

**THE HUMAN RIGHTS CENTER (HRIDC)**



# **LICENSE TO KILL**

*issued in Georgia*

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**The Human Rights Centre (HRIDC)** is a non-governmental human rights organization, without any political or religious affiliations. The purpose of HRIDC is to increase respect for human rights and fundamental freedoms in Georgia, as well as to contribute to the democratic development of the country.

**HRIDC** implements projects to ensure compliance with human rights laws and standards. We cooperate with international organizations and local organizations which also share our view that respect for human rights is a precondition for sustaining democracy and peace in Georgia.

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# Executive Summary

## Excessive use of force by law enforcement officials in Georgia

**Excessive use of force<sup>1</sup> by law enforcement officials, followed by ineffective investigations and unfair court hearings, has been one of the most often voiced criticisms against the current political leadership of Georgia. Civil society groups, the Ombudsman of Georgia, NGOs, the media and international organizations have continuously reported cases of excessive use of force and perversion of justice by law enforcement officials and time and again raised concerns about Georgian authorities condoning such practices.**

### **Human Rights Watch, 2006<sup>2</sup>**

“Although the Georgian government takes pride in its stated commitment to the rule of law and human rights protection impunity for the actions of law enforcement officials remains a serious problem; effective investigations are rare...

The government has failed to confront the long-standing problem of impunity for excessive use of force by law enforcement agents. Senior officials, including President Mikheil Saakashvili and the minister of the interior have made public statements condoning the use of lethal force and praising the professionalism of law enforcement agents.”

### **Committee against Torture, 2006<sup>3</sup>**

“Impunity and intimidation still persisted, in particular in relation to the use of excessive force, including torture and other forms of ill-treatment by law enforcement officials, especially prior to and during arrest, during prison riots and in the fight against organized crime.

The Committee therefore recommended that Georgia give higher priority to efforts to promote a culture of human rights by ensuring that a policy of zero tolerance was developed and implemented at all levels of the police force hierarchy as well as for all staff in the penitentiary establishments.”

### **UN Human Rights Committee, 2007**

“The Committee is concerned about allegations of deaths caused by use of excessive force by police and prison officials.

The State party should take firm measures to eradicate all forms of excessive use of force by the law enforcement officials. It should in particular:

- a) Ensure prompt and impartial investigation of complaints concerning actions of law enforcement officials, and make public the results of such investigations, including with respect to the 2006 disturbance at Tbilisi prison No. 5;
- b) Initiate criminal proceedings against alleged perpetrators;
- c) Provide training to law enforcement officials with regard to the criminal nature of the excessive use of force, as well as on the principle of proportionality when using force. In this

<sup>1</sup> Use of force is excessive when it is not proportionate to the legitimate aim pursued and/or when it is not necessary to achieve that legitimate aim.

<sup>2</sup> Human Rights Watch, *World Report, Events of 2006, Georgia*

<sup>3</sup> Conclusions and recommendations of the Committee against Torture: GEORGIA, AT/C/GEO/CO/3 / 25 July 2006

regard, the Committee draws to the attention of the State party the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;  
d) Provide compensation to the victims and/or their families.”<sup>4</sup>

#### **Public Defender of Georgia, 2008**<sup>5</sup>

“Investigating facts of police excessive use of force, which resulted in deaths, still remains a problem. Special attention has to be paid to inadequate use of firearms by the police while carrying out their official duties which have a direct impact on human life and health.

The Public Defender has a number of times appealed to the prosecutor’s office to initiate investigations [on particular cases], however many of them still remain uninvestigated. This creates reasonable ground to suspect that investigations in the prosecutor’s office is a mere formality; they are not thorough and objective, not all the necessary investigative measures are undertaken in order to establish the truth on the case.”

A large part of the problem of excessive use of force by law enforcement officials in Georgia is that authorities do not acknowledge its existence.<sup>6</sup> So do they deny the existence of a widespread impunity for excessive use of force and in response to criticism, they often point fingers at few cases when law enforcement officials were brought to justice. This report demonstrates however, that in those few cases the sentences imposed on the convicts were not adequate to the crimes which they actually committed. In addition, in those few cases, as in all other cases documented in this report, investigations carried out were not effective and the trials were not fair.

Precise nature and dimensions of the problem of excessive use of force by law enforcement officials in Georgia is difficult to establish. A big challenge for researchers of this issue is the absence of reliable and comprehensive data about the cases and the victims.

According to statistics provided by the Ministry of Interior, 16 law enforcement officials were killed and 33 citizens were injured during the special operative activities by the law enforcement officials in 2005.<sup>7</sup> In his open letter published in a newspaper the Minister of Interior stated that 21 citizens were killed during the special operative activities by the law

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<sup>4</sup> Concluding observations of the UN Human Rights Committee: Georgia 2007

<sup>5</sup> Public Defender of Georgia, *The Situation in the Field of Human Rights Protection in Georgia, second half of 2008*, (submitted to the Parliament)

<sup>6</sup> Unlike, e.g., the problem of torture which they recognized almost immediately after coming into power and undertook vigorous reforms to tackle it. As a result authorities have achieved considerable progress in eradicating widespread torture in Georgia. In respect of excessive use of force the situation is rather contrary. It is noteworthy that relevant state organs do not keep comprehensive statistical data on these cases and the victims that would enable them to analyze the situation and identify the pattern of violations, high risk situations, etc. and devise the strategy of how to tackle the problem. (see the official correspondence of the Human Rights Center with the Office of the Chief Prosecutor of Georgia cited below)

<sup>7</sup> Alternative Report to the UN Human rights Committee, May 2006 by Human Rights Center, Georgian Young Lawyers Association, The Public Health and Medicine Development Fund of Georgia, World Organization, (initially submitted to the UN Committee Against torture)

enforcement officials in 2005.<sup>8</sup> The Public Defender (ombudsman) of Georgia however stated that this number was 22 in 2005.

According to the Ombudsman's report,<sup>9</sup> the use of force by police resulted in the loss of lives of 33 persons [this means ordinary citizens, not law enforcement officials] in the process of arrest [from January 2005 to May 2006], 11 people out of that figure were killed from January to May 2006. However, according to statistics provided by NGO Georgian Young Lawyers Association, from January 2005 to May 2006 at least 44 men were shot dead by police or prison officials.<sup>10</sup>

According to the most recent information provided by the Ministry of Interior [hereinafter MINISTRY OF INTERIOR] in response to Human Rights Center's official request for public information, from 2005 until recently<sup>11</sup> 83 policemen died while carrying out their duties [the data was not segregated according to particular circumstances of death] and 54 citizens have been killed by police while the latter were carrying out their official duties; despite our request in the letter to provide segregated data, the number provided by the Ministry did not specify how many of those 54 people were the targets of the use of force by the police as opposed to the ordinary passers-by who were not targeted by the police but became a victim by a mere incident.<sup>12</sup>

The *Human Rights Center* applied to the Office of the Chief Prosecutor of Georgia and requested them to provide the following public information (segregated by years since 2000)<sup>13</sup>:

- 1) How many criminal cases have been initiated/investigations started on the fact of deprivation of a citizen's life by a law enforcement official in the course of carrying out his/her official duties?
- 2) How many criminal cases have been initiated/investigations started on the fact of incidental loss of a passer-by citizen's life or a serious bodily injury to

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<sup>8</sup> An Article by Vano Merabishvili published in the Georgian newspaper *24 saati* (24 hours) on May 10, 2005

<sup>9</sup> Public Defender of Georgia, *The Situation in the Field of Human Rights Protection in Georgia, second half of 2008*, (submitted to the Parliament)

<sup>10</sup> Amnesty International, *Georgia: Briefing to the United Nations Human Rights Committee*, 2007

<sup>11</sup> Public Defender of Georgia, *The Situation in the Field of Human Rights Protection in Georgia, second half of 2008*, (submitted to the Parliament)

<sup>12</sup> For the purposes of this report *ordinary passers-by who were not targeted by the police and became a victim by a mere accident* have to be distinguished from *ordinary passers-by who were targeted by the police* and were declared as 'criminals' after being killed. For the first category see e.g., the *Case of 3 dead policemen* which resulted in incidental loss of life of Shalikiani, for the second category of cases see e.g., the case of Phakadze.

<sup>13</sup> Letter of the Human Rights Center to the Ministry of Justice of Georgia/ Office of the Chief Prosecutor of Georgia dated by May 27, 2009

him/her by a law enforcement official in the course of carrying out his/her official duties (including when carrying out a special operative activity)?

- 3) What percentage of overall number of such cases have been closed down at the stage of investigation and what percentage has been sent to court for a trial? (please, indicate the grounds for closing down the cases.)
- 4) Please, indicate particular provisions of the Criminal Code and the grounds which became the bases to open the investigation on those cases

In response, Office of the Chief Prosecutor of Georgia wrote back that their office is not keeping statistical record of the information requested.<sup>14</sup> On our request to inform us which state organ was keeping record of such information, Office of the Chief Prosecutor of Georgia replied that according to the legislation regulating access to public information, they were not obliged to provide such information.<sup>15</sup>

The list of cases and victims documented in this report has no ambition of being comprehensive. This list is rather indicative of the problem and the pattern of human rights violations which usually accompany the excessive use of force (fabrication of evidence, violation of victim's procedural rights, etc.); but the list is in no case exhaustive. There are emerging reports that the number of casualties of excessive use of force by law enforcement officials in 2004-2009 exceeds 60.<sup>16</sup>

Another serious challenge for researchers of the issue is the hardship involved in establishing the accurate facts of the cases of use of force by law enforcement officials which ended with the loss of life.

This report is based on case files (materials gathered during the investigation and court hearings) which became available to the *Human Rights Center*, public statements made by executive authorities, MPs, annual reports and public statements of the Public Defender of Georgia, interviews with the lawyers and family members of the victims, media reports and

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<sup>14</sup> Letter of the Ministry of Justice of Georgia/ Office of the Chief Prosecutor of Georgia to the Human Rights Center [G 03-06-2009/70] dated by June 3, 2009

<sup>15</sup> Letter of the Ministry of Justice of Georgia/ Office of the Chief Prosecutor of Georgia to the Human Rights Center [G 09-06-2009/62] dated by June 9, 2009

<sup>16</sup> Detailed information about those cases is rarely accessible; allegedly relatives and families of those victims keep silent about these incidents for different reasons, e.g., fear of being punished and suppressed for raising their voices, poverty and incapacity to litigate for restoration of the rights of their killed family member, mistrust towards the justice system, etc. The NGO 'Protect the Life' (which is headed and composed of the parents of those who became victims of police excessive use of force) and the Conservative Party of Georgia who has been studying such cases for long time state that there are more than 60 of such cases dated by 2004-2009.

reports prepared by the *Human Rights Center* and other national and international organizations.

In all cases documented in this report, there exist at least two completely different versions of *truth*.

On the one hand, the law enforcement officials put forward a storyline saying that the use of force in given cases was absolutely necessary and in line with the requirements of law;<sup>17</sup>

On the other hand, human rights groups, public figures, victims' families and the media put forward alternative storylines. These alternative storylines suggest that the use of force was excessive - unnecessary and disproportionate to achieve the legitimate aim pursued and thus was in violation of law; moreover, the alternative storylines often show that the aim pursued by the law enforcement officials in particular cases was not legitimate (prescribed by law). Witness testimonies and material evidence in almost all cases support the alternative storylines and demonstrate that the law enforcement officials used excessive force and unlawfully deprived citizens of their lives;

In many of the cases documented in this report official (state) investigation has been carried out, and in some cases the courts have delivered judgments; despite that, facts of these cases still remain contested. Such a reality indicates the following: Victims' families and other groups of the general public do not trust the investigative authorities and the judiciary; consequently – they do not trust the facts established by these organs; They often blame the investigative authorities and the courts in violating the right of the next of kin and of general public to know the truth about the cases of unlawful deprivation of lives by law enforcement officials and say, that the justice system serves to cover up the crimes of the executive rather than do justice to the victims.

In fact, the public distrust towards the national justice system has its well-grounded reasons: the *Human Rights Center* has not been able to identify even a single case involving the loss of life as a result of use of force by law enforcement officials in 2004-2009 which was investigated thoroughly and independently, where the court hearing was fair and the sentence was adequate to the crime actually committed.<sup>18</sup>

What the *Human Rights Center* has identified however, and documented in this report, is that investigative authorities and the courts often disregard evidence incriminating the police and law enforcement officials. As a rule, they base their conclusions on the arguments and evidence of the police and prosecutor's office and disregard the evidence and arguments put

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<sup>17</sup> It is interesting that the issue of *proportionality* is rarely discussed in their statements, moreover, courts also rarely touch upon this issue.

<sup>18</sup> One of the most problematic issues in this respect is that law enforcement officials are often charged with and tried for *negligent killing*, while the evidence and witness testimonies show that the crime committed was *a murder*.



forward by the lawyers of the victims. While they do not provide any legally valid explanation for making such preferences, accusations - that they do so to cover up the executive - are gaining force and credibility.<sup>19</sup>

Investigations and the trials usually leave the crucial questions unanswered (or do not at all raise them); in many cases the investigation is not transparent for the public; moreover, access to the case materials is often denied even to the next of kin of the person killed; authorities often apply the law in an arbitrary manner in order to block them from having access to the case file and from being a party to the investigation.

## **II. State Condoning Excessive use of force**

Instead of effectively investigating the mounting allegations about excessive use of force by police, Georgian authorities kept downplaying such allegations, saying - the government was “at war with criminals/organized crime” and that they would not step back. Authorities continued dismissing these allegation and labeled them as “politically motivated”, “patronizing criminals,” opponents being “closely incorporated into the criminal world”, attempts to discredit “our moral, our firmness,”<sup>20</sup> etc.

Political leadership further praised the “professionalism” and “efficiency” of the police in cases when the use of excessive force led to loss of lives (including in many cases that of an ordinary bystander) and other grave consequences.

One vivid example of this was the case of the prison riot which took place in 2007:

On February 3, 2004, president *Saakashvili* said on televised interview with Rustavi 2 :  
«I... have advised my colleague *Zurab Adeishvili*, Minister of Justice - I want criminals both inside and outside of prisons to listen to this very carefully - to use force when dealing with any attempt to stage prison riots, and to open fire, shoot to kill and destroy any criminal who attempts to cause turmoil. We will not spare bullets against these people».

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<sup>19</sup> According to Georgian Criminal Code and Procedural Criminal Code, investigative authorities have to investigate the case thoroughly and impartially and have to identify evidence and circumstances which incriminate the alleged perpetrator (in such cases the law enforcement official) as well as those evidence and circumstances which demonstrate his or her innocence. The Criminal Procedural Code sets up the rules for inadmissibility of evidence, however in absolute majority of cases documented in this report the evidence submitted by the victim’s lawyer was legally valid, nevertheless – was dismissed by investigative authorities or the courts.

<sup>20</sup> Civil Georgia, March 7, 2006: *Ruling Party Backs Merabishvili* [quoted Givi Targamadze, an MP from the ruling party, saying that attack was directed against the “country’s major ‘power structure’ [Interior Ministry] “because our opponents are closely incorporated into the criminal world and with ‘thieves in law’ [criminal bosses]

In March 2007 when a riot took place in Tbilisi prison 5 the authorities used excessive force to quell the riot as a result of which at least seven inmates died, 22 inmates got injured<sup>21</sup> and two Special operative activity Task Force officers were wounded. The same day the President at a session of the National Security Council downplayed allegations of excessive use of force. The President hailed the actions of the Ministry of Justice and thanked the police "who acted highly professionally in order to save the citizens of the country from the misfortune that could have happened. »<sup>22</sup>

The Minister of Justice stated: "I can declare that we have prevented a jailbreak, which posed a serious threat to our citizens."<sup>23</sup> It has been proved that only by the effectiveness of our action was such a danger avoided."<sup>24</sup>

Such statements add credibility to the allegations that excessive use of force was condoned by the state. This argument is further supported by the fact that only as a result of serious international pressure and only after several months following the incident the government started to investigate the case of the prison riot. While authorities were prompt to bring charges against several prisoners for participation in the riot and increased their term of imprisonment for that, the allegations of excessive use of force while quelling the 'riot' remains uninvestigated until now.

### **III. State Encouraging Excessive Use of: a license to shoot to kill issued**

The political leadership of Georgia told the police that they must use force for self-defense without hesitation.

On February 3, 2004, yet again on Rustavi 2, Saakashvili added:

«I gave an order to [the Minister of Interior to] start this [anti-crime] operation and, if there is any resistance, to eliminate any such bandit on the spot, eliminate and exterminate them on the spot, and free the people from the reign of such bandits.»<sup>25</sup>

On February 23, 2006, President further addressed newly appointed judges: "*Policemen have instructions to open fire directly because the life of one policeman is more valuable than*

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<sup>21</sup> Those injured as a result of the events both in the central prison hospital as well as in investigation-isolation prison no. 5 on 27 March 2006 were only given access to medical personnel after the intervention by the Public Defender of Georgia

<sup>22</sup> Amnesty International, *Georgia: Briefing to the United Nations Human Rights Committee*, 2007

<sup>24</sup> Civil Georgia, March 27, 2006: *Inmates Die in Tbilisi Prison Riot*; Human Rights Center, *The Velvet downfall: Human Rights Situation In Georgia, 2006*, available at <http://humanrights.ge/files/The%20Velvet%20Downfall.pdf>

<sup>25</sup> Human Rights Centre, *One Step Forward, Two Steps Back, Human Rights in Georgia after the "Rose Revolution,"* 2004 (citing the interview broadcasted on TV Company "Rustavi 2")

*the lives of entire world of criminals and their accomplices. Therefore we made precedents to use arms and we intend to continue this way, same as practiced in USA, Europe, Israel and all other developed countries.”*

Interior Minister further reiterated similar statements: *“I am ordering the Georgian police, members of the special police forces, and anyone whose duty is to protect society: do not let your hand shake if you notice the slightest threat to the life or health of a citizen, especially if this citizen is a police officer.”*

On November 23, 2005, the Minister made a similar statement on the channel Rustavi2 TV:

*“I apply to all Georgian policemen not to hesitate to use arms when a person’s or policemen’s life is endangered.”*

Even before making such statements Georgian legislation already provided the right of a policeman to self-defence; however according to Law on Police, the use of force, even in self – defence, must be a measure of last resort. This requirement sets higher standards, than the use of force *at the slightest threat to the life without hesitation.* In fact, Georgian law as well as international human rights law mandates that the use of excessive force is not legally justified even in case of self-defence.

Did such statements mean to imply the following: it is futile to operate inside the law in the fight against organized crime and it is time to substitute what the law says by a vaguely defined license to shoot to kill?

Practice demonstrated later on – yes, they did.

After these statements were made, *self-defence* became a common pretext for police to use excessive force and further encouraged them to fabricate cases in order to fit the real case scenarios under the cover of ‘self-defence’ and ‘protection of life.’ As a result, serious allegations started to emerge that under the pretext of combating organized crime police were killing people and further declaring them as ‘criminals’ and that all this was going on without following appropriate legal procedure and by sidelining the court – the only body authorized to judge persons to be criminal.

In addition, the government officials often use terms such as ‘eliminate’, ‘liquidate’ on the spot in their public speeches, etc. International human rights instruments, as well as Georgian national legislation are unfamiliar with such terminology. Although, the use of this terminology is not directly in conflict with law, these terms are incompatible with the values enshrined in the European convention and the laws of Georgia. Such terminology is the continuation of shoot to kill policy.

Impartial, independent and thorough investigations of such allegations have been exceptionally rare if at all. This report documents the cases in which, as suggested by the

evidence, weapons were planted on the people killed to back-up the police allegations that they had to respond to the criminals who opened the fire against them.

The *Human Rights Center* has not been able to identify a single case when the issue of planting weapons –fabricating the evidence was investigated and the perpetrator was brought to justice.

Reaction of state officials towards the disturbing results which the police using force *at the slightest threat to the life without hesitation* produced in Georgia gives us the basis to conclude that the state encouraged the use of force by giving the police a vaguely defined license to shoot to kill and by further condoning the crimes which were committed by police as a result of using this license.

#### **IV. Policy of ‘Zero Tolerance’**

When Saakashvili government came into power after the Rose Revolution organized crimes - “Thieves in law” - was a serious and deeply-rooted problem in Georgia. Organized crime was closely intertwined with the general public through social and family ties and had huge influence on the daily life of this public. “Thieves in law” (something similar to mafia in Italy) - had been inherited by Georgia from Soviet times and was some of the most influential groups in the society. A mixture of respect, fear and belief in the power of these people was very deeply rooted in the social mentality.

The Saakashvili government has declared a war against organized crime and adopted a zero tolerance policy towards criminals.

Without doubt this was a legitimate undertaking by the government and significant success has been achieved in this respect. However, as in many other aspects of state building, this process has also been founded on a premise of highly questionable validity for the country wishing to establish “*a democratic social order a rule-of-law based State and secure universally recognised human rights and freedoms*” as stated in the Preamble of the Constitution of Georgia. In particular this premise unfortunately declared supremacy of the end over the means which ultimately led to unnecessarily sidelining the rule of law and human rights in the fight against crime.

One of the examples of this was that the political leadership have tried to legitimize the idea that it should not be *unacceptable* if it is the *criminals* who are killed on the spot in the course of police carrying out their duties to protect the citizens.

"In 2005 the police detained more than 11,000 people [...] unfortunately, 21 people were killed during these arrests. Three of them were suspected of killing policemen, two had escaped from prison, six had three or more convictions, and four had two convictions. In all

cases, weapons were used against the police. There was not a single case of an innocent bystander being killed or injured in a police operative activity.<sup>26</sup> This is a clear indication of the professionalism of the police force. Twenty-one deaths in a year – is that a lot?"<sup>27</sup> Similar statements have also been made by the President of Georgia at different times.<sup>28</sup>

Such an approach to combating crime was based on several factual and theoretical misconceptions. At that time when organized crime was prevalent in Georgia, the police were weak, corrupt and poorly funded by the state. After coming into power, the new political leadership started the ‘war against criminals’ thinking, that prevalence of organized crime required them to combat it by any means. The authorities failed to see, whether preventive measures taken in good time, or the use of accepted policing techniques, appropriately reinforced if necessary, might have been sufficient to deal with the situation. Instead, they decided to crack down on the crime by granting law enforcement officials a right to use force *at the slightest threat to the life without hesitation* – a vaguely defined license to shoot to kill.

As documented in this report, such a choice by the state led to fatal consequences for many people; moreover, it encouraged perversion of justice by law enforcement officials who fabricated evidence in order to justify killings of civilians. These cases were further covered up by the investigative authorities and even the courts.

Part I of this report describes the legal regime which regulates the use of force by law enforcement authorities. The chapter describes this legal regime in the light of the laws of Georgia and international human rights instruments applicable in Georgia. This chapter provides a clear vision of what the police is and is not authorized to do according to law as opposed to the *license to shoot to kill*.

Part II examines particular cases in which this legal regime of use of force was violated by law enforcement officials in Georgia. A closer look at these cases, however, reveals a further reason behind these killings: law enforcement officials not only used excessive force against the victims; in many cases the victims were targeted by the police without a valid legal reason. They were shot dead and tagged as ‘criminals.’ The tagging was done under the logic that criminality of a person can serve as an excuse for killing him. Absence of fair investigations

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<sup>26</sup> The statement of the Interior Minister was factually incorrect. By that time there were already precedents when the use of excessive force led to loss of lives (including in many cases that of ordinary by-stander) and to other grave consequences.

<sup>27</sup> Article by Vano Merabishvili published in the Georgian newspaper *24 Saati* (24 hours), dated by May 10, 2005

<sup>28</sup> e.g., during the prison ‘riot’ in 2006 at least 7 inmates were killed by law enforcement authorities. The President immediately praised the activities of the law enforcement authorities “as highly professional” before it was even investigated whether the use of force was at all necessary to deal with the situation. In fact, this issue remains uninvestigated up to date; the position of human rights groups is unilateral – the use of force while dealing with that prison ‘riot’ was excessive.

and trials on these cases, and vigorous statements of the authorities defending the murderers, have led us to the conclusion which is put forward as a title of this report – **license to kill issued in Georgia: 2004-2009.**

# International legal constraints imposed on the use of force by police, law enforcement officials

## I. Introduction

International human rights law, including those instruments which are binding on Georgia,<sup>29</sup> impose vigorous constraints on the use of force by law enforcement officials. These vigorous constraints are based on the understanding of the significance of human life and irreversibility of death.

According to these constraints, which are discussed in detail below, use of force must be both **necessary** to achieve a legitimate aim pursued as well as **proportionate** to that aim. Failure to comply with either of these requirements renders the use of force unlawful.<sup>30</sup> Self-defense, hot pursuit police operative activity, high crime rate, or the fact that deprivation of life was unintentional and happened by incident does not provide a legal defense for law enforcement officials if they use disproportionate and/or unnecessary force.<sup>31</sup>

Moreover, the state, and hence its agents - law enforcement officials, have a positive obligation to take all reasonable measures available to avoid loss of life. This means that the law enforcement officials have an obligation to take all measures available to them to avoid 1) incidental loss of life (as a result of the use of force either by the police or by those who are 'targeted' by the police) 2) loss of life of those who are specifically 'targeted' by the police, (e.g., in order to effect a lawful arrest).<sup>32</sup>

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<sup>29</sup> The most important of them - European Convention of Human Rights and Fundamental Freedoms and International Covenant of Civil and Political Rights

<sup>30</sup> Principles of necessity and proportionality reflect customary international law, (see e.g., UN Secretary General, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms: Extrajudicial, summary or arbitrary executions, September 5, 2006, A/61/311)

These principles are enshrined in a number of international human rights instruments: article 3 of the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979); principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990); Article 2 of the European Convention of Human Rights and the case law of the European Court of Human Rights.

<sup>31</sup> See the case law of the European Court of Human Rights cited below

<sup>32</sup> *Egri versus Turkey*, (1998) EHCR

International human rights law further requires the state to most carefully scrutinize the instances of use of force by law enforcement officials, especially those which end with the loss of life. Effective investigation and a judicial procedure, respectful of due process and arriving at a final judgment is generally the *sine qua non* without which a decision by the State and its agents to kill someone will violate the right to life.<sup>33</sup>

One of the most widespread scenarios in Georgia when law enforcement officials use excessive force resulting in death is a *special operative activity* when the law enforcement officials are pursuing an alleged criminal allegedly in order to arrest him.<sup>34</sup> The commonly used pretext for the authorities to ‘justify’ the use of (excessive) force is *self-defense* and *fight against crime*.

This chapter examines these and other pretexts/contexts against the legal constraints imposed on the use of force by the European Convention and the jurisprudence of the European Court. This chapter reveals the failure of Georgian state and its agents to follow these legal constraints: proportionality and necessity of the use of force, positive obligation to avoid loss of life and effective investigations subsequent to the death resulting from the use of force.

Choice of the European Convention and the case law of the Court as a reference point in this report has several reasons:

**First** of all, Article 1 of the Convention provides that a state party to the Convention is obliged to uphold the rights and freedoms enshrined in the Convention to the individuals within its jurisdiction.<sup>35</sup> Georgia is a party to the Convention. According to the Law on Normative Acts of Georgia, Georgia’s International treaty is an indivisible part of Georgian legislation; consequently, the Convention, and all the human rights standards enshrined in the Convention, is a part of Georgian legislation. Therefore, European Convention and the case law of the European Court as a reference point in a way means to assess how does Georgia complies with its own law.<sup>36</sup>

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<sup>33</sup> see e.g., article 2 jurisprudence of the European Court of Human Rights and also UN Secretary General, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms: Extrajudicial, summary or arbitrary executions, September 5, 2006, A/61/311 [referring to the ICCPR, article 6(1)]

<sup>34</sup> Some raise serious questions as to what is the real aim of these operative activities: to arrest alleged criminals or to execute them at the spot. At least in some cases, e.g., in the case of Vazagasvhili, evidence-supported allegations are mounting that the real aim was execution and not detention.

<sup>35</sup> Law of the European Convention of Human Rights, D J Harris, M O’Boyle, C. Warbrick, (Butterworth, 1995) [“ National Courts in the state parties to the Convention increasingly turn to the Strasbourg case-law when deciding on a human rights issue, and apply the standards and principles developed by the Commission and Court.”]

<sup>36</sup> Moreover, the Convention is in general applicable at national level. It has been incorporated into the legislation of the States Parties, which have undertaken to protect the rights defined in



**Second**, the European Convention constitutes an elaboration on the obligations for the membership of the Council of Europe<sup>37</sup> including political obligations. Georgia is a member of the Council of Europe.<sup>38</sup>

**Third**, the Convention gives rise to rights of individuals within the jurisdiction of its party states, including Georgia. Thus anyone who considers his right to be violated is entitled to address to the European Court of Human Rights.

When the Court finds against a State and observes that the applicant has sustained damage, it grants the applicant just satisfaction, that is to say a sum of money by way of compensation for that damage. Judgments finding violations are binding on the States concerned and they are obliged to execute them. The Committee of Ministers of the Council of Europe monitors the execution of judgments.<sup>39</sup>

In the event of a violation being found, the State concerned must be careful to ensure that no such violations occur again in the future, otherwise the Court may deliver new judgments against them. In some cases the State will have to amend its legislation to bring it into line with the Convention.<sup>40</sup>

In fact, some of the cases documented in this report are currently pending before the European Court. If the Court finds in those cases that Georgia has violated its obligations under the Convention, which is highly probable at least in the majority of those cases, Georgia will be obliged to abide by the decisions of the Court and take measures to redress the situation.

**Last** but not least, as documented in the report, Georgian courts rarely discussed the cases of use of force, when are the law enforcers and when not to use force and how much, etc. In a few situations when Georgian courts did consider such cases, this report documents that they were more concerned with covering up the crime rather than engaging into vigorous application of law to uphold the rights of the victims and bring the perpetrator to justice. Therefore, the

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the Convention. Domestic courts therefore have to apply the Convention. Otherwise, the European Court of Human Rights would find against the State in the event of complaints by individuals about failure to protect their rights. European Court of Human Rights: the ECHR in 50 questions

<sup>37</sup> Law of the European Convention of Human Rights, D J Harris, M O'Boyle, C. Warbrick, (Butterworth, 1995)

<sup>38</sup> ("The case-law of the European Commission and Court of Human Rights is exerting an ever deeper influence on the laws and social realities of the state parties. Many instances can also be cited of States modifying legislation and administrative practices prior to their ratification of the Convention, particularly in the case of those States who have recently joined the Convention." See Andrew Drzemczewski and Meyer-Ladewig, Principal Characteristics of the New ECHR Control Mechanism, as established by Protocol No. 11, 15 Hum. Rts. L.J. 81 (1994), at 82

<sup>39</sup> European Court of Human Rights : the ECHR in 50 questions

<sup>40</sup> Registry of the European Court of Human Rights: *European Court of Human Rights: the ECHR in 50 questions: 1959 -2009*

reference to the standards of the European Convention is particularly helpful for the purposes of showing which practices of use of force are legally valid and which - not.

The European Convention is the most judicially developed of all the human rights systems. The Court has generated more extensive jurisprudence than any other part of the international system<sup>41</sup> and contributed to the development of the global definition and understanding of the substantive content of the rights it protects.<sup>42</sup> As a tribunal dealing with human rights, the Court has decided difficult and important questions concerning the proper relationship between the individual and the State, i.e. what it means to have a particular right and how the balance is to be struck between competing interest [of an individual and the state],<sup>43</sup> a bigger issue of direct connection with the topic of this report.

The Chapter refers not only to the Convention, but also the case law of the European Court. The reason for this is that it is the Court who provides interpretation of the Convention. Although the Court is not bound to follow its previous decision, it ‘usually follows and applies its own precedents such as course being in the interests of legal certainty and the orderly development on the Convention case-law.’<sup>44</sup>

In the end, the chapter demonstrates that the law of Georgia, as well as practices of use of force by law enforcement officials, often hailed by Georgian authorities as effective and successful, are in direct conflict with the constraints imposed by international human rights law on the use of force by law enforcement officials. The report demonstrates that in the light of the constraints enshrined in the European Convention and the Court’s case law.

## **II. Right to life and use of force under the European Convention of Human Rights**

### **Article 2 of the European Convention provides:**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it

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<sup>41</sup> International Human Rights in Context, Henry J. Steiner, Philip Alston (Oxford, 2000)

<sup>42</sup> Francis G. Jacobs and Robin C.A. White, (Oxford University Press, 1996)

<sup>43</sup> J.G. Merrills, The Development of International Law By The European Court of Human Rights, (2<sup>nd</sup> end., 1993), at 9

<sup>44</sup> *Cossey versus United Kingdom*,(1990) EHRR; J.G. Merrill's, The Development of International Law By The European Court of Human Rights, (2<sup>nd</sup> end., 1993) [“The Court consistently seeks to justify its decisions in terms which treat its existing case-law as authoritative. In other words, it follows judicial precedent.”]

results from the use of force which is no more than absolutely necessary:

- a. in defense of any person from unlawful violence;
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c. in action lawfully taken for the purpose of quelling a riot or insurrection

Paragraph 2 of the article 2 does not primarily define instances where it is permitted intentionally to kill an individual, but describes the situations where it is permitted to “use force” [for any of the above purposes] which may result, as an unintended outcome, in the deprivation of life.<sup>45</sup> However, article 2 specifies that such force must be absolutely necessary to achieve one of the aims listed in paragraph two, otherwise if “use force” results in deprivation of life, the fact that it was ‘un-intentional’ will not render such use of force lawful.

Further article 2 requires not just that the law must regulate interferences with the right to life, but it must affirmatively “protect” individuals from unlawfulness, i.e. actions not justified under the second paragraph.<sup>46</sup>

The European Court has stated that “absolutely necessary” means that any force used for any of the purposes mentioned in Article 2 must be “strictly proportionate” to the achievement of any of the aims set out in sub-paragraphs 2 (a), (b) and (c) of that article.<sup>47</sup> This requirement is satisfied only when no other action – short of using such force – can achieve the same lawful purpose.<sup>48</sup>

“The words “absolutely necessary” mean that there have to be some proportionality between the force used and the interest pursued. Thus, the use of force resulting in death will not be “absolutely necessary” in the cases of the escape of a prisoner, or to affect an arrest, when no serious danger is reasonably to be feared from the person concerned, and thus use of force in such situations will violate the right to life.”<sup>49</sup>

The use of force to protect property is not included in article 2. Its omission from the Convention cannot be regarded as accidental. This suggests that lethal force cannot be legitimately used to protect property, unless life too is in jeopardy. (Pkhakadze)<sup>50</sup>

In addition, to article 2 of the ECHR, detention situations may also involve article 3 which applies with particular stringency in such situations and protects individuals against

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<sup>45</sup> *McCann and others versus United Kingdom*, (1993) ECHR, Grand Chamber judgment of 27 September 1995, quoting the Commission’s view, already expressed in the earlier case of *Stewart versus the United Kingdom*, (1984) ECHR

<sup>46</sup> *The right to life: A guide to the implementation of Article 2 of the European Convention on Human Rights*, Human rights handbooks, No. 8, by Douwe Korff

<sup>47</sup> *McCann and others versus United Kingdom*, (1995) ECHR

<sup>48</sup> *McCann and others versus United Kingdom*, (1993) ECHR

<sup>49</sup> *Theory and Practice of the European Convention on Human Rights*, P. van Dijk, G.J.H. van Hoof, Kluwer Law International, 1998

<sup>50</sup> *The right to life: A guide to the implementation of Article 2 of the European Convention on Human Rights*, Human rights handbooks, No. 8, by Douwe Korff

inhuman and degrading treatment and torture. Any use of physical force against a person in detention is presumed to violate Article 3, unless it can be shown by the state to be strictly necessary.<sup>51</sup>

### **III. the Right tot Self-defense**

Analysis of the practices of the excessive use of force during the recent years in Georgia shows that self-defence constitutes a common pretext for police to use excessive force. As documented in chapter three which provides particular examples of excessive use of force, in absolute majority of these cases it was revealed later on, or there exists credible evidence proving, that the police officer(s) lied that the person killed was armed. In reality there are many evidences which suggest that the person was unarmed. Nevertheless, such lies by the law enforcement officials have not been addressed adequately by the legal system.

To cite just one example where credible evidence exists that the victim was unarmed, is the case of Kiziria; the police intentionally shot him in the head in addition to other 52 bullet shots. One of these bullets was shot in his armpit when he was standing with his hands up in surrender. The investigative authorities accepted the allegations of the police about the self-defence and closed down the investigation with the conclusion that there was no excessive use of force. The court further rejected the petition of the family lawyer protesting against the closure of the investigation. The court relied on the testimonies by those who participated in the police operative activity and stated that the decision of the closure of investigation was “legally correct” because the use of force by the police was not excessive.

The European Convention of Human Rights has established that self-defense does not provide a law enforcement official a free hand to shoot in all circumstances even where the person shot is armed. On the contrary, the Convention clearly requires that the use of force in self-defense, as in all other cases, must be ‘absolutely necessary’ as defined by the Court.

The test of “absolute necessity” was met in *Wolfgram v FRG*.<sup>52</sup> There the police arrested five men whom they reasonably (and correctly) suspected to be armed with dangerous weapons and on their way to commit an armed robbery. When one of the men detonated a grenade the police opened fire killing two of the men. The Commission found that the force used could be justified as being “absolutely necessary” both in self defense and to effect a lawful arrest.

An emerging terminology prevalent in the statements of law enforcement officials in Georgia is that the police opened fire on ‘criminals’ ‘in response,’ which in its meaning does not imply in response to the threat of life but simply in response to the force being used. According to the European Convention, the policeman is only authorized to fire back at the

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<sup>51</sup> *Keenan versus United Kingdom*, (2001) ECHR

<sup>52</sup> *Wolfgram versus Federal Republic of Germany*, (1986) ECHR

target in order to protect life, including his own life, but here again the obligation to meet the requirement of absolute necessity is decisive.

#### **IV. Police operative activity**

In the majority of cases of excessive use of force documented in this report, people were killed during a police operative activity which officially<sup>53</sup> was supposed to detain and not to kill them. According to official information, the police operative activity took place based on operative information received by the police that a group was going to commit a crime.

According to the European Court, such operative information does not automatically authorize the police to use force against their ‘target.’ Rather on the contrary, possession of such information gives rise to a number of obligations on the part of the state;

This issue was addressed for the first time in *McCann and others v. the United Kingdom*. In that case the Court accepted that the soldiers who fired the lethal shots honestly believed that this was the only way to prevent the suspects from detonating a remote-controlled car bomb. However, the Court stated that what has to be taken into consideration is “not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination.”<sup>54</sup>

From the information gathered by the Court about the planning of the operation, it was clear that the suspected persons could have been lawfully arrested without risk to innocent lives at a different time (in that case - at a much earlier stage); however, the authorities had taken a deliberate decision not to do so.

The Court further established that there was a lack of appropriate care in the control and organization of the arrest operation, due to:

- 1) Failure of the authorities to exercise greatest of care in evaluating the intelligence information at their disposal before transmitting it to those who would administer the force, i.e. make sufficient allowances for the possibility that their intelligence assessments might, in some respects at least, be erroneous and
- 2) Automatic recourse to lethal force when the soldiers opened fire.

In sum, the Court was not persuaded that the killing of the three terrorists constituted a use of force which was no more than absolutely necessary in defense of persons from unlawful violence within the meaning of Article 2 of the ECHR. Thus, despite the honest belief of those

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<sup>53</sup> Credible allegations exist, at least in some cases, that the aim of police operative activity was to demonstrate force by acting violently and aggressively rather than to detain the ‘target.’

<sup>54</sup> *McCann and others versus United Kingdom*, (1993) ECHR

who actually administered the fire that the use of force was absolutely necessary, the Court found that the state was in breach of Article 2 of the ECHR.

## V. Hot pursuit police operative activity

The European Court has stated very clearly that when it comes to the constraints imposed on the use of force by the law enforcement officials, there are no two separate legal regimes one governing an ‘ordinary’ police operative activity and the other spontaneous, ‘hot-pursuit’ police operative activity.

As the Court noted in *Matzarakis case*, “police officers should not be left in a vacuum when exercising their duties, whether in the context of a prepared operation or a spontaneous pursuit of a person perceived to be dangerous: a legal and administrative framework should define the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the international standards which have been developed in this respect [...]”<sup>55</sup>

In that case the Court stressed that rather than acting in a legal vacuum in such situations, authorities are under positive obligation to do all that could be reasonably expected of them at the relevant time “to afford to citizens, and in particular to those against whom potentially lethal force will be used, the level of safeguards required and to avoid real and immediate risk to life which they know is liable to arise, albeit only exceptionally, in hot pursuit police operative activities.”

The Court further stated that the “unregulated and arbitrary action by State officials is incompatible with effective respect for human rights. This means that, as well as being authorized under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force [...], and even against avoidable accident.”<sup>56</sup>

Although the person targeted by the police survived in *Matzarakis case*, the Court still found the violation of the right to life of Mr. *Matzarakis* because of the failure by the state to afford to him the level of safeguards required and to avoid real and immediate risk to his life.

In addition to Article 2 of the ECHR, detention situations may also involve Article 3 - prohibition of torture, inhuman and degrading treatment - which applies with particular stringency in such situations. Any use of physical force against a person in detention is presumed to breach Article 3, unless it can be shown by the detaining authorities that it was strictly necessary.<sup>57</sup>

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<sup>55</sup> *Matzarakis versus Greece*, (2004) ECHR

<sup>56</sup> *I.d.*

<sup>57</sup> *Keenan versus United Kingdom*, (2001) ECHR

## **VI. State obligation to avoid incidental loss of life**

In a number of cases documented in this report, the police operative activity was conducted in a way which clearly disregarded lives of individuals, including minors, who were in the surroundings of the place where the operation was conducted. In a number of such cases the operation by the law enforcement officials was followed by incidental loss of life resulting from disregard of the state obligation to take protective measures to ensure that the use of force by police does not result in incidental loss of civilian lives.

The Human Rights Centre has not been able to identify even a single case when incidental loss of life which was re-dressed by the government either in terms of assuming legal responsibility for it and bringing the perpetrator to justice or providing monetary compensation for the victim's family.

The European Court has clearly stated that Article 2 of the European Convention puts states under the positive obligation to take protective measures to ensure that the use of force by police does not result in incidental loss of civilian lives, whether this happens as a result of police use of force or of the use of force by those whom the police is targeting (suspects, etc.).

The Court dealt with this issue in the case of *Egri v Turkey*. The case involved the death of a woman who appeared to have been caught in crossfire between members of the security forces and members of the banned paramilitary organization, the PKK. "The responsibility of the State is not confined to circumstances where there is significant evidence that misdirected fire from agents of the State has killed a civilian. It may also be engaged where they fail to take all feasible precautions in the choice of means and methods of a security operation mounted against an opposing group with a view to avoiding and, in any event, to minimizing, incidental loss of civilian life."

The Court wrote: The Court found Turkey to be in violation of Article 2 of the ECHR as 'insufficient precautions' had been taken by the responsible authorities to protect the lives of the civilian population.

## **VII. 'Eliminating criminals'**

The introductory part of the report already talked about the policy of zero tolerance for crime which the current Georgian government declared after coming into power. The introductory part also showed that in their public speeches Georgian officials often downplayed public criticism that police was using excessive force in the course of the "fight against crime." Moreover, state officials often referred to those killed by policemen as 'criminals' – as if their criminality, even if so, justified using excessive force and killing them.

Such actions of the state contradict two fundamental principles enshrined in the European Convention:

- 1) Presumption of innocence of an individual called a ‘criminal. As the European Court established no representative of the State may make a statement before the final decision of the court which gives the impression that the accused has already been found guilty.<sup>58</sup> In the cases documented in this report, officials in their public statements, which they made immediately or soon after the incident, often referred to those killed as ‘criminals.’ These officials violated presumption of innocence of those people as they labeled them as ‘criminals’ before Georgian courts had even discussed the issue of guilt or innocence of those people. (In most of the cases the guilt or innocence of those killed has never been investigated and decided upon by the court.)
  
- 2) Moreover, analysis of the cases documented in the report shows that making such statements were not a mere carelessness from the side of the Georgian authorities. Rather on the contrary, it was an integral part of the” fight against crime.” Georgian authorities, having no evidence of criminality of those who were killed by the law enforcers, tried to substitute such evidence by their own statements in order to ‘justify’ killings in the public eye. At some extent their calculation was correct: Georgian mainstream media, especially after clapping down the only nationwide TV Channel *Imedi* critical to the government, rarely follows up such incidents, consequently, it is the official storyline what the public learns about and not the facts which incriminate the police and show the innocence of those killed.

European Court of Human Rights has stressed that the law enforcement officials have a legal obligation to exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice.<sup>59</sup> In a democratic society law-enforcement personnel are expected to show caution in the use of firearms even when dealing with dangerous terrorist suspects.<sup>60</sup>

### **VIII. Obligation of the state to effectively investigate the cases of loss of life**

Excessive use of force by police has been one of the most often voiced criticisms of the current political leadership of Georgia. As this report demonstrates, this criticism rests on credible grounds. The reality is however that effective investigation of the cases of excessive use of force rarely takes place, if at all.

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<sup>58</sup> *Petra Krause versus Switzerland*, (1978) ECHR

<sup>59</sup> *Oman versus United Kingdom*, (1998) ECHR, The Court further specified this duty *In Edwards versus United Kingdom*, (1992) ECHR

<sup>60</sup> *McCann and others versus United Kingdom*, (1993) ECHR



According to the European Court, states have a duty to investigate killings by law enforcement officials. This obligation is often referred to as a procedural part of the right to life and means that, in order to meet article 2 requirements, the investigation must be **independent, effective, prompt** and **transparent**.<sup>61</sup> If the state fails to meet either of these requirements, it will violate the right to life and incur responsibility under the European Convention of Human Rights.<sup>62</sup>

**Particular meaning attached to the four requirements of investigation is as follows below:**

### **Independence**

In a number of cases documented in this report, the issue whether the use of force was excessive was being investigated by those people and/or state organs who themselves used the force in that case. Such was a case of Sandro Girgvliani, Zura Vazagashvili, and others.

European Court of Human Rights has established that an investigation will be independent only if the persons responsible for and carrying out the investigation are independent from those implicated in the events. The Court has stressed that ‘this means not only a lack of hierarchical or institutional connection but also a lack of a practical connection. Independence.’ Independent investigation means that investigators are genuinely free of any professional connection with those whom they are investigating and not only appear to be independent. Clearly, this means that the requirement of independence is not satisfied by an internal investigation by members of the force against which the complaint had been made.

### **Effectiveness**

To be effective the investigation must satisfy the following requirements:

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<sup>61</sup> In *Kelly and Others, Hugh Jordan and Shanaghan v UK* the Court further established that in order to meet article 2 requirements the investigation must be cases of *McShane versus United Kingdom (1998) ECHR* and its 2003 judgment in the case of *Finucane versus United Kingdom (2003) ECHR* have re-emphasized the need for all investigations into allegations of unlawful killing to meet these standards.

<sup>62</sup> In the case of *Kaya versus Turkey, (2000) ECHR* the Court found no violation of the substantive requirements of Article 2, but a violation of procedural requirements. Moreover, in *Kelly and Others v. the United Kingdom* the Court held that in certain cases, it could examine alleged violations of the procedural requirements even though domestic proceedings on the substance of the issues were still pending or were not pursued.

- it must be ‘capable of leading to a determination of whether the force used was or was not justified under the circumstances and to the identification and, if appropriate, the punishment of those concerned’; and
- ‘all reasonable steps’ have been taken to secure evidence concerning the incident, including ‘eyewitness testimony, forensic evidence, and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death.’

The requirement that an investigation be effective ‘is not an obligation of result, but of means.’ In other words, the Court’s emphasis is not upon whether an investigation has led to a finding of unlawful killing. Instead, it seeks to evaluate the content and quality of the investigation.

### **Promptness**

It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

The investigation must also be in a reasonably expeditious manner. Speed is of the essence at the very beginning of an investigation into the use of lethal force, when immediate steps are required to seize any evidence which may support or derogate from a complaint about unlawful killing (e.g. firearms which may have been discharged, clothing, etc.).

Facilitating rapid access to independent forensic medical expertise is also a vital element in the truth-gathering process. The investigation as a whole should also be conducted in an expeditious manner. In other words, it must be carried out as quickly as is consistent with completing the work in a professional way.

### **Transparency**

Transparent investigation means when there is a sufficient element of public scrutiny of the investigation or its results [...] to secure accountability in practice as well as in theory’. The Court has recognized that the degree of public scrutiny that is required may vary from case-to-case but, in every case, the next-of-kin of the deceased ‘must be involved to the extent necessary to safeguard their legitimate interests. The Court has further emphasized that proper procedures for ensuring the accountability of agents of the State were indispensable in maintaining public

confidence and meeting the legitimate concerns that might arise from the use of lethal force. Lack of such procedures would only add fuel to fears of sinister motivations, as was illustrated, among other things by the submissions made concerning the alleged shoot-to-kill policy.<sup>63</sup>

In *Egri v. Turkey* the Court established that the obligation of the state is not confined to cases where it has been established that the killing was caused by an agent of the State. Nor is it decisive whether members of the deceased's family or others have lodged a formal complaint about the killing with the relevant investigatory authority. In the case under consideration, the mere knowledge of the killing on the part of the authorities gave rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death.”

The Court further stressed that special circumstance, e.g. the prevalence of violent armed clashes or the high incidence of fatalities could not displace the obligation under Article 2 to ensure that an effective, independent investigation is conducted into the deaths arising out of clashes involving the security forces, more so in cases where the circumstances are in many respects unclear.”<sup>64</sup>

As the Court has established, the burden is upon the State to prove that an investigation complies with the abovementioned requirements Article 2.

Human Rights Center was unable to identify even a single case of excessive use of force by the law enforcement officials during the recent years where the investigation conducted satisfied these four requirements: independence, impartiality, effectiveness and promptness.

## **IX. Georgian legislation and the use of force by State Agents**

When the national legal framework regulating the use of force is compared with international one it is clear that there are certain incompatibilities between the two. This part of the report highlights the examples of incompatibility of the national law regulating the use of force by law enforcement officials with the requirements of the European Convention. However, it does not provide a comprehensive analysis of this issue. Three key examples of incompatibility are the following:

### **1) National legislation provides a broader list of legitimate aims in pursuance of which**

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<sup>63</sup> Press release dated by 04.05.2001 issued by the Registrar, Judgement in the cases of *Hugh Jordan v. UK, McKeRR v. UK, Kelly and others v. UK, Shanaghan v. UK*

<sup>64</sup> *Egri versus Turkey*, (1998) EHCR

**it is allowed to use force (which may result in death as an unintended outcome) than the European Convention does,** e.g., Georgian Law on Police considers protection of property or health to be such legitimate aim while the European Convention does not.

**2) While the European convention clearly articulates that the use of force must be Proportionate to the legitimate aim pursued, Georgian legislation does not clearly articulate such a requirement.** There are several provisions scattered in the Law on Police as well as the Criminal Code of Georgia and its commentaries which imply the requirement of proportionality in certain situations, however these provisions cannot replace the need for a general and a clear provision, applicable to all situation, which outlaws any use of force if it fails to meet the proportionality requirement whatever the situation might be. Moreover, the existing provisions with implied requirements of proportionality may be interpreted in such a way so as to reverse the burden of proof from the state to the (successor of) the victim. This is incompatible with standards set up by the European Convention.

**3) Georgian legislation, as well as the practice of arbitrary application of this Legislation, fails to ensure transparency of the investigation on cases of excessive use of force.** Procedural Criminal Code of Georgia limits the right to have access to the case materials only to the parties of the case. Administrative Code of Georgia, which regulates what is public information and guarantees public's access to it, sets a blanket ban on access to the case file and the details of any ongoing investigation by the public. This blanket ban blocks the public from getting information in relation to such cases even in such situations when the case is the matter of an acute public interest and when the release of at least some part of the information will not infringe upon anyone's rights or freedoms.

This blanket ban imposed on access to the information by third parties effectively makes these cases practically a secret; especially in combination with the widespread practice that the next of kin of the person killed by the police is often illegally denies or artificially delayed granting the status of a party to the proceedings.

## Part II

### Cases on Excessive Use of Force by Law Enforcement Officials in Georgia

#### *Case of Amiran Robakidze, 19, (2004)*

On November 23, 2004, on the anniversary of the Rose Revolution, a patrol police Grigol Bashaleishvili shot dead Amiran Robakidze, 19. High ranking police officials stated immediately after the incident that Robakidze was “a member of a criminal gang” who opened the fire against the police. The investigation deliberately blocked the truth about the incident to be made public, however under the pressure of the victim's family, mass media, the public and political opposition, it was revealed that the whole case was fabricated and the weapons were planted on the dead Robakidze; At the trial the patrol police Bashaleishvili confessed that he had killed an armless person "carelessly, by accident." Bashaleishvili was sentenced to four years of imprisonment for negligent killing. The case has been widely criticized for two reasons: first, the evidence and witness testimonies suggest that the killing of Robakidze was not accidental, and that the court convicted the patrol police for a lesser crime than he actually committed – a murder; second, those who fabricated the evidence and planted weapons on dead Robakidze while trying to cover up the police officer have not been brought to justice.

Robakidze's murder was one of the first cases of excessive use of force by patrol police resulting in death; Therefore this case served as litmus for the genuineness of the government's commitment to rule of law and human rights, which was one of its key promises when coming into power. Authorities had two choices: to admit that things went wrong and to bring the perpetrator to justice, or to try and cover up a wrongdoing. Unfortunately, authorities, including the judiciary, chose to cover up the wrongdoing.

The Public Defender of Georgia explains the choice the authorities have made in the following way: “it was the time when the confidence and trust towards patrol police<sup>65</sup> was emerging in the society. Putting this confidence under question was against the interests of the MINISTRY OF INTERIOR therefore the MINISTRY OF INTERIOR leadership was interested to conceal the crime of its employee.”<sup>66</sup>

On November 24, 2004 The TV program ‘Patrol Police,’ which is produced by the Interior Ministry's press service and aired daily by Rustavi 2 television, reported that the night

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<sup>65</sup> The police organs were very much discredited in Georgia during the previous political leadership, police reform was one of the key priorities for the current government of Georgia.

<sup>66</sup> Public Defender of Georgia, *Annual report on Human Rights Situation in Georgia*, 2004, submitted to the Parliament

before, on November 23, the police apprehended “an armed gang of bandits” and one of its members - Amiran Robakidze, 19, was shot dead. The Ministry released a video footage showing two sub-machine-guns, a pistol, a hand grenade and bullets allegedly belonging to the “gang.” According to law enforcers, they pursued the car in which Amiran Robakidze and his five friends were sitting as it was considered suspicious. The patrol police claimed that the “gang” opened fire the first and the police acted in self-defence. The investigation was initiated under Article 113 of the Georgian Criminal Code (inevitable self-defence).

However, soon it became evident that the police officers were simply lying and the investigators were trying to cover this up. Forensic autopsy of Robakidze’s body established that Robakidze was killed by a bullet shot in an armpit when he was holding his hands upwards in surrender. These finding of the forensic autopsy coincided with the testimonies of the guys five people who were together with Robakidze during the incident and who testified that one of the policemen, who were drunk, shot Robakidze accidentally while he was holding his hands upwards.<sup>67</sup> All the five denied possession of any weapons at the time of the incident and testified that they obeyed the police order to surrender without resistance and left the car with their hands up in surrender, this is when they indicated Robakidze was shot.

Careful scrutiny of the video footage about this incident filmed by the TV Program ‘Patrol Police’ further revealed groundbreaking evidence: though the picture was cut off, the voice of the police officers remained recorded when they were inspecting the group members and staying ‘they have nothing [referring to weapons]’.

Despite the evidence (autopsy results) and witness testimonies demonstrating that Robakidze was murdered by the patrol police, on August 10, 2006, police officer Grigol Bashaleishvili was sentenced for negligent killing to four years' of imprisonment.

Public Defender of Georgia, human rights groups and the relatives of Robakidze condemned the trial as an attempt to cover up higher-level Interior Ministry officials, who fabricated evidence and tried to conceal the crime committed by the police officer.<sup>68</sup>

There are a number of factual arguments supporting this position. During the pre-trial investigation here were numerous attempts by the investigative authorities to obstruct the course of justice. It took huge effort of the family and civil society to establish true facts on the case. The court hearing over the case further beared clear signs of the failure to conduct thorough, impartial and independent hearing, as mandated by the law. During the trials it was evident that

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<sup>67</sup> Public Defender of Georgia, *Annual report on Human Rights Situation in Georgia*, 2004, submitted to the Parliament

<sup>68</sup> See e.g., Civil Georgia, August 10, 2006 quoting the Public Defender saying: “Although a policeman has been convicted for the murder of Amiran Robakidze, the investigation is not yet over, because those top level police officials who fabricated evidence in the case have not been punished yet.”

the judge was biased in favour of the suspect and tried not to allow the truth to come forth. The judge rejected the petition of Robakidze's family lawyer to question then-chief of press services of the MINISTRY OF INTERIOR Guram Donadze, who was in charge of production for 'Patrol Police,' and then-chief of Patrol Police Zurab Mikadze, who were present at the crime scene during the incident. Their testimonies were important not only as eyewitnesses to the crime of shooting Robakidze but also in order to examine allegations about their involvement in the fabrication of evidence of the crime.

Initially the police alleged that the five had put up armed resistance to the police. However, it became crystal clear in the course of investigation and at the trial of Bashaleishvili that the five were unarmed. This further made clear that someone fabricated the evidence in order to cover up the police officer. Despite numerous attempts by the family lawyer and human rights groups<sup>69</sup> to pressure the government to investigate this issue, up to now it remains open and no one has been held accountable.<sup>70</sup>

According to Georgian legislation fabrication of evidence (GEORGIAN CRIMINAL CODE article 369), bringing a criminal case against an innocent person on purpose is also a crime (GEORGIAN CRIMINAL CODE article 146), concealing a crime (GEORGIAN CRIMINAL CODE article 375) are crimes in themselves. Consequently, all the people present at the crime scene, including Guram Donadze, who was in charge of production for 'Patrol Police,' and then-chief of Patrol Police Zurab Mikadze, should have been at least questioned as witnesses in relation to fabrication of evidence. Their possible personal involvement or non-reporting of the crime must have been investigated as well. However, until now the investigation has not reached any decision on the issue. The family of Robakidze has not been recognized as a victim and thus – a party to this investigation, therefore the case materials are closed to the family and the whole public as well.

In order to 'answer the questions society was asking and the General Prosecutor's Office failed to answer,'<sup>71</sup> several MPs, representing the parliamentary minority, initiated to establish a parliamentary committee to investigate the matter. Opposition MP Davit Zurabishvili commented: "These were not trivial murder cases. These are historic cases. Years will pass, but these cases will remain as a shameful spot in our history and a position of each individual, each

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<sup>69</sup> Public Defender, *Report on the Human Rights Situation in Georgia, second half of the 2006*, submitted to the Parliament, [Georgian Public Defender Sozar Subari appealed to the Prosecutor General Zurab Adeishvili to initiate immediately criminal proceedings against all those police officers and law enforcers who took part in the arrest operation, search and withdrawal conducted on the site of the incident and officially registered the withdrawn evidence].

<sup>70</sup> Formal investigation was opened by the Prosecutor General's Office under Article 369 ("falsification of evidence") and Article 333 ("excess of authority") of the Criminal Code.

<sup>71</sup> Statement by the MP Kakha Kukava at the Parliamentary Session on February 16, 2007

of us regarding these cases is important. Your vote for or against will show your attitude towards these cases,” opposition MP Koka Guntsadze further added: “By voting against the proposal you are putting a line between the authorities and society. With the creation of this commission you will foster a very positive trend.”

However, on February 16, 2007, lawmakers from the ruling party declined to debate the issue with the opposition parliamentarians. According to MP Nika GvaraMinistry of Interior of the ruling National Movement Party, their approval of the creation of an investigative commission ‘would mean that we have no confidence in the General Prosecutor’s Office and the judiciary.’<sup>72</sup>

### **Case of Afrasidzes’ (2004)<sup>73</sup>**

On the 24<sup>th</sup> of March, 2004 special operative activity was carried out in Svaneti, district of Mestia against the family of Afrasidze’s. The father of the family and his two sons were killed by the Special Forces. The special operative activity was conducted by using 12 helicopters and around 1000 men. The necessity and proportionality of the use of such force in that case remains highly contested. Moreover, by using such force and the way the special operative activity was conducted ignored the threats their activation posed to other people around, including to minors.

Before the special operative activity, the Afrasidzes’ family had been demonized in the media as ‘bandits’, ‘kidnappers’, ‘killers’, etc. starting from before the Rose Revolution. However, the special operative activity to apprehend them was carried out while charges had not been brought against them officially. Neither had they been called in by the law enforcers to appear for giving testimonies, etc.; Therefore, the legal basis – and first and foremost the necessity - for the special operative activity carried out Afrasidze’s remains highly contested.

Ministry of Interior, Ministry of Security and their top ranking officials, as well as internal troops, around 1000 men and 12 helicopters participated in the special operative activity.

The special operative activity started at around 7 a.m. in the morning: The police attacked house in which children and women were sleeping and started shelling it.

Evgeni Afrasidze, father of the family, came out of his house with his hands up, his 10 years old grandchild followed him. ‘He was going to surrender, but suddenly the fire was opened

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<sup>72</sup> Civil Georgia, February 16, 2007: *Parliament Rejects to Probe into High-Profile Murder Cases*

<sup>73</sup> Information available about this case is particularly scarce. The main source of the information about this case for this report have been the lawyer of Afrasidzes’ and a documentary movie maker Vakhtang Komakhidze (*Studio Reporter*) who conducted a journalistic investigation on the case and made a documentary about it. The stories of both sources coincide with each other.



from the planes without any warning. Evgeni was killed by a sniper. It is a miracle that the child did not get killed, though a bullet touched his trousers. He saw how his grandfather was murdered. The son of Evgeni ran out of the house and took his dying father inside, ‘– describes the lawyer the situation based on witness testimonies.

After Evgeni’s body was taken inside the house, the house was shelled and armed people descended from the helicopters and stormed the house while the wife of Evgeni, wife of his son - Shmagi and their three children, four men from the family and another person – Muraviiov were all inside.

‘Armed forces did not allow the family members, neighbors and relatives to take Evgeni Afrasidze’s body out of the burning house.’ - says the lawyer of Afrasidze’s.

According to the video-materials and witness testimonies two houses next to Afrasidze’s houses also came under attack. In fact, there are reports that at first they made a mistake and bombed a neighbor’s house. The lawyer recalled in the interview with the Human Rights Center that when he went to Svaneti to conduct interviews, he saw how the children were playing with lots of remains of those grenades.

According to witnesses, Omekh Afrasidze, one of the Evgeni’s sons, was shot when he was on his knees handcuffed. Lasha Afaqidze, 6-7, witnessed how his uncle was shot and then robbed - a cross and a ring was taken away from him. Another son of the family, Gocha was assaulted by certain kind of a big knife, he was badly injured, despite the fact that he was not resisting.

For the defense lawyer as well as many others it remains a question why was it necessary to conduct a special operative activity. “It was easily possible to detain e.g. Omekh Afrasidze any other time, everyday he was traveling from his village to another one alone. The special operative activity was done to terrorize the village, there is no other explanation,” - says the lawyer. He supported this suggestion by the fact that dozens were arrested in a police round-up in the village that day. Armed forces searched them several times, held them under detention in the tower yard for a day, from the morning to the evening disregarding the legal procedure. Later on a few of them were arrested for the possession of drugs. Gocha and Shmagi Afrasidzes were arrested and still remain under detention, which their lawyer considers to be illegal.<sup>74</sup>

There are reports about irreparable damaged sustained by untargeted innocent civilians as a result of this special operative activity: e.g., because of the manner the operation was conducted the wife of Schmagi Afrasidze became mentally and a neighbor, Ms. N. Gurchiani, who was ill and lying in the bad in her house during the operation, died as a result of fear. No

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<sup>74</sup> The lawyer talks about numerous violations of law and procedure in relation to their detention and imprisonment, e.g., he refers to the striking fact that the authorities did not bring charges against Gocha Afrasidze for three months while keeping him in detention, while the law sets 48 hour deadline for bringing charges against a person after the moment of detention.

action has been taken by the government to provide compensation for this damage or to raise the issues of accountability of any of its agents for such consequences.

Officially the special operative activity was assessed as a particularly successful one. Georgian President Mikheil Saakashvili hailed the anti-criminal operation saying: “We will continue to struggle against criminal gangs in Georgia. Not a single criminal band will remain in Georgia.”<sup>75</sup>

Necessity and proportionality of the use of force has never been investigated.

Very recently, President Saakashvili commented publicly in relation to this case: “I want to confirm that I gave the order to exterminate the Mestian bandits and I do not regret that. This was Afrasidzebi’s gang, which was controlling the whole Svaneti region and fortified in a high tower from the Soviet times. By my order, the helicopters opened fire, and in a result were destroyed these bandits and tower. This was right decision - the whole Svaneti breathe out after that. Who wants can say that it was brutality, however I feel sorry for every human being and I do not wish bad to anybody. There not exists development in Georgia without order. No compromise will be from our side in this issue.”<sup>76</sup>

### ***Case of 3 dead policemen (2004)***

**On March 4, 2004 a police special operative activity resulted in the death of three policemen and three civilians, including a pregnant woman.**

The police officers were chasing two cars ridden by suspects. The suspects, in order to escape the police, sought refuge in one of the houses on their way. The policemen were badly equipped in comparison with the offenders, they were not even wearing bullet proof cloths. The suspects opened the fire to the police, as witnesses testify; As a result of a clash between the suspects and the police officers three police officers Roman Robakidze died at the spot, Gia Khatiashvili and Gocha Shvangiradze - at the hospital. The offenders managed to escape.

According to the eyewitnesses, a real ‘war’ was going on, houses around were *shelled* by the bullets, even inside the houses walls were shelled. The special operative activity was headed by the governor of the Imereti Region Mumladze - who was a civil servant and had no

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<sup>75</sup> Civil Georgia, March 24, 2004: President Hailed Anti-Crime Operation in Svaneti

<sup>76</sup> Statement of the President Saakashvili at the opening ceremony of the Radisson Hotel” in Tbilisi, September 2, 2009;

The full statement is available at

<http://www.president.gov.ge/?l=E&m=0&sm=3&st=0&id=3030>

authority to lead the special operative activity *de jure* or *de facto*. Allegedly, all young guys in the district were factually detained for short time and beaten up.

During the special operative activity, a neighbor who was observing the situation from his house – Tamaz Shalikiani - became a victim of a blind bullet (by mere accident). Up to this date it remains unidentified whose bullet killed Shalikiani. Gaga Cheishvili, the person in whose house the suspects sought refuge, was first wounded and then killed by a control shooting. During the special operative activity, a neighbor pregnant woman got emotional shock as a result of which she had an early delivery and died. These three incidental losses of life were never dealt with by the state, either by assuming legal responsibility for the consequences or by compensating the victims.

### ***The Case of Gumashvili, (2005)***

**On June 3, 2005 a police special operative activity was carried out in the Pankisi Gorge, village Duisi, to arrest Avtandil Gumashvili, suspected of an attempted murder. The police set on fire the house of Avtandil Gumashvili's mother and brother where Avtandil was visiting. Avtandil Gumashvili was burned alive inside the house and his 23 year old cousin Vakhtang Gumashvili, who tried to escape the burning house through a window with his hands up in surrender, was shot dead by the police. An officer with the Special Forces and three civilians were injured. The Minister of the Interior personally led the special operation.**

**The case of Gumashvili is an exceptional case because, as a result of civil suit brought by the Human Rights Centre on behalf of Malkhaz Gumashvili, the owner of the house, the authorities agreed to pay damages for the house which was burned to the ground during the special operative activity. Gumashvili's brother did not want to file a criminal complaint against the police for the death of his brother, because he feared (indeed reasonably) that in that case he would get nothing - neither justice, nor the compensation for the house.**

**The prosecutor's office failed to initiate investigation into the lawfulness of the use of force by the police during the special police operative activity despite its legal obligation to do so. Accordingly, no one has been held legally responsible for the death of the two people and for the physical injuries to the neighbours.**

10 years before the police special operative activity, Avtandil Gumashvili's wife was raped by his co-villager Margoshvili. The act was witnessed by Gumashvili's children. After this incident the couple separated and Gumashvili's wife, together with the children, moved to Russia. According to the old tradition still practiced in the Pankisi Gorge, Avtandil Gumashvili was obliged to seek revenge on Margoshvili. Fearing this, Margoshvili and his family had to leave their house and hide elsewhere. Avtandil Gumashvili continued searching for Margoshvili. After some time Avtandil Gumashvili found out that Margoshvili was renting a flat in Televa,

paid him a visit and wounded him in the leg. As later on Avtandil Gumashvili told to his friend, he went to kill Margoshvili but that he could not do it when he saw Margoshvili's children.

Investigation was initiated on attempted murder and Avtandil Gumashvili was recognized as wanted without any legal grounds. According to GEORGIAN CRIMINAL CODE, a person is recognized as wanted when after undertaking appropriate measures the police fail to find the person. However, Avtandil Gumashvili was in his own house and no one visited him from the relevant authorities. Instead, they carried out a special operative activity to apprehend Gumashvili 10 days after he was declared wanted. On that day Gumashvili was visiting his mother and brother in their house.

The special operative activity started at 4 a.m. on June 3, 2005. At first the house of Gumashvili's mother and brother was surrounded by police officers. Gumashvili refused to give up unless he could take revenge against Margoshvili, who raped his wife. Avtandil's mother and other women pleaded to the police not to kill him because he was not a criminal. However, the Chief of the Kakheti Police Department, Temur Anjaparidze, threatened to arrest the members of the family.

At the request of the family members and neighbours, a friend of Avtandil Gumashvili started to mediate with Gumashvili and the police. Gumashvili told his friend he was neither going to give up, nor did he intend to harm any police officers. Soon the police started shooting, in response Avtandil; shot in the air. No one was injured by the bullet shot by him. At about 8 a.m. the Special Forces joined the police. The police officers numbered more than 200. The police threw something in the direction of the house which set it on fire. Everything was covered in smoke.

Vakho Gumavshili, cousin of Avtandil Gumashvili, unarmed tried to escape the burning house through a window to give him up. The police shot him and immediately took his body away. Meanwhile, Avtandil burned to death in the house. The police gathered Avtandil's remains and left.<sup>77</sup>

Witnesses say that during the special operative activity, police officers spread information that Avtandil Gumashvili was keeping hostages in the house, among them a small girl. The information turned out to be false. According to the neighbours, the police made up the story to justify somehow their presence and the horrible acts of the armed police during the special operative activity.

As a result of this incident, the daughter of Avtandil Gumasshvili, not the small girl falsely alledge to have been a hostage, received serious injuries-- her eye sight was damaged, she has mental problems and often loses her mind.

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<sup>77</sup> Unless otherwise stated in respect of this case, all the information provided is gathered from the on-line magazine [www.humanrights.ge](http://www.humanrights.ge)

The severity of the operation caused anger amongst the local people, who expressed support for the family, and protested against the attack by throwing stones at the armed forces. However, law enforcers did not pay any attention to their protests and in order to frighten the people away they started shooting in their direction. Reportedly they were also insulting the villagers verbally. During the special operative activity the police detained some young people for opposing them; among those detained was one disabled person. In protest to the special operative activity Suleiman Gumashvili, the head of the Council of Gorge Elders, left his position.

Mr. Jafar Gumashvili, the Gamgebeli (the local governor) of Duisi reported that the local population was very angry at the police because of what they did: Avtandil Gumashvili had a positive image among the local population who was protecting the tradition, not as a criminal.

A neighbour of Avtandil Gumashvili told Human Rights Centre: “They demonstrated their force in order to frighten us. We gathered two kilos of bullets on the immediate area. The neighbours were in danger as well, as the fire could easily have spread to their houses, and our village is heavily populated. The government takes pride in their operation, but no one cares that the family is left homeless.”<sup>78</sup> There was no indication that anybody in the house was threatening anybody else in the house so that perhaps the fire could be justified as necessary to save a live.

Mr. Ucha Nanuashvili, the Executive Director of the Human Rights Centre, commented that the special operative activity was a demonstration of force from the government. “A 200-strong armed regiment is not needed to detain one person,” he said. “Two people were killed and four people wounded as a result of the government’s needless activities. It is hard to say how they will compensate for the heavy losses of this family? This fact testifies that the government is continuing to terrorise its citizens by demonstrating its power.”

Avtandil Gumashvili’s brother Malkhaz Gumashvili told Human Rights Centre “I do not have a brother or a cousin any more. I am homeless, my mother has been very sick since the special operative activity. My brother did nothing wrong except shoot Margoshvili in the leg. Should he be burned to death because of that? . . . I am Kist<sup>79</sup> and I do remember everything. We have different traditions. We have been looking for justice for a year but no one paid any attention to us. The police threatened to kill me if I kept on, however, I told you, we are Kists and we will take our revenge if we are not listened to.”

The Human Rights Centre, on behalf of Malkhaz Gumashvili, a number of times appealed to the Ministry of Interior requesting the Ministry to compensate him for the house

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<sup>79</sup> The word *Kist* refers to particular ethnicity of people living in Georgia and in some parts of the Northern Caucasus

which was set on fire by the police during the special operative activity. But no one paid attention to the appeals.

On behalf of Malkhaz Gumashvili the Centre then filed an administrative complaint to the Tbilisi Administrative Court requesting the court to order the state to pay material damage to Malkhaz Gumashvili. The court turned down the suit as inadmissible.

The lawyers of the Human Rights Centre recall numerous obstacles and procedural hurdles put on their way while trying to get the Court to consider the complaint as admissible. After the second try, the Tbilisi Administrative Court accepted the complaint. However the process of consideration was still tough – 1 the lawyers recall.

Finally, a friendly settlement was achieved between the Ministry of Internal Affairs and Malkhaz Gumashvili and the MINISTRY OF INTERIOR agreed to pay him 13.000 dollars for his damaged house. This settlement was virtually a complete victory for him because the estimated cost of rebuilding the house was \$15,000.

### ***The Case of Tsalani (2005)***

On the 10th August 2005, officers of the Special Forces severely beat Revaz Tsalani, on his way home. As a result of the injuries Tsalani became bed-bound and several months later he died.

On that day Tsalani was driving home when the people wearing military uniforms (and not the uniforms they were obliged to carry in their office) asked him to stop his car. The victim recalled later that he did not stop as in those days everybody was wearing special military uniforms and carried weapons in Svaneti. “They just seemed strange so I carried on my way. They started shooting and stopped me.” After Tsalani stopped the special forces beat him up severely. Special Forces followed his car and were shooting in his direction. Finally they made him stop, grabbed him out of the car and beat him severely.

Tsalani appealed to the authorities on August 11, however his appeal was not registered by the registrant, which was an arbitrary action from the latter’s side. Authorities launched the investigation into the case only after the second appeal which was registered.

On October 27, 2008 Mestia Regional Court convicted Temur Chikovani and Temur GvaraMinistry of Interior in connection to Tsalani case. Initially charges against Chikovani were brought under article 333 - exceeding his authority and article 147 – illegal detention of a person, however the Court convicted Chikovani only under article 333 to 5 year’s imprisonment. GvaraMinistry of Interior was fined by 10 000 lari for official negligence.

The lawyer appealed the case to the Appeals Court, which upheld the judgment of the Regional Court. Supreme Court of Georgia rejected the case as inadmissible.

Despite the fact that at least five people participated in the criminal against Tsalani, only two of them got convicted.

### ***The Case of Surmanidze and Others (2006)***

On January 13, 2006 Constitutional Security Department (MINISTRY OF INTERIOR organ, *hereinafter* CSD) carried out a special operative activity close to the underground station “Samgori” as a result of which three” criminals were liquidated.”<sup>80</sup> The special operative activity was carried out based on the letter from the Ministry of Justice informing the CSD that a group of three was going to carry out a prison break of prison number 1 in Rustavi, a city close to Tbilisi.<sup>81</sup>

According to the case materials, the officers of the CSD knew on face only one person out of three, they carried out the special operative activity on the assumption that the other two who were together with the first one during the special operative activity were also the ‘rioters.’ The CSD set an ambush and when the officer recognized the person known to them, he gave a signal to the other members of the Special Forces, as agreed during the planning of the special operative activity. Two witnesses testify that the officers ran across the street and shouted at the three:” hands up put your firearms down.” Who started shooting first remains an open question. All three men died as a result of the special operative activity. Proportionality and necessity of the use of force remains highly contested. The doubts remain high that the Special Forces used excessive force during this special operative activity. All three men had multiple shots and the two out of three deliberate shooting in the head. “This was not a well-planned special operative activity. They were youngsters. Special forces who have a good training and are in good physical shape should have easily approached them in civilian forms, without masks and firearms and apprehended them one by one, if that was their purposes it could have been easily attained without killing them,” – adds the lawyer.

Lawfulness of the use of force when the aim of the special operative activity is conducted further remains highly questionable. Besides, it seems questionable how these three guys, with three firearms and approximately 20 bullets, as retrieved after the inspection of the crime scene, were going to break the prison.

In addition, by carrying out this special operative activity close to the underground station the CSD violated the Law on Police which prohibits use of firearms in city centers, especially in places crowded with traffic. The underground stations indeed belong to such a place.

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<sup>80</sup> such information was spread by mass media, including the news agency Ifrinda

<sup>81</sup> It remains unknown where did the Ministry of Justice got the information from about the planned ‘prison break.’

Several irregularities are observed as to how the inspection of the crime scene and examination of the evidence retrieved from there took place, e.g. several signatures of the officials attending the inspection of the crime scene are missing on the inspection protocols. In addition, the members of the Special Forces were questioned only a year and a half of the incident. The lawyer alleges that the delay was due to the fact that the authorities collected all the other material evidence, expert examinations and only after they ‘questioned’ the officials in order to ensure that their testimonies are in full compliance with the other material evidence. All the testimonies of the members of the Special Forces are exactly identical, which further seems unnatural and faked.

The investigation on the case was going on without having the victim’s side involved in the case, due to the familiar problem of denial of the formal status of a victim to the next-of-kin of the deceased. In June 2007 they formally started to investigate the issue of use of force separately from the accusations of organizing the ‘riot,’ brought against the three who were killed. “In a weeks time they closed down the investigation without carrying out any investigative activities in order to establish whether the Special Forces used excessive force. We appealed the case in the Court; the court upheld the decision on the closure of investigation without oral hearing. Appellate Court did the same, “– says the lawyer. Currently the case is pending before the ECHR.

### *Case of Sandro Girgvliani (2006)*<sup>82</sup>

**On January 27, 2006 Sandro Girgvliani, 29, head of the United Georgian Bank’s international relations department was kidnapped and severely tortured by the employees of the Constitutional Security Department (*hereinafter* CSD)<sup>83</sup> in the outskirts of Tbilisi. The next day Girgvliani was found dead as a result of multiple physical injuries. Girgvliani’s case came under the spotlight of the society as a result of Imedi TV program ‘Droeba.’ Accusations were voiced that top-ranking MINISTRY OF INTERIOR officials and the wife of the Minister of Interior were those who had ‘ordered’ the crime.**

**Only after a huge pressure from the family, media, political opposition and the society, prosecutor’s office started to investigate the case and convicted four CSD officers for 8 and 7 years of imprisonment for ‘inflicting injuries’ that resulted in Girgvliani’s death. The lawyer of Girgvliani’s family, Public Defender, human rights groups, media**

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<sup>82</sup> This case is not an example of excessive use of force by law enforcement officials in their course of duties; however it is included in the report to help understand the situation of rule of law and separation of powers in Georgia; since this case is as a vivid demonstration of the whole state machinery being involved in covering up a crime committed by state agents.

<sup>83</sup> Constitutional Security Department (CSD) is a unit of the Ministry of Interior.



criticized the case, saying the crime the four officers were convicted for was not as grave as they had in fact committed. This was done in order to ensure lesser verdicts for the murderers.

The case went up to the Supreme Court. The Supreme Court cut their prison terms by six months after dropping charges involving damage to the belongings of the victim. In 2009 President of Georgia issued an amnesty and halved the sentence to those convicted for Girgvliani's murder. Later on, very recently, they were released by the procedure of preterm release.<sup>84</sup>

Release of Girgvliani's murderers caused a serious public outcry.<sup>85</sup> Lawmakers from the ruling party brushed off criticism saying the preterm release was done in line with law.<sup>86</sup>

Authorities downplayed the critical voices. A lawmaker from the ruling party, Akaki Bobokhidze, commented: "no matter of public opinion" the law should be observed and those four men should have been released if they were eligible for that measure.<sup>87</sup>

According to the report on Imedi television, late on January 27 Sandro Girgvliani, accompanied by a friend, arrived at a café in downtown Tbilisi to meet Girgvliani's girlfriend, Tamar Maisuradze, who was with Tako Salakaia, wife of the Interior Minister, Data Akhalaia, chief of the constitutional department of the Interior Ministry, Guram Donadze, spokesman of the Interior Ministry and Vasil Sanodze, chief of the general inspection of the Interior Ministry. After a minor dispute with these people, Sandro Girgvliani and his friend left the scene, but were kidnapped by unknown men shortly after they left the café and taken to Okrokana, on the outskirts of Tbilisi. Girgvliani's friend claims he was able to escape, while Girgvliani's body was found close to nearby cemetery the next morning.<sup>88</sup>

Initially, there was an attempt to portray what happened as a result of some inter-group conflict between the people from Svaneti, a region where Girgvliani's surname comes from. However, as a result of independent investigation carried out by the family and the media, the objective information about the case started to lick out. At a news conference on February 21, 2006 Sandro Girgvliani's mother pointed finger at the officials from the Interior Ministry who "masterminded [her] son's murder." She demanded an immediate interrogation of those officials from the Interior Ministry who were present at the cafe with Girgvliani.<sup>89</sup>

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<sup>84</sup> The measure was applied to them on the grounds that they cooperated with investigation and committed no wrongdoing during their term in prison and already served part of their jail term, according to the Ministry of Penitentiary and Probation. Civil Georgia, September 8, 2009: *Ruling Party MPs Defend Preterm Release of High-Profile Murder Convicts*

<sup>85</sup> MP Giorgi Akhvlediani of Christian-Democratic Movement, part of parliamentary minority group, said at the parliamentary session on September 8, that the four men's preterm release was "negligence of public opinion", which might become a reason of "a new wave of public discontent." [Civil Georgia, September 8, 2009: *Ruling Party MPs Defend Preterm Release of High-Profile Murder Convicts*]

<sup>86</sup> Civil Georgia, September 8, 2009

<sup>87</sup> *I.d.*

<sup>88</sup> Civil Georgia, February 22, 2006: *Top MINISTRY OF INTERIOR Officials Grilled over Murder Case*

<sup>89</sup> *I.d.*

Guram Donadze, spokesman of the Interior Ministry, told *Inter Press News* agency on February 21 that he and other officials have already been interrogated. “I will not make further comments while the investigation is going,” Donadze said, but denied the allegations as “groundless.”<sup>90</sup>

Initially it was the MINISTRY OF INTERIOR who was investigating the case. This was against the requirements of the law to conduct impartial and independent investigation since those who were alleged to have committed the crime were high ranking employees of the MINISTRY OF INTERIOR. The Minister of Internal Affairs, Merabishvili explained the deviation in a following way: “We had information that the criminals were employees of the [Interior Ministry]... That is why we were very careful and were refraining from unveiling the details of the investigation,” Merabishvili added: “I am personally controlling the investigation process of this case... You know that many of our colleagues were sacked or arrested for wrongdoings in the past and we will not hesitate or step back if [such measures are] necessary in the future.”<sup>91</sup> However, after the pressure from the media and the public, the case was duly transferred to the Prosecutors Office for investigation.

From the very beginning, the prosecutor’s office asserted that the crime was committed as a result of “a spontaneous quarrel” between the victim and four officers of the Interior Ministry’s Department for Constitutional Security, who were later on convicted for the murder. Prosecutor’s office r dismissed the allegations that the four high ranking MINISTRY OF INTERIOR officials and the wife of the minister had links with the case. Witness testimonies downplayed correctness of this version; however the court did not take that into consideration.

Investigation as well as the trial of Girgvliani’s murder failed to be impartial, thorough and independent for a number of reasons, including the following:

a) The prosecutor, as well as the judge at the later stage, turned down the appeal by the lawyer of Girgvliani’s family to investigate and make it public if e those suspected of executing the crime and those alleged to have it masterminded, communicated to each other via cell phones during the crime being committed. This was crucial to investigate allegations of high ranking officials masterminding the crime.

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<sup>90</sup> *I.d.*

<sup>91</sup> Civil Georgia on February 25, 2006, [Minister of Internal Affairs, Merabishvili said at a news conference “We had information that the criminals were employees of the [Interior Ministry]... That is why we were very careful and were refraining from unveiling the details of the investigation,” Merabishvili added: “I am personally controlling the investigation process of this case... You know that many of our colleagues were sacked or arrested for wrongdoings in the past and we will not hesitate or step back if [such measures are] necessary in the future.”]

Furthermore, the lawyer repeatedly and to no avail petitioned the courts to make available to him video footage of a security camera installed at a house situated on the way to the village of Okrokana where Girgvliani was tortured and killed.

b) One day before planned announcement of the verdict, groundbreaking circumstances of the case were revealed, however the court as well as the prosecutor did not take them into consideration. The lawyer of Girgvliani family presented two witness statements which pointed finger at the high ranking officials who were inside the café. Despite that the new facts turned the version put forward by the Prosecutor's office and by the suspects upside down, the Chief of Tbilisi's Prosecutor Office said that these testimonies could not become a reason for re-investigation the case. The Presiding judge in the trial further turned down the lawyer's appeal to postpone announcement of the final verdict due to new evidences into the case, neither did he order to re-investigate the case in the light of the newly revealed situation.

c) The court did not study the case thoroughly failing to listen to the arguments of both parties. The judge went through five volumes, each approximately several hundred pages - in just five days. In other cases of comparable complexity, the normal trial period can last several years.

The courtroom was not conducive to a fair trial setting as no more than 40 people were able to sit at the trial; the victim's relatives also had difficulties to enter the courtroom. It was impossible to get close to the court proceedings.<sup>92</sup>

The court failed to answer the questions left without response by the prosecution when investigating the case; During announcement of the verdict the presiding judge has not named a motive behind Sandro Girgvliani's murder, and did not answer the allegations of high ranking officials standing behind the murder.<sup>93</sup>

The lack of transparent investigations into high-profile cases of murders by the police officers "turned into the most serious crisis for the authorities since the 2004 developments in South Ossetia"<sup>94</sup> (when clashes erupted there) and reached its pick in November 2007<sup>95</sup> when thousands of Georgians went to streets accusing the President of authoritarianism and demanding earlier elections.

Starting from spring 2006, citizens began rallying in the streets with slogans: "protect the life," "life of our children are under danger," organized "life signal" (thousands of motorists beeped their horns throughout Georgia). People protested against non-transparent

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<sup>92</sup> Human Rights Center, *Trial Monitoring in Georgia*, 2006

<sup>93</sup> Civil Georgia, July 7, 2006, quoting the newspaper *24 Saati*

<sup>94</sup> Civil Georgia, March 16, 2006: *Analyst Commented on Recent Political Developments* [quoting Gia Nodia]

<sup>95</sup> International Crisis Group, *Georgia: Sliding Towards Authoritarianism?* 2007, [ According to analysis by International Crisis Group, the lack of transparent investigations into high-profile cases was a major reason for the November 2007 protests)

and ineffective investigation in the case and demanded resignation of the Interior Minister, saying - while Merabishvili, one of Georgia's most influential minister, remains in office it is impossible to investigate alleged involvement of his family member and his employees in the case.

Over ninety prominent Georgian figures - writers, actors, film and theatre directors, singers and representatives of civil society called for fair and transparent investigation of Girgvliani's murder. Abstract from their letter addressed to the President of Georgia read as follows:

'The tragedy ...has gone beyond the frames of one family and has rightly become a reason for public concern and outrage. The death of a young man, especially when it is due to violence, is a tragedy in and of itself, but when the blame for a crime committed with inexplicable cruelty and cynicism is placed on high-ranking officials of law-enforcement agencies, the crime questions the security of each citizen and reveals the daunting reality that the very people empowered to protect human security are a lethal threat themselves.

The punishment of Sandro Girgvliani's murderers and the exposure of all participants in the crime is a concern for our entire society and a question of dignity for every person with self-respect. . .truth is the only means to heal broken confidence, however bitter that truth may be. Finding the objective truth and giving answers to the questions lingering over the case will defuse the aggressive and negative sentiments that have ensued from the crime. All other paths will lead us to a final compromise of the governmental hierarchy, which on its part challenges the vital interests of the country.'

In response to the increasing public criticism, the President commented that "the most important thing is that in Georgia we have established a fair government, where there are no untouchables, where no one is able to hide from justice,."96 "Everybody who deserved to be arrested are already arrested and if there is someone else [guilty of this crime] they will be held responsible as well and everything will be investigated."97 At the same time the President dismissed the calls for Merabishvili's resignation saying the latter was "an especially good Minister;" "Georgia has never before had such effective police... Could you ever imagined that the patrol [policy] would have such a high reputation?.. Do you think that all these have appeared just from the sky? All these have been done by Merabishvili... by all of us. So we will back police up to the end, up to the end. . . I know one thing very well; I know real reason [of these calls for Merabishvili's resignation] very well: we have touched very well-organized oligarchic, including the Russian oligarchic capital, as well as very serious local mafia

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<sup>96</sup> Civil Georgia, March 1, 2006: *Saakashvili Hails Interior Minister*

<sup>97</sup> Civil Georgia, March 17, 2006: *Saakashvili Backs Embattled Minister, Despite Increasing Protest*

interests. Georgia was a country of ‘thieves in law’ [criminal bosses]. Georgia was ruled by several ‘thieves in law.’ Those people who are now shouting loudly are the people who do not like that confiscation of property of ‘thieves in law’ has been launched”<sup>98</sup>

MPs further stated that the attack was directed against the “country’s major ‘power structure’ [Interior Ministry] because our opponents are closely incorporated into the criminal world and with ‘thieves in law’ [criminal bosses]. And it was clearly demonstrated by their [opposition parliamentarians’] refusal to support law on the fight against ‘thieves in law.’”<sup>99</sup>

MPs from the ruling party further stated that opposition should “forget” calls for Merabishvili’s resignation, since “Merabishvili was “a kind of a foundation” for the state and “the Minister on whom the stability of our state was based.” Ruling party further expressed its “clear-cut support towards Vano Merabishvili.” and condemned “attacks against him.”<sup>100</sup>

After such statements the MPs reiterated the words of the President that “there were no untouchables.”<sup>101</sup>

The verdict on Girgvliani case was announced on June 6 ordering arrest of four officers from the Interior Ministry’s Department of Constitutional Security. On that day the Minister of Interior promptly stated that the case was solved.<sup>102</sup> Chief of the Constitutional Security Service Data Akhalaia also commented on that case underlying that: “this was the most important case for us, a matter of our honour. And I want to say that any official, any policeman, who commits a crime, will be punished more severely than any other ordinary citizen. This grave consequence which resulted from a personal conflict should be condemned and punished severely.”<sup>103</sup>

Giorgi Khaindrava, State Minister for Conflict Resolution, said on July 7 that “The court failed to pass the test. The verdict should have affected all those who were involved in this [murder] case...”<sup>104</sup> However, this did not happen.

In March 2007 four high ranking officials who were allegedly involved in Girgvliani’s murder quit their jobs under enormous public pressure.<sup>105</sup> However, their involvement in the

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<sup>98</sup> See e.g., Civil Georgia, March 17, 2006, [Some opposition parliamentarians have criticized the President’s statement as a sign of Saakashvili’s failure to assess situation “adequately.” “I do not think that Saakashvili heard the honking today. I guess that he just fails to adequately assess that the situation is really very serious. I call on the population to gather tomorrow outside the State Chancellery in order to show Saakashvili that there are many of us who protest,” MP Levan Berdzenishvili of the opposition Republican Party said in a late night talk show aired by the Tbilisi-based 202 television on March 16.]

<sup>99</sup> Civil Georgia, March 7, 2006 quoting MP from the ruling party Targamadze Givi

<sup>100</sup> Civil Georgia, March 7, 2006 (citing statements by MPs, e.g., of Maia Nadiradze)

<sup>101</sup> Civil Georgia, March 7, 2006 (citing statements by MPs, e.g., of Maia Nadiradze)

<sup>102</sup> Civil Georgia, March 7, 2006

<sup>103</sup> Civil Georgia, March 7, 2006

<sup>104</sup> Civil Georgia, July 7, 2006

<sup>105</sup> In March 2007 Donadze was dismissed, MPs from the New Rights and Democratic Front factions convened a news conference and warned the Interior Minister to sack those other

case was not investigated despite numerous petitions by Girgvliani's family lawyer and the calls by the public.

In 2006 the Parliament of Georgia passed several legislative amendments in the Georgian Criminal Code which as alleged by human rights groups were done in order to ensure lighter sentences for Girgvliani's murderers.

In 2009 President of Georgia issued amnesty for those sentenced for Girgvliani's murder.

Recently, a documentary movie was prepared by TV Maestro which shows that the detainees sentenced for Girgvliani's murder are living under special regime in the prison much favourable to them than to other detainees, including often being on freedom during the night.<sup>106</sup>

A couple of days before this report was finalized the four officials convicted for the Girgvliani's murderers were released by the procedure of preterm release.

### *Case of Babukhadia, Kiziria and Bendeliani (2006)*

**On February 23, 2006, the police killed three young men as a result of police operative activity on the highway from Kutaisi to Vartsikhe (Imereti Region, Western Georgia). The case of Babukhadia, Kiziria and Bendeliani is a clear illustration of police use of excessive – unnecessary and disproportionate force. According to official storyline, the three men were “going to rob one of the families in Vartsikhe,” this family remains unidentified up to date. As alleged by the police, the three men offered armed resistance to the police, the police fired back. In the shoot-out, which according to police lasted for 3-5 minutes, none of the policemen were injured, while Kiziria was shot 53 bullets, Babukhadia - 19 and Bendeliani– 28 bullets.**

**Closer look at the case reveals the most convincing evidence that in reality the three men were not armed and were killed by the police while they were in surrender.**

**However the most striking part of the story is that the investigator concluded - there was no excessive use of force in this case and closed down the investigation so that the case could not be considered by the court on its merits. This decision was appealed to the court by Kiziria's lawyer.**

**In response to the appeal the court concluded, without oral hearing and by ignoring essential facts of the case, that the decision to close down the investigation “was legally**

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officials as well who allegedly are linked to Girgvliani murder case, including Data Akhalaia, chief of the Department of Constitutional Security and Vasil Sanodze, chief of the general inspection of the Interior Ministry, before evening of March 7, otherwise they threatened to launch a campaign for Merabishvili's resignation. [reported by Civil Georgia on March 7, 2006]; On March 13 the Public Defender issued a tough-worded statement on the Interior Ministry saying that “those officials, who are suspected by society of having links with this [murder] case [Girgvliani], would have been resigned in any democratic state, or in a state which has an ambition to be a democratic.” In the March 13 statement Sozar Subari also warned that the Girgvliani murder case has “challenged successes of the authorities.”

<sup>106</sup> Official position of the state has been the denial of these facts.

**correct” and “the force used was not excessive and the police acted in full compliance with the law.”**

**The application is sent to the European Court of Human Rights in Strasbourg.**

According to the case file, on February 23, 2006 Kutaisi Office of MINISTRY OF INTERIOR notified Imereti Regional Office of MINISTRY OF INTERIOR that three unidentified offenders armed with fire-weapons were moving by a car - a white ‘gaz-21’ towards village Vartsikhe with an intent to rob “one of the families.” An operative group was promptly created in Imereti Regional Office of MINISTRY OF INTERIOR and went to carry out immediate investigative activities together with Special Forces. On their way to the destination point, the police saw a car ‘gaz-21’ and three people who allegedly were trying to escape. Police decided to carry out immediate search of their car, as they were informed that the three people they were looking for were armed, and demanded from them to stop. Allegedly, the three men disobeyed this demand and opened the fire to the police. In response the police also opened the fire.<sup>107</sup> As a result, Babukhadia, Kiziria and Bendeliani were killed.

Kiziria was shot by 54 bullets, Babukhadia - 19 and Bendeliani– 28 bullets. All three were shot by control shooting in the head from the same side. In addition Bendeliani was shot in the armpit, in the position which was only possible if he was standing with his hands up in surrender. The force used in this police operative activity was clearly disproportionate. Claims about its necessity are also under big question mark; several facts add credibility to allegations by family members that the three did not offer any armed resistance to the police and that they were shot dead by the police while they were in surrender. The investigation did not provide answers or explanations to these facts: e.g., strangely enough, despite numerous bullets shot at Kiziria, the purse which Kiziria was keeping in his pocket was not touched by a bullet at all. Despite intensive shootout involving the police and the three, the car, as well as the taxi and its driver did not get injured even slightly.

On the photos shot after the special operative activity, Babukhadia, Kiziria and Bendeliani are shown shot dead, but holding the weapons: how were they capable of still holding the weapons after they were shot for so many times? Furthermore, Kiziria is “holding” the firearms in his left hand, while according to his family members, he was not a left-handed and his physical conditions did not allow him to hold anything heavy in the left hand.

The taxi driver in his televised phone interview with *Rustavi 2* almost immediately after the incident said that he has not noticed anything strange to the three men (including weapons) when he picked them up. An expert examination was carried out on the bodies of the three, in particular on their clothes to identify if there were signs of weapons touching their clothes.

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<sup>107</sup> Case File, The ruling to terminate investigation on the case dated by December 31, 2006, by Western Georgia’s Regional Office of the Prosecutor, Head of the Investigative Unit Chabukiani.

According to the findings of this examination Bendeliani and Kiziria were unarmed. Expert examination considered “it to be possible” that Babukhadia was armed – there was a sign of weapons having touched on his cloths.<sup>108</sup> However, it is highly impossible that Babukhadia had three guns, allegedly belonging to Kiziria, Babukhadia and Bendeliani and the taxi driver could not notice it.

Investigation started under article 114 of the Georgian Criminal Code (excess of force necessary for apprehension of the offender), however in 2007 the investigation was closed down on the ground that it was conducted thoroughly and had not identified any criminal act committed by the police. This ruling issued by the investigator was appealed to the court by Kiziria’s lawyer. In his appeal the lawyer relied on the results of the expert examination and other facts, some of them described above, which challenged the official storyline that the three opened the fire to the police the first. The lawyer also suggested to question the taxi driver once again as envisioned by the law, since the driver gave controversial interviews to *Rustavi 2* and to the investigative authorities later on.<sup>109</sup>

However, Kutaisi City Court considered the appeal of the lawyer to be ill founded and decided that ‘the force used for apprehension of the offenders was not excessive and the actions of the policemen participating in the operation of apprehension were in full compliance with article 13 of the Law on Police “police has the right to use force in order to apprehend offender when the latter offers armed resistance” Therefore the decision to terminate the investigation on the case was “legally correct.”<sup>110</sup>

The Kutaisi City Court reached the following decision based on the testimonies by the special forces and policemen who participated in the special operative activity, results of the expert examination which according to law was invalid evidence since it did not lead to firm conclusion, testimony by the taxi driver which contravened his previous testimony given shortly after the incident to the *Rustavi 2*. The court said: the fact that “[the three] were armed and offered armed resistance to the police was evident as a result of the search of the crime scene where dead Kiziria was holding a gun in his hand and the other two [were holding ]fire-weapons, two masks and 37 bullet cases were also discovered nearby.”

Despite the gravity of the crime committed, the case did not get a high resonance beyond Kutaisi, the city where the three guys killed used to live. Partially this can be explained by the fact that provincial matters are more rarely voiced in the nationwide media than those that happen in the capital. The lack of nation-wide media coverage is an important reason of why the

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<sup>108</sup> According to article 371 of the GEORGIAN CRIMINAL CODE, uncertain results of the expertise cannot be considered as evidence

<sup>109</sup> It is noteworthy that soon after this questioning the taxi driver left Georgia and moved to Greece.

<sup>110</sup> Kutaisi City Court Ruling by Judge Kozmava, dated by March 28, 2007



abuse of power and arbitrary actions often goes easier without consequences for the government in the regions, than in the capital. One example of that is the story of the father of Kiziria who recalls that in order to get the victim's status and become a party to then the ongoing investigation (a right guaranteed to him by law), it took him to get in touch with Nino Burjanadze (then the Head of the Parliament) and PM Elene Tevdoradze.<sup>111</sup>

The father of Kiziria, Ramin Kiziria recalls the struggle he is going through in order to find justice: "When Vano Merabishvili [Minister of Internal Affairs] was here in Kutaisi, I asked him three times to give me 2 minutes for a talk. He turned down his head and walked away from me, jumped in the car and ran away... I met the President during the pre-election campaign. He asked someone to make a note about the case and promised me to have a meeting with me in August, but you know what happened in August [the war]; I have sent a letter to the president's administration asking for a meeting."<sup>112</sup>

On the journalist's question what will happen if the president does not meet him, Ramin Kiziria replies: "In that case I will dig out all three of them out of their graves by my own hands and bring them in front of the city Mayor's office. I demand the answer on why they terminated investigation on the case? Why can't I find justice in my own country?! Why did they break my family down and turned our lives into the hell?! Let the President answer my questions."<sup>113</sup>

According to the Ramin Kiziria, on the day of the incident the three young men - Kiziria, Babukhadia and Bendeliani were going to a party. "In those days 4 robberies had taken place in the region and none of them were opened by the authorities. They were looking for a criminal gang, came across with the guys and the police took the guys as criminals. Then they took their personal belongings (cell phones, purses, etc.) and made them to put their hands in surrender, the guys obeyed to this order; however probably protested verbally and then the police shot them. From the beginning the police [unofficially] admitted that they made a mistake, but later on denied. Is it acceptable to kill innocent guys like that by mistake? If they can bring even a single fact proving that the guys were guilty, I will shut up."<sup>114</sup>

### **Case of Vazagashvili (2006)**

**On May 2, 2006, in one of the central locations of Tbilisi, adjacent area to tennis courts, Criminal Department of Ministry of Interior of Georgia conducted a police operative activity to apprehend a "criminal group" who was going to rob "one of the**

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<sup>111</sup> During the parliamentary session Tevdoradze displayed the pictures of his son shot dead saying, those who did it should not stay in office. Interview with the father of Kiziria,

<sup>112</sup> Interview with Ramin Kiziria (father of killed Kiziria), Newspaper *Yvela Siaxle* (All the News) 25 June-1 July, 2009

<sup>113</sup> *I.d*

<sup>114</sup> *I.d*

apartments in the city” according to the operative information police officers had allegedly received earlier.<sup>115</sup> The police conducted a special operative activity in order to prevent the robbery as a result of which “two members of the group were liquidated, third member was injured. One police officer was injured and the police car was damaged.”<sup>116</sup>

Authorities failed to impartially and thoroughly investigate the facts of the case; they ignored witness testimonies and intentionally destroyed the evidence that incriminated the police. Investigative authorities for a long time kept denying to the next of kin (mother) of Vazagashvili the status of a party to the proceedings and consequently – access to case materials, despite the fact that no legal ground existed for the denial of such a status to the mother.<sup>117</sup> According to the family of Vazagashvili they were kept away from the proceedings and case materials as authorities would not otherwise have been able to destroy and fabricate the evidence, as they in fact did.

On April 20, 2007 the investigation established that there was no excessive use of force by the police during the police operative activity of May 2, 2006 and closed down the case. This decision was preceded by taking away from Vazagashvili’s mother the status of the party to the proceedings granted to her earlier. By doing so the authorities reached two aims: 1) ensured that the decision of the closure of the investigation could not be appealed in the court, as according to Georgian Criminal Procedural Code, only a party to the proceedings has the right to appeal such a decision; 2) blocked the case to be considered by the court on its merits.

On September 9, 2009 Public Defender of Georgia released the results of the alternative expert examination carried out on the car in which Vazagashvili and the other two were sitting during the special operative activity. The expert examination demonstrates that there was no shooting or armed resistance from the side of Vazagashvili and others sitting in the car – the law enforcement officials murdered unarmed civilians.

According to the family and their lawyer, throughout the investigation the authorities treated the family members of Vazagashvili cynically.

Currently the case is pending before the ECHR.

Immediately after the police operative activity of On May 2, 2006 human rights groups and the public defender criticized it saying the police set up an ambush with the intention to kill the two men.<sup>118</sup> Besides, they pointed out that the special operative activity violated Georgian

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<sup>115</sup> Press briefing by the Director of the Criminal Department of Ministry of Interior, Irakli Kadagide, held on May 2, 2006

<sup>116</sup> Press briefing by the Director of the Criminal Department of Ministry of Interior, Irakli Kadagide, held on May 2, 2006

<sup>117</sup> According to Georgian legislation, only parties to the case have the right to have access to the case file and the information as to how the investigation is progressing. Furthermore, only the state parties are authorized to raise suggestions as to which investigatory activities should be carried out, e.g. questioning of a witness, results of expert examinations, etc. In this case the next-of-kin of Shavadze, his wife, is not yet recognized as a victim – thus a party to the case. Denial of the victim’s status in this case by the prosecutor’s office lacks any legal justification.

<sup>118</sup> Non-governmental sources reported that at least 50 police officers including senior officers of the criminal department of the Ministry of Interior, 10 masked officers of the special police unit as well as other police officers participated in the special operative activity.

Private investigation conducted by Vazagashvili family identified a former employee of the Criminal Police Department of Ministry of Interior, Mr. Gvilava who participated in the operation, Nugzar Gvilava. Gvilava admitted in private conversation that participants of police operative activity had been ordered to liquidate the passengers in the car, rather than arrest them; after the liquidation the fire arms have been placed in the car. Gvilava declined from giving an

Law on Police which prohibits using firearms in city centers, especially in places crowded with traffic. However, the Interior Minister downplayed the accusations stating [the operation] was planned well, lawfully.<sup>119</sup>

Two separate investigations were initiated on the case: one in the allegations of the criminal activities of the group (*hereinafter* case one) and another in excessive use of force by the police during the operation of May 2, 2006 (*hereinafter* case two). The investigation of the *case one* was conducted by the MINISTRY OF INTERIOR, and of *case two* by the Office of the Tbilisi Prosecutor. MINISTRY OF INTERIOR's involvement in the investigation from the very beginning jeopardized its independence and impartiality since the MINISTRY OF INTERIOR was an interested party to the case and not a neutral investigator; It was in the direct interest of the MINISTRY OF INTERIOR to establish that Vazagashvili and the other two sitting in the case were criminals and that the police operative activity they conducted was lawful. Otherwise, if, in the course of the investigation it would be established that the three men were guiltless, the MINISTRY OF INTERIOR, who killed the two and seriously injured the third during the police operative activity, would find itself in a difficult position in another investigating the issue of excessive use of force by the MINISTRY OF INTERIOR on May 2. Thus MINISTRY OF INTERIOR was in a way investigating its own case. As the lawyer reported, later on it was further revealed that the investigation in the MINISTRY OF INTERIOR was conducted by those people who themselves participated in the police operative activity of May 2, 2006.

The lawyer of the family number of times petitioned to the relevant authorities with a request to transfer the investigation into the *case one* to the prosecutor's office instead of the MINISTRY OF INTERIOR, however the petitions were turned down as being "groundless" without further clarifications.

The next of kin of Vazagashvili was not recognized as a party to the proceedings in the *case one* for a long time and thus was denied access to the case materials and other procedural rights. Only after the numerous complaints by the lawyers, including the petition sent to the General Prosecutor, wide media coverage of the fact and interventions by the Ombudsman of Georgia and the Chair of the Parliamentary Committee on Human Rights and Civil Integration, Tbilisi Prosecutor's Office finally recognized the mother a party to the proceedings. However, according to the lawyer, even after this the authorities obstructing the victim's successor from getting access to the case file under different excuses, kept certain legal proceedings closed and confidential e.g. the Prosecutor's Office did not allow their party to participate in the questioning of witnesses and did not provide them with the transcripts of the witness statements;

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official testimony, his secretly taped interview, was sent to the ECHR together with other materials.

<sup>119</sup> Eurasia Net, *Georgia's Crime Fighting Campaign Comes under Scrutiny*, Molly Corso, 2006

The lawyer of Vazagashvili explained to Human Rights Center that holding the Vazagashvili family away from the investigation gave the police a greater possibility to destroy the evidence and exercise pressure on Bondo Puturidze (the third member of the group who survived the police operative activity on May 2) who at the trial admitted in the preparation of an organized robbery and that the group opened the fire at the police first.<sup>120</sup> As a result of corroboration with the investigation, Puturidze received reduction of his term of imprisonment (4 years in jail and 6 years on probation)<sup>121</sup>

In *case two* (investigation into the allegations of excessive use of force by the police) the investigative authorities ignored the evidence and witness testimonies which challenged the official storyline of the incident established by the MINISTRY OF INTERIOR in *case one* (investigation into the allegations of the criminal activities of the group) that the ‘group of criminals’ were the first to open the fire. According to the family lawyer, the investigation and the trial of the *case one* served to create an alibi for police employees and guarantee their impunity, rather than to establish the facts.<sup>122</sup> Several examples of the stated above are provided below:

1) Two eyewitnesses contravened the official version of the investigation that it was the police who started to shoot in the direction of the car without a warning. According to eyewitness Marina Tsomaia, there was no shooting from BMW car, windowpanes of the car were up. Police started to shoot without any prior notification or warning to the passengers in BMW. Tsomaia testified that had been any announcements she would be able to hear.<sup>123</sup>

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<sup>120</sup> On December 28, 2008 it was the media from where the family of Vazagashvili learned that there was a hearing on *case one*. They went to attend the trial. The family lawyer recalls that the court hearing of the case was characterized by number of irregularities, e.g., MINISTRY OF INTERIOR officers, among others those who participated in the police operative activity, were present at the trial dressed up in civilian forms. The general atmosphere during the trial indicated that the MINISTRY OF INTERIOR had an upper hand over the judiciary; the principle of publicity of the hearing guaranteed by the law at that time was violated, since a documentary movie maker was not allowed to attend the trial, etc.

<sup>121</sup> During the investigation, Bondo Puturidze had a meeting with Public defender, Sozar Subari, who after the meeting announced that there have not been any fire arms in the car and there has not been any shooting respectively.

<sup>122</sup> The lawyer states that prosecutor’s office did nothing during the investigation but reproduced the expert examinations conducted by criminal Police Department and the testimonies of the police who were given the status of victims from police operative activity and in fact were the lawbreakers.

<sup>123</sup> According to Tsomaia’s testimony, on May 2, 2006 she was driving her personal car. When she stopped at the traffic lights, it was quiet, suddenly a number of people in civilian clothes appeared and headed towards the traffic lines and started to shoot a black BMW, which was standing on the left line in front of her car. After the shots, the car started and crashed into a column. After the car crashed into the column fire did not stop to its direction. At that point, police in uniforms and masks engaged in armed assault. After this Marina Tsomaia’s car was approached by a person in civilian attire, who commanded her to leave the place, so she had to leave.

Eyewitness Ivrita Gachechiladze's testimony coincided with the testimony of Tsomaia and further added that there were several shots made towards the BMW after the car crashed into a column.

Ivrita Gachechiladze's statement on the successive shots made in the direction of a crashed car was also verified by the employee of Public Defenders Office, Khaindrava, which she made in an interview to the journalists.

The investigation ignored these testimonies, without any legal basis to do so, and draw its conclusions solely on the testimonies of the police officers who participated in the operation and the testimony by Puturidze who received significantly reduced sentence as a result of giving such testimony.<sup>124</sup>

Three MINISTRY OF INTERIOR cameras were shooting the special operative activity from different sides however only the footage of one of them was released publicly. The lawyer believes that the video footages were not released as they would challenge the official storyline and demonstrate that there was shooting by the group.

2) According to the state ballistic investigation, the passengers of the car shot at police through the back window of the car. However, the video footage recorded by the press centre of the MINISTRY OF INTERIOR and aired on television shortly after the special operative activity showed that the glass of the car's back window was not damaged. This triggered allegations that the authorities had fabricated/destroyed the evidence.

In order to clear up the situation, the Vazagashvilis' family decided to commission an independent ballistic examination and, on 25 April 2007, filed a request with the Prosecutor General's Office to forward the documents of the state experts to an independent expert. However, their request was not granted. The next day Tbilisi Prosecutor's Office informed them that the case examining the allegations of excessive use of force had already been closed on 20 April and that the investigation did not find evidence that excessive force had been used.

There were further question marks and gaps in the case which the investigation failed to answer: Why the police did not apprehend the criminals at a different place which would significantly decrease the risk to the lives of the group members as well as the ordinary civilians? In accordance with the police decree, after at 9:20 am the group members gathered on the Saburtalo Street, they headed for the Vedzisi district and entered the Vedzisi Street through Gagarini Square. The street was narrow and was an ideal place for capturing the group members, which was the aim of investigative operation. (pg55). However, the investigation never got interested why the police did not choose that place. Furthermore, the use of force was on that

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<sup>124</sup> It is important to note that Puturidze never admitted his crime during pre-trial investigation. Furthermore, according to the Public Defender, he denied the accusations of possessing arms when he met the Public Defender (before the trial).

place was contrary to the Law on Police since it prohibits using weapons in city canter, especially in places crowded with traffic. The investigation also did not get interested into this fact.

Why did the police open intensive fire after the car clashed into a column so powerfully? Due to the shock and injures received from the powerful crash, it would have been impossible for the people sitting inside the car it immediately show resistance to the police. The video materials broadcasted on TV clearly displayed that the police approached the car running while at the same time shooting from the submachine guns. According to the family lawyer, "there were so many bullets in the two men that the medical experts who examined their bodies were unable to actually count them."

However, the investigation did no pay attention to such facts and concluded that the use of force was not excessive.

On April 29, 2007 the lawyers received a letter from the investigator dated by April 26, 2007 in which he informed that investigation on the case was closed on April 20, 2007. The same letter stated that a day prior to closing the investigation; on April 19, 2007 decree recognizing Vazagashvili's mother a party to the proceedings was annulled. The letter explained that in accordance to section 1 of article 398 of the procedural code of criminal law, a decree on the closure of the preliminary investigation is delivered to the parties, since the mother of Vazagashvili was no longer a party to the case, according to the decision of April 19, 2007, the decree on the closure of the preliminary investigation was not delivered to her. A further request of the lawyer to obtain the case materials from the preliminary investigation was rejected since at that time MRs. Tsiala Shanava no longer represented a party to the case.

On July 13, 2007 the lawyers appealed the fact that the decree was annulled, however until this date they have not received any answer from the Court, who was obliged to decide the issue within 15 days from the date of submission.

The family recalls that the conduct of authorities was characterized with particular cynicism throughout the investigative process. Just to cite one example, on July 12, 2006, mother of Vazagashvili was introduced with the report of expert examinations including findings of a forensic autopsy. By that time the mother was already recognized as a party to the case, and was entitled to get a copy of the report, however investigator categorically rejected the request to make the photocopies of the report and thus practically forced the mother of Vazagashvili to rewrite by hand the report, including forensic autopsy report describing multiple injuries as a result of which her son died. The request to obtain copies was unsuccessful, even though they applied several instances at the prosecutor's office with this request, even to the General Prosecutor of Georgia.

## *The prison riot (2006)*

On March 27, 2006 Special Forces units entered Tbilisi Prison No. 5, a pretrial detention facility, to quash what the government called "a large-scale, well-planned provocation" against planned reforms of the prison system.<sup>125</sup> The operation resulted in death of at least seven inmates, 22 inmates were injured<sup>126</sup> and two officers were wounded.

Public Defender of Georgia, MPs and human rights groups contested the official storyline about the 'riot' as well as the legality of the use of force by the authorities.

Government officials made public statement that they well in advance had the information about the planned prison riot. This statement further fuelled allegations by human rights groups that the casualties could have been avoided, or at least their number could have been kept lower, had the government acted with due diligence and in accordance with their legal obligation to protect the right to life of the detainees.

Despite numerous calls by national as well as international actors, the incident remains un-investigated up to date.

According to official information, since January 25, 2006 authorities "had information that the prison riot was being planned and "the Penitentiary Department and other parts of government were ready for any kind of deterioration of the situation."<sup>127</sup> As further explained by the authorities, in order to avoid the situation, prison authorities planned to move disruptive prisoners to another facility. On March 27, 2006 the head of the Department of Prisons, along with officers from the Investigative Department of the Ministry of Justice, arrived at the prison hospital to carry out the transfer.<sup>128</sup> Six prisoners resisted being moved from the hospital and incited others to riot during the attempted transfer; disturbances reached Tbilisi prison no. 5 at 2:30 am on March 27 the riot began.

Public Defender of Georgia, number of MPs and NGOs downplayed government's allegations for a well-planned riot, saying it was a spontaneous prison disturbance provoked by the prison administration and the head of Penitentiary Department Bacho Akhalaia personally. Bacho Akhalaia was reported to have abused the prisoners physically and verbally, which triggered protests from the latter side.<sup>129</sup>

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<sup>125</sup> Eurasia Daily Monitor, *Protests, Accusations nad Riots Shake Georgia*, March 31, 2006, by Zaal Anjaparidze, quoting the Statement by the Minister of Justice Ghia Kavtaradze.

<sup>126</sup> Those injured as a result of the events both in the central prison hospital as well as in investigation-isolation prison no. 5 on 27 March 2006 were only given access to medical personnel after the Ombudsman's intervention.

<sup>127</sup> Human Rights Centre, *The Velvet downfall Human Rights Situation In Georgia*, 2006 at <http://humanrights.ge/files/The%20Velvet%20Downfall.pdf>

<sup>128</sup> It remains strange as to why the top official of the penitentiary system arrived to the prison himself in order to carry out the transfer of prisoners.

<sup>129</sup> See e.g., Public Defender, *For the prevention of torture: 2004-2007 at* [http://ombudsman.ge/uploads/special\\_reports/camebis\\_preveniistvis\\_geo.pdf](http://ombudsman.ge/uploads/special_reports/camebis_preveniistvis_geo.pdf)

[In the report the Public Defender underlines that the testimonies of the detainees certify that the head of the Department of the Penitentiary, Bacho Akhalaia accompanied with the special forces was in the prison on the night of March 27<sup>th</sup> where he physically and verbally assaulted a number

Human rights groups further criticized the authorities for excessive use of force while trying to stop the 'riot.' They claimed that the police officers used weapons when the prisoners were inside their cells and thus were unable to confront the police. Reportedly, the Special Forces continued to fire even when the revolt [had] actually ended and the prisoners were not resisting anymore.<sup>130</sup> Public Defender further stated that the authorities failed to take measure to decrease the number of casualties.<sup>131</sup>

Authorities vigorously tried to rebut such allegations saying that before taking any action the Special Forces several times urged the inmates to stop the riot and to calm down; however, allegedly, their request was followed by counter-reaction from the inmates: inmates began to move towards the officers, throwing stones and pieces of metal and wood at them; in response - the special task force used the guns with rubber bullets.<sup>132</sup>

At the session of the National Security Council later on March 27, 2006 President Mikheil Saakashvili hailed the special operative activity undertaken to stop the 'riot.' The President thanked the officials of the Ministry of Justice and the police "who acted highly professionally in order to save the citizens of the country from the misfortune that could have happened....Last night in Tbilisi more than 4000 dangerous criminals could have escaped [...] This would have meant hundreds of stolen cars, hundreds of raped people, hundreds of robbed houses, hundreds of murder cases and many other disasters and disorders."<sup>133</sup> The Minister of Justice stated, "I can declare that we have prevented a jailbreak, which posed a serious threat to our citizens."<sup>134</sup> "If the attempt had succeeded, the mutiny would have spread to other prisons in

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of prisoners; this became the reason for the riot, which took place spontaneously. The testimonies given by a number of detainees are identical to each other although the detainees did not have a chance to agree on these identical stories with each other in advance. The PD further stated in his parliamentary speech that if the Head of the Penitentiary Department, Mr. Bacho Akhalaia, did not go to the prison that night and use force, the riot would not have happened.]

[http://ombudsman.ge/uploads/special\\_reports/camebis\\_preveniistvis\\_geo.pdf](http://ombudsman.ge/uploads/special_reports/camebis_preveniistvis_geo.pdf)

Human Rights Centre, *The Velvet downfall Human Rights Situation In Georgia, 2006* at <http://humanrights.ge/files/The%20Velvet%20Downfall.pdf>

<sup>130</sup> Ombudsman Accuses Bacho Akhalaia of Provoking Prison Riot at <http://humanrights.ge/index.php?a=news&id=3190&lang=en>

Amnesty International, *Georgia: Briefing to the United Nations Human Rights Committee, 2007* [According to Grigol Giorgadze, the Head of the Department on Investigation and Monitoring at the Office of the Ombudsman of Georgia, who was in the yard of the investigation-isolation prison at the time, the authorities gave no warning before they started shooting at the inmates]

<sup>131</sup> Public Defender, *For the prevention of torture: 2004-2007*

<sup>132</sup> Civil Georgia, March 27, 2006: *Inmates Die in Tbilisi Prison Riot, see also* Amnesty International, *Georgia: Briefing to the United Nations Human Rights Committee, 2007*

<sup>133</sup> Amnesty International, *Georgia: Briefing to the United Nations Human Rights Committee, 2007*

<sup>134</sup> Civil Georgia, March 27, 2006: *Inmates Die in Tbilisi Prison Riot*



the country," he added.<sup>135</sup> "It has been proved that only by the effectiveness of our action was such a danger avoided."<sup>136</sup>

However, these statements did not convince the human rights groups, media and the broader public that the law enforcement authorities acted in line with the national law and Georgia's international human rights obligations. These suspicions were further fuelled by two facts: 1) the members of the Prison Monitoring Council were denied to have access to the Prison No. 5 during the two days after the special operation. Such a denial was in contravention to the mandate of the Prison Monitoring Council. Authorities did not provide any legally valid explanation for that.<sup>137</sup> 2) Immediately the next day of the incident, on March 28, the ruling party decisively voted down the initiative of the opposition MPs to initiate parliamentary investigation about the alleged 'riot' as well as about allegations of the excessive use of force to stop the 'riot.' As an explanation for their decision, MPs from the ruling party accused the authors of this initiative of "patronizing criminals."<sup>138</sup>

Initially the Ministry of Justice started to investigate the incident, despite the fact that the Ministry of Justice and its high ranking officials were accused of provoking the disturbance. Thus, investigation by the Ministry of Justice contradicted to the requirement of the national law which mandates that the investigation must be carried out in an impartial and independent way; finally, as a result of public pressure, the case was transferred to General Prosecutor's Office.<sup>139</sup> Authorities brought charges against several prisoners for participation in the riot and convicted a number of them. At the trial these prisoners admitted that they resisted to the Special Forces and also stated that the use of force by law enforcement authorities was not excessive. Some

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<sup>135</sup> Eurasia Daily Monitor March 31, 2006, by Zaal Anjaparidze: *Protests, Accusations and Riots Shake Georgia*

<sup>136</sup> Human Rights Centre, *The Velvet downfall Human Rights Situation In Georgia 2006* <http://humanrights.ge/files/The%20Velvet%20Downfall.pdf>

<sup>137</sup> Information as to what was going inside the prison was unavailable to outsiders. Relatives of inmates spent all night outside the 5th prison trying desperately to get information about the developments inside the jail with no avail. Prison number 5 was housing approximately 3,700 detainees.

<sup>138</sup> Human Rights Center: *The Velvet downfall Human Rights Situation In Georgia, 2006* [The authors of the investigation initiative dismissed these allegations as a "worthless legend" aimed at misleading the public and whitewashing the March 27 prison violence. The opposition thinks that it was planned by Merabishvili's office. The government wants to shift society's attention away from the Sandro Gvirgvliani murder to something new]; See further Eurasia Daily Monitor, March 31, 2006, by Zaal Anjaparidze: *Protests, Accusations and Riots Shake Georgia* [Nodar Grigalashvili, a legislator from the ruling National Movement Party, said that a Georgian criminal ring abroad is collecting money to organize Saakashvili's murder. Tea Tutberidze, of the pro-governmental Liberty Institute, alleged that Georgian criminal bosses who had fled to Russia and Greece are providing assistance to their "colleagues" in Georgia, because they are losing influence at home, including in the penitentiary system.]

<sup>139</sup> Criminal Procedure Law of Georgia does not specify the time limits for how long the investigation may last

human rights activists saw making such testimonies by the prisoners as a part of their deal with the executive since after making these testimonies the prisoners got released on probation.<sup>140</sup>

The issue whether the force used to stop the ‘riot’ was or was not excessive remains uninvestigated to this date.

Very recently, the President made a public statement concerning Bacho Akhalaia, who was appointed as a Minister of Defense. He said: “Georgia is the only former Soviet country, where ‘thieves-in-law’ no longer rule prisons,” he continued. “This is a huge historic gain for Georgia and it has been done by this man [referring to Akhalaia]. And he has done it through carrying out very strict measures.” President also added: “While carrying out all of these strict measures, Bacho was acting under my personal instructions and support.”<sup>141</sup>

### *Case of Varlam Pkhakadze, 19, (2006)*

**On December 7, 2006, patrol police officer beat up and shot Varlam Pkhakadze, 19, as the police, investigating an allegation in a break-in and mistakenly took Phakadze for the ‘thief.’ The police officers omitted in their legal obligation to ensure that Phakadze, who was beaten and wounded by them, was provided with timely medical assistance. As a result, Phakadze died four days after the incident. Police officers were convicted for killing Phakadze, however adequacy of the punishment with the crime they committed remains questionable. One of the policemen committed a suicide in the prison.**

According to the case file, a patrol police crew received a call from a citizen saying she had heard some strange voices from a cellar of the apartment and thought that someone had broken in. The police went to see the place. On their way to the flat they met Pkhakadze who was coming back home from a birthday party. According to eyewitness Nana Tordia, she heard when Phakadze was asking the policemen to explain why they were beating him, as he could not understand what the police wanted from him. The patrol shot Phakadze on purpose and then left him at the entrance of the apartment building and started to call for people: “come out people, we got a cellar thief,” – recalls Tordia. Phakadze had 3 bullet shots and had signs of severe beating according to the family members (e.g., part of his leg was broken, etc.)

It was revealed very soon that the police mistakenly took Phakadze as a thief. According to the search protocol for the cellar, carried out after beating and shooting Phakadze, none of the locks of the cellar were broken; there were not even signs of attempted break-in.

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<sup>140</sup> Interview of the Human Rights Center with Nana Kakabadze (Former Political Prisoners)

<sup>141</sup> Civil Georgia, August 27, 2009

The Kutaisi Civil Court charged a patrol police Ivane Kapatadze under Georgian Criminal Code Articles 114(excessive use of force for the detention of an offender) and 342 (neglect of official duty). Kapatadze was sentenced to a five-year term of imprisonment.

The other patrol police officer was charged for neglect of official duty and was convicted to 1 year and 6 months of deprivation of liberty. The other two policemen present at the crime scene were convicted to two years of deprivation of liberty; however Kutaisi City Court reduced the sentence to 2 years of conditional punishment, with the deprivation of the right to work in the law enforcement organs. Each of them was fined with 2000 GEL.

This decision was appealed by both parties, the defence wanted reduction of sentences and the lawyer of the family wanted imposition of stricter punishments. The Appeal Court upheld the decision of the City Court and the Supreme Court rejected further appeal as inadmissible.

The mother of Phakadze suspects that there must have been some personal reason for killing her son; however, she does not refer to anything specific. She demands creation of a special commission to investigation the reason behind her son's murder. She demands all the killers to be punished appropriately. "If not, I have decided –when they come out of the prison I will deal with them on my own – I will cut them into pieces."<sup>142</sup>

### *The case of Giorgi Gamtsemlidze (2008)*

**At night on May 8, 2009 a patrol police officer Abuashvili killed Giorgi Gamtsemlidze, 32. The police officer chased Gamtsemlidze for violating traffic rules [speeding] and killed him, allegedly by accident, while trying to arrest him.<sup>143</sup> The patrol police officer was sentenced to two years in prison and 2 years on probation for negligent killing [GEORGIAN CRIMINAL CODE article 116].**

**Fairness of the conviction remains highly contested. The Public Defender of Georgia studied the case, as authorised by the Law on Public Defender, and concluded that according to the facts of the case, the patrol police Abuashvili should have been charged with pre-meditated murder instead of negligent killing. The lawyer, the public defender and human rights groups state that if the investigation and the trial on the case were impartial, thorough and independent, Abuashvili would not have been able to get away with such a lenient sentence.<sup>144</sup>**

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<sup>142</sup> Newspaper *Akhali Gazeti*, March 24-30, 2006

<sup>143</sup> According to Georgian legislation speeding constitutes an administrative offence

<sup>144</sup> The fact that the judge did not return the case for investigatory review has its justification: the current legislation does not allow a judge to return the case for investigatory review. However, the prosecutor has the right based on Part V of Article 446 of the Criminal Procedural Code of Georgia (the court had had the right of returning the case to the investigation for the revision before March 25, 2005 based on Part I and II of Article 452 of the Criminal Code of Georgia until the amendments were introduced. The experts say that this is a serious problem of current legislation because a judge is unable to return the case if a prosecutor does not want to.) However, a judge can still try to convince the prosecutor to return a particular case to

**The Public Defender commented that “as in the case of Girgvliani [in the case of Gamtsemlidze too] the investigation and the court as a rule did everything to shield the police officer from adequate punishment.”<sup>145</sup>**

According to the testimony by the Patrol Policeman Abuashvili,<sup>146</sup> on the night of May 8, 2008, while patrolling in the Vera district of Tbilisi together with another police officer, he noticed a BWM car that violated traffic rules by speeding. The driver did not obey the lawful demand of the police to stop and continued to drive at a high speed. Abuashvili pursued the car and also ran after him on foot when the driver ran out of the car and ran towards a yard. Abuashvili said that he shot Gamtsemlidze accidentally while trying to arrest him.

The patrol police officer Abuashvili was convicted for negligent killing; however the material evidence and witness testimony suggest that the crime committed by patrol officer was pre-meditated murder rather than negligent killing. The police officer alleged that he accidentally killed Gamtsemlidze in the courtyard of the apartment of flats while apprehending him. A resident of one of the flats, Otar Teneishvili testified that he saw a man (Gamtsemlidze) who was shot while running on the roof of the garage (and not the courtyard as the police officer stated). The eyewitness further testified that he saw several policemen dragging the body of the wounded Gamtsemlidze, who fell down from the garage roof, to the place where Abuashvili alleged the shooting took place. This testimony suggested that the killing was not accidental but that the patrol police shot Gamtsemlidze on purpose. Expert examination on Gamtsemlidze’s body and other material evidence gathered at the crime scene (e.g., the signs on the roof of the garage) further suggested that Gamtsemlidze was not killed in the yard, neither was he killed from a close distance as Abuashvili alleged;<sup>147</sup> these evidence suggested that the crime committed as pre-mediated murder and not negligent killing.

The expert examination recommended carrying out a court experiment in order to further determine the relatively correct disposition of the shooter and the victim. Independent experts agreed with the recommendation. The lawyer of the Gamtsemlidze’s family filed a petition requesting such an experiment to be carried out, however it was dismissed.<sup>148</sup> The Lawyer says that the prosecutor’s office turned down every petition she had filed.

The court dismissed the testimony by Teneishvili. Lawyer of the Gamtsemlidze’s family told to Human Rights Centre that the witness Teneishvili was first questioned in a couple of hours after the incident. He testified that he saw Gamtsemlidze falling down from the garage

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investigation for the revision. The judge did not try to convince the prosecutor to return the case to investigation on so called Gamtsemlidze’s trial.

<sup>145</sup> The Situation in the Field of Human Rights Protection in Georgia, second half of 2008, report by the Public Defender of Georgia submitted to the Parliament

<sup>146</sup> Patrol Police testified as a witness on May 8<sup>th</sup>, 2008 and as an accused on June 18, 2008

<sup>147</sup> Ombudsmen of Georgia, Annual Report, II half of 2008

<sup>148</sup> On-line magazine [www.humanrights.ge](http://www.humanrights.ge)

roof and then his body being dragged towards the other place. However, the prosecutor has not paid attention to this testimony and built up their version of negligent killing. Later on the prosecution decided to get rid of the witness whose testimony contravened their version of the incident. Approximately for 2 months they were postponing the process of testifying by Teneishvili before the court. During this period the witness was under pressure as a result of which he altered some details in his testimony; on face the details he changed were further supporting our position of pre-mediated murder; however the Prosecutor relied on the provision in the law saying giving controversial testimonies provides a legal basis to dismiss them.

To support their statement that the witness Teneishvili was pressured by the prosecutor, the lawyer and the family further draw attention to the following fact: according to Georgian legislation giving controversial testimonies may trigger legal responsibility of the witness. Although the Prosecutor's office initiated the controversial testimonies by Teneishvili to be dismissed, they never raised the issue of witness's legal responsibility for giving controversial testimonies. The submission of the family's lawyer raising the similar issues was dismissed without any justification.

The investigation and the trial left unanswered issues of key importance, e.g., initially the police alleged that Gamtsemlidze possessed a fire weapon, later on this accusation was dropped since Gamtsemlidze's fingerprints were not found on that fire weapons. Although it became evident that the firearms were planted on Gamtsemlidze, authorities did not investigate who fabricated the evidence.

According to Georgian legislation, when a person is killed the crime scene is inspected by the prosecutor's office. However, in this case the crime scene was divided into two: the yard which was searched by the prosecutor's office and the garage roof which was inspected by the representatives of The Ministry of Interior of Georgia. This fact triggered allegations that maybe the representatives of the prosecutor's office refused to plant or hide the evidence but agreed to cover the MINISTRY OF INTERIOR which did so.<sup>149</sup>

While Abuashvili was pursuing Gamtsemlidze by a car he did not turn on the siren as he should have done. Neither did he use weapons to stop the fleeing car, as he was authorized by the law to do. Abuashvili also did not give a warning shot which according to law he was obliged to give. The justification he referred to – being in the residential area – according to Law on Police is not an excuse for not giving a warning shot. The fact of giving a verbal warning to the fleeing driver, which patrol Abuashvili was also obliged to do according to law, remains contested in the light of the testimonies by the residents of the yard – the residents stated they have not heard any such warning.

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<sup>149</sup> <http://www.humanrights.ge/index.php?a=article&id=3517&lang=en>

When asked about the provision of the Law on Police which specifies the circumstances when the law permits the police to use force, Abuashvili could not recall any such circumstance, but when the detainee escapes and creates a real danger to others around him. He added that he has not been in touch with legal literature for 8 months.<sup>150</sup>

The lawyer was demanding that Abuashvili is convicted for premeditated murder in addition to excess of authority; however at the submission of the prosecutor the court sentenced Abuashvili for negligent killing. The penalty he received for this conviction was not the maximum penalty prescribed by law for the negligent killing.

The appeal court left the city court decision unaltered. The case is pending before the Supreme Court of Georgia. Lawyer is demanding Abuashvili to get the maximum available under article 116.

### *Case of Roin Shavadze (2008)*

**On August 16, 2009 in Batumi, Adjara Region, officers from the Special Forces unit (MINISTRY OF INTERIOR) in masks attacked Roin (Roman) Shavadze, a sergeant, in a central street in the middle of the day and started to beat him severely. This was the second day of Shavadze's arrival from having participated in the Russia – Georgia 2008 war in South Ossetia where he was serving in a special department of intelligence. After Special Forces beat Shavadze severely, he disappeared for several hours. Later on that day he was found dead with the signs of severe torture. The authorities told the family that Shavadze was shot and killed by police while he was fleeing from the scene of a drug-related crime; authorities reportedly threatened the family when Shavadze's widow stated she would press for more details about her husband's case.**

**A criminal investigation has been opened regarding the death of Shavadze under the suspicions of pre-meditated murder [GEORGIAN CRIMINAL CODE article 108]. However, despite the request the investigative authorities have not granted to the next of kin (widow) of Shavadze the status of a party to the proceedings, despite the fact that no legal ground exists for the denial of such status to Shavadze's widow.<sup>151</sup> This way the investigative authorities are effectively blocking the family to have access to the case materials and to represent the interests of Shavadze in the course of investigation; on the other hand, investigative authorities violate the principle of transparency of the investigation – it is impossible for the family as well as for any third party to follow the investigation and exercise public scrutiny regarding the actions of the investigative authorities.**

**Allegations are voiced by human rights groups, the media and the family that Shavadze was killed because he possessed certain information about the war which the authorities did not want to be disclosed.**

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<sup>150</sup> Public Defender of Georgia, *State of Human Rights in Georgia*, 2008

<sup>151</sup> They have not indicated such a ground. According to Georgian legislation, only parties to the case have the right to have access to the case file and the information as to how the investigation is progressing. Furthermore, only the state parties are authorized to raise suggestions as to which investigatory activities should be carried out, e.g. questioning of a witness, expert examination, etc. In this case the next-of-kin of Shavadze, his wife, is not yet recognized as a victim – thus a party to the case. According to law wife is entitled to be recognized as a victim. Denial of the victim's status in this case by the prosecutor's office lacks any legal justification.

On August 16, 2009 in the middle of the day Shavadze was seen being beaten by the representatives of Special Forces. After that he disappeared for several hours. The widow of Shavadze recalls how she was desperately running from one state organ to another trying to find her missing husband. Neither patrol police nor the military police assisted the family to look for the missing Shavadze. The family members were not allowed to enter the Adjara Office of the Ministry of Interior. Law enforcement institutions avoided to answer the questions of the family members. Several hours later the family was told about the death of Shavadze.

After several hours of searching, the family was notified that Shavadze was found dead.

According to the Ministry of Interior, “on August 16, 2008 the Constitutional Security Department of the MINISTRY OF INTERIOR received operational information and a preliminary investigation was opened against Roin Shavadze for purchasing and possessing a substantial amount of illegal drugs. On the same day Roin Shavadze was detained as a suspect. He was searched and some suspicious substances were discovered on his person. According to laboratory analysis, Shavadze had 0.97 grams of non-processed Heroin and 0.05 grams of Buprenorphine. It was ordered that Roin Shavadze be moved to the Tbilisi pre-trial detention facility # 1 for detainees.

The representatives of the Operative Department of MINISTRY OF INTERIOR Constitutional Security Department Adjara Autonomous Republic Main Division were instructed to move Roin Shavadze to Tbilisi. While he was being escorted on the Kobuleti - Kakuti Car Road Shavadze asked for escort car to stop because he needed to go to the toilet. The car stopped and an escorting police officer took the detainee out of the car. Shavadze managed to take a gun away from the police officer and attempted to escape. He shot the gun at the escort several times and damaged the escort car. His actions consequently jeopardized the life and security of the Constitutional Security Department representatives. The escort had no choice but to return the fire against Shavadze and as a result of this Shavadze died of his wounds.”

The lawyer of Shavadze’s family expresses doubts about the realness of this story. “They say they were instructed to move Shavadze to Tbilisi. This is strange; first of all, on August 16 Russians were standing in Gori, so how would they reach Tbilisi from Batumi when they could not go through Gori? Second, there is also the pre-trial detention facility in Batumi, why was it necessary to move Shavadze to Tbilisi?” – told the lawyer to Human Rights Centre. “Shavadze was severely beaten and it is highly questionable how, under such physical conditions and handcuffed, did he manage to take arms away from the policeman and run away? When his body was discovered, it was practically abandoned on the road, why?”- say the lawyer.

The credibility of the official storyline is challenged by the testimonies of the eyewitnesses and the signs identified on the body of Shavadze after his death. According to

eyewitnesses, 20 armed masked people attacked Shavadze in the street, pushed him down on the ground and beat him severely; ”The Special Forces] were beating him [Shavadze] so ruthlessly that even those who were passing by were totally shocked. Some people tried to help him but special unit members shouted that he was a traitor and scores of soldiers died as a result of his treason,” says one of the eyewitnesses preferring to stay anonymous.<sup>152</sup>

The family and the lawyer further say that the body of Shavadze had clear signs of excessive use of force. “There were a lot of bullet holes on his body<sup>153</sup>, almost every finger was broken and we fixed them with plaster. His limbs were also broken; and his flesh was ripped out in several places,”<sup>154</sup> says Tsitsino Shavadze, the widow of Shavadze.

The lawyer of Shavadze’s family states that he was informed by the prosecutor’s office that an Autopsy examination has been conducted of Shavadze’s body, however, since the next of kin has not been officially recognized as a party to the proceedings, the lawyer is not allowed to have access to the results of the examination as well as other materials of the case.

Shavadze’s case and the reason for his death is surrounded by secrecy. The widow recalls that the previous night officers from the Constitutional Security Department took her husband for some time from home and interrogated him. When he returned home “he was furious stating he was blamed for such treachery. He could never imagine being accused of such a vile crime”- recalls Tsitsino Shavadze.

The widow stated that soldiers who fought with her husband could not come to the funeral. “So many rumours were spread about his treason that many of his friends did not even come to pay their last respects in honouring him. They just called and told us that Roini had saved their lives and apologized for not coming.”<sup>155</sup>

The family reported to be offered money in exchange for keeping quiet and was threatened with the punishment if they would press for more details about the death of Shavadze.

The investigation into the case of Shavadze is ongoing.

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<sup>152</sup> Newspaper Batumelebi, August 29, 2008: *Treachery or Drugs: Soldier’s Widow Explain Special Unit Tortured and Killed Husband*

<sup>153</sup> The lawyer further adds that there were at least 27 bullet holes on the body of Shavadze.

<sup>154</sup> *I.d.*

<sup>155</sup> *I.d.*



## *Case of Krialashvili (2009)*<sup>156</sup>

On May 5 information surfaced in Georgia about a ‘mutiny’ in Mukrovani Military Base. Officials alleged that the ‘mutiny’ “at a minimum aimed at thwarting NATO military exercises and at a maximum - organizing full-scale military ‘mutiny’ in the country.”

In his televised speech on May 5, the President of Georgia said that the “organizers of disorders” had links with Russia. Political Opposition, independent experts, media and human rights groups have downplayed these allegations.

On May 20 a special operative activity was undertaken to apprehend the ‘mutineers’, one of them- Gia Krialashvili- was killed and two other heavily injured. The killing of Krialashvili remains surrounded by rumours and secrecy. The investigation on the case is ongoing; however the next of kin of Krialashvili is blocked by the investigative authorities from being involved in the investigation as a representative of the victim and is denied access to the case file.

According to the Official Statements of the MINISTRY OF INTERIOR released on May 21:

*“The participants of Mukhrovani ‘mutiny’, namely: Koba Otanadze, Levan Amiridze and Gia Krialashvili, after the attempted military ‘mutiny’, were avoiding legal responsibility and were hiding in different locations of Tbilisi. The wanted persons were careful in their manner of behaviour and rarely contacted their relatives or other people. For the last few days the given persons were hiding in one of the summer-cottages situated in the vicinities of Tskvaritcha Ministry of Interior village.*

*On the basis of operative information received by the employees of Special Operative Department and Counter Intelligence of the Ministry of Interior, it was established that the group of wanted persons was planning to leave Tbilisi on a mini-bus and was heading towards territories currently under Russian occupation and military control. Law enforcers, have also managed to ascertain the details of the above mentioned scheme. When suspects attempted to leave the surroundings of Tbilisi the Ministry of Interior has held a special operative activity aimed to detain the wanted persons due to which suspects have put up armed resistance to the police forces. As a result, during the exchange fire Gia Krialashvili has died at the place of incident, while Koba Otanadze and Levan Amiridze were wounded. . . Among other evidences firearms were seized from the detainees by the police.”*

Any additional official information in relation to the special operation has not been released.<sup>157</sup>

According to the MINISTRY OF INTERIOR Statement quoted above, authorities had the suspects under their control and knew the details of the suspect’s scheme to leave Tbilisi. Accordingly, they were in a position to plan, organise and control the special operation so as to minimise, to the greatest extent possible, recourse to lethal force,’ and take adequately into

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<sup>156</sup> Human Rights Centre, Repressive Democracy?! - Chronicles of State Sponsored Violence in Georgia during the spring 2009, available at <http://www.humanrights.ge/admin/editor/uploads/pdf/repressive%20democracy.pdf>

<sup>157</sup> Human Rights Center has been following the case, however, no information other than documented in the previous report [Repressive Democracy?!- Chronicles of State Sponsored Violence in Georgia during the spring 2009] has been made available to the public until now

consideration the right to life of the three suspects. At least from the information made public, there exists no reason to assert contrary.

In fact however, the special operation was carried out in a compact residential district, while a number of civilians were in the streets and according to witnesses, their lives were also endangered. In addition, supposedly the fire was opened when both cars were moving, which naturally increased chances for the loss of life.

The special operation was planned in advance, however no one took measures to ensure that a medical unit be on alert to promptly reach the place in case of need to save life. In fact, as newspapers reported – the medical unit came only after the Minister of Internal Affairs paid a visit to the scene.

The MINISTRY OF INTERIOR Statement does not clarify what action from the side of the police proceeded to the putting up of armed resistance from the suspects.

The area where the special operation in question was carried out is surrounded by street surveillance cameras; a measure introduced by the MINISTRY OF INTERIOR in the Capital to better control the crime some 3 years ago. As to the date of writing this report the MINISTRY OF INTERIOR has not released the full video footage of the special operation, neither to the public nor to the family of the killed suspect.<sup>55</sup> Speaking strictly legally, MINISTRY OF INTERIOR does not have obligation to do so (at least till the victim's status is officially granted to the family). However, what should be born in mind is that because there is considerable public interest in the issue and burning questions around the special operation have emerged in the society, and considering that as a rule MINISTRY OF INTERIOR does not hesitate to release video footages to convince the public in the correctness of its position, denial to release the footage stirs up suspicions among the public about the special operation.

According to eyewitnesses interviewed by Human Rights Centre, there was no exchange of fire at all and that there was no blood on the crime scene. The defence lawyer also confirms, based on the information availed from his client, that there was no exchange of fire between the police and the suspects. According to one version spread in the public, suspects were detained before the special operation, they were travelling in the car together with the MINISTRY OF INTERIOR representatives who shoot them inside the car and then staged the special operation.

Several hours after the special operation road reconstruction activities were carried out on that particular place. Thus the possible crime scene no longer exists. Consequently, there no longer exists a possibility to carry out examination of the place where the special operation took place. Otanadze's defence lawyer said that the investigators are telling him that they have carried out examination and taken samples from the place as required by law. But because the defence lawyer cannot get access to these materials it is impossible to say whether the investigation has carried out the procedures required by law appropriately. Speaking strictly legally, while national

law provides for the obligation to ensure protection of the crime scene, it does not however specify for how long that obligation exists. However, if the defence lawyer at some point will need to carry out certain procedures on the scene, he will not have the possibility to do so. This is why expediency in road reconstruction activities carried out after the special operation, gave rise to concerns and suspicions.

The investigation on the case is ongoing; however the next of kin of Krialashvili is blocked by the investigative authorities from being involved in the investigation as a representative of the victim and is denied access to the case file.

## Concluding Observations

The report documents the cases of excessive use of force by Georgian law enforcement officials in 2004-2009 which resulted in the loss of life. Excessive force in those cases was used under the cover of law and later on was justified under the pretext of ‘combating crime’ both by the executive and the political leadership of the country,<sup>158</sup> as well as the judiciary.<sup>159</sup>

In absolute majority of cases documented herein, ‘criminality’ of the people killed remains highly contested: while the burden of proof on this matter lies exclusively on the state/authorities, in none of these cases have the authorities met this burden and provided legally valid and convincing evidence that 1) the people killed were criminals and/or 2) that the authorities used necessary and proportionate force to achieve the legitimate aim pursued (effect the lawful arrest, in defence of any person from unlawful violence, etc.). On the contrary, in absolute majority of these cases there is convincing evidence submitted by the other party (lawyer of the family of the person killed) that these people were not ‘criminals,’ moreover – they were not armed during the incident and did not resist to the police. In fact, in several cases the evidence (including witness testimonies, results of expert examinations, etc.) suggest that people were executed by the police or law enforcement officials when the former were holding their hands up in surrender.

In almost all cases documented in this report weapons were planted on the person killed to back up the police allegations that the person killed was ‘a criminal’ who fired against the police and the police fired back in self-defence. Those who used excessive force and/or fabricated evidence to cover it up are rarely brought to justice.

Next of kin or relatives of the victims of excessive use of force are often blocked from having access to the case materials and are deprived of their right to participate in the proceedings, while these rights are formally guaranteed by Georgian legislation;

Investigative authorities often turn down petitions of the victim’s lawyer and selectively apply the evidence: accept only those which support the police version of the case and ignore the evidence and witness testimonies which incriminate the police. They do so without providing any legally valid explanation whatsoever.

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<sup>158</sup> Various examples of these justifications are cited in the main body of the report.

<sup>159</sup> In many cases the investigation on the allegations of excessive use of force was not launched or the case did not reach the court because investigator decided to close down the investigation without finding any use of excessive force – despite the fact that in most of the cases the evidence suggested contrary.

In addition, there are cases when citizens became a victim of police use of force against ‘criminals’ by accident. The rights of those people and their families most often go without any redress.

In none of the cases documented in this report the investigation carried out was effective and the trial – fair.

This report also provides legal analysis of the practices and patterns observed throughout the cases of excessive use of force documented herein. As the report shows, Georgian law enforcement officials often violate the national legislation on use of force. However, the part of the problem is also that Georgian legislation on this issue is incompatible with international human rights standards applicable to Georgia, in particular with the European Convention of Human Rights and the European Court’s case law. This incompatibility further allows the use of excessive force by law enforcement officials to go unpunished in Georgia.

The report in a number of cases quotes the next of kin of the person killed. Their statements often express severe disappointment by the national legal system and reveal their intentions to take revenge against the law enforcement officials on their own by those means which sideline the law and the court system. These quotes surface an emerging threat to rule of law and public order in Georgia: the threat that public will try to replace the judiciary and justice system by the system of personal revenge against law enforcement official who committed a crime and got away without a punishment (or without an adequate punishment).

Discussing the problems of judicial independence and the independence of the investigative authorities from those whose criminal activities they are supposed to investigate is not the primary focus of this report. However, the cases documented in the report do confirm the existence of these problems in Georgia and disclose yet another detrimental product of executive control over the judiciary – impunity.

This report shows that impunity for the crimes<sup>160</sup> committed by the executive and state agents in general, and in the context of the cases involving excessive use of force in particular, is widespread in Georgia.

Existence of impunity in Georgia will not be news for Georgians and many international actors involved and interested in the issues of Georgia. What this report demonstrates however, is that this impunity is not the result of certain structural or legislative setbacks or the lack of training and qualified human resources that much, but of political will openly condoning and encouraging impunity of state agents. In the same way, excessive use of force by law

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<sup>160</sup> In the light of this report, these crimes involve not only illegal deprivation of life through excessive use of force, but also falsification of evidence to hide the crime, concealment of a crime, pressure on witnesses, obstruction of justice, etc.

enforcement officials in Georgia is not a matter of exceptions and accidents but an integral part of the state policy.