

# **TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN GEORGIA PRISONS AS PART OF CRIMINAL JUSTICE POLICY**

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## **Abstract**

For nearly a decade, a significant amount of research, investigations, and scandals in mass media has produced a new understanding about the threat of violence in penitentiaries and the changing the international approaches to this phenomenon. Experience has shown that almost no country is immune from practices that amount to torture and ill-treatment. In the article author explores the reasons and scope of torture in the law enforcement and penitentiary systems of Georgia. Particularly author analyzed: reasons for the torture of the accused offenders on the stage of preliminary investigation; violence as a result of overcrowding in closed correctional facilities public policy and investigation of torture; and reasons for the use of force in prisons.

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**Keywords:** Transnational crime, torture, violence, prison reforms

Georgia is members of the United Nations, the Council of Europe and a member of numerous international treaties which obligate member States to prohibit the torture and inhuman treatment, and carry out prevention measures.

Georgia is one of the members of the United Nations, the Council of Europe and a member of numerous international treaties the provisions of which provide duty of the State to ban torture and inhumane treatment and prevention. In particular, Georgia acceded to the following international instruments: the Universal Declaration of Human Rights (1948) <sup>1</sup>, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)<sup>2</sup>, Convention for the Protection of Human Rights and Fundamental Freedoms, also known under the informal name The European Convention on Human rights (1950)<sup>3</sup>, the European Convention for the Prevention of torture and Inhuman or Degrading Treatment or Punishment (2002).<sup>4</sup>

Despite international cooperation independent researches documented numerous cases of torture and ill-treatment in Georgia prisons. That has become one of the main factors of defeat in 2012 parliamentary election of the President Saakashvili's ruling National Movement Party.

The author explores the reasons and scope of torture in the law enforcement and penitentiary systems of Georgia.

In particular he considers:

1. The reasons for the torture of the accused offenders on the stage of preliminary investigation;

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<sup>1</sup> International Bill of Human Rights – A Universal Declaration of Human Rights. Resolution UN 10 December 1948. [http://www.un.org/ru/documents/decl\\_conv/declarations/declhr.shtml](http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml)

<sup>2</sup> the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)UN Resolution 10 December 1984 [http://www.un.org/ru/documents/decl\\_conv/conventions/torture.shtml](http://www.un.org/ru/documents/decl_conv/conventions/torture.shtml)

<sup>3</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, (1950) <http://ru.wikipedia.org/wiki>

<sup>4</sup>European Convention for the Prevention of torture and Inhuman or Degrading Treatment or Punishment (2002)<http://www.cpt.coe.int/lang/rus/rus-convention.pdf>

2. Violence as a result of congestion (overcrowding) in closed correctional facilities;
3. Public policy and investigation of torture;
4. The reasons for the use of force in prisons.

### **1. The reasons for the torture of the accused on the stage of preliminary investigation**

The criminal justice system is an area where the risk of torture and other cruel, inhuman or degrading treatment or punishment is very high. This was noted in the annual reports of the Ombudsman of Georgia, as well as in the reports the U.S. State Department, and other organizations.<sup>5</sup> The UN Committee against Torture in 2006, expressed concern about the particularly large number of complaints of torture or maltreatment and the small number of subsequent convictions among employees of law-enforcement agencies related to numerous allegations for torture and inhuman treatment, and the lack of public information on such cases. According to experts, the practice of torture and other forms of illegal violence is quite common in the police, particularly in some departments as Special Operative Department and the Department of Constitutional Security.<sup>6</sup> This factor is in the large extent predetermined by the entire system of criminal procedural traditions which are essentially based on the confession of the accused criminal.

Law enforcement agencies were given broad discretion to detain and keep under control any person if he/she could be useful for the effective

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<sup>5</sup> Pre-trial detention in humiliating and unfair conditions: violation Ramishvili and Kokhraidze v. Georgia, no. 1704/06, no. 115; Arrest of witness in order to put pressure on his fugitive brother and lack or inadequacy of reasons for pre-trial detention: violations Giorgi Nikolaishvili v. Georgia, no. 37048/04, no. 115

<sup>6</sup> The Special Operative Department and the Department of Constitutional Security of the Ministry of Internal Affairs were disbanded and restructured to new agencies

investigation of the crime in the absence of clear guaranties against torture. Often the person have apprehended and detained without a court order, and sometimes in complete isolation from the outside world as long as possible, usually during maximum period permitted by law.

To use evidence of guilt or confession obtained by torture is prohibited according to the Constitution and the Criminal Procedure Code of Georgia. Those legal acts declare that nobody can use evidence obtained "by violation of procedural law." However, in practice the use of dubious confessions in the criminal proceedings, might be cause for reasonable doubt about voluntariness of statement.

The UN Committee against Torture, in the findings and recommendations of 18 May 2007 stated that “The Committee is concerned at the current investigation system in which confessions are used as a principal form of evidence for prosecution, thus creating conditions that may encourage the use of torture and ill-treatment of suspects. The Committee regrets that the State party did not sufficiently clarify the legal provisions ensuring that any statements which have been made under torture shall not be invoked as evidence in any proceedings, as stipulated in the Convention.<sup>7</sup>

Courts often do not fulfill their obligations and avoiding using their power for influence to detractive practices of law-enforcement agencies. Georgian legislation and judiciary practices does not provide judges by reliable criteria and procedural capabilities to determine the admissibility of evidence, in particular, voluntary of testimony, and to exclude suspicious evidence from the process of case-based reasoning.

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<sup>7</sup> <http://www.unhcr.org/refworld/publisher>, p.11

## **2. Violence as a result of congestion closed institutions**

Despite the fact that in recent year's substantial financial resources had been submitted to improve conditions in prisons, the situation still remains unsatisfactory. The number of prisoners from 2004 to 2012 had grown from 9000 to 24.500 almost three times that had seriously complicated the social conditions in Georgian prisons.<sup>8</sup>

Public policy does not currently take into account the fact that the poor social conditions only partly concerning to availability of material resources. The solution of problem needs systemic approach and depends on changes in the criminal policy. This policy first of all depend on subjective attitude of law enforcement and judicial authorities concerning to frequency of application of different forms of imprisonment. It should be noted that the criminal justice system of Georgia is very severe and criminal legislation considered as one of the most punitive in the world. The system is more oriented to fulfillment the State interests and implementation of strict norm of law than compliance with human right standards.

In particular, the most common practice in contemporary Georgia remain the preliminary detention of suspects, which, besides of growth congestion and the cost of the relevant penitentiary institutions, causing significant damage inflicted to suspected person and his family, destroying his life in spite of guilt has not been proven.

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<sup>8</sup> Review of Results of the Criminalization and Victimization Sociological Research in Georgia 2009-2012. Grigol Robakidze University Academic Digest, Law Tbilisi 2012 p. 280-301 (on Georgian)

Poor conditions of custody are also a problem for other detention facilities, such as hospitals or hospital wards, which are designed to enforce isolation of criminals and delinquents such as juvenile shelters, and other institutions.

Public authorities still do not perceive the criminal policy as part of social policy and do not introduce into the legal system approaches directed at support to the convicted or reintegration acquitted into society.

Moreover it usually happens that criminals are taken into custody without solid justification. The disparity in sentencing can be caused by:

1. Lack of legislative restrictions regulated usage of preliminary detention instead of bail or other non custodial measures;
2. Limited number of the periodical judicial revision of the reasonableness of detention measure applied to offenders
3. Lack of criteria and experience in assessing the factors that may to affect on the sentencing decision;
4. The desire of the judiciaries to prevent any even a minimal risk of evasion from punishment.

Such an approach on the one hand increases the financial burden on the state's economic conditions, on the other - leads to a violation of the human rights through the inability of the authorities to ensure international minimum standards of custody.

Conditions in preliminary detention institutions before judgment of court are often more strict than in prisons for convicted criminal. Though according the Georgia Constitution they have a status of innocent persons.

This situation highlights the fact that pre-trial detention can be one of the tools in the arsenal of law enforcement agencies to enforce a person to confess guilt.

### **3. Public policy and efficiency in investigation of torture.**

The Prosecutor's Office of the independent Georgia, until recently, could not create a system of effective investigation of allegations related to torture and ill-conduct.

International bodies such as the UN Committee against torture are mentioning low effectiveness of the prosecutor's office in this regard.

The European Committee for the Prevention of Torture has repeatedly noted the lack of an effective investigation of suspicious cases the same approach is observed in the local human rights organizations

Among the main problems that hinder the effective investigation, are: the absence of functional independence; the conflict of interest in the system of prosecution; the lack of public control over the investigation; the uncertainty of the legal status and lack of protection against torture and inhuman treatment

### **4. The reasons for the use of force in prisons**

The practice shown that in some cases disproportionate use of force has serious or fatal consequences which are regarding to the absence of clear legal regulation about usage of force, insufficient skills in the usage of limited coercion and lack of effective methods to conflict resolution.

One of the serious problems for law-enforcement agencies is ensuring public order among prisoners. It should be noted that there are objective difficulties to maintain proper discipline in closed institutions, especially in terms of congestion and underfunding. However, this does not imply that the use of violence has not alternative measure. On the contrary only creation of system in which the usage of force will be the exception, and any case application of force be the subject of disciplinary proceedings, would bring Georgian law-enforcement system closer to European standards.

Amnesty International has repeatedly stated that in after President M. Saakashvili came to power, the vicious practice of prisoners torture in Georgia have not changed significantly.<sup>9</sup> In October 2007, the organizations Amnesty International, Human Rights Watch and Penal Reform International issued a statement called the country's authorities "to take urgent steps to end torture and ill-treatment in places of detention."<sup>10</sup>

A classic example of the of severe policy demonstrated by Georgian authorities against prisoners are measures used to suppress the so-called prison riot in the Tbilisi detention center № 5 of the Ministry of Justice of Georgia in March 26, 2006. The special task forces called by MIA officials used against inmates disproportionate lethal violence with firearms. As a result according to independent sources, seven prisoners were killed and 13 injured.<sup>11</sup>

Despite of many casualties the military operation in detention center № 5 did not seriously criticized by the Georgia Central government and international organizations. Moreover syndrome of impunity had urged law enforcement agencies operate more severely and it become the prelude for future numerous violent acts carried out by the prison authorities against inmates (both pretrial incarcerated or sentenced). Research shows that strict measures used against inmates could be explained by necessity:

1. To obtain the evidence for the investigation of crime;
2. To maintain discipline and order in the penitentiaries;
3. To counteract against so-called "thieves-in-law prison traditions";

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<sup>9</sup> Georgia: Police torture and other ill-treatment must be relegated to the past // Amnesty International, AI Index: EUR 56/003/2006 (Public). News Service No: 029. 2 February 2006;

<sup>10</sup> Authority against torture criticizes Georgia. Human rights organizations have called on Tbilisi to end torture // Amnesty International, AI: EUR 56/007/2007

<sup>11</sup> Georgia: Torture and ill-treatment still a concern after the «Rose Revolution» // Amnesty International, AI Index: EUR 56/001/2006 (Public). News Service No: 017. 2 February 2006



4. To punish of political opponents of the President Saakashvili regime;
5. To intimidation and blackmailing disobedient businessmen;
6. And other purposes.

Analysis carried by the independent researches shown that the practice of mass killings, torture and inhuman treatment of prisoners in Georgia have acquired a systemic character and become a part of public policy for the implementation of the so-called concept of "zero tolerance for crime" by any available means and methods. The violence in Georgia prisons have caused a scandal in 18th September 2012 after the two opposition TV channels "Maestro" and "TV-9" shown footage of beatings and raping of prisoners by guards in so-called "Gldani" prison. As a result of this scandal the Minister of Interior Bacho Akhalaia, the Minister of Corrections and Legal Assistance Khatuna Kalmakhelidze have resigned, and for more than 10 prison officers who participated in the violence against prisoners were detained. All staff of penitentiary agencies was reshuffled. Bacho (Bachana) Akhalaia is detained and wait criminal court decision related abusing of power<sup>12</sup>

However, despite all the measures taken by the authorities conflict received political significance and become one of the most decisive factors in the defeating of the ruling party "National Movement" in the parliamentary elections in October 2012 .

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<sup>12</sup> Former Minister, Head of United Headquarters detained <http://eng.ghn.ge/news-6843.html>

It should be noted that a change of government does not mean “a priori” rapid changes in the prison system, which continues to operate in ways that have remained unchanged since era of Soviet Union. The new authorities have declared an all-out amnesty, which to some extent affected the interests of prisoners. In particular from prison were released more than 10,000 persons (half of total number of prisoners), more than 200 have been fully rehabilitated and obtained the status of political prisoners. It is therefore essential for the new government that came after the parliamentary elections in October 2012 not to make mistakes and crimes of the previous government and to clearly define the conceptual level to violence prevention in the field of law enforcement.

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