely violates the right to assembly, and, in the name of public order and morals, poses serious risks to the freedom of expression.

In the mentioned cases, the subject of discussion was when a specific expression falls under the disposition of petty hooliganism article. This issue is not determined by consistent criteria, creating possibilities of using the norm arbitrarily. Compilation of concrete addressees of offensive expressions, violation of honor and dignity and, at the same time, violation of public order, according to international practice, is considered as preconditions defining petty hooliganism. In the case of Alexi Matchavariani, the law enforcers qualified the phrase "shameful police" as petty hooliganism, while the court made a ruling of acquittal on the case with the motive of insufficiency of evidence, however, without discussing whether the expression under question should have been regarded as petty hooliganism. As for the phrase used during the Panorama demonstrations, "Panorama my D…", was considered by both police officers and the court as violation of public order and petty hooliganism, even though the court did not discuss how it violated public order.

In addition to wide interpretation of petty hooliganism, within the scope of this offense, research also revealed the risks of limiting constitutional rights in the name of protecting public morals. The court considered the banner used on the demonstration - "Panorama my D…"– as inappropriate behavior in public space, considered the slogan as both having general nature and directed at specific persons, without specifying the addressee whose dignity could have been violated, and justified suppression by the necessity of "protecting public morals." Such clarifications do not comply with international practice and the standards of protecting freedom of assembly and manifestation in public space in a democratic society.

The cases studied by the project team revealed another violation related to the failure of police officers to comply with the detention procedures.

Study of concrete cases revealed numerous cases of grave violations of detention procedures by police officers.

When using administrative detention, police officers disregarded the obligation of clarifying the rights, type of offense, grounds for detention and right to attorney to detainees. In addition, in several cases, detainees were not transferred to the nearest law enforcement unit in a timely manner. In three cases, an important violation was the holding of detainees in police cars for several hours.

Considering the following circumstances, the project team presents the following recommendations to strengthen functional autonomy of the police and ensure its political neutrality:

- Further refinement of legal regulations of drug testing is necessary, in order to avoid violation of a range of constitutional rights by police officers through this instrument;
- The dispositions of administrative offences which are often associated with the limiting circumstances to the rights to assembly and manifestation, should be clearly defined. The risks of wide and unjustified interpretation of these norms should be mitigated;
- It is important to organize professional trainings for relevant employees of the Ministry of Internal Affairs regarding the rights to assembly and manifestation, in order to avoid the cases of unjustified and arbitrary limitation of these rights through policing instruments;
- Finally, a wide-scale and systemic reform of the Administrative Code should be implemented, including the reassessment of procedural and material norms and integration of offenses and sanctions of “criminal nature” to the criminal legislation to ensure comprehensive procedural guarantees.

PART 5: STUDY OF POLICE POLITICAL NEUTRALITY BASED ON CRITICAL DISCOURSE ANALYSIS

Chapter 1: Political and Legal Context

In the election program prepared for the 2012 parliamentary elections, [131] "Georgian Dream" allotted a wide space to the issue of the police. On one hand, they underlined that the police was extremely politicized during the rule of UNM:

„The main support of this regime is the extremely politicized Prosecutor's Office and police. Instead of serving protection of justice, they have become the driving force of the government's repressive apparatus, while the court has become a supplement to the Prosecutor's Office."

On the other hand, in their program, they presented the reform of MIA, the main component of which was de-politicization of the system:

"In order to de-politicize the police, the relations between the police and the Ministry of Internal Affairs should be clearly determined to ensure the independence of the police and its protection from political influence."

"Police officers will be liberated from political pressure and legal guarantees will be created for the inviolability of their action. De-politicization of law enforcement agencies and their independence is an important guarantee for protecting citizens, including the employees of these services."

After the 2012 elections, the first Minister of Internal Affairs of the new government, Irakli Gharibashvili, explained the essence of this reform as follows:

"The main difference between the old and new patrol police is that you will never have to comply with political orders. This is what de-politicization of police implies."

In the following years, the representatives of the government pointed out on numerous occasions that, after the reform, police became de-politicized. In the 2016 letter,[132] Bidzina Ivanishvili, the former Prime Minister, also highlighted this:

"We carried out the de-politicization of the police and no one will be able to use it against political opponents; we abolished the Special Operative Department and the Constitutional Security Department, which were blackmailing citizens and taking their businesses. The State Security Service has been distanced from the MIA."

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131. https://www.scribd.com/doc/104513449/ბლოკ-ბიძინა-ივანიშვილი-ქართული-ოცნების-საარჩევნო-პროგრამა

132. http://2030.news/?newsid=7525

The 2013 law "On Police" [133] set out the principle of political neutrality through different articles:

> Article 8. Main guiding principles for police activity
>
> 1. In his or her activities, a police officer steadily protects the principles of protecting and respecting the fundamental human rights and principles, rule of law, impermissibility of discrimination, proportionality, exercising of discretionary power, political neutrality and transparency of police activities.
>
> Article 11. Principle of impermissibility of discrimination: the police is obliged to support and protect human rights and freedoms, irrespective of race, skin color, language, sex, age, religion, political and other views, national, ethnic, or social belonging, origin, property or social status, place of residence and other characteristics.
>
> Article 14. Principle of political neutrality: a police officer should fulfill his or her duties in accordance with the principle of non-partisanship. A police officer has no right to use his or her position for the partisan interests of any political subjects.

The principle of political neutrality is also reflected in the new Code of Police Ethics of Georgia: [134]

> 1.8. Police officer shall treat everyone with due respect for the inherent dignity of the human
>
> person, and deal with them fairly and impartially regardless of race, nationality, language, sex, age,
>
> religion, political or other opinion, property or rank, social belonging, origin, education, place of
>
> residence or other personal condition and/or sexual orientation of a person.

Chapter 2: Analysis of specific cases

Topic one: demonstration of the United National Movement on April 19, 2013

133. http://police.ge/files/sajaro–informacia/policiis%20shesaxeb.pdf

134. http://police.ge/files/pdf/etikis%20kodeqsi/Georgian%20Police%20Code%20of%20Ethics%20Georgian%20final–geo.pdf

Context: On March 19, 2013, during a press conference, one of the journalists asked Irakli Gharibashvili (then-Minister of Internal Affairs) a question about the protest demonstration planned by the UNM for April 19. UNM had been preparing for this demonstration for several months and, according to its members, the purpose of the demonstration was the "support to Euro-Atlantic integration of Georgia and the possible return of the country to the Russian political orbit."

Text:

Journalist: How prepared is the MIA for the April 19 demonstration which is planned by the UNM? Information spread in the press today that different types of provocation are expected during the demonstration and the National Movement itself is planning this. This was printed in the press. I want to underline this once again. Do you have any type of plan, especially since we have experienced the events in front of the National Library, where there was continuous focus on the fact that you failed to fulfill your duties, there was no order, etc., a plan that would protect the safety of participants and also that of the leaders of UNM."

Irakli Gharibashvili: "What I want to say first of all is this, the general impression about the so-called demonstration of April 19 is overestimated. I simply do not understand what they are expecting. But, surely, irrespective of who is organizing a demonstration, we will protect order, such that is acceptable. If any provocation takes place, it will be eliminated at the start and all provocateurs will be punished. This is my response. We will deal with and manage any provocation in a relevant manner."

Source: http://www.myvideo.ge/v/1982912

The journalist asks the Minister two questions – "How prepared is the MIA for the April 19 demonstration which is planned by the UNM?" and "Do you have any type of plan … that would protect the safety of participants and also that of the leaders of UNM?" However, between these two questions (and their parts) a range of information is given, which gives the questions certain directions. On one hand, the journalist wants to take the first question towards "planned provocations," but on the other, to the case where Gharibashvili "failed to fulfill duties." Therefore, the journalist in this dialogue represents a situational determinant. The journalist controls the theme and, simultaneously, dictates the direction of discussion, its framework, to the Minister. In this situation, Gharibashvili can choose two strategies – **normative** – recognize the offered scheme and respond to the author's expectations

according to the **scheme** of the discussion, or use a **creative** strategy and refuse the scheme, thus creating a new **scenario** for the discussion.

Notably, in this case, Gharibashvili is not responding to the journalist merely from the position of a Minister, so his expressive value is not related only to the identity of the Minister of Internal Affairs. In the comment, he reveals his political identity as well. The whole statement can be divided into three elements with expressive value – firstly, the statement starts with the expressive value of a person with a political identity, secondly, the Minister identity follows, and finally, the last part can be seen as a mix – a position of both a political figure and the Minister of Internal Affairs.

Values expressing political identity: Gharibashvili evaluates the April 19 demonstration as an overestimated event, thus trying to highlight the insignificance of the event. For this purpose, he also calls the demonstration **"so-called,"** thus indicating that the April 19 demonstration is not perceived by him as a political manifestation of full value. In addition, he also doubts its outcomes – "I simply do not understand what they are expecting." The discourse produced from this position implies that the political opportunities of UNM are far more modest as compared to the "general impression" about them and their own expectations.

Values expressing Minister's Identity: In this case, Gharibashvili highlights that his Ministry provides order, regardless of everything else. However, the logical link between sentences is notable – "I simply do not understand what they are expecting. **But**, surely, **irrespective** of who is organizing the demonstration, we will protect order, such that is acceptable." The link "but… irrespective of," points to the fact that **ensuring security on the April 19 demonstration could not be deserved by the organizers of the demonstration, but the Ministry will ensure order anyway.** The logical link can be attributed to a range of ideological logical links, since for Gharibashvili, in ideological terms, ensuring security during the April 19 demonstration is not the same as that of other demonstrations or manifestations. The Minister also implies that protection of order will be "acceptable," but this word can be translated either as "within the framework of the law," as "acceptable for the ruling powers," or as "acceptable for UNM." Notably, these three different "interpretations" imply completely different perceptions of protecting order.

Values expressing a mix of identities: in the third part of the text, we encounter the following sentences: *"**If** any provocation **takes place**, it **will** be eliminated at the start and all provocateurs **will** be punished. This is my response. We will deal with and manage any provocation in a relevant manner."* Here, the Minister already uses imperative ("will be eliminated," "will be punished"). This can be considered as values expressing only the Minister identity, however, they are preceded by the possible expression values – "if any provocation takes place," which is already an expression of political identity. In this case, Gharibashvili uses the same **stereotypical pattern** as the journalist, when the latter

voices information “spread in the press,” that the provocation is planned by UNM leaders themselves. The stereotypical pattern is the view that UNM members pose threat to the stability of the country.

The imperative expression is strengthened by the so-called over wording of the Minister “provocation will be eliminated and provocateurs will be punished;” “we will deal with and manage any provocation in a relevant manner.” These two sentences are essentially the same, but the Minister uses over wording in response to the journalist in order to highlight his readiness, thus also indicating that he does not consider the chance of the existence of a provocation as insignificant. The sentence – “This is **my** response. **We** will deal with and manage any provocation in a relevant manner.” – is a summarizing element. On one hand the response (which is aimed not at the author of the question, but a mass audience) is given by Gharibashvili himself (“my response”) and, at the same time, by the Minister (“We will deal with”).

The three different identities marked by expressional values are reflected in the text structure as follows – the assessment of a political figure is at the front, then comes the guarantee of the Minister and last comes the response produced by the mix of these two identities, which implies not only a response to the concrete question, but a general position for all.

In total, this statement of Gharibashvili produces (and joins) the discourse, according to which the UNM does not represent an important political power and, simultaneously, the demonstration it plans could produce disorder. While responding to the question, Irakli Gharibashvili puts forth his (personal) position, compared to the institutional position of a minister. His personal position is ideologically determined as far as it aims at discrediting political opponents. Even though the MIA should provide security equally for all citizens, such discourse of the Minister gives “green light” to the creation of such patterns that, in terms of security, give the society, and primarily, the ordinary police officers, the opportunity of selected approach. Furthermore, putting personal ideologized views before official duties creates a presupposition that personal ideologized sympathis may have more influence on decision-making, than social status.

If we segregate discourse producing factors according to a scheme offered by Fairclough, the journalist will be the **situational** determinant and the frame presented by the journalist, political clash between governmental and oppositional parties will be the **institutional** factor, and mass audience, the complete society, with which the Minister is communicating via media, will be the **societal** factor. These three factors influence the r**esources of the participant,** which unite Gharibashvili’s personal experience of conflict with UNM and placing of personal positions before obligations. Together, all of this creates the above-mentioned discourse, which, in turn, has reverse influence, since it supports institutional conflict among parties.

Topic two: Euromaidan scenario of the United National Movement

General context: On numerous occasions, information was spread in the Georgian media that the leaders of the UNM planned to return to government through a state coup. For example, in an interview given to the "Asaval-dasavali" newspaper on March 31, 2014, Irma Inashvili stated that her sources have her detailed information that UNM was working on an Euromaidan scenario. The newspaper "Kviris Kronika" also published an article – "The plan of UNM has been revealed,[135] " saying that the information given was based on a letter sent from prison by Gigi Ugulava.

On April 6, 2014, Aleksandre Tchikaidze, the then-Minister of Internal Affairs, gave an interview to the "Prime Time" newspaper, where he discussed the Maidan scenario planned by the UNM. On September 10, 2014 the Minister stressed the attempt of destabilization in his interview with "Alia" newspaper, noting: "It is possible for a coup to obtain state power to take place. Criminal case has been opened and the investigation is ongoing." Later, his then-deputy, Levan Izoria, also confirmed the launch of an investigation: *"Operative information exists. Therefore, when the Minister of Internal Affairs noted in his September 10 interview that investigation had been launched, certainly, this is the truth and this investigation is ongoing to this day…the case is related to the attempt to change the government through violent means, which is envisaged in Article 315 of the Criminal Code. This has been stated publicly and, I repeat, the process is ongoing within the scope of this investigation."*[136] However, MIA did not officially confirm the investigation at that time.

The next, newly appointed Minister after Tchikaidze, Vakhtang Gomelauri, also started talking about a conspiracy. On the Government session of February 5, 2015, he noted: *"Of course, different information exists. We will not allow disorder… Be it the UNM or any other movement, does not matter. I will not be specific in this case. Of course, we will not allow disorder that happened in Ukraine. God forbid that something similar happened in Georgia, until we are here. There are certain attempts. Of course, different powers want to cause disorder."* However, afterwards, the Minister noted that he did not imply the UNM under the danger.

Already in October 2015, the State Security Service officially declared that investigation had started against UNM under Article 315, however, the case is classified and the details remain unknown to the society.

It should be noted that the analysis of this case does not aim at understanding whether the conspiracy plan described by police officials was real or not. **The analysis aims at describing and evaluating the degree to which their narrative exceeds the competence**

135. http://www.for.ge/view.php?for_id=35638&cat=9

136. http://www.tabula.ge/ge/story/88621-izoria-dzaladobit-xelisuflebis-shecvlis-mcdelobaze-gamodzieba-mimdinareobs

of a police officer during the description of a criminal plan and the degree to which it is used for the marginalization of political opponents, for the benefit of the ruling party.

Situational Context:

Since this was a newspaper interview, the context in which the discussion took place, as well as the conditions in which Aleksandre Tchikaidze interpreted different information during the interview, remain unknown. The interview included 20 questions, out of which 5 were related to the plans of UNM to run processes according to the Euromaidan scenario (the analysis will mainly focus on these 5 questions).

Descriptive Analysis:

On the journalist's question regarding the probability of Euromaidan in Georgia, the Minister's response starts with an evaluation of Euromaidan events – he underlines that the contexts of Georgia and Ukraine are different – *"as regards the purpose for which the Euromaidan took place in Ukraine, here there is not precondition like that."* The Minister also highlights the existence of a secure environment in Georgia, but does so not in relation to Ukraine, but to the previous years, which implies the rule of the UNM. The Minister talks about the incomparable increase ("200 and 300 per cent"), with which the situation in terms of protection of human rights is better than that of the previous years.

The second part of the response to this question is related with "however," which aims at juxtaposition to the previous content. The Minister states that the idea of implementing Euromaidan in Georgia exists from the side of the UNM. Since the Minister juxtaposes these two parts of his response to each other, Euromaidan for him is the opposite of today's secure environment (which is also confirmed in the following parts of his interview). The Minister gives a specific detail about the purchase of tires (*"there are reports that they have also started purchasing tires"*) – since, as he starts discussing the Georgian plan of Euromaidan, it is important to issue a detail with an acute content. Tires, in this case, represent material symbols of destabilization.

In total, the short message of the response to the third question is as follows – **In Georgia, the environment is much safer as related to previous years, but a specific political power is trying to change this.**

The journalist paraphrases the last sentences of the Minister's response in question form and focuses on the detail of tires, after which the Minister discusses other parts of the plan. Here also, the narrative is divided into two parts – reveal of conspiracy details and its political context.

On the fourth question (regarding UNM's revolutionary plans) the Minister's response has an "unquestionable expressive value," meaning that he issues information not as a

presumption, but with certitude and assurance. This is proven by the verbs used by him, where the subject of the action is UNM: “they want to,” “they might,” “there are groups,” “they brought,” “they are holding trainings,” “they are taking under cover” – as we see, only in one of the 6 cases there is a supposition, while others have an assertive character.

According to Tchikaidze, the aim of the disorder is to solidify UNM’s political interests, which implies interference to the government working on overcoming problems and the country on the right track. In this case, **Tchikaidze represents UNM as a power against progress, which is trying to bring chaos into order.**

Tchikaidze stresses the democratization of MIA as an institution. Starting the discussion with the word “today” gives the first sentence a time dimension, pointing to the presently democratized MIA and in itself implies the opposing situation in the past.

Importantly, during the interview, the Minister uses the same formula of elaborating sentences – he starts the sentence by highlighting that the state bears and produces democratic values and ends with a clear message that non-democratic and unconstitutional actions are expected from opponents, which will be punished with maximum severity:

“Compared to previous years, human rights, private lives, political views, etc., are protected by more than 200 and 300 per cent, however, I will not hide this and I will tell you that there are certain reports [about disorders].”

“They have the opportunity to freely express their will, but groups which will try to cause destabilization in the country, beating people and opponents in order to blame the state later, will be severely punished!”

In both cases, these sentences are the central parts of the response. In the first case, this is a certain opening of a curtain, the first statement about the plan of conspiracy. The second statement expresses a position, that within the scope of their rights, opponents will not the limited, but in case of exceeding, they will be held accountable. Notably, Tchikaidze does not use such terms as “illegal act,” “law violation” or such general descriptors. Rather, he talks about specific criminal activities, which again proves that the Minister has concrete accusations against the opposition party.

Tchikaidze uses the adjective “severe” two times (“will be severely punished,” “the society will respond, and much more severely”), thus assuring his audience (the reader of the newspaper) that the response to destabilization will not be merciful. The formulation, that in addition to the state the society will also respond, and much more severely, is worth noting:

“they will get response from the society, and much more severely.”

The Minister mentions the society even before this:

“I think the society itself will not allow this (meaning disorder), since the country is now on the right track.”

When the government focuses on the societal position, the society for it is perceived as having the right position, since the government is elected by the people and even if the latter sometimes is mistaken, it is possible to raise the issue of legitimacy of the government. Therefore, the harsh response of the society is a priori right and this is why the government is acting in this manner.

On the fifth question (regarding the preventive measures for the expected bloodshed), towards the end of his response, the Minister indicates how dangerous UNM’s conspiracy is:

“During the past few years, a lot of blood has been shed in Georgia. People do not need this anymore, people need peace and normal development.”

To describe the danger, Tchikaidze uses the “bloodshed” metaphor, the possible victims of the clashes. “Bloodshed” for Tchikaidze is a type of nominalization of what UNM is planning. Tchikaidze says that “people do not need this anymore, people need peace and normal development.” In this sentence “this” is logically related to bloodshed, which, in this text, is logically related to UNM’s expected actions. Therefore, Tchikaidze opposes “peace” and “normal development” to the plan of UNM.

Interpreting Political Context:

Alexander Chikaidze talks to the interviewer as the Minister of Internal Affairs. The Minister is the first police officer in the country with the principle of neutrality also extending upon him. However, while talking about the criminal plans of the political party, the Minister frequently mentions his own political allegiance.

In the interview, the Minister presents the opposition party as a destructive force, having clear plans of destabilization. According to the narrative, UNM is the power that goes against the secure environment, right path, peace and normal development and is set off by the Georgian Dream, which is the insurer of all the abovementioned and is the guarantor of the rule of the law and is the protector of public interests.

As the minister mentions, destabilization has a political goal. It is illustrated with the fact that the Minister mentions the conspiracy in the context of Euromaidan, while Euromaidan was a political event directed against a specific political decision. Additionally, the conspiracy is planned and is planned to be executed by the political party, which, according to Tchikaidze, is in its essence a destructive against the government. In this case, the Minister of Internal Affairs is not a public official not taking any sides, instead he is positioning as the member of the Georgian Dream Government and interprets the information in his hands as one of the sides. For instance he uses the word “opponents” twice to dissociate UNM and

Georgian Dream.

"The major problem that Georgia has is the social-economic situation and trust me, the Georgian government, with the leadership of Irakli Gharibashvili is actively working to overcome these problems. Opponents obviously will try to cause disturbance".

Despite the fact that the Minister talks about the Government in the third person, Alexandre Tchikaidze is himself a member of the Government and makes this statement in the name of the Government. The word "trust me" illustrates the claim, indicating the involvement of the interviewee in the process (working) and pointing that he is not merely assessing the work of the government or is not an external observer.

"I believe that our opponents will understand that this is not the way that will benefit the country or any of us".

In this case, the Minister of Internal Affairs talks about the ruling party in the first place. Pronoun "us" is implicit – indicating a specific interest group, a political party, whose member is Tchikaidze and which is opposed by the UNM.

In addition to speaking about Euromaidan, Tchikaidze positions himself earlier, while answering the first question of the inerviewer

"Everyone is equal before the law, our supporters, as well as opponents".

Here as well, the Minister uses implicit "us" and talks not as the representative of the Ministry, but as the representative of the party.

Therefore, it can be noted that the member's resource of the interpretator of the information (in this case the Minister of Internal Affairs) includes his political allegiance, which also implies the opposition to the UNM.

While discussing the Maidan scenario, the Minister makes a political statement. For instance, this part of the interview is fully a political assessment of the UNM's plans, as well as the Government's work:

"There are groups that will try to cause trouble in the country and it is done to enhance their own political interests. I think that the society itself will not allow this to happen, since today the country is on the right path. The major problem that Georgia has is the social-economic situation and trust me, the Georgian government, with the leadership of Irakli Gharibashvili is actively working to overcome these problems. Opponents obviously will try to cause disturbance".

In addition to the part on the conspiracy, the interview addresses other topics of related to the UNM. For instance, on journalist's question regarding the violence against the representative of UNM – Nugzar Tsiklauri, Tchikaidze notes:

"In general, there is an aggression against the UNM in the society and I often have to direct the police to ensure their safety from the citizens. I would like to thank the police for this, since they understand that every individual, regardless of political affiliations, is the citizen of this country".

This statement by the Minister of Internal Affairs is some kind of summary of the member's resources that forms the expressive value. On the one hand, the Minister underlies an apriory right position of the society – *"Georgian people are wise, they have great ability to analyze and draw conclusions."* On the other hand, he notes that there is an aggression against the UNM in the society. According to the Minister, society's aggression toward the UNM is justified and the police has to overcome the dilemma to protect one group of the citizens. On the one hand, this is illustrated by the fact that he expresses gratitude towards the police, underlying the importance of this action and on the other hand, separating the "special group" with the phrase "despite political affiliations". Moreover, the phrase "ensuring their safety from the society as much as possible" serves as a divisive phrase, indicating the fact that this group is separate from the society and once again underlies general aggression. It shall be noted that the Minister's expression in this part is absolutely clear. He presents the existing perceptions as general and undisputed, which might be called categorical expression.

Explanatory analysis of the interview:

The explanatory stage discusses the discourse at three levels: situational, institutional and societal. However, before discussing each of the levels, it is important to touch upon the member's, or the Minister's resource, that influence each other. In addition to party affiliation, his resources also include specific views and perceptions. Based on the interview, number of similar views/perceptions can be identified:

- The Government of Georgian Dream works on the wellbeing [of the society] while political opponents, and more specifically – UNM, tries to sabotage all these.
- The society is never wrong and always chooses right position in relation to different issues.
- The society wants stable development and peace.
- UNM has destructive potential.
- In general, the society is aggressive towards UNM.

These are the 5 major experiential values (composed of knowledge, faith and perception) creating member's resources. While discussing the conspiracy plans, the Minister uses these exact resources.

At the **situational level,** the attention should be directed to the context where the narrative is taking place. As it was already mentioned, newspaper interview does not allow to observe and study a situational context. That is why we can only rely on the questions of the interviewer as the situational determinants influencing Tchikaidze's narrative. It is worth noting that the journalist creates the dramatic effect in the very beginning. He/she constructs the first two sentences putting the key words at the end and finishing them with three dots – "turned out to be scandalous…"; "talks about the destabilization…" – through which he/she prepares the reader for an intriguing interview. The newspaper Prime Time can be considered a tabloid publication because of its form and the content, frequently attributing the status of "scandalous" to news while creating content based on rumors. In this case as well, the questions are dramatized as much as possible even in the printed interview – three dots are frequently used, the questions are asked using paraphrasing, the journalist uses assessment in questions ("quite serious statement"; "however there is a second, less serious problem of synthetic drugs…"). As of the plan of the conspircy, the fact that the interviewer brings in the topic by directly asking about the plot of Euromaidan is an important issue. Yet, it should be noted that the question is not expressed categorically or undoubtedly, but with supposition and implies the assessment of possibility/chances. However, the narrative of the Minister continues with certainty and talks not about the possibility of implementing this plot, but about its details and motives.

As for the institutional layer, the Minister of Internal Affairs is a member and the head of the police, as an institution. Therefore, belonging to the institution should effect his speech, like the sayings of its head is effective the police. However, as it was already mentioned, police as an institution, is formally politically neutral, while its leader positions himself as a political-party figure and not as the head of the politically neutral institution. And if the head of the institution is not the guarantor of neutrality, the it is possible that the principle will not work in the entire institution.

Societal level – At this level the discourse of the Minister of Internal Affairs is assessed in relation to the society. Perceptions and positions in the society have a significant effect on the Minister's member's resources. Considering the fact that the Minister is positioning as a political figure, it is important for him to take the position (from the perspective of member's resource) accepted by the society (which, for him, is discussed in the context of the electorate)

Topic Three: The topic of criminogenic situation in media

Context: In 2014 one of the major topics in media was the criminogenic situation. The media and the opposition parties frequently noted that the situation is worsened in this direction in the country. Then minister of Internal Affairs – Alexande Tchikaidze blamed it on

the media and manipulation with numbers and stated that the criminogenic situation was improved.

After a numerous high profile murders in the summer of 2014, the issue of crime became prominent again. In relation to this newspaper, Alia recorded an interview at first with the Deputy Minister of Internal Affairs – Levan Izoria, on September 6, approximately a week later (September 10) with the Minister of Internal Affairs – Alexandre Tchikaidze.[137]

Description and the Analysis of the interview: on the first question the Deputy Minister responds in a categorical tone that the accusations against the Ministry of Internal Affairs are lies and emphasizes the fact that the UNM is manipulating with the information, which, unlike their time in power, is public today. Answering the first question, Izoria repeats three times that the members of UNM are liars:

"Statements by UNM, as if the criminogenic situation is worsened, I am saying directly, is a lie".

"That is why they should sit, state the number of murders and talk to the society with the facts, not with lies…"

"With the lies, they will lose the trust of the society, lies are their style".

In first and the second cases, the lies imply the falsified representation of the situation by UNM, while the third statement emphasizes the fact that this is not the first occasion, but a permanent strategy of UNM.

While answering the third question, the focus of the argument of the Deputy Minister shifts to the "bad practice" of other institution. In particular, this institution is court, perceived by the then executive branch as an institution under the influence of UNM. The Deputy Minister describes the actions of the court not as a procedural defect, but a bad/unhealthy practice, that intentionally hampers the effective work of the patrol.

On the fourth question, the Deputy Minister once again puts the emphasis in the fact that the issue of the criminogenic situation was created artificially through the access to information and all these are motivated politically. He also disassociates new and old government using this motive – the new government tells the truth to the society, while the old government made the reality look "better" via media.

Izoria considers that the opposition party is conducting an intentional campaign, with former president behind this, planning to undermine the Minister of Internal Affairs. The Deputy Minister focuses on the moral aspect and states that the representatives of UNM do not have a moral right to criticize the police, since they are criminals themselves. Izoria describes the police of the previous government with the epithet of "defamed", with which

137. See the full texts of the interviews in the appendix.

he once again brings the discussion into a moral context. In this case the Deputy Minister responds to critical statements not with the arguments, but by negatively presenting the critics to show their statements as illegitimate, having some kind of "insidious" intentions. "Insidious games" is the nominalization that the Deputy Minister uses to call the statements of UNM.

The interviewer asks questions to the Deputy Minister on various accusations. However, in almost every instance, Izoria uses the strategy of "shifting the blame". Accusations are either lies, or artificially created. In either case, both of them aim to discredit the police and the Ministry of Internal Affairs. This is some kind of patterns of the interview, detected in almost every part of the interview. Interview, as a full text, is not a discussion of specific topics. Instead it is a representation of harmful activities of the opposition party based on various occasions. Similar narrative characterizes 3rd, 4th, 6th and 7th question and answers.

Vocabularies of both the Deputy Minister and the interviewer contain cynicism and tone of accusation, all of them directed against UNM and helping to establish a specific situational context.

The journalist of the newspaper Alia often includes his/her position during the interview. There is a provision in the dialogue of his/her member's resource, that UNM is a criminal phenomenon. While talking about the UNM, the journalist avoids to express his/her own negative position. For instance, the interviewer tries to use the allegory such as "chronicles of the announced murders", with which states that the previous government overtly committed crimes. Also, in case of last question, the journalist goes further and makes a relatively long assessment of various topics. **Similar strategy of the interview creates a situational context, in which there is some kind of agreement about UNM. This agreement implies that the members of UNM are criminals, liars and have a distructie policy. Levan Izoria does not go beyond this context and in each case underlies that UNM is an illegitimate political power because of various reasons.**

The scenario of the conversation is fully agreed between the two of them (interviewer and interviewee) as it does not create any kind of dissonance. Even in case of critical questions, the situational context in which UNM is a destructive power, gives wide range of possibilities to provide a satisfactory answers to the questions to neglect the criticism.

Politicization of police's discourse

Izoria and Tchikaidze are conduction the discourse followed by the Ministry of Internal Affairs for the past couple of years, which implies that the police, as an institution, works effectively. There is no basis to doubt the effectiveness of the institution and whoever does

this, has political goals. This discourse plays especially important role when criticizing the criminogenic situation. The issue of criminogenic situation was in fact prominent during the leadership of Alexandre Tchikaidze and Levan Izoria.

"Talking about the fact that the criminogenic situation in the country has worsened is absolutely groundless, since it serves only to discredit the Ministry of Internal Affairs. No matter what we do, our opponents try to aggravate the situation and formulate a wrongful perception in the society. I want to assure you that we have the situation under control and there is nothing alarming going on. Criminal exists in every state. If the state exists, unfortunately there is a criminal as well, this is a subsequent process." [138]

"Statements of UNM, as if the criminogenic situation is worsened, is, I am saying directly, a lie. I used their own statistics, because in August 2011, unfortunately the same amount, or 11 cases of murder happened, out of which 10 was investigated. In 2014 out of the same amount of murder, 10 cases were investigating. Today, unlike the period of the UNM rule, everyone has an access to statistics and especially the representatives of UNM. Therefore, they should sit down, state the amount of these murders and talk to the society with a concrete facts and not lies… they will lose the trust of the society with lies, lies are their style". [139]

The same discourse is taken by the police since the elections of 2012, when the issue of criminogenity became a topic of discussion. In the interview, given to Kviris Palitra [140] by Irakli Gharibashvili a month after he was appointed as the Minister of Internal Affairs, the same discourse pattern is identified:

Journalist: *"The opponents of the new government state that the criminogenic situation in the country has worsened and there are grounds for it. The cases of theft and robbery have become more frequent. Couple of serious crimes were also committed…"*

I.Gharibashvili: *"I would like to explain to the society that UNM or the members of previous government, intentionally tried to present a different picture of reality, as if the criminogenic situation in Georgia has worsened, that the police does not effective react on crimes and etc. They try to create a background, as if the situation is getting worse day by day. This is an intentionally hostile approach toward our country's interests. I say with the full responsibility – the situation in our country is absolutely under the control. Crime always happened and is happening now. Unfortunately, we cannot create a model of a society with no criminal. Naturally there are objective reasons, more specifically there is a background for our opponents to criticize us. As you already know the transfer of power started in October. Until October 25th, we could not get into the Ministry to see what was*

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138. Interview of Alexandre Tchikaidze with the newspaper Prime Time, April 6, 2014

139. Interview of Levan Izoria, Newspaper Alia, September 6, 2014

140. December 3, 2012

going on. We did not know how well the employees, criminal police, special operative or constitutional security departments were dealing with this or that situation. Before us, politically aggravated figures were taking key positions in the Ministry of Internal Affairs, who left the not only the Ministry, but the country as well as soon as we came into the power. Therefore a vacuum was created. Those employees, whose leadership has left, cannot work effectively anymore."

As we see Irakli Gharibashvili uses the resources of the same member, that Tchikaidze and Izoria used and brings into the discussion a political identity, affiliates himself with one of the sides and emphasizes the issue of intentionally distorting the reality. Moreover, blames UNM for hostile intentions towards the country, which is the continuation of discourse that UNM is an anti-state and a destructive power.

The abovementioned approach applies to the substitute of Tchikaidze – Vakhtang Gomelauri, third Minister of Internal Affairs of the Georgian Dream party. In one of the interviews, the journalist of the newspaper Kviris Kronika [141] asked him about the plot of Euromaidan.

Journalist: *"Alexandre Tchikaidze stated in the interview with Alia that specific groups, behind who is UNM, are planning a plot to overturn a ruling government. We hear the statements of Saakashvili that in 2015 he will return to Georgia and to the government after the elections. It is known UNM has an office in Ukraine and it is the plan of UNM to demoralize the police officers in the first place, to achieve their goal easily…"*

V. Gomelauri: *"When Alexandre Tchikaidze made this statement, of course there was operative information, the information is available now as well, but we will not allow the destabilization in the country. This will not happen. For the development of the country stability is an important factor to attract investments. I was just visiting Riga on the matters of Visa Liberalization. I had very important meetings, I met with the high ranking EU officials and they state their support to us. We will not allow the destabilization of the country, since this will be a serious setback for our country. The destabilization will take away the achievement of what we call the pursuit towards the EU. UNM, with its statement, annoys the people. At first they said that they were coming in fall, now they moved to spring, they are on vacation in summer and then they say they are coming in fall and etc. Of course they want to ruin many things. Unfortunately they do not think about the country"*

Like his predecessors, Gomelauri emphasized the destabilization. However, unlike them, he does not directly name UNM as a source of destabilization. Like the journalist, he refers to the UNM with its shortened name, a negative denotation of the party and refers to the similar situational scenario that we saw in the interview with Izoria. According to the Gomelauri's assessment, UNM annoys people and they don't think about the country,

141. Newspaper Kviris Kronika, February 2, 2015

repeating Tchikaidze's narrative in both of the cases. Speaking about the opposition party, like Levan Izoria, Gomelauri also uses sarcasm when he discusses the indecisiveness of UNM.

It is clear from each of the case discussed above that the most important resource for the participants is their political and party identity. Despite the fact that the representatives of the Ministry of Internal Affairs are obliged to be politically neutral, Gharibashvili as well as Tchikaidze, Izoria and Gomelauri are not free from party affiliations while discussion various issues. This implies the cases, when the representatives of the media are interested in the discourse in the context in which the abovementioned figures represent a side and have opponents – UNM. It also implies the cases, when the journalists ask questions without any political context.

When appointed as the Minister of Internal Affairs, Irakli Gharibashvili often stated that one of his major goals was to depoliticize the police. He talked about it broadly in his statement on December 17, 2012 while meeting the patrol officers:

"The main difference between the old and the new patrol police is that, you will never have to fulfill political tasks. Depoliticization of the police means exactly this. The goal of every one of us is not to serve the government, specific party or a group, but to serve people. Of course, every criminal shall be prosecuted according to the law. Meanwhile, none of the innocent individuals shall be punished. We have the similar approach toward the violations of the law. Act within the boundries of the law in any cases, regardless of the violation of the law, political affiliation of position. Does the minister violate the law? He must be punished like any other citizen would be".

In the depoliticization of the Police, the Minister implies two provisions: the first provision is the depoliticization of the police, as the refusal to use governmental resources for the political goals; the second provision is that during the violation of the law, informal political immunity will be abolished and everyone will be equalized before the law. It is worth noting that punishment is pushed at the front and it has to be used equally in any cases of political affiliation.

Irakli Gharibashvili, as the Minister of Interior, pressed the issue of depoliticization in his other statements as well. The ministers following him always stated that the Ministry of Internal Affairs implemented the reform of depoliticzation and that the police is free from political pressure. However, the depoliticization in this from does not imply the depoliticization of the discourse of the police, it indicates at maintaining political neutrality in policing and only excludes selective justice. Incompatible discourse hampers the complete implementation of the depoliticization policy. Institutional leaders and their highest representatives are and talk in the name of it. Therefore, whenever they incorporate their identity in the conversation, they politicize the entire institution. All of these are aggrevated by two factors.

1. Police, with its management rules is strictly hierarchical and centralized, which allows the high ranking officials to influence the lower ranking officials as much as possible. [142]

2. The discourse of the police is conducted exclusively by its high ranking officials. Because of their status, they have a better access to media. However, during the past years, a tendency was established according to which lower ranking officials avoided the communication with the media as much as possible and tried to direct journalists to the press office. The tendency appeared during the rule of the UNM and has not changed in the new government.

The abovementioned cases and the narratives of officials indicate the unity of the discourse – at every stage of the analysis, including descriptive stage, common patterns are detected, be it lexical, logical, ideological, or any other kind. This form of discourse inhibits the police to be perceived as independent and impartial institution, with the social function to fulfill the responsibility independently. Contrary to this, it is limited in various contexts – on the one hand in party context (with the ruling party reproducing the discourse) and on the other hand in the context of time (by limiting its function and responsibility to the period of the new government and juxtaposing the "previous" and the "new" ones [government], [the institution] is fully marginalizing existing experience and other resources).

* * *

However, it shall be noted that **unlike previous officials, in the discourse of the new Minister of Internal Affairs – Giorgi Mghebrishvili these two contexts (party and time) are more or less softened. The following paragraph discusses his discourse related to the police reform, where the main instrument for producing the discourse, juxtaposition with the specific period of time (for instance "9 years") plays a lesser role.**

Narratives of Giorgi Mghebrishvili on the police reform.

Footage of police using violence against a citizen.

Context: On April 23, 2016 TV Pirveli aired the footage on which, according to the journalist, showed the detention of two individuals in Batumi on April 16, 2016. TV Pirveli emphasized the fact that the police officers roughly treated the suspect. The story was called "Is the patrol police using violence against the citizen?". The Minister of Internal Affairs responded to the accusations toward the police with the letter on his Facebook page:

142. Since the research aims to study only the macro level of the discourse, the given information does not allow to expend the discussion on the influence of discourse produced at the lower level of hierarchy

Girogi Mghebrishvili:

"I, the Minister of Internal Affairs, state that the state police is being intentionally discredited!

I will not allow the attempts to disparage our police officers!... Yes, we declared an uncompromised war against the crime. In this war our police officers are ready to risk their lives to protect the safety of our citizens. Unlike the previous periods, the war against the crime is not waged at the expense of violating human rights.

I declare with the full responsibility that the Ministry of Internal Affairs has never been oriented more on the public and the western standards than it is today. After the new government came into the power, the values were fundamentally changed and our police became depoliticized, fully complying with the international norms, confirmed by the assessments of numerous international organizations.

Respecting and supporting your police is in fact the part of the western values and civic responsibility.

However, intentional attacks on the image of the police have recently become frequent and will supposedly be intensified with the pre-elections period. One of the clear examples of this is the video footage showed by the media today. With this footage, a journalist ties to convince the viewer that the video depicts the violence of the modern police officer on the citizen.

It shall be noted that the footage does not reflect the situation today. It is recorded before rebranding the police. The video clearly shows that the patrol police officers are wearing old uniforms. It also depicts old brand and the color of the patrol police car "Skoda". Considering all these, it is impossible that the video published on April 23 to show the detention of the citizens in Batumi on April 16, 2016.

I declare with the full responsibility, that I am personally controlling any possible misconduct of any police officers and the General Inspection of the Ministry of Internal Affairs, as well as the Prosecutor's office are working hard in this direction. It is my personal interest in the first place, to detect sole individuals damaging the system of 38000 collective and to ensure that they are hold accountable before the law.

However, I will not allow anyone to unjustifiably and without any legal evidence cast a shadow over thousands of honest and ardent officers…

Yes, I will not allow that our society became the victim of criminals, insinuation of their supporters and unhealthy pre-elections campaign!

Our police is an apolitical entity. Its main goal is the safety and the security of each

and every one of the citizens and the prevention and elimination of crime.

However, this goal will not be accomplished if the police does not have a public support, if the public does not differentiate between the truth and the lie. We must understand that the groundless discreditaion of the police and the attempts to disparage it is directly threatening the peace and security of our citizens. This is the activity directed against the country, for which we all should have an adequate response. [143]

The minister starts the letter with the statement that the police is intentionally discredited in the country. However, unlike his predecessors, no specific actor discredition the police is identified: "I, the Minister of Internal Affairs, state that the state police is being intentionally discredited!" We meet similar formulation of the sentence in other cases as well, when the possible reasons of discreditation are named: "However, intentional attacks on the image of the police have recently become frequent and will supposedly be intensified with the pre-elections period. One of the clear examples of this is the video footage showed by the media today." Like his predecessor, the discourse of the Minister of Internal Affairs identifies the reason of discreditation as political – pre-elections period. However, unlike others, the expression of the reason of discreditation is not certain. Bringing in a similar form of discreditation and using passive form of the agent, Mghebrishvilil chooses a different strategy – does not nominalize the agent. This strategy differs from the others in a way that Mghebrishvili does not put himself in opposition to anyone. For him "opponent" is anti-western and antidemocratic figure.

Another major difference is that the text does not identify the reason of discreditation. It is true that there is almost no visibility of the agent in the letter, however, Mghebrishvili indicates that they are criminals: "Yes, I will not allow that our society became the victim of criminals, insinuation of their supporters and unhealthy pre-elections campaign!"

In this statement of Mghebrishvili two sides are confronted – the police devoted to the western standards, ensuring the safety and the security of the citizens and criminals, attacking the police to discredit it for their individual and pre-election goals. Mghebrishvili emphasizes the fact that the western standards were introduced during the new government.

G. Mghebrishvili: *„Unlike the previous periods, the war against the crime is not waged at the expense of violating human rights. I declare with the full responsibility that the Ministry of Internal Affairs has never been oriented more on the public and the western standards than it is today. After the new government came into the power, the values were fundamentally changed and our police became depoliticized, fully complying with the international norms, confirmed by the assessments of numerous international organizations."*

143. https://www.facebook.com/MgebrishviliGiorgi/posts/548494965311723

In this part of the text we see the political statement similar to those of the current Minister's predecessors, when he compares old and new police in the context of old and new governments. "The previous period" in the text is juxtaposed with the "new government", meaning that the phrase implied previous government. Juxtaposition of new and old police in the context of new and old government happens in the form of the protection of human rights, orientation on western standards and the degree of politicization, where the old is opposite to the new, or significantly lags behind in terms of achievement. While we meet similar comparisons in other cases discussed here, Mghebrishvili's narrative differs from the rest of them in a sense that he has a clear orientation on the achievements of the new police and not on the failures/criminality of the old ones. Despite the fact that in this letter political affiliation is detected along with the identity of the Ministry of Internal Affairs as a member's resource, it mostly aims to present the police from a positive angle and the accusations - lies. He is focusing on police and not on the accuser. This positive approach is the main aspect differentiating Mghebrishvili from his predecessors.

Another example of this is his address [144] to the police on June 2, 2016 on the day of the police, when he talked about the successful reform of depoliticization:

> **G. Mghebrishvili:** *"We declared uncompromised war to the crime and in this war the spirit of every one of us matters… For me the main achievement is that the police now, as never before, is oriented on the public. Since 2012 the police has become completely depoliticized, which is one of the fundamental values of the civil society. Yes, you and me are the police officers of Georgia and its citizens, regardless of race, sex, ethnical, political or religious affiliation"*

In his address the Minister of Internal Affairs talks about the value of being socially oriented, which is said to be the main achievement. In this case Mghebrishvili is producing a narrative, that with the new government, the police is much more progressive. However, the temporal approach is different in Mghebrishvili's statement. If according to the narratives of his predecessors and other high ranking officials, the police is better than it was during the rule of UNM, Mghebrishvili uses the general past experience for the comparison, indicated by the phrase "now, as never before". We see similar approach in his previous statement "I declare with the full responsibility that the Ministry of Internal Affairs has never been oriented more on the public and the western standards than it is today." – the key word in this sentence is the adverb "never", which shows the temporal approach to the past in general and not to specific period.

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144. https://www.youtube.com/watch?v=–NuwnGXOjQ0

Chapter 3: Conclusion

Discursive analysis of different texts (which are directly related th social-political positioning of high-level officials of the sphere of internal affairs) revealed the following tendencies:

In de-politicization of police, the representatives of the "Georgian Dream" government largely imply the refusal to use police, a governmental resource, for partisan-political purposes; however, certainly, the refusal to use police resources for partisan interests is not the only ensuring factor for political neutrality. Several cases studied throughout this research showed that **high-level police officials position as politically biased figures.**

Certainly, high-level police officials, as citizens or even as officials, cannot be fully distanced from political processes and apolitical (and, in a sense, they do represent political figures, since, according to certain understandings of politics, their actions within the scope of their position are political), however, "politicization" means not the opposite of such situation, but rather, the situation in which an individual does not adequately separate his official status and partisan identity.

Such confusion and positioning takes place in two ways:

a) in one case, political opponents are brought into the narrative (discourse) as active subjects and they are referred to or discussed as counterbalance; this way, narrators/ discursants identify their position exclusively in relation to opponents. The main issue here is that the opponent almost always stays in the role of a "negative background," which should present the value of its alternative with special positivity. Importantly, in this case, the universalization of the "enemy image" (or an attempt to such universalization) takes place.

b) In other case, police officials put forward their partisan belonging, as the main resource of the participant (MR) [145] and define their position through political identity.

In turn, relations to political oppotents (meaning the United National Movement) has two forms or contexts:

- In one case, social-political functioning and actions of the police in the conditions of current and previous governments are being compared, highlighting the repressiveness and injustice of the police during the previous government and the democratization and depoliticization of the police during the current government. This juxtaposition is politically motivated (biased) in two ways: a) the police institute during the previous government is assessed in a holistically negative context; there is no attempt to distance positive and negative practices related to the activities of the police during the rule

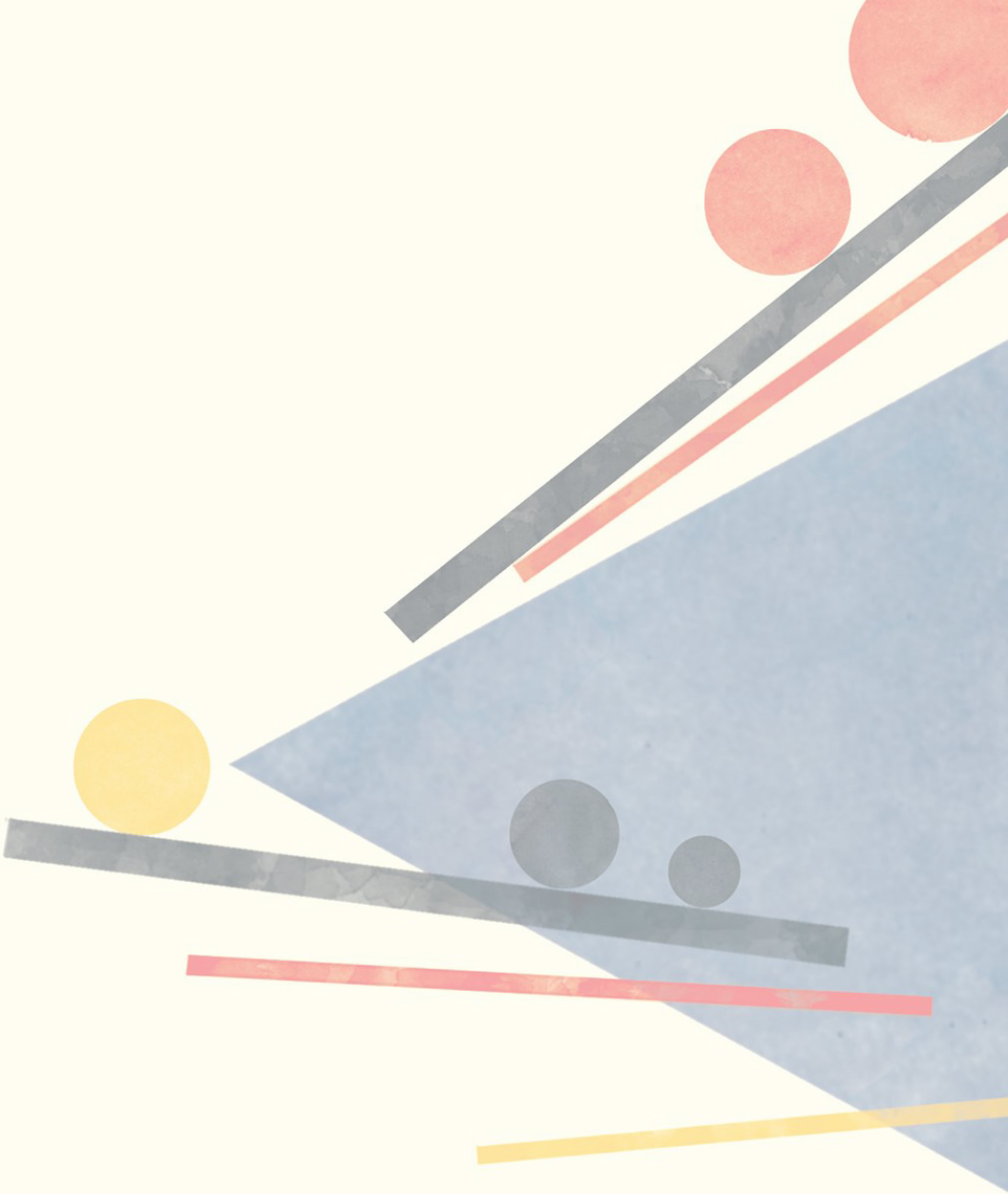
145. See the Methodology chapter.

of UNM; b) police is discussed not as a politicallu neutral state institution, but as an organ associated with the executive government, change or reformation of which is based on the "good wil" of the ruling party. In other words, often, the MIA officials of the "Georgian Dream" government focus on their (new government's) contribution to the police, rather than the objective function of the police. The discursive narratives of police officials create the impression that the claim of adequateness of the operation of the police institute is based on (attached to) the claim of adequateness of the leading government officials (police is good not because it fulfills its function, which it should fulfill, but because we have a good government).

- Another form of relating to opponents is the following: in cases when the police, due to different reasons, becomes subject to criticism from the civil society, media, or political opposition, MIA officials, either partly or completely go beyond their institutional status and engage in political polemics in both form and content, operating by the same language and semantics as the representatives of the ruling party.

On the basis of discursive analysis of concrete cases, the report shows that public positioning of almost all Ministers (and deputy ministers) of Internal Affairs of the "Georgian Dream" coalition government is circumscribed by the above-mentioned two contexts: - time (pointing to the past) and party contexts. I. Gharibashvili, A.Tchikaidze, V.Gomelauri, and L.Izoria position themselves in this modus of politicization.

A somewhat (but not essentially) different modus is created by the current Minister of Internal Affairs, G. Mghebrishvili; in his public narratives, rigid juxtaposition to the concrete time period (figuratively, to the "9 years"), does not represent the main instrument for producing discourse related to the police reform, however, G. Mghebrishvili fails to distance himself from the partisan context.



POLITICAL NEUTRALITY IN THE POLICE SYSTEM

(POLICY DOCUMENTS, LEGISLATION AND PRACTICE)

Human Rights Education and Monitoring Centre (EMC)

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