



STATE
INSPECTOR'S
SERVICE



2021

REPORT ON THE ACTIVITIES OF THE STATE
INSPECTOR'S SERVICE

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ევროკავშირი
საქართველოსთვის

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State Inspector's Foreword

On May 10, 2019, the State Inspector's Service was established by the decision of the Parliament of Georgia. The country created an institution to have its say and to raise its voice against human rights abuses by state officials. Clearly this was an important event in terms of human rights protection in the country.

The team of the State Inspector's Service did its best to improve the standard of personal data protection in the country on the one hand, and to establish European standards for the investigation of crimes committed by officials on the other hand. Despite numerous legislative or practical obstacles, the Service was able to increase public confidence in its activities in a short period of time. When the Service was moving to the next stage of development and submitted legislative changes to the Parliament of Georgia for the purpose of institutional strengthening, the Parliament of Georgia in an expedited manner, without the involvement of the State Inspector's Service, the international community and the civil sector, within four days abolished the independent agency and the elective position of the head of the agency.

The decision of the Parliament of Georgia to abolish the State Inspector's Service was made in the name of approximation to European standards, while this law, the form and methods of its adoption, have nothing in common with European values. The law was passed in the name of European values, while the European Union, the Council of Europe Commissioner for Human Rights, the UN, representatives of the diplomatic corps accredited in Georgia, Members of European Parliament, the US Ambassador, and OSCE demanded suspension of the adoption and enforcement of the law.

The law abolishing the State Inspector's Service was passed in the name of raising the standard of personal data protection, while the European draft law on personal data protection has been shelved in Parliament for more than two years and none of its provisions have been implemented in this new law. The law was passed in the name of strengthening the investigation service of the crimes committed by officials, while no new effective mechanism was

added to the new investigative service for investigating crimes committed by officials and did not address any of the challenges identified in the reports of the State Inspector's Service. The law was passed on the grounds of incompatibility with each other of investigative and personal data protection functions, although no one asked the Service whether these two functions were compatible with each other or what challenges were faced in the implementation of these two functions by the agency.

The dissolution of an independent state institution by such methods - in an expedited manner, in an opaque manner, with the early termination of the term of office of an elected official - is unprecedented. In all developed countries such reforms are being carried out cautiously, avoiding similar repercussions on officials, based on wide discussions and open, in-depth reviews. Otherwise it threatens human rights and undermines the independence of institutions.

Countries do not set up oversight agencies to unconditionally agree with all government decisions. Oversight agencies are set up in developed countries to have a say when state agencies violate human rights. In contrast, the Georgian parliament abolished an independent body that: never agreed with anyone its decisions and acted only in accordance with the law; bravely imposed liability on public institutions for unlawful interference with humans privacy and misuse of their data; with limited legislative, human, and financial resources did its utmost to investigate the facts of violence perpetrated by law enforcement; constantly fought to punish officials who committed crimes; dared and said out loud that they have been creating problems and obstacles in the process of obtaining evidence and did not provide the evidence - documents, videos - that were necessary to punish officials committing violence; truly stood on the European path and was implementing new, European standards; dared and boldly expressed critical views when the legislative reforms were façade.

The most important tribune for an independent state agency is the parliament. Unfortunately, I have only once had the opportunity to appear before the Parliament of Georgia in person. Having the utmost respect for the institution of the Parliament of Georgia, despite the abolition of the Service, I am submitting the report on the activities of 2021 to the Parliament of Georgia, where the achievements of the Service and the challenges in the process of performing the functions within the competence of the Service are discussed in detail. I hope that the Parliament of Georgia will help the two newly established services to overcome these challenges.

I would like to thank the international community, the diplomatic corps, the non-governmental sector, the Public Defender's Office and all those who have contributed to the development of the State Inspector's Service and expressed their unprecedented support for the Service in the abolition process.

I would like to thank the professional staff of the State Inspector's Service for their ethical and dignified work.

I would like to thank the Deputy State Inspectors - Giorgi Gamezardashvili, Sophio Jiadze and Salome Bakhsoliani for creating this Service and for dignified and courageous decisions.

The State Inspector
Londa Toloraia

I. Mission and Values of the State Inspector's Service

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The mission of the State Inspector's Service is to encourage the establishment of a culture of respect for privacy in the community, carry out effective supervision over personal data protection, ensure thorough, impartial and effective investigation of specific crimes committed by a representative of law enforcement bodies, by an official, or a person equal to an official.

While carrying out its duties, the Service is guided by the following values and principles:

Protection and Respect for Human Rights and Freedoms – Respect for human rights and freedoms is the primary value of the Service. Each decision of the Service is centered on human rights protection;

Independence and Political Neutrality – the State Inspector's Service is independent in its activities, and it is not subordinate to any institution, official and/or political force in making decisions;

Lawfulness – the Service is guided by the Constitution and the legislation of Georgia. All decisions of the Service are based on the law;

Impartiality, objectivity and fairness – the Service carries out its activities with the principles of impartiality, objectivity and fairness;

Involvement of an applicant and a victim – the State Inspector's Service ensures involvement of an applicant and the alleged victim in the proceedings, seeks their position/opinion and protects their interests;

Prompt and comprehensive response – the Service, despite limited human and infrastructural resources, dealt with each case in a timely manner and within reasonable timeframe;

Transparency and Openness – the Service conducts its activities in a transparent manner, is open to cooperation with all sectors, is accountable to the public and proactively disseminates information about its activities;

Professionalism – the Service is staffed by professional and qualified employees selected based on the transparent, multi-stage competition. The State Inspector’s Service constantly strives to recruit professional employees and raise the staff qualification to ensure high quality of its work;

Development-orientation – the State Inspector’s Service regularly assesses its performance, identifies and acknowledges challenges, focuses on their timely solution and development;

Innovation – the Service applies and implements modern approaches and technologies in its work;

Teamwork – the Service's structural units/employees have integrated vision and collaborate to overcome the challenges faced by the institution.

II. The Mandate of the State Inspector's Service

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The State Inspector's Service is an independent state authority accountable only to the Parliament of Georgia.

The State Inspector's Service was established on 10 May 2019 as a successor of the Office of the Personal Data Protection Inspector, which monitored the lawfulness of personal data processing in Georgia since 2013.

Pursuant to the law of Georgia on "the State Inspector's Service", the institution performs its functions in three directions:

- Monitoring the lawfulness of personal data processing (since 2013);
- Monitoring covert investigative actions and activities performed within the central databank of electronic communications identification data (since 2015);
- Ensuring impartial and effective investigation of specific crimes committed by a representative of law enforcement bodies, by an official, or a person equal to an official (since 2019).

In order to monitor the lawfulness of personal data processing, the State Inspector's Service carries out preventive actions and responds to the facts of unlawful data processing by public or private institutions. The Service provides consultations on personal data protection to stakeholders, contributes to public awareness-raising, reviews citizens' complaints and monitors the lawfulness of personal data processing by conducting inspections.

For monitoring covert investigative actions as well as the activities performed in the central databank of electronic communications identification data, the State Inspector's Service receives documents for 24 hours from the court, the Prosecutor's Office and other law enforcement bodies on carrying out covert investigative actions, and from electronic communication companies – about transferring identification data of electronic communication to the law-enforcement authorities. The Service verifies the submitted documents with the information reflected in the electronic systems and controls the central databank through the electronic system. For the supervision purpose, the Service also conducts on-site examination (inspection) of the above-mentioned bodies.

The State Inspector's Service investigates the following crimes committed by a representative of law enforcement bodies, by an official, or a person equal to an official from 1 November 2019:

- Torture - Article 144¹ of the Criminal Code of Georgia;
- Threat of Torture - Article 144² of the Criminal Code of Georgia;
- Degrading or Inhuman Treatment - Article 144³ of the Criminal Code of Georgia;
- Abuse of official powers, committed using violence or a weapon, or the same act resulting in offending personal dignity of the victim - Article 332, paragraph 3, subparagraphs 'b' and 'c' of the Criminal Code of Georgia;
- Exceeding official powers committed using violence or a weapon or by offending personal dignity of the victim - Article 333, paragraph 3 subparagraphs 'b' and 'c' of the Criminal Code of Georgia;
- Coercion to provide an explanation, testimony or opinion - Article 335 of the Criminal Code of Georgia;
- Coercion of a person placed in a penitentiary establishment into changing evidence or refusing to give evidence; as well as coercion of a convicted person in order to interfere with the fulfilment of his/her civic duties - Article 378, paragraph 2 of the Criminal Code of Georgia;
- Other crime resulting in the death of a person, who at the time of the crime was placed in the temporary detention isolator, at the penitentiary establishment or in any other detention facility where s/he, against own will, was forbidden by a representative of law enforcement bodies, by an official, or a person equal to an official to leave the place of detention and/or was otherwise placed under effective control of the state.

The State Inspector's Service is authorized to carry out full-scale investigation and apply operative and investigative actions on the crimes mentioned above.

III. Monitoring the Lawfulness of Personal Data Processing

III. Monitoring the Lawfulness of Personal Data Processing

This chapter reviews the state of personal data protection in Georgia, and the activities carried out by the State Inspector's Service to protect the rights of data subjects.

Main Activities of 2021

- For the first time, an annual plan of inspections was developed based on the criteria for identifying high-risk areas for alleged violations of personal data
- A network of data protection officers has been created in public agencies with whom data protection issues in the public sector, were discussed
- Models of implementation and enforcement of personal data protection legislation were developed for three public institutions
- The practice of periodical publication of Service's important decisions has been introduced
- A recommendation and a video lecture on the rules of video surveillance were prepared
- A recommendation on the personal data processing during the distance learning process was prepared
- A recommendation on the processing of personal data in the online shopping was prepared
- A guideline on access to personal information stored in public institutions has been developed
- A guideline on biometric data processing in the financial sector has been developed
- A guideline on data processing in the field of electronic communications has been prepared
- A handbook on European standards for biometric and genetic data processing has been prepared
- A compilation of Service's decisions on data processing in labor relations and by law enforcement agencies were prepared

- Stories for minors were prepared aiming to raise awareness on the importance of personal data
- A compilation of 10 judgments of the European Court of Human Rights and the Court of Justice of the European Union has been prepared
- An information booklet on personal data protection for representatives of ethnic minorities and person with vision disabilities was prepared
- A distance learning platform on personal data protection issues has been introduced
- A summer school for students with respect to personal data protection was held
- A new rule for assessing the lawfulness of personal data processing through the examination of citizens' applications and the inspections of data controllers has been developed
- A methodology for producing statistics was developed
- A methodology for assessing the level of personal data protection in the country has been developed
- A survey on public awareness in terms of personal data protection was conducted
- Service became a participant in Global Cross Border Enforcement Cooperation Arrangement (GCBECA)
- The Service participated in the 21st meeting of the Central and Eastern European Personal Data Protection Authorities (CEEDPA)
- Service shared its experience with other countries - Kazakhstan and Ukraine

Main Activities of 2020

- Three independent departments (for supervising public and private sectors, and law enforcement bodies) have been established to deal with data protection issues according to sectors
- Criteria for identifying potentially high-risk areas of personal data processing were established
- A self-assessment questionnaire has been developed that enables public and private institutions to assess the status of personal data protection within their organization
- Student project - "Personal Data Protection Ambassadors" has been initiated
- Information brochures on the processing of Identity Card and child registration data were prepared and placed in the Public Service Halls of 14 Georgian cities

- Meetings were held in 7 regions with the representatives of local self-governments, Public Defender's Office and the non-governmental sector
- Two compilations of the State Inspector's decisions on the results of monitoring the lawfulness of the processing of minor data and health-related data were prepared and published
- Several recommendations have been developed for personal data protection in various areas during the pandemic
- An information document on personal data protection and the rights of voters during the election process was developed
- Two recommendations were developed: "How to protect yourself from cyberbullying" and "About the risks related to TIK TOK application"
- A guideline for developers of electronic systems and applications has been prepared
- Two video lectures on data processing in the health sector and personal data security in the internet space were prepared
- A memorandum was concluded with the Personal Data Authority of Ukraine.

Main Activities of 2019

- The Service presented the legislative proposal on “Personal Data Protection” to the Parliament of Georgia
- Georgia hosted the Spring Conference of European Data Protection Authorities for the first time
- A recommendation on personal data processing by commercial banks was developed
- A handbook on European Data Protection Law was translated and published in Georgian
- Guiding Principles on the Protection of Privacy in Media Coverage was translated and published in Georgian
- Within the scope of the Council of Europe distance learning platform (HELP) E-course on personal data protection and the right to privacy was implemented for the first time in Georgia
- New webpage was launched for the purpose of improving public communication
- Electronic system for managing consultations, incoming applications/notifications, as well as performed inspections was introduced

01

Introduction

1. Introduction

In 2021, as in previous years, raising public awareness and applying prevention-centered policies remained a priority for the State Inspector's Service. Although the State Inspector's Service performed its functions against the background of epidemiological situation this year as well, the Service has implemented a range of large-scale awareness-raising projects across Georgia which aimed at improving data protection standards: "Personal Data Protection Ambassadors", who were students selected from all regions of Georgia, organized dozens of campaigns; A number of student forums and conferences were held; Competitions were organized for school children; Meetings with the representatives of local self-governments and non-governmental sector were held in all regions of Georgia; Recommendations were developed for different target audiences; Compilation of thematic decisions issued by the State Inspector were published; A distance learning course has been introduced for all interested parties; Dozens of training were conducted for public and private sector representatives, etc. In addition, a tool to measure the state of personal data protection improvement in Georgia every year and plan each subsequent year based on this, has been created.

In 2021, in parallel with awareness raising, the State Inspector's Service actively monitored the lawfulness of data processing in the public and private sectors, both based on the citizens' applications and notifications, as well as on its own initiative. Special emphasis was put on the organizations processing large volumes of data and newly introduced data processing procedures.

Despite the progress made in the field of data protection in Georgia, the protection of fundamental principles of data protection still remains as the main challenge for the country. Unfortunately, 2021 was a year full of challenges in terms of data protection: thousands of files were leaked, allegedly containing personal communications of other persons; Personal data was illegally disclosed for discrediting people; Documents and data that should have been available only to public or private institutions, were released on the social network and media. etc.

Despite the efforts of the State Inspector's Service, a new law on “Personal Data Protection” aiming to increase public and private sector responsibilities in the field of personal data protection, has not been adopted yet. Also, our country has not signed the 108+ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which would contribute to establishing a higher standard of data protection in Georgia and realization of internationally recognized principles.

To establish a high standard of personal data protection, taking effective steps shall continue. It is necessary to: Join forces in this field; Have a proper and effective legislation; have a clearly stated policy on data protection priorities; Increase public and private sector accountability; Further raise public awareness; Establish a higher culture of personal data protection which will make the public think about respect for the privacy of others and the protection of personal data, as well as on serious consequences of the illegal use (dissemination) of data, not only when it touches upon the individual, but also when it relates to protection of the rights of others - regardless of gender, origin, ethnicity, religion, political opinion or other ground; A strong and independent supervisory body that will be equipped with effective legislative mechanisms and will enjoy solid guarantees of inviolability, is especially crucial.

02

General Statistical Data

2. General Statistical Data

In 2021, for the first time the State Inspector's Service worked based on the principle of sectoral approach in the field of personal data protection. Three independent departments (Public Sector Oversight Department, Private Sector Oversight Department, and Law Enforcement Oversight Department) supervised data protection according to sectors.

In 2021, in parallel with the inspection of data processing procedures, the efforts of the State Inspector's Service were directed at prevention – provision of consultations and raising awareness of public and those involved in data processing procedures.

In order to prevent unlawful processing of personal data, the Service provides consultations based on the applications of both private and public sector representatives, as well as citizens. Consultations are provided both orally (by telephone or in-person meetings) and in writing.

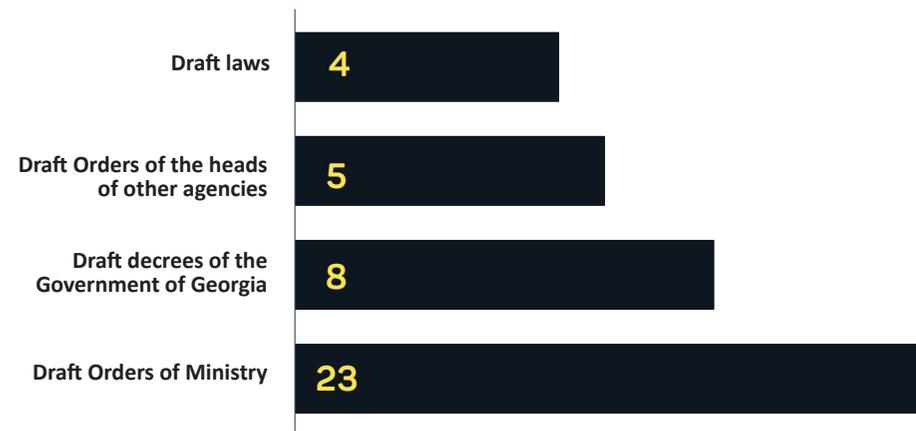
Number of consultations provided by the Service in 2021



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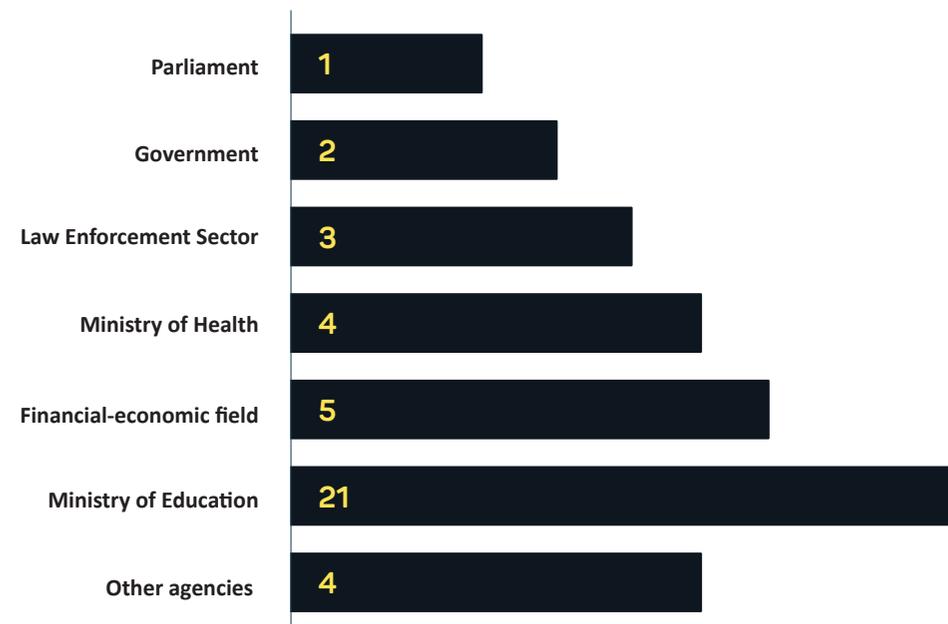
Also, in order to introduce a high standard of data protection in national legislation and protect the rights of the data subject, the State Inspector's Service, based on the applications of public institutions, provides legal opinion on draft legislative acts and subordinate normative acts by assessing their compliance with the Law on Personal Data Protection. Legal assessment of draft legislative and subordinate normative by the Service promotes to prevent unlawful processing of personal data. In 2021, the State Inspector's Service evaluated the compliance of 40 legislative acts with the Law of Georgia on Personal Data Protection.

Types of legislative acts on which the Service provided legal opinion



In 2021, fourteen public institutions applied to the State Inspector's Service to assess the compliance of the drafted legislative and subordinate normative acts with the Law of Georgia on Personal Data Protection, in particular:

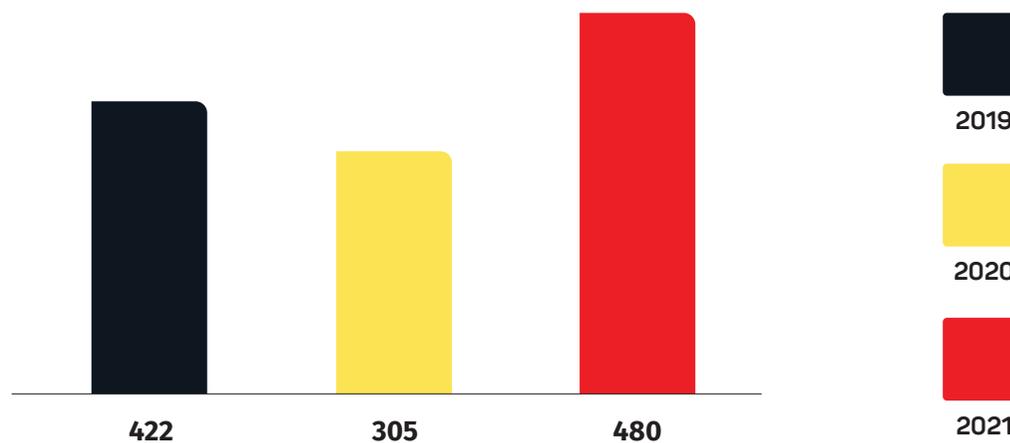
Institutions which addressed the Service for issuing legal opinion



Legislative acts drafted by the public institutions are not frequently foreseeable due to which the data processing procedures remain unclear for the data subject together with his/her rights in this process. The following shortcomings are mainly identified in the legislative acts: types of the personal data to be processed, the specific and clear goals of personal data processing are not defined; No data storage time-frames are defined or inappropriate time-frames are provided; The rule for documenting the data processing procedure and the measures to be taken for data security are not determined; Individuals with access to data are not identified; obligation for recording activities performed in relation to data processing is not established. In parallel with the challenges outlined above, unfortunately, not all legislative and subordinate normative acts which includes personal data processing are submitted by public institutions to the State Inspector's Office for legal examination or they are submitted with delay (when the technical means of data processing regulated by the legal act have already been created, for instance, an electronic program in which it is impossible to make changes due to additional required financial resources). Therefore, prompt application to the data protection authority in the process of drafting and adopting legislation (at the process planning stage) and taking into account the opinion of this body is crucial.

In parallel with the consultation, citizens actively addressed the Service about alleged cases of unlawful data processing. In 2020, due to the pandemic, the number of citizens applying to the Service has decreased, although in 2021 this figure has increased in comparison to the previous year.

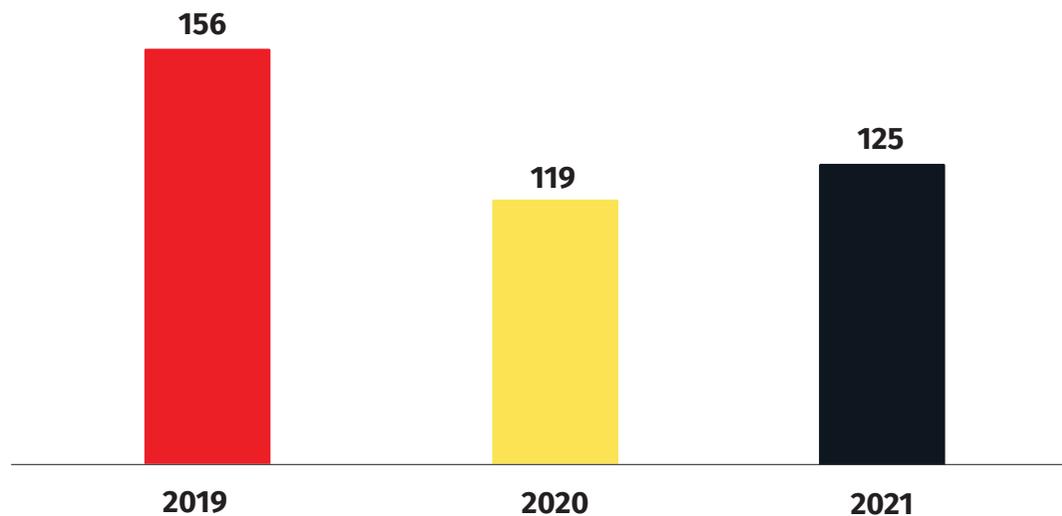
Citizens' applications



In 2021, 56% of citizens' applications concerned data processing in the private sector, 21% - in law enforcement agencies, and 23% - in other public agencies. It should be noted that in comparison to the previous years, number of applications lodged against private institutions has decreased, while the percentage of applications against law enforcement agencies and public institutions has increased.

The State Inspector's Service inspects public and private institutions both on the basis of citizens' applications and on its own initiative. Although the situation created by COVID-19 was maintained in 2021 (remote work of institutions, which complicated coordination with public and private institutions), the Service was able to increase the number of inspections.

Conducted Inspections



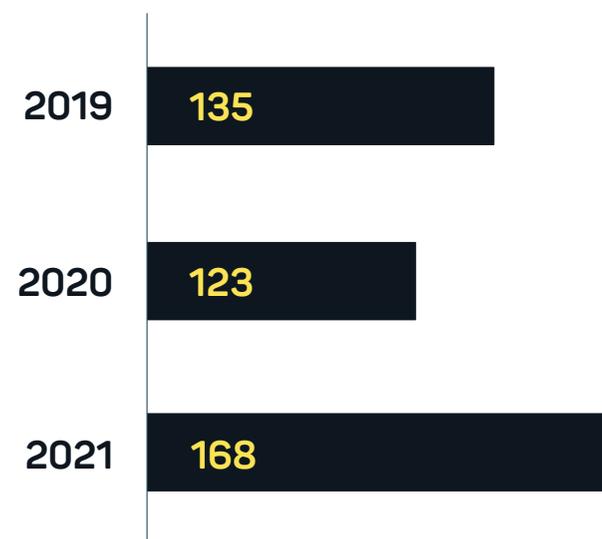
In 2021, 69% of examinations (inspections) were carried out as a response to citizens' applications and notifications, while 31% with the initiative of the Service.

The Service selected the institutions to be inspected on its own initiative on the basis of the criteria developed in 2020 pursuant to the international standards (such criteria include: data processing in large volumes, processing of special categories of data, processing of personal data of vulnerable groups (including persons with disabilities) and data of minors, big number of employees at data controller organization, use of innovative technologies during personal data processing, etc.). Consequently, those private and public institutions were identified where the possibility of violating the right to personal data protection was high.

31% of examinations (inspections) carried out with the initiative of the State Inspector's Service concerned the lawfulness of personal data processing in the public institutions, 46% - in private organizations while 23% - in law enforcement agencies.

In 2021, the State Inspector's Service identified 168 cases of unlawful processing of personal data. 59% of administrative offences revealed by the Service related to unlawful data processing in the private sector, 24% - in the public sector, and 17% - in law enforcement bodies.

Number of revealed administrative offences

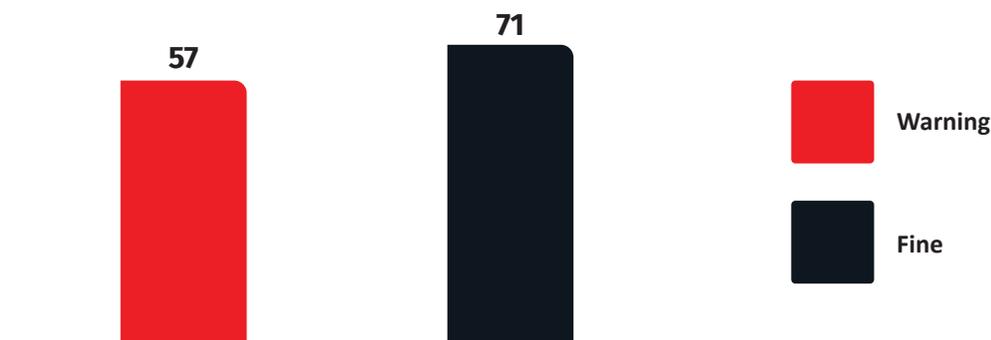


Most of the administrative offenses identified by the Service in 2021 concerned violations of data processing principles and non-compliance with the data security requirements. In particular, the detailed picture of administrative offences is as follows:

- 50 (30%) – violation of the principles of data processing (Article 44 of the Law of Georgia on Personal Data Protection);
- 36 (22%) – failure to comply with the data security requirements (Article 46);
- 23 (14%) – violation of the rules for informing a data subject (Article 50);
- 19 (11%) – processing data without the legal grounds (Article 43);
- 10 (7%) – violation of the video surveillance rules (Article 48);
- 9 (5%) – use of data for direct marketing purposes in violation of rules (Article 47);
- 9 (5%) – data processing by an authorized person in violation of the rules provided by law (Article 52);
- 4 (2%) – processing of a special category data without legal grounds (Article 45);
- 4 (2%) - violation of rules on processing the building entry/exit data of public and private institutions (Article 49);
- 2 (1%) – assignment to the data processor by the data controller in violation of rules (Article 51);
- 2 (1%) – non-compliance with the requirements of the State Inspector’s Service (Article 53).

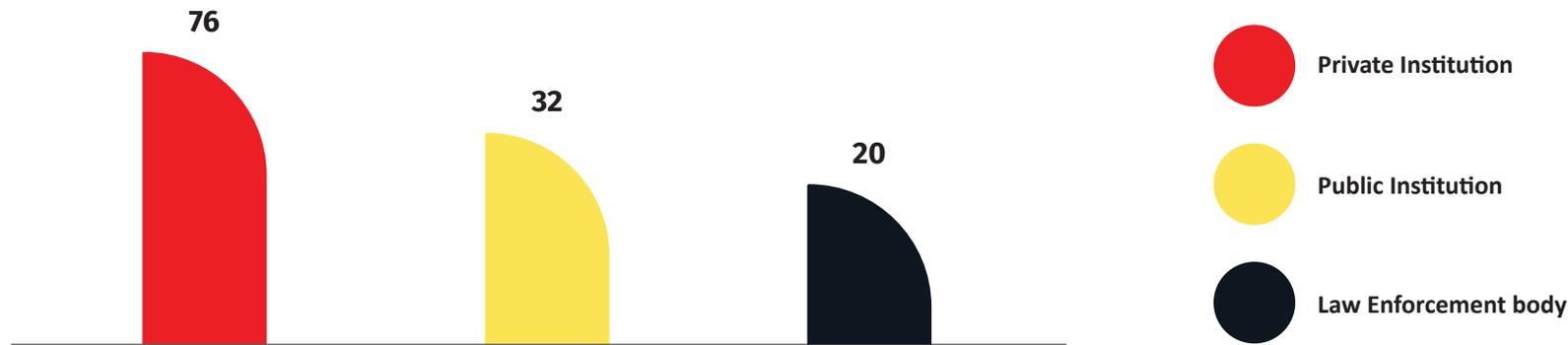
In 55% of revealed administrative offences fine was imposed as an administrative penalty, while in 45% of cases warning was used.

Imposed administrative penalties



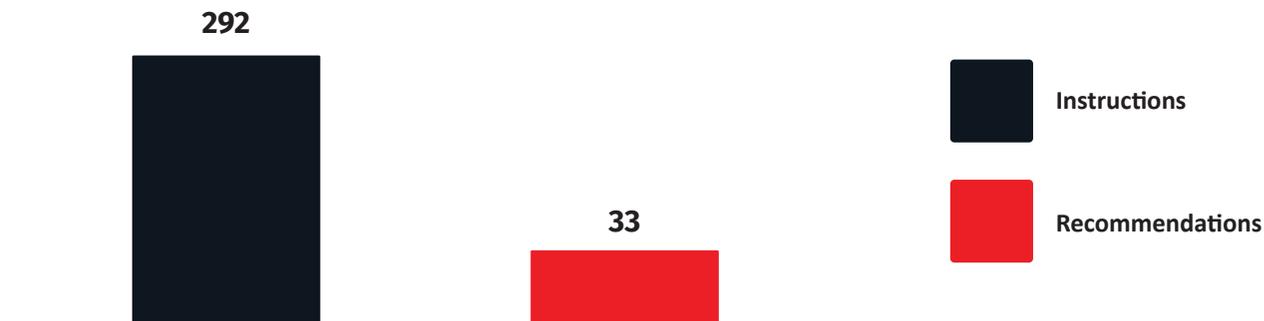
In 59% of cases, administrative liability was imposed on private institutions, in 25% – on public institutions while in 16% – on law enforcement bodies.

Persons being imposed with administrative liability



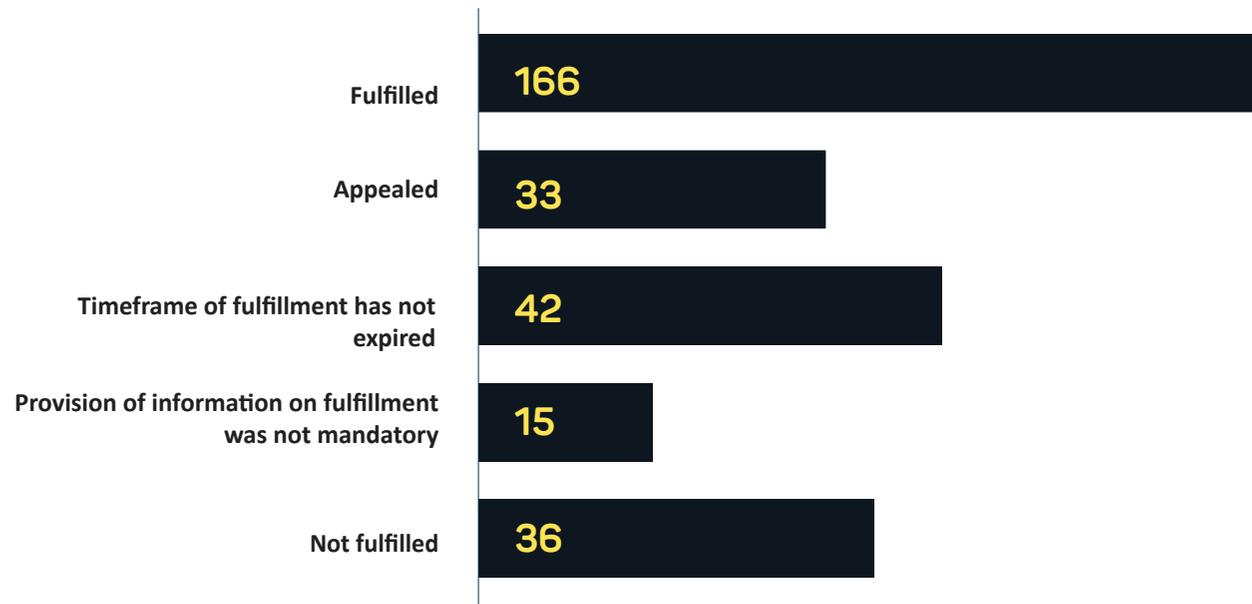
The State Inspector’s Service focused not only on imposing administrative penalties but also on eliminating the shortcomings revealed in the institutions. Consequently, to eradicate the identified deficiencies, the State Inspector issued mandatory instructions and recommendations. In 2021, the State Inspector's Service issued 325 instructions and recommendations, from which 48% related to the private institutions, 29% - public institutions, while 23% concerned to law enforcement bodies.

Instructions and Recommendations issued by the Service



As for the fulfillment status of the instructions issued by the Service, 57% of them have been fulfilled for the time being.

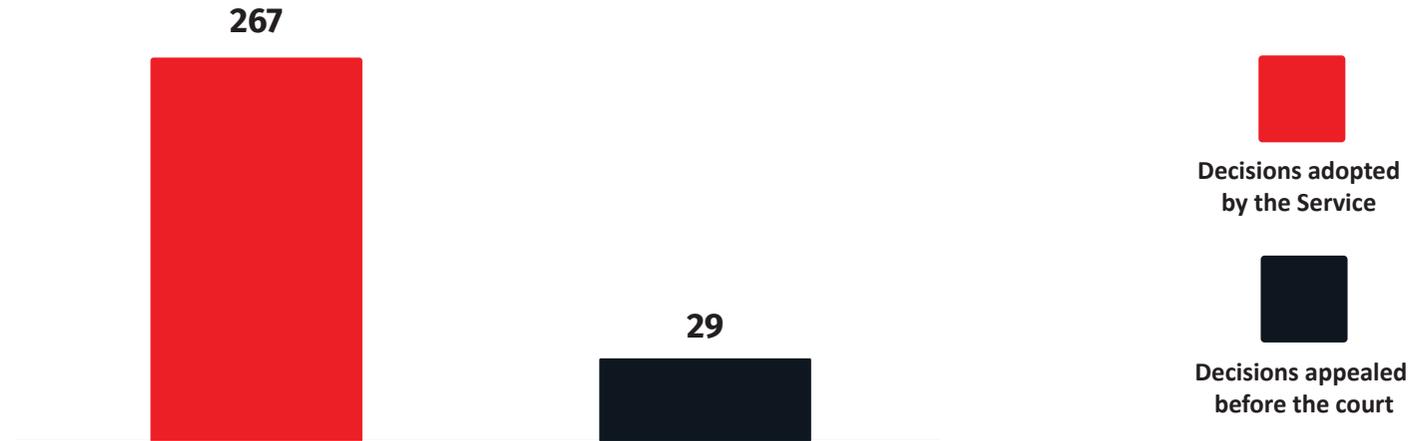
Status of fulfillment of the instructions issued by the Service



It should be noted that the percentage of fulfilled instructions is higher in private institutions than in public institutions. In particular, private institutions fulfilled 75% of the instructions assigned to them, public institutions - 33% of the instructions while law enforcement agencies fulfilled 28% of instructions assigned to them.

As for appealing the decisions of the State Inspector in court, out of 267 final decisions adopted in 2021, 29 decisions have been appealed so far (which is 11% of the decisions). Out of 29 cases, the court examined only 2 of them (the lawfulness of the decisions adopted by the Service towards the Ministry of Justice of Georgia and the Special Penitentiary Service). The court overturned both decisions of the Service. In other 27 cases, proceedings are still pending.

Figure of the State Inspector's decisions appealed before the court



In 2021, the court also examined 7 cases related to decisions adopted by the State Inspector / Personal Data Protection Inspector in previous years (one decision of the Personal Data Protection Inspector adopted in 2017, one decision of the State Inspector adopted in 2018, three decisions of the State Inspector adopted in 2019 and two decisions of the State Inspector adopted in 2020). The court upheld 5 decisions of the State Inspector, overturned 1 decision, while the Court of Appeals returned 1 decision to the City Court for re-examination.

03

**Protection of Personal Data of
Minors**

3. Protection of Personal Data of Minors

The Convention on the Rights of the Child and the Code on the Rights of the Child adopted in 2019 oblige the State to take into account the best interests of the child in each particular case while making decisions with respect to the child.

One of the clearest examples of violating the best interests of the child is the unjustified interference with the privacy of minors and the unlawful processing of their personal data. It is noteworthy that the pandemic has increased the risks of unlawful processing of a child's personal data as they use the internet more frequently (some services, including the education process, have moved to remote mode).

Minors usually have scant information about the harmful consequences of unlawful data processing and are less aware of the importance of protecting their own personal data. Further, the unlawful disclosure or misuse of minors' personal data may result in violation of the dignity of the child, his/her stigmatization, bullying, discrimination and / or have other adverse effects on the minor's emotional state and subsequent development. Consequently, monitoring the lawfulness of the processing of minor data remained as a constant priority for the State Inspector's Service.

In 2021, the State Inspector's Service continued to work actively for protecting the data of minors: for this purpose, the Service carried out a range of measures aimed at raising the awareness of those responsible for processing minors' data and preventing the violations of minors' rights, also examined cases of personal data processing of minors.

Awareness-raising and implemented preventive measures

03

Measures taken by the State Inspector's Service for personal data protection of minors, were aimed at improving data processing in institutions, on the one hand, and raising awareness of children and their parents, on the other hand. In particular:

- In 2021, the Service successfully continued the project of "Ambassadors of Personal Data Protection" launched in 2020, in the framework of which students interested and motivated in personal data protection, who were selected from all regions of Georgia, conducted informational meetings and training in different regions (Samtskhe-Javakheti, Imereti, Kakheti, Samegrelo) with minors, teachers involved in the data processing of minors and other staff of educational institutions.
- The staff of the State Inspector's Service trained more than 60 employees of the Ministry of Internal Affairs of Georgia (investigators of the Juvenile Division and persons responsible for monitoring juvenile criminal cases), more than 155 representatives of 65 municipalities and more than 150 representatives of general educational institutions (teacher and school principal). Meetings and training on the right to personal data protection were also held with more than 90 school children and students.
- In parallel with information meetings and training, the State Inspector's Service directed its efforts at raising the standard of data protection in those organizations which processed minor data in large volumes. To this end, with the support of the United Nations Development Programme (UNDP) Governance Reform Fund (GRF) project "Enhancing Personal Data Protection in Georgia" and with the involvement of the Innovation and Reform Center (IRC), the State Inspector's Service conducted description of data processing and assessed their compliance with the data protection legislation in LEPL - Galaktion Tabidze 51 Tbilisi Public School, and LEPL – Agency for State Care and Assistance for the Victims of Human Trafficking.

The following procedures of personal data processing of school children and teachers were described in the school and evaluated in terms of compliance with personal data protection legislation: registration of first graders, production of school journal, data processing during distance learning and by collegial bodies (including Board of Trustees, Teachers Council), video-monitoring, data processing procedures by the school in the electronic education systems and databases, including - Eflow, e-school www.emis.ge.

Data processing procedures under various sub-programs of LEPL - Agency for State Care and Assistance for the Victims of Human Trafficking were described and assessed in terms of compliance with personal data protection legislation. In particular: sub-programs related to social rehabilitation, child care, promotion of early childhood development, provision of care for children with severe and profound disabilities at home, assistance to families with children who are in a crisis situation; data processing procedures during adoption and foster care (including during international adoption); data processing procedures in Tbilisi Infant House and shelters.

In view of the assessment results, recommendations were prepared on measures to be implemented for data protection, which implies the development of relevant policy documents and procedures, and conduction of training for staff.

The project outlined above aimed at bringing the practice of the institutions involved in the project in line with data protection standards, on the one hand, and creation of guidelines/ role models/examples for institutions of similar types, on the other hand.

- To ensure data protection in the distance learning process, the State Inspector's Service developed 2 thematic recommendations (for educational institutions and school children / students) on the personal data processing during the COVID-19 pandemic. These recommendations were prepared with the support of USAID and the involvement of a consulting company - UAI Ltd based on the results of written surveys and interviews with various educational institutions;

- To raise children's awareness on personal data protection and encourage their involvement in the data protection process the State Inspector's Service with the support of the United Nations Development Programme (UNDP) conducted a photo contest "My Personal Data are Mine". Up to 100 school children from different regions of Georgia participated in the competition, and five authors of the best thematic photo were awarded.

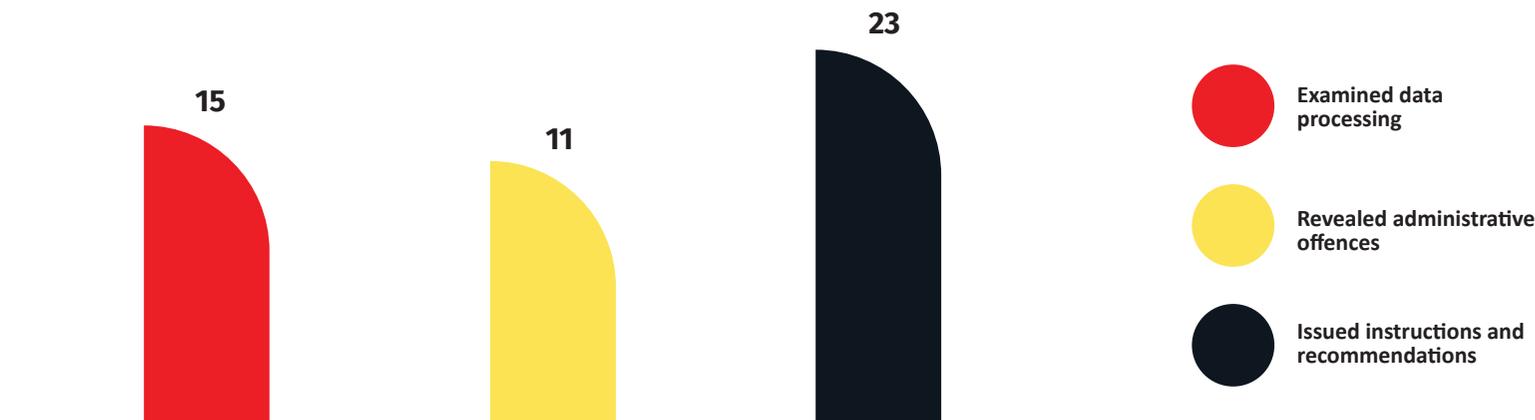


Examined processes

In 2021, the State Inspector's service examined 15 cases of minor's data processing, 7 of which were carried out based on the applications of citizens, and 8 - with the initiative of the Service. The received applications mainly related to violation of the rules for informing (failure to provide information / documentation on the administrative offense case pending against a juvenile in the law enforcement body, also non-provision of data stored about minor at the medical institution to the minor / his/her legal representative), unlawful obtaining of minor data and its disclosure on social media.

As a result of the cases examined by the Service, administrative liability was imposed on 7 persons for 11 offenses. As a sanction, a warning was issued to 4 persons, while 3 persons were fined. In parallel with imposing the administrative penalties, in order to improve the data processing procedures in public and private institutions and ensure their compliance with the Law of Georgia on Personal Data Protection, the Service issued 5 recommendations and 18 mandatory instructions.

Processing minors' data



In 2021, upon the initiative of the State Inspector's Service, the procedures of personal data processing of minors were examined in the organizations which process large volumes and / or sensitive data related to minors on a daily basis. Emphasis was put on electronic processing of minor data. Regional coverage was also considered. The Service examined / inspected:

- NNLE "Tbilisi Kindergarten Management Agency." The inspection was initiated by the Service, as the agency (which is the administrator of public pre-school child-care institutions - kindergartens throughout Tbilisi) processes a large amount of information about children. The inspection included the lawfulness of obtaining and storing data during the registration process of public kindergarten children by the Agency. Electronic registration of children in public kindergartens has been carried out through a special registration form posted on the website of the Agency since 2011. From this period until the inspection, the data of 53 436 children, as well as their parents / legal representatives were processed through the website of the Agency.

As a result of examining the lawfulness of the data processing in the agency, the State Inspector's Service established that it is possible to find the number, name and address of the public kindergarten where a particular child is registered through the agency's website. No verification or authorization of the parent / legal representative was required to obtain this information, it was sufficient to indicate the child's personal number in the appropriate field of the website. Consequently, anyone, who knew the child's personal number, could obtain information on the child's kindergarten and its location. Given the risks of publicly accessing the child's data (his / her vulnerability, simplification of becoming a victim), processing of minor's personal data in this form was considered a violation by the Service. Further, as revealed during the examination, the agency had no deadline for storing the data processed during the registration process and the data was stored for an indefinite period.

Decision of the Service: The Agency was held liable for an administrative offence provided for in Articles 44 and 46 of the Law of Georgia on Personal Data Protection (violation of data processing principles and non-compliance with the data security requirements). At the same time, in view of the best interests of the child, it was assigned to modify access to the data on the website.

Status of fulfillment of the instruction: in the process of fulfillment

- NNLE Javakheti Ninotsminda St. Nino Boarding School of the Patriarchate of Georgia for the Homeless, Orphans and Children without Parental Care. The chief of the boarding school publicly posted several audio-video recordings on his personal Facebook page, which fully enabled the identification of minors reflected in the same recordings, made their identities, visual images, voice, psycho-emotional state accessible. The videos had hundreds of "shares" and "views" within hours of being posted, and tens of thousands of "views" within weeks of being released, with thousands of "reactions" and hundreds of "comments" from various social network users. In view of the best interests of the minors, as soon as the information was spread on the social network, the State Inspector immediately started inspecting the boarding school. The inspection aimed at examining the lawfulness of disclosure of audio-video recordings reflecting minor beneficiaries by the boarding school.

After examining the lawfulness of the data processing in the boarding school, the State Inspector's Service established that despite the development around the boarding school in May-June 2021 (there was a suspicion of violence against children in the boarding school) and the great public interest with respect to the legal status of the beneficiaries living there, special care was needed when disclosing minors' personal data. Prioritizing the best interests of the child over other interests is recognized by both national and international law. Consequently, the chief of the boarding school, whose primary duty was protecting the rights of the children and had a special role in protecting the confidentiality of conversations and private meetings with minors, was obliged to assess the above-mentioned threats and not disclose the data in this form and scope. It is noteworthy that during the inspection process from July 1, - to July 12, 2021, the boarding school deleted the videos published on the social network.

Decision of the Service: an administrative liability was imposed on Boarding School for administrative offence provided for in Article 44 of the Law of Georgia on Personal Data Protection (violation of data processing principles).

- Production of cards for reduced rate travel for school children and students in Batumi municipal transport. The inspection was initiated by the Service, as data on multiple persons are processed for ensuring reduced rate travel for school children / students in municipal transport, and in this process, data on minors are processed. Within this program, data of 11,988 school children and 8,493 students were processed as of August 17, 2021.

As a result of examining the lawfulness of data processing, the State Inspector's Service established that based on the resolution of the Batumi City Council, within the funding allocated from Batumi budget, both public and private organizations (including Batumi City Hall - for the allocation of finances required for reduced rate travel and the Bank - for the issuance of travel cards) are involved in the data processing of school children and students for the purpose of production of travel cards required in municipal transport. Within the examination, no administrative offences were revealed in the data processing of school children and students, however, it was found that due to the legislative shortcoming, the resolution of the Batumi City Council was not fully tailored to the current practice and needs. In particular, the resolution of the City Council provided for the data processing of only a certain part of school children, while the data processing of other was carried out with the consent of the legal representative of the school children.

Decision of the Service: To ensure the foreseeability of the data processing procedure, Batumi City Council was recommended to eradicate the above-mentioned shortcoming.

- LEPL - Ivane Javakhishvili Tbilisi State University and LEPL - Batumi Shota Rustaveli State University. The examination was initiated by the Service as universities process large volumes of personal data about many individuals. The inspection examined the lawfulness of processing student data by universities through electronic portals. The inspection revealed that one of the portals also has an employment function through which, in some cases, student data becomes available to potential employers. Universities process the data of more than 118,000 students / graduates (including juvenile students) through these portals.

After examining the lawfulness of data processing in universities, the State Inspector's Service established that the universities did not fully record the actions taken in relation to the student data while processing their data through electronic portals. For instance, there was no record of students' data being browsed / downloaded by the employees (administrative or academic staff), which, given the wide range of persons with access to the data, posed risks of unlawful data processing and their unauthorized use. At the same time, in some cases, data were obtained from the students and / or became available to potential employers through the same portals, although there was no need for obtaining/sharing this data. For example, the students were requested to fill in the fields related to their marital status on the portal of LEPL - Ivane Javakhishvili Tbilisi State University, while LEPL - Batumi Shota Rustaveli State University, with the consent of the student, shared with the potential employer the date of the student's last visit to the portal and IP address.

Decision of the Service: Universities were found responsible for administrative offences provided for in Articles 44 and 46 of the Law of Georgia on Personal Data Protection (violation of data processing principles and non-compliance with the data security obligations) and at the same time, were instructed to eliminate violations identified during the inspection.

Status of fulfillment of the issued instruction: fulfilled.

- LEPL - National Agency for Non-custodial Sentence Enforcement and Probation. As the agency processed data in large volumes, the inspection was conducted upon the initiative of the Service and included an examination of the lawfulness of the processing of biometric data of convicts, including juvenile convicts, by the agency. As of March 2021, the agency was processing biometric data (fingerprints) of approximately 14,000 convicts.

After examining the lawfulness of data processing at the LEPL - National Agency for Non-custodial Sentence Enforcement and Probation, the State Inspector's Service established that the specific actions performed in relation to the data were not recorded in a special electronic system for processing biometric data of convicts - actions taken by administrators / developers (whose responsibility is to administer the database, eliminate technical defects, adopt changes) were not recorded.

Decision of the Service: In order to minimize the risks of unlawful data processing, the Agency was instructed to eliminate this shortcoming.

Status of fulfillment of the instruction: fulfilled.

- Apart from the above-noted, on the basis of the applications of minors, their legal representatives and / or their representative non-governmental organization (mainly NNLE Partnership for Human Rights), the Service examined the lawfulness of informing (provision of information and / or documentation related to minors) minors/their legal representatives by various public (including LEPL – Agency for State Care and Assistance for the Victims of Human Trafficking, the Ministry of Internal Affairs of Georgia) and private organizations.

Examination of the lawfulness of data processing in various institutions has revealed the cases when minors and / or their legal representatives were not provided with documents and / or information containing their data in a timely manner as set by the law or were not provided at all, which may cause significant harm to minors or hinder the realization of his/her other rights.

Decisions of the Service: Data controllers were held liable for an administrative offence provided for in Article 50 of the Law of Georgia on Personal Data Protection (violation of the rules for informing the data subject). Relevant organizations were also instructed to develop and implement effective mechanisms for ensuring timely and proper information of the data subjects.

Key Findings and Recommendations

03

According to the international standards, the processing of a child's personal data is subjected to higher standards, requires more protection, and obliges organizations to act in the best interests of the child. Despite the strict regulations in this area, the cases examined by the Service and taken measures show that some irregularities and shortcomings are revealed while processing minor data by various public and private institutions. In particular:

- Most of the organizations fail to properly assess the risks of violating the best interests of the child in relation to each procedure of minor data processing (for example, placing information about a child's kindergarten in an easily accessible form). Without such an assessment, the tools and forms selected for processing a child's personal data often pose such risks of harming the best interests of minors, which may leave an indelible trace on the child's psyche and development;
- Most of the organizations have not taken adequate and effective measures to protect data security. For example, most data controller organizations do not record all actions performed in relation to minor data in electronic systems (for instance, data browsing, downloading, editing facts). Without recording all data related actions, the organization will not be able to properly monitor who, when, for what purpose, and to what extent had access to minor data. Also, in a specific case - for example, when a minor's data is disclosed in violation of the law - it becomes difficult or impossible to identify the person responsible for the unlawful disclosure of the data;
- In some cases, organizations have no defined timeframes for storing minor data keeping personal data indefinitely. Some data become obsolete over time, lose their relevance, and there is no need for keeping it any longer. Storing such information indefinitely can be particularly detrimental to minors, given the importance of their integration into society and development;

- The cases were revealed when data controller organizations did not properly provide to the data subject children and/or their legal representatives information / documents provided by the law on Personal Data Protection which contained minor's data despite their requests or provided within an unreasonable (delayed) time, notwithstanding the fact that provision of information / documentation to minors in a timely manner is often directly related to realization of their vital rights. Given that, it is crucially important for each organization to take proper responsibility for the request of the minor / his/her legal representative with respect to provision of information / documentation containing the child's personal data, and ensure that their request is met within a reasonable time.

To raise the standard of data processing of minors, it is important that organizations whose activities are related to minors, pay more attention to the protection of children's rights in this field. To this end, organizations should develop a data processing policy document describing data processing procedures in a language understandable to minors together with their rights in this process. It is also important for organizations to periodically raise awareness of persons involved in the personal data processing of minors (for example, principals, teachers, resource officers, social workers) on the issues related to personal data processing / protection.

04

**Personal Data Processing through
Video-audio Monitoring**

4. Personal Data Processing through Video-audio Monitoring

Video surveillance is one of the most common forms of personal data processing used in almost every field of activity. In the world of modern technology, video surveillance systems, due to their diverse functions, give the possibility of processing (obtaining, recording, storage) various types of personal data in large volumes. Most of the video surveillance cameras have the function of live mode monitoring, night-vision, maneuver, remote observation, detecting details (including those invisible to the human eye), audio recording, as well as the possibility to identify unique human features (such as face), study and analyze their behavior. Regular and systematic monitoring of a person is possible through video surveillance. The practice of the State Inspector's Service reveals that in parallel with video surveillance, a number of cases of data processing through audio monitoring has significantly increased, which poses risks of unlawful processing of personal data and violation of the right to privacy.

Movement without observation and maintaining the confidentiality of own behaviors and characteristics is an essential part of private life. Therefore, it is crucial the video surveillance systems and the organizational and technical measures taken during their operation, the timeframe for storing the videorecording, the forms of their use and other issues related to the personal data processing of the persons recorded on the video to be in full compliance with the current legislation. Supervision of the video surveillance conducted by natural persons, public and private institutions remained a priority for the State Inspector's Service in 2021.

Awareness-raising and implemented preventive measures

The State Inspector's Service has taken various measures related to the personal data processing through video-audio monitoring, which served to ensure compliance of personal data processing through video-audio monitoring with the legislation and to raise public awareness. In particular:

- The Service has developed a detailed and comprehensive recommendation on video surveillance, which includes the rules of video surveillance on the street and public transport, in public and private institutions and residential buildings, as well as the specifics of video surveillance by the law enforcement agencies and practice of the European countries. It is noteworthy that the recommendation provides samples (in the form of attachments) for data controllers on warning data subjects about video surveillance and their rights;
- In parallel with the information meetings and training, in 2021 the State Inspector's Service shared a video lecture via Facebook on the topic - "Rules for video surveillance and security of personal data obtained through this way." The video lecture aimed at providing information to the persons conducting video surveillance on the regulations established by the Law of Georgia on Personal Data Protection and at informing the data subjects about their rights in the process of video surveillance.



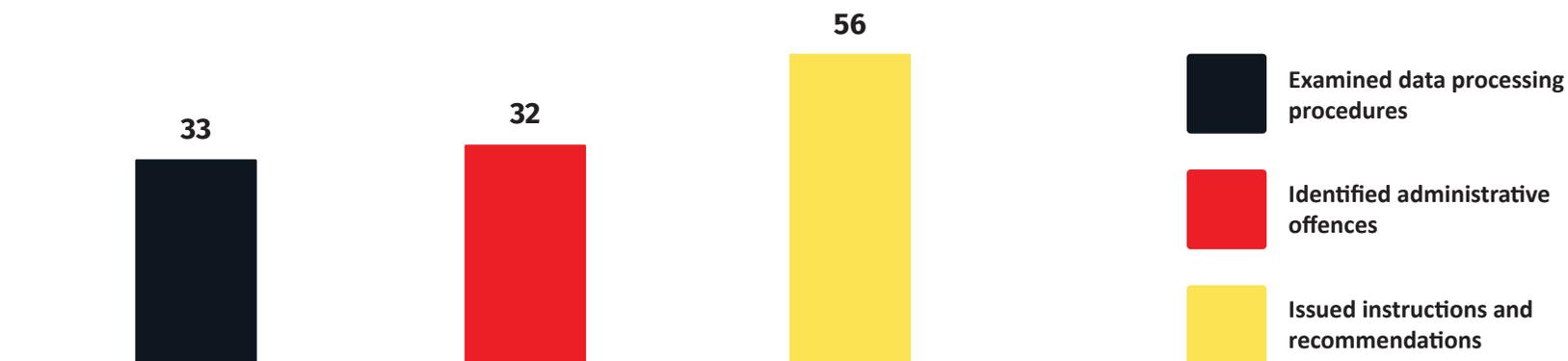
Examined processes

In 2021, the State Inspector's Service examined 32 cases of personal data processing by various public or private institutions, as well as individuals through video-audio monitoring, out of which 23 examinations were carried out on the basis of citizens' applications/notifications, while 9 – upon the initiative of the Service.

Citizens mainly referred to the video surveillance in the fitting rooms of the shopping stores, the video surveillance of entrance to the apartment by the neighbors, the audio monitoring of the pharmacy network, the video surveillance without the appropriate warning sign, etc.

As a result of the cases examined by the Service, administrative liability was imposed on 25 persons for 33 offences. As a sanction, a warning was issued to 17 persons, and a fine was imposed on 8 persons. In parallel with the administrative penalties, the Service issued 2 recommendations and 54 mandatory instructions for improving data processing procedures in public and private institutions and their alignment with the Law of Georgia "On Personal Data Protection".

Personal Data Processing through video-audio monitoring



In 2021, the State Inspector's Service put particular emphasis on supervision of the lawfulness of data processing through audio monitoring. Regional coverage was also considered. The Service examined / inspected:

- LEPL - Center for Emergency Coordination and Urgent Assistance. The examination carried out on the basis of a citizen's application, included the lawfulness of the personal data processing by means of audio recordings through video surveillance cameras installed in ambulances intended for medical emergency brigades by the Center.

As a result of examining the lawfulness of the data processing at the center, the State Inspector's Service established that the Center through video surveillance cameras installed in ambulances recorded the conversations of brigades' members sitting in front of the vehicle. The Center indicated that audio recording aimed at controlling the quality of the performance of duties and responsibilities by medical staff, as well as at preventing / protecting the Center's and other persons property, including inventory in vehicles, from infringement. The State Inspector considered that the continuous recording of the brigade members' communication was not an adequate and necessary means of data processing in order to achieve the goal(s) named by the Center, as the facts of late departure and delayed return (named by the Center) were controlled via GPS. Accordingly, this goal was achieved through alternative effective mechanisms of data processing. It also remained unclear how the audio recording of the staff served for preventing the inventory damage. It is also noteworthy that during the inspection process, the Center replaced the old audio-video equipment with a new one, which no longer recorded the conversations of the brigade members.

Decision of the Service: The Center was held liable for an administrative offence (violation of the principles of data processing) provided for in the first paragraph of Article 44 of the Law of Georgia on Personal Data Protection. At the same time, the Center was instructed to delete the data processed through audio recording.

Status of fulfillment of the instruction: fulfilled.

- Ministry of Internal Affairs of Georgia. The State Inspector's Service, on its own initiative, decided to examine the lawfulness of data processing of job seekers in the Ministry, as the Ministry processed large amounts of personal data about candidates, including the Healthcare Service (where job seekers undergo medical examination) corridors and the cabinet of the Medical Commission's chair, where video-audio monitoring was conducted.

The examination of the Ministry revealed that audio recordings were also being made through several video surveillance cameras installed in the corridor of the Healthcare Service and the cabinet of the Chairman of the Medical Commission. According to the Healthcare Service, they did not intend to record audio in the corridors and the data was processed in this way according to the capability of the camera. Accordingly, the Healthcare Service ensured the audio recording function to be turned off in the corridors during the examination process. According to the Healthcare Service, the audio recording in the cabinet of the chairman of the medical commission was necessary for safety. In particular, there was a high risk of conflict in case of issuing unsatisfactory report on the candidate's state of health, as such reports caused dissatisfaction and they entered the cabinet of the chair to challenge this conclusion. Consequently, the video-audio recording was an important piece of evidence in the event of a conflict. However, according to the explanation of the Healthcare Service, the need to use video-audio recording has never revealed so far.

The State Inspector's Service did not share the above explanation of the Healthcare Service, as in addition to the candidates, persons employed in the same service also entered the cabinet of the Chair. Failure to inform them created risks of disproportionate data processing. Moreover, the Healthcare Service failed to substantiate the necessity to process the data in this form in case of dissatisfaction of the candidates having unsatisfactory results, especially given the fact that the need to use the records has never arose. It is also noteworthy that, considering the role of the Healthcare Service, the meetings ongoing in the cabinet might have been related to the special category data of the candidates, which posed an increased risk of their unlawful processing.

Decision of the Service: The HealthCare Service was held liable for an administrative offence (violation of the principles of data processing) provided for in the first paragraph of Article 44 of the Law of Georgia on Personal Data Protection. At the same time, the Healthcare Service was instructed to terminate audiorecording in the cabinet of the Chair of the Commission, while ensuring the placement of the monitor in the same room in such a way the video footage not to become accessible to unauthorized persons.

Status of fulfillment of the instruction: fulfilled.

- Pharmacy network. Based on the citizen's notification, the State Inspector's Service examined the lawfulness of processing personal data by audio recording in one of the pharmacy branches.

As a result of the pharmacy network inspection, the State Inspector's Service established that the pharmacy, through the equipment installed on the counter and the ceiling, conducted audio monitoring for 24 hours for the purpose of controlling the service, evaluation of the employees, their encouragement or imposition of disciplinary liability, reviewing and resolving customer complaints, as well as protection of consumer rights and interests.

As audio monitoring was carried out in a constant mode in permanent workspace of the company's employees, where these individuals probably established both official and non-official communications, while the customer service was not provided for 24-hour a day, the State Inspector considered that the goal of the service quality control in the pharmacy could have been achieved in other ways - by processing less volume of employee and consumer data.

Decision of the Service: The company was held liable for an administrative offence provided for in the first paragraph of Article 44 of the Law of Georgia on Personal Data Protection (violation of data processing principles). At the same time, the company was instructed to terminate the audio monitoring in all branches and completely destroy the material obtained through audio monitoring.

Status of fulfillment of the issued instructions: Not fulfilled. The decision was appealed to the Court.

- Private clinic. According to the news story broadcasted by one of the TV stations, audio monitoring was also carried out in a private clinic through video surveillance systems. Based on this information, the State Inspector's Service, on its own initiative, started inspecting a private clinic, which included examining the lawfulness of the personal data processing through video surveillance system in the clinic.

As a result of the inspection of the private clinic, the State Inspector's Service established that the clinic was conducting video-audio monitoring for 24 hours a day. Clinic named protection of the property and safety of the clinic, including monitoring turnover of specially controlled medicines as the purpose of the video monitoring, and controlling cash payment as the purpose of audio monitoring. According to them, different amounts of money were received / issued from/- to the customers of the clinic on a daily basis, including in cash.

It should be noted that the audio recording was carried out by the clinic only through one video surveillance camera, which captured the reception of the clinic (where the necessary documentation for the operation of the clinic was placed). Different persons, including patients, appeared in this space, which was considered as an important circumstance. Thus, the clinic recorded the communication between them, which also could include personal conversations. This space was also a permanent workplace for specific staff of the clinic, where the employees probably exercised both official and non-official activities. The inspection also found that the service was not provided to customers on a 24-hour basis, while the service quality control at the clinic could have been achieved by processing other, less volume of data. Moreover, the clinic staff was not informed about their rights during the video-audio monitoring process.

The inspection also revealed that the records obtained by the clinic through the video surveillance system were handed over to the law enforcement officers without any legal basis and without recording the information on the removal of the recordings (so-called log-recordings) in the video recorders.

Decision of the Service: The clinic was held liable for administrative offence provided for in the first paragraph of Articles 43, 44 and 46 of the Law of Georgia on Personal Data Protection (processing of data without grounds envisaged in the Law of Georgia on Personal Data Protection, violation of data processing principles and non-compliance with the data security requirements). At the same time, the clinic was instructed to: a) inform all employees, whose video surveillance was carried out at the workplace, about their rights in writing; b) adopt relevant organizational and technical measures to ensure that all actions performed through the video surveillance system in relation to data are recorded.

Status of fulfillment of the issued instructions: Not fulfilled. The decision was appealed to the Court.

- The State Inspector's Service examined several cases concerning the lawfulness of video surveillance by the private companies. The inspections carried out by the Service included examination of the security measures taken during the personal data processing through video surveillance systems and the lawfulness of disclosure of video recordings to third parties.

As a result of the inspection of private companies, the Service established that persons conducting the video surveillance handed over / showed the video recordings from the video surveillance system in their possession to unauthorized persons - police officers despite the fact that the Ministry of Internal Affairs officers did not submit any legal documents to them (court decision, prosecutor's resolution, written justification), which would have provided the legal basis for browsing the videos. In addition, persons conducting the video surveillance did not record the information about the disclosure of the video recordings to the representatives of the law enforcement body.

Cases of non-adoption of other organizational and technical security measures were also revealed within the examination carried out by the Service in private companies. In particular, the video storage devices were not sufficiently protected by private companies and could be accessed by any person using the password stored in the program. In addition, the username and password of the login user was indicated by one of the data processors on a sheet of paper placed near the video surveillance system, which was accessible to other persons who could access the video recordings in the system in case of interest.

Decisions of the Service: The Service assessed the above-noted facts as an administrative offence provided for in Articles 43 and 46 of the Law of Georgia on Personal Data Protection (processing data without grounds enshrined in this Law, non-compliance with the data security requirement). Administrative liability was imposed on relevant private companies and mandatory instructions were issued for fulfillment.

Status of fulfillment of the issued instructions: In the process of fulfillment

- In 2021, as in previous years, a number of citizens applied to the State Inspector's Service requesting examination of the lawfulness of the video surveillance installed in residential building.

Based on the citizens' applications with respect to the video surveillance of residential buildings, inspections conducted by the State Inspector's Service revealed that in some cases video surveillance is carried out without the written consent of apartment owners, while in some cases video surveillance cameras capture entrance of concrete individuals' apartments, windows and other areas without the consent of the owners of these areas. The inspections also revealed that the video surveillance systems were not protected by username and password, which allowed access of third parties to the video recordings. In addition, as it was identified, the video recorders did not contain information confirming removal of the recordings (so-called log-recordings).

Decisions of the Service: The Service assessed these facts as administrative offences envisaged under Articles 44, 46 and 48 of the Law of Georgia on Personal Data Protection (violation of data processing principles, non-compliance with data security requirements, violation of video surveillance rules). Data controllers were instructed to take appropriate organizational and technical measures for data security, terminate the video surveillance and / or conduct the video surveillance in accordance with Article 13 of the Law of Georgia on Personal Data Protection.

Key findings and recommendations

The cases examined by the State Inspector's Service and implemented measures confirm that certain violations and shortcomings are observed in the process of video-audio monitoring carried out by the various public and private institutions, owners of residential apartments:

- Service providers (medical institutions, pharmacies), in parallel with video surveillance, also carry out audio monitoring in constant mode. These institutions usually can achieve the legitimate purpose for which they conduct the audio monitoring by other alternative means - by processing relatively small amounts of data. Thus, audio monitoring should not be carried out at the expense of disproportionate interference in persons' private lives;
- Electronic systems fail to record the actions performed in relation to the data during the personal data processing through video-audio monitoring. For ensuring the security of electronically protected data, given the easy access to it, it is important to record any action taken in relation to this data (including data browsing) in order to prevent unlawful data obtaining, disclosure, use, destruction, etc. and further, in case of such action, the responsible person should be identifiable;
- Data controllers disclose the video recordings to the law enforcement agencies without any legal basis. Even when video recording is carried out lawfully, the data controller has no right to disclose and / or transfer the recordings to third parties. This requires the existence of a legal basis provided by law. The standard for obtaining evidence in the framework of a criminal investigation by a representative of a law enforcement body is set by the Criminal Procedure Code of Georgia (the representative shall submit to the data controller a court ruling or a prosecutor's resolution). Thus, when it comes to handing over a videotape to the investigative body for the purposes of a criminal investigation, a mere verbal request may not be the ground for the disclosure of the video footage(s);
- In residential buildings, data processors install video surveillance cameras in such a way that not only the entrance to their apartments, but also the common area and the entrance to the apartments of other owners are captured by the video surveillance. For that reason, the data controller should only capture the area s/he owns in the video cameras. In case of monitoring the common space, the written consent of more than half of the owners should be obtained, and in case of video surveillance of the entrance, window, balcony of another person's property - the direct written consent of its owner.

In order to raise the standard of data processing through the video-audio monitoring, private and public institutions conducting video-audio monitoring should not use video surveillance cameras for a purpose incompatible with the law; should not carry out audio monitoring without urgent need; place warning signs in a prominent place; develop internal organizational rules for video-audio monitoring, which will define in detail the purpose and the need of data processing, data security issues, and the rules for handing over and / or disclosing data to third parties, including providing video surveillance system records to law enforcement bodies; ensure written notification of the organization staff (whose workplace is monitored) about the video surveillance and their rights.

05

**Personal Data Processing
in Labor Relations**

5. Personal Data Processing in Labor Relations

Organizations process large volumes of data within the framework of labor and its consequent relations. The data processing procedure typically involves a number of individuals who, for performing administrative, organizational, financial, archival, and other purposes, have access to information about employees, job seekers, and former employees, including sensitive (e.g., criminal records, health-related) data, and have real mechanisms for their free use. In addition, most of the data is processed through various electronic systems, which makes them even easier to access and poses threats to data security. It is also noteworthy that the employee is highly dependent on the employer and often for job retention is compelled to consent to the data processing in various forms.

It should be also noted that private and public institutions moved the work process remotely for preventing the spread of COVID-19. In order to protect public health, organizations have been subject to a range of responsibilities, most of which are related to collecting and monitoring additional data on employees (including a special category – data related to the state of health). Prevention of the spread of infection and protection of human health are legitimate goals of data processing, although the form and scale of processing must be reasonable, fair and proportional to existing threats.

In view of the above-noted, monitoring the lawfulness of data processing within the labor relations remained a priority for the State Inspector's Service in 2021 as well. The Service has conducted a number of meetings aimed at raising awareness of data processing organizations within the labor relations and focusing on prevention of violations of the employees' rights together with examining cases of personal data processing within the labor relations.

Awareness-raising and implemented preventive measures

Measures taken by the State Inspector's Service to protect personal data within the framework of labor relations were aimed at improving the data processing procedures in organizations on the one hand, and raising the awareness of employees / persons seeking employment, on the other hand:

- A compilation of the State Inspector's decisions has been prepared on personal data protection within the framework of labor relations, which includes 25 cases examined by the Service from 2016 to September 2021. The compilation aims at promoting a high standard of data protection in labor relations in Georgia, familiarizing interested persons with the best practice of the State Inspector's Service, definitions suggested by the Service, international standards and prevention of similar violations by offering recommendations;
- The staff of the State Inspector's Service trained more than 120 representatives of various organizations on the data protection issues within the framework of labor relations. Meetings were also held with the Employers Association and the member companies of the Global Compact – Network Georgia. More than 250 employees of the Ministry of Defense of Georgia, the Ministry of Foreign Affairs of Georgia, LEPL - National Agency of Public Registry, LEPL - Municipal Service Development Agency, LEPL - National Food Agency and various private organizations were trained on the right to personal data protection;
- In parallel with informational meetings and training, the State Inspector's Service efforts aimed at raising the data protection standard in organizations processing data in large volumes. To this end, the State Inspector's Service, with the support of the United Nations Development Programme (UNDP) Governance Reform Fund (GRF) project "Enhancing Personal Data Protection in Georgia" and with the involvement of the Innovation and Reform Center (IRC), conducted description of data processing procedures and assessment of their compliance with data protection legislation in LEPL - Galaktion Tabidze #51 Tbilisi Public School, LEPL - Legal Aid Service and LEPL – Agency for State Care and Assistance for the Victims of Human Trafficking.

In these institutions, the data processing procedures of employees (teachers, social workers, lawyers, and other employees) were also described and evaluated in terms of compliance with personal data protection. In view of the results of the evaluation, recommendations were prepared on data protection measures to be implemented, including the development of relevant policy and procedure documents and training for staff. This project aimed at bringing the practice of the institutions involved in the project in line with data protection standards, on one hand and creation of guidelines / role examples / models for similar types of institutions, on the other hand;

- During the meetings of the State Inspector's Service with various sectors, the employers named the issue of introducing the employees' timesheet (working hours) to them, as one of the problematic issues. According to the current legislation, the employer is obliged to present the timesheet in full form to the employees. In addition, the form of this timesheet is approved by the Order of the Minister and the data of all employees are registered in it. Given this regulation, the employers believe that each employee should be provided with a complete document (which indicates the data of not only concrete but all employees). The State Inspector's Service addressed the LEPL Labor Inspection Service with a recommendation to resolve this issue and establish a detailed rule for presenting the form of timesheet by the employer to the employee. LEPL - Labor Inspection Service expressed readiness and received additional recommendations from the Service. However, no changes have been made to the relevant rule approved by the Minister for given period.

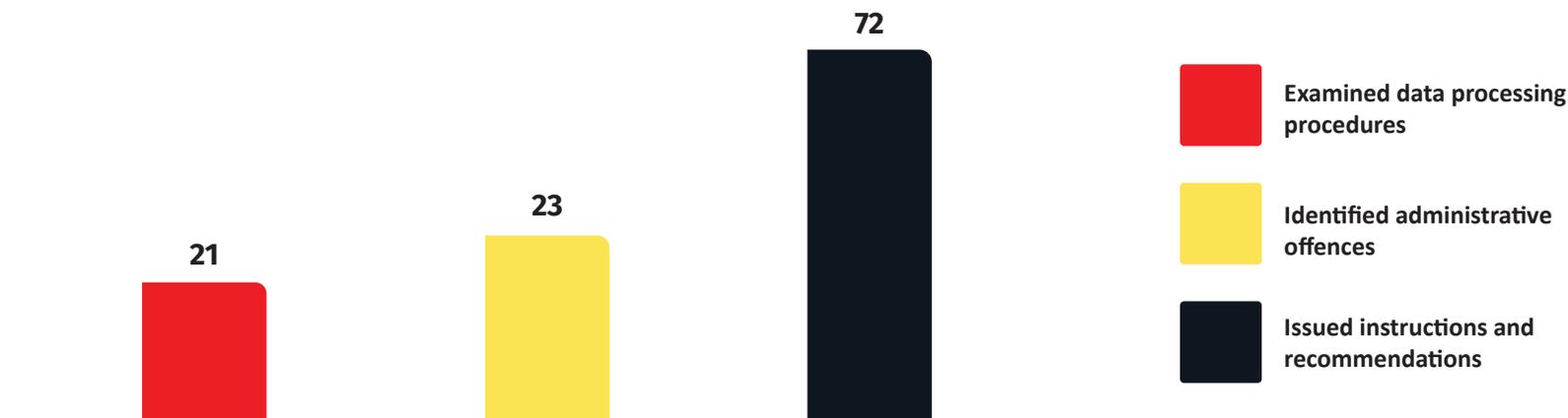


Examined processes

In 2021, the State Inspector's Service examined 21 cases of data processing in labor relations, 12 of which were carried out on the initiative of the Service and 9 – on the basis of citizens' complaints. The received complaints mainly concerned disclosure of information about the employment contract concluded with the employee and the disciplinary sanction imposed on the employee, video surveillance of the employees' workspace and / or place intended for hygiene.

As a result of the cases examined by the Service, administrative liability was imposed on 16 persons for 23 offenses. As a sanction, a warning was issued to 9 persons, while 7 persons were fined. In parallel with imposing the administrative penalties, in order to improve the data processing procedures in public and private institutions and ensure their compliance with the Law of Georgia on Personal Data Protection, the Service issued 10 recommendations and 62 mandatory instructions.

Data processing in labor relations



In 2021, upon the initiative of the State Inspector's Service, the personal data processing in the field of labor relations was examined in public agencies (including in law enforcement agencies) and private organizations that process large volume and / or sensitive data about employees. The Service put emphasis on data processing by bodies responsible for employment promotion, data processing during posting vacancies and the candidate selection stage, as well as data processing condition by management of COVID-19 within the labor relations. Regional coverage was also considered. In particular, the Service examined / inspected:

- LEPL - Civil Service Bureau. The examination was initiated by the Service, as the Civil Service Bureau (through whose website public institutions announce vacancies for civil servants) processes a large volume of information about job seekers in public institutions. The inspection included examination of the lawfulness of data processing of job seekers by the Bureau through the website - www.hr.gov.ge. The website, which has been operating since 2011, is the only way for those seeking employment in the public service - to take part in a competition and be recruited in the public service.

After examining the lawfulness of data processing in the Bureau, the State Inspector's Service established that while registering on the website, the job seeker created his / her own account indicating his / her identifying and contact details. The successfully registered candidate created his / her own electronic resume and, if they so wished, provided additional information about education, work experience, marital status and skills. The website had no function of deactivating / deleting the candidate's account, while the employer public institutions had indefinite access to the applications and documents submitted within the vacancy advertised by them. In addition, the correspondence in the functionality of the website - "online correspondence" (which was used to communicate between the candidate and the administrator) was permanently stored in the system. The examination process also revealed that: the system did not record information about the person who browsed the data and / or changed it; users of former employees of the Bureau registered in the system were still active at the time of the inspection; the Bureau had no document identifying the persons entitled to access the data and other issues related to their authority, data security and personal data protection policies.

Decision of the Service: The Bureau was held responsible for the administrative offence provided for in Articles 44 and 46 of the Law of Georgia on Personal Data Protection (violation of the data processing principles and non-compliance with the data security requirements). At the same time, it was instructed to set reasonable timelines for data storage, take organizational and technical measures for data security protection, and ensure the possibility of deleting accounts registered on the website.

Status of fulfillment of the issued instruction: in the process of fulfillment.

- LEPL - State Agency for Employment Promotion. The examination was conducted upon the initiative of the Service, as the agency (which is the body responsible for the implementation of active labor market policy and employment promotion by the state) processes information in large volumes about job seekers. The inspection included an examination of the lawfulness of data processing of job seekers by the Agency through the labor market management information system. The registration of jobseekers through the information system has been carried out since December 2013, and from this period until the inspection, the data of 389,886 jobseekers were processed through the information system.

After examining the lawfulness of data processing in the Agency, the State Inspector's Service established that before registering on the web portal, the job seeker by agreeing to the registration conditions also agreed to the processing of his/her data by the Employment Agency. However, the registration conditions did not specify that the data processed aimed at promotion of employment. Also, the identity of the data processor was incorrectly indicated, and it was unclear which data processing s/he consented to. This failed to provide proper information to the data subject. The inspection also revealed that it was mandatory to fill in certain data of job seekers in the information system, while the reflection of part of the data was voluntary, which posed a risk of disproportionate data processing. Further, the Employment Agency had no information in case of job seekers' death even though storing the data of the deceased person did not correspond to the initial purpose of processing the job seekers' data by the Employment Agency (employment promotion). The inspection also revealed that the Employment Agency was unable to create a user for a new employee, change of access levels for the users created in the system, and reset the password for the job seeker user. In addition, during the inspection process, it was not confirmed that the Employment Agency recorded the actions taken in relation to the data processed through the information system.

Decision of the Service: The Agency was held liable for an administrative offence provided for in Article 46 of the Law of Georgia on Personal Data Protection (non-compliance with the data security requirements). At the same time, in order to eliminate the violations and other shortcomings identified during the inspection, recommendations and mandatory instructions were issued. In particular, the agency was tasked with providing comprehensive information to job seekers and obtaining informed consent from them; Modification of the electronic system in such a way that the system processed only the necessary and essential information proportionate to the legitimate purpose; Take appropriate organizational and technical measures to protect the data security, etc.

Status of fulfillment of the issued instruction: in the process of fulfillment.

- LEPL - Employment Agency of the Autonomous Republic of Adjara. The examination was conducted upon the initiative of the Service, as the Agency registers, records, promotes employment of job seekers in the administrative territory of the Autonomous Republic of Adjara, and processes large volume of information of job seekers. In addition, the Agency is involved and participates in the personal data processing of persons wishing to leave the territory of Georgia temporarily. The inspection focused on examining the lawfulness of personal data processing of job seekers and persons wishing to temporarily leave the territory of Georgia by the Employment Agency.

By examining the lawfulness of data processing in the Agency, the State Inspector's Service established that the Agency employee was filling the relevant fields of the data base according to the information received from the job seeker. In the process, the job seeker was verbally explained the purpose of the data processing and the fact that filling all fields were not required. The Agency had not elaborated a written standard rule(s), which would oblige the Agency employee to provide the detailed information to the job seeker including on the right of the data subject as well as which data was mandatory to submit and which of them was not. Meanwhile the Agency database included a number of fields which were not being filled. The inspection also revealed that the jobseeker's data was not deleted from the database even if the jobseeker applied to the agency with this request. Further, it was found that the database did not record any actions performed against the data, the database did not have a user authentication function and the access to the database was granted without a personalized username and password. As for the processing of the data of persons wishing to leave the territory of Georgia temporarily, the employees of the Agency were processing the data within the framework of their duties imposed by law, and no violations have been revealed in this regard.

Decision of the Service: The Agency was found responsible for an administrative violation prescribed in Article 46 of the Law of Georgia on Personal Data Protection (non-compliance with data security requirements). At the same time, in order to eliminate the violations and other shortcomings identified during the inspection, recommendations and mandatory instructions were issued. In particular, the Agency was instructed to take organizational and technical measures to protect data security; modification of the electronic system in such a way that the system processes only the necessary and essential information in proportion to the lawful purpose; development of a unified rule and standard application form to ensure the data subject is fully informed, etc.

Status of fulfilling the instruction: in the process of fulfillment.

- Tbilisi City Court and Tbilisi Court of Appeals: examination was initiated by the Service as the mentioned institutions are among the largest public sector employers. Examination included the check of the lawfulness of the data processing on entering and exiting the court buildings by the employees. At the time of the examination Tbilisi City Court was processing the data of 529 and Tbilisi Court of Appeals – the data of 194 employees in order to record the data of entering and exiting the court buildings.

As a result of the examination of the lawfulness of data processing in the courts, the State Inspector's Service found that courts had used employee biometric data (fingerprints) to record entry and exit from the building until the beginning of 2020, however, courts later discontinued (including by deleting) processing of such data. During the examination, it was established that by the time of the examination, the courts, in order to establish the timely appearance of employees at work and the fact of their presence in the court building during working hours (including disciplinary proceedings), also with the purpose of the security of cases stored in the court building and of the court property, they were electronically registering the entry and exit times of the employees as well as their identities and kept the mentioned information. Upon entering the court building, the employee affixed a personalized plastic card in his/her name on the device, at which time the employee's time of coming to and leaving the workplace was automatically reflected on the device and the electronic server. The examination also revealed that Tbilisi City Court from 2014 and Tbilisi Court of Appeals from 2016 had been keeping the records of employees entering and leaving the buildings. In addition, the internal regulations of the courts provided for the possibility of processing the biometric data of employees for the purpose of recording the entry and exit of the building, although similar data were not processed at the time of the inspection.

Decision of the Service: The courts were found responsible for administrative violations under Article 49 of the Law of Georgia on Personal Data Protection (violation of data processing rules on entry and exit of public and private institutions). At the same time, they were instructed to bring the internal regulations in line with the requirements of the Law of Georgia on Personal Data Protection.

Status of fulfilling the instruction: the instructions have been fulfilled (needs to be mentioned that even though the instructions were followed, the courts appealed the decisions of the Service)

- The Ministry of Internal Affairs of Georgia. The employee of the ministry notified the Service mentioning that in case of refusal of the vaccination by the employee, the ministry requested from them the health certificate to identify because of what health issue was the employee refusing the vaccination. Taking into consideration the importance of protecting the rights of employees in the employment relationships the State Security Service launched the examination of the Ministry. Examination included checking the lawfulness of possible processing of personal data in connection with the vaccination of persons employed by the Ministry.

As a result of the examination of the lawfulness of data processing in the Ministry, the State Inspector's service found that vaccination of employees in the Ministry's system was organized in order to manage the pandemic caused by the new coronavirus (SARS-COV-2) infection, to protect employees and public health, as well as to run the Ministry smoothly. There are specific responsible persons in the structural units or territorial divisions of the Ministry, whose responsibility is to organize issues related to the vaccination process and to process relevant information or produce statistics. At the same time, vaccinated persons were registered on the basis of information provided directly by the employees and no additional information was obtained. The recorded information was stored only in the official computers of the responsible persons, with which only they had access. Due to the fact that the employees of the Ministry, in the process of fulfilling the tasks and responsibilities assigned to them, had to have active, daily contact with the citizens, the issue of vaccination of employees would have an impact on public health. Accordingly, there was a need to process data on the vaccination status of persons employed in the Ministry. Nevertheless, the examination revealed that no internal document regulating the management of the vaccination process had been developed by the Ministry. The lack of clear rules for the processing of this data posed certain risks in terms of unlawful processing of data.

Decision of the Service: The Ministry was instructed to develop a written document regulating the management of the employees' vaccination process.

Status of fulfilling the instruction: in the process of fulfilment.

- The Ministry of Internal Affairs of Georgia. The Service initiated the examination as the Ministry employs tens of thousands of persons and voluminous information about candidates, including special categories of data, is being processed during job openings. The examination included the check of the lawfulness of processing of the candidates' personal data to fill the vacant positions by the Ministry.

As a result of the examination of the lawfulness of data processing by the Ministry, the State Inspector's Service found that at the various stages during the competition the Ministry processed the personal data of the candidates, including special categories and biometric data. LEPL - Healthcare Service of the Ministry of Internal Affairs of Georgia was involved in the process of processing the data of those wishing to take a vacant position (candidates). The examination revealed that the website - hr.police.ge (used to submit employment application) contained a standard text, according to which the Ministry might have verified the protected data about the candidate for employment purposes. The candidate agreed with the text by ticking the appropriate box. The examination revealed that the information provided to the data subject was general and did not contain details about the forms and the specific purpose(s) of data processing within the competition. Moreover, in the application form for participation in the competition there was no indication which field was mandatory, and which was voluntary. The applicant should have reflected in the form the information about his/her criminal record and administrative fine, however, about what type of crimes and administrative offenses should have been indicated information, it was not be mentioned. The examination also revealed that there was no deadline for keeping the documents related to the examination of the candidates. In addition, the existing program for conducting a psychodiagnostic test recorded some of the actions taken against the data, including the information about the user logging in / logging out. Given the obligation to protect data security, the data processor was instructed to take appropriate organizational and technical measures to record all actions taken against the data in the program. The examination also found that applications submitted by candidates (including those who failed the competition) were stored for unlimited time. In addition, 107,296 records of candidates were searchable in the dactyloscopic database, which were also stored for indefinite time.

Decision of the Service: The Ministry and LEPL - The Healthcare Service of the Ministry of Internal Affairs of Georgia were found responsible for an administrative violation (violation of the principles of data processing) prescribed in Article 44 of the Law of Georgia on Personal Data Protection. At the same time, instructions and recommendations were issued to eliminate the violations and shortcomings identified during the inspection.

Status of fulfilling the instruction: not fulfilled. The decision of the Service was appealed and LEPL Healthcare Service of the Ministry of Internal Affairs fulfilled the instructions partially.

05

- Microfinance organizations. With the initiative of the Service the examination was carried out in two microfinance organizations since the microfinance organizations are among the biggest data processors. This included examination of the lawfulness of processing data of special categories of persons employed by two microfinance organizations and the data of employed persons recorded through the monitoring of telephone conversations and emails, At the time of the examination one of the organizations employed 989 persons and had granted service contracts with 37 persons, another organization employed 334 persons.

As a result of the examination of the lawfulness of data processing, the State Inspector's Service determined in the case of one of the organizations that a special questionnaire was sent to the employees. The questionnaire stated that due to the situation created by the pandemic, for the continuation of their activities, it was necessary to obtain information about their health in order to identify high-risk individuals and create specific working conditions for them. The questionnaire listed various diseases from which employees had to indicate the disease they were carriers of. The State Inspector's Service found that the organization could achieve the above objectives without collecting information about specific illnesses of employees, for example, giving employees the opportunity to indicate only general information (whether or not they were carriers of the listed diseases).

The examination of by another organization found that it was collecting information about the criminal records from persons seeking employment. The employee's written consent form for data processing did not provide the data subject with specific information about the data processed about him/her and the purpose(s) of the data processing. The examination also revealed that on the internal portal of the organization employees had the opportunity to upload various data (including a criminal record). 618 persons, 315 of whom were former employees of the organization, had voluntarily uploaded the mentioned documents on the mentioned portal, the legal purpose and need for processing of which could not be indicated by the organization.

The examination of both organizations also revealed that in order to protect the rights of consumers and to obtain evidence to protect the interests of the organization, the telephone conversations of employees were monitored, to which employees agreed by signing an employment contract and internal regulations. When calling the organization's telephone number, the caller was automatically informed about the monitoring of telephone calls, however, during the outgoing telephone call made by employees to third parties, the recipients of the call were not informed about the monitoring. In addition, one of the organizations was recording internal phone calls of employees, the need for which the organization could not indicate. Without proper legal purpose and need, also without properly informing employees about audio recording of internal phone calls and data subjects by the organizations, the audio recording of phone calls was not considered as lawful processing of data. Violations of data security rules were also revealed during the inspection of the organizations.

Decision of the Service: The organizations were found responsible for the administrative violations (violation of the principles of data processing and failure to comply with data security requirements) prescribed in Article 44 and 46 of the Law of Georgia on Personal Data Protection. At the same time, the organizations were instructed to eliminate the violations identified during the inspection.

Status of fulfilling the instruction: fulfilled.

- Chain of supermarkets. The examination was initiated by the Service as the employers process voluminous personal data of job seekers and employees in the framework of the employment relationships with different purposes. The examination included the check of the lawfulness of personal data processing by the chain of supermarkets of job seekers.

As a result of the examination of the lawfulness of the data processing, the State Inspector's Service found that the supermarket chain was obtaining information on the identification, contact, education and work experience of candidates seeking employment. The candidate could share this data with the supermarket chain through a social network (Facebook, LinkedIn), a website, e-mail or employment boxes placed in supermarkets. The text of the announced vacancies stated that "the application form may contain data of a special category". Nevertheless, the supermarket chain did not process such data and tried to insure against the possible facts of sending a special category of data randomly / at the initiative of a candidate. The inspection also revealed that the supermarket company stored the candidates' data electronically for unlimited time in order to review them for various vacancies in the future, while periodically destroying the questionnaires placed in the employment boxes. However, there was no rule / instruction on this. In addition, several employees had access to candidate data collected through the website under a common username and password. The same electronic system did not fully record the actions taken against the data. The examination also revealed that the website of the supermarket chain did not contain information about the purpose, need, data subject rights and security measures of the data processing.

Decision of the Service: The supermarket chain was found responsible for administrative violations under Articles 44 and 46 of the Law of Georgia on Personal Data Protection (violation of data processing principles and non-compliance with data security requirements). At the same time, it was instructed to determine a reasonable period of data storage, take appropriate organizational and technical measures for data security, develop rules and procedures for the destruction of questionnaires, and indicate only accurate information about the processing of data in the vacancy text.

Status of fulfilling the instructions: fulfilled

- Insurance companies. The Service initiated the examination as the employers process numerous personal data of the employees. The mentioned examination included the check of the lawfulness of processing personal data of employees through the video surveillance systems in order to record the appearance and departure of an employee at the workplace.

As a result of examination of the lawfulness of the data processing, the State Inspector's Service found that due to the situation caused by the spread of COVID-19, one of the insurance companies was additionally monitoring the employees and obtaining data on their health status. In particular, the company registered the entry of employees into the building through a "thermal screening journal", which indicated the date of entry into the building, the identity of the employee, temperature information and signature. The examination revealed that the processing of personal data of consumers by the insurance company, including special categories, served the protection of public health, management and operation of the health care system. However, the inspection also revealed that the company kept the collected data (the so-called "thermal screening log") from the day of its production, the need for which the insurance company could not name.

Decision of the Service: The insurance company was recognized responsible for an administrative violation (violation of the principles of data processing) prescribed in Article 44 of the Law of Georgia on Personal Data Protection. At the same time, the company was instructed to determine the required period of storage of the data in the "thermal screening journal", and after the expiration of this period to delete the data or store it excluding the identification data.

Status of fulfilling the instructions: fulfilled

Key Findings and Recommendations

Processing of employees' personal data in the framework of employment relations requires special protection and organizations should take into account the interests of employees and job seekers in this process. The cases examined by the Service and the measures taken show that certain violations and shortcomings are observed in the process of data processing by various public and private organizations within the framework of employment relations:

- Most organizations do not properly inform employees/job candidates about the data processing. In most cases, the information provided to the data subject does not contain details about the data processing forms and the specific, clear purpose(s) of the processing. In some cases, the standard consent forms of data subjects incorrectly indicate the identity of the data processor, and it is also unclear which data processing and for what purpose is consented by the data subject. Consequently, the general wording of the consent forms fails to provide proper information to the data subject as to by whom, for what purpose and processing of which data s/he consents to;
- In some cases, organizations retain the personal data of job seekers for unlimited time to review the resumes of job seekers for various vacancies in the future. It should be noted that storing the data of persons seeking employment for an indefinite period of time cannot be considered as lawful, as after a certain period of time the data about the person in the resume / form / application may change or become outdated, or the person may no longer be interested in the employment. In order to make a decision on hiring a candidate for a new job, the organization will need updated information about the person. Thus, organizations should determine the necessary duration for retaining the data of persons seeking employment in order to achieve the relevant legal objective and ensure that they are deleted after the expiration of that term and the achievement of the objective;
- In some cases, organizations did not evaluate and determine what information they needed to be processed within the employment relationship. Facts were identified when the questionnaires for employment contained additional/unnecessary information fields and the organizations did not inform the subject provision of which data was mandatory and which was voluntary. In some cases, the data subject's awareness and degree of awareness depended on the conscientiousness and prudence of a particular employee (e.g., Employment Agency staff verbally explained to

the data subject which field was required). This poses a risk of infringement of the data subject's rights, as in the absence of instructions there is a greater risk of incomplete and/or improper provision of information to the data subject by the employee of the organization. Further, non-binding data poses a risk of disproportionate processing of the data and may constitute grounds for discriminative treatment in the pre-employment relationships. Based on the principle of data minimization, organizations should evaluate and determine what information they need to obtain for employment;

- Cases have been identified where organizations do not ensure data deletion despite the data subject recalling consent. The right of the data subject to request the deletion of data processed with his/her consent is one of the solid guarantees that the data subject will be able to control his/her own data at will. Therefore, it is important for the organization to take appropriate responsibility for the realization of this right by the data subject and to ensure its implementation;
- Most organizations have not taken adequate and effective measures to protect data security. In some cases, data processing organizations do not record all actions taken against data in their electronic systems. In addition, the employees of the organization have access to the data in the electronic systems with a common user name and password. Without accounting for the data, the organization will not be able to properly monitor who, when, for what purpose and to what extent had access to the data obtained through the employment relationship. Also, in a specific case - for example, when the fact of disclosure of the data of an employed person / employment candidate arises, it becomes difficult or impossible to identify the person responsible for the disclosure of data;
- In some cases, organizations do not have written standard rules / rules for data processing (including data updating, access to data, informing data subject, etc.). It should be noted that the absence of data processing rule(s) creates risks of disproportionate data processing and unauthorized access to the data. Therefore, in order to properly protect the rights of the data subject within the employment relationships, it is important for organizations to have written data processing rules;

- In some cases, organizations take additional measures to monitor employees and obtain data on their health status (e.g., vaccination status and chronic illness) due to the prevalence of COVID-19. It is lawful to obtain health information in order to ensure continuity of work, protection of employees' lives and health, to identify high-risk individuals and to create specific working conditions for them, although organizations must process data in proportion to that purpose by processing less data on employee's general health condition;
- Cases have been identified where organizations process biometric data of employees to record their entry and exit of the building. It is true that the specifics of labor relations require the recording of working hours and job postings, but the use of biometric data for this purpose is not legal. The Law of Georgia on Personal Data Protection separately regulates the issue of entry-exit registration at the workplace, the list of data to be used for this purpose and the maximum period of their storage. Employers can collect only certain data (name, surname, number and type of identification document, employee's address, dates of entry and exit, time and reasons) to record entry into and exit of the building.

In order to improve the standard of data processing within employment relations, it is important for organizations to pay more attention to protecting the rights of employees and job seekers. Employers at different stages of the employment relationship must maintain a fair balance between the employee's right to privacy and the legitimate interests of the employer. Employer organizations are obliged to effectively manage each case of employee data processing, to protect the confidentiality, security and to process the information obtained about the employee and / or the job seeker without violation of dignity.

06

**Personal Data Processing
in the Healthcare Sector**

6. Personal Data Processing in the Healthcare Sector

Information about a person's health status (which in some cases contains intimate details about personal life, mental and physical condition) is an extraordinary category of data. Both national and international law provide for a higher standard of protection for such data.

The obligation of protecting confidentiality of patient information is specifically defined by the legislation of the healthcare sector. The Law of Georgia on Patients' Rights guarantees the confidentiality and inviolability of the patient's private life and obliges the health care provider to protect the confidentiality of the information available to him/her both during the patient's life and after his/her death. Confidentiality is essential for building trust between the patient and the medical facility and for the healthcare system to function effectively. Thus, increased attention should be paid to health data protection by data processing organizations.

The intensity of data processing in the healthcare sector has increased significantly due to the situation created by COVID-19. New systems related to health data processing have been introduced. With the increase in the volume of data processing in the health sector, the importance of compliance with the rules established by the Law of Georgia on Personal Data Protection by data processing organizations is increasing.

Awareness raising and implemented preventive measures

In 2021, the State Inspector's Service took various measures to prevent the unlawful processing of personal data in the health sector, which, on the one hand, serve to improve the process of personal data processing in the sector, and on the other hand, raise public awareness. In particular:

- The Service held working meetings with representatives of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs on various issues related to data processing (for example, on the process of introducing Covid-passports), as well as with medical institutions and pharmaceutical companies about patient/consumer data security and data subjects' rights. During the workshops, representatives of the Ministry and data processors were given recommendations to bring data processing in line with the Law of Georgia on Personal Data Protection;
- The Service, with the support of the United States Agency for International Development (USAID) Good Governance Initiative (GGI) project, has created a distance education platform www.elearning.stateinspector.ge. The personal data protection training module is placed on the distance learning platform. It is tailored to the specifics of the health sector and provides an overview of data protection issues in this area. The educational platform allows anyone interested in personal data protection, including representatives of the private and public sectors, to remotely improve their qualifications with the desired schedule. The distance learning platform is free and accessible to all. It is adapted for people with disabilities;
- The Service discussed the draft order of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia "On Determining the Procedure, Form and Requisites for Issuing a Document on Vaccination against, Testing on and/or Recovery from New Coronavirus (COVID-19)." In order to ensure the lawful processing of data, the Service issued recommendations and guidelines, including on the detailed regulation of procedural issues, which would ensure the introduction of heterogeneous practices in different organizations. The service also made recommendations in the process of introducing the "Get Vaccinated and Win" vaccination incentive lottery.

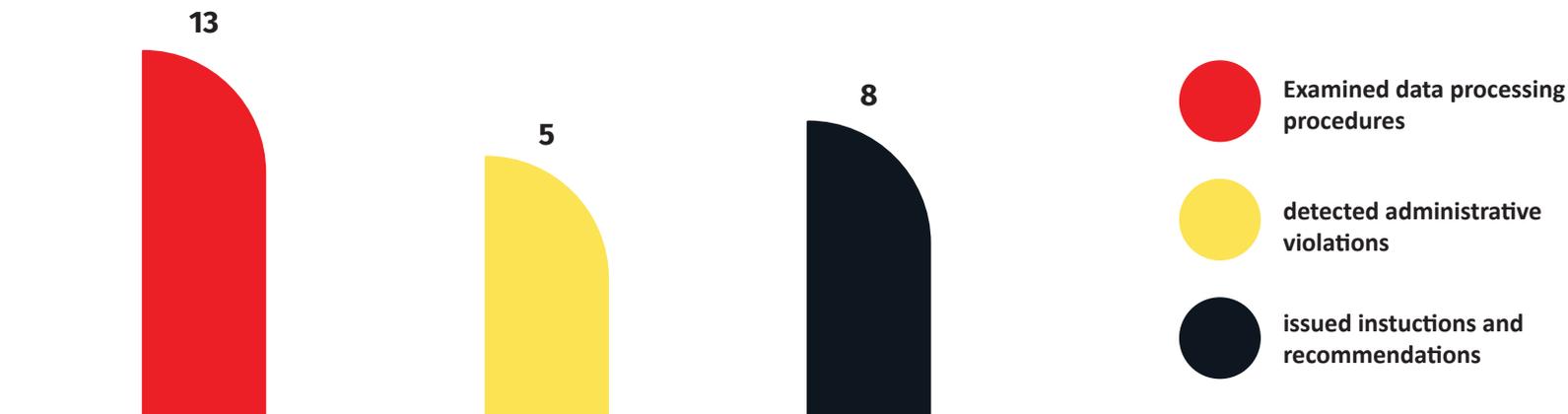


Examined processes

In 2021, the State Inspector's Service investigated 13 cases of data processing in the health sector, 10 of which were carried out on the basis of citizens' claims/notifications, and three - at the initiative of the Service.

Citizens mainly indicated the transfer/disclosure of their personal data to third parties by medical institutions in violation of the rules established by the Law of Georgia on Personal Data Protection. In addition, the processing of inaccurate data on citizens was identified as a serious problem during the reporting period.

Based on the cases investigated by the Service, administrative liability was imposed on four persons for five offenses. As a sanction, one person was given warning and three people were fined. In parallel with the administrative penalties, in order to improve the data processing in public and private institutions and to ensure their compliance with the Law of Georgia on Personal Data Protection, the Service issued eight mandatory instructions.



In 2021, special attention was paid to the lawfulness of the processing of personal data through new electronic products introduced in the management of COVID-19. The Service examined/inspected:

- Private laboratory. The State Inspector's Service learned that one of the laboratories used a specific link on its website to publish the so-called PCR test results of patients using the laboratory services. In particular, by clicking on the link of the date of the test and the first five digits of the personal number / passport number, any person had access to another person's personal data, including the so-called PCR test results. The State Inspector's Service initiated an examination of the lawfulness of security measures taken by private laboratory in the process of processing personal, including extraordinary categories of data.

In the process of inspecting the private laboratory by the State Inspector's Service, the laboratory explained that the purpose of operating the link in this manner was to obtain test results easily and quickly by those receiving the laboratory services. However, the laboratory indicated that there was an organizational-technical defect in the process of issuing the patient's examination results in this form, which was changed in such a way that the results of the test through the link are no longer available to anyone other than the patient.

Decision of the Service: the laboratory was found responsible for the administrative violation prescribed in the first paragraph of Article 46 of the Law of Georgia on Personal Data Protection (non-compliance with data security requirements).

- LEPL - L. Sakvarelidze National Center for Disease Control and Public Health and Blood Bank. On the basis of the citizen's application, the State Inspector's Service examined the legality of processing of the applicant's data in the unified electronic database of blood donors by the Center and a private blood bank.

According to the applicant, s/he was diagnosed with HIV in 2012, on the basis of which his/her right to donate blood was restricted. Following this, the applicant underwent several medical examinations from 2012 to 2020, although the same infection was no longer confirmed. According to the information provided by the applicant, the 2012 data were incorrect and the presence of incorrect data in the database restricted the right to donate blood. Accordingly, his/her rights were violated.

In reviewing the application, it was found that the blood donor database did not have the technical functionality to reflect the different results of testing on donor infections. That is, the unified electronic database of blood donors did not allow for chronological and consistent reflection of donor health status information, even when subsequent data contradicted the previous one. Besides, all persons who had access to the unified electronic database of blood donors could have access to outdated information about the data subject, while the data subject itself did not have the opportunity to exercise his right and request an update of the data about him in the database.

Decision of the Service: LEPL - L. Sakvarelidze National Center for Disease Control and Public Health was instructed to add the technical functionality of reflecting changes in donor health information in the Unified Electronic Blood Donor Database and to update data about the applicant in the database.

Status of fulfilling the instructions: in the process

- LEPL - L. Sakvarelidze National Center for Disease Control and Public Health. The State Inspector's Service initiated examination of the lawfulness of personal data processing in the electronic queue management system in the process of vaccination against COVID-19 when booking a visit - <https://www.booking.moh.gov.ge>.

According to one of the media outlets, as part of a journalistic experiment, the journalist inserted the data of the Prime Minister of Georgia (name, surname, personal number and year of birth) on the above-mentioned portal to book a visit to one of the clinics for the second vaccine. According to the story, the mentioned circumstance - the fact of booking a visit for the second vaccine - indicated that the Prime Minister of Georgia had not been vaccinated twice.

Examination by the State Inspector's Service of LEPL - L. Sakvarelidze National Center for Disease Control and Public Health revealed that the portal allowed an individual to register another person, which served to facilitate the vaccination process, as there were frequent cases when users - due to age, lack of equipment or other circumstances - did not have the possibility to register on the portal.

The State Inspector shared the Center's argument regarding the smooth running of the vaccination process, explaining that the simplification and acceleration of the vaccination process served a legitimate public interest - the protection of public health, which was critically important. Consequently, although the portal allowed other persons to register the data subject and receive short text messages intended for the data subject, the State Inspector considered that the Center's addition of data security measures to the portal would complicate the registration process and impede legitimate purpose.

The State Inspector clarified that the Law of Georgia on Personal Data Protection does not apply to the processing of data by a natural person for obvious personal purposes (when the processing is not related to his/her entrepreneurial or professional activities) and to the processing of data by the media to inform the public. As the inspection revealed that the data of the Prime Minister of Georgia was reflected on the portal within the framework of journalistic activities, the registrant could not be held responsible under the Law of Georgia on Personal Data Protection.

Examination also revealed that the center was processing the data through an authorized person - LEPL - Information Technology Agency, about which incorrect information was indicated in the document posted on the portal. In particular, the document stated that the center did not use the services of an authorized person during the data processing.

Decision of the Service: LEPL - L. Sakvarelidze National Center for Disease Control and Public Health was instructed to inform the data subjects about the identity of the data processor and the authorized person involved in the data processing, the purpose of the data processing and the rights of the data subject.

Status of fulfilling the instructions: in the process

- Private clinic and doctor. Based on the citizen's application, the State Inspector's Service examined the legality of disclosing patient health data on a social network by one of the clinics and a doctor.

According to the applicant, s/he underwent plastic surgery (rhinoplasty) and s/he refused to advertise his photographs or use them for scientific research. Six months after surgery, the patient was re-consulted by a physician. During the consultation, the patient was photographed, which, according to the doctor, would be stored in the applicant's medical history and the photographs would not be made available to third parties. Despite this, the applicant found on the social network that the doctor had posted photos of the applicant before and after the operation on his/her own social network accounts.

Examining the legality of the data processing by the private clinic and the doctor, the State Inspector's Service found that, accompanied by a text reflecting the health condition, the doctor had posted photos of the patient (applicant) on his/her personal Facebook and Instagram accounts before and after the nose surgery. The text attached to the photos described the patient's medical testimony and the medical manipulations performed. Although the patient's eyes were covered in the published photographs, other facial features made it easy to identify him/her. The case examination revealed that the patient, when opening the medical history file, had given written consent to the clinic to post his/her photographs on the social network. However, later, before the operation, s/he refused the photographs to be used for advertising purposes in the same way. The physician could not name the grounds for disclosing the patient's photographs and health information as required by law. S/he was referring to the patient's initial consent, on the basis of which the photographs were stored in the folder of the computer where the photographs intended for publicity were placed. However, according to the doctor, the text attached to the patient's photographs did not refer specifically to that patient and it was a standard medical-scientific-popular description of rhinoplasty information that was identical to the description on other patients' photographs posted on social media. The inspection carried out by the State Inspector's Service also revealed that the doctor was not authorized (nor was s/he instructed so) by the medical institution to post this information on the social network, therefore s/he acted independently from the clinic conducting the medical procedures.

According to the State Inspector, the protection of the confidentiality of health-related data is important both for the patient's privacy and data protection, as well as for maintaining public confidence in the medical profession and the health care system. The decision of the State Inspector states that people may be particularly sensitive to plastic surgeries, including disclosure of information about rhinoplasty to third parties, especially in a form accessible to all. Besides, the information about the health condition indicated by the doctor on the patient's photo was not addressed to the patient, therefore it was not real and accurate.

Decision of the Service: The doctor was found liable for the administrative violations provided for in the first paragraphs of Articles 44 and 45 of the Law of Georgia on Personal Data Protection (violation of the principles of data processing and processing of special categories of data without grounds provided by this Law). At the same time, the physician was instructed to process the patient's data(s) on the basis of the Law of Georgia on Personal Data Protection and in compliance with the principles, in particular, to process the true and accurate data(s).

Status of fulfilment of the instructions: fulfilled.

- Private Clinic. The State Inspector's Service, on the basis of a citizen's notification, started to examine the lawfulness of the processing of special category data of the applicant and his/her mother by one of the clinics.

When examining the legality of data processing by a private clinic, the State Inspector's Service found that the applicant and his/her mother had benefited from the so-called PCR test delivery service of one of the clinics. According to the applicant s/he indicated the e-mail address to the representative of the clinic and asked to send the results of his/her and his/her mother's test results to the mentioned address. Nevertheless, the clinic sent the results of the study to an e-mail address to a third party - the sister of the applicant, who had done the examination at the same clinic a few days earlier.

The clinic explained that it had obtained verbal consent from the data subjects to forward their data to the sister's email address. The inspection could not verify the fact that the clinic obtained the verbal consent of the data subjects regarding the processing of a special category of data. However, the State Inspector explained that since the test results represent a special category of data, the clinic had to have the written consent of the data subjects in order to disclose the test results.

Decision of the Service: The clinic was found responsible for the administrative violation prescribed in the first paragraph of Article 45 of the Law of Georgia on Personal Data Protection (processing of special categories of data without the grounds provided by this Law).

Key Findings and Recommendations

The cases examined by the Service and the measures taken show that there are a number of violations and shortcomings in the process of processing personal data in the health sector:

- In the process of data processing in the healthcare sector, data processors often do not take appropriate data security measures, leading to accidental and illegal disclosure of data. It is important that at the initial stage of data processing, organizational and technical measures are taken to ensure that data is protected from accidental or unlawful destruction, alteration, disclosure, extraction, any other form of misuse and accidental or unlawful loss;
- In some cases, medical facilities process inaccurate patient data. Given the sensitivity of data processed in the healthcare sector, it is essential that patient data be processed with maximum accuracy. The Law of Georgia on Personal Data Protection obliges the data processor to process the true and accurate data of the data subject, as incorrect/inaccurate processing of certain categories of data may cause irreparable damage to the realization of other human rights;

- In some cases, the data processor does not provide information to the data subject about the processing of his/her data in accordance with the law. Receiving such information allows the data subject to control the lawfulness of his/her data processing. If the data is collected directly from the data subject, the data processor or authorized person is obliged to provide the following information to the data subject:
 - The name and registered address of the data processor and authorized person (if any);
 - The purpose of data processing;
 - Whether provision of data is mandatory or voluntary; if mandatory - the legal consequences of refusing it;
 - The right of the data subject to receive information about the processed data about him/her, to request their correction, update, addition, blocking, deletion and destruction;
- Not infrequently, a medical facility / medical staff discloses/publishes patient-specific data without a legal basis. It should be noted that protecting the confidentiality of health-related data is important not only for safeguarding a patient's privacy and data protection, but also for maintaining public confidence in the medical profession and the healthcare system. According to the Law of Georgia on Personal Data Protection, processing of special categories of data (including disclosure) is not allowed, except in exceptional cases;
- It is often a problematic issue to establish the fact of the consent of the data subject regarding the processing of the data. The Law of Georgia on Personal Data Protection imposes on the data processors the burden of proving the consent of the data subject. Thus, data processors must ensure that relevant evidence is created/stored to prove that they have obtained consent from the data subject in the event of a dispute.

In order to improve the standard of data protection in the healthcare sector, it is important that organizations that process patients' personal data, including special categories, pay attention to the violations and recommendations outlined in this report.

It's recommended for the organizations to take into account the following:

- Not disclose patients' personal data without a legal basis established by the law;
- Take organizational and technical measures to ensure data security and prevent accidental and illegal disclosure of data;
- develop internal rules for the processing of patients' personal data, detailing the purpose of the data processing, the need, data security issues, and the cases of data transfer and/or disclosure to third parties;
- provide training for the employees of the organization on the issues of personal data protection to make sure they do not violate the privacy of patients in the work process.

07

**Processing of Personal Data in the
Election Process**

7. Processing of Personal Data in the Election Process

During the election period, both "ordinary" and "special" data are processed extensively, for example, information about a person's political views, which is highly protected information, and its collection, use and disclosure are allowed only in exceptional cases provided by the law.

Part of the personal data in the election process is publicly available under the law (for example, a certain part of the voter list), which increases the risks of their illegal use. Some of the data is available to the subjects and persons involved in the election process: the Central Election Commission, election commissions, political parties, election blocs, voter initiative groups, etc; including the right to collect desirable information for submitting appeals regarding voting and grievance issues.

In addition, in accordance with the law, representatives of electoral subjects and observers have the opportunity to observe the electoral process, including the right to collect the necessary information in order to file a complaint on issues related to voting and the voting procedure.

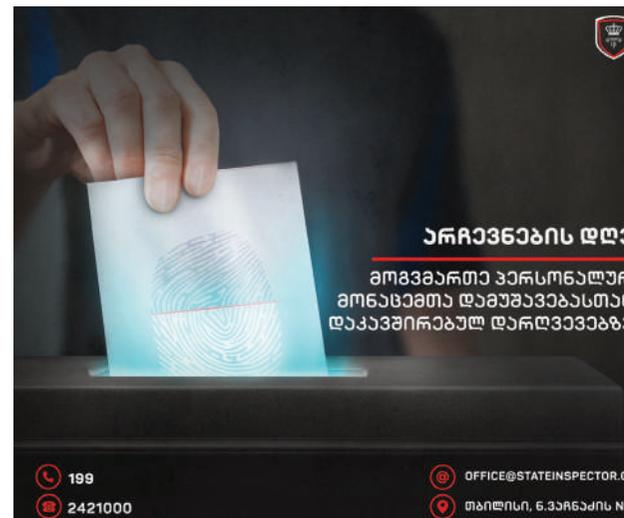
Granting broad powers (including data processing) to entities involved in the electoral process is in the public interest and serves the purposes set out in the Constitution and the Electoral Code of Georgia, although it is essential for the democratic conduct of the electoral process to ensure voter personal data protection.

In 2021, local self-government elections were held in Georgia. Accordingly, the issues of personal data protection in the election process were also relevant.

Awareness raising and implemented preventive measures

The measures taken by the State Inspector's Service to protect personal data in the election process were aimed at detecting and responding to violations of data protection legislation, as well as preventing them:

- Prior to October 2, 2021 local government elections, the State Inspector met with the Chairperson of the Central Election Commission. The purpose of the meeting was to further strengthen the coordination between the agencies and to protect the personal data of the citizens during the pre-election process and on the voting day. The meeting focused on the importance of protecting the confidentiality of voters' choice on Election Day and the steps taken by the Central Election Commission to this end. Violations revealed by the State Inspector's Service in cases related to election processes in previous years were also discussed. In addition, a working meeting was held between the State Inspector's Service and representatives of the Central Election Commission to facilitate the protection of personal data during the election process;
- In order to raise the awareness of voters, the Service prepared and posted on the social network a test on the importance of personal data protection in the election process, which was completed by more than 750 users of the social network. In addition, in order to prevent similar violations during the 2021 local self-government elections, the Service published information on the facts of illegal processing of personal data revealed by the State Inspector's Service during the 2020 parliamentary elections;
- Representatives of the State Inspector's Service were involved in the activities of the Interagency Commission for Free and Fair Elections at the Ministry of Justice of Georgia to prevent and respond to violations of the election law, where the information disseminated by the media regarding election violations was discussed.



Examined processes

In 2021, the State Inspector's Service investigated 16 cases of personal data processing in the election process, of which 10 were carried out on the basis of citizens' applications, and six - at the initiative of the Service. The allegations submitted to the service were mainly related to the illegal extraction/use of voter data and violation of the rules of notification (obtaining voters' identities, telephone numbers and addresses, contacting voters in support of a political party, as well as not providing information to the data subjects on the ways the personal data were obtained).

It should be noted that due to the lack of evidence, it was difficult to establish the facts of personal data processing and assess their legality. According to the cases investigated by the Service, administrative liability was imposed on one person for one offense. A warning was used as a sanction. In parallel with the administrative penalty, in order to improve the data processing processes and ensure their compliance with the Law of Georgia on Personal Data Protection in public and private institutions, the Service issued one recommendation and three mandatory instructions to be performed.

Cases of personal data processing in the 2021 election process have been examined in various political parties and public organizations that process large-scale and/or sensitive data on voters. The focus was on the processing of civil servants' data to mobilize political party supporters, the use of video surveillance cameras at polling stations, the collection of personal data by political parties for voter polls, and the disclosure of voters' personal data at polling stations. In particular, the service examined/inspected:

- Polling district. According to one of the news outlets, on the voting day of the local self-government elections on October 2, 2021, in one of the public schools in Rustavi city, the video surveillance cameras placed in the space for the polling station were aimed directly at the polling booths. Based on this information, the State Inspector's Service, on its own initiative, began to check the legality of the processing of personal data through video surveillance cameras at the polling station.

As a result of an examination of the polling station, the State Inspector's Service found that the space allocated for the polling station and the polling booths were not in the field of view of the video cameras. They were directed towards the corridor in the polling station. It was also established that the school resource officer, based on a letter from the Central Election Commission of Georgia and at the request of the Ministry of Education and Science of Georgia, shut down the video surveillance system before the Election Day. Thus, as of October 2, 2021 (Election Day), the public school video surveillance system was not operational. Besides, the fact of deleting the video recording and/or other similar manipulations were not revealed.

In this case, the service focused on the fact that the video surveillance cameras placed at the polling station may have suspected voters and persons present at the polling station of violating the secrecy of the ballot, which would have prevented the free expression of the will of the voters.

Decision of the Service: The Central Election Commission was recommended to take appropriate measures to modify the video cameras placed at the polling station on the polling day in such a way that it does not cause a feeling of video surveillance among voters and other persons present at the polling station.

- LEPL - Public Service Development Agency. On the basis of the referral by one of the applicants, the State Inspector's Service examined the legality of the agency obtaining the applicant's data and processing information relating to his deceased father.

As part of the examination of data processing, the State Inspector's Service found that the Agency was implementing a project to "improve voter lists" in order to fulfill its obligations under the Electoral Code. The goal of the project was to correct the inaccuracies in the unified electoral list, due to which a certain category of citizens was restricted from voting. The verification process revealed that the processing of the applicant's data was necessary in order to carry out its statutory duties and to protect the public interest in accordance with the law by submitting an accurate/correct list of voters to the CEC.

During the inspection, the applicant also indicated that a representative of the agency had provided incorrect information about the identity of the data processor and had introduced him/herself as a representative of the House of Justice. Due to the lack of conclusive evidence, the Service could not establish this fact, however, in order to properly inform the data subject, the Agency was given mandatory instructions to perform.

Decision of the Service: LEPL - State Service Development Agency was instructed to provide clear and unambiguous information to the data subject about the identity of the data processor when contacting the data subject within the framework of the "Voter List Improvement Project".

Status of fulfilment of the instructions: in the process.

- Political Party. As in previous years, during the reporting period, many citizens applied to the State Inspector's Service with a request to study the legality of processing their personal information by various political parties. It turned out that the party representatives were asked by the voters in the telephone communication for information about the processing of their data, including the specific source of data collection.

An examination carried out by the State Inspector's Service on the basis of a citizen's applications revealed that on 2 October 2021, one of the applicants requested information from a political party representative over the processing of his/her data by telephone. As the election period was over and the party had the information in its possession destroyed, the party was unable to provide the Service with the information and evidence of informing and/or attempting to inform the applicant within 10 (ten) days from October 2, 2021.

Decision of the Service: The political party was found responsible for the administrative violation provided for in Article 50 of the Law of Georgia on Personal Data Protection (violation of the rules for informing the data subject). In addition, it was instructed to develop a written rule / procedure for data collection.

- Political party. Following a report by one of the NGOs, on the day of the October 2, 2021 local self-government elections, various unauthorized persons had identical lists of voters' lists with photographs for public information outside the polling stations, which included voter photographs and other identifiable information (video footage was presented as an evidence). Based on this information, the State Inspector's Service immediately started examination of the indicated fact.

Despite numerous measures taken by the State Inspector's Service during the inspection process, it was not possible to identify the persons recorded in the video material submitted by the author and to obtain an explanation from them about the circumstances related to the data processing. However, the connection of one person with one of the political parties was revealed. The inspection of the case also revealed that the party had written to the Central Election Commission of Georgia requesting an electronic copy of the voter list, which was made available to members of the political party and persons permanently affiliated with the party. During the inspection, it was revealed that the party was giving oral instructions during the transmission of the voter list to its members and affiliated persons on the measures to be taken to ensure the security of the lists.

Decision of the Service: The political party was instructed to record the facts of handing over the voter list to the party members / persons affiliated with the party and to regulate in writing the rules of its destruction after the use of the voter list and the achievement of the goal.

Status of fulfilment of the instructions: in the process.

- Political party. According to one of the news outlets, on the day of the local self-government elections of October 2, 2021, employees of the Tbilisi City Hall and the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia were receiving calls from callers with different telephone numbers, who were addressing them by name and surname and asking to vote for the party. The State Inspector's Service started to study the mentioned facts on its own initiative.

As a result of the examination of the lawfulness of the data processing, the State Inspector's Service did not establish the fact of contacting the employees of the Ministry by the political party on October 2, 2021. In addition, the Service interviewed the recipients of the calls made by the party on October 2, 2021, only one of which confirmed the fact of working at the City Hall. The specific source of the data collected by the party was not identified. During the examination, the political party failed to provide accurate information on specific ways and procedures of obtaining data, however, it indicated that it was obtaining the data in accordance with current legislation, including the Election Code of Georgia. The party did not record information about voters and supporters received from the third party(s) (including the source of the data), which jeopardized the exercise of the data subject's rights.

Decision of the Service: The political party was instructed to develop and implement a written procedure on obtaining personal data of voters from third parties and on recording such data (what data was obtained, in what way, when, on what grounds and purpose) for mobilization of voters/supporters in the framework of pre-election agitation.

Status of fulfilment of the instructions: in the process.

Key findings and recommendations

Processing of voters' personal data during the election process requires special protection. Accordingly, in this process, organizations must act in the interests of the electorate. The cases examined by the Service show that there are some violations and shortcomings in the processing of data during the election process, In particular:

- Most political parties do not record voter/supporter information obtained from the third parties (including the source of the data), which jeopardizes both the exercise of the data subject's right(s) and, in the event of a dispute, complicates to thoroughly establish investigate the circumstances of data processing. In order to ensure the realization of the data subject's rights and data processing in accordance with the Law of Georgia on Personal Data Protection, it is im-

portant for political parties to develop a written document that will regulate the collection and recording of personal data from the third parties in order to mobilize voters/supporters (what data were collected, in what way, when, on what grounds and purpose);

- In some cases, when passing the voter list political parties provide only oral instructions to party members and affiliated persons on measures to ensure the security of the lists. The large volume of personal data of millions of voters collected in the voter list and the large number of persons involved in the data processing during the elections pose risks of data processing in violation of the law. Thus, in order to prevent illegal or accidental disclosure or use in any other form of data and to prevent unauthorized access to data, it is necessary for political parties to record the facts of transfer of voter lists to party members / affiliated persons and to determine in writing the rules of their use and deletion. At the same time, political parties should pay special attention to the voter list on election day - they should use the list only for legitimate purposes provided by the law and in cases specified by the election legislation;
- According to the revealed tendency, when political parties contact voters by phone to conduct surveys, citizens are interested in the source of the data / ways of obtaining their personal data. Although it is the right of the data subject to obtain such information, in some cases, the parties did not properly provide this information to the voter and cannot indicate the sources, which poses doubt on the legitimacy of obtaining the data. In order to properly exercise the rights of a data subject under the Law of Georgia on Personal Data Protection, it is important for political parties and other organizations involved in data processing in the election process to proactively provide voters with information about their rights as data subjects and if requested - the information on which organization collects the data, for what purpose, whether it is mandatory or voluntary to provide data, on what legal basis the information is processed, etc.;
- It was also revealed that sometimes polling stations are located in an area where video surveillance cameras are installed. Although no irregularities were found in the case handled by the Service where it was found that the video surveillance cameras were switched off on Election Day, placing video surveillance cameras at the polling station still raise the suspicion of violating the secrecy of the ballot among voters and people present at the polling station. Thus, it is necessary for the Central Election Commission to ensure that polling stations are organized in such a way that the voter has a sense of secrecy when executing their voting right.

In order to improve the standard of personal data processing in the election, it is important that voter data processing organizations focus on the violations and recommendations outlined in this report. Organizations should:

- develop detailed rules/instructions governing the voter data processing during elections;
- for the purpose of voter surveys, their data should be obtained only according to the rules and legal basis provided by the Law of Georgia on Personal Data Protection and in compliance with the principles provided by the same law;
- should raise the awareness of those involved in the election process and should ensure the security of voter data.

08

**Data Processing in Law
Enforcement Agencies**

8. Data Processing in Law Enforcement Agencies

The activities of law enforcement agencies are related to the implementation of various police actions, crime investigations, criminal prosecutions and sentencing. In performing these functions, they process large volumes of personal data. They have access to a large number of databases, video surveillance system records, data obtained by open and secret methods, which increases the risks of processing personal data in violation of the law. In turn, illegal processing of data by law enforcement agencies can significantly damage the rights of data subjects: cause damage to their dignity/reputation and/or cause stigmatization, discriminatory treatment of them, etc.

In 2021, the examinations conducted by the Service in law enforcement agencies focused on the protection of the rights of both citizens (including persons held administratively liable, accused, convicts), as well as those employed in law enforcement agencies. Among other important issues, COVID-19 remained a challenge in 2021, prompting law enforcement agencies to introduce new data processing procedures.

In 2021, the State Inspector's Service responded to the communications and statements of citizens, as well as paid special attention to the information spread in the media regarding the possible violation of data processing law requirements in the law enforcement sector and issues identified by NGOs and by the Office of the Public Defender of Georgia.

Awareness raising and implemented preventive measures

In addition to reviewing the data subjects' applications and verifying the lawfulness of data processing, the State Inspector's Service focused on prevention - raising the awareness of law enforcement officials. The service conducted a number of meetings and trainings in 2021:

- The Service conducted seven trainings for about 200 employees of the Ministry of Internal Affairs of Georgia and the Ministry of Defense of Georgia. The trainings covered general data processing issues, juvenile data processing, specific category data processing including health status, data security measures and other important issues;
- Five meetings were held with the representatives of the law enforcement bodies, in which the representatives of the Ministry of Internal Affairs of Georgia, the State Security Service of Georgia, the Prosecutor's Office of Georgia, the sub-agency of the Ministry of Justice of Georgia - Special Penitentiary Service and common courts participated. The meetings focused on important issues of data processing, such as: photography within the framework of police measures, video surveillance by law enforcement agencies, data processing within the framework of investigative actions provided by the Criminal Procedure Code of Georgia, etc.;
- With the support of the United States Agency for International Development (USAID) Good Governance Initiative (GGI) project, a collection of decisions on data processing within the law enforcement agencies was prepared, comprising of 24 real cases reviewed by the State Inspector's Service (Personal Data Protection Office) in 2013 - 2021 and recommendations for data processors to prevent similar violations. This collection, among other things, provides information to the public about important decisions made by the Service and the rights of data subjects;
- The staff of the Service was involved in the work of the inter-agency working group on cyber security in order to develop the National Cyber Security Strategy and its Action Plan. In addition, the staff of the Service are members of the Board of the Cyber Security Reform Program. In the course of the work, the State Inspector's Service issued recommendations that served to comply with data processing standards in this area.

Examined processes

In 2021, the State Inspector's Service examined 56 cases of data processing by law enforcement agencies, 27 of which were based on the applications of data subjects, 20 - on the basis of reports received, media reports, circumstances indicated in the Public Defender's report, and nine on the initiative of the State Inspector (the Service initiated the examination in the Ministry

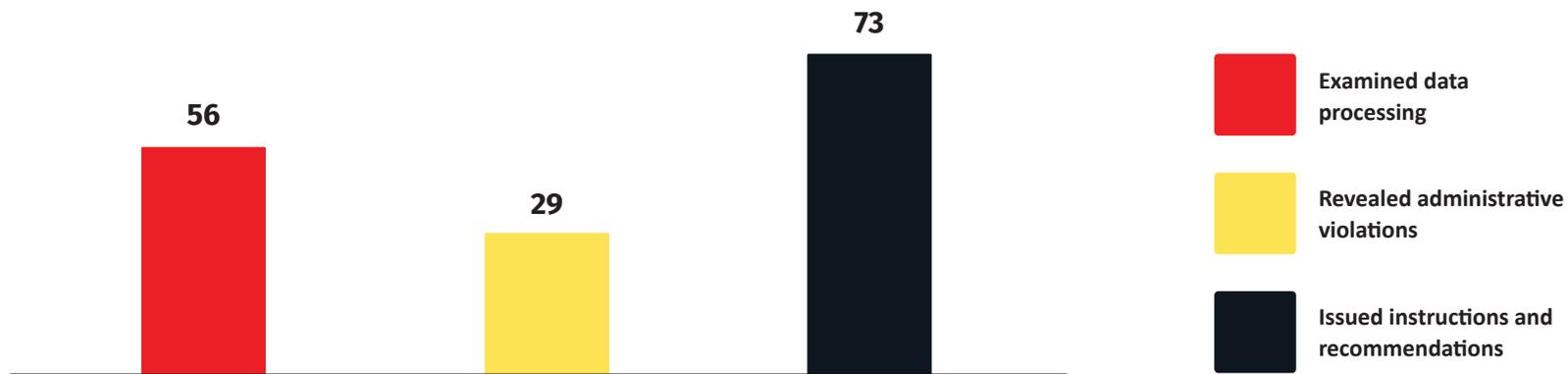
of Internal Affairs of Georgia, the Investigation Service of the Ministry of Finance of Georgia, LEPL - Operative-Technical Agency, Special Penitentiary Service, LEPL - National Agency for Execution of Non-custodial Sentences and Probation and Electronic Communication Company - Vion Georgia Ltd.).

In 2021, most of the notifications and applications of data subjects were related to the processing of data by the Ministry of Internal Affairs of Georgia and the Special Penitentiary Service. As for the content of the notifications and applications, they were mainly related to: violation of the rules for informing data subjects; legality of taking photos of citizens on the street; legality of the use of information on a annulled/revoked conviction in the course of a criminal investigation; legality of the processing of personal data during the exchange of documents between lawyers/representatives of investigative bodies and defendants/convicts in penitentiary institutions within the limits of COVID-19 management; legality of processing the data of persons employed in law enforcement agencies for the purpose of vaccination, etc.

Within the framework of the examinations carried out at the initiative of the State Inspector's Service, the following was studied: legality of the processing of personal data of persons employed in the law enforcement agencies, including special categories (on health status); legality of biometric data processing and electronic databases used for their processing; legality of data processing by the Special Penitentiary Service in the framework of prison visits; legality of the processing of data during covert investigative actions, including the technical means used for this purpose; data processing with video surveillance systems and more.

As a result of the cases examined by the State Inspector's Service, administrative liability for 29 violations was imposed on 20 different law enforcement agencies in 20 cases. In four cases, a warning was used as a sanction, and in 16 cases - a fine. In order to improve the data processing and ensure their compliance with the Law of Georgia on Personal Data Protection, in parallel with the application of administrative penalties, the Service issued seven recommendations and 67 mandatory instructions.

Data processing in law enforcement agencies



A number of data processing cases in law enforcement agencies are discussed in detail in the relevant thematic sections of this report. This subsection reviews the cases of data processing carried out by the law enforcement agencies in connection with performing their main functions. In particular, the Service examined / inspected:

- Ministry of Internal Affairs of Georgia. In July 2021, on the social network "Facebook", the personal information of the deceased (victim of the protests held on July 5, 2021 in Tbilisi, operator of TV Pirveli A.L.) was published by various users, including: special category data - about his participation in administrative and criminal cases with this or that status. The State Inspector's Service initiated the investigation of the case on its own initiative.

As a result of examining the legality of data processing, the State Inspector's Service found that the personal data of TV Pirveli operator A.L. were recorded in the database of the Ministry of Internal Affairs available only to those who had access to the electronic database (on his participation in administrative and criminal cases with this or that status). Comparing the data published on the social network/Internet and that protected by the Ministry, it was found that the information disseminated was in complete match with the data in the Ministry's database: structure, sequence, charac-

ters used in the text (punctuation marks). Also, stylistic and grammatical errors and omissions were identical. The inspection of the database of the Ministry also revealed that to the data of A.L., in the period before their publication, access was exercised 164 times by 82 employees of various positions and functions of the Ministry.

The above circumstances clearly indicated that the Ministry was the first source for the dissemination of A.L.'s personal including special category data. However, the service could not identify a specific employee of the Ministry who made this data available to third parties. It is noteworthy that the General Inspectorate of the Ministry initiated an official inspection on its own initiative to identify those employees who had access to the data in the Unified Information Bank without a legal basis. Accordingly, the State Inspector's Service did not / could not assess the legality of the actions of a specific employee of the Ministry of Internal Affairs of Georgia according to the Code of Administrative Offenses of Georgia.

Decision of the Service: the Ministry of Internal Affairs of Georgia was instructed to provide the State Inspector with the information on the results of the inspection and the decisions made upon the completion of the ongoing official investigation of the facts of access to data and alleged disclosure. It was also instructed to develop detailed instructions for accessing and using personal data and to provide staff with access to these instructions through their periodic training.

Status of fulfillment of the instruction: in progress

- Ministry of Internal Affairs of Georgia. Based on the citizen's application, the State Inspector's Service investigated the lawfulness of the storage by the Ministry of Internal Affairs of Georgia of information on a person's conviction and its use in the investigation of a criminal case.

Upon examination of the lawfulness of the data processing at the Ministry of the Internal Affairs, the State Inspector's Service found that in the ongoing criminal case against the applicant, the investigator had requested a certificate of his conviction. Although the conviction notice indicated that the conviction had been lifted for the applicant, the investigator requested the materials of the applicant's conviction, a bail bond, and a notice of his release from the penitentiary. These documents were attached to the criminal case and submitted to the court. According to the information provided by the Ministry, the applicant's revoked conviction could not have had a legal effect on the qualification of the possible criminal offense, although it did form an impression on the applicant's identity.

It was found that the Ministry kept information about illegal actions, administrative offenses, criminal offenses, their possible perpetrators, administratively liable persons, the measures of liability imposed and the ongoing legal proceedings. The need to process information on revoked or annulled convictions was also caused by the Law of Georgia on Weapons and the Law on Combating Crimes against Sexual Freedom and Inviolability, the provisions of which provide for the restriction of certain rights after revocation and/or annulment of the conviction. Besides, according to the criminal law of Georgia, in order to postpone the execution of the sentence, release the convict from further serving of the sentence, review the sentence of life imprisonment / change it to a lighter sentence and apply a conditional sentence, the court may take into consideration the fact of committing crime in the past. In view of the above, the Service considered that the Ministry was allowed to process annulled or revoked conviction data for a certain period of time, although the Service clarified that the Ministry's indefinite retention of conviction data violates international and domestic personal data protection legislation. Accordingly, the Ministry should set differentiated time limits for storing these data. The Service clarified that in order to conduct the investigation objectively and to administer fair justice, the investigator was authorized to verify information about the person's conviction, however, according to Georgian legislation and the Supreme Court of Georgia, past convictions affect a person only for a certain period of time. After fulfilling the objective set by the law these data, in the event of a criminal prosecution, may not affect the assessment of the person (for what purpose the applicant's data was used in this particular case).

Decision of the Service: the Ministry of Internal Affairs of Georgia was found responsible for the administrative violations provided for in Article 44 of the Law of Georgia on Personal Data Protection (violation of the principles of data processing). At the same time, it was instructed to: define in writing the terms of storage of data on convictions of persons,

which excluded the possibility of storage of data for life; after the achievement of the processing objective(s) deleting conviction data or storing it in a form which excludes the identification of the person; defining in writing the rule/procedure of access to the archived data on the conviction; take such organizational-technical measures which, within the framework of the criminal case investigation, ensures the processing of data on a person's conviction only to the extent relevant to the legal purpose.

Status of fulfillment of the instruction: not fulfilled

- Ministry of Internal Affairs of Georgia. Based on the information provided in the 2020 report of the Public Defender of Georgia on the situation of protection of human rights and freedoms in Georgia, the State Inspector's Service examined the legality of video surveillance in the barracks of conscripts of the Security Department and the Special Tasks Department of the Ministry of Internal Affairs.

As a result of the examination of the Ministry of Internal Affairs, the State Inspector's Service found that 24-hour video surveillance was carried out in the Special Tasks and Facility Protection Departments, in the barracks of conscripts - in bedrooms and rest areas, in classrooms. The Special Tasks Department, on its own initiative, stopped the video surveillance in the bedrooms during the inspection, as there was no need to process data in this way. The Department of Facility Protection named the security of individuals, protection of property and confidential information as the purpose of the video surveillance, and for the video surveillance in the classrooms it named testing/examinations as a purpose. However, the Department of Facility Protection clarified that the rest areas were not changing rooms, as conscripts were not allowed to take off uniforms while using the mentioned areas.

Data subjects have the right to freely use the rest areas without the observation of outsiders, which is one of the important guarantees of the realization of their privacy. As the Ministry failed to provide adequate justification for the necessity of video surveillance in the bedrooms / rest areas, the Service did not consider the surveillance of military per-

sonnel in a private environment to be in accordance with the law. Especially in the conditions where conscripts are constantly monitored (including in the bedroom / rest area) by officers. Video surveillance in classrooms was considered as a legitimate means to achieve the goal, although military personnel were not properly informed about the purposes of video surveillance.

Decision of the Service: The Ministry of Internal Affairs of Georgia was found responsible for the administrative violation provided for in Article 44 of the Law of Georgia on Personal Data Protection (violation of the principles of data processing). At the same time, the Department of Facility Protection was instructed to stop video surveillance in the living (sleeping) areas of barracks for military servicemen and to fully and accurately inform the employees about the purposes of video surveillance in the classrooms.

Status of fulfillment of the instructions: fulfilled.

- Inspection of the Ministry of Internal Affairs of Georgia. Regarding video surveillance, the State Inspector's Service conducted an important inspection at the Ministry of Internal Affairs of Georgia, which was initiated based on a notification of the Investigative Department of the State Inspector's Service. According to the report, the video recorders requested by the Investigative Department were not stored in the video recorders of the territorial bodies of the Ministry, despite the fact that the request to provide the recordings was made before the expiration of the minimum period for storing the records specified by the order of the Minister of Internal Affairs. The inspection carried out by the State Inspector's Service included an examination of measures taken to ensure the security of personal data processed through video surveillance systems located in the territorial bodies of the Ministry. It should be noted that the State Inspector's Service inspected the ongoing video surveillance process in the territorial bodies of the Ministry of Internal Affairs of Georgia in 2020, within the framework of which significant security deficiencies were revealed.

As a result of checking the lawfulness of data processing at the Ministry of Internal Affairs, the State Inspector's Service found that the Ministry did not provide video recordings to the Investigative Department of the State Inspector's Service due to their absence in video recorders. The Ministry pointed out the technical shortcomings of the recording equipment as the reason for the absence of records. The inspections revealed that most of the internal cameras in the territorial bodies were out of order, and the information about the activities carried out in the recording devices (so-called log-recordings) was protected only from the period after the refusal to provide video recordings to the Investigative Department. Video recording equipment was replaced in the territorial bodies of the Ministry, which, according to the Ministry, was due to damage to old equipment. At the same time, the Ministry did not have any information registered about malfunctioning of video surveillance cameras and the organizational and technical measures taken by them did not ensure the timely identification of technical defects in the recording equipment, which threatened the legitimate interests of data subjects. Due to the fact that the Ministry did not fulfill most of the instructions issued by the State Inspector's Service in 2020, which were related to defining the rights and obligations of persons entitled to access video recordings, complete recording of actions taken on video recorders, instantaneous and systematic recording of video surveillance malfunctioning cases.

Decision of the Service: The Service instructed the Ministry of Internal Affairs of Georgia to submit updated information on the implementation of the instructions issued by the decision of the Service in 2020. The Service also recommended the timely monitoring of video surveillance systems, video recording equipment, to ensure the timely detection of all possible technical deficiencies and protection against accidental or illegal destruction of personal data.

Status of fulfillment of the instructions: in the process.

- Ministry of Internal Affairs of Georgia. For years, the problem has been the photographing of citizens by police officers as part of preventive policing measures. The authority to take a photograph is vested in the police during the course of identifying a person for the sake of public safety. It should be noted that the use of a person identification measure is allowed only in cases provided by law, when there are relevant preconditions, in particular, if it is impossible to determine the identity of the person despite his interview and verification of documents.

In 2021, the State Inspector's Service received seven notifications regarding this issue, on the basis of which the relevant inspections were carried out. The fact of administrative violation was revealed in only two cases. Since the representative of the Ministry of Internal Affairs of Georgia and the data subject provided contradictory explanations during the administrative proceedings and there was no other evidence to support the position of either party, it was difficult to establish whether processing the data was in violation of the law. In cases where the State Inspector found the data to be processed in violation of the law, the facts recorded by the police were captured by street video surveillance cameras and matched the information provided by the data subjects. It should be noted that in these cases as well, the Ministry of Internal Affairs of Georgia denied the fact of data processing through photography.

As a result of the inspection carried out on the basis of one of the notifications related to the photo taken by the Ministry of Internal Affairs, the State Inspector's Service found that during the night hours, while walking on the street, police officers stopped a person for identification purposes. He was considered suspicious because of his resemblance to a person who had been implicated in the commission of a criminal offense. The person stopped by the police voluntarily provided the police officer with information about his/her identifying details. Nevertheless, the police officer took a photo of the person to compare him/her with the suspect. Given that the police officer had all the necessary data to identify the person, which was not doubtful, the Service considered that the processing of data through additional photographing was not an adequate and proportionate means of achieving the set goal. At the same time, the police officer did not draw up a protocol for the identification of a person under the Law of Georgia on Police, which, on the one hand, serves to inform the data subject and facilitate the realization of his/her rights, and on the other hand, is important evidence for assessing the lawfulness of police action.

Decision of the Service: The Ministry of Internal Affairs of Georgia was found responsible for the administrative violations provided for in Article 44 of the Law of Georgia on Personal Data Protection (violation of the principles of data processing). At the same time, it was instructed to develop rules governing the process of photographing in order to identify a person, which would set the procedure for carrying out this action, the standard of photography, the technical means used for photographing, the rules of data storage and access, etc.

Status of fulfillment of the instructions: in the process

- **Special Penitentiary Service.** The inspections were initiated by the Service, as the Special Penitentiary Service processes a large amount of personal data about many persons in the process of exercising the right to short, long and family visits of the accused/convicts. As part of the inspection, the legality of the processing of personal data by penitentiary institutions of persons using appointments was examined. The data of the mentioned persons is processed by the special penitentiary service through an electronic program, where the documents of the persons exercising the right of visit are also stored. It should be noted that by 2021, the number of detainees in penitentiaries exceeded 9,000.

As a result of the inspection of the Special Penitentiary Service, the State Inspector's Service found that the Special Penitentiary Service, by registering in the relevant electronic program, processed various information about persons exercising the rights to visit - name, surname, personal number, date of birth, relationship type, mobile phone number, place of visit / penitentiary institution, as well as name, surname, father's name, date of birth and personal number of the accused/convict. In the same program, electronic copies of all relevant documents submitted by visitors were uploaded. The Special Penitentiary Service determined the period of storage of the mentioned data as the period of stay of the accused/convict in a specific penitentiary institution and, in addition, one year after his release. However, the inspection revealed that the Special Penitentiary Service had not deleted the personal data and documents containing them from 2019, which had expired and there was no need for storage. Due to software shortcomings, it was not possible to activate the auto-delete functionality after the expiration date. However, no actions were taken against the

data. According to the Special Penitentiary Service, work had begun on the new software (which would be completed no later than April 2022), which would take into account all the deficiencies identified during the inspection process.

Decision of the Service: The Special Penitentiary Service was found responsible for the administrative violations provided for in Articles 44 (violation of the principles of data processing) and 46 (non-compliance with data security requirements) of the Law of Georgia on Personal Data Protection. At the same time, the Special Penitentiary Service was instructed to: delete, destroy and/or store in a non-identifiable form the data of the persons who had the right to visit, for whom the expiration date had expired due to data processing purposes; ensure accounting (logging) of all actions performed on the data, including viewing, deleting, modifying, adding, and printing.

Status of fulfilling the instructions: in the process

- Special Penitentiary Service. The inspection was initiated by the Service as certain restrictions were enacted in the penitentiary system to prevent the possible spread of Covid-19. Restrictions applied to meetings between detainees and a lawyer/investigator, during which documents were exchanged through staff at the penitentiary. Documents such as interrogation and interview protocols, attorney and defense counsel positions, court decisions, and others containing the personal data of detainees were exchanged among the above-mentioned individuals. Therefore, it was important to assess in a timely manner whether the confidentiality of personal data was protected in the process and whether there was a risk of third-party access to it.

Upon inspection by the Special Penitentiary Service, the State Inspector's Service found that meetings of lawyers or representatives of the investigative body with detainees in penitentiary institutions were held beyond the glass barrier, excluding the possibility of physical contact between them and the transfer of documents in person. During the meetings, the exchange of documents was carried out with the help of the staff of the penitentiary institution and before delivery to the addressee it was in the hands of several staff. Documents were usually exchanged in open form (documents were placed only in a transparent polyethylene package). In parallel with the adoption of restrictive measures,

the rules of exchange of confidential information in special penitentiary institutions were not regulated, besides, the participants of the meeting were not provided with the means to protect the content of the correspondence (e.g. sealed envelopes). Although the participants in the meeting received information on the spot in advance in what form the documents would be delivered to the addressee, which formed certain expectations regarding the data exchange process, also despite the explanation of the Special Penitentiary Service that the documentation was not checked by the penitentiary staff, the Service considered that the open exchange of documents and the lack of appropriate security measures posed risks of data disclosure.

Decision of the Service: The Special Penitentiary Service was instructed to: develop a written rule for the exchange of documents during the meeting between the detainee and the visitor; take organizational and technical measures to ensure the secure exchange of documents (for example, by placing sealed envelopes on both sides of the barrier in an accessible place).

Status of fulfillment of the instruction: fulfilled

- Special Penitentiary Service. The Service reviewed the statement of the convict in the penitentiary institution, which indicated that at the time of sending the correspondence the Special Penitentiary Service did not allow the sealing of the documents containing his/her personal data, due to which the documents were handed over to the lawyer in an open form. During the review of the application, the Service examined the legality of the exchange of correspondence through the chancellery of the penitentiary institution, including the measures taken to ensure the confidentiality of personal data.

As a result of checking the legality of data processing in the Special Penitentiary Service, the State Inspector's Service found that the forms of correspondence exchange in the penitentiary institution are different from each other. In particular, according to the Detention Code, the correspondence of the accused/ convict is subject to inspection - visual inspection, and, in extreme cases, in the presence of a reasonable suspicion, the relevant employee of the penitentiary institution is entitled to read the correspondence. Correspondence received in a sealed envelope is subject to visual inspection only, without knowing the contents, and it is opened in the presence of the accused/convict. The penitentiary

institution explained to detainees their rights, including the form of correspondence exchange and the procedure for checking correspondence, although defendants/convicts were not provided with information on the procedure for sending correspondence, specifically the right to request for an envelope. Because the standards for verifying closed and open correspondence differed from each other, it was important for detainees to have detailed information, including on requesting a closed envelope and sending a letter in this form.

Decision of the Service: In order to choose the preferred form (open or closed) of correspondence for proper realization of the right provided by the Detention Code and sending documents containing personal data, the Special Penitentiary Service was instructed to inform the detainees in writing about the right to send correspondence in a sealed envelope.

Status of fulfilment of the instructions: fulfilled

Key findings and recommendations

Law enforcement agencies should take special care and attention to data processing of data subjects. Unlike other data processors, law enforcement has easy access to personal data, including special categories of data (e.g., convictions, being a victim, administrative detention), the disclosure of which could substantially harm the interests of data subjects.

Despite the preventive measures taken by the State Inspector's Service, trainings and timely reactions on the possible violations of the law, there are still many challenges in terms of data protection in law enforcement agencies. In particular:

- A matter of concern is the illegal disclosure of information about data subjects by law enforcement agencies. Law enforcement agencies should pay special attention to cases of data disclosure, should thoroughly assess the damage that data disclosure may cause to the data subject and provide the public with accurate, adequate and information relevant to the purpose of data processing;

- Although large amounts of data, including special categories of data, are stored in law enforcement databases, detailed instructions for accessing and using personal data are not developed, and complete and effective data access control mechanisms are not provided. In the absence of rules and having a weak control, law enforcement officials do not shy away from accessing data without a legal basis, which poses a very serious threat to the rights of data subjects;
- In some cases, data storage time-limits are not defined and are stored indefinitely, including data that could substantially infringe the rights of data subjects;
- Most law enforcement agencies have not taken adequate and effective organizational and technical measures to protect data security (for example, damaged and/or malfunctioning video surveillance systems, actions taken against electronic data in electronic programs or video recorders). In the absence of such measures, data processors will not be able to identify unauthorized access to data or other illegal activities and to protect the data from accidental or unlawful destruction, extraction, disclosure, any other form of misuse and accidental or unlawful loss;
- A significant challenge is providing data subjects with a comprehensive definition of their rights (for example, the right to request an envelope when sending correspondence to a penitentiary, informing them of the purpose of ongoing video surveillance in the classroom), which hinders or makes it impossible for data subjects to exercise their rights;
- With the innovations introduced due to the situation created by COVID-19, the need for data privacy protection was not analyzed and assessed;
- Data protection and video recording protection remain a challenge in the process of video surveillance;
- Compliance with the law on the procedure of photographing in order to identify a person also remains a problem. The processing of data in this form should be carried out only when necessary, in the presence of the appropriate grounds provided by law, and only to the extent necessary to achieve the legitimate aim pursued.

Law enforcement agencies should pay special attention to data protection by taking into consideration the following:

- constantly assess the expected risks before processing the data and during the processing and take appropriate measures to eliminate the risks in advance;
- pay attention to the realization of the rights of data subjects - citizens, as well as the protection of the data of the persons employed with them;
- develop documents regulating data processing procedures and regulating data access;
- clearly define the goals and needs of data processing; explain to the data subjects clearly and with the form that they understand the purposes of data processing and their rights.
- Taking into account the specifics of law enforcement agencies, take constant care of the qualifications of those employed by them on personal data protection issues.

09

**Personal Data Processing using
Modern Technologies**

9. Personal Data Processing using Modern Technologies

Against the background of technological development, the cases of creation of electronic databases through various innovative (for instance, systems based on artificial intelligence, use of biometric data) means and using them for different purposes are increasing in organizations. The joint use of electronic databases and modern technologies allows the processing of large volumes of data without extra effort, which also significantly saves financial or human resources. In parallel with the growing trend of database creation and technological development, given the volume of processed data and the non-transparency of processing procedures, the threats of unlawful data usage also increase.

It is noteworthy, that the situation created by the spread of the coronavirus has increased the demand for e-Trade, which has led to the provision of remote services to the consumers by the private organizations. The use of online services implies the data processing in the online space, which also significantly increases the risk of violating the requirements of the Law of Georgia on Personal Data Protection.

The protection of data available in the databases from accidental or unlawful use / disclosure and their security is the responsibility of both private and public organizations. Improper risk assessment and adoption of inadequate security measures for data protection may pose risks of unlawful data processing and cause harm to the interests of both the data subjects and the data controllers. Accordingly, the State Inspector's Office annually directs its efforts to improve the data processing processes in electronic databases.

Awareness-raising and implemented preventive measures

In 2021, the State Inspector's Service actively supervised the lawfulness of data processing using modern technologies:

- The Service, at the request of various private companies, has provided a number of written consultations on processing of biometric data through modern technologies in the process of remote identification;
- The Service participated in the work of the Ad hoc Committee on Artificial intelligence of the Council of Europe, which works on the issue of artificial intelligence and the development of a legal document regulating this field;
- The Service participated in the 6th Georgian Internet Governance Forum attended by numerous representatives of the public and private sectors. At the forum, an employee of the State Inspector's Service spoke about the importance of personal data protection in the development of technologies and artificial intelligence. Emphasis was put on the challenges accompanying the introduction of artificial intelligence technologies;
- The Service, with the support of the United States Agency for International Development (USAID) Good Governance Initiative's (GGI) project and in partnership with consulting firm UYI Ltd, has developed two thematic recommendations on personal data processing in online shopping and distance learning;
- Within a joint project with the Institute for Development of Freedom of Information (IDFI) and with the support of the Kingdom of the Netherlands in Georgia, the Service has prepared 2 information documents to raise the standards of data processing through modern technologies: biometric data processing in the financial sector and data processing in the field of electronic communications. In addition, a survey on the best European practices for biometric and genetic data processing was conducted.

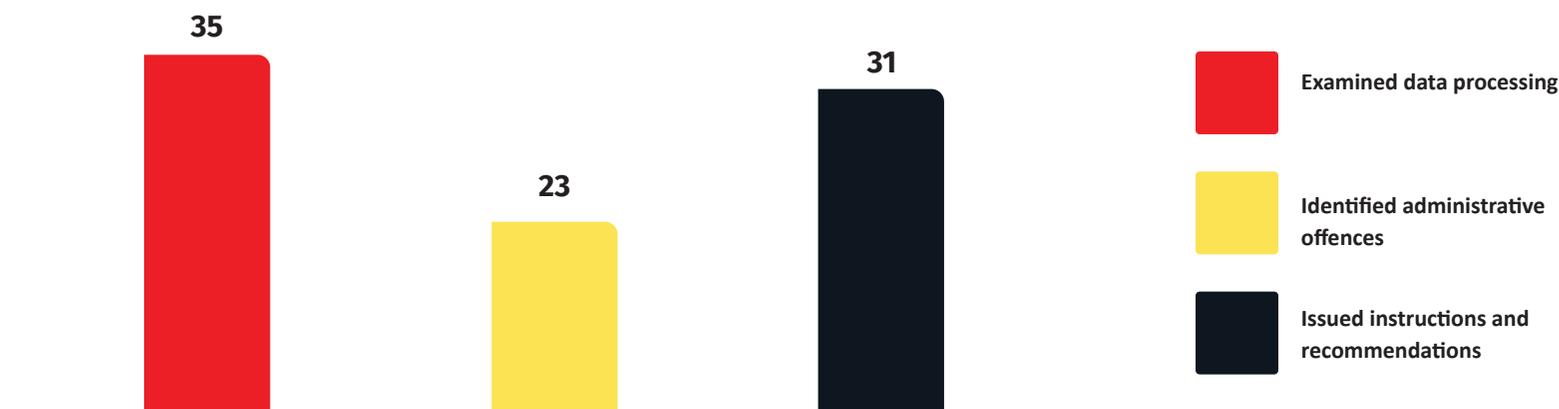


Examined processes

In 2021, the State Inspector's Service examined 35 cases of personal data processing through modern technologies, out of which 24 examinations were carried out on the basis of citizens' applications, while 11 – upon the initiative of the Service. The received applications mainly related to cases of data processing through electronic databases, biometric data processing and data processing for direct marketing purposes.

As a result of the cases examined by the Service, administrative liability was imposed on 17 persons for 23 offences. As a sanction, a warning was issued to 6 persons, and a fine was imposed on 11 persons. In parallel with the administrative penalties, the Service issued 1 recommendation and 30 mandatory instructions for improving the data processing procedures in public and private institutions and their alignment with the Law of Georgia “On Personal Data Protection”.

Data processing using modern technologies



In 2021, upon the initiative of the State Inspector's Service, the personal data processing was examined in organizations that through modern technologies process large volumes and sensitive data on a daily basis in large databases. In addition, emphasis was put on data processing by remote service providers. The Service examined / inspected:

- LEPL - Levan Samkharauli National Forensics Bureau. Production of the database for drug registration is Bureau's one of the functions. Considering the high public interest towards the proper and safe production of the Unified Drug Database, the sensitive nature of the personal data processed by the Bureau, its scope and the risks of unlawful processing, the Service, on its own initiative, examined the lawfulness of personal data processing in the production process of a drug registration database by the Bureau.

As a result of inspecting the lawfulness of data processing in the Bureau, the State Inspector's Service established that the drug registration database is a unified database of the Bureau and the Ministry of Internal Affairs of Georgia, which consists of four sub-databases. Data of more than 600,000 persons were stored in the database at the time of inspection. The inspection revealed that the factual data processing through the drug registration database and the legal acts regulating this process did not completely coincide. For example, there was no clear legal basis for merging the databases of the Bureau and the Ministry of Internal Affairs of Georgia and the procedure for removing a person from the drug registration database, also the period of being registered in the drug registration did not fully comply with the instructions approved by the law.

The inspection also revealed that when processing data through a drug registration database the Bureau failed to ensure adoption of the measures required by law for protection of the data security. In particular, during the inspection, the Bureau did not record the actions taken through the program in relation to the data; the users of 309 employees of the Bureau, who should not have had access to the drug registration database at the time of the inspection, were not canceled / blocked; due to the simplicity of the user passwords used to access the program, there was a risk of accessing the data on someone else's behalf and for unlawful purposes.

Decision of the Service: The Bureau was found liable for an administrative offence provided for in Article 46 of the Law of Georgia on Personal Data Protection (non-compliance with the data security requirements). At the same time, the Bureau was assigned to assess the database volume, consolidation of existing form of data, scope of access to the data (including the scope of access to the database of the Bureau by the Ministry of Internal Affairs and, conversely, the scope of access to the database of the Ministry of Internal Affairs by the Bureau), the timeframe for data processing, the issue of processing information on removal of persons from drug registration and considering the existing needs; and to ensure compliance with legal acts regulating the data processing procedure. The State Inspector's Service informed the Government of Georgia, the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs and the Ministry of Internal Affairs of Georgia about these needs.

Status of fulfillment of the issued instruction: in the process of fulfillment.

- LEPL - Public Service Development Agency. The inspection was initiated by the Service, as in order to prevent the spread of the new coronavirus, the LEPL - Public Service Development Agency introduced remote services, which envisaged communication to service recipients with audio-video calls. The inspection included an examination of the lawfulness of processing of service recipients' personal data by the Agency through audio-video calls during remote services.

As a result of examining the lawfulness of data processing in the Agency, the State Inspector's Service established that the duties and responsibilities imposed on the Agency by the law included providing remote services to interested persons and for this purpose, establishing visual contact with them, identifying them through this way and confirmation of the content of the expression of their will. Accordingly, the Agency had the legal basis for processing the data of the service recipients through audio-video calls (data processing is required for the data processor to perform the duties assigned to him / her by law, data processing is necessary to process the data subject application / provide services). However, some shortcomings were identified in terms of data security. In particular, the Agency stored audio-video files con-

taining the service recipients' data on three different servers. 53,847 records were stored on the backup server during the inspection. In some cases, none of the actions taken in relation to the audio-video files stored on the server were recorded by the period of inspection, although before its completion, the Agency presented evidence confirming recording of all actions taken in relation to the data.

According to the Agency, it ensured provision of information to the data subject about his/her audio-video recording before launching record. However, the fact of the warning was not recorded in the audio-video recordings. Consequently, the Service was deprived of the possibility to verify whether the Agency indeed provided proper information to the data subject.

Decision of the Service: The Agency was found liable for an administrative offence provided for in Article 46 of the Law of Georgia on Personal Data Protection (non-compliance with data security requirements). At the same time, it was recommended to ensure that during remote services, before processing data by audio-video calls, data subjects are informed in a way that would confirm its compliance with the law.

Status of fulfillment of the recommendation: fulfilled.

- E-Trade companies. Due to the spread of COVID-19, the demand for e-Trade has significantly increased, which has proportionally increased the volume of personal data processed in private organizations and the risks associated with data processing. The State Inspector's Service, on its own initiative, inspected several companies engaged in e-Trade. The inspection included examination of the lawfulness of personal data processing during online sales and service provision.

As a result of inspection, the State Inspector's Service established that hundreds of thousands of consumer's data were stored in companies' databases. In turn, consumers registered on the companies' websites to receive specific services. The registration process included the following information about consumers: first name, last name, email address, mobile phone number, in some cases, personal number and bank details.

The inspections revealed that some of the companies processed data although they had no real need and purpose to collect them in the service process. For example, information about the health status of consumers. The inspection also revealed that the information contained in the "Privacy Policy" documents posted on the websites regarding the data processing did not reflect the factual processes.

It was further established that in most of the cases, the data security measures were not observed. In particular, those with access rights could search, delete, browse, edit the data of consumers stored in the database, although some companies did not record information about data retrieval, browsing and editing, meaning that not all actions taken in relation to electronically protected data were recorded by companies.

The inspections also revealed that the companies used their websites to process the so-called "Ready-made files" (Cookies - small text files that website stores on a user's computer or mobile phone during user's visit and through which users' behavior is monitored and analyzed), however, informed website visitors about processing their data through Cookies only if they registered on site.

Decisions of the Service: Data controllers were held liable for administrative offence under Articles 44 and 46 of the Law of Georgia on Personal Data Protection (violation of data processing principles, violation of data security) and at the same time, were instructed to eliminate violations identified during the inspection.

Status of fulfillment of the instruction: fulfilled.

- Direct marketing companies. Cases of direct data processing through telephone number databases were still relevant during the reporting period. The cases studied by the Service reveal that organizations create telephone number databases based on data obtained from publicly available sources and information held by them within various services. Cases of unlawful disclosure of telephone numbers between companies were also revealed. Based on the citizen's notification, the State Inspector's Service examined the lawfulness of processing his/her phone number for direct marketing by one of the companies.

Within the inspections of the company, the State Inspector's Service established that the phone number owned by the author of the notification was obtained by the company from another company although no special legal relationship and / or document regulating the process between them existed. As explained by the company, the activities of both companies were identical, they had common founders, persons authorized for management and representation were also identical, they also had common employees, including employees of the marketing department (who directly processed personal data for direct marketing purposes). Accordingly, the company used a database of telephone numbers of another company when sending advertising messages. The State Inspector did not consider the companies' argument about the common founders and employees to be a precondition for the lawfulness of the data disclosure, as both companies were registered as independent entrepreneurs.

Decision of the Service: The direct marketing company was held liable for the administrative offence provided for in the first paragraph of Article 47 of the Law of Georgia on Personal Data Protection (violation of the rules for direct marketing purposes), while the company providing the telephone database was held liable for the administrative offence provided for in the first paragraph of Article 43 of the Law of Georgia on Personal Data Protection (processing of data without the ground provided by the Law). At the same time, the direct marketing company was instructed to terminate processing of the telephone number of the author of the message, while the other company was instructed to terminate disclosure of the telephone numbers(s) to the third party (s) without proper legal basis.

Status of fulfilling instruction: fulfilled.

Coronavirus has affected the activities of financial institutions and their users. As processes in this field have mostly moved to the online space, introduction of new data processing procedures has become necessary. For example, under the conditions of general community quarantine, intensive use of biometric data (facial images) has started in financial institutions for person's remote identification. In 2021, representatives of a number of financial institutions addressed the State Inspector with a request to examine the lawfulness of biometric data processing procedures in remote identification process. According to the identified tendency, the organizations used the services of the so-called intermediary companies in the mentioned pro-

cess, which created remote identification systems upon the organizations' request. The State Inspector's Service pointed out to the organizations, that biometric data should only be processed for the grounds and purposes directly established by the law. In addition, while processing data through the so-called intermediary companies, a written agreement should have been concluded between the data controller organization and the relevant intermediary company clearly defining the purposes and means of data processing by the intermediary company. The State Inspector's Service also provided recommendations and guidance to organizations to take organizational and technical measures for ensuring data security.

Key Findings and Recommendations

The cases examined by the Service and taken measures confirm that certain violations and shortcomings are observed in the processing of data through modern technologies by various public and private institutions. In particular:

- Most of the organizations have not taken adequate measures for data security protection. For example, data controller organizations fail to record all actions taken in relation to large volume data stored in electronic databases (for instance, the facts of data browsing, downloading, editing). Without recording the activities performed in relation to data, the organization would not manage to properly monitor who, when, for what purpose and to what extent had access to the data. Also, in some cases, users used by former employees were not promptly deleted or blocked, while in some cases the simplicity of user passwords used for accessing the databases created the risk of accessing the data on behalf of someone and for unlawful purposes;
- In some cases, organizations process and store more personal data and for a longer period of time than is needed for achieving the legitimate purpose. It is noteworthy that the extraction and storage of unnecessary data poses a risk of disproportionate data processing. Considering the principle of data minimization, organizations should evaluate, determine, and differentiate what information needs to be retrieved and stored, and deleted after the expiration of necessity;
- The cases were revealed when organizations have published on their websites a data protection policy document that failed to provide data subjects with complete information about their data processing or provided it in an inaccurate manner. Inadequate information delivery and non-transparent data processing procedure creates a misconception among data subjects about their data processing;

- Biometric data are intensively used for remote identification of a person in financial institutions. The data processing is often carried out through an authorized person. Biometric data can only be processed if it is necessary for achieving the legitimate purpose which cannot be achieved by other means or requires unreasonably great effort. At the same time, adequate organizational and technical measures should be determined, developed and implemented in practice for the security of biometric data. Further, there is a need to conclude a written agreement between the data controller organization and the relevant intermediary company clearly defining the data processing procedure by the intermediary company;
- Processing telephone numbers and data exchange between companies is still problematic in direct marketing. Data exchange between companies for the purpose of creation of a database without the consent of the data subject or other legal basis is impermissible.

To raise the standard of personal data processing through modern technologies, organizations shall adopt organizational-technical measures that would ensure data security and protect data from accidental and unlawful disclosure. Organizations should develop internal organizational rules for personal data processing, determining in details data processing purposes, the necessity, data security issues, and the legal basis for their disclosure. Further, it is important for organizations to periodically raise awareness of employees involved in processing of data through technology and raise their qualifications on issues related to personal data processing / protection.

10

**Disclosure of Personal Data for
the Protection of the Public or
Other Overriding Interest**

10. Disclosure of Personal Data for the Protection of the Public or Other Overriding Interest

There is great public interest towards some of the personal data stored by public agencies. Public institutions often respond to the public interest by publication of the information containing personal data through mass media, social networks and/or on their own webpages. Besides, in some cases, data processing public institutions publish personal data not to satisfy the public interest, but to protect the interests of the agency. In all the above cases, the processing of data takes place notwithstanding the wishes of the data subject and is connected to the intensive interference with the right of protection of personal data.

Data processing (including disclosure) is permitted to protect the important public interest, the legitimate interests of a data processor, or a third party, however, prior to disclosure, institutions are required to identify legitimate interests (public interest, interest of data processor and/or third party), evaluate them, and compare with the interest of protection of personal data. The processing of data for the benefit of the public or other overriding interests is permissible only if it serves a clearly defined, legitimate purpose, the data is processed fairly and lawfully without violation of the dignity of the data subject, the data are true, accurate and processed only to the extent necessary to achieve the lawful purpose.

Numerous data processing procedures examined by the Service indicate that institutions often publish disproportionate, extra, inaccurate and/or inadequate data in response to public and other overriding interests, with less attention paid to data publication deadlines. The issue of access to information containing personal data can also be considered as a challenge for the public servants themselves, who often turn to the State Inspector's Service for consultations before making a decision to make the data public.

Unlawful processing of data can cause irreversible harm to a person when disclosing the information to the general public. Consequently, given the complexity and risks of data processing in the public and other overriding interest, supervising this process was a priority for the State Inspector's Service through 2021.

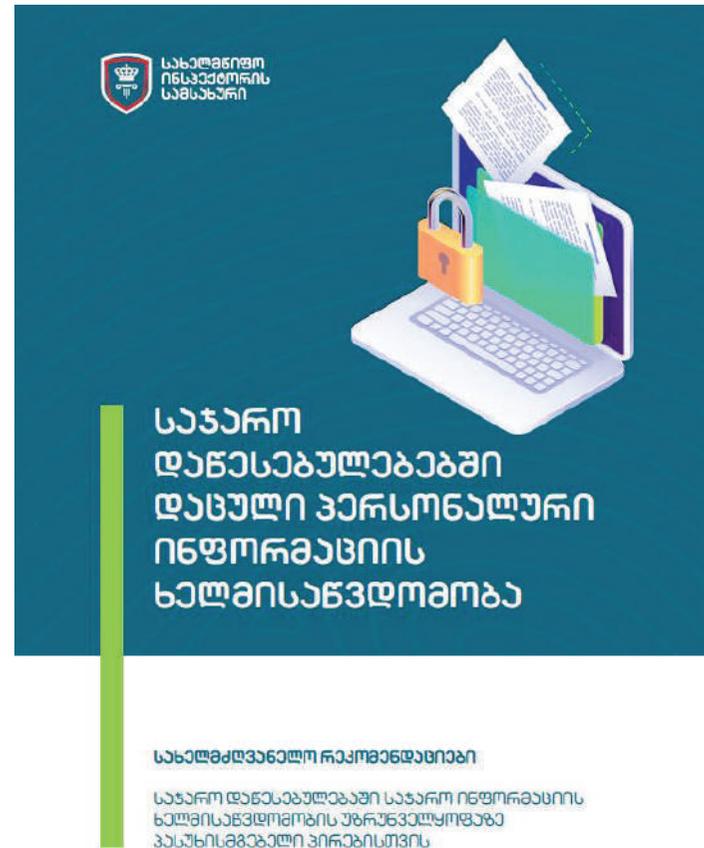
Awareness raising and implemented preventive measures

The Service examined a number of cases of data processing in response to public and overriding interest, developed a recommendation document to generalize the experience gained, and devoted significant time to awareness-raising meetings or trainings:

- To ensure access to personal information protected in public agencies and, at the same time, to protect the rights of data subjects, with the support of the United Nations Development Programme (UNDP), guiding recommendations have been prepared for the persons responsible on providing public information. The document will serve as a kind of roadmap in deciding whether to publish, publicize or disclose to third parties personal data protected in public institutions.

Prior to the development of these recommendations, many years of experience of the Service, analytical surveys conducted on access to information and the information requested by the Service through a special questionnaire on the content of correspondence received by them requesting personal information were analyzed. The prepared document reflects the specifics of personal data protected in public institutions, the process of comparing personal data protection and access to information, the circumstances to be considered before processing the data to satisfy the increased public or overriding interests, and the procedures for providing information.

- The staff of the State Inspector's Service conducted trainings on the disclosure of personal data on the basis of public or other overriding interest for about 80 representatives of various public institutions, including the staff of the Ministry of Defense and LEPL - Environmental Information and Education Center. In addition, meetings on personal data processing were held with more than 60 representatives from more than 50 public institutions and up to 160 representatives from 70 municipalities. The subject of particular interest of the participants during the meetings was the disclosure of data on the basis of public and other overriding interests.



Examined processes

In 2021, the State Inspector's Service investigated 29 cases of personal data processing carried out to satisfy the public or other overriding interest, of which 24 were carried out on the basis of citizens' appeals, and five - at the initiative of the Service. Appeals to the service were mainly related to the publication of personal data on websites or social networks without the consent of data subjects (including disclosure of data processed in the framework of competitions and administrative proceedings to interested parties, as well as transfer of data related to financial debt to the third parties by the enforcement agencies and financial institutions).

Based on the cases examined by the Service, administrative liability was imposed on 12 persons for 13 offenses. As a sanction, five people were warned and seven people were fined. In parallel with the administrative fines, in public and private institutions, in order to improve the data processing procedures and ensure their compliance with the Law of Georgia on Personal Data Protection, the Service issued one recommendation and 16 mandatory instructions.

In 2021, at the initiative of the State Inspector's Service, the procedures of personal data processing for the public or overriding interests were examined in public institutions, including the law enforcement agencies and private organizations. The focus was on data processing for public health and on the scope, need and timeliness of publishing data on lawyers, students, and public figures. Particular importance was attached to the proportionality of the processed data and the need to process the data in response to the public interest. The service has examined/inspected:

- LEPL - Ivane Javakhishvili Tbilisi State University - based on one of the appeals, the State Inspector's Service examined the lawfulness of publishing the lists of students participating in the scholarship competition and the winners.

As a result of the inspection of Ivane Javakhishvili Tbilisi State University, the State Inspector's Service established that one of the faculties of the university had published on its website a rating list of more than 200 students participating in the scholarship competition, indicating their personal numbers and competition scores. With the publication of the list, the faculty clarified that students could apply with claims. After the deadline for the appeal expired, the University initially published the personal numbers and ranking scores of more than 100 winning students, and then corrected the information and posted an updated list on the website. In a public statement issued along with the list, the university noted that the competition scores of several students were found to be incorrect, caused by information provided by the student self-government. To confirm this, the university also published photos of communication on official issues with the representative of the student self-government. The purpose of publishing the data was to satisfy the high interest of students in the results of the public competition, to gain public trust in the results of the competition, to protect the reputation of the public institution, to inform students about scholarship opportunities, transparency and publicity of spending finances. The University explained that in the case of data confidentiality, it would not be able to detect the fact of miscalculation of the competition scores as the interested students would not be able share the information in their possession with the educational institution and would not be able to protect their legitimate interests.

The examination found that the data disclosure objectives were legitimate, although it was found that a few months after the end of the competition, the data was still available to the public via the website, and the university did not have a procedure and timeline defined for publishing the data.

Decision of the Service: the University was instructed to determine in writing the legal objectives of data processing in the scholarship competition, the form, volume, timeliness of data processing of students, and the deletion of such publicized data after the expiration of the storage period.

State of fulfilling the instructions: in the process

- LEPL - Georgian Bar Association - one of the lawyers notified the Service about the publication of the lists of lawyers with membership fee dues on the website of the Bar Association - www.gba.ge. The verification of the information revealed that the data of the lawyers with membership fee dues were published on the website in different years and this information was also available in 2021. Considering the risks of publishing outdated and voluminous personal data, the State Inspector began an inspection of the association, which included the legality of the time limit for publishing personal data of lawyers with membership dues on the website.

As a result of the inspection of the Georgian Bar Association, the State Inspector's Service found that the decisions of the Association's Executive Board were published on the website (www.gba.ge), along with the lists of lawyers with membership debts for 2017-2021. The acts concerned the commencement of administrative proceedings in respect of membership dues to lawyers, the postponement of the payment of debts, the termination of administrative proceedings, the termination of membership in the Association and the additional period of renewal of such membership. Decisions were made public for indefinite time, with the identification data of hundreds and, in some cases, thousands of lawyers. According to the Association, it had a practice of informing lawyers through the publication of decisions and lists, as it was difficult to establish individual written communication with them due to the large number of lawyers. And, the publication of personal data on the website for life was the evidence in the event of a dispute by any lawyer. The examination revealed that the administrative proceedings against the lawyers in debt were completed in 2019-2021 and

the addressees were informed about the decisions by their publication. That is, the goal of publishing lists of lawyers with membership dues was achieved, and it was not necessary to post information on the website indefinitely to store evidence. Accordingly, the State Inspector considered the publication of data for indefinite time to be a violation of the principles of data processing.

Decision of the Service: the Association was held liable for an administrative violation provided by Article 44 of the Law of Georgia on Personal Data Protection (violation of the principles of data processing). At the same time, it was instructed to delete the lists of lawyers with membership debts / membership terminated posted on the website - www.gba.ge.

State of fulfillment of the instructions: in the process

- Ministry of Internal Affairs of Georgia. On July 11, 2021, the operator of TV Pirveli A.L. died. The Ministry held several briefings on the criminal case related to his death, during which the Ministry of Internal Affairs of Georgia released video recordings of A.L.'s movement. As the dissemination of information about the deceased was related to the interference in his right to privacy, the State Inspector's Service, on its own initiative, began to study the legality of the publication of these videos.

As a result of the inspection of the Ministry of Internal Affairs of Georgia, the State Inspector's Service determined that the purpose of the briefings held by the Ministry was to inform the public about the investigation into the death of A.L. However, during the briefings held on July 11, 2021, the representative of the Ministry did not/could not name the specific cause of A.L.'s death and noted that the results of the forensic examination were particularly important for the investigation to determine the cause of death. In parallel, at the briefings, the ministry released video footage of A.L.'s movements with relevant comments, but did not provide information to the public about the purpose of their release and the causal link between the video recordings and the ongoing investigation. Moreover, the Ministry refrained from announcing a specific version of the investigation (citing the fact that only after a forensic examination could determine the cause of death), called on the public not to draw premature conclusions from the published videos and to wait for the results of the investigation.

As none of the videos released by the Ministry on July 11, 2021 answered the main public question about the specific cause of death, and at the briefings the connection between these recordings and A.L.'s death was not clarified, the State Inspector's Service determined that the publication of the videos lacked a specific and clearly defined legal purpose.

Decision of the Service: The Ministry was found responsible for the administrative violation provided by Article 44 of the Law of Georgia on Personal Data Protection (violation of the principles of data processing). In addition, the Ministry was instructed to delete the videos of A.L.'s movement from the official Facebook page, YouTube channel and all other portals.

State of fulfilling the instructions: fulfilled

- State sub-agency within the system of the Ministry of Justice of Georgia - Special Penitentiary Service and the Ministry of Justice of Georgia. These public institutions periodically disseminated various information about the third President of Georgia, Mikheil Saakashvili, a starving prisoner placed in penitentiary institutions. In particular, the Special Penitentiary Service published information about the products purchased and received by Mikheil Saakashvili in the shop of the penitentiary institution and about Mikheil Saakashvili's vital signs, as well as photos (showing food supplements taken by Mikheil Saakashvili) and video footage (of Mikheil Saakashvili consuming food). The Ministry of Justice of Georgia and the Special Penitentiary Service made public: information about Mikheil Saakashvili's food ration; video recording of Mikheil Saakashvili leaving №12 penitentiary institution; video recording of Mikheil Saakashvili's entry to №18 penitentiary institution and audio-video recording of the events taking place in the reanimobile used to transport Mikheil Saakashvili from №12 penitentiary institution №18 penitentiary institution. The State Inspector's Service, started the examination of the legality of obtaining and disclosing information containing M. Saakashvili's personal data.

The Special Penitentiary Service and the Ministry of Justice of Georgia clarified in all cases that the reason for the disclosure of information containing Mikheil Saakashvili's personal data was high public interest, as misinformation was spread about his legal status and deteriorating health. At the same time, spreading false information in the society could instigate acts of violent nature, which endangered both state and public safety, as well as damaging the reputation of the penitentiary institution and the interests of other prisoners and their families.

The examination by the State Inspector's Service revealed that there was indeed a high public interest in the health and

legal status of the third President of Georgia, Mikheil Saakashvili, although institutions had to assess on a case-by-case basis how legitimate this interest was and how proportionate and adequate it was to publish such data for satisfying the public interest.

It was revealed that in the conditions when the information about the extreme deterioration of Mikheil Saakashvili's health condition was spread, informing the public about general normal vital signs of Mikheil Saakashvili (blood pressure, pulse, saturation, glucose data) was in proportion with the legitimate public interests.

As for the rest of the facts: the type and quantity of products purchased and received by Mikheil Saakashvili in the store was not a subject of public interest. Publication of information about his diet even created a misconception in the public about the illusory hunger, while the opposite was confirmed by medical documents. Consequently, the provision of information to the public, without the important detail that the intake of food supplements was prompted by the recommendation of the council of physicians, could not meet the legal requirements. Regarding the publication of video footage of food intake and the photos of food supplements at the medical point, it was established that the published facts could not convince the objective observer of the state of health of the person or the quality of medical services. At the same time, the portrayal of private state Mikheil Saakashvili and publication of the videos with fruit-purees and purees as the products consumed by him, created a false sense of the fake hunger in the society. Consequently, their disclosure was assessed as a violation of the dignity of the starving person.

With regard to the release of a video recording of leaving and entering the penitentiary institution and of audio-video recordings of the events taking place in the reanobile, it was found that it was not the valid means to convince the public that Mikheil Saakashvili left the penitentiary institution at his own will, because with the recordings published afterwards, the contrary was proven. Disclosure of the footage of Mikheil Saakashvili being forcibly brought to the penitentiary was assessed as data processing in the form of degrading the dignity – taking into consideration his political status, well-knowingness, high public interest, videotape content (the institution staff were carrying him by hands, forcibly, above body parts undressed) and the foreseeable results of the publication (the footage was spread in the media (and not only in Georgia). The purpose of making this information public named by the public agency was to demonstrate that reanobile was stopped at the penitentiary building, Mikheil Saakashvili damaged medical equipment and physically assaulted the staff of the penitentiary, however, publishing the footage that violated the dignity was considered neither as data processing with the legitimate purpose, not a proportionate and adequate means used to satisfy the public interest or any legitimate goal.

Decision of the Service: The Ministry of Justice of Georgia and the Special Penitentiary Service were found administratively liable for several episodes of administrative violation provided by Article 44 of the Law of Georgia on Personal Data Protection (violation of data processing principles). In addition, the Ministry and the Special Penitentiary Service were instructed to remove videos, audio-video recordings and photographs from the official Facebook pages and official websites.

State of fulfilling the instructions: not fulfilled

Key Findings and Recommendations

Disclosure, publication of and/or granting access to the third party on the personal data requires particular caution. In this process, institutions must individually assess the scope of legitimate interference in a person's private life on the basis of public and other overriding interest and select appropriate means of interference. The cases examined by the Service and the measures taken show that certain irregularities and shortcomings are observed in the data processing by various institutions on the basis of public and/or other overriding interest. In particular:

- The processes studied by the Service show that when disclosing data on the basis of significant public interest, it is not properly assessed - whether there is a public interest specifically on the disseminated information and how clear the purpose is, how well the information serves achievement of the purpose, how possible it is to achieve the purpose with the means applied and whether the public interest takes precedence over the interest of the protection of personal data;
- When disclosing data on the basis of public interest, public institutions usually do not properly analyze all the specific circumstances that should be taken into account when interfering in the private life on this basis: public interest in the issue, identity and status of the data subject, previous actions of the data subject; data processing agency, method of data collection and their accuracy, content and form of publicized data, results of data being accessible to the general public and predictability of these results, etc.;

- The examined processes showed that particular caution is needed when processing data in response to the public interest and/or other overriding interest, if data processing may violate human dignity. Prior to disclosure of data, the objective observer's expected perception of the disclosed information should be properly assessed. The right to dignity reinforces an order in which the main value is the person. The right to protection of human dignity by the state belongs unconditionally and unrestrictedly to all persons. The conflict between a value protected by the right to dignity and any other valuable interest protected by the Constitution must be resolved immediately and unconditionally in favor of human dignity, therefore the public interest cannot outweigh the right to human dignity;
- Organizations often have proper legitimate goals, but they underestimate the timeliness of publishing data - they publish data longer than necessary. The purpose of informing the interested person about the individual administrative-legal act or the need to prove the fact of publishing the data cannot justify the publication of the data in public space for unlimited time. Disclosed data should be deleted as soon as the goal is reached. It is important that data processors find ways to minimize interference with the right to personal data protection when possible and thus ensure that legitimate goals are achieved;
- Institutions should be especially careful when publishing data related to the reputation of people in a particular profession. Publishing data on the Internet, as a rule, makes it available to the general public through Internet search engines (for example, Google). Organizations, therefore, must assess on a case-by-case basis how sensitive this or that data is to a person's private life, to his or her business reputation, and whether there is sufficient public interest. In the absence of such interest, the information should be removed from the search engine;
- The examined processes show that the disclosure of data is in some cases related to public competitions. Public institutions may have an overriding interest in gaining public trust and protecting the agency's reputation as a result of a competition, for which publishing adequate volume of data for an appropriate period of time is permissible. However, it is important that institutions properly assess the legitimacy of public interest and the importance of public oversight of their actions/decisions before disclosing the data;

- In relation to individual public institutions, there was a tendency of hybrid data disclosure rules within the competition. In particular, part of the rules for disclosure of data is governed by written internal documents, and part - by established practice over the years. It should be noted that the oral regulation of the issue and the practice established on its basis, in contrast to the written internal documents (instructions, rules, etc.), have a less binding effect on the persons involved in the data processing. In order to ensure a consistent and predictable process of data processing, the institutions should define in a written document the procedure for publishing the data, the volume and the deadlines for the data processing necessary to achieve the legitimate goals.

Institutions are obliged to publish/transfer to the third parties only proportionate volumes of data, which is adequate to a specific purpose. This often means a time-consuming, qualified and impartial investigation, but in a democratic society, data processors must meet the public interest through legal means.

11

Rights of Data Subjects

11. Rights of Data Subjects

The data subject is the person about whom personal data is processed. The introduction of a high standard of personal data processing is impossible without effective mechanisms for realization of the rights granted to the data subject. Rules and conditions for the realization of the rights of data subjects are established under Articles 15 and 21 of the Law of Georgia on Personal Data Protection, according to which the data processor is obliged to provide the data subject with information about the processed data in the form selected by the data subject and within the timeframe set by the law.

Provision of proper information to data subjects at all stages of data processing ensures comprehensive control of the data processing and prevention of unlawful data processing. Informing the data subject properly and within a reasonable time is directly related to the realization of data subject's other rights (for example, requesting deletion and correction of incorrect / inaccurate data) set by law. Accordingly, in 2021, issues related to informing data subjects were still relevant.

Awareness-raising and implemented preventive measures

In 2021, the State Inspector's Service implemented a number of measures aiming at raising awareness of data subjects and informing data processing organizations about the rights of data subjects. In particular:

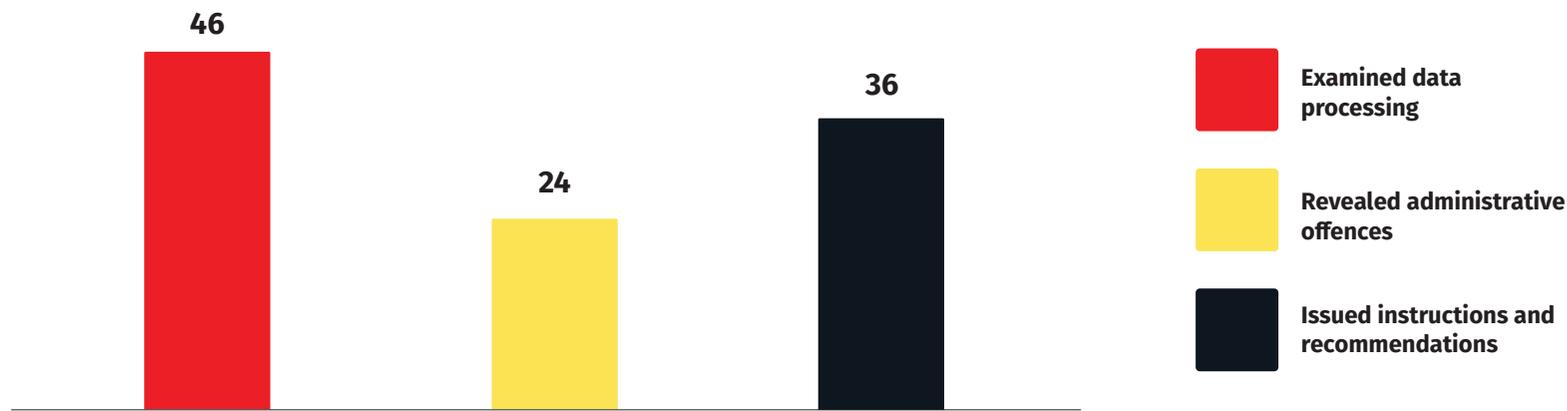
- Most of the training conducted by the State Inspector's Service covered issues related to the rights of data subjects and obligations of data processors towards data subjects. Training and information meetings on data subject rights were conducted with more than 500 individuals, including with the representatives of data processing organizations (employees of the Ministry of Internal Affairs of Georgia, municipalities, public law entities and private companies);

- In parallel with the training and meetings, the State Inspector's Service worked to set up various platforms that would enable interested persons to receive information related to the personal data protection independently. To this end, with the support of the United States Agency for International Development (USAID) Good Governance Initiative (GGI) project, a distance education platform www.elearning.stateinspector.ge has been created. It is also adapted for persons with disabilities;
- Due to the Coronavirus, in view of the scale of distance learning and online shopping, recommendations on personal data protection in online shopping and distance learning were developed with the support of the United States Agency for International Development (USAID) Good Governance Initiative's (GGI) project and in partnership with consulting firm UYI Ltd. A significant part of the recommendations concerns the process of informing school children and students in the distance learning process, and to consumers in the process of online shopping as data subjects, and puts emphasis on the necessary criteria for informing data subjects, informing form and its content;
- With the support of the Institute for Development of Freedom of Information (IDFI) and the funding of the Embassy of the Netherlands in Georgia, the State Inspector's Service has created a video - "Think before you share personal data." Through this video public was provided with the information about the specifics of personal data processing, the consequences of sharing them, and the rights and responsibilities of each data subject in this process.

Examined processes

In 2021, the State Inspector's Service, based on 46 applications from citizens, examined 46 cases related to the protection of the data subject's rights in the personal data processing. Applications received by the Service were mainly related to the non-provision / incomplete provision of information on data processing (including, purpose and legal basis of data processing, source of data collection, information on transferring data to third parties) to data subjects and/or documentation containing personal data, refusal to correct/delete/destroy data/ terminate data processing /leaving the request without response.

As a result of the cases examined by the Service, administrative liability was imposed on 24 persons for 29 offenses. A warning was used as a sanction against 16 people, and 8 people were fined. In order to improve the data processing in public and private institutions and ensure their compliance with the Law of Georgia on Personal Data Protection, in parallel with the imposition of administrative penalties, the Service issued 2 recommendations and 35 mandatory instructions.



With respect to informing data subject, the State Inspector's Service examined the following cases:

- The State Sub-agency within the system of the Ministry of Justice of Georgia - Special Penitentiary Service. Based on the citizens' applications, the State Inspector's Service examined the lawfulness of the response of the Special Penitentiary Service to the data subjects' requests. Evidence obtained during the examination of the applications revealed the cases of improper informing of data subjects by the Special Penitentiary Service.

In one case, the data subject requested from the Special Penitentiary Service the copies of his/her medical records produced by the penitentiary institutions. The Special Penitentiary Service provided the applicant with the requested documents incompletely after a long period of time (27 days) from the submission of the request.

In another case, the data subject requested from the Special Penitentiary Service the video footages recorded with a

video camera of the penitentiary institution which reflected the investigative actions taken against him/her based on the court decision. The Special Penitentiary Service refused to transfer the requested video footage to the data subject, however, the grounds for restricting the data subject's right (refusal to transfer the video containing his/her personal data) were not duly substantiated.

Decisions of the Service: In both cases, the Special Penitentiary Service was found liable for an administrative offence provided for in Article 50 of the Law of Georgia on Personal Data Protection (violation of the rules for informing the data subject). At the same time, it was instructed to properly inform the data subject by transferring the relevant documentation.

Status of the fulfillment of the instruction: fulfilled.

- The Ministry of Internal Affairs of Georgia. During the reporting period, several citizens applied to the State Inspector's Service with a request to examine the violation of the rules for informing the data subject by the Ministry. The examination of the applications revealed that in some cases, the Ministry of Internal Affairs of Georgia had improperly fulfilled its obligation on informing data subjects.

In one case, the representative of minor twice requested copies of administrative case materials from the Ministry at different times. The Ministry only provided the requested materials to the representative after a long period of time (20 working days) had elapsed since the re-submission of the request. In addition, the provided materials were not processed in a form adequate for the realization of the data subject's rights - the identification data of police officers participating in the administrative proceedings and interviewed citizens was redacted in provided documents. Although minor was a party to the administrative proceedings and had the right to have full access to the materials of the administrative offense ongoing against him/her to effectively exercise the defense, the Ministry failed to substantiate the grounds for restricting (issuing documents incompletely) the data subject's right.

In the second case, the data subject requested from the Ministry of Internal Affairs provision of evidence of the administrative proceedings - copies of the videos recording his/her arrest. The Ministry failed to take any action on this request. The Ministry did not provide the applicant with a video recording. At the same time, following the applicant's application, the Ministry provided the above-mentioned video recordings to the court within the framework of the administrative proceedings.

Decisions of the Service: In both cases, the Ministry was held liable for the administrative offence provided for in Article 50 of the Law of Georgia on Personal Data Protection (violation of the rules for informing the data subject). At the same time, it was instructed to properly inform the data subject – provision of the document in one case and the video recording, in another.

Status of fulfillment of instructions: Not fulfilled. The decision adopted with respect to the first case was appealed, while the video recording with respect to the second case was no longer stored in the Ministry (it was handed over to the court).

- NNLE “the Apostle Matata Batumi City Fund” The examination was conducted based on the application of the representative of the data subject (NNLE “Partnership for Human Rights”), according to whom the Fund violated its obligations on informing the data subject as defined by the law.

During the review of the application, the State Inspector's Service found that from 2004 to May 2011, the Fund provided 24-hour care, education and medical services to the data subject. According to the letter submitted to the fund, the data subject requested complete documentation containing his/her data, in response to which it was explained that they were no longer stored in the fund. The data subject, in a repeated application to the Fund, requested information about the actions taken against the documentation containing his/her data (destroyed or transferred to the archive) and the basis for and dates of these actions, which the Fund left unanswered. Besides, the Fund failed to indicate the legal basis for restricting the provision of information to the data subject. Examination of the application revealed that the documentation containing the data of the foster child of the Fund was handed over to third parties, including the school and the person taking the child out of the institution (the Fund).

Decisions of the Service: The Fund was found liable for an administrative violation provided for in Article 50 of the Law of Georgia on Personal Data Protection (violation of the rules on informing the data subject). In addition, the Fund was instructed to provide the requested information to the data subject.

The status of fulfillment of the instructions: in the process.

- LEPL - Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking. The inspection was carried out on the basis of the data subject's application regarding the non-issuance of a document containing the applicant's personal data received by the Agency during the enforcement proceedings.

In the process of reviewing the application, the State Inspector's Service found that in September 2021, the data subject requested a copy of the ex-spouse's application containing the personal data of him or her and his/her minor child. The Agency initially refused in writing to provide the data subject with the document, and after the State Inspector's Service initiated the proceedings, the Agency granted the applicant's request (handed over the requested document - three sheets). The agency explained that the initial decision to refuse to hand over the document to the applicant was incorrect due to the lack of grounds for restriction his/her right. It should be noted that even after the discovery of the fact of unjustified restriction of the data subject's rights, the data processor took an unreasonable period of time (20 days) to satisfy the data subject's request.

Decision of the Service: The Agency was found liable for an administrative violation prescribed in Article 50 of the Law of Georgia on Personal Data Protection (violation of the rules for informing the data subject). At the same time, it was instructed to develop and implement specific rules for informing the data subject.

Status of fulfilling the instructions: not implemented. The decision was appealed to the court.

- Private employers' organizations. Several applications submitted in 2021 concerned the legality of informing data subjects - employees/former employees - when processing data by private organizations in the framework of employment relations.

In one case, a data subject emailed a private organization requesting information about the exact date of his/her appointment and dismissal, the position held, and the grounds for his/her dismissal. The company did not initially respond to the request. The organization provided information to the former employee only after the State Inspector's Service started inspection - more than 1 month after the request was made by the data subject.

In the second case, the data subject requested a document containing his/her personal data - a copy of the employment contract - by e-mail from a private organization, his former employer. The organization explained to the data subject that the specified document was archived and due to the pandemic, the organization did not have access to the archive. At the same time, they indicated that s/he had been given one copy of the employment contract in the past, which was confirmed by the relevant signature.

Decisions of the Service: In the first case, the organization was found liable for an administrative violation under Article 50 of the Law of Georgia on Personal Data Protection (violation of the rules for informing the data subject), and in the second case, the organization was instructed to provide a copy of the employment contract to the data subject.

Status of fulfillment the instruction: fulfilled.

- Private organizations. Applications submitted to the Service in 2021 concerned the legality of informing consumers - as data subjects - by organizations under contractual relationships.

In one case, the data subject purchased the insurance policy through the insurance company's website and inserted the bank details (credit/debit card details) on the same website to ensure payment. Later, the data subject deleted his/her bank details from the website and asked the insurance company to stop processing the card and cancel the automatic payments. The insurance company did not respond to this request. Among them, the provision of Article 23 of the Law has not been fulfilled, according to which, in case of termination/deletion of data by the subject, the data processor is obliged to satisfy the relevant request or notify the data subject within 15 days of the refusal to satisfy the request.

In the second case, the data subject requested in written the information from the mobile operator about the processed data about him/her, requested to stop processing his/her data and explained that s/he wanted to receive the information materially, via mail. The organization provided the data subject with information in violation of the 10-day period

specified in Article 21 of the Law and at the same time provided incomplete information.

Decisions of the Service: Organizations were held responsible for the administrative violation provided for in Article 50 of the Law of Georgia on Personal Data Protection (violation of the rules for informing the data subject).

Key findings and recommendations

The cases studied and the trends identified by the Service show that public and private organizations, in some cases, do not pay due attention to the importance of informing data subjects:

- Under current legislation, public institutions have more obligations to data subjects than private institutions. In particular, the public institution is obliged to not only provide information to the data subject, but also to provide copies of the existing data free of charge (except for the data for the issuance of which a fee is provided by Georgian legislation), although this norm does not set a specific deadline for submission of documents. The absence of a deadline does not allow data processors to interpret it as indefinite. Delaying the delivery of a document can be a significant detriment to the data subject, as after a certain period of time the information may lose its value and the data subject may lose interest in obtaining that information. The case studies revealed that the desire of data subjects to actively monitor the processing of their data by public institutions has increased, which is a challenge for large data processors in the public sector and requires additional efforts on their part. Scarce (human) resources of a public institution cannot become a legal basis for unlawful restriction of data subject rights;
- Organizations usually do not have an assessment and understanding of the frequency and content of data subject referrals, challenges in the process of exercising subject rights, and ways to deal with these challenges. That is why data processors are not able to meet the requirements of data subjects and/or respond within the timeframe set by law;

- In some cases, the content of the requests submitted by the data subjects themselves is problematic. In particular, sometimes the requests are vague and it is not specified what kind of documents(s) and/or information are requested from the institution. These shortcomings do not relieve data processors from the obligation to realize the rights of the data subject, however, they significantly complicate the issuance of complete information within the time limit set by law. Consequently, the effective exercise of their rights by data subjects depends significantly on their level of awareness.

To ensure that the data subject is informed, organizations should develop and publish, for example, on a website a data protection policy document that explains in a concise and simple language the issues related to data processing and the rights of the subject. At the same time, institutions, especially public institutions, should increase their efforts to establish mechanisms that minimize the risks of delays in meeting the requirements of data subjects. This can be ensured through the development/implementation of data subject review procedures and/or the designation of a person responsible for reviewing data subject requests.

12

**Transferring Data to
Another State**

12. Transferring Data to Another State

In accordance with the Law of Georgia on Personal Data Protection, personal data may be transferred to another state and international organization if there are grounds for data processing and if appropriate data protection guarantees are provided in the relevant state or international organization.

The list of countries with adequate data protection guarantees is established by order of the State Inspector. If the data transfer is not carried out in countries with adequate data protection guarantees, the data transfer to another state and international organization will be allowed only when: it is provided by the international treaty and agreement of Georgia; the data processor ensures appropriate data protection and protection of the fundamental rights of the data subject under an agreement between the data processor and the State concerned, the legal or natural person of that State or an international organization. In the latter case, the international transfer of data requires the permission of the State Inspector.

In order to standardize the process of issuing permits for international data transfer, in 2021 the State Inspector's Service developed a procedure and form for issuing permits for the transfer of personal data to another state and international organization. The rule describes in detail and clearly the list of documents to be submitted to the Inspector and the rules of the submission as well as the procedures for review the application and make a decision. As for the application form, on the one hand, it will make it easier for organizations to apply to the Service, and on the other hand, it will ensure the establishment of a high standard of protection of the data subject's rights.

In 2021, five private legal entities applied to the State Inspector's Service for a permit. The public institution did not apply to the State Inspector's Service for a permit.

Out of 5 applications for data transfer to another state, 4 were fully satisfied and one was partially satisfied. The requirements were mainly for data transmission to the United States and the Republic of Turkey.

Author of the application	What data transfer was requested	To which country was requested the transfer	Purpose of data transfer	Service decision
A private organization that conducts clinical trials of pharmaceutical products in Georgia	Data of patients pseudonymized with a unique code participating in the clinical examination – age and year of birth, sex, Georgian citizenship, patient's medical information, including patient test/examination results	United States of America	Conducting clinical trials of pharmaceutical products	Fully granted
A private organization that provides banking services	The content of the comment/question of the Author of public comment or question on social pages owned by private data entities (Facebook, Instagram, LinkedIn)	United States of America	Hiring a US-registered company to help manage social media and improve the quality of customer service	Fully granted
Private organization that provides beer production in Georgia	Personal data of employees - name, surname, e-mail, position and photo	Republics of Turkey and Kazakhstan	Introduce a common platform to facilitate communication between employees of subsidiaries in different countries	Fully granted

A private organization that provides brokerage services	Personal data of users who request access to the investment module, namely: identification data (name, date of birth, personal number, address, citizenship, residence, sex, photograph, telephone number); code for tax purposes; FATCA status (if any); PEP status; employment information (status, sector, employer information and position); financial information (average annual income and source of income); information about affiliates with US stock exchanges or municipal trading / dealerships.	United States of America	Trading in US stock exchanges	Fully granted
A private organization that provides trade in clothing and other similar products in Georgia	Personal data of employees - contact information, identification number, information on the quality / level of work performance, video / audio recordings of testing and training.	Republic of Turkey	Human resources management by a founding company registered in the Republic of Turkey (Georgian subsidiary did not have a unit responsible for human resources management)	Partially granted (Request for transfer of training video / audio recordings was not satisfied, as there were alternative means to achieve the stated goal (quality control of training))

In order to ensure a high standard in the process of transferring personal data from Georgia to other countries, in 2020-2021, the State Inspector's Service conducted a legal expertise of 59 international treaties and agreements concluded on behalf of Georgia, in 45 of which recommendations were issued. As part of the expertise, the Service reviews the draft agreement, the legislative and institutional mechanisms in place in the field of personal data protection in the Contracting State, and assess the general risks of human rights violations in data processing, on the basis of which it recommends amendments to the draft agreement.

13

**Legislative Challenges in the Field
of Personal Data Protection**

13. Legislative Challenges in the Field of Personal Data Protection

The data protection standards established by the Law of Georgia on Personal Data Protection are somewhat outdated and require harmonization with European data protection standards.

The Office of the State Inspector's Service has actively supported the acceleration of the signing process of the 2nd Additional Protocol (108+) to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the entry into force of which will significantly contribute to harmonization of national legal norms with international data protection standards. It should be noted that the protocol was opened for signing on October 10, 2018. Today, Georgia is one of the 7 member states of the Council of Europe (along with Azerbaijan, Denmark, Montenegro, Moldova, Turkey and Ukraine) that is not a signatory to the protocol.

In addition, the current legislation requires approximation to the standards set by the EU General Data Protection Regulation (GDPR) and the Directive on the protection of personal data in the police sector.

Personal data protection legislation needs to be improved in the following areas:

- **Principles and basics of data processing** - In contrast to European legislation, the principles of data processing established by the legislation of Georgia do not include the principle of data security, which obliges data processors to take appropriate technical and organizational measures to ensure data security, which protects them from unauthorized or illegal processing, accidental loss, destruction and damage. As for the grounds for data processing, European legislation provides for more grounds for the processing of special categories of data than the Law of Georgia on Personal Data Protection. Incomplete grounds for data processing pose a problem for many data processors in practice;
- **Guarantees for the protection of data subject rights and interests** - the Law of Georgia on Personal Data Protection does not provide for a number of data subject rights (for example, refusal to data porting (transfer), profiling), which are provided by European legislation;

- **Obligations of data processors** - the Law of Georgia on Personal Data Protection does not provide for such important obligations of data processors as data processing impact assessment, appointment of a data protection officer, obligation to notify the State Inspector and the data subject of data security incident, etc.;
- **Processing of data for the purpose of direct marketing** - the Law of Georgia on Personal Data Protection considers the processing of data for the purpose of direct marketing to be permissible without the consent of the data subject, which creates a number of problems in practice;
- **Rules of video monitoring** - the Law of Georgia on Personal Data Protection does not regulate the rules and grounds for audio monitoring;
- **Data processing of juveniles** - the Law of Georgia on Personal Data Protection does not provide for special rules on the processing of juvenile data focused on the true interest of the juvenile;
- **Personal Data Protection Officer** - the Law of Georgia on Personal Data Protection does not provide for the mandatory existence of a person responsible for data protection in public and private institutions;
- **Administrative penalties** - small amounts of fines imposed for illegal processing of personal data under the Law of Georgia on Personal Data Protection can no longer meet modern challenges. Consequently, the sanctions imposed have no deterrent effect. In many cases, correcting data processing deficiencies requires much more financial resources than paying a fine, which is why data processors have no incentive to bring their shortcomings and data processing procedures into compliance with the law;
- **Statute of limitation period** - according to the Code of Administrative Offenses, an administrative penalty can be imposed on a person no later than two months from the date of the offense, and when the offense is continuous - no later than two months from the date of its detection. Offenses related to the processing of personal data are significantly different from other offenses, the information on which the agencies responsible for their prevention have practically immediately. Illegal processing of personal data may become known to the data subject after a few months. Due to the two-month limitation period, the Service is unable to investigate and respond to the fact of illegal data processing. However, the Code of Administrative Offenses does not provide for the suspension of a two-month limitation period in the event of an appeal against the decision of the State Inspector in court. Accordingly, if the court overturns the decision of the State Inspector and returns to the State Inspector's Service for further investigation of the circumstances of the

case, due to the expiration of the statute of limitations, the State Inspector's Service fails to investigate the circumstances and impose liability on the data processor;

- **Execution of mandatory instructions issued by the State Inspector's Service** - the State Inspector is authorized by law to give a mandatory instruction to a data processor. However, neither the State Inspector nor the LEPL National Bureau of Enforcement have effective legislative mechanisms to force data processors to follow the instructions given by the State Inspector to address data processing deficiencies.

Regulation of abovementioned legislative issues will help increase the standard of data protection in Georgia. In 2019, the draft law of Georgia on Personal Data Protection was initiated in the Parliament of Georgia, which was prepared by the State Inspector's Service. The purpose of the draft law was to bring the existing legislation in the field of personal data protection in line with European standards, to fulfill Georgia's international obligations, to establish universally recognized principles and best practices, as well as to eliminate the challenges identified as a result of several years of service.

Unfortunately, the abovementioned law has not been adopted yet and none of the above practical problems have been solved by the legislative amendments made by the Parliament of Georgia on December 30, 2021, according to which the Office of the State Inspector's Service was abolished and a separate data protection supervisory body was established.

14

**Survey of Public Awareness
on Personal Data
Protection**

14. Survey of Public Awareness on Personal Data Protection

14

In November 2021, with the support of the United States Agency for International Development (USAID) Good Governance Initiative (GGI) project, a Public Awareness Survey on Personal Data Protection was conducted. The goal of the research was to determine the awareness, knowledge level and attitudes of the Georgian population regarding personal data protection issues. By random sampling, 1206 citizens aged 18 and over were interviewed through a telephone survey.

The survey identified the level of awareness of respondents and their attitudes towards the collection, storage and disclosure of personal data.

The research revealed the following main trends:

- The vast majority of respondents (96%) agree with the statement that the protection of personal data is linked to human rights, including the right to privacy;
- Protection of personal data is important for the vast majority of citizens (93%);
- 60% of the population of Georgia has heard about personal data and their protection. It is noteworthy, however, that only 2% of respondents are able to name 5 examples of personal data without being helped with suggestions;
- The vast majority of respondents (98%) believe that public and private institutions are obliged to protect the security of personal data in their possession. However, in parallel with this, the awareness of citizens about the dangers of illegal (excessive) processing of personal data was low;
- 6 out of 10 interviewed respondents believe that they can reduce the dangers of illegal/excessive use of personal data, but more than half of the respondents find it difficult to name a specific action that will help them reduce the dangers of illegal/excessive use of their personal data.

The results of the study show that despite the numerous awareness-raising campaigns carried out by the Personal Data Protection Supervision Authority over the years, significant steps are still to be taken to provide citizens with in-depth information about their personal data, rights and potential risks.

15

Conclusions

15. Conclusions

Over the last decade, Georgia has implemented significant reforms in the field of personal data protection - first of all, the Law on Personal Data Protection was adopted and a data protection monitoring body was established.

Trends revealed by the work of the State Inspector's Service show that, for the most part, public and private organizations are motivated to develop and implement modern data protection standards, raise staff awareness in this area, collaborate and consult with the Service, and carry out instructions and recommendations issued by the Service. However, in some cases, both public (including law enforcement) and private organizations have grossly violated the rules established by the law, evading the obligations imposed on them, failing or delaying to provide information to the Service, not fulfilling the instructions issued by the service and etc.

Effective steps must be taken to establish a high standard of personal data protection in Georgia:

- **Strong legal guarantees for the inviolability of the data protection supervisory body and its head** - first of all, it is necessary to create strong legal guarantees for the inviolability of the personal data protection body and its head, which determines the degree of independence of the agency. Legislative changes at the end of 2021 (which abolished the State Inspector's Office and terminated the term of office of the head of the agency responsible for personal data protection) reaffirmed the importance of strong legislative safeguards;
- **Legislation in line with international standards** - effective legislative leverage in the hands of the personal data protection monitoring body, increased accountability of data processing institutions and effective legislative mechanisms for the realization of data subjects' rights are needed. For this purpose, the Parliament of Georgia should consider the draft law of Georgia on Personal Data Protection prepared by the State Inspector's Service and initiated in 2019 within a short period of time;
- **Clearly stated policy on data protection priority** - it is necessary to unite the forces of state agencies and a clearly stated policy, both at the legislative and practical level, on the importance and priority of data protection;

- **Raising the standard of data protection by data processing institutions** - the public and private sectors should increase their efforts to raise the standard of data protection: should develop written internal instructions and policy documents detailing the rules and conditions of personal data processing, data security issues, data access rights - duties, consequences of illegal use of data by the employees of the institution, means of realizing the rights of the data subject, etc; prior to the introduction of data processing procedures, the risks that may accompany their processing should be assessed and mechanisms should be put in place to minimize the risks of unlawful processing of personal data; adequate, effective and up-to-date security measures should be taken to prevent accidental or illegal destruction of data; adequate data storage time-limits should be defined according to their content and purpose of processing; appropriate mechanisms for timely and effective realization of data subjects' rights should be established; should be ensured that employees are aware of personal data protection issues; should establish an effective internal monitoring mechanism to respond to cases of illegal and/or data processing for non-official purposes by employees;
- **Raising public awareness** - work to raise public awareness needs to continue. The State Inspector's Service has almost entirely existed in the midst of an epidemiological situation, which has hampered direct communication with the public and the conduct of large-scale information campaigns. Social networks and online platforms were mainly used to raise awareness. Consequently, not all segments of the data subjects were covered. Despite the efforts of the Service, public awareness of data protection issues remains low and requires active work;
- **Signing of the 108+ Convention** - Georgia should sign the Council of Europe Modernized Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data (108+ Convention). The signing and subsequent ratification of this Convention by Georgia will significantly contribute to the approximation of national data protection standards to international ones. By signing this convention, the country will confirm its desire and readiness to establish a modern standard of data protection.

IV. Investigation of Crimes Committed by a Representative of the Law Enforcement Body, an Official or a Person Equal to an Official

Main Activities of 2021

- Division of the Autonomous Republic of Adjara was established in the Investigative Department and a new office was opened in Batumi
- A child-friendly environment was established in the division of Autonomous Republic of Adjara of the Investigative Department
- The legislative proposal was submitted to the Parliament of Georgia to respond to the challenges in the field of investigation
- the Service submitted its opinions on the draft law on separation of the investigative and prosecutorial functions to the Government and the Parliament
- In cooperation with the non-governmental sector, the study "Independent Investigative Mechanism in Georgia - Achievements and Existing Challenges" was carried out
- The investigative department received a second flow of intern-investigators
- The digests aiming at informing the investigators were prepared on the judgments of the European Court of Human Rights
- A practical guide on appointing an examination was developed
- A handbook on the use of force by the law enforcement officers during assemblies and demonstrations was developed
- A handbook on the protection of the rights of persons with disabilities in the process of investigation was prepared

- Standards for communication with persons with disabilities were developed
- In order to improve the interviewing process, questionnaires for interviewing alleged victims were developed
- 6 recommendations were developed for investigators and operatives
- A study on preventive measures taken by the independent investigative mechanisms was conducted
- A study on the standards set by the supervisory authorities in relation to torture and ill-treatment was developed
- A study on questioning police officers was prepared
- A study on the standards in relation to the use of handcuffs by police was developed
- Information posters were placed in public transport
- An informational video about the hotline was prepared and posted on the social network
- Information meetings aiming at prevention of crime were held with the law enforcement officers in the regions
- The report of the Investigative Department was presented to the representatives of the Public Defender's Office and the non-governmental sector
- Information meeting was held with the regional non-governmental organizations working on ethnic minority issues
- An information meeting was held with the media representatives
- The Service has started cooperation with the Ontario Special Investigations Unit (SIU) of Canada and the Independent Office for Police Conduct in England and Wales – bodies responsible for investigating crimes committed by police officers.
- The qualification exam for investigators was conducted in cooperation with the Training Center of Justice

Main Activities of 2020

- An operative unit has been set up in the Investigative Department
- A system of paid internship has been introduced in the Investigative Department
- A child-friendly environment was established in the West Division of the Investigative Department
- Memorandum of Understanding was signed with the LEPL - Office of Resource Officers of Educational Institutions for ensuring the provision of psychologist services to a juvenile participating in the proceedings
- A mentoring system has been introduced for interns
- The forensic experts of the Service have been equipped with the modern standard equipment/inventory
- 5 recommendations were developed for investigators and operatives
- A questionnaire for self-assessment of the effectiveness of the investigation was developed for investigators
- 5 studies were conducted
- Information brochures were placed in the temporary detention facilities and penitentiary establishments
- Meetings were held in 7 regions with representatives of the local self-government bodies, the Public Defender's Office and the non-governmental sector
- A board for reviewing the disciplinary issues, employee evaluation appeals and encouragement has been set up
In cooperation with the Council of Europe, the HELP Distance Learning Course - "On Prohibition of Ill-Treatment in Law Enforcement, Security and Other Coercive Contexts" was introduced
- An electronic programme for the investigation plan was created
- With the active involvement of the Service, the Inter-agency Council of the Ministry of Justice developed an Action Plan for 2021-2022 on fight against torture, inhuman, cruel or degrading treatment or punishment

- A special form / design was created for the investigators
- The qualification exam for investigators was conducted in cooperation with the Training Center of Justice

Main Activities of 2019

- A Strategy and an Action Plan in the field of investigation was developed
- Amendments to the law of Georgia on the State Inspector's Service were adopted
- An Investigative Department was set up for exercising investigative functions
- Two offices of the Investigative Department was opened in Tbilisi and Kutaisi
- The offices of the Investigative Department were equipped with relevant inventory
- The Investigative Department was recruited through transparent and multi-tier selection process
- A Manual on the investigative methodology was developed
- A 24-hour hotline service has been introduced and launched
- Investigators were granted access to the electronic criminal case management system
- New logo was created for the Service
- In cooperation with the Training Center of Justice, the qualification exam for the investigators was conducted
- A statistical methodology was developed
- Code of Ethics was developed
- The rules for disciplinary proceeding were elaborated
- Webpage for the investigative direction was set up

01

Introduction

1.Introduction

On 21 July 2018, Parliament of Georgia adopted the Law on “The State Inspector’s Service”. This law transformed the Personal Data Protection Service into the State Inspector’s Service. In addition to the previous functions, the Service became empowered to investigate specific crimes committed by a representative of a law enforcement body, an official or a person equal to an official.

According to the original version of the Law noted above, the State Inspector's Service was mandated to start exercising investigative function from January 1, 2019, however, the timeframe was extended twice. Finally, the State Inspector’s Service started exercising its authority to investigate certain crimes committed by the law enforcement representative, an official or a person equal to an official from November 1, 2019. The following crimes committed by the officials after 1 November 2019 have been defined to fall under the investigative jurisdiction of the State Inspector’s Service:

- Torture;
- Threat of torture;
- Inhuman or degrading treatment;
- Abuse of official powers, committed using violence or a weapon, or resulting in offending personal dignity of the victim;
- Exceeding official powers committed using violence or a weapon or resulting in offending personal dignity of the victim;
- Coercion to provide explanation, evidence or opinion;
- Coercion of a person placed in a penitentiary institution to change evidence or refuse giving evidence;
- Coercion of a convicted person to interfere with the fulfillment of the civil duties;
- Other crime resulting in the death of a person, who at the time of death was placed in the temporary detention facility or the penitentiary establishment or was confined in any other place by a representative of the law-enforcement body, an official or a person equal to an official against his/her will and where the detained person had no right to leave the place of detention or was otherwise placed under effective control of the state.

International organizations and independent experts for many years discussed the need of establishing an independent investigative mechanism in Georgia. In his report – “Georgia in Transition”, published in 2013, Thomas Hammarberg – the former High Commissioner for Human Rights of the Council of Europe and the former EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia – noted lack of effective investigation of cases of torture and ill-treatment committed by law enforcement bodies and referred to the need of establishment of an independent investigative mechanism. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or punishment also noted referred to impunity for ill-treatment in Georgia in its report of 2015 and called on the authorities to apply measures that would ensure the investigation of alleged cases of ill-treatment in compliance with the standards established by the European Court of Human Rights.

An Independent human rights expert – Maggie Nicholson, in her assessment of 2017 of the implementation of 2014-2020 Human Rights National Strategy, as a matter of priority, called on establishment of an independent investigative mechanism to look into cases of misconduct by the law enforcement officers, stating that this would be the best indication of the government’s commitment to fight impunity.

The establishment of the State Inspector’s Service as an independent investigative entity has been positively assessed by the international organizations. In 2020, the Committee of Ministers of the Council of Europe adopted the decision on the Tsint-sabadze Group of cases, according to which the Committee welcomed the measures taken for the effective functioning and institutional strengthening of the State Inspector’s Service and called on the State to continue adopting the legislative and other necessary measures to further enhance the independence and effectiveness of the Service.

On 24 December 2021, The State Inspector’s Service submitted a legislative proposal to the Parliament of Georgia which aimed at strengthening the investigative direction and addressing the challenges identified in the process of investigation of the crimes committed by officials. In parallel, on December 30, 2021, the Parliament of Georgia amended the Law on the State Inspector’s Service abolishing the State Inspector’s Service (creation of two new services - the Special Investigation Service and the Personal Data Protection Service from March 1, 2022, was decided). The Parliament of Georgia adopted this law without consulting and involvement of the State Inspector’s Service.

This chapter reviews the activities of the State Inspector's Service conducted in 2019-2021 in the field of investigation: general tendencies of the investigation of the crimes committed by the law enforcement representative, official or person equal to him/her, that fall under the jurisdiction of the Service; statistical data; legislative and practical challenges encountered by the Service in the process of investigation of crimes committed by the officials; measures taken by the Service to address the existing challenges.

02

**Process from Receiving the
Notification to Adoption of the Final Decision**

2. Process from Receiving the Notification to Adoption of the Final Decision

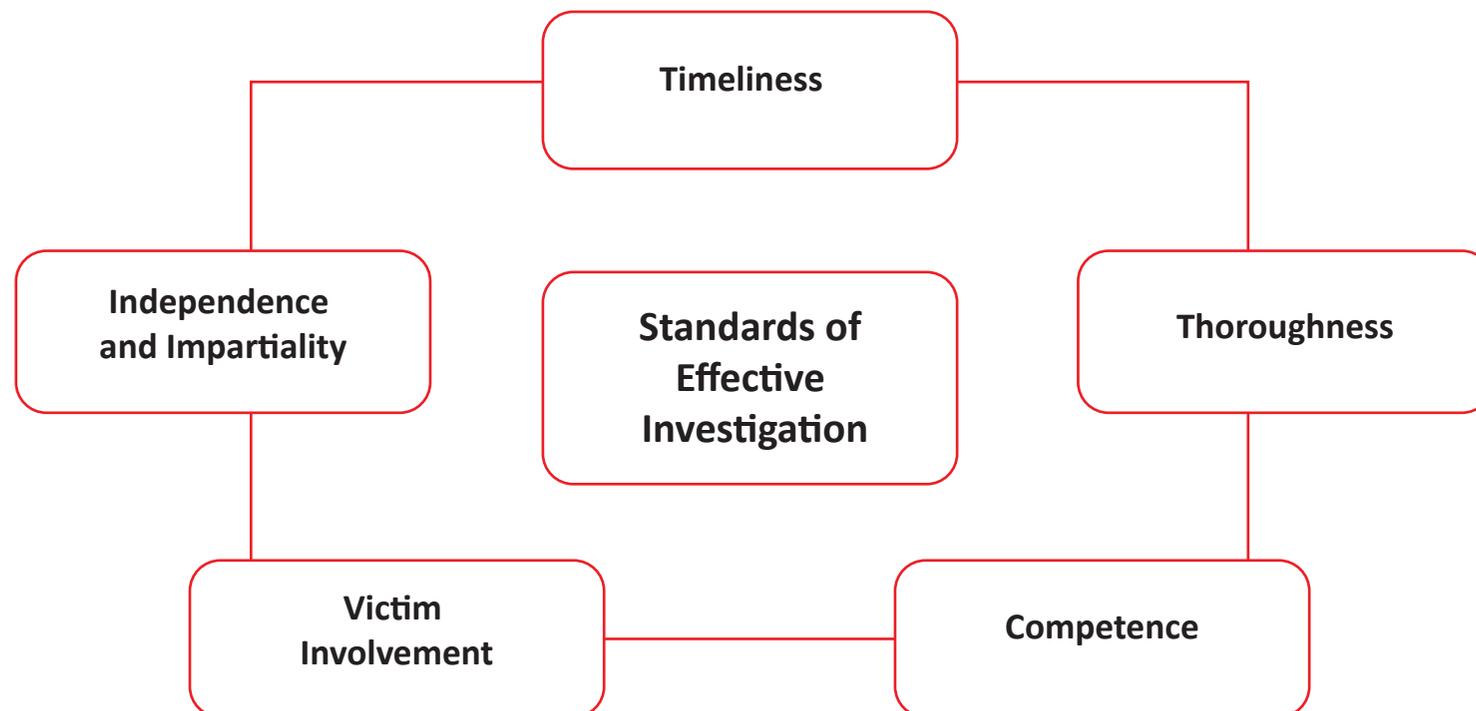
From November 1, 2019, the State Inspector's Service has identified the introduction of an effective mechanism for receiving notifications and immediate response to incoming notifications as one of its priorities, which did not occur during the investigation of similar alleged crimes.

The Investigative Department of the State Inspector's Service receive notifications about crime and actions containing signs of alleged crimes on a 24-hour basis from various sources – through the hotline of the State Inspector's Service (number - 199), electronic document management system, mail, social network, or official e-mail of the Service. Notifications are received from: the following units of the Ministry of Internal Affairs: Temporary Detention Department, General Inspection, territorial units – police departments; Special Penitentiary Service of the Ministry of Justice, General Inspection of the Ministry of Justice, Prosecutor's Office, the Bar Association, Court, Parliament of Georgia, Public Defender's Office of Georgia, non-governmental organizations, public institutions, individuals and media.

The notifications received by the State Inspector's Service, according to a pre-established 24-hour shift schedule, are allocated to the employees of the Investigative Department, who immediately communicates with the author of the notification / the alleged victim to clarify the circumstances. The employee of the Investigative Department, inter alia, interviews the authors of those notifications, that do not reveal signs of the crime falling under the jurisdiction of the State Inspector's Service and / or their content is vague, after which a decision is made whether to open the investigation.

If the alleged victim or the author of the notification denies commission of the crime against him/her falling under the investigative jurisdiction of the State Inspector's Service and the Investigative Department officer has no suspicion that the law enforcement representative, public official or a person equal to the official has committed the crime, the investigation is not launched, about which the author of the notification is informed in writing. If during the interview the alleged victim or the author of the notification notes that the crime envisaged under the Criminal Code of Georgia was committed against him/her, which does not fall under the investigative jurisdiction of the State Inspector's Service and / or relates to the disciplinary misconduct of an official, the notification is forwarded to the relevant body for further examination, about which the author of the notification is also informed in writing.

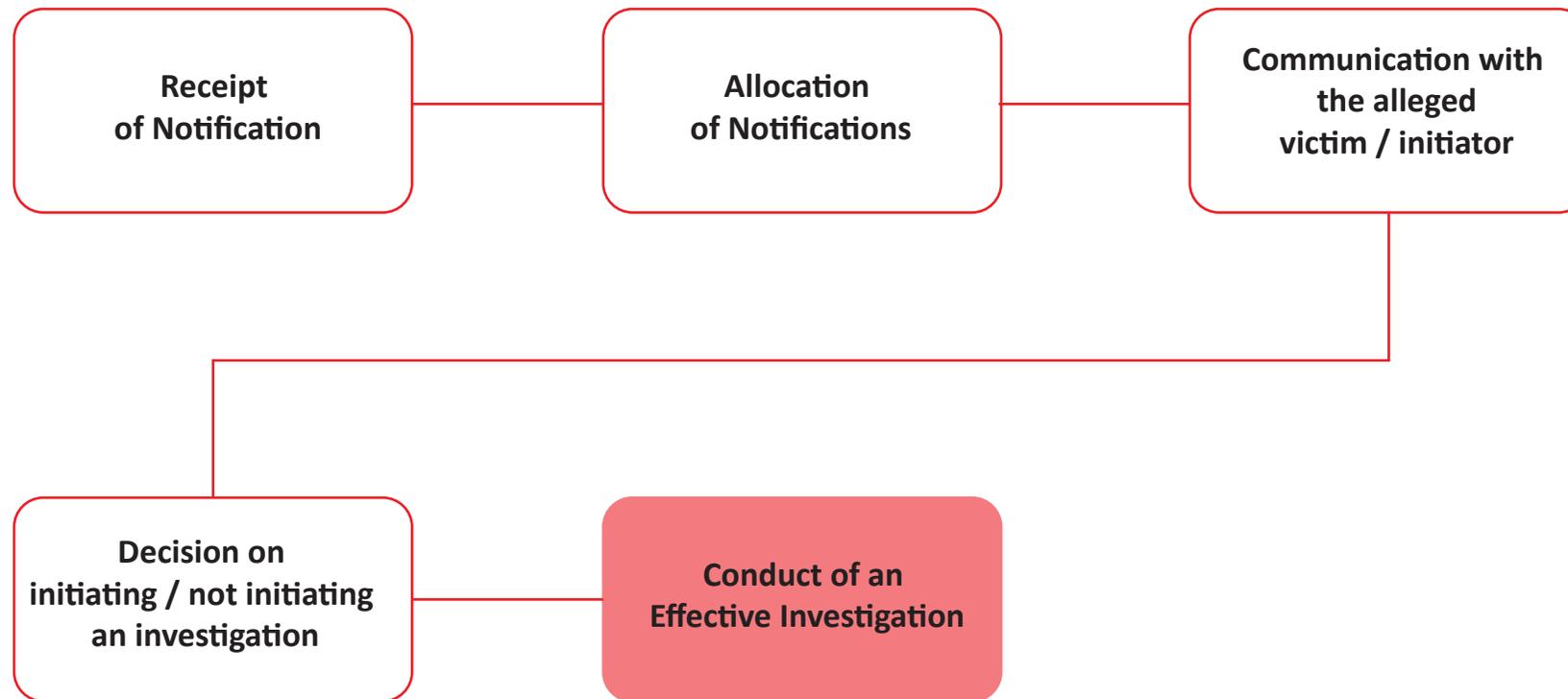
If the signs of the crime falling under the jurisdiction of the State Inspector's Service are revealed, the Investigative Department of the State Inspector's Service immediately opens the investigation and, in accordance with the standards of the European Court of Human Rights, conducts prompt, thorough, competent, independent, and impartial investigation with focus on protection of the interests of the alleged victim and his/ her active involvement in the investigation.



The staff of the Investigative Department of the State Inspector's Service develops the investigative tactics and strategies upon the commencement of the investigation. The type and sequence of the investigative and procedural actions to be conducted are organized in such a manner to enable possible to obtain the maximally large volume, relevant and valuable information and evidence in a short period of time. Priority and urgent investigative and procedural actions are carried out immediately, the delay of which may hinder the obtaining of those evidence which may be destroyed in a short period of time (video recordings, biological material, etc.);

- Interviewing of the alleged victim is conducted immediately;
- On the same day when the investigation is opened, with the participation of a forensic expert of the Investigative Department, the incident scene is inspected, from where important samples are taken, evidence is obtained and properly attached to the case, as well as video surveillance cameras are identified at the incident scene in order later to request the video-recordings based on the judge's ruling.
- At the earliest opportunity, the alleged victim is personally presented to an expert for a medical examination;
- Eyewitnesses of the incident are identified and questioned as witnesses in addition to the inspection of the scene;
- On the same day when the investigation is opened, written requests are sent to individuals, as well as to various private and public institutions, in order to obtain information and documentation relevant to the case or ascertain the place of its storage (for the purpose of its seizure at a later stage based on the judge's ruling);
- Relevant video-recordings are requested/examined;
- If necessary, psychological, information-technological, ballistic, trasological, dactyloscopic, habitoscopic, chemical, biological and other examinations are also conducted;
- All necessary and possible investigative and procedural actions are carried out in a tight timeframe, which ensures the conduct of a quality, thorough and objective investigation of the case.

It is also noteworthy that the State Inspector's Service provides comprehensive information on the progress of the investigation, at certain intervals and / or upon request, to the alleged victim.



03

Implemented Measures

3. Implemented Measures

Creation of the Division of the Autonomous Republic of Adjara

The State Inspector's Service opened an office in Batumi to strengthen its institutional capacity and increase its efficiency. The State Inspector's Service has established a new structural unit in the Investigative Department - the Division of the Autonomous Republic of Adjara, which investigates the violent crimes committed by the officials on the territory of the Autonomous Republic of Adjara and the Guria region.

Prior to the opening of Batumi office, the Investigative Department of the State Inspector's Service conducted investigations across the country only from two cities - Tbilisi and Kutaisi. The Western Division of the Investigative Department covered 8 regions with the resources of 5 investigators. Considering that almost half of the criminal cases concerned the facts that took place on the territory of the Autonomous Republic of Adjara, the investigators of the Western Division constantly had to travel to this region for performing investigative and procedural actions. This challenge has emerged the need for opening additional office.

The establishment of an additional office in the Autonomous Republic of Adjara has significantly contributed to swift response to the alleged crimes committed in the area, the prompt conduct of the investigative and procedural actions, and the more efficient allocation of staff resources. In addition, the new office facilitated communication of the local population with the Service and the participants of the process no longer have to travel to another region for participation in the investigative and procedural actions.

The needs of minors and persons with disabilities are also considered in the Division of the Autonomous Republic of Adjara. A child-friendly environment is created to protect the rights and best interests of a juvenile victim and a witness involved in the investigation of a criminal case. The office infrastructure is adapted to the needs of persons with disabilities. Separate areas are allocated for interviewing witnesses and conducting an identification parade.



The scarcity of territorial offices is a significant obstacle for the timely and effective investigation by the State Inspector's Service. As of today, the Investigative Department is represented in three cities - Tbilisi, Kutaisi and Batumi. This hinders the timely appearance to the territorially remote place, as well as the conduct of investigative and procedural actions: witnesses refuse to appear before an investigating authority in another region, and in their homes, even with their consent, it is impossible to conduct an investigative action under appropriate conditions (including ensuring confidentiality). In addition, it is very difficult to effectively plan investigative and procedural actions in remote territorial units - in parallel with investigative actions, there is often a need to submit separate documents to different institutions, which must be prepared/compiled and then printed from the internet-connected device, electronically, which requires being at the office

In view of the above, it is vital that the State Inspector's Service has offices in all regions, which will enable the investigator to conduct investigative and procedural actions in accordance with the requirements of the law, in an appropriate environment.

Legislative proposal submitted to the Parliament of Georgia

In 2019, launching an independent investigative mechanism in the form of the State Inspector's Service was evaluated as one of the most important steps forward taken by Georgia in terms of human rights protection, both at national and international levels. However, the 2-year work of the State Inspector's Service in the field of investigation revealed practical challenges, eradication of which through legislative amendments was crucial for further development of the Service and conducting an independent and effective investigation.

In order to strengthen the institutional capacity of the State Inspector's Service, increase the degree of its independence and equip it with effective legislative mechanisms, the State Inspector's Service has submitted a legislative proposal to the Parliament of Georgia. The legislative package submitted to the Parliament was developed with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR). The legislative proposal includes amendments to 14 legislative acts, including the Law of Georgia on the State Inspector's Service, the Criminal Procedure Code, the Code of Administrative Offenses of Georgia, the Law of Georgia on Police, and the Organic Law on the Prosecutor's Office.

The developed legislative package responds to those legislative and practical challenges, which are thoroughly reviewed in the Report on the Activities of the Service submitted to the Parliament of Georgia on March 31, 2021, as well as to the recommendations highlighted by the NGOs Institute for Development of Freedom of Information (IDFI) and Social Justice Center in their study - "Independent Investigation Mechanism in Georgia - Achievements and Existing Challenges.

The legislative proposal envisages:

- Imposition of a legal obligation on physicians, police officers, staff of the State Security Service, and Public Emergency Management Center “112” to immediately report to the State Inspector’s Service in case of suspicion of torture, other cruel, inhuman or degrading treatment or other violent acts.

Practice reveals that the citizens mainly report the facts of ill-treatment to the Public Emergency Management Center "112", which in turn forwards this information to the General Inspection of the Ministry of Internal Affairs and / or to the district police departments. This process, in addition to causing delays in time, is a significant obstacle for effective conduct of the investigation, as it poses the risk of notifying the law subject police officer about the report lodged against him/her

- Determining the obligation of a judge reviewing an administrative offense case to apply to the State Inspector's Service if during the examination of the case a suspicion of commission of torture, other cruel, inhuman or degrading treatment or other violent acts by law enforcement officers arises.

Reporting about the crime in a timely manner is one of the prerequisites for an effective investigation. Unlike the Criminal Procedure Code of Georgia, the Code of Administrative Offenses of Georgia, does not provide for a special regulation on measures to be taken by a judge in case of torture, degrading and/or inhuman treatment of a person charged with the administrative offense.

- Granting authority to the State Inspector to apply to the Prosecutor General with a substantiated proposal on transferring the criminal case closely related to the case pending before the State Inspector's Office, for further investigation.

There are frequent cases in practice when a criminal case pending before the Service reveals the signs of other crime committed by the law enforcement representative, official or a person equal to an official, the separation of which, on the one hand, prevents the conduct of an effective investigation of the case pending before the Service, and, on the other hand, leads to the conduct of investigation on the same fact by the different investigative bodies (including the conduct of the same investigative / procedural actions).

- Determining the obligation of other investigative bodies, to promptly ensure that upon the request of the State Inspector's Service, the latter is granted with access to the materials of the criminal case pending before them.

The current law does not provide the adequate guarantees for timely transfer of the criminal case investigated by other investigative body to the Service. This circumstance coupled with other factors, leads to the initiation of an investigation by an unauthorized investigative body and the conduct of investigative actions, which calls into question an effective investigation, especially if the investigation is launched by the law enforcement body whose employee is implicated for commission of alleged crime, as in such case the risk of destruction, alteration and falsification of evidence is even higher.

- Reducing the timeframe for consideration of a substantiated proposal of the State Inspector and the relevant Deputy State Inspector in relation to the conduct of the investigative / procedural action based on the court's ruling, by the Supervising Prosecutor and the Prosecutor General from 72 hours to 24 hours.

The terms envisaged under the current law for the conduct of an investigative / procedural action does not meet the essential component of an effective investigation - the timeliness of the investigation, as the discussion between the Service and the Prosecutor's Office on conducting an investigative / procedural action relevant to the case and obtaining important evidence might continue for 8 days, in addition to the time required for applying to the Court and for reviewing the motion.

- Defining the obligation for the Supervising Prosecutor and the Prosecutor General to substantiate their decision on not satisfying or partially satisfying the reasoned proposal of the State Inspector and the relevant Deputy State Inspector.

While the State Inspector and the Deputy State Inspector are required to substantiate written proposals submitted to the Prosecutor's Office, the Supervising Prosecutor / Prosecutor General have no obligation to substantiate their decisions adopted with respect to the proposals. This, in addition to finding the prosecutor's decision obscure, complicates the substantiation of the proposal sent by the State Inspector to the Prosecutor General, as the motivation of the Supervising Prosecutor on partially satisfying or refusal to satisfy the proposal remains unclear for the Service.

- Granting unimpeded access to the temporary detention facilities for investigators of the State Inspector's Service without the permission of the head of the facility.

The Service investigator needs the permission of the head of the facility in each individual case to enter the isolator for performing the investigative / procedural action. In addition to the fact that obtaining such a permit requires several hours (sometimes an entire day), which delays the conduct of investigative action, this barrier further creates a risk for evidence destruction.

- Establishing a short timeframe (10 working days) for transferring the evidence to the State Inspector's Service and imposing the obligation on all persons and bodies to substantiate their refusal on handing over the evidence to the Service and / or to provide information to the Service about the reasons for transmitting the evidence to the Service in violation of the term.

In many cases, it is impossible for the Service to obtain the video recordings installed at law enforcement agencies (for example, police stations) even when their request is submitted immediately and the time limit for storing the video recordings established by official acts of the same agency has not expired. Moreover, it is not uncommon for the state agencies to delay the transfer of the information requested in a written form to the Service (several weeks, months later), which prolongs and / or makes it impossible to obtain evidence.

- Granting the possibility of conducting covert investigative actions on the crimes falling under the jurisdiction of the Service (Article 144² (threat of torture) and Article 378 (2) (obstruction of the activities of the penitentiary institution and / or disorganization of these activities)

Alleged victims of ill-treatment refrain from testifying against the law enforcement officer for different reasons, while the law enforcement representatives almost never cooperate with the investigation (they do not testify against either themselves or their colleague). Given this, the conduct of the covert and / or computer-related investigative action on the crimes falling under the jurisdiction of the Service is often the only way for ascertaining the objective truth.

- Granting the authority to the Service to conduct computer, video, phonoscopic and habitoscopic examinations on the criminal cases falling under its jurisdiction;

This year, similar to 2020, the issue of obtaining an expert opinion on time remains a challenge for the Service, which significantly hinders the conduct of an effective investigation.

- Granting the authority to the Service to conduct qualification exams for the Service investigators, etc.

In those circumstances, when the qualification exams of the Prosecutor's Office, lawyers (specializing in criminal law) and the investigator of the State Inspector's Service are passed in identical disciplines (pursuant to the Law of Georgia on the State Inspector's Service, the only exception was the administrative law, which was also provided for in the legislative amendments and added to the law) and in view of the identical content of the exams, it is important the results of the qualification exams of the staff of the Prosecutor's Office and the lawyers to be given equal legal force and mutual recognition.

The State Inspector's Service considered the views of the relevant state agencies, including the Public Defender's Office, and the non-governmental sector on the prepared legislative proposal. It should be noted that the law enforcement agencies (especially the Prosecutor General's Office of Georgia and the Ministry of Internal Affairs of Georgia) strongly contradicted to the implementation of legislative changes referring to the effectiveness of the instruments already provided for in the Law of Georgia on the State Inspector Service, for instance:

- The Ministry of Internal Affairs disagreed on entitling the Service investigators to enter temporary detention facilities without permission on the ground that the Service has no preventive authority, thus, the rules for entering the isolator to respond to the fact and perform an investigative function, should be similar to other investigative agencies. The Prosecutor General's Office also disagreed on granting the investigators of the State Inspector's Service to enter the isolators and penitentiaries without the permission of the institutions (It should be noted that the Ministry of Justice of Georgia did not comment with respect to entering the penitentiary institution by the Service investigator without permission. Moreover, the Ministry of Justice has considered the regulation of this issue in its 2021 legislative plan);

- The Prosecutor General's Office disagrees that the report on the activities of the State Inspector's Service reflected statistical data in relation to those criminal cases on which the State Inspector's Service applied to the Supervising Prosecutor with its substantiated proposal with the request of initiating criminal prosecution. The exclusive authority of the Prosecutor's Office to initiate criminal prosecution was named as an argument. The draft legislative amendment was assessed as an intrusion into the functions of the Prosecutor's Office and the Prosecutor General;
- The Prosecutor General's Office disagrees on authorizing the State Inspector to submit a substantiated proposal to the Prosecutor General on transferring the case closely related to the case under the jurisdiction of the State Inspector's Service as well as on obliging the Prosecutor General to adopt a timely and substantiated decision on this issue. As highlighted, the Prosecutor General should not have the obligation to substantiate the non-exercise of his/her exclusive powers and to provide the reasons of not transferring the case to the State Inspector's Service that does not fall under the latter's jurisdiction;
- The Ministry of Internal Affairs and the Prosecutor General's Office disagree over equipping the State Inspector's Service with effective legislative guarantees which will ensure the obtaining of written and other evidence by the Service in a timely manner (for example, setting deadlines for the submission of evidence);
- The Ministry of Internal Affairs disagree on the immediate satisfaction of the Service's request for granting prompt access to the case materials due to the specifics of the activities taken by the investigative bodies and the workload, etc.

The State Inspector's Service reflected part of the opinions submitted by the state agencies in the drafted legislative proposal and presented to the Parliament of Georgia legal arguments on the issues that were not considered.

Opinions submitted by the Service on the draft law on separation of investigative and prosecutorial functions

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The Government of Georgia has submitted to the Parliament of Georgia a legislative initiative with respect to the separation of investigative and prosecutorial functions. The legislative package has been prepared by the Ministry of Internal Affairs.

It is noteworthy that the State Inspector's Service submitted its substantiated opinions on the legislative package both to the Ministry of Internal Affairs and the Government of Georgia, most of which are not reflected in the draft law submitted to the Parliament of Georgia. In particular, the State Inspector's Service offered different regulations for the separation of investigative and prosecutorial functions on a number of legal issues in relation to the Service. However, pursuant to the draft law submitted to the Parliament of Georgia, the authority granted to the Service are identical to other investigative bodies. Consequently, the legislative package does not / cannot meet the challenges the State Inspector's Service faces as the nature and mandate of the Service, purpose of its creation and activity, the specifics of investigation of crimes falling under jurisdiction of the Service and the importance of conducting the independent investigation into the crimes committed by officials are not considered.

Reform on separation of investigative and prosecutorial functions is crucial for all investigative bodies, while this initiative is even more important for the State Inspector's Service, whose degree of independence and efficacy is essential for effective investigation of violent crimes committed by law enforcement officers and other public officials.

The full control of the Prosecutor's Office over the State Inspector's Service and the need for prompt legislative amendments in this direction was underlined by the Committee of Ministers of the Council of Europe within the general measures adopted at 1390th meeting, 1-3 December 2020 (DH) on the Tsintsabadze group of cases.

The State Inspector's Service considers that the legislative amendments presented to the Parliament of Georgia fails to: ensure independence of the State Inspector's Service from the Prosecutor's Office; empower the Service to adopt decisions on the conduct of important investigative actions independently of the prosecutor; achieve the goal of the reform on the separation of investigative and prosecutorial functions and fully respond to the recommendations issued by the Venice Commission with respect to this reform.

Although a clear, timely and complete separation of investigative and prosecutorial functions is one of the necessary preconditions for the effective functioning of the State Inspector's Service, according to the draft law submitted to the Parliament of Georgia, the Service remains dependent on the Prosecutor's Office in making important decisions. In particular: the prosecutor retains full control over the conduct of covert investigative actions; Also, until January 1, 2024, the prosecutor retains full control over the conduct of investigative actions restricting human rights (search, seizure, computer data retrieval, etc.), and, after January 1, 2024, the right of the investigator on applying to the court with motion becomes restricted (it would be possible only prior to criminal prosecution); The superior prosecutor retains the right to involve an investigator from another investigative agency in the investigation of the criminal case pending before the State Inspector's Service; The Prosecutor General is still entitled to withdraw a case from one investigative body and transfer it to another investigative body for investigation, regardless of the investigative subordination; The prosecutor retains the right to terminate the investigation; Also, the prosecutor retains the right to change the classification of the criminal case before the initiation of criminal prosecution based on the complaint, etc.

In addition to incorrect allocation of investigative and prosecutorial functions, the State Inspector's Service disagrees with the enactment of the law with respect to the Service after 1 year (January 1, 2023) and the restriction of conducting investigative actions restricting human rights before January 1, 2024 without the intervention of a prosecutor. It leaves the Service completely dependent on the Prosecutor's Office for another two years, which threatens the conduct of a timely and independent investigation and calls into question the effectiveness of the Service.

The State Inspector's Service does not require a transitional period to be prepared for the legislative amendments, as no obstacles that may arise in relation to other investigative agencies, exist in this case. Highly qualified investigators with higher legal education, who are selected on the basis of a multi-stage competition with the involvement of representatives of the non-governmental sector and academia, are employed at the Investigative Department of the Service. Consequently, the Service investigators will be able to perform the new functions assigned to them without impediment.

The State Inspector's Service submitted its opinions on the legislative initiative to the Parliament of Georgia as well. ²

² Detailed opinions of the State Inspector's Service is available on its official website -

[HTTPS://STATEINSPECTOR.GE/KA/ARTICLE/SAXELMWIFO-INSPEQTO-](https://stateinspector.ge/ka/article/saxelmwifo-inspeqto-)

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Study conducted in collaboration with the non-governmental sector

With the involvement and active participation of the State Inspector's Service, IDFI and the Social Justice Center (with the support of the Open Society Foundation (OSGF)) prepared the study on the the activities of the Independent Investigative Mechanism. This is the first document that assessed the investigative direction of the State Inspector's Service and analyzed the current challenges.

It is noteworthy that the study findings are in full compliance with the 2020 activity report of the State Inspector's Service submitted to the Parliament on March 31, 2021.

The main challenges of the study are as follows: the number of investigators is particularly low compared to the number of cases. In addition, the Service has insufficient financial and infrastructural resources, which hinders the efficient operation of the State Inspector's Service; The mandate of the Service is not extend to responding to alleged crimes committed by the Minister of the Internal Affairs, the Head of the State Security Service, the Prosecutor General; Regardless of the institutional independence of the Service, it is not equipped with sufficient mechanisms for conducting independent investigations; The investigator is limited to conduct independent investigation into a criminal case and adopt decisions on the conduct of important investigative actions in the case; The Investigative Department is not entitled to access information kept in computer systems (video recordings) without the Prosecutor's Office, even when there is a threat of destroying evidence and even if it is the main evidence for investigating alleged crimes committed by law-enforcement representatives; The existing model of appointing the State Inspector lacks sufficient guarantees for avoiding political influence on the process and thus creates risks of taking politically motivated decision.

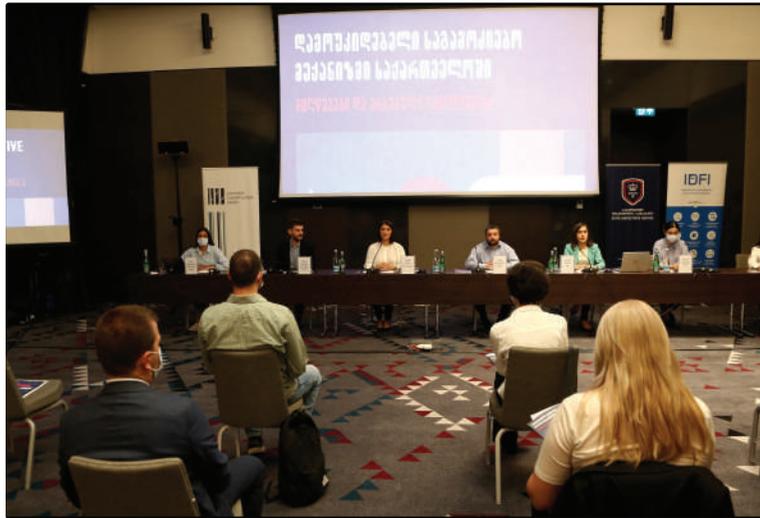
To tackle the challenges outlined above, the Study offered relevant recommendations on electing the State Inspector with the 3/5 majority of the Parliament composition: Provision of adequate human and material resources to the Investigative Department and creation of additional structural units in different regions, establishing the pre-emptive jurisdiction of the State Inspector's Investigative Department on all crimes committed in the process of investigation and increasing the independence of the investigator. ⁴

³ The full Study is available at the following link -

<HTTPS://IDFI.GE/PUBLIC/UPLOAD/ANALYSIS/GEO-INDEPENDENT%20INVESTIGATIVE%20MECHANISM%20IN%20GEORGIA-MIN.PDF>

As noted above, the legislative proposal developed by the State Inspector's Service and submitted to the Parliament of Georgia echoes the findings and recommendations of the study.

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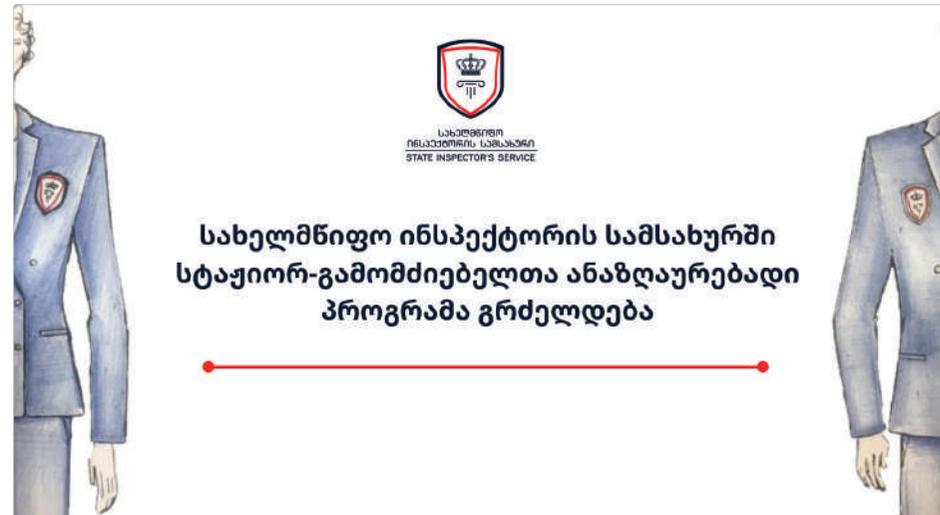
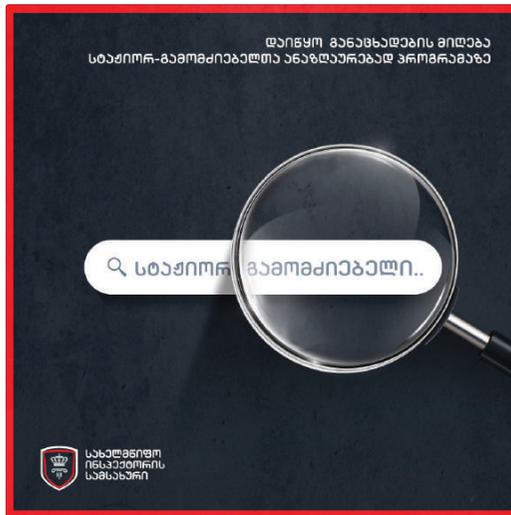


Continuation of the implemented internship program

In 2020, an internship system has been introduced in the Investigative Department to attract a new, motivated workforce. In 2020, based on the competition, 5 intern-investigators were appointed in the East Division of the State Inspector's Service, four of whom, in 2021, were appointed as investigators in the Investigative Department after a successful one-year activity.

In parallel with the appointment of the current intern-investigators, in 2021 the Service announced a competition for a new flow of intern-investigators.

Based on a 4-stage transparent competition, 14 were selected from 218 candidates, 5 of whom were appointed as intern-investigators, while 9 were enrolled in reserve. Representatives of non-governmental organizations and the scientific community were involved in the selection commission of intern-investigators. Intern-investigators are equipped with investigative powers in accordance with the law.



Hotline

5161 messages were registered via the hotline of the Investigative Department (number - 199) from November 1, 2019 to December 31, 2021. Messages were received from both citizens and the state agencies (including via SMS) within 24 hours.

In 2021, an informational video about the hotline was prepared and posted on the social network for the purpose of informing citizens.

In 2021, the Parliament of Georgia made significant changes to the Imprisonment Code and the Juvenile Justice Code, in which the State Inspector's Service was also involved.

Pursuant to the enacted legislative changes:

- Accused and convicted persons placed in penitentiary institutions are entitled to call the hotline of the State Inspector's Service at any time, without any restriction. Calling the hotline of the State Inspector's Service is no longer reflected on the telephone conversation limit set for the convicted persons / accused under the Imprisonment Code and the Juvenile Justice Code;
- Persons placed in penitentiary institutions are entitled to call on the hotline of the State Inspector's Service even when their right to telephone conversation is limited by an investigator or prosecutor. The convicted person / accused reserves this right even when the right to telephone conversation is limited as a disciplinary sanction and during his/her placement in a solitary confinement cell;
- Costs for calling on the hotline of the State Inspector's Service are reimbursed to the accused / convicted persons by the penitentiary institution.

Legislative changes adopted by the Parliament of Georgia in the Imprisonment Code and the Juvenile Justice Code will significantly contribute to provision of information on the crimes under the jurisdiction of the State Inspector's Service in a timely manner, which is one of the crucial prerequisites for an effective investigation.

Handbook for investigators

In order to ensure the effectiveness of the investigation, to protect the rights of the process participants and to develop uniform practices, a number of guidelines have been developed for investigators:

- A practical guide on appointing an examination - Since the investigation of crimes falling under the investigative jurisdiction of the State Inspector's Service is characterized with certain specifics, the guideline was developed by forensic experts, investigators and analysts to ensure the introduction of a common standard for appointment of the examination and the conduct of an effective investigation. The document provides a list of investigative actions that should be carried out before the appointment of each type of expertise and the possible questions to be asked during the appointment of different types of expert examination;
- A handbook on the use of force by the law enforcement officers during assemblies and demonstrations - The handbook sets out international and national standards regarding the scope of the right to assembly (demonstration), types and forms of assembly (demonstrations), the preconditions and rules on the use of force and non-lethal weapons by the law enforcement officers, and the rules about the risks and prohibitions for use of non-lethal weapons. This handbook will assist the investigators to assess the lawfulness of the force used by the law enforcement officers in the process of investigation of the crimes related to the use of allegedly excessive force by the law enforcement officers during assemblies;
- A handbook on the protection of the rights of persons with disabilities in the process of investigation - This handbook was developed to raise the awareness of investigators about the needs of persons with disabilities and to ensure that the investigation is tailored to the needs of PwDs. The handbook includes the rules for establishing primary communication with an alleged victim and witness with disability, interviewing, questioning, presenting before a medical examination, participation in an investigative experiment, taking a sample, and informing an alleged victim;
- The Standard for Communication with Persons with Disabilities - A document developed with the support of the Council of Europe, applies a human rights-based approach. It reviews the international and national standards, the case law of the European Court of Human Rights, attitudes towards the disability, direct and indirect forms of discrimination, intersectional discrimination, etiquette of communication with persons with disabilities (acceptable and unacceptable behavior) and general practical advice for communication with persons with disabilities. The guide will help the State Inspector's investigators to adapt the investigative actions to the needs of persons with disabilities;
- Digests of judgments of the European Court of Human Rights - In order to enhance the knowledge of the representatives of the Investigative Department and to implement the judgments of the European Court of Human Rights in their daily practice, developing the Digest of Judgments of the European Court of Human Rights has started. The prepared digests covered various issues related to the violation of the material and procedural limbs of Articles 2 and 3 of the European Convention on Human Rights, also other important topics such as: suicide and self-harm of persons under effective state control; use of handcuffs and other restraining measures; Murder of a person arrested / detained by the representatives of the state agencies, infliction of a physical harm on him/her; torture or inhuman or degrading treatment of detained and imprisoned persons. It is also noteworthy that an electronic portal for internal use has been created, on which all digests are available in electronic format;

- Questionnaires for interviewing alleged victims – Questionnaires for interviewing the alleged victims on the crimes falling under the jurisdiction of the State Inspector’s Service, were developed for the investigators. The following crimes are included in the questionnaire: abuse of official powers (including disproportionate use of force, unlawful use of special means and other cases); Inhuman and degrading treatment (including the fact of improper medical treatment); Torture; Threat of torture; Coercion to provide statement; The death of persons under the effective state control and the coercion of a person placed in a penitentiary institution. These questionnaires will help the investigators obtain the most relevant and comprehensive information from alleged victims, which in turn will help in effective planning of further actions and conducting a thorough investigation;
- Recommendations – For establishing a common standard and performing an effective investigation, recommendations have been developed on the following issues: the rule for informing the victim / his / her lawyer about the actions implemented by the State Inspector's Service; Audio / video recording of the investigative action; Electronic database browsing rules; Prerequisites for conducting the identification parade; A list of evidence to be obtained in a certain category of cases; Information to be obtained from public agencies through sending letters.

Studies

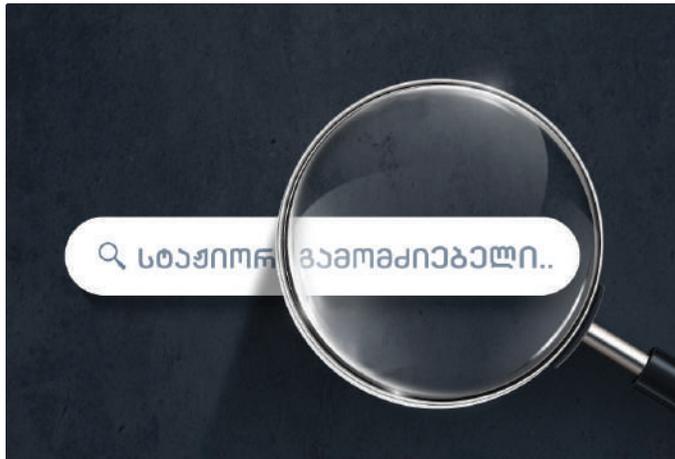
To respond to the current challenges in the investigative direction, four studies were conducted with the support of the international organizations (European Union, Office of the United Nations High Commissioner for Human Rights and the Council of Europe) to carry out activities in line with the international standards:

- Research on preventive activities implemented by independent investigative mechanisms - The study covers the standards set by the European Court of Human Rights and the oversight bodies in the field of prohibition of torture, on the rights of persons deprived of their liberty and certain detention conditions;
- Survey on standards established by the supervisory bodies with respect to torture and ill-treatment - The study presents the standards of the Council of Europe Committee for the Prevention of Torture and the practice of the member States of the Independent Police Complaint Authorities Network (IPCAN).
- A study on questioning police officers – This study was developed with the funding of the European Union (EU) and the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR). The document is a compilation of methodological recommendations for the State Inspector's investigators in the questioning process of the law enforcement officers. The document is based on the international (European) standards for conducting the investigative questioning. The document covers the stages of planning and conducting a questioning. It also contains the principles for an investigative interview / questioning and a schematic detailed framework for questioning / interviewing of a police officer (witness and a subject officer);
- A study on the standards in relation to the use of handcuffs by police - the document was developed with the funding of the European Union (EU) and with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR). It summarizes the practice of other states regarding the restraint of limbs. The document also reviews the case law of the European Court of Human Rights in the context of Article 3 of the European Convention and the position of the European Committee against Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the use of handcuffs and the means for limb restrains in different countries.

Awareness Raising about the activities of the Investigative Department

In order to better inform the citizens about the investigative authority of the State Inspector's Service, information posters were placed on Tbilisi Metro trains and buses. The information posters contained information about the crimes under the jurisdiction of the Service, the ways for addressing the Service, and in case of reporting, the procedure for reviewing their reports.

The project was implemented with the support of the European Union (EU) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) and with the assistance of Tbilisi City Hall and Tbilisi Transport Company Ltd.



The State Inspector's Service, with the support of the Council of Europe, held working meetings with the representatives of local public agencies, the judiciary, and the law enforcement agencies in 3 regions of the country (Adjara, Samegrelo, Imereti). Current trends in the investigative direction, ways for addressing the local needs, and the importance of coordinated activities were discussed within the meetings.

The State Inspector's Service conducted meetings with the representatives of the Public Defender's Office, the non-governmental sector (including regional non-governmental organizations working on the issues of ethnic minorities) and journalists presenting the results of the Investigative Department of the State Inspector's Service. Challenges in the investigation were also discussed.

Cooperation with similar investigative agencies of other countries

Successful communication with leading colleague institutions is a priority for the State Inspector's Service. This is important for the institutional development of the Service, improving the quality of activities and strengthening the capacity of employees.

In 2021, the State Inspector's Service has started cooperation with the Ontario Special Investigations Unit (SIU) of Canada and the Independent Office for Police Conduct in England and Wales – bodies responsible for investigating crimes committed by police officers. Online meetings were held with them, the aim of which was to deepen cooperation between the agencies and share successful international practices.

The Ontario Special Investigations Unit of Canada (SIU) and the Independent Office for Police Conduct in England and Wales provided detailed information to the employees of the State Inspector's Service on the history of the establishment of the investigative agencies, the mandate and investigative jurisdiction, structure, legal and practical guarantees for independence of the agencies, the measures at their disposal for conducting effective investigations, rule for responding to alleged incidents committed by police officers, statistics on the initiation of investigations and prosecutions, issues of coordination between investigative agencies and Prosecutor's Office, results achieved and current challenges.

Both investigative agencies praised the steps taken by the State Inspector's Service in a short period of time and the results achieved. They also expressed a desire to continue further cooperation with the State Inspector's Service.

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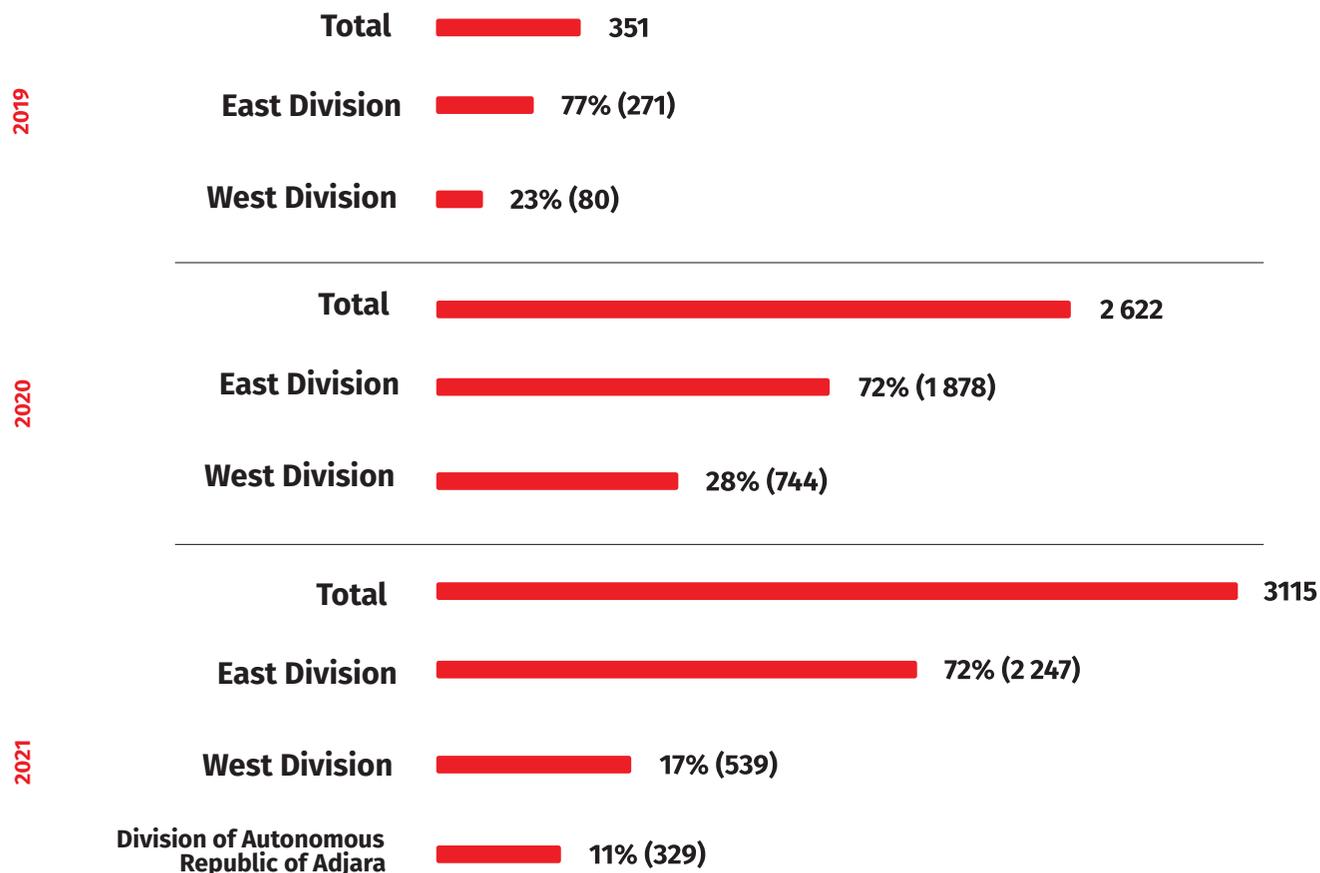
Received Crime Reports

4. Received Crime Reports

Number of crime reports received

From November 1, 2019 to December 31, 2021, the Investigative Department of the State Inspector's Service received 6088 crime reports. 72% (4396 reports) were reviewed by the East Division of the Investigative Department, 23% (1363 reports) - by the West Division, and 5% (329 reports) were dealt with by the Division of the Autonomous Republic of Adjara.

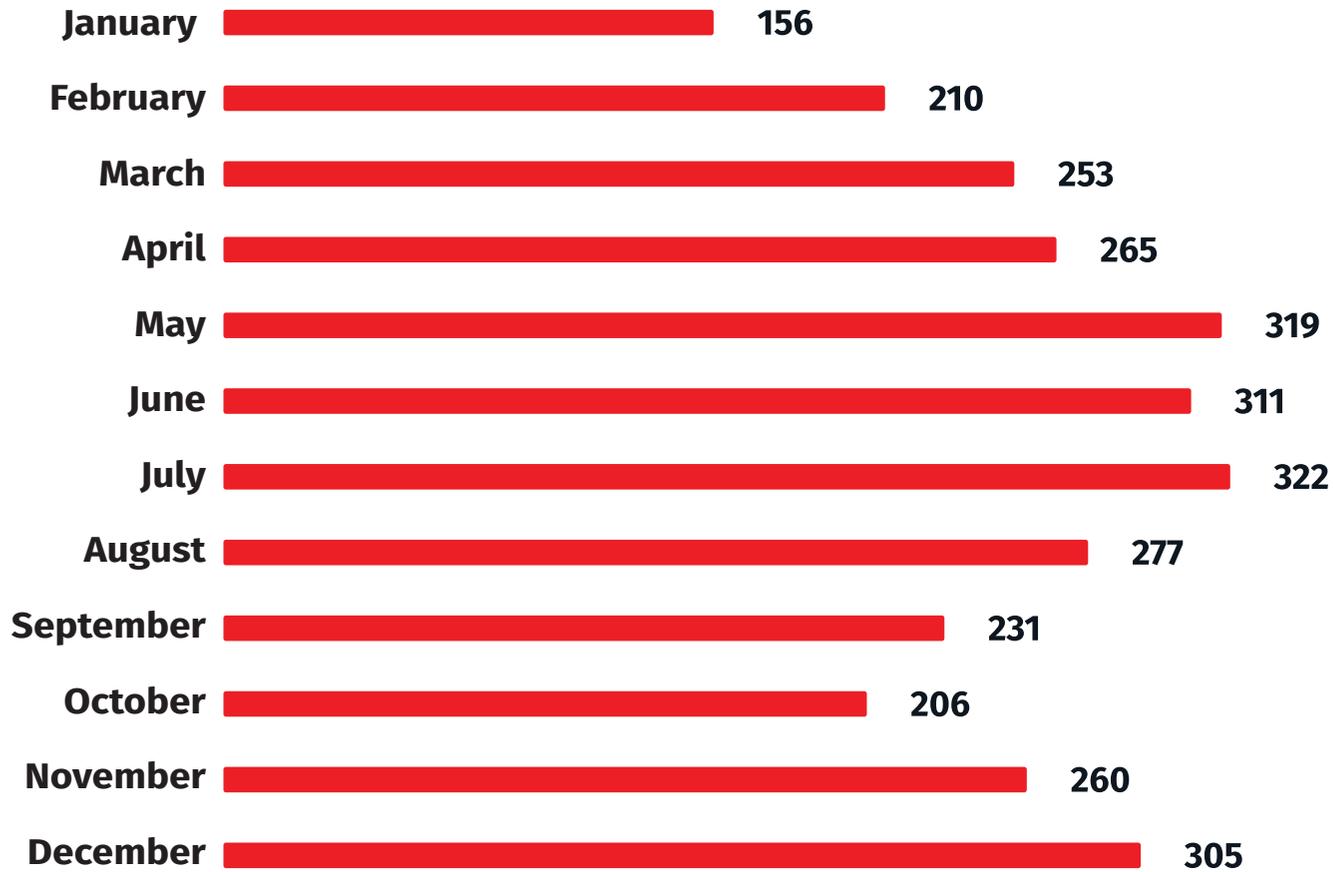
Out of 6,088 reports received by the Investigative Department of the State Inspector's Service, 351 crime reports were received in 2019 (from November 1 to December 31), 2,622 complaints - in 2020, and 3,315 - in 2021. Hence, compared to the previous year, in 2021, the Service received 19% more reports.



⁴ The Division of the Autonomous Republic of Adjara has started operating from May 2021.

The number of crime reports received in 2021 varies by month. Most complaints were received in July, and the least - in January.

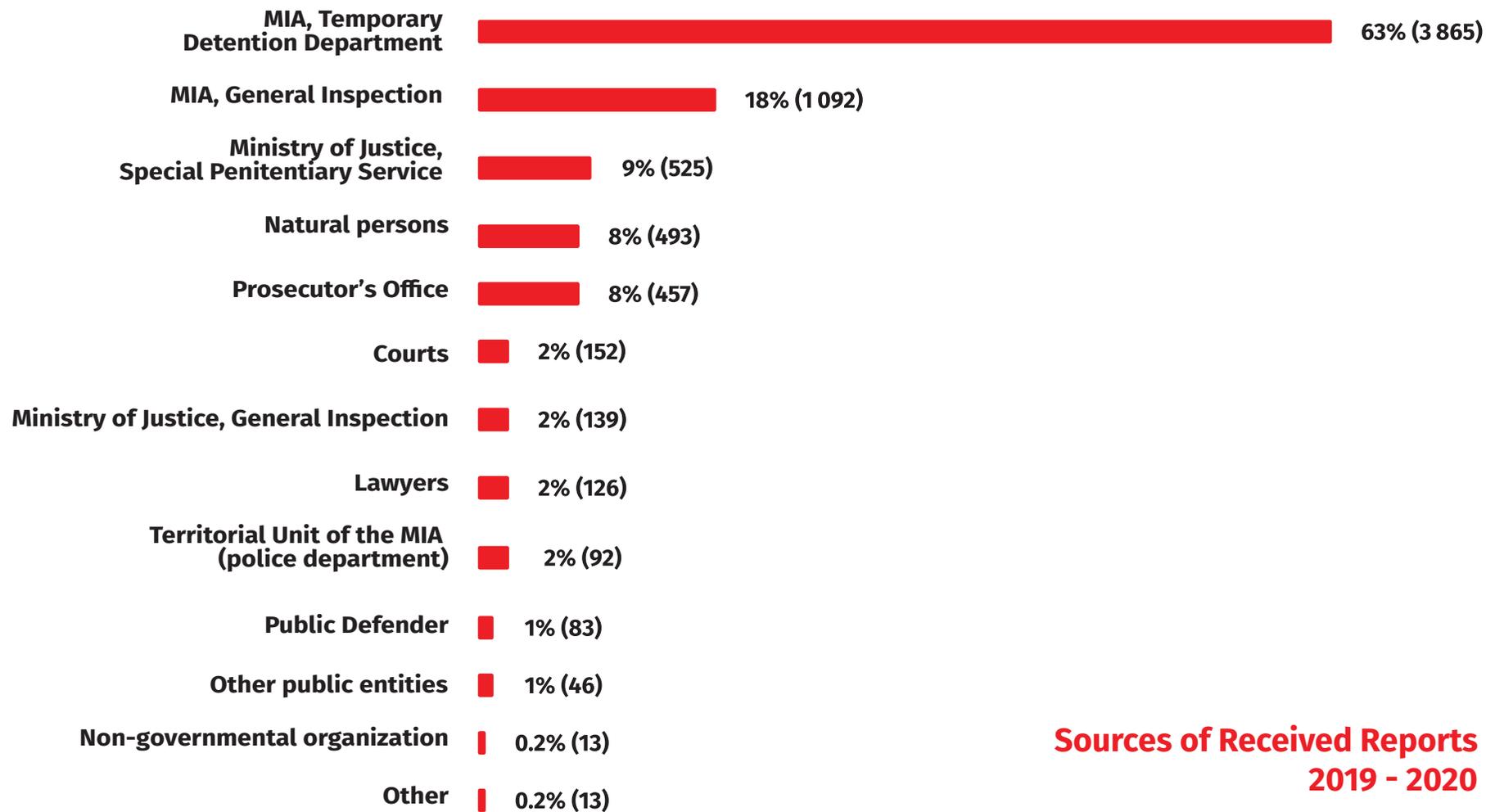
Number of crime reports received in 2021 by month



Sources of received reports

The State Inspector's Service receives reports about possible crimes 24 hours a day from various sources - the Ministry of Internal Affairs, the Ministry of Justice, the Prosecutor's Office, the Public Defender's Office, citizens, etc.

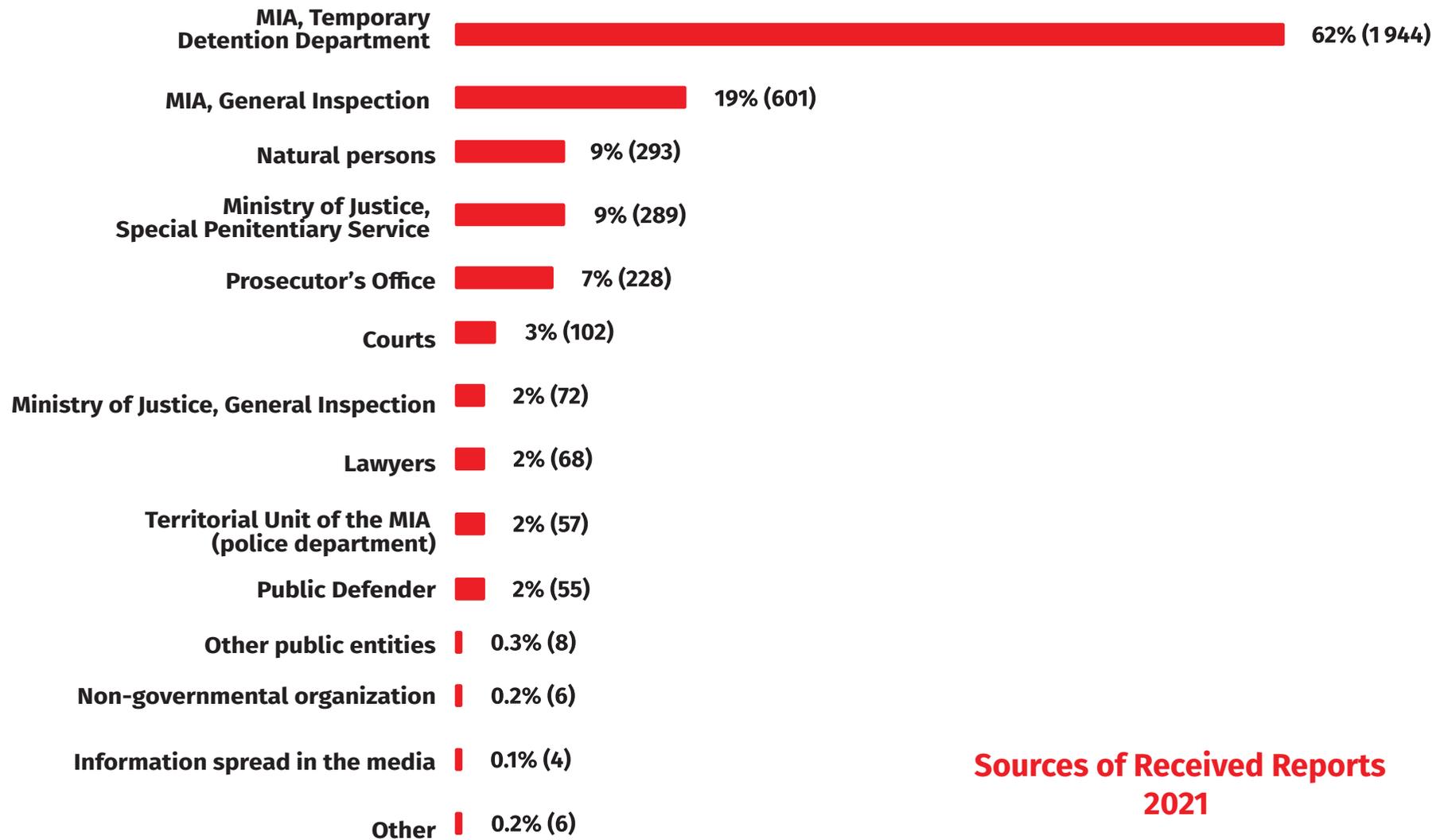
From November 1, 2019 to December 31, 2021, the largest part of the reports (83%) were received by the State Inspector's Service from the Ministry of Internal Affairs. In some cases, the reports on the same incidents were received from several sources.⁵



⁵ In some cases, the State Inspector's Service receives the same report from several sources. In such cases the report will be ascribed to all relevant agencies/sources in order to record complete statistical data. Therefore, the total number of crime report sources exceeds the total number of report received by the Service.

In 2021, the State Inspector’s Service received most of the crime reports (83%) from the Ministry of Internal Affairs. Reports on the same facts were received from several sources during this year as well.

It is noteworthy that in 2021 receiving crime reports from the individuals has increased. If 169 reports were received from individuals in 2020, which was 6% of the total number of incoming complaints in 2020, 293 crime reports were received from individuals in 2021, which is 9% of the total number of complaints received in 2021. This confirms raised awareness about the Service and increased public confidence towards the activities of the Service.



Sources of Received Reports
2021

Reports received from the Ministry of Internal Affairs

The figures provided above demonstrate that most of the reports are received from the Temporary Detention Department of the Ministry of Internal Affairs. An effective mechanism for receiving notifications has been introduced between the Investigative Department of the Service and the Temporary Detention Department. Medical workers employed at the Temporary Detention Facilities send information by telephone immediately for 24 hours a day. The head of the facility sends report only if there are no doctors employed at the detention isolators. Notifications are sent from the Temporary Detention Department to the Investigative Department of the State Inspector's Service when:

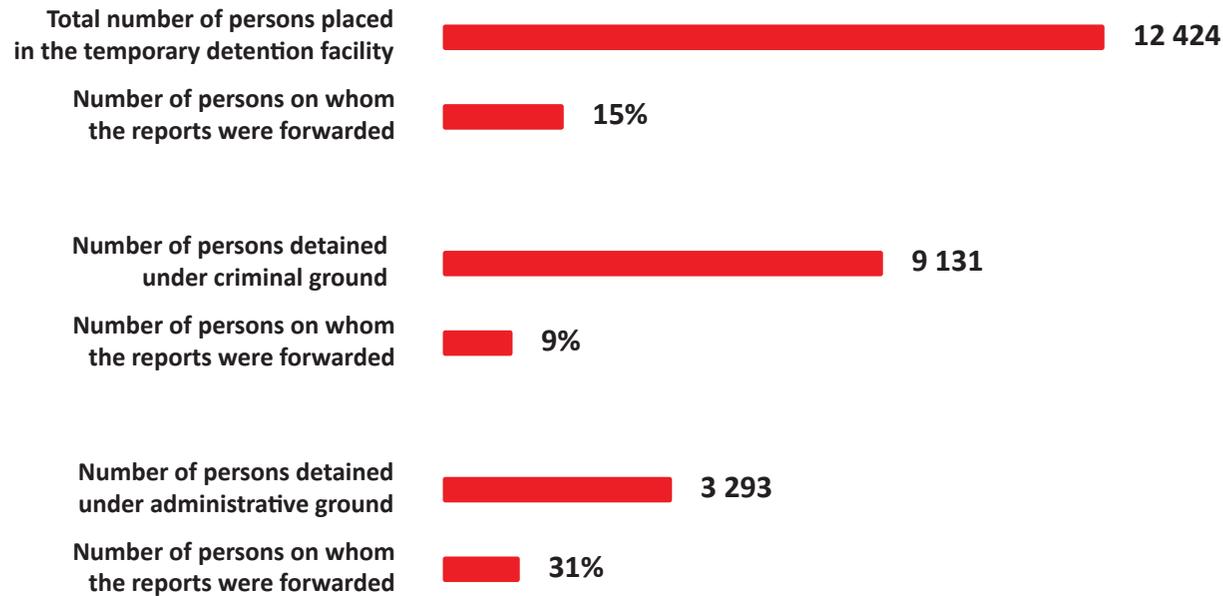
- A detainee has physical injuries, and a doctor employed at the isolator suspects that s/he had been subject to torture or ill-treatment;
- A detainee has new marks/traces of violence on his/her body;
- A detainee placed in an isolator alleges violence against him/her from the representatives of law enforcement bodies.

1,944 reports received from the Temporary Detention Department of the Ministry of Internal Affairs concerned 1856 persons (in some cases, report with respect to one person is received twice - during administrative arrest and in case of imposing administrative detention while his/her placement in detention), of whom 1,017 were detained on administrative grounds and 839 – on criminal grounds.

According to the information received from the Temporary Detention Facility of the Ministry of Internal Affairs, in 2021 the total number of persons detained under criminal and administrative grounds amounted to 12,424. 9,131 of them were detained on criminal grounds, and 3,293 - administratively.⁶ Accordingly, in 2021, the notifications were sent to the State Inspector's Service on 15% of those placed in the Temporary Detention Facility. It is noteworthy, that the rate of notifications on the persons detained for administrative offences is much higher. In particular, a notification was sent from the temporary placement facility to the State Inspector's Service on 9% of persons arrested for the commission of crime envisaged under the Criminal Code and on 31% of persons detained for administrative offenses.

⁶ Statistics officially published by the Ministry of Internal Affairs - https://info.police.ge/page?id=576&parent_id=233 (accessed on 11 February, 2022)

Reports Received from the Temporary Detention Facility



According to the reports received from the Temporary Detention Facility, 557 out of 1,017 persons detained for administrative offenses were arrested under two Articles of the Code of Administrative Offences - Article 166 (petty hooliganism) and Article 173 (disobeying the lawful order or demand of a law-enforcement officer), 397 persons - only under Article 173 (disobeying the lawful order or demand of a law-enforcement officer) and 63 persons - only under Article 166 (petty hooliganism).

A large proportion (54% - 456 persons) from 839 persons arrested on criminal grounds were charged with violent crimes envisaged under the Criminal Code (domestic crime, as well as crimes against health and life, sexual freedom and inviolability or against public security and public order).

⁷ In 2020, notification was forwarded to the State Inspector's Service on 14% of those placed in temporary detention isolators. In particular, a notification was sent from the temporary placement isolator to the State Inspector's Office for 8% of persons arrested for commission of an act envisaged under the Criminal Code and 25% of persons detained for administrative offenses.

Most of the persons arrested under the above-mentioned articles cited conflict with the other citizens or their resistance to the police as the reason for receiving the injury.

Notifications are also sent for 24 hours a day from the General Inspection of the Ministry of Internal Affairs. The General Inspection of the Ministry of Internal Affairs is informed about the alleged crimes committed by the employees of the Ministry that fall under the jurisdiction of the State Inspector's Service through its hotline (number - 126), calls received at 112, and/or written statements of citizens.

Reports received from the Ministry of Justice

On 30 November 2020, Order № 663 of the Minister of Justice of Georgia was issued on Approval of the Rules for Registration of Injuries of the Accused/Convicted Persons as a Result of Torture and Other Cruel, Inhuman or Degrading Treatment in Penitentiary Establishments. On the basis of the document, from November 30, 2020, the rules for sending reports from the penitentiary establishments have been changed and only doctors can report to the State Inspector's Service on the persons placed in the facilities with injuries. Notification is sent from the facilities of the Special Penitentiary Service when:

- The accused/convicted person has physical injuries, and a doctor suspects that s/he had been subject to torture or ill-treatment;
- The accused/convicted person alleges violence against him/her from a representative of the law enforcement body.

The penitentiary establishments of the Special Penitentiary Service of the Ministry of Justice also submit to the State Inspector's applications of those accused/convicted persons who allege possible acts of violence Service. The information on the death of the prisoners and the detainees is also immediately provided to the State Inspector's Service on a 24-hour basis.

If in the process of investigation or during the interviews conducted prior to launching the investigation the signs of crime falling under jurisdiction of the State Inspector's Service are identified, the General Inspection of the Ministry of Justice immediately submits the applications of accused/convicted persons together with the case materials.

In 2021, 179 applications / notifications were sent directly by the convicted / accused prisoner to the Investigative Department of the State Inspector's Service (in several cases, the notifications were sent by the same person). It should be noted that in 2020, 116 applications / notifications were sent by the convict / accused prisoner.

Reports received from other institutions

The Prosecutor's Office of Georgia forwards written statements and/or complaints received by them which point to the alleged crime falling under the jurisdiction of the State Inspector's Service. Prosecutors mostly report to the hotline of the Service notifications which concern statements of accused persons containing signs of crime made during the first appearance in the court, pre-trial hearing or during the trial.

As for the court, the judge reports to the State Inspector's Service on the claims made by the accused persons during the hearings of criminal cases. It should be noted that in the case of administrative courts, the rate of sending reports is still very low, while the majority of complaints are made by persons detained on administrative grounds.

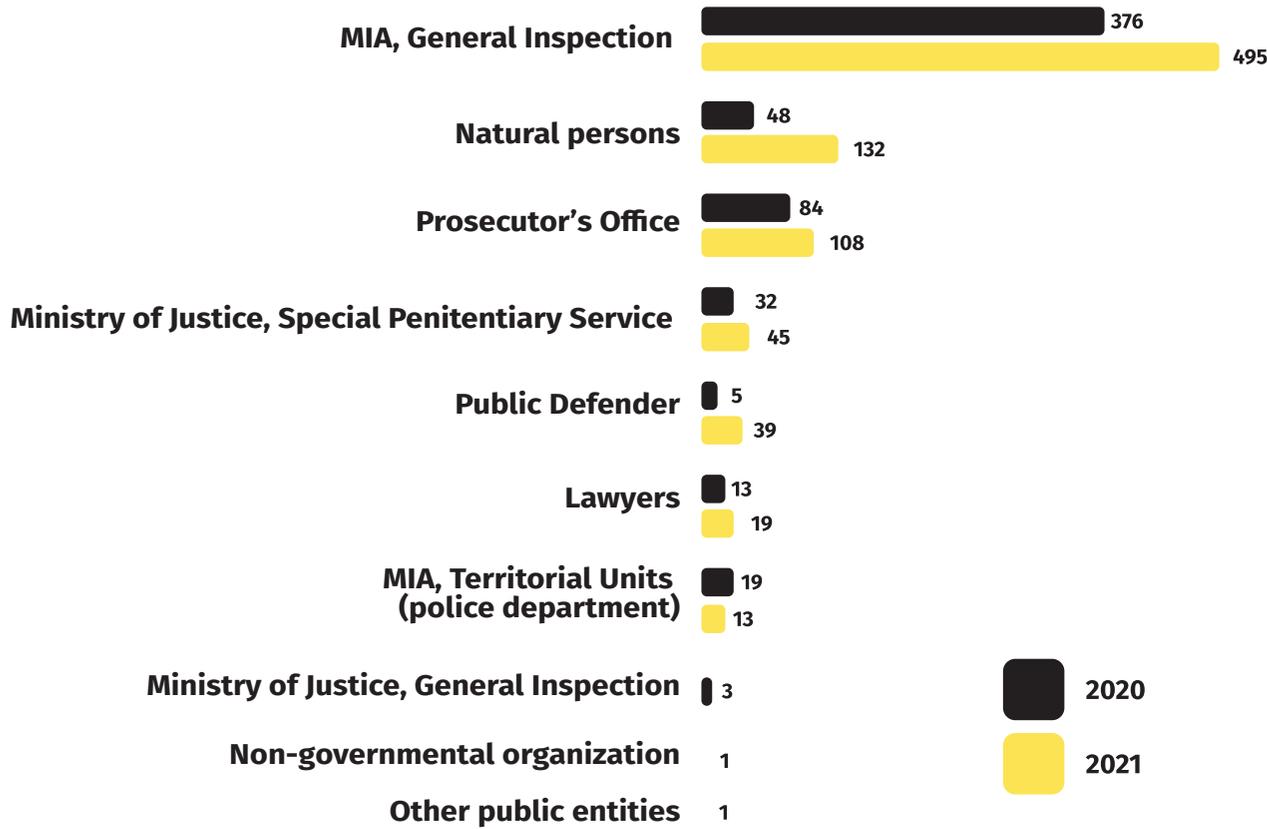
Reports received on hotline

The State Inspector's Service has been operating a 24-hour hotline with number 199 since November 1, 2019.

In 2021, the Investigative Department of the State Inspector's Service received 682 notifications from 851 sources via the hotline. In some cases, the information received from different sources referred to the same fact.⁹ It should be noted that in 2021, 132 individuals applied to the State Inspector's Service through the hotline. As for the notifications made via hotline in 2020, the Investigative Department of the State Inspector's Service received 482 notifications from 582 sources via the hotline. In 2020, only 48 individuals used the hotline of the State Inspector's Service.

⁸ In such cases, the notification will be ascribed to all relevant agencies / sources. In view of that, the total number of authors of received notifications exceeds the total number of notifications received by the service. .

Sources of Reports Received via Hotline

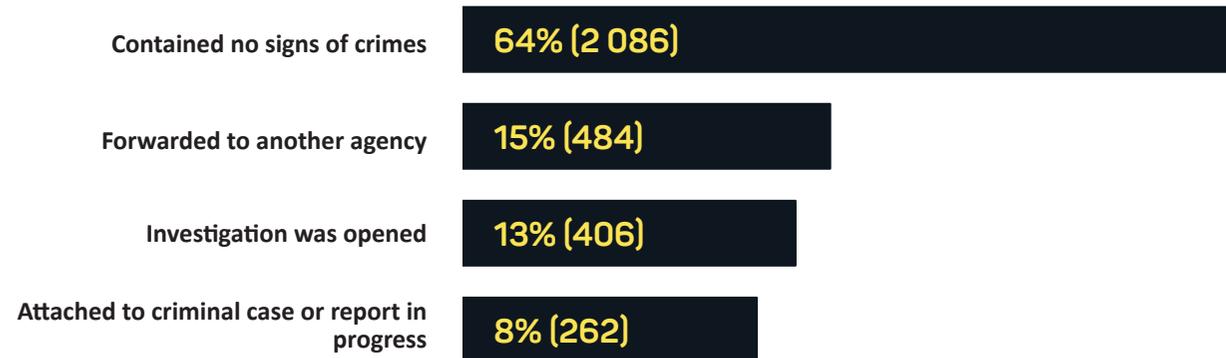


Response to received crime reports

In 2021, 3115 reports received by the Investigative Department of the State Inspector's Service concerned 3,238 persons (in some cases, one report involved action against not one, but several persons).

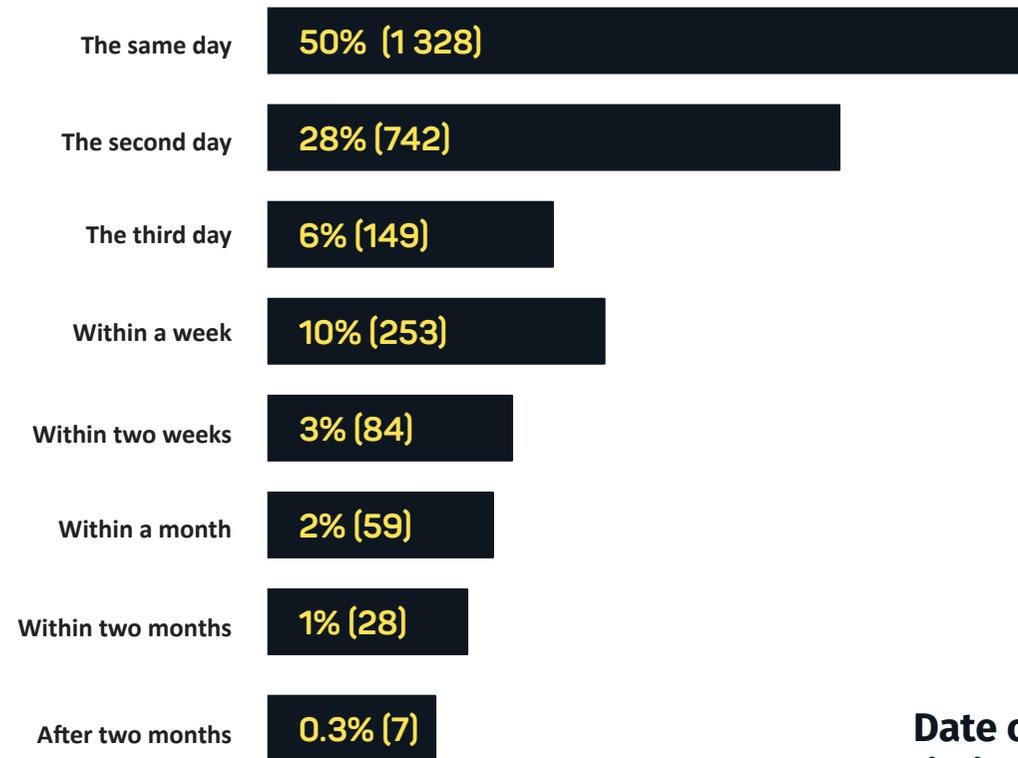
The investigation was launched (on 365 criminal cases) into 13% of received reports (against 406 alleged victims). As for other reports, 64% (with respect to 2086 alleged victims) showed no signs of crime; 15% (with respect to 484 alleged victims) was transferred to another agency as they did not fall within the investigative competence of the State Inspector's Service; 8% (with respect to 262 alleged victims) was additional information on criminal cases under investigation and/or other already received reports.

Response to Received Crime Reports (Calculated according to the number of alleged victim)



Prior to deciding whether or not to launch an investigation into reports received by the State Inspector's Service, the latter conducts an interview with an alleged victim (unless the report contains obvious signs of a crime, and the classification of the crime is explicit). For the purpose of conducting an interview, employees of the Investigative Department immediately after receiving the notification contact the alleged victim and if it is impossible to identify them – the author of the report. Interviews are mostly conducted in person, however, to avoid delays during the pandemic, interviews were conducted remotely, and/ or by telephone. Investigative Department staff interviewed 2,650 out of 3,238 alleged victims.¹⁰ 78% of the alleged victims were interviewed on the day of receipt of the report or the day after.

⁹ Part of the notifications received by the Investigative Department of the State Inspector's Service contained additional information related to the notification already received or the criminal case already in progress. In such cases, if the information did not relate to the new circumstances, a re-interview with the applicant would no longer take place. Apart from that, part of the received notifications did not belong to the investigative jurisdiction of the State Inspector's Service. Consequently, there was no need for an interview. In some cases, despite numerous attempts of the investigators of the State Inspector's Office, it was not possible to contact the applicant and / or the alleged victim.



Date of interviewing the alleged victim after the receipt of report

Interviewing the alleged victim a few days (weeks) after the receipt of the report was mainly conditioned by the following factors: it was impossible to contact the alleged victim - did not answer phone calls, was not at a registered address and family members had no information about his/her whereabouts; the alleged victim needed time for hiring a lawyer; the alleged victim refused to be interviewed for certain period of time; the alleged victim was not able to participate in the interview due to his/her health condition.

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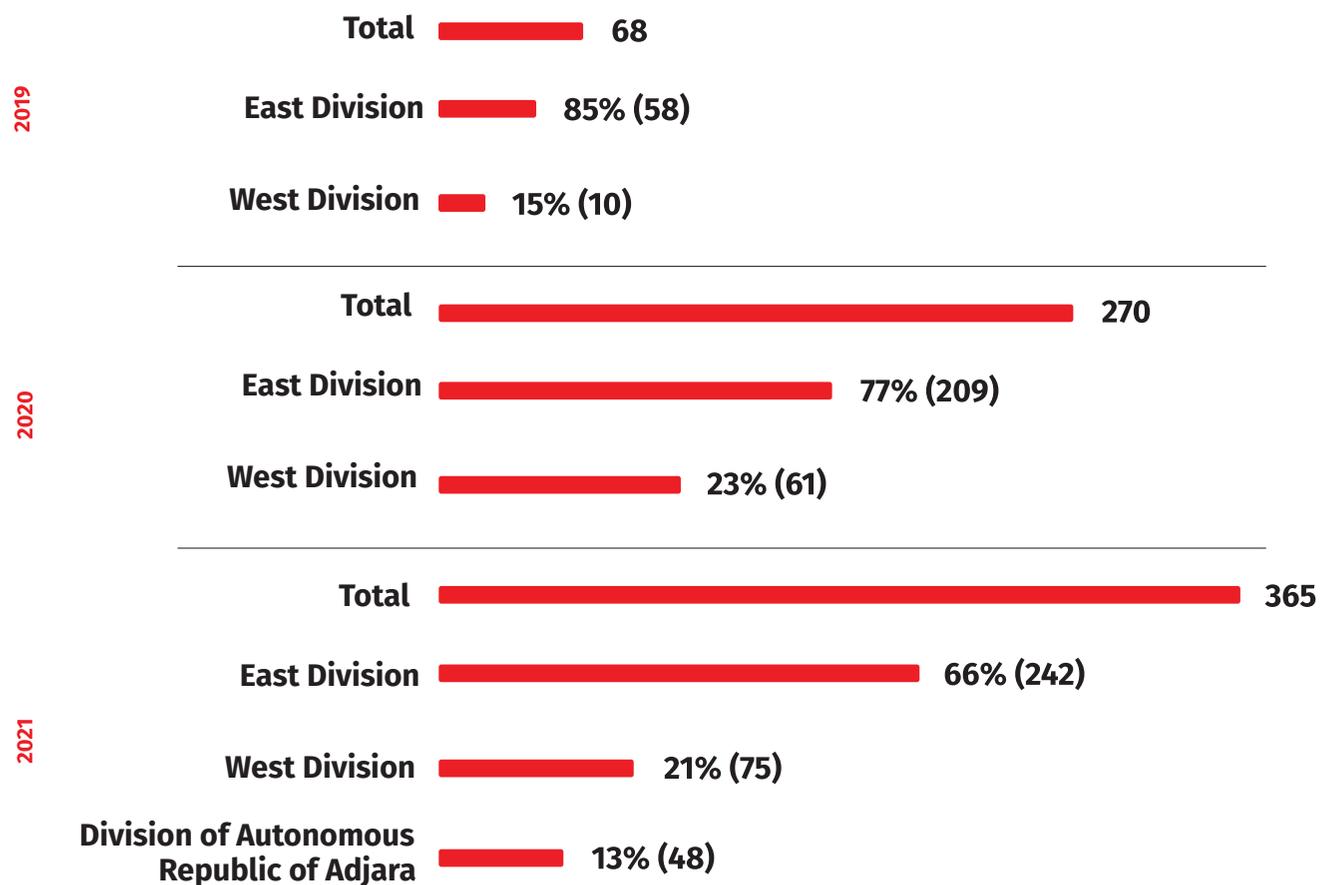
Launching Investigation

5. Launching Investigation

Number of criminal cases

For the period from November 1, 2019 to December 31, 2021, the Investigative Department of the State Inspector's Service launched investigation into 703 criminal cases: in 2019, investigation started on 68 criminal cases, in 2020 – on 270 criminal cases, and in 2021 – on 365 criminal cases (the investigation was launched based on the received notifications on 362 criminal cases out of 365, while in 3 cases – based on the decision on separation of the criminal case).

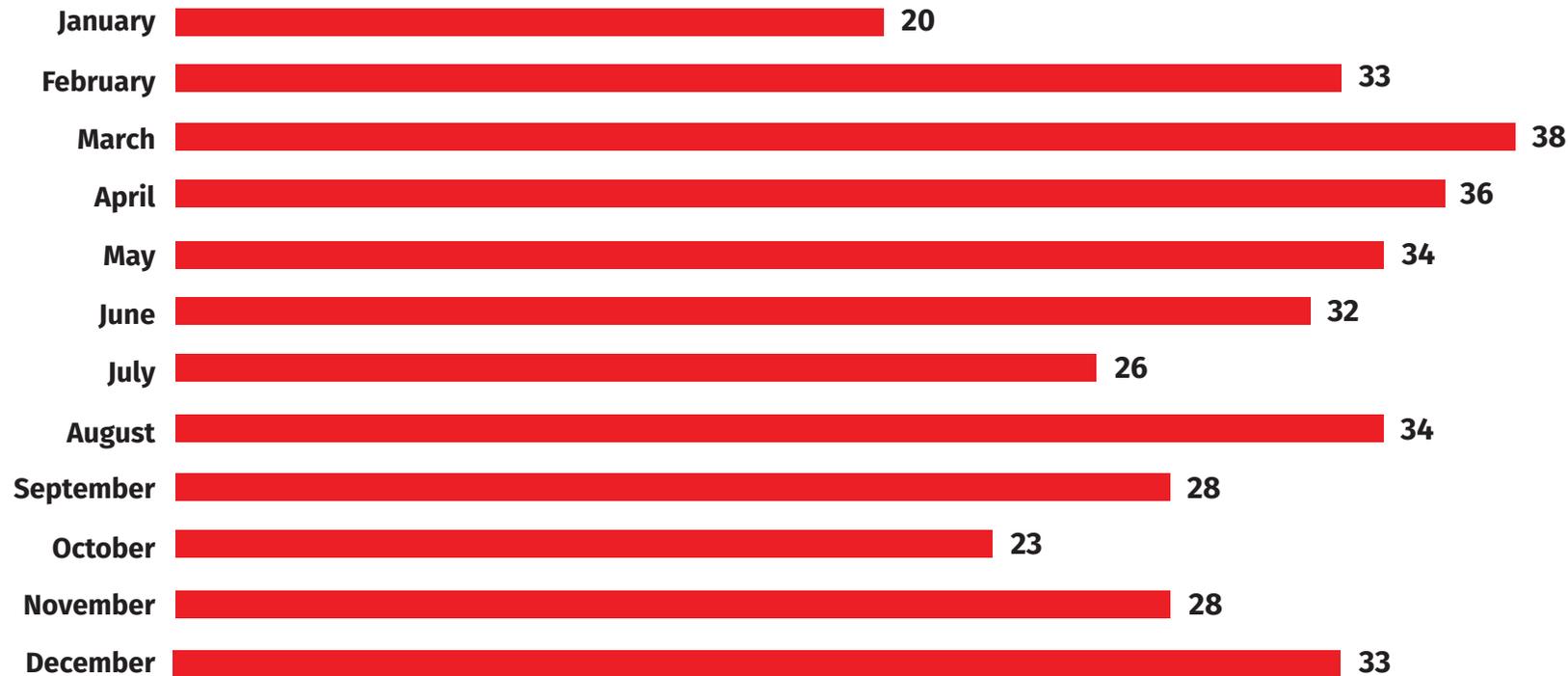
Number of opened investigations



In 2021, in addition to opening the investigation, 3 criminal cases were referred by the Ministry of Internal Affairs to the Investigative Department of the State Inspector's Service based on the investigative jurisdiction. The investigation of all three criminal cases continued in the East Division of the Investigative Department of the State Inspector's Service.¹⁰

The highest number of investigations were launched in March and the lowest in January.

Launching investigation by months

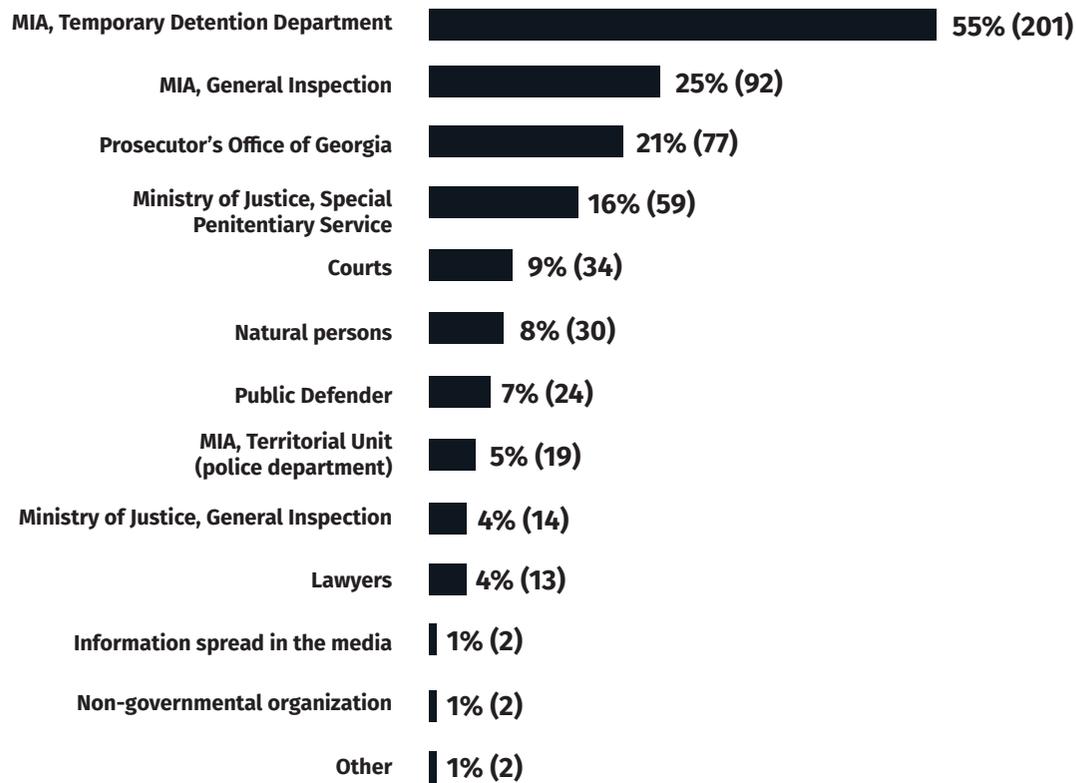


¹⁰ Considering the termination of the investigation and the criminal cases brought before the court: As of January 1, 2020, 69 criminal cases were pending before the Investigative Department of the State Inspector's Service; As of January 1, 2021, 318 criminal cases were in progress before the Investigative Department of the State Inspector's Service; and, as of January 1, 2022, 629 criminal cases were under investigation of the Investigative Department of the State Inspector's Service.

The ground for opening the investigation

In 2021, most of the reports containing signs of crime were received from the Temporary Detention Department of the Ministry of Internal Affairs. In some cases, the same fact was reported by several sources. ¹¹

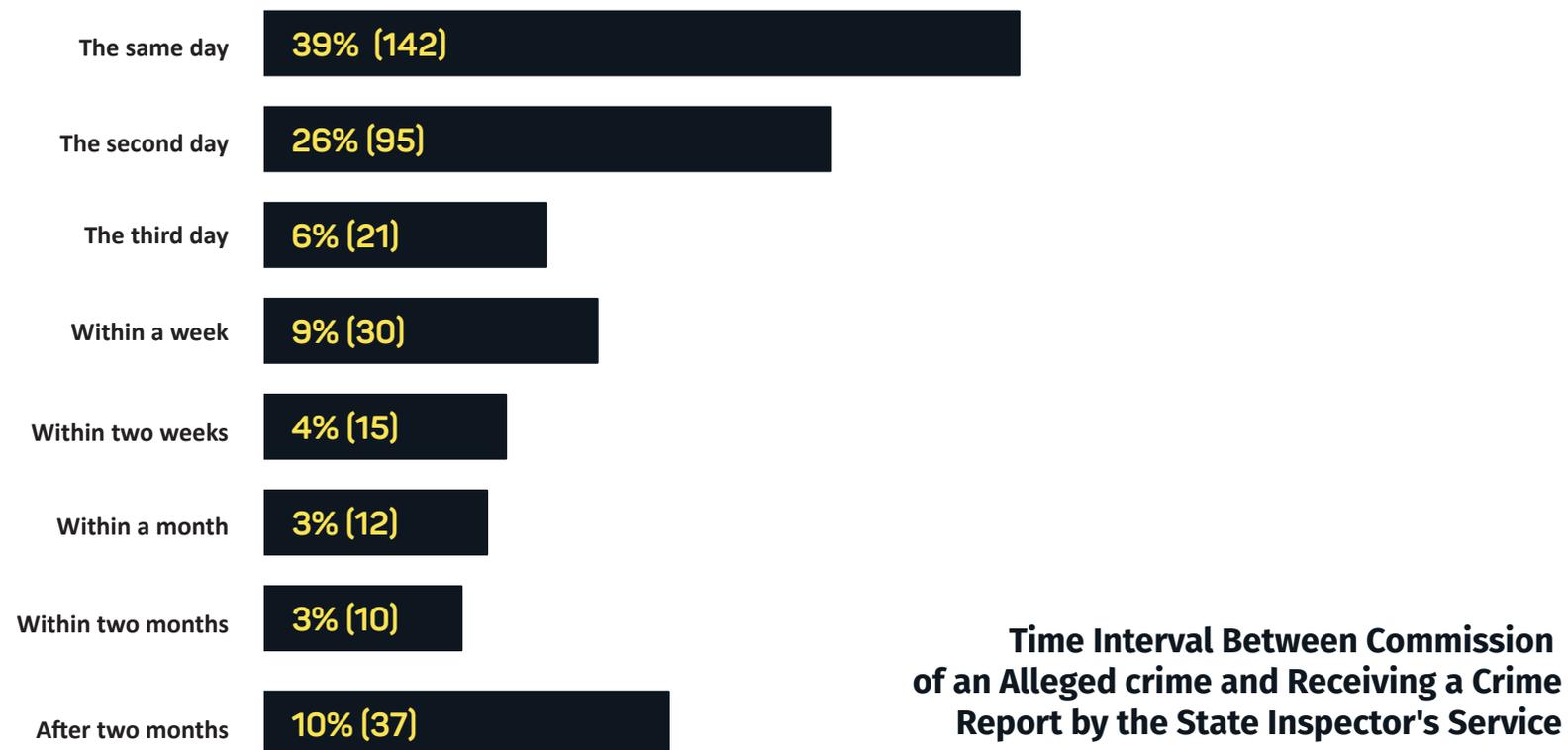
Sources of reports containing signs of crimes



¹¹ In some cases, the State Inspector's Service receives the same report from several sources. In such cases the report will be ascribed to all relevant agencies/sources in order to record complete statistical data. Therefore, the total number of crime report sources exceeds the total number of reports received by the Service.

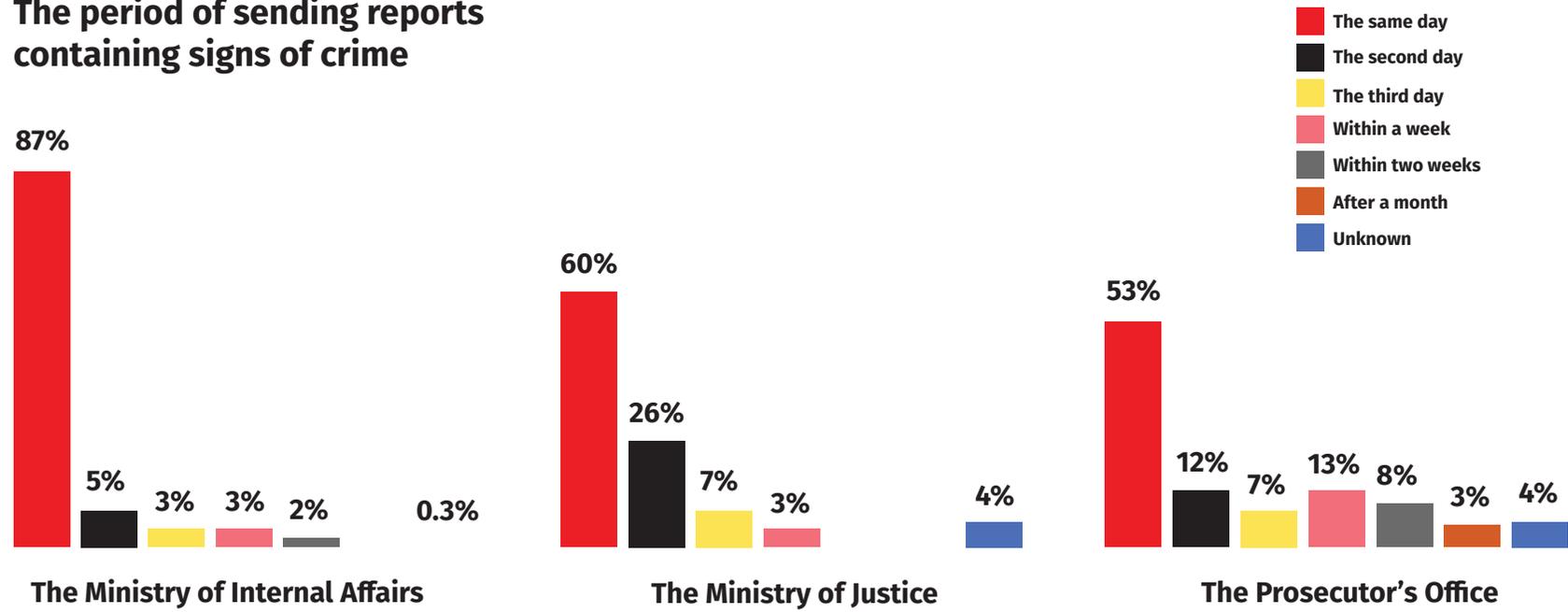
In order to carry out an effective investigation (launching the investigation in a timely manner, the conduct of investigative actions in a short period of time, prevention of the evidence destruction), one of the most important issues is to immediately inform the State Inspector's Service about alleged crimes.

The analysis of reports containing signs of crime during 2021 reveals that sometimes these reports are not immediately provided to the State Inspector's Service upon commission of the alleged crime (both from government agencies and citizens). 71% of reports containing signs of crime, were received by the State Inspector's Service within three days of the commission of the alleged crime, 29% - within a week or later.



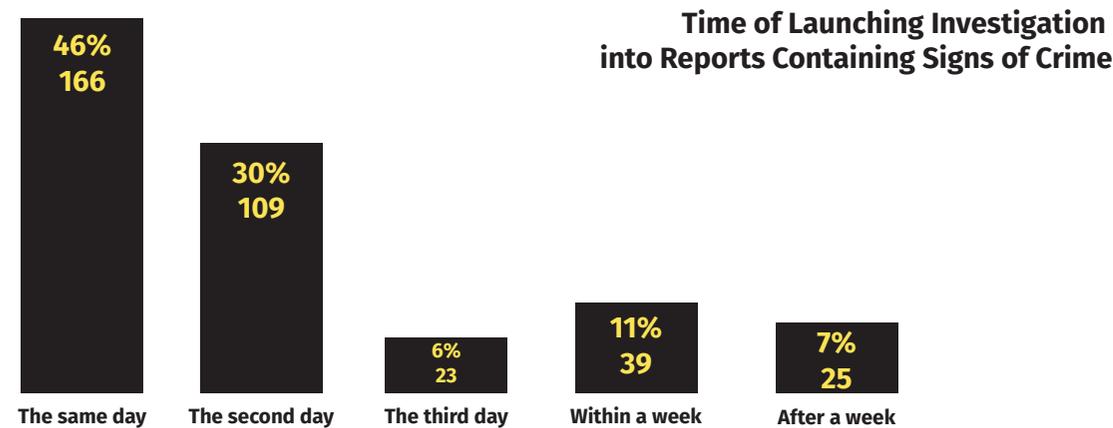
Most often, the Investigative Department of the State Inspector's Service receives reports containing the signs of crime from the Ministry of Internal Affairs, the Ministry of Justice, and the Prosecutor's Office. The agencies mainly send reports on the same day or the second day after receiving the information, although sometimes their reports are delayed. The reports containing signs of crime are sent in a short time and most efficiently from the Ministry of Internal Affairs.

The period of sending reports containing signs of crime



Given the specifics of the crimes under the jurisdiction of the State Inspector's Service, immediate interviewing of the alleged victim and presenting him/her to a medical expert, as well as prompt communication with the witnesses and obtaining other evidence are vital. Consequently, even a 1-2-day delay in sending the reports makes it impossible and/or significantly hinders obtaining evidence and establishing the factual circumstances.

The State Inspector's Service, in order to conduct an investigation in a timely manner, usually launches investigation on the day the notice is received. In 2021, investigation was launched on 46% of reports containing signs of crime on the day of receipt, 30% - on the second day, 6% - on the third day, 11% - within a week, and 7% - after a week.



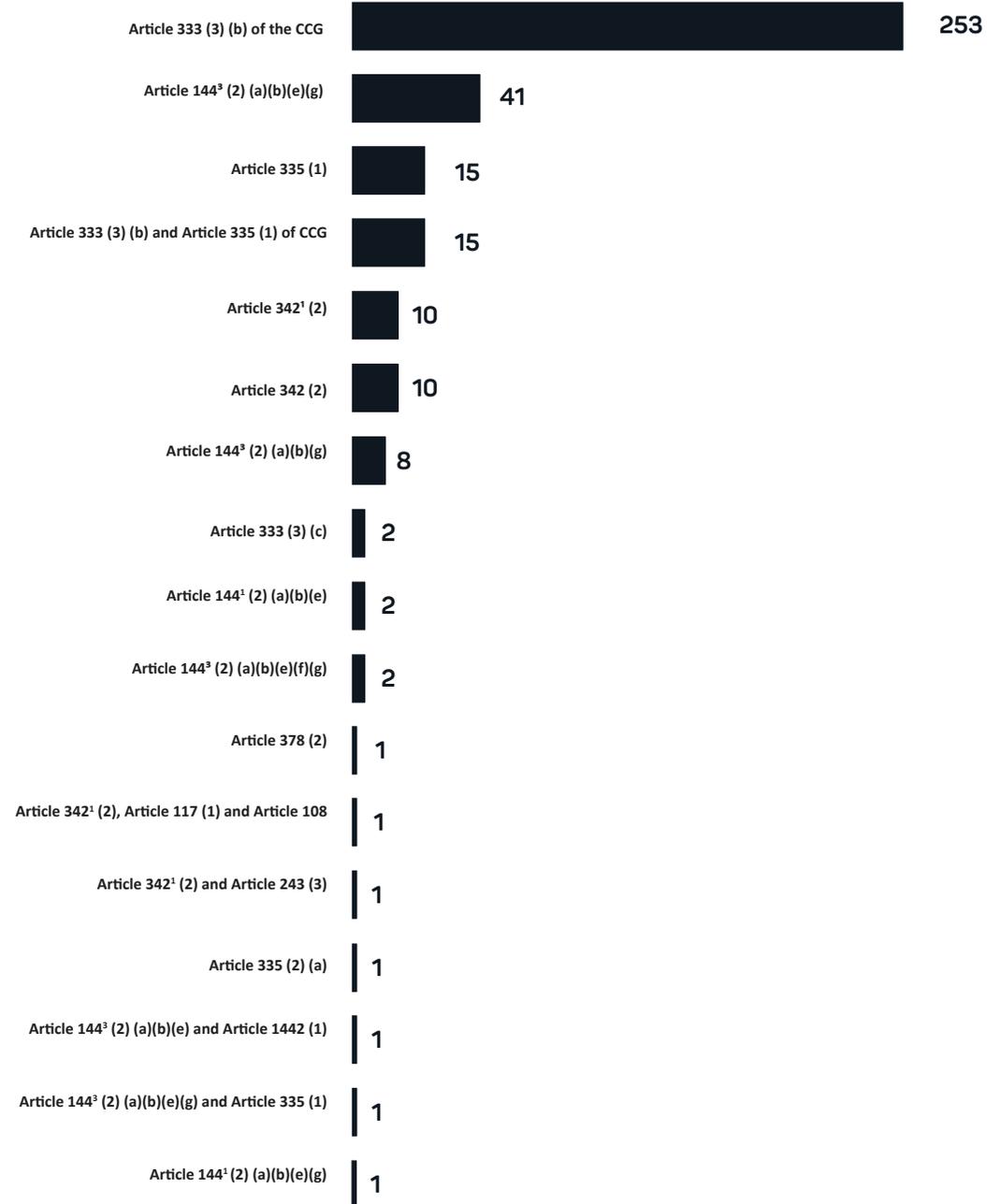
The investigation was launched into 25 criminal cases after more than a week of receipt of the report as the notifications were vague (there was no obvious indication of signs of crime) and it became necessary to clarify the details with the applicant, which, despite numerous attempts of the investigator, was not possible in a timely manner for the following reasons:

- The alleged victims in 14 criminal cases refused to be interviewed without a lawyer;
- In 4 criminal cases, the alleged victims denied the fact of violence against them during their initial interview. After a certain period of time, the mentioned persons re-applied to the State Inspector's Service with respect to the same fact;
- In 3 criminal cases, the alleged victim refused to provide information;
- In 1 criminal case, the person was placed in a psychiatric institution. The investigator's referral was sent to the institution / treating physician regarding the possibility / expediency of conducting the interview, however, before sending the response, the person was discharged from the psychiatric institution. In view of that, this person was interviewed at the earliest opportunity;
- In 1 criminal case, the alleged victim was the contact of a prisoner tested positive for COVID-19 and was placed in isolation - in a special space of the penitentiary institution. The staff of the institution presented him/her for an interview to the State Inspector's investigator once the isolation period expired;
- In 1 criminal case, the alleged victim placed in a penitentiary facility, refused to be interviewed remotely, while planning a personal interview took some time due to pandemic regulations;
- In 1 criminal case, the alleged victim was transferred from one penitentiary institution to another, which prevented an immediate interviewing of the alleged victim.

Qualification of a criminal case

The investigation of criminal cases was launched mainly on the basis of Article 333 (3), (b) of the Criminal Code of Georgia (exceeding official powers, committed with violence). The investigation into 19 criminal cases has been launched with cumulative crimes.

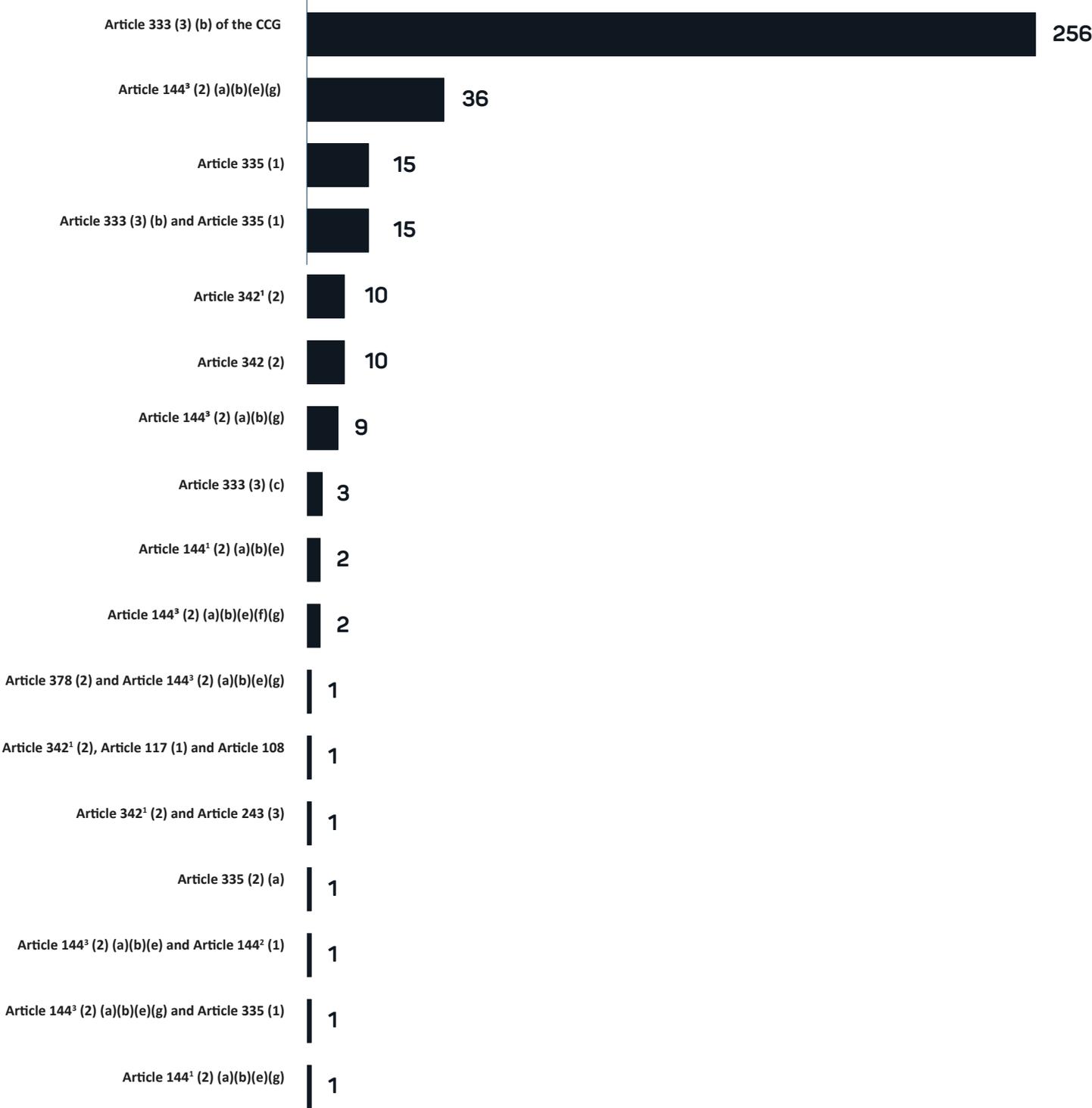
Qualification of crimes



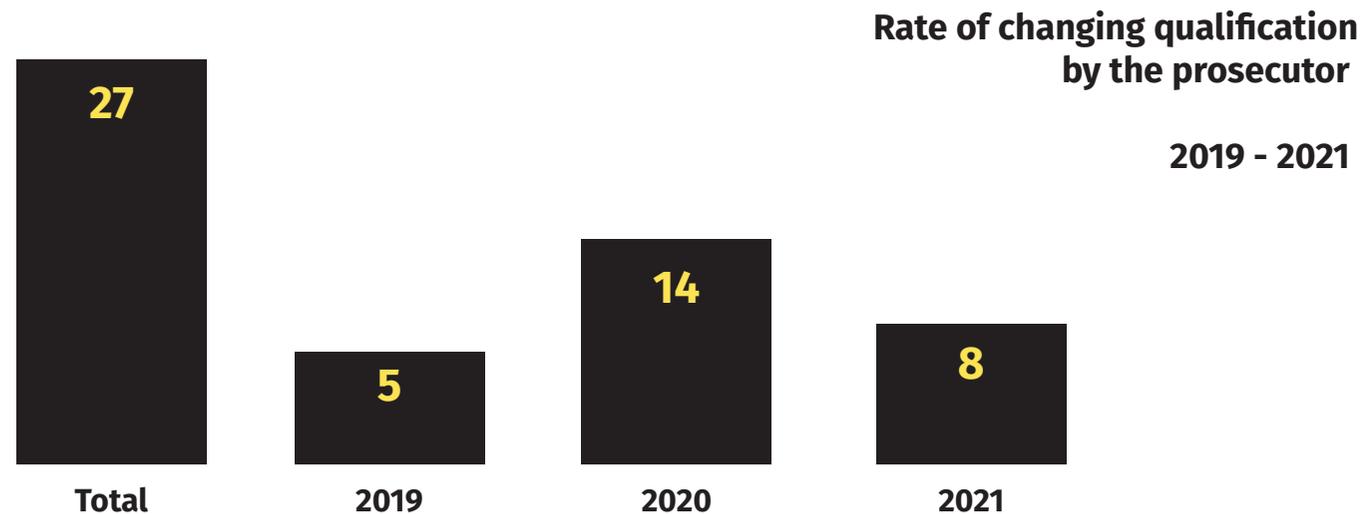
Out of 365 criminal cases into which the investigation was launched in 2021, the prosecutor changed the qualification of crime in 7 criminal cases during the investigation. In particular:

- In 4 criminal cases qualification under Article 144³ of the Criminal Code of Georgia (degrading or inhuman treatment) determined by the State Inspector's Service was changed by the prosecutor under Article 333 (3) (b) of the Criminal Code of Georgia (exceeding official powers committed using violence);
- In 1 criminal case qualification under Article 144³ of the Criminal Code of Georgia (degrading or inhuman treatment) determined by the State Inspector's Service was changed by the prosecutor under Article 333 (3) (c) of the Criminal Code of Georgia (exceeding official powers committed by offending personal dignity);
- In 1 criminal case qualification under Article 333 (3) (b) (exceeding official powers committed using violence) determined by the State Inspector's Service was changed by the prosecutor under 144³ of the Criminal Code of Georgia (degrading or inhuman treatment);
- In 1 criminal case, the Prosecutor added new qualification under Article 144³ of the Criminal Code of Georgia (degrading or inhuman treatment) to the classification under Article 378 (2) of the Criminal Code of Georgia (Coercion of a person placed in a penitentiary institution to change evidence or refuse giving evidence) given by the State Inspector's Service and the investigation was continued with cumulative crimes;

Final qualification of Crimes



From November 1, 2019 to December 31, 2021, the prosecutor changed the qualification in 27 of the 703 criminal cases pending before the State Inspector's Service.



The detailed picture of changing the qualification by the prosecutor is as follows:

- In 10 criminal cases qualification under Article 144³ of the Criminal Code of Georgia (degrading or inhuman treatment) determined by the State Inspector's Service was changed by the prosecutor under Article 333 (3) (b) of the Criminal Code of Georgia (exceeding official powers committed using violence);
- In 6 criminal cases qualification under Article 333 (3) (b) of the Criminal Code of Georgia (exceeding official powers committed using violence) determined by the State Inspector's Service was changed by the prosecutor under Article 144³ of the Criminal Code of Georgia (degrading or inhuman treatment);
- In 5 criminal cases, the prosecutor clarified the aggravating circumstances in the qualification under Article 144³ of the Criminal Code of Georgia (degrading or inhuman treatment) granted by the State Inspector's Service and continued investigation under other paragraphs of the same Article;
- In 4 criminal cases, the Prosecutor added new qualification under Article 335 (1) (coercion to provide explanation, evidence or opinion) to the qualification under Article 333 (3) (b) of the Criminal Code of Georgia (exceeding official powers committed using violence) determined by the State Inspector's Service and the investigation was continued with cumulative crimes;

- In 1 criminal case qualification under Article 144³ of the Criminal Code of Georgia (degrading or inhuman treatment) determined by the State Inspector's Service was changed by the prosecutor under Article 333 (3) (c) of the Criminal Code of Georgia (exceeding official powers committed by insulting personal dignity);

- In 1 criminal case, the Prosecutor added new qualification under Article 144³ of the Criminal Code of Georgia (degrading or inhuman treatment) to the classification under Article 378 (2) of the Criminal Code of Georgia (Coercion of a person placed in a penitentiary institution to change evidence or refuse giving evidence) given by the State Inspector's Service and the investigation was continued with cumulative crimes.

06

Alleged Victims

6. Alleged Victims

The Investigative Department of the State Inspector's Service pays special attention to the involvement of the victim / alleged victim in the investigation process and informing him / her about the progress of the investigation. Pursuant to the recommendations developed by the Service, the alleged victim or his / her representative is periodically informed about the investigative and procedural actions conducted in the criminal case. In addition, the Investigative Department of the State Inspector's Service provides to the alleged victim and / or his / her representative the relevant information upon their request or after the prosecutor adopts decision on termination of the investigation or initiation of the criminal prosecution.

With this approach, the State Inspector's Service has established a high standard of effective investigation - involvement of an alleged victim in the investigation – as established by the European Court of Human Rights. In a number of cases adopted against Georgia, the European Court of Human Rights made no distinction between persons who had been granted victim status and those who did not enjoy that status and explained that the failure to provide information to the alleged victim on the progress of the investigation deprived the applicants of the opportunity to use hierarchical and legal measures to appeal the decisions on termination of the criminal investigation, as well as delays in investigation and lack of progress and classification.¹²

The Committee against Torture and the European Court of Human Rights emphasizes the importance of victim involvement and underlines that the victim (or his or her successor) should be involved in the investigation to the extent that his or her legitimate interests are protected.¹³

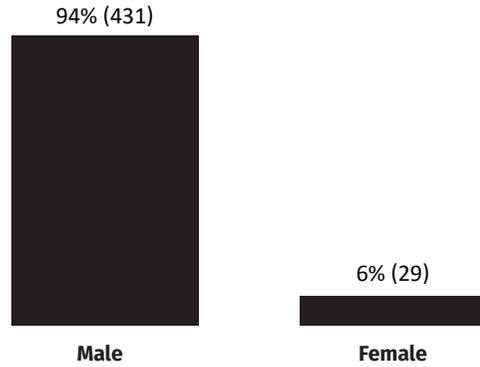
There are 460 alleged victims in 365 criminal cases started in 2021, most of whom (94%) are male while 6% are female.

97% of the alleged victims are adults, 3% - minors.

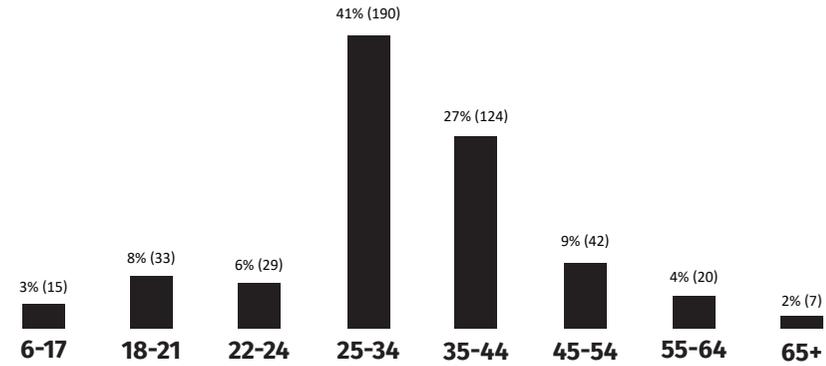
¹² Members of Gldani Congregation of Jehovah's Witnesses and Others v. Georgia, § 122-123; see also Begheluri and Others v. Georgia, §140

¹³ 14th General Report on the CPT's activities, CPT/Inf (2004) 28, para. 36.

Gender of Alleged Victim

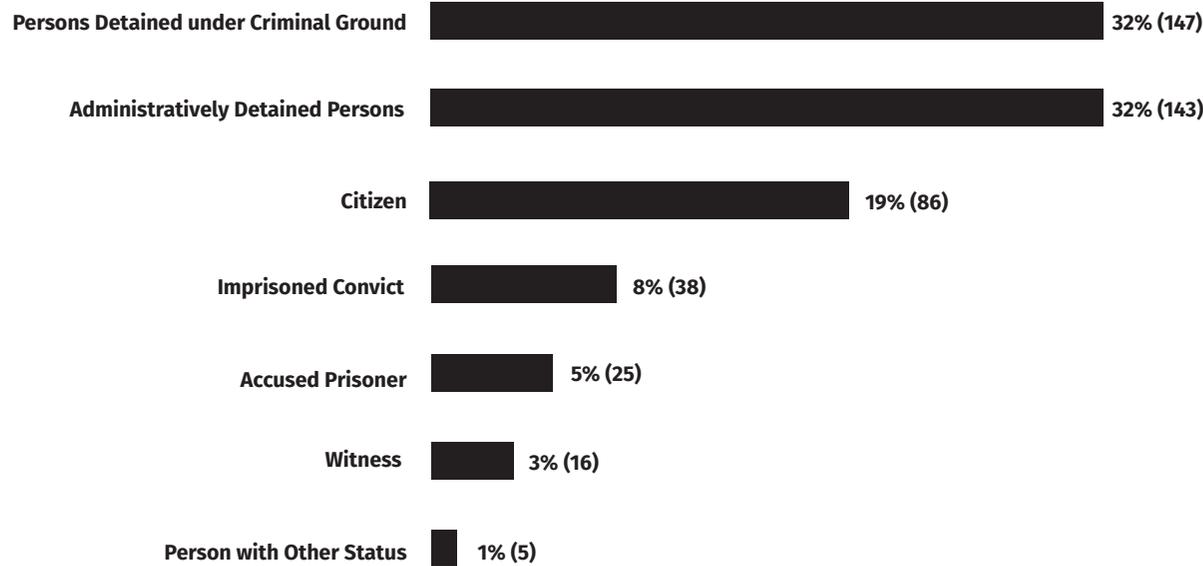


Age of Alleged Victim



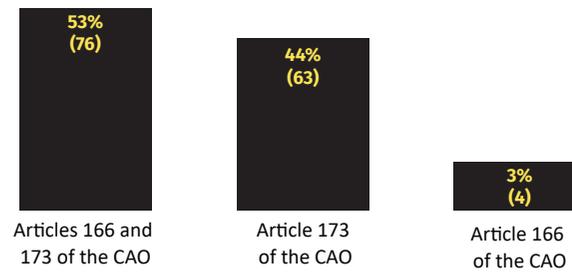
67 persons of the alleged victims are representatives of the ethnic minorities, 23 are foreign nationals. 32% of alleged victims are detained on criminal grounds, 32% - are administratively detained persons, 19% - citizens, 8% – imprisoned convicts, 5% - detained accused, 3% - witnesses, and 1% - persons with other status.

Procedural Status of Alleged Victims



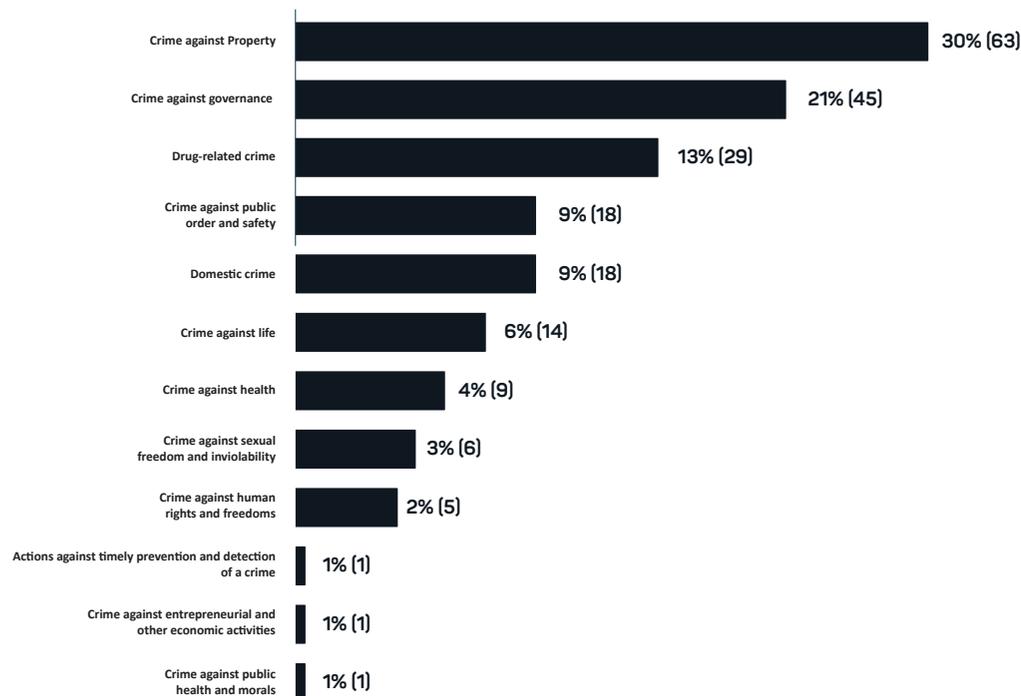
Administratively detained/penalized persons who claim that the law enforcement officers have committed an unlawful act are mainly detained under two Articles of the Code of Administrative Offences - petty hooliganism (Article 166) and disobeying the law enforcement officer (Article 173).

Administrative Offences committed by Alleged Victims



Detainees or convicts under criminal law who claim that law enforcement officers have committed an illegal act are mainly detained/convicted for the following crimes: a crime against property (30%), crime against governance (21%), drug-related crime (13%), crime against health and life (10%), domestic crime (9%), crime against public order and security (9%).

Crimes on which accused/convicted persons are alleged victims



07

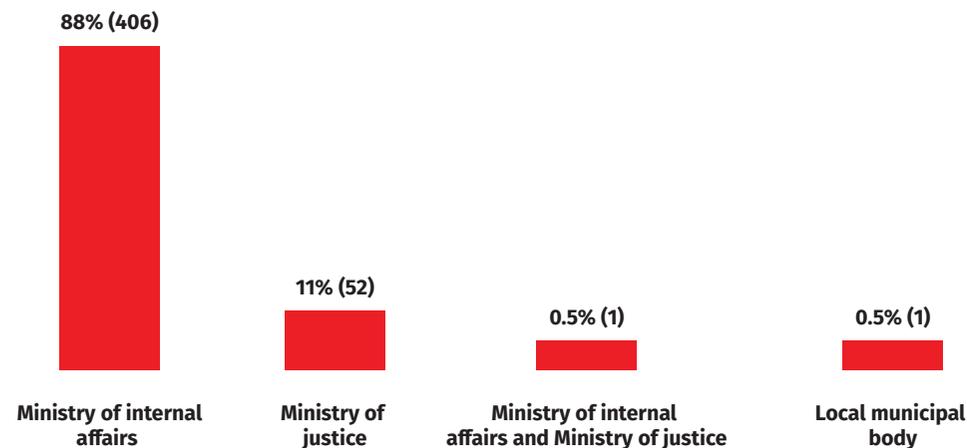
**Circumstances of the Alleged
Crimes**

7. Circumstances of the Alleged Crimes

The vast majority of cases under the jurisdiction of the State Inspector's Service relates to alleged physical violence committed by a law enforcement officer.

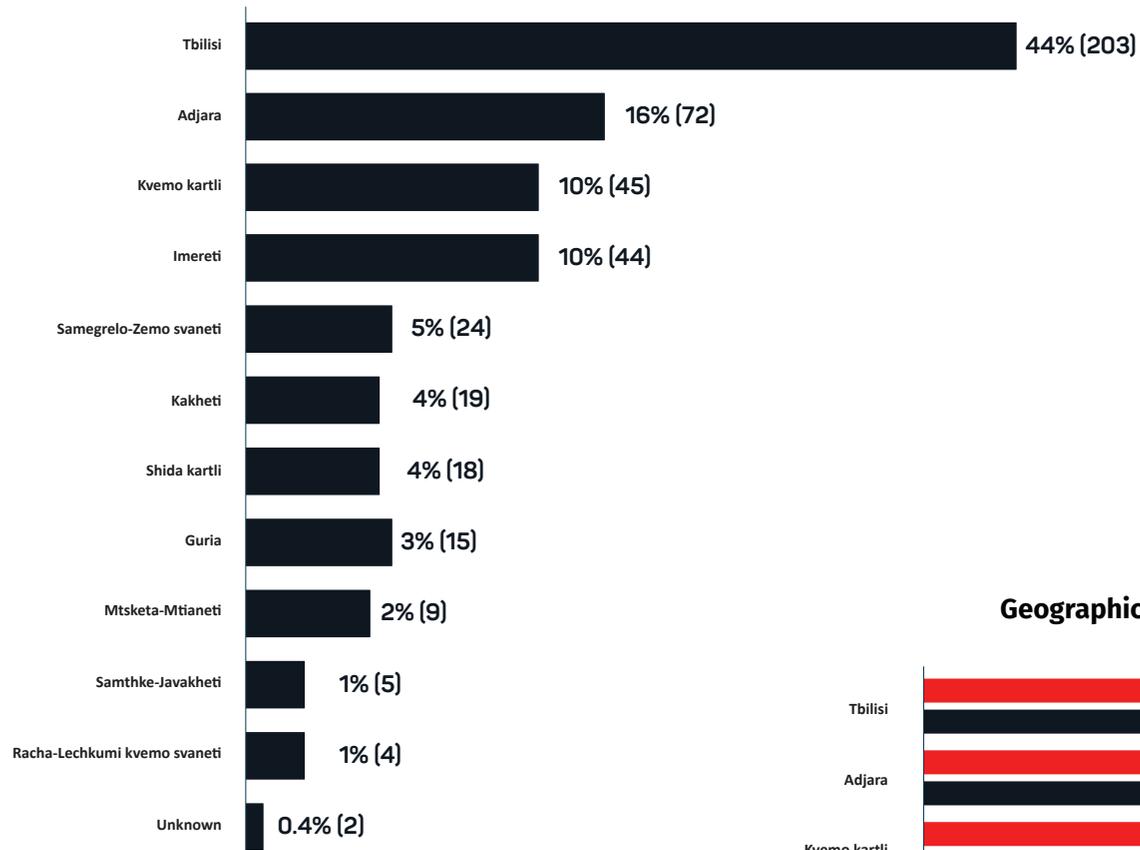
In 88% of the investigations launched by the State Inspector's Service in 2021, the alleged victims named employees of the Ministry of Internal Affairs as perpetrators of possible criminal acts, in 11% - employees of the Special Penitentiary Service of the Ministry of Justice, and in 1% - employees of the local self-government bodies.

Agencies indicated by alleged victims

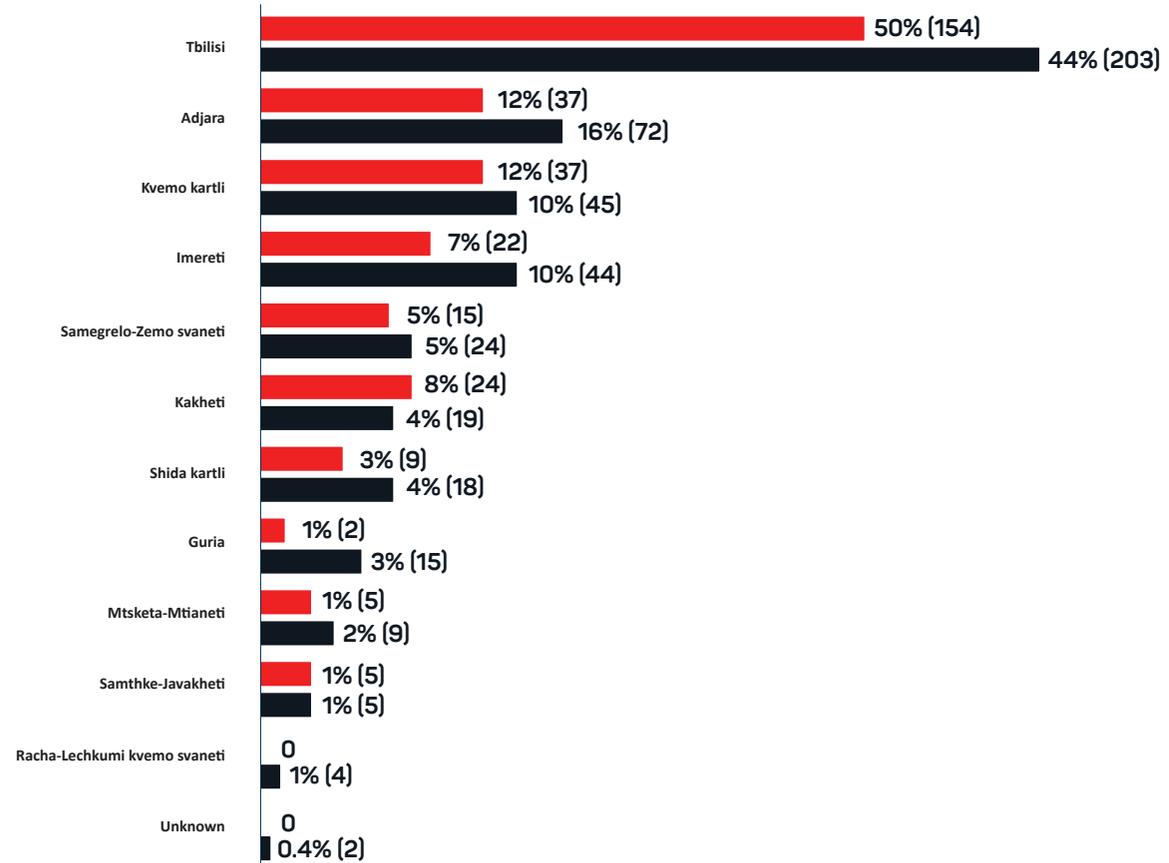


In 2021, 44% of the alleged victims named Tbilisi as the crime place. Also, a relatively high percentage is observed in Adjara - 16%, Kvemo Kartli - 10% and Imereti - 10%. The picture was slightly different in 2020, when 50% of the alleged victims named Tbilisi as a crime place, 12% - Adjara, and 12% - Kvemo Kartli.

Geographical area of alleged crime

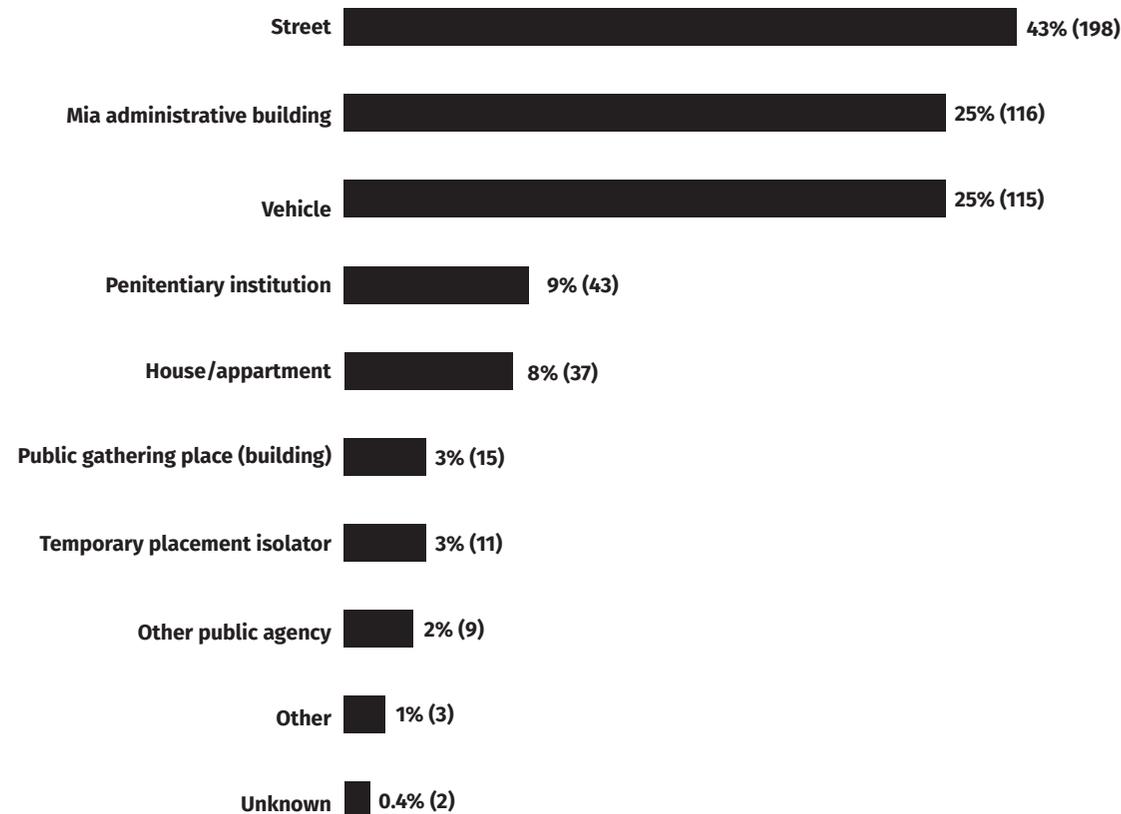


**Geographical area of alleged crime
2020-2021**



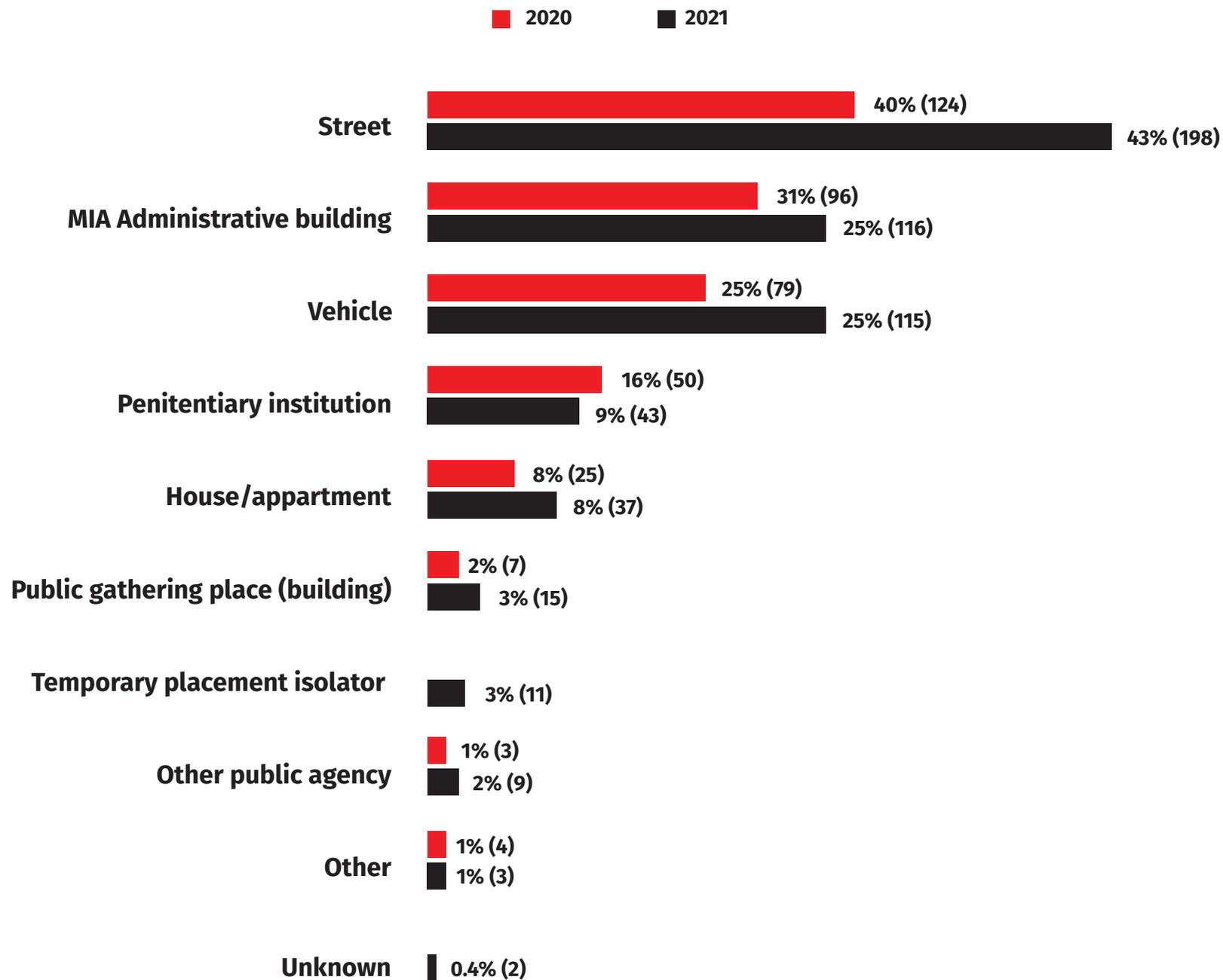
In 2021, 43% of alleged victims indicate a street as a place of alleged crime, 25% - an administrative building of the Ministry of Internal Affairs, 25% - a car, 9% - a penitentiary institution, 8% - a house/apartment, 3% - a public gathering place (building), and 3% - temporary placement isolator. In some cases, the same victim named several places as places of alleged crime.

The specific place of the alleged crime



It is noteworthy that compared to the previous year, the places of crime indicated by the victims have slightly changed. For example, if in the previous year 40% of the alleged victims indicated the street as the crime scene, 43% of the alleged victims indicated the street as the crime scene in 2021. Also, if 31% of the alleged victims indicated a police administrative building as a crime scene in 2020, 25% of the alleged victims named a police administrative building as a crime scene in 2021.

Specific place of the alleged crime



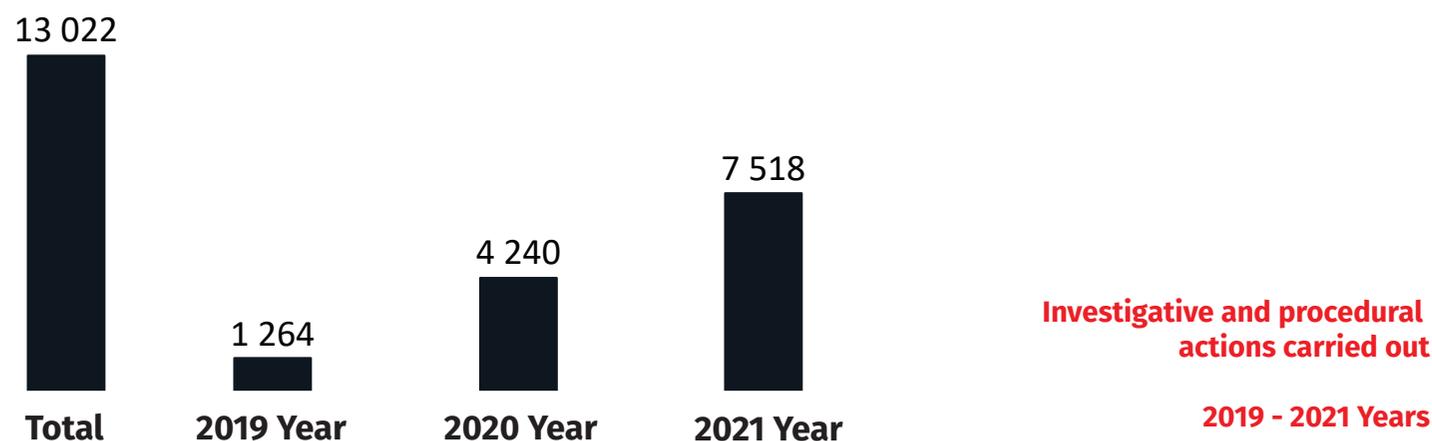
08

**Taken investigative
and procedural actions**

8. Taken investigative and procedural actions

Number of taken investigative and procedural actions

From November 1, 2019 to December 31, 2021, the Investigative Department of the State Inspector's Service conducted a total of 13022 investigative and procedural actions: 8121 persons were interviewed (among them 3275 persons were law enforcement officers); 770 forensic examination were appointed; 1799 information requests, 1640 inspections, 434 seizures, 87 investigative experiments were conducted.



In 2020, due to the epidemiological situation created by the coronavirus, the investigation and procedural actions were deferred significantly. At the same time, in the same year, the Service investigators were located only in the offices of Tbilisi and Kutaisi. Consequently, a large part of the investigators' time resource was spent on long-distance transportation. Pandemic related restrictions were eased in 2021, and a new office of the Service was opened in Adjara, enabling more efficient use of investigators' resources and timely conduct of investigative/procedural action.

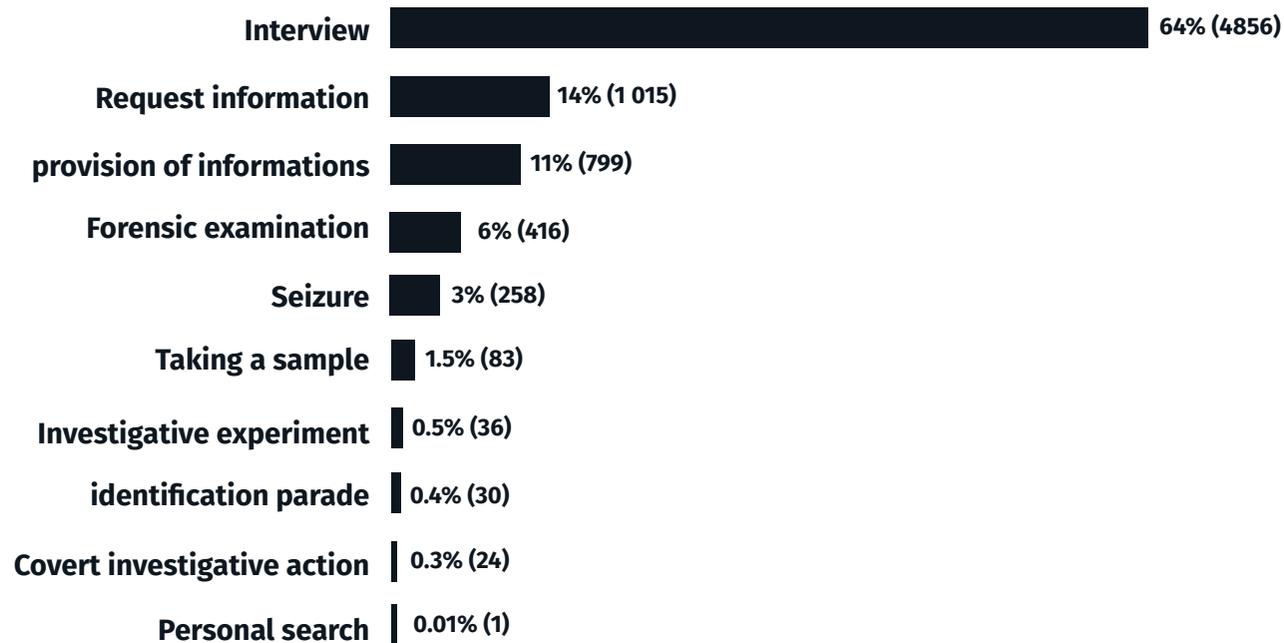
Although restrictions aimed at preventing the spread of the coronavirus were eased in 2021, investigative and procedural actions continued with significant delays. In particular:

- Under the threat of infection, to avoid delays, interviews were mostly conducted remotely and/or by telephone;
- Appearance of witnesses at the investigative body was a challenge. Part of them explained that they were diseased with coronavirus or were contacts of the persons infected with the virus and were in isolation. Besides, due to the changed work schedule, some of them were not present at the actual/registered address indicated in the official sources, which made it difficult to communicate with them;
- There were cases when a participant in the process presented at the investigative body had one or more symptoms of the virus, due to which it was not possible to carry out investigative actions with him/her;
- Some of the alleged victims stated that during the violence, the law enforcers were wearing face masks, so they could not identify them.

It was also complicated to conduct interviews with persons placed in penitentiary institutions. In cases where at least one of the persons involved in the proceedings (lawyer, translator, juvenile representative) was not fully vaccinated, the investigative/procedural action could be carried out only in a special room for appointments, beyond the glass barrier. This caused various problems: a) the common space on both sides of the threshold, where prisoners and other persons were present near the interrogated person, made it difficult (and in some cases impossible) to maintain confidentiality during the investigative action; b) it was difficult to present video/audio recordings and other evidence during the investigation; c) Information was exchanged between the participants of the process by telephone, which required much more time than usual.

In spite of all the above-mentioned, in the conditions of the pandemic, the Investigative Department worked 24 hours a day and was able to carry out urgent investigative and procedural actions in a short period of time. In 2021, almost twice as many as in the previous year - 7518 investigative and procedural actions were conducted, of which 64% were interviews. 4856 persons were interviewed, of which 2022 were law enforcement officers.

Investigative and procedural actions carried out 2021

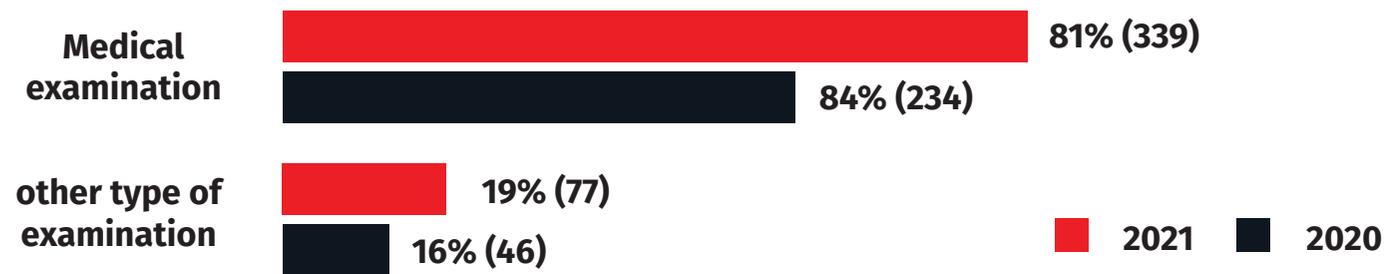


Difficulties related to conducting the forensic examination

In criminal cases carried out by the State Inspector's Service, the applicants mainly referred to alleged physical violence by the staff of the Ministry of Internal Affairs. Consequently, in most criminal cases, forensic medical examination was ordered by the Service. The Service refers to the Levan Samkharauli National Forensics Bureau to conduct an examination to avoid questioning the expert's impartiality and objectivity.

In 2021, the Investigative Department scheduled 416 forensic examinations, including 339 medical examinations, and 77 other types of examinations (including 8 computer examinations). Compared to the previous year, the rate of medical examinations increased by 45%, while the rate of appointments for other types of examinations increased by 67%.

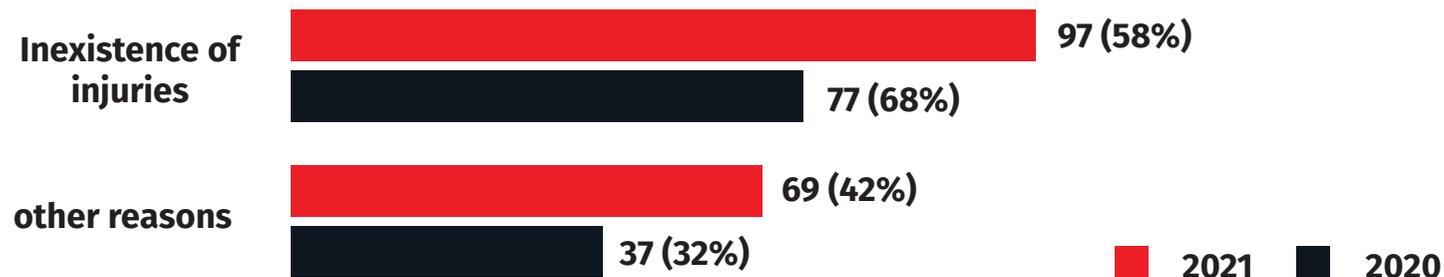
Forensic examinations



In 2021, 214 persons were present in person for examination by a medical expert, while 166 persons refused to be examined by an expert. In 102 cases (of which, 13 were medical commission examinations), medical examinations were scheduled on the basis of medical documentation, while in 23 cases, medical examinations of corpses were scheduled.

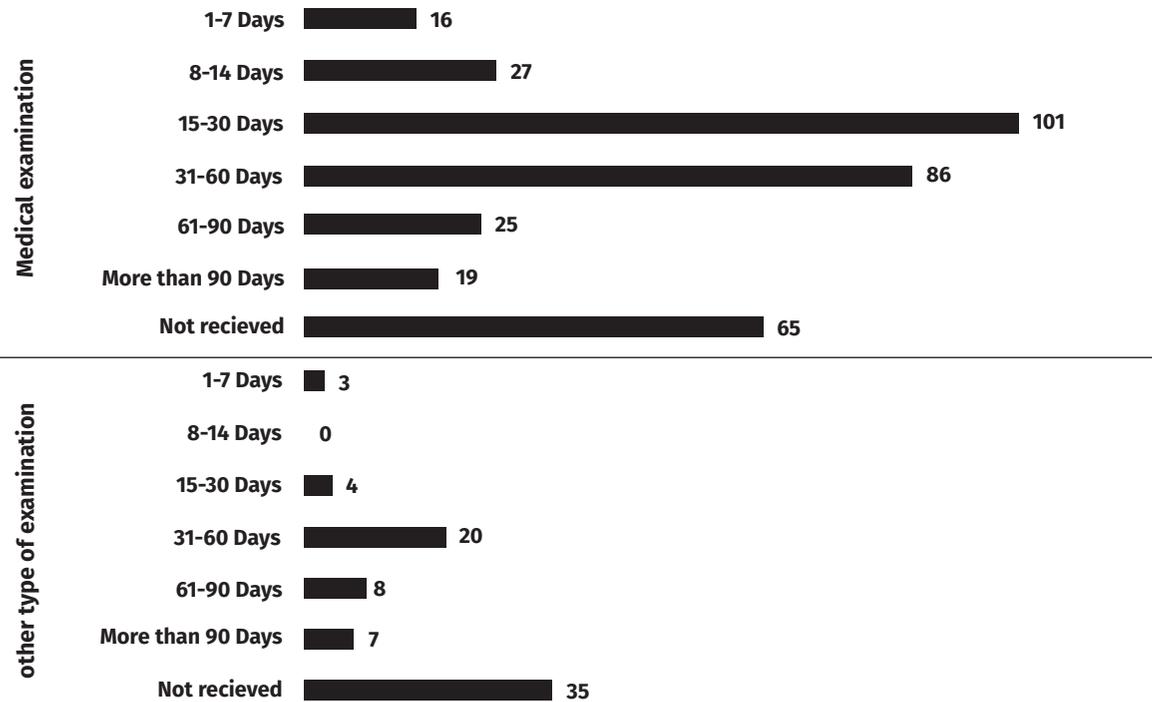
97 alleged victims (58%) named the absence of bodily injuries as the main reason for refusing to be examined by a medical expert, while 69 probable victims (42%) avoided appearing for examination for various reasons (some of the probable victims did not explain the specific reasons for refusal, some did not cooperate with the investigation, some even denied the fact of violence by police officers and refused the examination for this reason).

Reason for refusing an examination



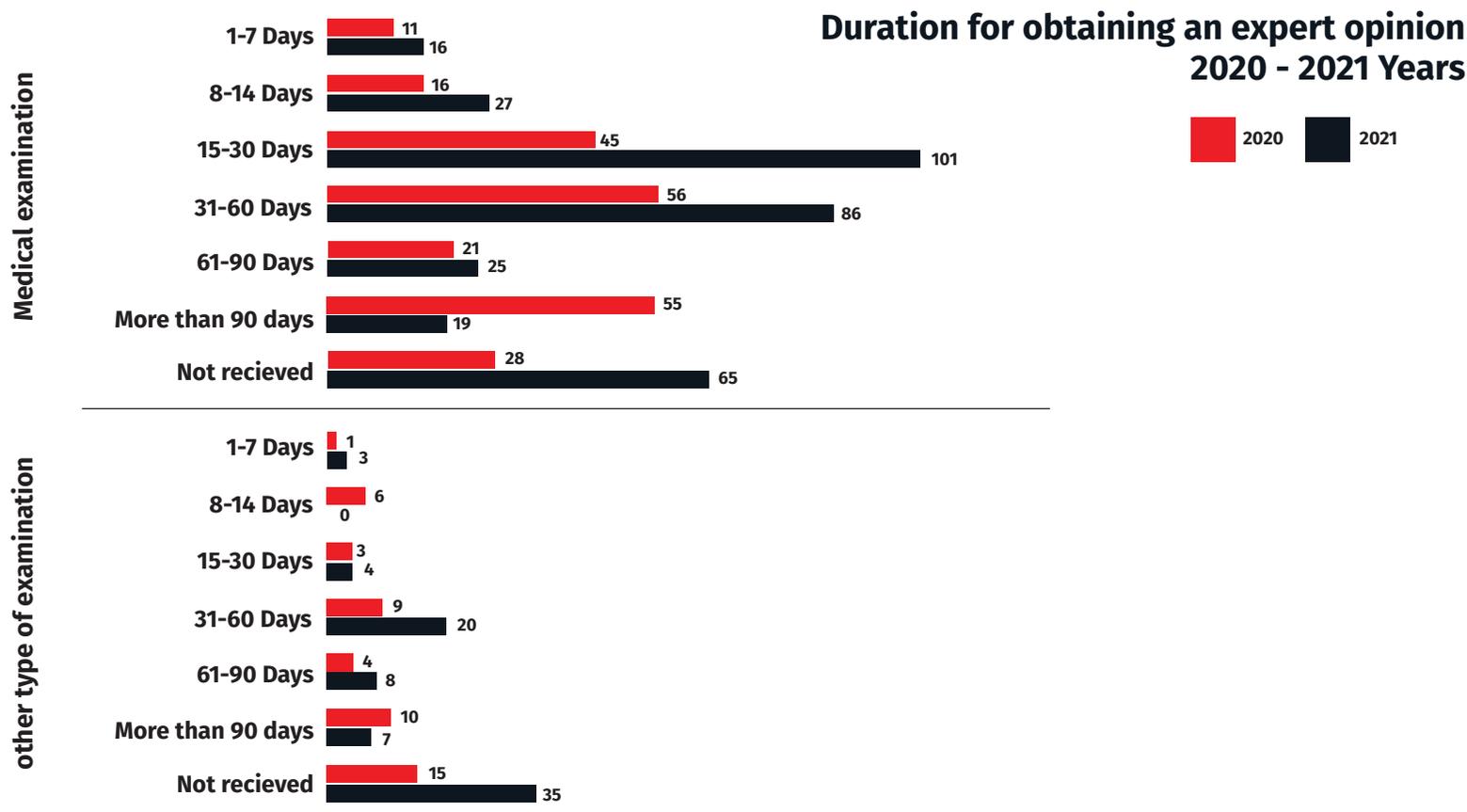
Out of 416 appointed forensic examinations, reports were received in 316 (76%) cases and out of medical examinations appointed for 339 persons, reports were received for 274 (81%) persons. The reports of the medical examination are mainly received within 15-30 and 31-60 days, while the reports of other types of examination are received within 31-60 days.

Deadlines for obtaining forensic examination reports



A positive trend in the timely preparation of medical examination reports by the Levan Samkharauli National Forensics Bureau should be mentioned, as well as the fact that duration for conducting examination of criminal cases under the State Inspector's Service has somewhat reduced (for example, if in 2020, 35% of medical examination reports were received within 1 month, in 2021, 42% of reports were obtained in the same period of time), however, in 2021 the number of unreceived reports increased. The Investigative Department of the State Inspector's Service did not receive expert reports on 19% of the requested medical examinations and on 45% of other examinations.

From the requested eight computer examinations, reports were obtained on 2 of them. In one case, the report was received after 60 days, and in another case - after more than 90 days.



Conducting a commission medical examination is associated with extraordinary challenges. The legislation and procedure regulating such examination significantly hinders the conduct of timely and thorough investigations. In order to conduct such an examination, the Investigative Department addresses the LEPL Levan Samkharauli National Forensics Bureau, which sends a request to the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs to allocate specialists in the relevant field for the Commission. Specialists are not motivated to participate in the commission, as it involves a large amount of work (review of medical documentation submitted for examination, preparation of consultation answers and examination report). Besides, neither the Forensics Bureau nor the Ministry provides for remuneration for this work. As long as participation in the examination commission is voluntary, the specialists refuse to take part in it. For these reasons, the examination is delayed for several months (years).

Compared to the previous year, the rate of appointing commission medical examinations has increased 6.5 times. 13 commission medical examinations were scheduled in 2021 and a report was received on only one of them (within more than 90 days).

Challenges in obtaining information from public agencies

In the process of obtaining evidence, in order to obtain information on the factual circumstances of the criminal case, the State Inspector's Service writes to the public agency whose employees has allegedly committed a crime which is being investigated by the Service. Since 88% of the criminal cases in the Service are related to the alleged crimes of the employees of the Ministry of Internal Affairs, most of the letters are sent to this Ministry.

In 2021, the Investigative Department of the State Inspector's Service sent 1405 letters to public agencies: most of them - 855 (61%) - to the Ministry of Internal Affairs, 286 (20%) - to the Special Penitentiary Service, 177 (13%) – to the court, 28 (2%) - to local self-government bodies, 1 (0.1%) - to the prosecutor's office and 58 (4%) - in other public agencies. 2021 data show that responses to the requested information are mostly received within 1-7 days, although there are cases when the provision of information is delayed for several months.

**Letters sent to public agencies
2020 - 2021 Years**



The Department of Temporary Placement of the Ministry of Internal Affairs is distinguished by the timely provision of the requested information, where the most requests were sent and the majority of responses were received within seven days.

The information presented in the table above shows that the information requested by the State Inspector's Service from the Patrol Police Department of the Ministry of Internal Affairs is mostly provided within 14 days (see the table below). Most of the letters sent to the Patrol Police Department (as well as to the territorial divisions) address the following issues: the identity of the law enforces who carried out detention and those present at the scene, the identification of the specific location of the detention, the identification of the numbers of body cameras of the patrol police, and the presence of board records.

As for the Special Penitentiary Service, where after the Ministry of Internal Affairs the most requests were sent (284 letters), there are some delays in terms of deadlines, although this does not pose a problem in requesting video recordings, as the service immediately archives the records requested by the State Inspector and provides them.

Delayed responses from the court (which are sent incompletely along with the delay and investigators have to clarify a number of issues by telephone) prevent the timely retrieval of court records and video footage submitted by the parties, on the basis of which further investigative and procedural actions are planned (the most problematic is when the notification to the State Inspector's Service is sent after a long time has elapsed since the crime was committed and the recordings of the body cameras of the patrol police officers are no longer kept in "112" due to the expiration of the term of storage, although they were submitted to the court).

The rate of provision the required information (2020-2021) is given in the table:¹⁴

¹⁴ The direction of the red arrow indicates the relationship between the 2021 rate and the 2020 rate. In particular, the red arrow pointing up indicates an increase, while the red arrow pointing down indicates a decrease. Besides, by the end of 2021, responses were not received to 39 letters. Accordingly, they are not counted in the data in the table.

Time period in which the requested information was provided	Year	1-7 Days	8-14 Days	15-30 Days	31-60 Days	61-90 Days	More than 90 days	Total
Ministry of Internal Affairs								
MIA, Temporary Detention Department	2020	98%	1%	1%				206
	2021	↓ 79%	↑ 20%	1%	-	-	-	↑ 266
MIA, Public Safety Management Center ("112")	2020	49%	30%	19%	2%	-	-	43
	2021	↑ 56%	↑ 36%	↓ 8%	-	-	-	↑ 48
MIA, Territorial Divisions (Police Departments)	2020	34%	28%	26%	8%	3%	1%	152
	2021	↓ 23%	↑ 39%	↑ 29%	↓ 7%	↓ 1%	1%	↑ 259
MIA, Patrol Police Department	2020	20%	35%	42%	2%	1%	-	102
	2021	↑ 37%	↓ 34%	↓ 28%	↓ 1%	-	-	↑ 139
MIA, other divisions	2020	70%	20%	9%	1%	-	-	135
	2021	↓ 61%	↑ 28%	↓ 8%	↑ 3%	-	-	↓ 117

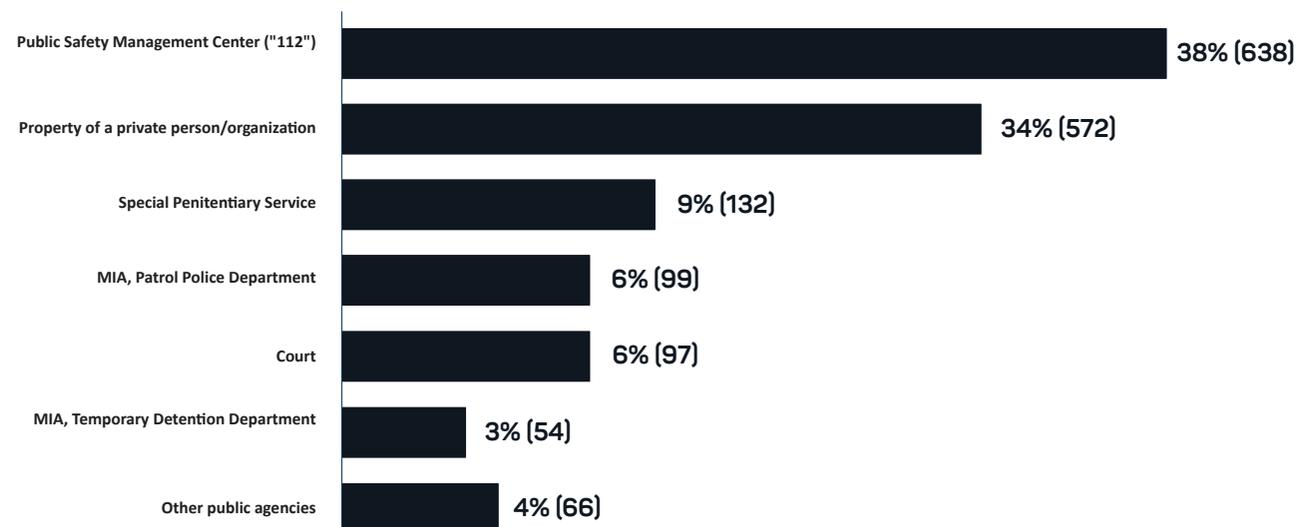
Time period in which the requested information was provided	Year	1-7 Days	8-14 Days	15-30 Days	31-60 Days	61-90 Days	More than 90 days	Total
Other public agencies								
Prosecution Service	2020	100%	-	-	-	-	-	2
	2021	100%	-	-	-	-	-	↓ 1
Local self-government agencies	2020	91%	9%	-	-	-	-	12
	2021	↓ 79%	↑ 21%	-	-	-	-	↑ 28
Special Penitentiary Service	2020	47%	33%	16%	4%	-	-	289
	2021	↓ 49%	↑ 39%	↑ 11%	↓ 1%	-	-	↓ 284
Court	2020	42%	37%	11%	6%	2%	2%	123
	2021	↓ 28%	37%	↑ 28%	↓ 5%	↓ 1%	↓ 1%	↑ 167
Other public agencies	2020	65%	24%	7%	2%	-	2%	58
	2021	↓ 60%	↑ 32%	↓ 3%	↑ 3%	-	2%	↓ 57

Difficulties in obtaining audio-video recordings

One of the important pieces of evidence in the criminal cases under the Investigative Department of the State Inspector's Service is the video recordings of the surveillance system (audio-video recordings) placed at the scene of the alleged crime. Accordingly, audio-video recordings are requested from various public institutions and private persons.

From November 1, 2019 to December 31, 2021, the Investigative Department of the State Inspector's Service requested 1658 audio/video recordings relevant to the case from various public institutions and private persons.

**Institutions from which audio/video recordings were requested
2019-2021 Years**

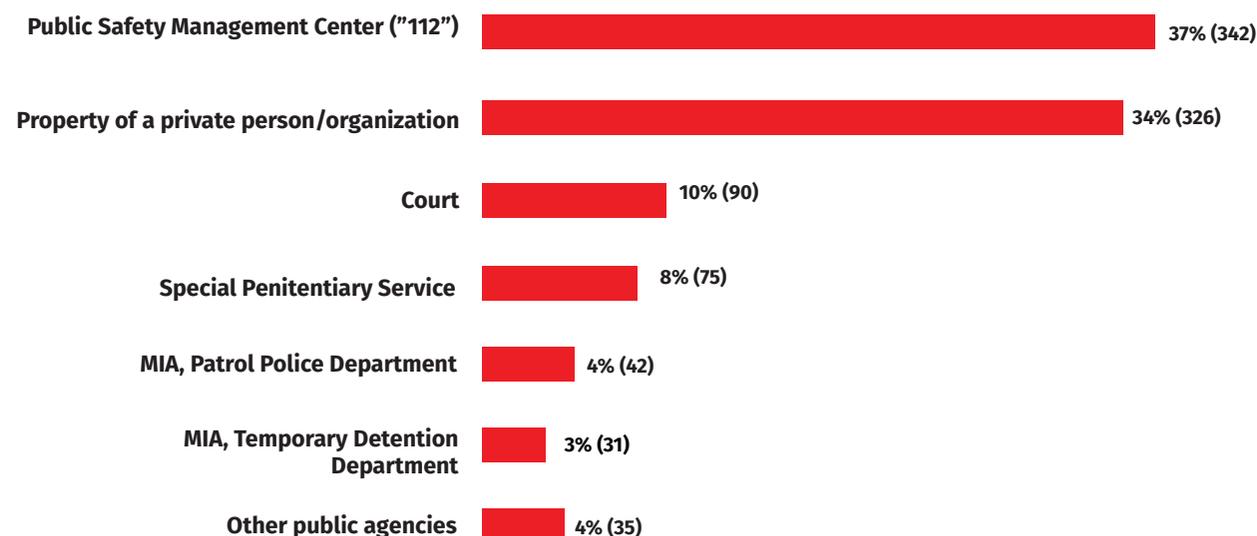


As for 2021, video recordings were requested in most cases based on a court order, except in three cases. In particular, on the basis of urgency by the prosecutor's decision, video camera recordings were requested: from the Public Security Management Center of the Ministry of Internal Affairs ("112") - video camera recording of the indoor and outdoor perimeter of the administrative building, from the Special Penitentiary Service - video recording of the indoor and outdoor perimeter of the penitentiary institution and from a private person/organization - a video camera recording of the outer perimeter.

In 2021, the Investigative Department in 366 criminal cases requested 941 audio/video recordings important for the case from various public institutions and private persons. 37% of them were requested from the Public Security Management Center of the Ministry of Internal Affairs ("112"); 34% - from individuals and legal entities under private law, 10% - from the court, 8% - from the Special Penitentiary Service, 4% - from the Patrol Police Department of the Ministry of Internal Affairs, 3% - from the Temporary Detention Department of the Ministry of Internal Affairs, and 4% from other public institutions.

Institutions from which audio/video recordings were requested

2021



¹⁵ The Public Security Management Center of the Ministry of Internal Affairs keeps recordings of surveillance video cameras installed in the administrative buildings of the territorial bodies (police departments) of the Ministry of Internal Affairs and body video cameras of patrol police officers.

¹⁶ The Penitentiary Department of the Special Penitentiary Service keeps recordings of surveillance video cameras installed in penitentiary institutions

¹⁷ The patrol police department of the Ministry of Internal Affairs keeps the video recordings of the patrol police vehicles.

¹⁸ The Department of Temporary Detention of the Ministry of Internal Affairs keeps the recordings of the surveillance video cameras installed in the temporary placement isolators.

As for the status of the provision of video recordings, the only agency that provided all the requested recordings to the Investigative Department in 2021 is the court. The percentage of provision of video recordings provided by the Department of Temporary Detention of the Ministry of Internal Affairs and the Special Penitentiary Service is high, but reduced compared to the previous year.

Relatively low, though increased compared to the previous year, is the rate of submission of video recordings by the Ministry of Interior. While 43% of the alleged victims indicate the street as the scene of the alleged crime, 25% to the administrative building of the Ministry of Internal Affairs, and 25% to the police vehicle, substantial evidence of criminal cases under the State Inspector's Service is submission of video recordings of the body cameras of Patrol Police and of the cameras placed on the inner and outer perimeter of the police station.

	Number of requested recordings	Provided in full	Partially	In the process of requesting	Not provided
Court	90	100%	-	-	-
MIA, Public Safety Management Center ("112"), audio recording of the notifications	3	100%	-	-	-
Property of private person/organisation	326	94%	1%	2%	3%
Temporary Detention Department of MIA	31	91%	-	3%	6%
Other public agency	35	85%	3%	3%	9%
Special Penitentiary Service	75	83%	13%	1%	3%
MIA, Public Safety Management Center ("112"), Police Video cameras inside and outside the perimeter of the police station	202	74%	3%	2%	21%

	Number of requested recordings	Provided in full	Partially	In the process of requesting	Not provided
MIA, Public Safety Management Center ("112"), External Surveillance Video Cameras	48	73%	2%		25%
MIA, Patrol Police Department	42	67%	10%	2%	21%
MIA, Public Safety Management Center ("112"), Body Cameras	88	58%	38%	-	4%
MIA, Public Safety Management Center ("112"), Information in the "Electronic Registry of Actions" of the Recording system	1	-	-	-	100%

A comparative analysis of the submission rates of the requested audio-video recordings (2020-2021) is given in the graph:

	Year	Number of requested recordings	Provided in full	Partially	In the process of requesting	Not provided
Temporary Detention Department of MIA	2020	14	100%	-	-	-
	2021	↑ 31	↓ 91%	-	↑ 3%	↑ 6%
Special Peitentiary Service	2020	53	87%	13%	-	-
	2021	↑ 75	↓ 83%	13%	↑ 1%	↑ 3%
Property of private person/organization	2020	181	87%	2%	-	11%
	2021	↑ 326	↑ 94%	↓ 1%	↑ 2%	↓ 3%
Court	2020	4	50%	50%	-	-
	2021	↑ 90	↑ 100%	↓ -	-	-
Other public agency	2020	16	81%	6%	-	13%
	2021	↑ 35	↑ 85%	↓ 3%	↑ 3%	↓ 9%
MIA, Patrol Police Department	2020	49	41%	10%	-	49%
	2021	42	67%	10%	2%	21%
MIA, Public Safety Management Center ("112"), External Surveillance Video Cameras	2020	36	67%	14%	-	19%
	2021	↑ 48	↑ 73%	↓ 2%	-	↑ 25%

¹⁹ The direction of the red arrow indicates the relationship between the 2021 rate and the 2020 rate. In particular, the red arrow pointing up indicates an increase, while the red arrow pointing down indicates a decrease.

	Year	Number of requested recordings	Provided in full	Partially	In the process of requesting	Not provided
MIA, Public Safety Management Center ("112"), Police Video cameras inside and outside the perimeter of the police station	2020	140	53%	9%	-	38%
	2021	↑ 202	↑ 74%	↓ 3%	↑ 2%	↓ 21%
MIA, Public Security Management Center ("112"), body cameras	2020	66	48%	34%	-	18%
	2021	↑ 88	↑ 58%	↑ 38%	-	↓ 4%
MIA, Public Safety Management Center ("112"), audio recordings of the notifications	2020	-	-	-	-	-
	2021	↑ 3	↑ 100%	-	-	-
MIA, Public Safety Management Center ("112"), Information in the "Electronic Registry of Actions" of the Recording system	2020	-	-	-	-	-
	2021	↑ 1	-	-	-	↑ 100%

One of the most important pieces of evidence in the criminal cases under investigation by the State Inspector's Service, where alleged victims report violence committed against them by police officers at the police stations, are video recordings placed on the inside and outside perimeter of the police administrative buildings. Accordingly, the State Inspector's Service, immediately upon the commencement of the investigation (or from the moment the Service becomes aware of an alleged crime committed in a police administrative building) requests the Ministry of Internal Affairs to provide the records. Although the deadline for the storage of the videos had not expired at the time of their request, unfortunately in some cases they were not provided to the State Inspector's Service.²⁰

There were several cases when the State Inspector's Service applied to the Center "112" within 14 days with the court order to request information, but the center did not provide records. Absence of video recording on the hard disk of the recording device was indicated as a reason of this.

The State Inspector's Service carried out various actions to determine the specific reasons for the absence of video recordings. In particular:

- In all such cases, the State Inspector's Service wrote to the Center, "112" of the Ministry of Internal Affairs requesting information on the specific reasons for the absence of video recordings and documents confirming this;
- In several criminal cases (where there was a suspicion of intentional deletion of video recordings), with the court ruling issued based on the motion of the prosecutor, requested information from the Center "112" about electronic operations on a recording device located in the police building (name of the user who has the access to the video recordings, access date, access duration, access form (view, save, archive, download, delete)). According to the information requested on the basis of the above-mentioned rulings, in the "electronic registry of actions" of the video recording device, in the period from allegedly committing a violence by police officers before informing the State Inspector Service about the deletion of video recordings, the first action taken by the user in the device system was to change the date and time of the device system (in particular, time was artificially shifted from 2000 to real time, which raised the suspicion of performing certain actions using the past time), during the same period, no video was searchable and/or no trace (log) of any action was recorded on the device. Considering that the general functions of the computer system allow both the return of the system parameters to the initial stage (RESET/FORMAT) and the deletion of the electronic

²⁰ According to the Annex to the Order № 53 of the Minister of Internal Affairs of Georgia of January 23, 2015 on Determining the Terms of Storage of File Systems of the Ministry of Internal Affairs of Georgia and Data in them, the storage time of the recordings of the video cameras located on the inner and outer perimeter of the administrative buildings of the Ministry depends on the characteristics of the technical means and is stored for at least 14 days.

logbook (LOG) of any action, as well as the possibility of artificially changing the system time, in order to ensure a thorough investigation, in some cases it was necessary to request complete information of the electronic logbook (LOG) to identify electronic actions taken in the artificially modified time period. As the Prosecutor General's Office had a different opinion on the conduct of these investigations, the Deputy State Inspector sent a proposal to the prosecutor supervising the two criminal cases to send the complete information of the "Electronic Logbook" (LOG) from the recording equipment located in the administrative buildings of the Police Department, without indicating the time interval. The proposals were partially granted by the supervising prosecutor and filed motions to the court requesting information from the logbook about electronic actions taken during a period of possible violence, which obviously did not provide additional and/or valuable information for the investigation;

- In several criminal cases, video recorders placed in police administrative buildings were removed based on a judge's ruling. To obtain information on the possibly deleted video recordings interesting for the investigation and on electronic actions taken against video recording device, the Service appointed information-technological expertise. Several months have passed since the appointment of the expertise, but the reports have not been received yet;
- After a number of criminal cases pending before the State Inspector's Service revealed a tendency of not providing video recordings, the Service's Investigative Department provided information to the State Inspectorate's Law Enforcement Oversight Department, in order to study the compliance with the Law of Georgia on Personal Data Protection of the organizational and technical measures taken by the Ministry of Internal Affairs to protect the video surveillance.²³

It is noteworthy that the State Inspector's Service also requested video recordings from private institutions in the vicinity of which law enforcement officers allegedly used violence. There have also been cases in private organisations where video recordings could not be found on the recorders, even though the record-keeping period had not expired. To determine the reason for their absence, the Service removed recording devices from private institutions and appointed information-technological expertise on them. The conclusion of the expertise received in one of the cases established the fact of deleting the video recordings. Investigative and procedural actions in the same case also revealed that the video recordings were deleted during direct access to the recording equipment of the police officers. As there were signs of crimes police officers under Article 368 of the Criminal Code of Georgia (destruction of evidence, which does not belong to the investigative authority of the State Inspector's Service), in early 2021, a letter was sent to the supervising prosecutor requesting to detach the fact of destruction of the evidence as a separate criminal case and to hand it over to a competent investigative body for investigation

²³ In this regard, information on the inspection conducted by the Law Enforcement Supervision Department of the State Inspector's Service is provided in the relevant chapter of the report - "Data Processing in Law Enforcement Bodies",

or transfer the whole case to the State Inspector's Service without separating it. The Supervising Prosecutor did not inform the Service on the action taken and/or the reason for not taking the action.

One of the main purposes of video surveillance systems installed by law enforcement agencies is to protect the safety of the person. Therefore, in case of possible violence by an employee of such a body, it is essential that the State Inspector's Service be provided with the video recordings without delay, and in the event of non-provision, it should be possible to establish the cause. Video surveillance systems in law enforcement should be technically maintained in such a way as to prevent accidental or intentional destruction of records.

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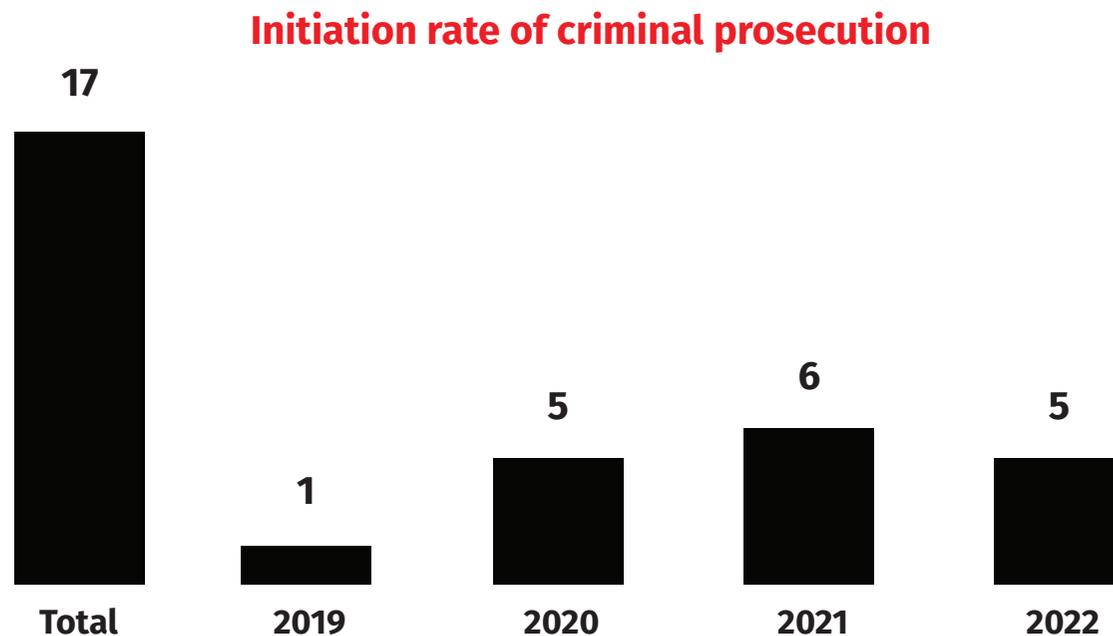
**Prosecutorial Activities on Cases
under the Jurisdiction
of the Service**

9. Prosecutorial Activities on Cases under the Jurisdiction of the Service

Launch of criminal prosecution

The Prosecutor General’s Service has launched criminal proceedings against 17 persons in 13 criminal cases initiated by the Investigative Department of the State Inspector Service since November 1, 2019. Out of the mentioned 17 persons, 12 were employees of the Ministry of Internal Affairs, and five persons were employees of the Special Penitentiary Service.

Out of the 17 accused, three persons are female and 14 persons are male.



Out of above-mentioned 17 persons:

- Five persons (employees of the Ministry of Internal Affairs) were charged under Article 333, part 3, subparagraph b of the Criminal Code (abuse of official power committed with violence), out of the mentioned 5 persons, the prosecutor clarified the charges against one of the persons and the criminal prosecution continued under Article 333, part 3, subparagraphs “b” and “c” of the Criminal Code (abuse of official power committed with violence and abuse of personal dignity);
- Five persons (employees of the Special Penitentiary Service) were charged under Article 342, part 2 of the Criminal Code ((neglect of official duty, which resulted in death);
- One person (employee of the Ministry of Internal Affairs) was charged under Article 333, part 3, subparagraph b of the Criminal Code (abuse of official power using a weapon);
- One person (employee of the Ministry of Internal Affairs) was charged under Article 335, part 1 of the Criminal Code (coercion to give an explanation, testimony or report – two episodes);
- One person (employee of the Ministry of Internal Affairs) was charged under Article 144³, part 2, subparagraphs “a”, “b” and “g” of the Criminal Code (degrading or inhuman treatment);
- One person (employee of the Ministry of Internal Affairs) was charged under Article 333, part 3, subparagraph c of the Criminal Code (abuse of official power committed with the abuse of personal dignity - three episodes). Following the criminal prosecution, the prosecutor clarified the charges against the person and the criminal prosecution continued under Article 333, part 3, subparagraph c of the Criminal Code (abuse of official power committed with the abuse to personal dignity – two episodes) and Article 144³ of the Criminal Code, part 2, sub-paragraphs "a", "b" and "d" (degrading or inhuman treatment - one episode);
- One person (employee of the Ministry of Internal Affairs) was charged under Article 333, part 3, subparagraph “b” of the Criminal Code (abuse of official power committed with violence - one episode) and part 3, Subparagraph “c” of the same Article (Abuse of official power with the abuse to personal dignity - two episodes). Following the commencement of the criminal prosecution against the mentioned person, the prosecutor clarified the charges and the criminal prosecution continued under Article 333, part 3, subparagraph b of the Criminal Code (abuse of official power committed with violence - one episode); part 3 (c) of the same Article (abuse of official power committed with the abuse to personal dignity - one episode) and Article 144³ (2) (a), (b) and (e) of the Criminal Code (degrading or inhuman treatment));
- One person (employee of the Ministry of Internal Affairs) was charged with the first part of Article 332 of the Criminal Code (abuse of official power);
- One person (employee of the Ministry of Internal Affairs) was charged under Article 126, part 1 of the Criminal Code (violence).

Reasoned proposals to the Prosecutor General's Office

In 2020-2021, the State Inspector and the authorized Deputy State Inspector applied to the Prosecutor's Office with 33 substantiated proposals in accordance with Article 19, paragraphs 6 and 7 of the Law of Georgia on the State Inspector's Service.

Out of the above 33 substantiated proposals, the Deputy State Inspector, in accordance with Article 19, paragraph 6, subparagraph "a" of the Law of Georgia on the State Inspector's Service, submitted five proposals to the supervising prosecutor on the initiation of criminal proceedings against five persons (four employees of the Ministry of Internal Affairs and one employee of the Special Penitentiary Service), as evidence was collected which, according to the standard of substantiated presumption, indicated the commission of a crime under the jurisdiction of the State Inspector's Service. None of these reasoned proposals were approved by the supervising prosecutor.

It should be noted that in 2022, the Deputy State Inspector, in accordance with Article 19, paragraph 6, subparagraph a of the Law of Georgia on the State Inspector's Service, addressed a substantiated proposal to the superior prosecutor to initiate criminal proceedings against three persons (employees of special penitentiary institutions), whereas evidence was gathered which, according to the standard of substantiated assumption, indicated the commission of a crime under the jurisdiction of the State Inspector's Service. This reasoned proposal was the first precedent when the Prosecutor General's Office granted the State Inspector's appeal to initiate criminal proceedings.

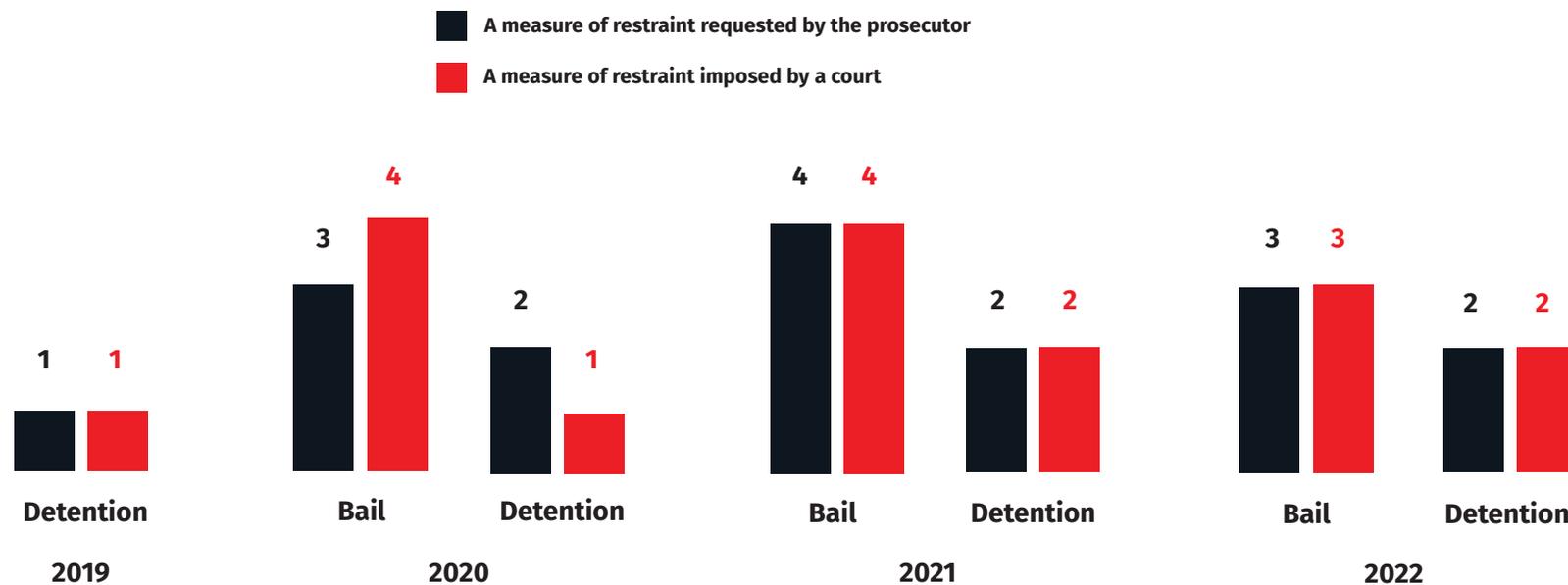
In only one case (in 2021) did the State Inspector address a reasoned proposal to the Prosecutor General regarding the feasibility of instituting criminal proceedings. The above proposal appealed the Supervising Prosecutor's rejection of the proposal submitted by the Deputy State Inspector regarding the initiation of criminal proceedings against an employee of the Special Penitentiary Service. The Prosecutor General delegated the exercise of his powers to the Head of the Department of Procedural Supervision of the State Inspector's Service, who did not accept the State Inspector's proposal.

Measures of restraint requested and imposed on the accused persons

The Prosecutor General's Office filed motion in the criminal cases that has been under investigation from November 1, 2019 to date, requesting that a bail be used against 10 of the 17 accused and detention against - seven. The court did not uphold the type of restraining order requested against only one of the accused and instead of detention, bail was used against the accused. Detention was used against six persons and bail – against 11.

As for 2021-2022, the Prosecutor General's Office filed motion to the court to grant bail as a measure of restraint against seven out of the 11 accused in criminal charges (bail was requested for five persons in the amount of 5000 GEL, and for two persons in the amount of 3000 GEL) and detention – against four accused. The court granted the measure of restraint requested against all the accused. Detention was used against four persons and bail was used against seven persons (2000 GEL as a bail was used against six persons and 3000 GEL as a bail – against one person).

Measures of restraint requested by the prosecutor and imposed by the court

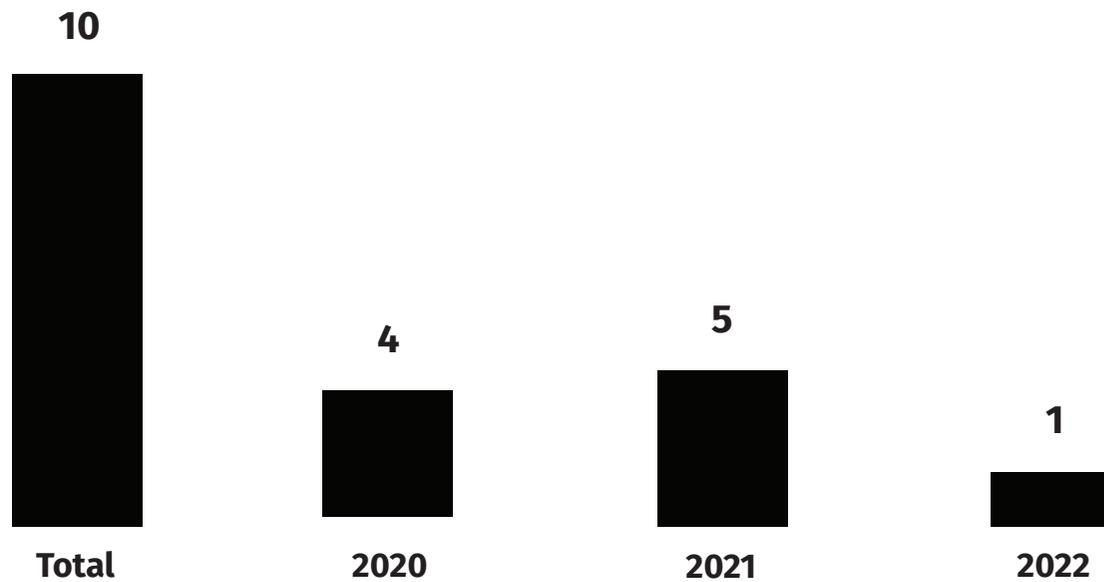


Court rulings

The Criminal Court of First Instance has ruled on nine criminal cases investigated by the State Inspector's Service against nine persons since 2020 (no ruling was issued in 2019). The court passed a verdict against three persons with a substantive hearing, and against seven defendants - without a substantive hearing of the case (based on a plea agreement).

Out of nine criminal cases, investigation of four criminal cases were launched in 2019, four - in 2020, and one criminal case was transferred to the Investigative Department of the State Inspector's Service in 2021.

Summary decisions issued by the court



Out of the 10 convicts, eight were employees of the Ministry of Internal Affairs and two were employees of the Special Penitentiary Service.

Eight out of 10 convicts are male and two persons are female.

Out of the above 10 persons:

- Against four persons (employees of the Ministry of Internal Affairs) charges were fully accepted by the court of an offence under Article 333, part 3, subparagraph b of the Criminal Code (abuse of official power committed with violence);
- Against two persons (employees of the Special Penitentiary Service) charges were fully accepted by the court of an offence under Article 342, paragraph 2 of the Criminal Code (neglect of official duties that resulted in death);
- One person (employee of the Ministry of Internal Affairs) was partially acquitted. In particular, the accused was found guilty of one of the episodes provided by in Article 335, paragraph 1 of the Criminal Code (coercion to provide an explanation, testimony or report) and was acquitted in the second episode of the offense under the same Article;
- One person (employee of the Ministry of Internal Affairs) has been fully convicted under Article 333, part 3, subparagraph b of the Criminal Code (abuse of official power using a weapon);
- One person (employee of the Ministry of Internal Affairs) has been partially acquitted by a jury. In particular, the accused was found guilty of one of the episodes provided by Article 333, part 3, subparagraph c of the Criminal Code (abuse of official power committed with the abuse to personal dignity) and Article 144³, part 2, subparagraphs "a", "b" and "e" of the Criminal Code (degrading or inhuman treatment, committed by an official or an equivalent person, using a of official powers, by a group) for one episode; and was found not guilty for one episode under Article 333, part 3, subparagraph b of the Criminal Code (abuse of official power using violence).;
- One person (an employee of the Ministry of Internal Affairs) was convicted. In particular, the accused was found guilty under Article 144³, part 2, subparagraphs "a", "b" and "d" of the Criminal Code (degrading or inhuman treatment, committed by an official or an equivalent person, against two or more persons) for one episode and for two episodes provided for in Article 333, part 3, subparagraph c of the Criminal Code (abuse of official power committed with the abuse of personal dignity).

As for 2021, the Court of First Instance ruled against five persons in five criminal cases under the proceedings of the Investigative Department of the State Inspector's Service. The investigation of four criminal cases was launched in 2020, and one criminal case was transferred to the Investigative Department of the State Inspector Service in 2021.

In all five criminal cases court ruled guilty verdicts. Two employees of the Special Penitentiary Service and three employees of the Ministry of Internal Affairs were found guilty. It should be noted that the court rendered a verdict against four persons without a substantive hearing (on the basis of a plea agreement), while a verdict of guilt was rendered against one person by a jury trial:

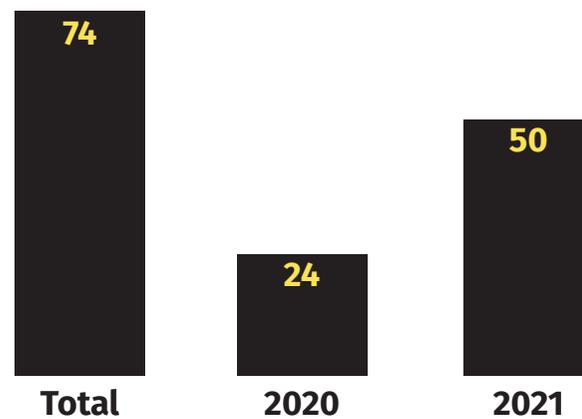
- Two persons (employees of the Ministry of Internal Affairs) were fully convicted under Article 333, part 3, subparagraph b of the Criminal Code of Georgia (abuse of official power committed with violence);
- Against two persons (employees of the Special Penitentiary Service) - the court rendered a full conviction for the action provided by Article 342, paragraph 2 of the Criminal Code (neglect of official duties, which resulted in death);
- One person (employee of the Ministry of Internal Affairs) was convicted by a jury. In particular, the accused was found guilty of one of the episodes provided by Article 333, part 3, subparagraph c of the Criminal Code of Georgia (abuse of official power committed with the abuse of personal dignity) and Article 144³, part 2, subparagraphs "a", "b" and "e" of the Criminal Code (degrading or inhuman treatment committed by an official or an equivalent person, with the abuse of official powers by a group), for one episode; For one episode under Article 333, part 3, subparagraph b of the Criminal Code (abuse of official power using violence) was found not guilty.

It is noteworthy that this was the first case in the history of a jury trial when a jury rendered a guilty verdict on the fact of ill-treatment.

Termination of the investigation

In 2020-2021, the Prosecutor General's Office terminated the investigation of 74 criminal cases, of which on 14 cases investigation started in 2019 (November and December), on 41 - in 2020, and on 19 - in 2021 (the investigation was not terminated in 2019, and in 2022 (to date) the investigation was terminated in only one criminal case).

Rate of termination of the investigation of a criminal case



Criminal cases terminated in 2020-2021 were investigated under the following articles:

- 61 Criminal cases were being investigated under Article 333, part 3, subparagraph b of the Criminal Code (abuse of official power committed with violence);
- Five criminal cases were being investigated under Article 144³, part 2, subparagraphs "a", "b", "e" and "g" of the Criminal Code (degrading or inhuman treatment);
- Two criminal cases were being investigated under Article 144³, part 2, subparagraphs "a", "b" and "g" of the Criminal Code (degrading or inhuman treatment);
- One Criminal case was being investigated in combination of crimes under Article 333, part 3, subparagraph "b" and Article 335, part 1 (abuse of official power committed with violence and coercion to provide an explanation or testimony);

- One Criminal case was being investigated under Article 342, part 2 of the Criminal Code (neglect of official duties, which resulted in death);
- One criminal case was being investigated with a combination of crimes under Article 333, part 3, subparagraph “b” and Article 150, part 1 (abuse of official power committed with violence and coercion);
- One criminal case was being investigated under Article 333, part 3, subparagraph b, Article 115, part 1, and Article 342, part 2 of the Criminal Code (abuse of official power committed with violence, incitement to suicide and neglect of official duties, which resulted in death or other grave consequences);
- One Criminal case was being investigated under Article 126, part 1 of the Criminal Code (violence);
- One criminal case was being investigated under Article 187, part 1 of the Criminal Code (damage or destruction of an item).

As for 2021, the Prosecutor General's Office terminated the investigation of 50 criminal cases, two of which were launched in 2019 (November and December), 29 - in 2020, and 19 - in 2021.

The investigation of the above 50 criminal cases was terminated due to the lack of action provided by criminal code.

The investigation into the terminated criminal cases was under the following articles:

- 42 criminal cases were being investigated under Article 333, part 3, subparagraph b of the Criminal Code (abuse of official power committed with violence);
- Four criminal cases were being investigated under Article 144³, part 2, subparagraphs “a”, “b”, “e” and “g” of the Criminal Code (degrading or inhuman treatment);
- One criminal case was being investigated under Article 144³, part 2, subparagraphs “a”, “b” and “g” of the Criminal Code (degrading or inhuman treatment);
- One Criminal case was being investigated under Article 342, part 2 of the Criminal Code (neglect of official duties, which resulted death);
- One criminal case was being investigated in a combination of crimes under Article 333, part 3, subparagraph “b” and Article 150, part 1 (abuse of official power through violence and coercion);

- One criminal case was being investigated under Article 333, part 3, subparagraph b, Article 115, part 1, and Article 342, part 2 of the Criminal Code (abuse of official power committed with violence, incitement to suicide and neglect of official duties, which resulted in death or other grave consequences).

10

**Alleged Crimes Committed by the Employees of the
Special Penitentiary Service and
Challenges Related to their Investigation**

10. Alleged Crimes Committed by the Employees of the Special Penitentiary Service and Challenges Related to their Investigation

General statistical data

In 2021, the Investigative Department of the State Inspector's Service received 159 reports of alleged crimes committed by Special Penitentiary Service staff, relating to 167 alleged victims (in some cases, one report involved action against not one but several individuals).

In 2021, the Investigative Department of the State Inspector's Service launched investigation into 49 alleged offences committed by the Special Penitentiary Service staff against 53 alleged victims.²⁴

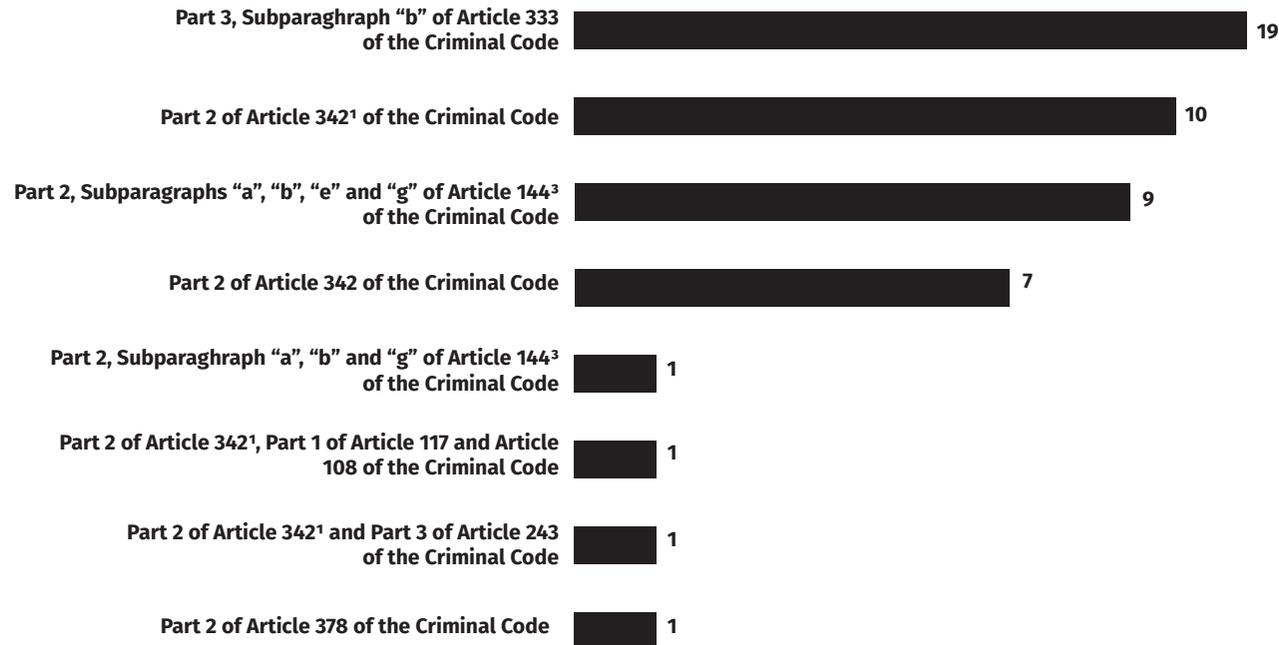
Number of Reports received from Special Penitentiary Service



In most (39%) of the criminal cases, investigations were launched under Article 333, part 3, subparagraph b of the Criminal Code of Georgia (abuse of official power committed with violence). Detailed information is given in the graph:

²⁴ 1 alleged victim in the criminal case could not indicate alleged ill-treatment was carried out by the employees of the Ministry of Internal Affairs or the Special Penitentiary Service. Accordingly, the mentioned criminal case is considered both in the chapter of alleged crimes committed by the employees of the Special Penitentiary Service and the Ministry of Internal Affairs.

Qualification assigned to the crime at the start of the investigation



Death of prisoners

Out of the above 49 criminal cases, 19 concerned the death of accused/convicted persons in a penitentiary or other institution under effective state control. And 30 criminal cases - the fact of alleged violence and/or ill-treatment of accused/convicted persons by the staff of the Special Penitentiary Service.

In 2021, the State Inspector's Service Investigative Department received 19 reports from 21 sources/agencies regarding the death of a detained accused / person in a penitentiary or other institution under effective state control (several facts were reported from more than one source). The author of 11 notifications was the Special Penitentiary Service Escort and Special Events Division; seven reports were received from penitentiary establishments of the Penitentiary Service; single notification was received from the Public Defender's Office, the General Inspection of the Ministry of Justice and the territorial divisions of the Ministry of Internal Affairs.

Of the 19 criminal cases involving the death of a detained accused / person in a penitentiary or other institution under effective state control:

- Investigation into 10 criminal cases was started on the fact of negligence of official duties, which resulted in death, under the second part of Article 342 of the Criminal Code of Georgia;
- Investigation into seven criminal cases launched on the fact of violation of a rule established in the penitentiary service by an employee of the Special Penitentiary Service or an equivalent person, which resulted in death, a crime under the second part of Article 342¹ of the Criminal Code of Georgia;
- Investigation into one criminal case started for a combination of crimes - violation of the service rules by the employee of the Special Penitentiary Service or an equivalent person and violation of fire safety rules, which resulted in the death of two people, crimes under Article 342¹, part 2 and part 3 of Article 243 of the Criminal Code of Georgia;
- Investigation into one criminal case launched on the facts of violation of service rule by an employee of the Special Penitentiary Service or an equivalent person, intentional grievous bodily harm and premeditated murder, crimes under Article 342¹, part 2, Article 117, part 1 and Article 108 of the Criminal Code of Georgia.

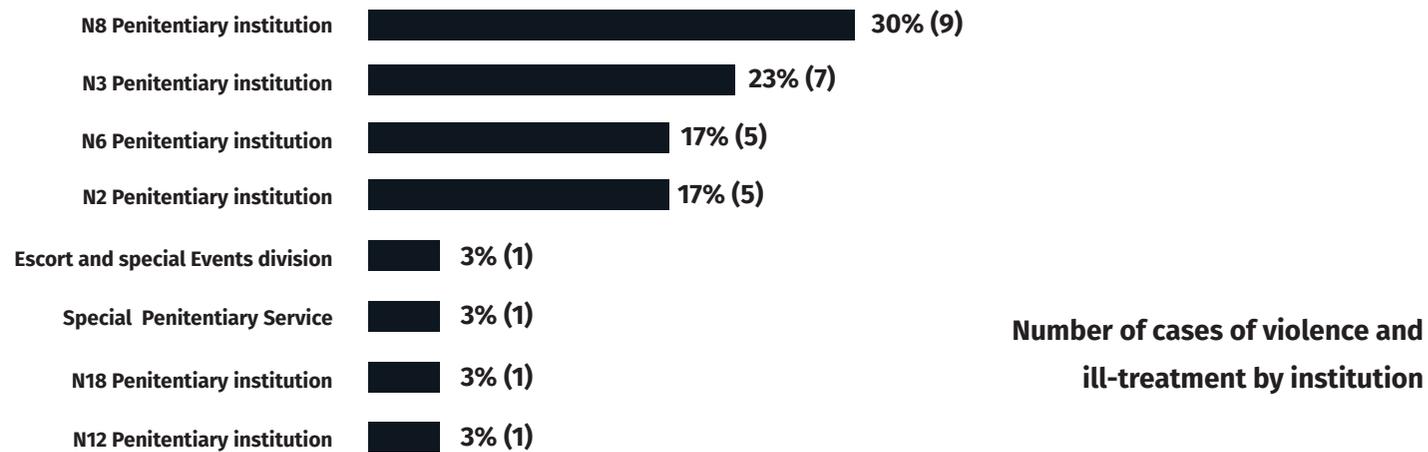
Out of the 19 criminal cases mentioned above, 14 were related to the death due to deteriorating health of a person under the effective control of the staff of the Special Penitentiary Service, three deaths were related to suicide, in one case an alleged victim died due to injuries sustained in physical confrontation with other prisoners, and in one criminal case two convicts died as a result of a fire in a penitentiary institution.

Out of the 20 people who died, 11 were convicted prisoners and nine (including all three people who committed suicide) were incarcerated defendants against whom no summary judgment had been rendered by the court.

Out of 14 persons who died due to deteriorating health, 10 were in the civilian clinic for treatment under the effective control of the Special Penitentiary Service, two persons in №8 penitentiary institutions, 1 person in №2 penitentiary institutions, and 1 person - in №17 penitentiary institution. Two people who died as a result of fire and one person who died as a result of a physical confrontation with prisoners were in №17 penitentiary institution. Out of 3 prisoners who died as a result of suicide, one was in №2 penitentiary institution, one person was in the psychiatric department of Levan Samkharauli National Forensics Bureau, and one person was in the Center for Mental Health and Drug Prevention Ltd.

Most of the criminal cases (30 cases) related to the alleged violence and/or ill-treatment of a detained accused / person deprived liberty were initiated against employees of №8 and №3 penitentiaries. Detailed information is given in the graph.²⁵

Alleged violence against and ill-treatment of prisoners



Out of 49 criminal cases initiated in 2021, criminal prosecution was launched in 1 criminal case against 3 employees of the Special Penitentiary Service under Article 342, part 2 of the Criminal Code of Georgia (on the fact of suicide committed by a prisoner at the Center for Mental Health and Drug Prevention Ltd.).

²⁵ An investigation launched into one criminal case against an employee of various departments of the Special Penitentiary Service.

Challenges in the case investigation process

Legal acts

- The inspector-controller on duty is legally responsible for the protection, control and supervision of the accused/convicts in the institution, although the legal acts do not specify how often the penitentiary staff member should check the prisoner in the cell and/or in other territory of the penitentiary and what specific actions are to be carried out when checking. Consequently, imperfect and vague legal regulation of the employee's duties makes it difficult and/or impossible to establish the fact of violation of the rules by the employees of the penitentiary institution, to legally assess his/her actions and to identify the issue of guilt;
- By order of the Minister of Justice, the employee (inspector) of the unit responsible for video monitoring is obliged to immediately notify the authorized persons in case the person involved in the suicide prevention program does not appear in the field of vision for 5 minutes. In addition, in cells equipped with video surveillance cameras, by the decision of the head of the relevant penitentiary institution, are included those prisoners too who are not involved in the suicide prevention program but need special attention due to the increased risk and safety. According to the official instructions, the employee (inspector) is obliged to carry out constant monitoring, including of this category of prisoners, through video surveillance cameras. However, the legal acts do not specify in detail what kind of actions of such a category of prisoners must the employee (inspector) notify to the relevant person. For example, in one of the criminal cases, it was established that the prisoner under the video-surveillance was in the bathroom for a long time (37 minutes) and therefore left the field of view of the cameras, although the cameraman did not inform the relevant persons. The indicated prisoner committed suicide in the toilet room. In order to ensure the safety of life and health of prisoners, it is important to clearly define the responsibilities of a special unit officer (inspector) for such categories of prisoners;
- Several legal acts of the Minister of Justice regulate the rules of taking out prisoners from penitentiary institutions, control over their behavior, monitoring and supervision. One of the challenges identified was the taking a prisoner to a forensic psychiatric examination facility and the monitoring by Special Penitentiary Service staff. The legal act of the Minister of Justice stipulates the duty of the staff of the chief unit of External Protection and Information-Technical Security of the Special Penitentiary Service to ensure the safety and supervision of prisoners for forensic psychiatric examination, which includes both external and internal supervision and protection of prisoners. Besides, another special legal act of the Minister of Justice stipulates the duty of the staff of the same unit to ensure the protection of the place of direct accommodation of prisoners, albeit without control over the wards of these prisoners and the corridors between them. Consequently, their duty is limited to external protection only. Therefore, the norms regulating the duties of the employees of the unit mentioned in the legal acts are substantially contradictory. As part of the investigation of one of the cases it was revealed that in practice the staff of the Special Penitentiary Service does not directly monitor the detainees in the forensic psychiatric examination facility. Their duty is limited to external protection only. Consequently, the issue of visual monitoring of prisoners is not regulated - it is not specified who should supervise/monitor prisoners placed in wards, who were subjected to 24-hour visual monitoring in penitentiary institutions before being transferred for psychiatric examination. It should be borne in mind that this category of prisoners poses an increased threat to themselves as well as to those around them, which requires a high degree of monitoring of their behaviors;

- One of the major challenges remains the quality of the effectiveness of the suicide prevention program. The Legal Act of the Minister of Justice sets out the inclusion of prisoners in the Suicide Prevention Program, including the purpose of the program - to identify suicidal accused/convicts and reduce suicide-related deaths. For the purposes of the program, it is very important to identify those at risk of suicide in a timely manner and to include them in the program. To ensure this, the regulations of the relevant penitentiary institutions include the obligation to meet with the local coordinator and to assess the risk of suicide with the mentioned prisoner when receiving prisoners in these institutions. However, the legal acts do not require, after admission to the facility, mandatory periodic special screening of prisoners to identify and assess suicide risks, which contradicts the objectives of the program and makes it ineffective. It should also be noted that the risk of suicidal ideation in prisoners is higher after a certain period after being placed in a penitentiary institution than upon being placed there. As an investigation into the deaths of prisoners through suicide established, in none of the cases was the prisoner involved in a suicide prevention program. Therefore, in order to identify convicts/accused at risk of suicide and reduce suicide-related mortality, it is advisable to revise the scoring scheme in the Suicide Risk Assessment to avoid low-risk scoring of the inmates (meaning staying outside the program in prison), who are actually of medium or high-risk carriers. As it was revealed during the investigation of one of the cases, the detainee tried to commit suicide in the temporary detention isolator, about which, after the transfer of the prisoner, the information was provided in writing to the relevant penitentiary institution. Nevertheless, during the review of the suicide risk at the facility, a low level of risk was identified for this prisoner, and s/he was not included in the Suicide Prevention Program. The mentioned prisoner committed suicide. Also, the legal acts do not provide for measures and specific approaches to be taken towards persons involved in the suicide prevention program, subject to effective control of the special penitentiary service, while outside the penitentiary institution (eg medical clinic, expert institution, quarantine space ...), including: continuous video monitoring and/or direct visual surveillance at certain intervals. This puts the lives and health of this category of prisoners at risk.

Performing assigned duties by employees

- In some cases, the relevant unit of the Special Penitentiary Service fails to fulfill its legal obligation to conduct video surveillance using surveillance cameras. As it was revealed during the investigation of one of the cases, according to the unofficial decision of the administration of the penitentiary institution, the inspectors (operators) of the relevant unit monitored not all the prisoners subject to video surveillance, but only a part of this category of prisoners. According to the official information provided by the Special Penitentiary Service, this was due to the lack of human resources in a particular unit, due to which the video monitoring of the prisoners was limited. Investigations into other criminal cases also revealed that due to the isolation of the staff of the same unit of the Special Penitentiary Service, for some time they did not perform their duties at all - visual surveillance of inmates in a cell equipped with surveillance cameras, during which prisoners (two inmates) committed suicide;
- The proper performance of the duties imposed upon the staff of the Special Penitentiary Service towards the prisoners in the civilian clinics and quarantine areas outside the penitentiary institutions is a challenge. The relevant legal acts of the Minister of Justice define the rules/obligations for the supervision of prisoners by the staff of the relevant unit, including the obligation to have at least three staff members at the checkpoint, however, as evidenced by the investigation of individual criminal cases, this is not realized in practice. And staff can not provide constant and uninterrupted supervision of prisoners. This is mainly due to the fact that the number of prisoners is proportionally higher than the number of staff who have to continuously visualize prisoners (especially in institutions where there are no video cameras in cells/wards), which increases the risks to the safety of life and health of prisoners;
- Investigation of one of the criminal cases revealed significant challenges in terms of fire safety in one of the penitentiary institutions of the Special Penitentiary Service: the building did not have an address-type fire alarm system; the building did not have automatic fire extinguishing systems; the personnel did not receive the necessary instructions for fire safety measures and evacuation in case of fire; The electrical wiring in the penitentiary facility was artificially connected (transient resistance), which poses a threat to fire safety and poses a high risk of fire. Besides, despite the fact that there was a plan of measures to be taken in case of fire in the penitentiary institution, the functions stated in the plan were not performed by the relevant responsible persons and employees of the institution. It should be noted that despite the significant challenges listed above in terms of fire safety in the penitentiary institution, the Special Penitentiary Service did not apply to the authorized administrative body for measures to ensure fire safety in order to obtain relevant instructions and consultations.

In general, it should be noted that in many criminal cases, there is a tendency that penitentiary staff do not have information about their functions and responsibilities and are guided in the process of activity not by legal acts, but by established practices in the service.

Medical issues

- On the facts of death resulting from the deterioration of the prisoner's health, the investigation assesses the quality of the treatment carried out: how it was diagnosed during the placement in the facility, subsequent treatment and timely and adequate medical care provided in the necessary situation. The findings of the forensic medical examination received on the cases under investigation of the State Inspector's Service show that in the case of deaths of prisoners under the effective control of the Special Penitentiary Service, the cause of death was in some cases chronic or other diseases not identified by medical staff at any stage of the prisoner's treatment. This circumstance raises questions about the quality of diagnosis and treatment provided by the medical staff of the Special Penitentiary Service, which should be determined/excluded by conducting a commission-medical examination;
- In the event that a prisoner in a penitentiary institution requires medical care that cannot be provided to a prisoner in the institution, the legal acts of the Minister of Justice provide for the transfer of a prisoner to a civilian clinic for appropriate medical manipulations. In such a case, the issue of transferring a prisoner to the clinic is considered by the Commission for the Review of Medical Referrals of Accused/Convicts of the Ministry of Justice, which determines the type of intervention. An investigation into one of the cases revealed that the doctor deemed it necessary to intervene the prisoner (of a surgical nature) in an expedited manner, although the commission considered the matter several months late. Accordingly, the transfer of the prisoner to the clinic and the provision of emergency medical services was carried out with a delay of months;
- The investigation of individual cases revealed that the medical card (record) requested from the penitentiary institution does not always contain information on all medical manipulations performed for the relevant prisoner, as well as data on all visits and complaints of the prisoner to the doctor. This may lead to an incorrect conclusion by an expert regarding the quality of the treatment provided.
- In the event of the death of a prisoner, a commission medical examination is appointed by the Service to assess the quality of treatment provided by the staff of the Special Penitentiary Service and to establish a causal link between the death of the prisoner and the actions of the staff. It takes a long time (months, years) to issue such an expert report, which delays the investigation.

11

**Alleged Crimes Committed by Employees of the
Ministry of Internal Affairs and Challenges Related
to their Investigation**

11. Alleged Crimes Committed by Employees of the Ministry of Internal Affairs and Challenges Related to their Investigation

Statistical data

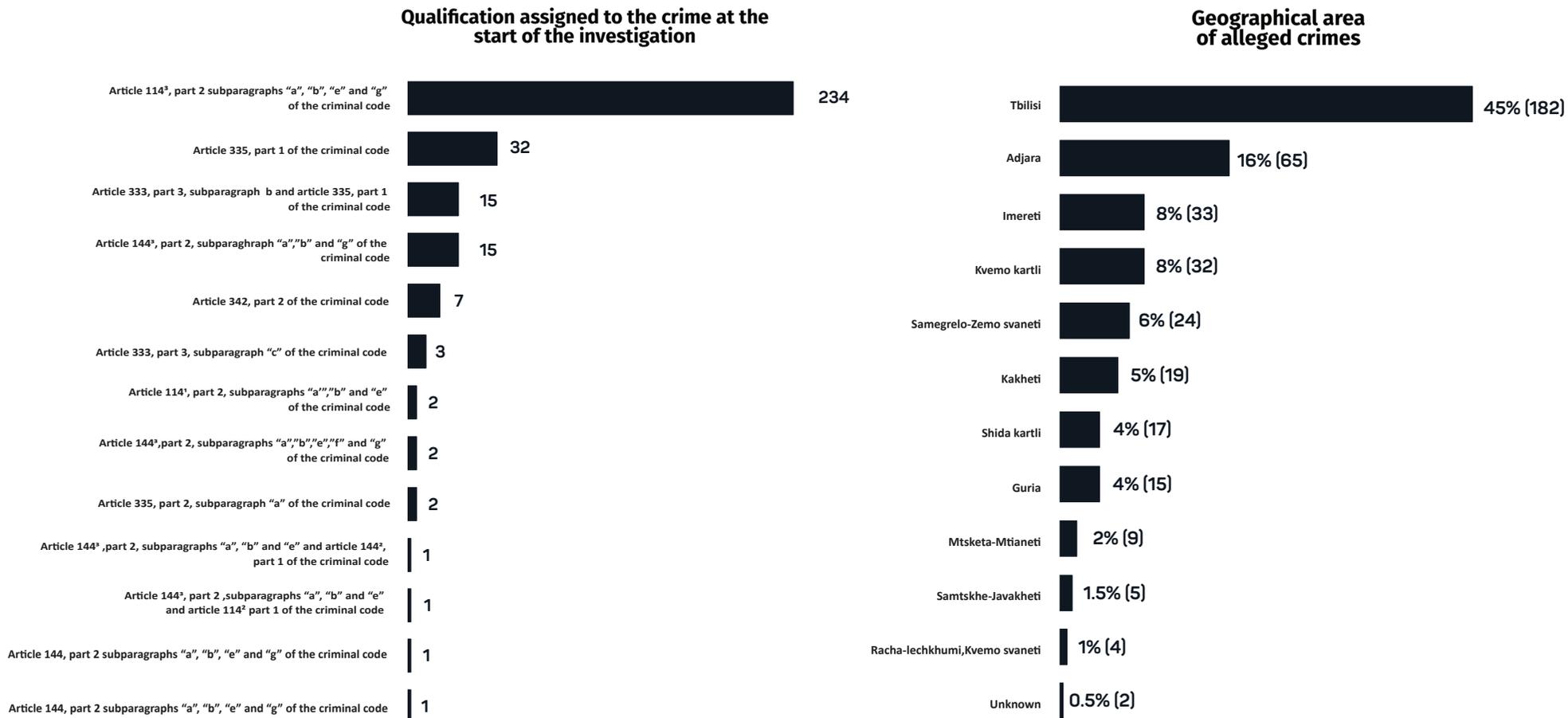
In 2021, the State Inspector's Investigative Department received 1,150 reports regarding 1,224 alleged victims of alleged crimes committed by Interior Ministry staff (in some cases, one report involved action against not one but several individuals).

In 2021, the Investigative Department of the State Inspector's Service launched an investigation into the alleged crime committed by the staff of the Ministry of Internal Affairs in 316 criminal cases regarding 407 alleged victims.²⁶

The majority of criminal cases - 74% - were investigated under Article 333, part 3, subparagraph b of the Criminal Code of Georgia (abuse of official power committed with violence).²⁷

²⁶ This number does not include reports received from the Department of Temporary Detention of the Ministry of Internal Affairs related to injuries received by the detainee prior to the arrest. In these reports the detainees did not indicate any violence by the law enforcers, and the investigation of the circumstances did not reveal any signs of a crime under the investigative jurisdiction of the State Inspector's Service.

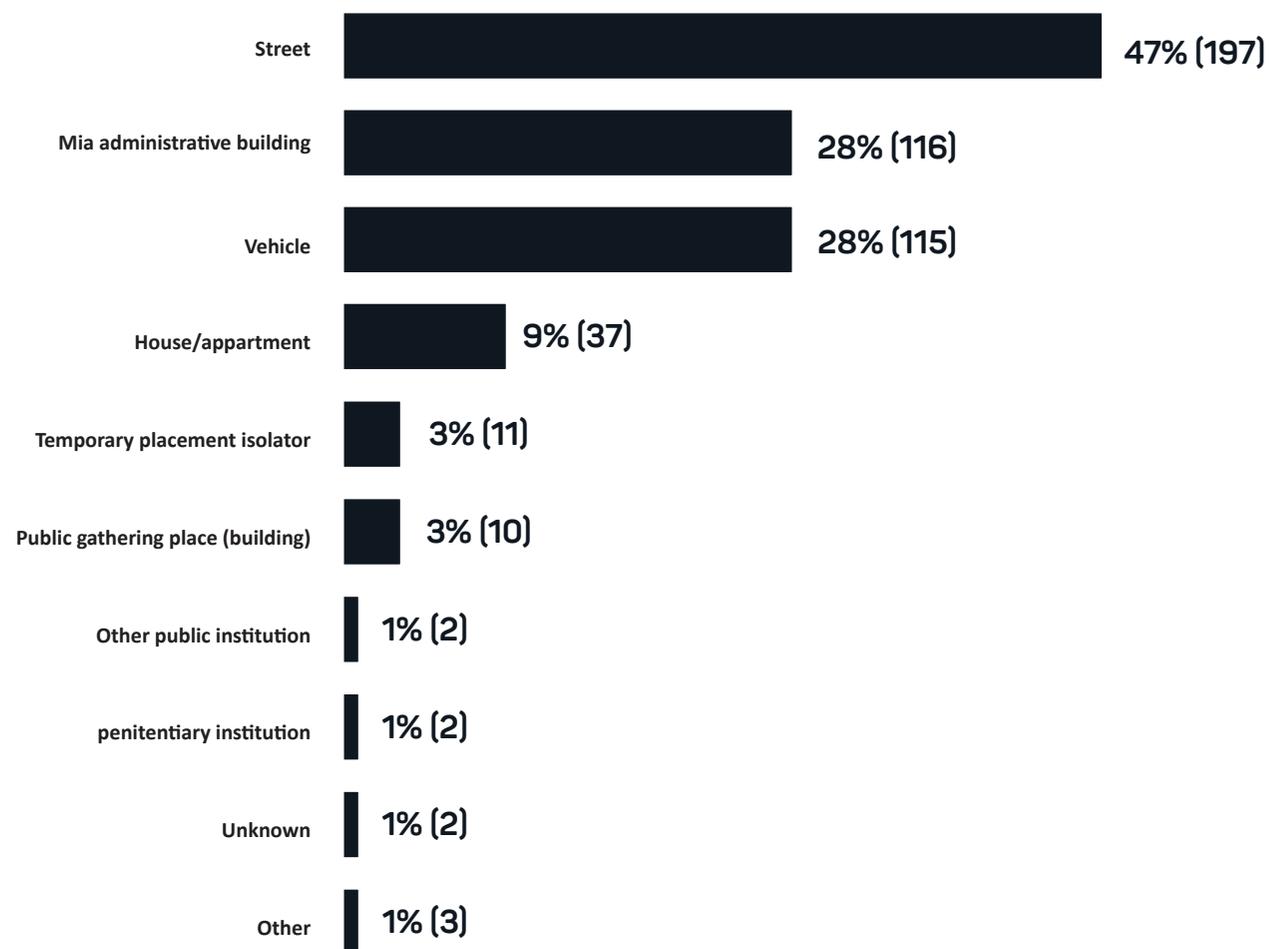
²⁷ One alleged victim in the criminal case could not indicate whether the alleged ill-treatment was carried out by the employees of the Ministry of Internal Affairs or the Special Penitentiary Service. Accordingly, the mentioned criminal case is considered both in the chapter of alleged crimes committed by the employees of the Special Penitentiary Service and the Ministry of Internal Affairs.



Out of the 407 alleged victims, 45% indicated Tbilisi as the site of the action. Also, relatively high percentage rates are observed in Adjara (16%), Imereti (8%) and Kvemo Kartli (8%). Racha-Lechkhumi, Kvemo Svaneti (1%) and Samtskhe-Javakheti (1%) were named as the places by the lowest number of alleged victims.

47% of the alleged victims name a street as a place of possible crime committed by the employees of the Ministry of Internal Affairs, 28% - an administrative building of the Ministry of Internal Affairs, 28% - a vehicle owned by the Ministry of Internal Affairs, and 9% - a house (apartment). Most of the alleged victims indicated several locations.²⁸

The specific place of the alleged crime



²⁸ In case of naming several places of action by one victim, each place was registered separately, therefore the sum of the places of action does not match the number of probable victims.

Treatment of detainees in temporary detention facilities

11

During 2021, the Investigative Department of the State Inspector's Service launched investigation into two criminal cases related to the death of a detainee in a temporary detention facility of the Ministry of Internal Affairs of Georgia. The investigation of the mentioned facts was launched on the signs of a crime under the second part of Article 342 of the Criminal Code of Georgia – negligence of official duties, which resulted in death.

According to the medical examination report obtained on one of the above two criminal cases, the cause of death of the accused was an acute myocardial infarction. In this criminal case, a medical-commission examination is appointed, in which questions are asked about the quality of treatment provided to the deceased (which includes diagnosis, as well as determining the course of treatment and providing first aid). The initial conclusion of the medical examination in the second criminal case has not been received, therefore the cause of death of the detainee is unknown.

An investigation into the deaths of the accused in the temporary detention facility has established that the problem is the inconsistent presence of a doctor in the isolator. In particular, doctors go to the temporary placement isolator if they are called by the isolator staff when the need arises. In one case, a detainee in a temporary detention facility was found unconscious while the doctor was not on the scene, and first aid was provided to the detainee by the isolator staff. As for the second case, at the moment of the person becoming unwell the doctor was on the spot by accident – s/he was called for another person placed in the isolator for a medical examination. Thus, practice shows that the constant presence of a medical worker in solitary confinement is an important guarantee for the provision of adequate medical care to persons under the effective control of the state.

As for the facts of possible violence against the detainee in the isolator, in 2021, five criminal cases were launched on the basis of Article 333, part 3, subparagraph b of the Criminal Code of Georgia - abuse of official power committed with violence.²⁹

Out of the five criminal cases mentioned above, the information provided by the alleged victims in the four criminal cases under the investigation of the Eastern Division regarding the circumstances of the alleged crime is identical. In particular, the detainees indicated that they had been assaulted in a room of the medical staff of the temporary detention facility, where surveillance video cameras were not located, and no electronic monitoring was taking place. In the case of the Western Division, according to the alleged victim, violence was carried out by the isolator staff in the isolator investigation room, where there is also no video surveillance.

²⁹ It should be noted that in 2019-2020, the Investigative Department of the State Inspector's Service did not launch an investigation into the possible violence against the detainees by the staff of the temporary detention isolator or the death of a detainee in the temporary detention isolator.

Out of the five criminal cases listed above, investigation on two started following the report made by the isolator doctor on the hotline of the State Inspector's Service regarding alleged violence by the isolator staff. In the other three cases, according to the report received from the temporary detention isolator, detainees were placed with injuries in the isolator, although they did not relate the origins of the injuries to the actions of law enforcement officials. During the interview with an employee of the State Inspector's Service, the three detainees pointed to the use of violence by the staff of the temporary detention isolator, which became the basis for launching an investigation. At the same time, they stated that the doctors were informed about the violence against them in the temporary detention isolator.

In all of the above cases, the alleged victims indicated that doctors did not see the violence against them. Besides, in the above-mentioned three criminal cases (where the initial reports there was no information about violence committed by the staff of the temporary detention facility), the new injuries sustained by the detainees as a result of alleged violence in the isolator were not reflected in the medical records prepared by the doctors. Among them, in one of the criminal cases, the alleged victim while being placed in solitary confinement had bodily injuries received before the detention as evidenced by a relevant document drawn up by a doctor, although the investigation revealed that the alleged victim received new bodily injuries while in solitary confinement, however the mentioned injuries (which according to the alleged victim, was inflicted by the staff of the isolator), were not recorded in the medical document drawn up during the withdrawal of the person from the temporary placement isolator, nor was any document drawn up regarding new injuries on the body of the person under effective state control.

No summary decision has been issued in any of the criminal cases at this stage.

Challenges in the case investigation process

The results of the investigation and investigative practice of possible crimes committed by the employees of the Ministry of Internal Affairs have revealed a number of challenges in terms of obtaining evidence in this category of criminal cases.

Interviewing police officers

It should be noted that some of the employees of the Ministry of Internal Affairs, despite numerous notifications, did not appear at the investigative body. The main reason indicated for non-appearance for the interviews was the lack of consent from the supervisors (this tendency is mainly observed in the summoning of the employees of Tbilisi Police Department and its structural units, as well as of the Main Unit of Tbilisi Patrol Police Department). According to the interviewees, following to the established practice in the Ministry, they cannot appear in the Investigative Department of the State Inspector's Service without the consent of the immediate supervisor. The process of obtaining consent from the supervisor usually takes several weeks. Also, police officers sometimes explain absenteeism with a busy work schedule, despite being offered the time they want to conduct an interview.

Before the supervising prosecutors repeatedly has been raised the issue of filing a motion with a magistrate judge to question a police officer in such cases, although such motions have never been made on the grounds that the witness did not directly refuse to participate in the investigation and was therefore unfounded to raise the question of interrogation to a magistrate judge.

In order to conduct an effective investigation, it is essential to conduct timely interviews of those involved in the case, including police officers. At the same time, in order to ensure a thorough investigation, the analysis/evaluation of the information received from the above-mentioned persons determines the need for counter-investigative/procedural actions. Therefore, this practice substantially harms the interests of the investigation.

Unlawful use of physical force/special means

In 2021, as in 2020, the issue of the use of physical force/special means while carrying out coercive measures provided by the Law of Georgia on Police is still problematic.

In criminal cases conducted by the State Inspector's Service, in 2021 too, the alleged victims point to law enforcement officers handcuffing tightly, for a long time, and deliberately not using the density regulatory mechanism for violence against them. They also complain about the style of handcuffing. For example, attaching a handcuff to the back of the chair or to the legs of the chair, as well as placing it to the back of in such a way that the hands are turned opposite to each other, which causes severe pain and discomfort when in a certain position (including sitting in the car).

In two criminal cases investigated by the Service in 2021, it was established that officers of the Patrol Police Department of the Ministry of the Interior used excessive, disproportionate physical force against the detainee, resulting in citizens suffering minor health injuries in the form of upper limb fractures. The Deputy State Inspector addressed a well-founded proposal to the Supervising Prosecutor on these criminal cases to initiate criminal proceedings against two employees of the Ministry of Internal Affairs, but the Supervising Prosecutor did not share any of the Deputy State Inspector's proposals.

The Ministry of Internal Affairs has not developed standard operating procedures for the detention of a person, as well as for specific actions permitted for law enforcement officers when using special means (including handcuffs). Such a guidance document would ensure the proportionate use of special means by police officers and the prevention of the use of disproportionate force. Its existence is also important in assessing the proportionality of the force used by the police officer in the investigation and in making a summary decision on the case.

Video surveillance and video recordings

The alleged victims often indicate a place of violence against them (police car, law enforcement office) where, as a rule, there are no neutral witnesses present. Therefore, it is critically important to properly produce audio-video recordings during the entire period of a citizen's effective police control.

Employees of the Patrol Police Department of the Ministry of Internal Affairs do not record audio-video on a continuous basis with body video cameras when communicating with citizens, as this obligation is not regulated, and video recording depends on the desire of the patrol inspector. Also, there is no video recording of the interior of the police vehicle. Consequently, in the presence of a complaint of possible ill-treatment by a potential victim, the Investigative Department of the State Inspector's Service fails to obtain such substantial and objective evidence as videotapes of communication between citizens and police officers.

In addition, the Service receives information about the duration of recording the video by patrol police officer and the duration of the videotape from the Patrol Police Department, and there is no mechanism to verify the accuracy of the response received (in connection with the video recording). Besides, replies to such letters from the Patrol Police Department are sent late. It should also be noted that after receiving a response to the letter (which indicates the number of the so-called "sticker" identifier of the body video camera used by the patrol inspector), it is possible for the prosecutor to refer to the court with a motion to request information.

Video recordings of the surveillance cameras installed in the administrative buildings of the Territorial Units of the Criminal and Patrol Police Departments of the Ministry of Internal Affairs, body video cameras of the Patrol Police Department and video cameras placed in the public space (on the roads and outer perimeter of buildings) are kept at LEPL Center of Public Safety Management "112". Accordingly, court rulings are sent to the said unit. Based on a court ruling, 112 submits video recordings to the State Inspector's Service with a delay of days and sometimes weeks. Thus, it takes about one month to obtain video recordings of a possible crime from the Ministry of Internal Affairs (reply to a letter from the Patrol Police Department, then prosecutor's motion to the court, transfer of video footage from 112 based on a court ruling). Consequently, obtaining new evidence need of which arises as a result of viewing and analyzing the videos requested from 112 is often too late/impossible.

Also noteworthy is the fact that only with the staff of the Patrol Police Department and the LEPL Security Police Department are equipped with the body video cameras, which makes it impossible to obtain video recordings of employees of other units' communication with citizens.

Providing information requested in a letter

Investigators of the State Inspector's Service, upon the commencement of the investigation, apply in writing to the relevant structural units of the Ministry of Internal Affairs to request information on the identities of the perpetrators of the alleged violence against the alleged victim, the persons carrying out detention and their accomplices. This information is provided to the investigation mostly incompletely and with a delay, in more than ten days (sometimes several weeks) after sending a letter, which is a hindrance in terms of timely and effective investigation. Delaying the provision of this information, in addition to hindering the conduct of investigative actions, allows law enforcement to communicate with each other and agree on positions. Moreover, these individuals are often employed in the same structural unit and have a close daily relationship with each other.

It should also be taken into account that a letter requesting information on the identities of the officers in contact with the alleged victim is sent to the same structural unit where the above-mentioned officers work. Accordingly, they are aware of the ongoing investigation by the State Inspector as soon as the investigation begins.

An obstacle to the investigation is that the documents containing important information for the investigation (regarding the circumstances of the detention of alleged victim, the state of his/her health and other circumstances) are kept in the same structural unit where the law enforcement officers who committed the alleged crime are employed. Accordingly, the State Inspector's Service requests the transfer of evidence from the said unit (directly interested in the outcome of the investigation), which may raise doubts about the authenticity of the transmitted documents.

Persons under administrative detention

Most of the alleged victims in the criminal cases before the State Inspector's Service are persons administratively detained by the Ministry of Internal Affairs. In such criminal cases, one of the most important pieces of evidence is the administrative detention protocol, which is produced with flaws. In particular, they do not fully indicate injuries to the body of a detained person, as well as information on the circumstances of the detention, the resistance and the use of force. Besides, the identification of the perpetrators of the alleged crime is complicated by the fact that the protocol of administrative detention does not specify the real persons who carried out detention.

The information provided by the alleged victims regarding the length of time the detainee was effectively under police control is noteworthy. Administratively detained/sanctioned persons who report illegal acts by law enforcement officers are mainly detained under two articles of the Code of Administrative Offenses - petty hooliganism (Article 166) and resisting a law enforcement officer (Article 173). Detainees often report that they were in the police station, police vehicle, and/or the parking lot of the police administration building for several hours prior to their placement in a temporary detention facility when there was no need to do so. Clearly, such an approach to detainees creates a risk of ill-treatment of detainees.

In 2021, there is a negative trend of informing persons detained under administrative law by law enforcement about the grounds for detention and their rights. Especially when, according to an amendment to the Code of Administrative Offenses in 2021, the term of administrative detention was extended to 48 hours. Detainees' ignorance of their rights excludes and/or significantly hinders their realization, including timely application to the State Inspector's Service.

Information provided by the alleged victims

The information provided by the alleged victim to the State Inspector's investigator is one of the key pieces of evidence around which various information should be sought and the facts verified. However, sometimes delayed, incomplete and/or incorrect information provided by them is an obstacle to conducting a thorough investigation and making a summary decision.

In some cases, the alleged victims report an unlawful act against them only after the completion of the criminal case or the administrative case against them. Consequently, it is impossible and/or significantly complicated to obtain evidence such as: medical examination report, video recordings, objects containing biological material, testimony of eyewitnesses, etc. It should be noted that it is sometimes impossible to obtain such evidence even in criminal cases in which the investigating authority received information about the crime even one day or a few hours after the incident.

In cases where possible violence occurred during the arrest of a person, some of the alleged victims provide incomplete/modified information to the State Inspector's investigator in order not to conflict with their favorable position in the ongoing proceedings in the Ministry of Internal Affairs (these risks are particularly high in cases where a person is arrested for resisting law enforcement and/or physically abusing them). Consequently, incomplete and/or false information provided by the alleged victim regarding circumstances relevant to the investigation hinders a thorough investigation of the case and a summary decision.

12

Conclusions

12. Conclusions

The State Inspector's Service already has two years of experience in investigating crimes committed by officials during which, a number of steps have been taken to effectively investigate this category of crimes. In particular: The Investigative Department was recruited through transparent and multi-tier selection process; Forensic experts have been employed for ensuring independence and promptness of the investigation; The Investigative Department of the Service is represented in three major cities - Tbilisi, Kutaisi and Batumi; A 24-hour hotline service has been introduced and launched for swift response to the alleged crimes; In order to tackle the legislative and practical challenges, a number of studies were conducted, which formed the basis of the legislative proposals and internal guidance documents developed by the Service; A child-friendly environment was created to ensure juvenile-oriented investigation process: The participation of a psychologist in all investigative / procedural actions involving minors was ensured; Investigators were trained in Juvenile Justice, The Service submitted a legislative proposal to the Parliament in order to effectively conduct the investigative function and increase the independence of the Service; The Service presented its opinion to the Government and Parliament of Georgia on the draft law on separation of the investigative and prosecutorial functions; An internship system for investigators has been introduced to attract new and qualified workforce; A statistical methodology was developed to produce comprehensive statistical data, the public was informed, and a detailed report was submitted to the Parliament of Georgia on alleged crimes committed by officials; A number of internal guidelines and recommendations were developed, and training courses were conducted to enhance the capacity of the investigators, ensure the protection of the rights of participants in the process and to introduce uniform practices; Various information campaigns were conducted, including in the regions; The Service started cooperation with the investigative agencies of other countries with similar functions; A Code of Ethics has been developed to ensure the high moral standards of investigators; A website was created for the purpose of constantly informing the public; The Service cooperated with other state institutions, non-governmental sector and the Public Defender's Office.

Despite the efforts of the Service, a number of practical and legislative challenges still exist in the process of investigation of the crimes committed by officials, without overcoming which, it is difficult, or sometimes even impossible, to investigate this category of crimes. Consequently, relevant steps shall be taken to ensure the conduct of effective investigation into the crimes committed by officials. In particular:

- **Increasing institutional independence and creation of strong legal safeguards for the inviolability of the head of the Service** - First of all, it is necessary to create strong legal safeguards for the independence of the agency, responsible for the investigation of crimes committed by a representative of a law enforcement authorities, an official or a person equal to an official, and the inviolability of its head. The legislative changes adopted at the end of 2021 (abolishing the State Inspector's Service and early terminating the power of the head of the agency responsible for investigating crimes committed by officials) reaffirmed the importance of strong legislative safeguards. It is obvious that the current legislation fails to provide sufficient guarantees for the practical independence of the Service;
- **Equipping the Service with effective legislative mechanisms** - Prompt and effective legislative steps are needed to reduce dependence of the Service on other institutions. First of all, the investigative and prosecutorial functions shall be explicitly separated. The legislative initiative submitted by the Government of Georgia to the Parliament of Georgia on the separation of investigative and prosecutorial functions fails to meet the challenges faced by the agency responsible for investigating crimes committed by officials (detailed information is provided in the relevant part of the report). It is also important to equip the State Inspector's Service with effective mechanisms that will reduce its dependence on the decisions of other agencies and make the evidence-gathering process more efficient (e.g. granting unimpeded access to penitentiary establishments and temporary detention facilities; imposing a legal obligation on provision of information on alleged crimes in a timely manner; setting a tight timeframe for reviewing the letters of the Service, etc.). On 24 December 2021, the State Inspector's Service submitted a legislative proposal to the Parliament of Georgia, which addresses most of the independence related challenges presented in the report;
- **Clearly stated strict policy towards officials committing crimes** - There is a need for clearly stated strict policies (expressed in their decisions and statements) of the relevant state agencies (law enforcement authorities, Prosecutor's Office, Court) towards those officials who infringe the citizens' rights by committing crimes. Such clear messages are one of the strongest mechanisms for the prevention of this category of crimes;
- **Improving the cooperation quality from the law enforcement and other public agencies** - There is a need to increase the quality of cooperation from the law enforcement and other public agencies to promptly transfer the report about alleged crimes, fully and timely submit requested information / evidence (audio-video recordings, written documents) (as indicated in the report, the degree of cooperation is low);

- **Strengthening the role of the Parliament of Georgia** - It is necessary to strengthen the role of the Parliament of Georgia and its involvement in the process of overcoming the legislative challenges faced by the Service, as well as in terms of overseeing the quality of cooperation of other agencies with the State Inspector's Service;
- **Proper functioning of audio-video monitoring in law enforcement agencies** - there is a need to ensure proper functioning of audio-video monitoring systems in law enforcement agencies to exclude accidental or intentional damage / destruction of video recordings;
- **Improvement of the legal acts regulating the rights and responsibilities of officials** - there is a need to improve, or in some cases develop, the legal acts regulating the rights and responsibilities of the employees of the law enforcement agency. The cases were revealed when their specific responsibilities are not defined at all (and they act according to the rules implemented in practice) and / or the acts regulating their rights and responsibilities are vague giving each official the discretion to interpret the responsibility in his / her own way. This poses a threat to the proper performance of the responsibilities assigned to the officials, while in case of improper performance of their responsibilities, complicates to ascertain the objective truth and the guilt of a concrete person;
- **Strengthening the expert institution and improving the examination procedures** - it is necessary to strengthen the expert institution and improve the legislation regulating the expertise, as the insufficient human resources of the expert institution and the legislation regulating the commission forensic medical examination fail to ensure the conduct of examination in a timely manner;
- **Increasing regional offices and human resources** - It is crucial to strengthen the agency investigating the crimes committed by officials with infrastructure and human resources. The Service should have offices in all regions of Georgia for ensuring effective investigation. In addition, the number of investigators and criminal cases should be commensurate with each other in order to enable the conduct of an effective (timely) investigation;
- **Raising public awareness** - The Service needs to continue its work to raise public awareness on its activities and investigative functions. Public awareness is directly related to the prompt access to the Service, the conduct of an effective investigation and also, determines the degree of public confidence towards the Service.

**V. Control over the Activities
Carried out at the Central Databank of
Covert Investigative Actions and
Electronic Communications
Identification Data**

01

Introduction

1. Introduction

The right to personal life, privacy and communication is one of the fundamental human rights. Intensive interference with these rights, such as covert surveillance and/or wiretapping, is subject to special control and may be exercised only in cases strictly provided by law, if it is an appropriate, proportionate and last resort of achieving a legitimate aim.

Under current legislation, in order to control covert investigative actions, the State Inspector's Service is provided 24-hour with court rulings and prosecutorial decrees, which allow one or other investigative body to conduct covert investigative actions in accordance with the law. The State Inspector's Service is also receiving protocols on the conduct of covert investigative actions by law enforcement agencies and on the destruction of materials obtained as a result of covert investigative actions. In parallel with receiving the above-mentioned documents, the State Inspector's Service monitors the covert investigative actions through electronic systems, through which the State Inspector's Service has real-time vision on the current and completed processes of covert wiretapping and telephone communication recordings carried out by the LEPL Georgian Operational-Technical Agency. Accordingly, the State Inspector's Service has the opportunity to compare the received material documents (court rulings and prosecutor's rulings) with the data reflected in the electronic system by the LEPL - Georgian Operational-Technical Agency. At the same time, the State Inspector's Service, within the framework of monitoring, in the cases defined by the Criminal Procedure Code of Georgia, has the right to suspend the ongoing secret wiretapping and recording of the telephone communication.

In parallel with the above-mentioned constant monitoring, the State Inspector's Service, both in the case of citizens and on its own initiative, in the framework of control over the conduct of covert investigative actions, including the issue of informing the persons against whom covert investigative actions have been conducted, carries out inspections of investigative bodies and LEPL - Georgian Operative-Technical Agency. In case of detection of an administrative violation within the framework of the inspection, the State Inspector's Service takes measures (imposes administrative sanction on the violator); and in case of detection of signs of crime in the process of the activity, the Service notifies the authorized investigative body.

It should also be noted that the oversight authority of the State Inspector's Service does not extend to the processing of personal data classified as state secret for the purposes of state security, defense, intelligence and counterintelligence activities. Consequently, the Service lacks legislative mechanisms and leverage to investigate the facts of covert surveillance and wiretapping carried out in alleged breach of legislative requirements in this area.

02

**Disclosure of Covert
Recordings in 2021**

2. Disclosure of Covert Recordings in 2021

In 2021, there were incidents of publication of telephone communication between various persons and of other types of secret recordings. The disclosed material raises questions about various persons, about illegal covert surveillance and wire-tapping. The sense of insecurity appeared in public and the publication of the materials also affected the public trust in state institutions. Although the State Inspector's Service lacks legislative mechanisms and leverage to detect (and subsequently investigate) facts of covert surveillance and wiretapping carried out without a court order and a prosecutor's decision, the authority granted to the Service by the Law of Georgia on the Service of the State Inspector (control of activities carried out at the Central Bank for Covert Investigative Actions and Electronic Communications Identification Data) brings increased public expectations towards the Service. Accordingly, the published material raised questions about the effectiveness of the State Inspector's Service.

Following the publication of the materials, 22 persons appealed to the State Inspector's Service, stating that the records containing their telephone communications had been included in the published material. They asked the Service to respond and confirm/deny whether they were undercover surveillance/wiretapping carried out against them without a court order / prosecutor's order. The State Inspector's Service, within its authority, verified the court rulings received by the Service, the decisions of the Prosecutor and the compliance of the mentioned documents with the data contained in the electronic control system and the special electronic control system. As it was established that no covert investigative action had been carried out against any of them, about which the obligation to inform the subject of the covert investigative action would have arisen, the appeals submitted to the Service were sent to the Prosecutor's Office of Georgia for further proceedings.

In 2021, with the support of the European Union (EU) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), a study was prepared on international mechanisms for overseeing covert investigative measures (protection of the right to personal and family life and protection of personal data). The document provides legal instruments under the UN, the Council of Europe and the European Union, as well as the case law of the European Court of Human Rights, and an overview of the oversight systems of the EU and Council of Europe member states.

³⁰ See the statement issued by the State Inspector Service regarding this fact -

https://www.facebook.com/permalink.php?story_fbid=2570250059784490&id=295537447255774

In 2021, a comparative study was prepared with the support of the Office of the High Commissioner for Human Rights (OHCHR) and the Open Society Foundations Georgia (OSGF), assessing the compliance of Georgian legislation on recording and surveillance of communications with standards developed by the European Court of Human Rights.

The purpose of the research was to analyze the Georgian legislation, identify gaps in the legislation, study international experience in this area and determine the Service's evidence-based vision regarding the role of the Service in monitoring covert investigative actions.

Unfortunately, the Constitutional Court of Georgia, which is considering the case N11231 of June 1, 2017 on the issue of the constitutionality of several norms related to covert investigative activities, computer data, data bank and supervision, has not yet made a decision. The decision of the Constitutional Court would help to refine the legislation regulating covert investigative actions.

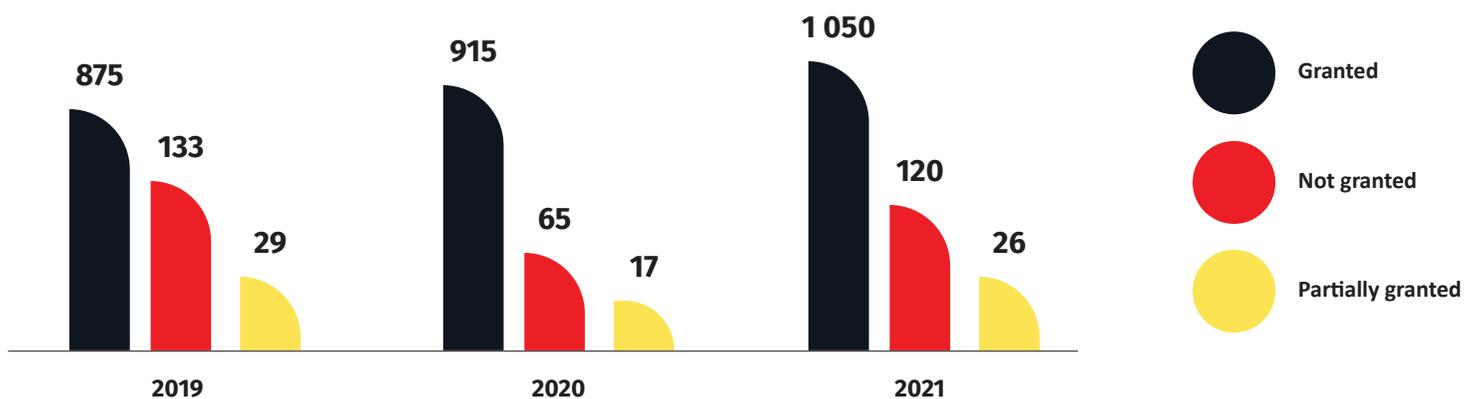
03

Statistical Data

3. Statistical Data

In 2021, the court considered 1996 motions for covert wiretapping and recording of telephone communications, in 2020 - 997, in 2019 - 1037. In 2021, compared to the previous year, the rate of full satisfaction of motions by the court decreased (in 2019 this figure was 84%, in 2020 - 92%, and in 2021 - 88%).³¹

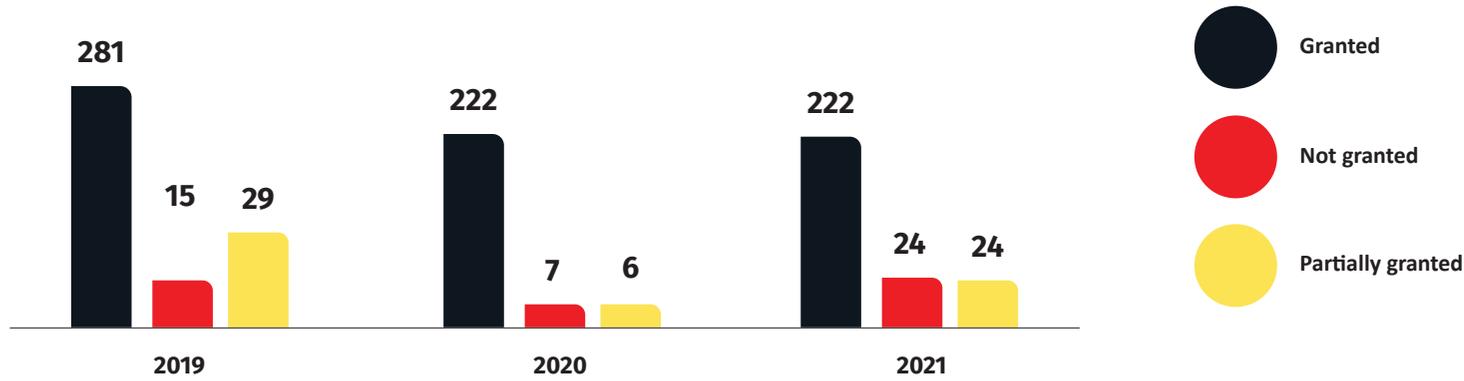
Court rulings on covert wiretapping and recording of telephone communications



As for the extension of the term of covert wiretapping and recording of telephone communications, the court considered 270 motions on this issue in 2021, 235 - in 2020 and 325 - in 2019. As for the approval rate by the court, in 2021 the rate of approval of motions for extension requests was reduced. (In 2019, this figure was 86%, in 2020 - 94%, and in 2021 - 82%).

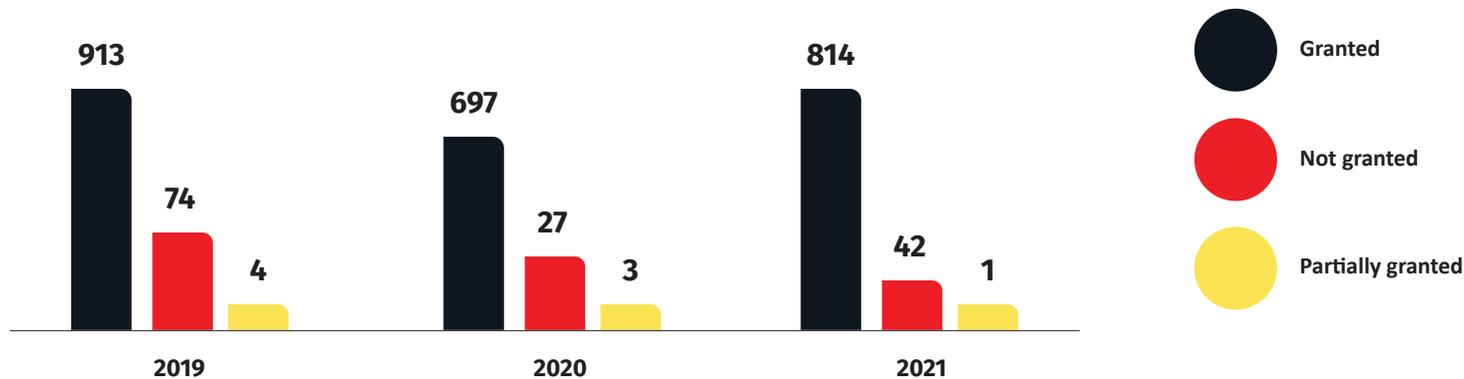
³¹ აღნიშნული სტატისტიკური მონაცემები წარმოადგენს ამ ეტაპისთვის საქართველოს უზენაესი სასამართლოს ხელთ არსებულ მონაცემებს, რომელიც შესაძლოა მათ მიერ დაკორექტირდეს მცირედით.

Court Rulings on Covert Telephone Wiretapping and Extension of Recording Time



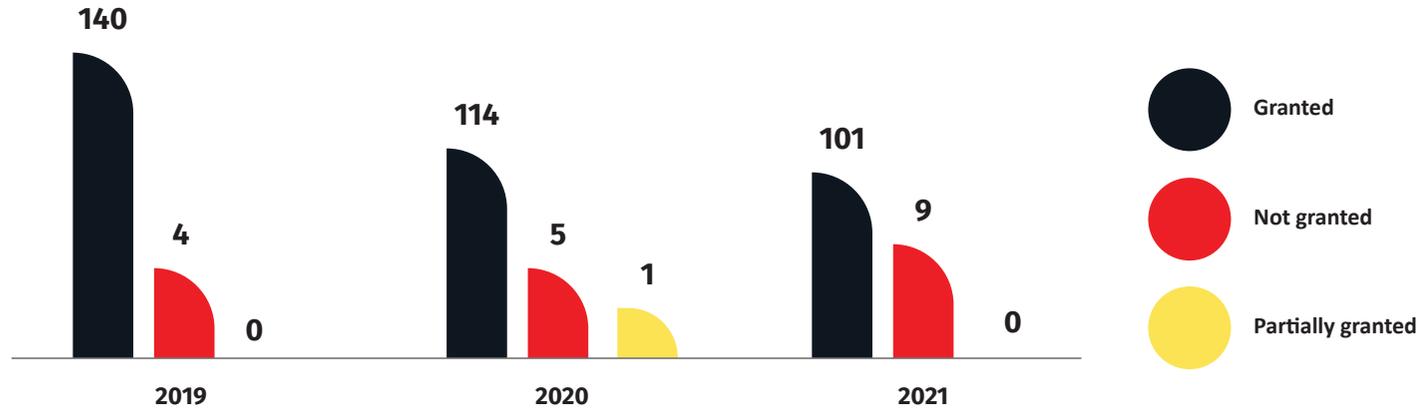
After covert wiretapping and recording of telephone communications, majority of the motions are on the covert video and/or audio recording, or photo-taking. In 2021, the court considered 857 motions for covert video and/or audio recording, or photo-taking, in 2020 - 727, in 2019 - 991 . As for the rate of approval by the court, in 2020-2021, the rate of full approval of this type of motion is almost equal (in 2019 the rate was 92%, in 2020 - 96%, and in 2021 - 95%).

Court rulings on covert video and/or audio recording, photo-taking



As for covert video and/or audio recording, extension of the photo-taking, the court considered 110 motions on this issue in 2021, 120 - in 2020 and 144 - in 2019. As for the rate of approval by the court, in 2021 the rate of approval of motions for extension of time has decreased (in 2019 this rate was 97%, in 2020 - 95%, and in 2021 - 92%).

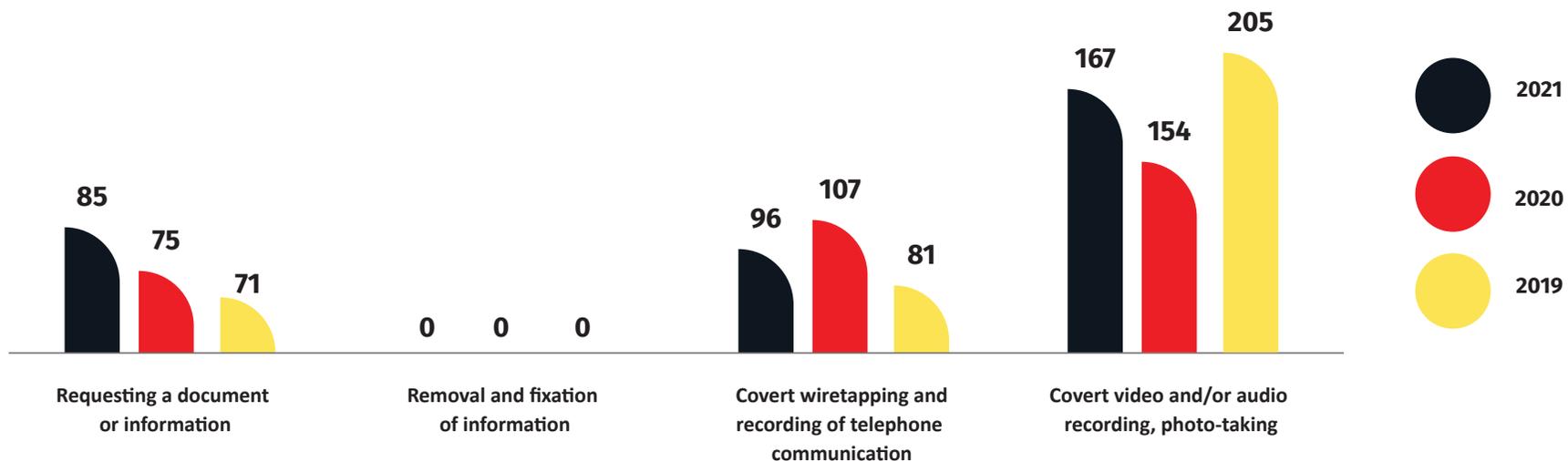
Court rulings on extension of time for video and /or audio recording, photo-taking



Five motions were submitted to the court in 2021, two motions - in 2020, and eight motions - in 2019 on covert investigative action - removal and fixing of information from the communication channel, computer system. All of them (all three years) were granted by the court.

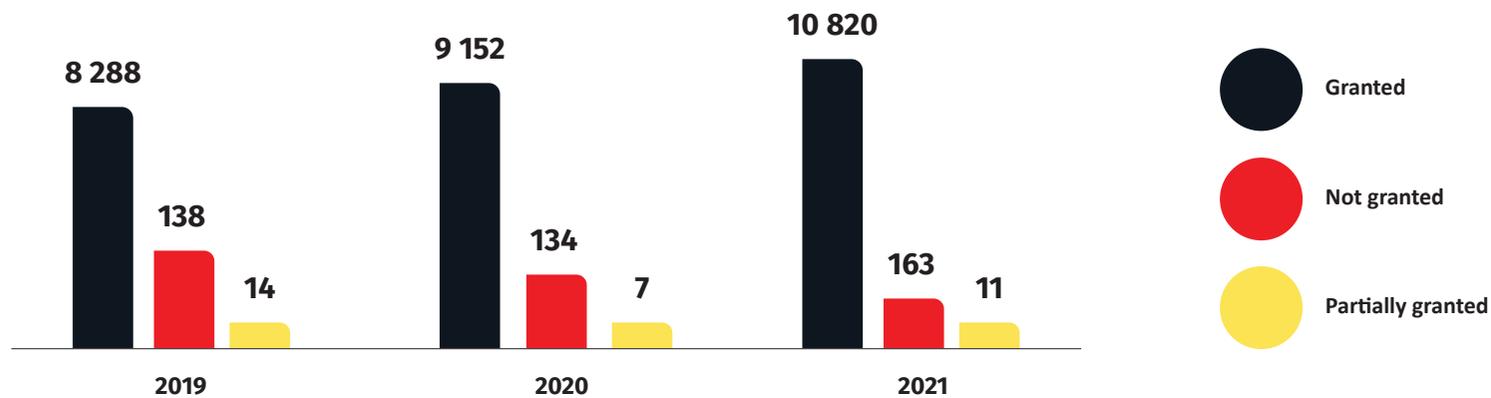
As for the statistics of the prosecutor's decision received by the State Inspector Service on conducting covert investigative actions as a matter of urgency, most of the decisions are on covert video recording, audio recording and/or photo-taking.

Decisions of the prosecutor received by the State Inspector's Service



The State Inspector's Service also receives court rulings on the conduct of an investigative action (request for a document or information) under Article 136 of the Criminal Procedure Code of Georgia. In 2021 10,994 motions were submitted, in 2020 - 9,293, in 2019 - 8,440. As for the rate of approval of motions by the court, their rate is at the same mark for the last three years (in 2019 this rate was 98%, in 2020 - 98%, and in 2021 - 98%).

Court rulings submitted to the Service - on the request for a document or information



The State Inspector's Service supervises the activities carried out by the LEP-Georgian Operational-Technical Agency at the Central Bank for Electronic Communication Identification Data through the electronic control system of the Central Bank for Electronic Communication Identification Data.

Based on the permit issued by the court, the data in the Central Bank for Electronic Communications Identification Data was processed in 2021 in 77 cases, in 2020 - 78, and in 2019 - 81 cases on the basis of a court ruling.

No deficiencies or incidents were detected during the supervision of the activities carried out at the Central Bank for Electronic Communications Identification Data in 2021.

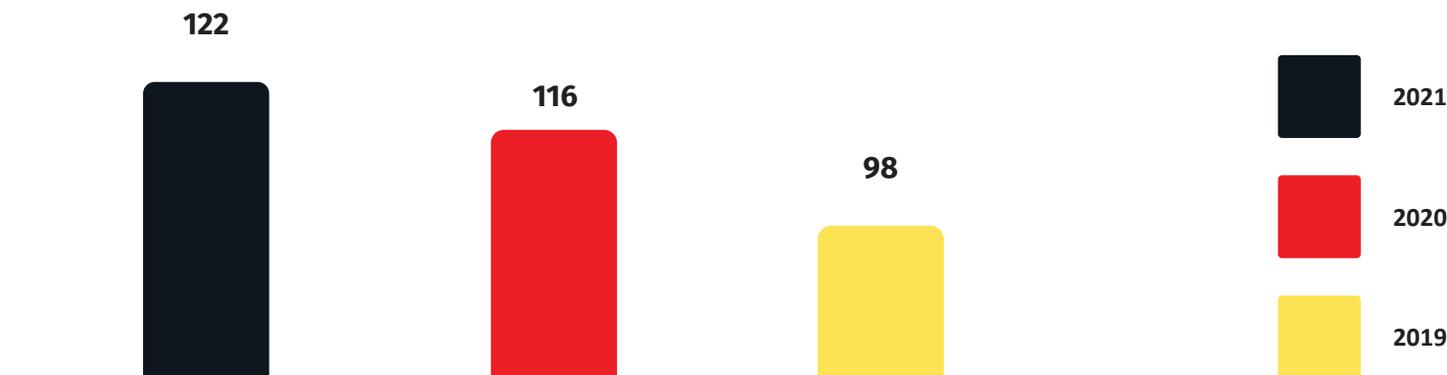
04

**Use of the Suspension
Mechanism by the Service**

4. Use of the Suspension Mechanism by the Service

The State Inspector's Service used the suspension mechanism of covert wiretapping and recording of ongoing telephone communications (via electronic control system) in 2021 – 122, in 2020 - 116, and in 2019 - in 98 cases.

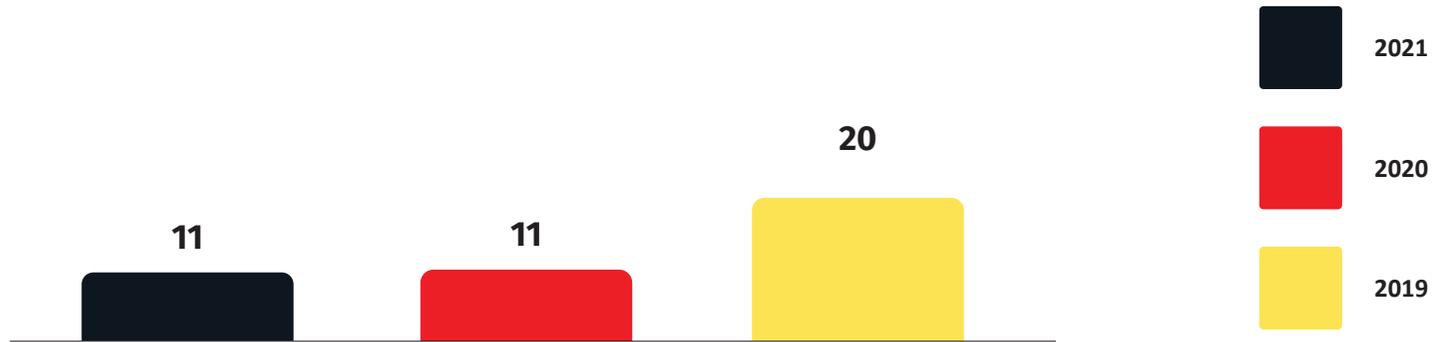
Use of suspension mechanism by the Service



The reason for the suspension of the wiretapping and recording of the current telephone communication for the most part was the failure to appear at the State Inspector's Service in the timeframe established by the Criminal Procedure Code or the ambiguity-inaccuracy of the prosecutor's decision.

LEPL - Georgian Operational-Technical Agency was notified (via electronic control system) about the ambiguity-inaccuracy in the court rulings 11 times in 2021, 11 times - in 2020 and 20 times - in 2019. In all cases, the ambiguities found in the court rulings by the State Inspector's Service were eliminated within the timeframe set by the Criminal Procedure Code of Georgia.

Use of ambiguity-inaccuracy notification mechanism by the Service



The State Inspector's Service found ambiguities-inaccuracies in the court rulings and prosecutor's rulings on the wiretapping of telephone communications: regarding the date of receipt, the time limits for conducting the covert investigative action, the consumer telephone numbers allowed for covert surveillance-recording.

05

**Processes Examined by the
Service**

5. Processes Examined by the Service

In order to control the lawfulness of covert investigative actions, in 2021, at the initiative of the Service, the LEPL - Operational-Technical Agency of Georgia, the Prosecutor's Office of Georgia and the Electronic Communications Company were inspected.

The inspection did not reveal any violations, however, in order to improve the data processing and ensure compliance with the Law of Georgia on Personal Data Protection, the Service issued 10 mandatory instructions and one recommendation.

It should be noted that in 2021, inspection of the Investigation Service of the Ministry of Finance of Georgia also started, which includes examination of the organizational and technical measures taken to ensure the safety of the materials obtained through covert video and/or audio recordings (due to the situation caused by COVID-19 in the Investigation Service of the Ministry of Finance, it was impossible to conduct an on-site inspection, due to which the inspection could not be completed in 2021).

In 2021 the Service inspected:

- LEPL - Georgian Operational-Technical Agency - examination was initiated by the Service. It was deemed necessary to study the systems used by the Agency for covert surveillance and recording as they had changed significantly since 2017, and a similar scale inspection was last conducted at the Agency in 2016. During the inspection, the Service examined the lawfulness of personal data processing through the real-time communication stationary technical means by the Agency when carrying out the investigative measure under the Article 143¹, Part 1, subparagraph a of the Criminal Procedure Code – “covert wiretapping and recording of telephone communication”. The inspection examined classified documents, network and software facilities, as well as technical capabilities used by electronic communications companies for covert investigative purposes. The fact of the violation was not established as a result of the inspection. However, shortcomings were identified and for their elimination the LEPL - Georgian Operational-Technical Agency was given mandatory instructions and recommendations, which are in the process of implementation;

- Prosecution Service of Georgia - examination was initiated by the Service, as in order to effectively control covert investigative actions, it is crucial that the Service possess all the information and documents related to these actions. Within the framework of the inspection, the Service examined the compliance of secret investigative actions carried out by the Prosecutor's Office of Georgia as an investigative body during 2021 - undercover surveillance and recording of telephone communications, covert video and/or audio recording, photographing – with the requirement of Article 143⁶, part 14 of the Criminal Procedure Code to submit to the Service the protocols on the completion of the investigative action. According to the above-mentioned article of the Criminal Procedure Code, the competent state body draws up a protocol upon completion of the covert investigation, which is handed over to the investigative body, which is obliged to immediately submit the document to the State Inspector. The fact of the violation was not established as a result of the inspection. However, shortcomings were identified regarding the non-submission of the document to the service within the time-frame set by the Criminal Procedure Code. In order to eliminate them, a mandatory instruction was issued, which is in the process of fulfilment.
- Electronic Communication Company - despite the positive dynamics of the reports submitted to the Service on the transfer of electronic communications identification data to the law enforcement agencies by the Company in accordance with Article 136 of the Criminal Procedure Code of Georgia, in order to exercise effective control over covert investigative actions, the State Inspector's Service inspected the communication company, in the framework of which the issue of fulfilling the obligation to notify the Service about the transfer of identification data of electronic communications to the law enforcement bodies in 2021 was studied. During the examination, the documents received from the court and the electronic communications company were processed and analyzed. Their comparison and analysis revealed that in two cases the company had not submitted a report to the Service on the transfer of data to the law enforcement agency. The Electronic Communications Company could not be held administratively liable, as the two-month statute of limitations established by the Code of Administrative Offenses of Georgia had expired.

06

Conclusions

6. Conclusions

The analysis of the legislation regulating covert investigative actions, the activities carried out by the State Inspector's Service to monitor covert investigative actions and the processes studied reveal that the following legislative and practical challenges exist in this area:

- **Revision of the State Inspector's oversight function and legislative leverage** - control of the State Inspector's Service does not extend to covert investigative actions carried out for counterintelligence purposes. Consequently, the Service lacks the ability to inspect the part of the system that contains information on covert investigative activities carried out for counterintelligence purposes. Also, the State Inspector's Service does not have the practical ability to inspect a body conducting covert investigative action (including investigative bodies) without prior notice and notification. A similar capability would increase the effectiveness of control. In view of the above, it is necessary to review the functions, role and legislative and practical mechanisms assigned to the State Inspector's Service as a body carrying out control over covert investigative actions. In this regard, the role of the Parliament of Georgia and the timely decision of the Constitutional Court of Georgia are important. The decision of the Constitutional Court will help to refine the legislation governing covert investigative actions and will be a guide for the legislature, including in defining the role and functions of the State Inspector's Service in monitoring covert investigative actions;
- **Improving the legislation regulating the conduct of covert investigative actions** - a) It is necessary to reconsider the expediency of influencing the provisions of Articles 136-138 of the Criminal Procedure Code of Georgia by Articles 143²-143¹⁰ of the same Code (regulating covert investigative actions), as in practice (including the court case law) this issue causes differences of opinion. This causes that some judges and prosecutors do not send the ruling/resolution on the investigative action provided for in Article 136 of the Criminal Procedure Code to the State Inspector's Service; b) it is necessary to revise the articles listed in the second part of Article 143³ of the Criminal Procedure Code of Georgia, on which covert investigative actions are allowed. This article, which has been amended several times since its enactment (2014), provides for an extensive list (wiretapping and recording of telephone communication for more than 200 articles) and, consequently, gives unlimited powers to investigative and judicial bodies. Even more problematic is the authority given to the state in connection with covert wiretaps under the Georgian Law on Counterintelligence, both in terms of crimes and the deadlines of covert investigative actions;

c) The terms of destruction of the material obtained as a result of covert investigative action should be reviewed. According to the Code of Criminal Procedure, material obtained as a result of a covert investigative action, which the court recognizes as inadmissible evidence, must be destroyed 6 months after the decision of the court of final instance. The storage of such material for such a long period of time, the need for which is unclear, poses risks of invasion of personal life. The provisions governing the sorting, confidentiality and destruction procedures of information obtained as a result of surveillance under the Law of Georgia on Counterintelligence are even more obscure; d) the issue of informing the data subject about the conduct of a covert investigative action is vague and needs clarification. In particular, according to Article 143⁹ of the Criminal Procedure Code of Georgia, the decision on when a person should be notified of a covert investigative action and be handed over the relevant verdict and material, both during and after the proceedings, is made by the prosecutor. However, the Code does not regulate who has the obligation to inform: the decision-making prosecutor or the representative of the investigative case of which the investigation was conducted. This creates the threat of violation of the rights of data subjects (failure to provide information to the data subject about the covert investigative action or delay); e) the Criminal Procedure Code of Georgia does not stipulate the deadline for submitting a report confirming the destruction of materials obtained as a result of a covert investigative service to the State Inspector (Article 143⁸, Part 5); which gives data processors freedom of action and complicates to exercise effective control. In addition, it is not regulated specifically who is obliged to submit a report on the destruction of materials obtained as a result of covert investigative actions to the Service;

- **Accessibility of the by-laws regulating the conduct of covert investigative actions** - during the inspection of the LEPL - Georgian Operational-Technical Agency by the State Inspector's Service, the by-laws regulating the conduct of covert investigative actions, which are not accessible to data subjects making this process unpredictable, were studied. Given that most of the studied documents do not contain information knowledge of which by the data subject would damage the process of execution of covert investigative actions and/or endanger its course, it is necessary to reconsider the need for the secrecy of their content/part of the content. Acts enabling the state to intervene in the effective exercise of a person's right to privacy and the right to communication must be formally promulgated and made available to the general public;
- **Informing data subjects about the covert investigative actions** - in practice, informing data subjects about covert investigative actions against them, in some cases, is delayed and/or in violation of the rules established by the Code of Criminal Procedure. Special attention should be paid to this issue and it is desirable to tighten sanctions for non-performance or improper performance of this duty;

- **Destroying irrelevant information obtained as a result of covert investigative action** - according to the Code of Criminal Procedure, based on the prosecutor's decision the information should be destroyed immediately upon termination or finalization of the covert investigative action if it has no value for the investigation. Criminal materials disseminated through the media show that in some cases, such (irrelevant) information is placed in a criminal case and it is passed on to the parties. Clear internal regulations are needed regarding the sorting of information obtained as a result of covert investigative actions and the destruction of data unrecognized by the investigation (which may include personal information);
- **Strengthen cooperation with the State Inspector's Service** - In some cases, electronic communications companies do not provide the State Inspector's Service with the information on the facts of the transfer of electronic communications identification data to the relevant state authorities within the 24-hour period prescribed by law. At the same time, law enforcement agencies are insufficiently submitting protocols to the State Inspector's Service on the completion of a covert investigative action and the destruction of materials obtained within that action.

VI. Structure, Human Resources and Institutional Development of the State Inspector's Service

01

Organizational Arrangement

1. Organizational Arrangement

On July 21, 2018, the Parliament of Georgia adopted the Law of Georgia on the State Inspector Service, on the basis of which the Office of Personal Data Protection Inspector was transformed into the State Inspector Service and in parallel with the existing functions (protection of personal data and monitoring of covert investigative actions), the Service was given the authority since 1 November, 2019 to investigate certain crimes committed by a representative of the law enforcement body, an official or an equated person.

After the establishment of the Service in a new form, in order to effectively implement the assigned powers, the need for an effective new organizational arrangement arose on the agenda. Consequently, a number of organizational development-oriented decisions were made by the Service over the past three years.

In parallel with the expansion of functions, three new structural units were added to the Service: the Investigative Department, the Analytical Department and the General Inspection.

Following the enactment of the investigative powers of the Service, the need arose to modernize the existing organizational arrangement and to make changes in response to the challenges facing the organization. Accordingly, in 2020, the Service decided to reorganize and establish a new organizational arrangement. The purpose of this process was to avoid possible duplication between structural units, simplify the decision-making process, reduce bureaucracy, increase management efficiency and quality of service.

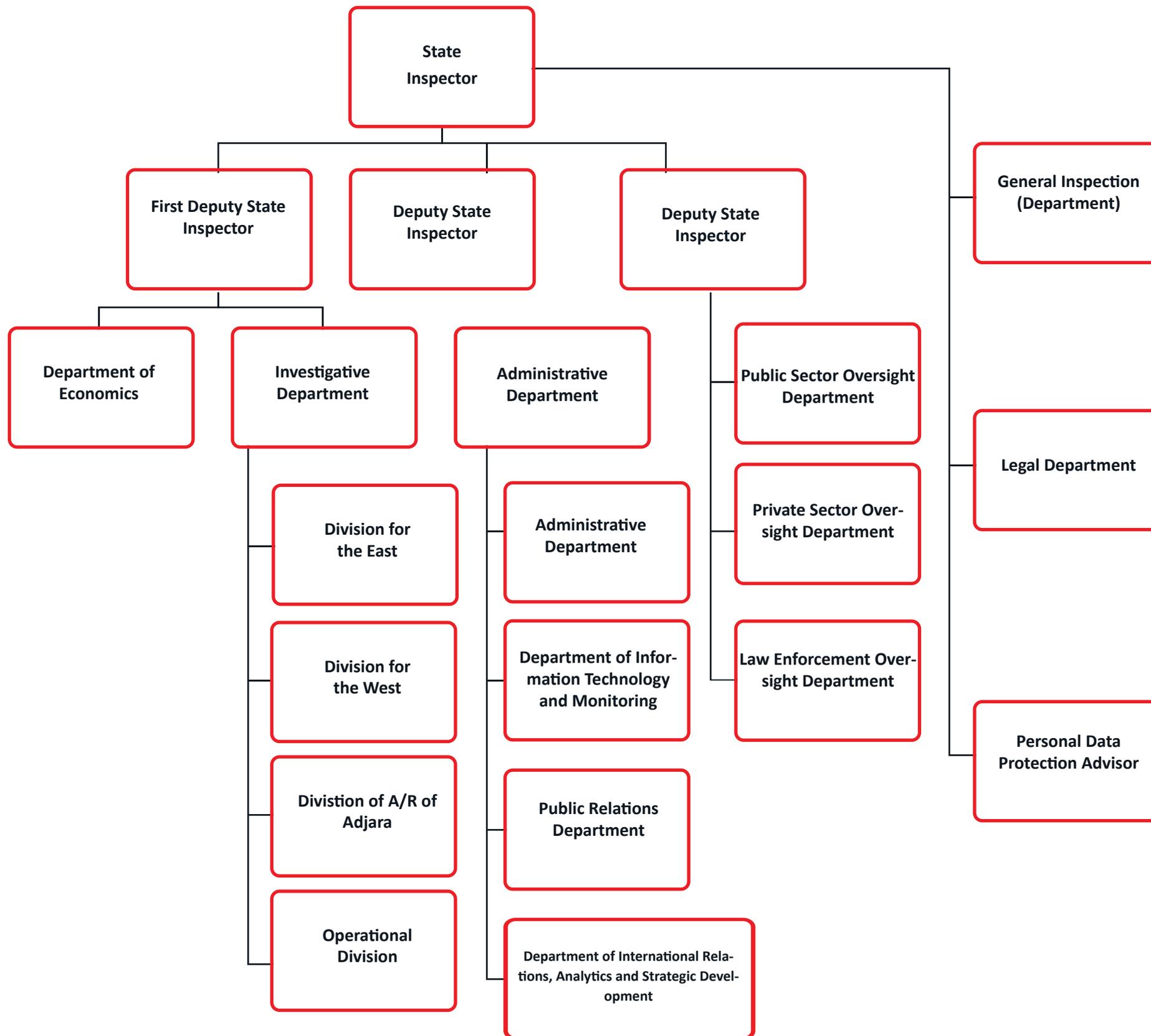
As a result of the reorganization, private and public sector oversight departments were established as independent departments, as a result of which monitoring of personal data protection was divided into three departments, respectively - the Law Enforcement Oversight Department, the Private Sector Oversight Department and the Public Sector Oversight Department. The purpose of such a sectoral approach to monitoring personal data protection was to establish consistent approaches in the relevant areas, to establish uniform practices and to strategically plan the measures to be implemented. Besides, as a result of the reorganization, an operational division was established as a separate structural unit, the main function of which

was to facilitate the effective investigation of crimes under the Service. It should be noted that in the process of reorganization, a number of legal acts were revised and newly drafted, including: the Statute of the Service, staff list, internal regulations of the Service, job descriptions required for each Position of the Service, additional and special qualification requirements and other acts related to the Service activity. It should be noted that none of the employees of the service were fired as a result of the reorganization.

The staff of the service increased since 2022. It was planned to create a new structural unit, which would monitor the activities of employees, both in terms of personal data protection and investigation. However, taking into consideration the law adopted by the Parliament of Georgia on December 30, 2021 (which abolished the State Inspector's Service and established two other services on its basis), no changes were made to the existing organizational arrangement.

02

Structure of the Service



03

Human Resources

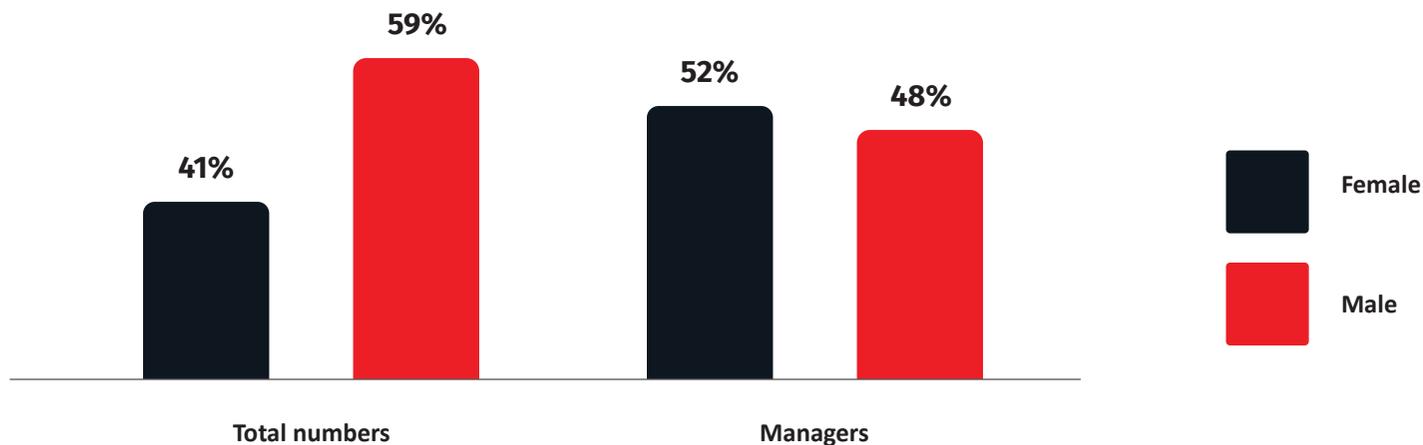
3. Human Resources

In 2019, in parallel with the transformation of the Personal Data Protection Inspector’s Office into a State Inspector’s Service, the number of employees increased from 53 to 116.

As of 2020, the number of staff members of the service was set at 125, which has remained unchanged throughout 2021.

At the end of 2021, the service employed 110 people, of whom 45 were women and 65 men. It should be noted that out of 25 employees in the managerial position, 13 were women and 12 were men.

Distribution of employees by gender



The staff of the Service has increased from 125 to 150 since 2022, however, due to the law adopted by the Parliament of Georgia on December 30, 2021 (which abolished the State Inspector Service and created two other services based on it), vacancies were not announced for the vacant positions.

In parallel with organizational development, the Service was constantly filled with qualified staff. To this end, to ensure the initiation of the investigative function, in 2019 , the Service announced a vacancy for 71 vacant positions, out of which the competition was held from October 1, 2019 to December 31, 2019 for 53 vacancies.

Similarly, in 2020 as well as in 2021, the need to mobilize new human resources was again identified. Accordingly, the Service announced a competition for 30 vacant positions in 2020 and 64 - in 2021.

From the day of the establishment of the State Inspector's Service, one of the most important priorities for the Service has been to attract qualified and highly ethical staff, whose selection would have been based on the principle of transparency. Accordingly, a high standard of conduction competitions was established by the Service, which involved selecting a winning candidate based on a multi-stage competition procedure. Candidates' qualifications, work experience, professional skills, personal qualities and motivation were crucial in the decision-making process. In order to conduct the open, closed and internal competitions announced by the Service as transparently and objectively as possible, the Competition Commission was constantly composed of representatives of the Service and invited external members (including from the civil sector and academia).

The Service has always paid special attention to promoting the career development of current, highly qualified and motivated employees. For this purpose, in 2019, 2020 and 2021, several internal competitions were announced within the service, as a result of which 21 employees were promoted in the field of personal data protection, as well as investigative and other areas.

An internship and mentoring program was introduced by the Service with the support of the United States Department of Justice (DoJ) to attract new and motivated staff. First it was carried out in the investigative direction, as a result of which, in 2020, on the basis of a four-stage open competition, five intern-investigators were selected from 245 candidates. Four of the selected individuals underwent a one-year paid internship in the East Division of the Investigative Department, and one of them was terminated prematurely on a personal application. Upon successful completion of the internship, all four intern-investigators were appointed to the position of investigator. The second stage of selection of intern-investigators took place in 2021, as a result of which, out of 215 candidates, 5 intern-investigators were selected. The selected intern-investigators are currently undergoing an internship in the East Division of the Investigative Department. It is noteworthy that in order to provide more opportunities for motivated youth, in 2021, the opportunity of selecting reserve candidates for intern-investigators was introduced. Within the framework of the announced competition, 9 reserve candidates were selected, who will be given the opportunity to be employed by the Investigative Department in Tbilisi, as well as in Batumi and Kutaisi divisions in case of early termination of internship for intern-investigators or other cases provided by law, without passing an additional competition, only on the basis of an interview.

The internship and mentoring program, similarly to the Investigative Department, has been introduced in other structural units of the Service. 10 successful and motivated participants of the youth projects implemented by the Service were given the opportunity to undergo internships in different departments of the Service. It should be noted that in addition to the

internal internship systems, in order to provide additional opportunities for students, the service was also actively involved in the state internship program, through which nine students underwent internships in 2019-2021.

The State Inspector used incentives for 40 employees between 2020 and 2021 (18 in 2020 and 22 in 2021), including 29 who were expressed appreciations and 11 were given special state ranks ahead of schedule. All these issues were discussed by the Council (Appeal, Incentive and Disciplinary Review Body Established in 2020 in order to establish the principles of legality, fairness, objectivity, impartiality, transparency, prevention of conflict of interests and trust in employment relations), whose recommendations were fully shared by the State Inspector.

As for the disciplinary liability of employees, during 2020-2021, by the decision of the State Inspector, disciplinary liability was imposed on three employees of the Service.

04

**Human Resources
Development**

4. Human Resources Development

The professional development of the staff of the State Inspector's Service is a continuous process and great attention is paid to the improvement of qualifications. In line with new challenges, the Service has been constantly striving to develop the knowledge, competence, professional and social skills of its employees. In order to improve the qualification and professional development of the employees of the Service:

- In 2019, 14 educational activities were conducted, in the framework of which 122 persons were trained;
- In 2020, 33 educational activities were conducted, in the framework of which more than 370 persons were trained;
- In 2021, 46 educational activities were conducted, in the framework of which 688 persons were trained.

In 2021, the following training activities were carried out in the field of personal data protection:

- Employees of the Service, with the support of the Embassy of the Kingdom of the Netherlands in Georgia and in cooperation with the Institute for Development of Freedom of Information (IDFI), were trained on administrative violations proceedings, the purpose of which was to discuss the procedures of administrative proceedings on the facts of possible illegal processing of personal data, to solve practical issues raised in the daily activities of the Service and to get acquainted with the case law in this regard;
- With the support of the Embassy of the Kingdom of the Netherlands in Georgia and in cooperation with the Institute for the Development of Freedom of Information (IDFI), staff were trained on case law of the European Court of Human Rights and the European Court of Justice, in the framework of which important decisions were discussed, including: processing of personal data by the police, covert surveillance, mass surveillance, obtaining data from communication service providers and foreign intelligence services, monitoring of employee by an employer, conducting video monitoring;
- To meet the development of modern technologies and existing challenges, in cooperation with the Council of Europe, staff was trained on artificial intelligence and protection of personal data.

In 2021, in order to increase the professional capacity of the staff of the Investigative Department of the State Inspector's Service, the following educational activities were carried out:

- In order to ensure the high quality of the investigation and to introduce international standards in the process, the staff of the Investigative Department underwent trainings on the following: covert investigations, crime scene investigation and management, professional standards and surveys. The trainings were conducted in collaboration with foreign partners and experts and included sharing their experiences with other topics. The training activities were supported by the European Union;
- Service staff participated in a special training course on the use of firearms, physical coercion and special measures, in which they underwent both theoretical and practical training;
- In order to conduct an investigation oriented on genuine interest of juveniles, investigators underwent a specialization course on juvenile justice.

In 2021, a number of training activities were planned to develop the skills of the staff:

- With the support of the United Nations Development Programme (UNDP), a series of trainings for Service managers was conducted, covering the following topics: general, strategic and change management, crisis and time management, teamwork and organizational culture, as well as emotional intelligence, motivation and self-motivation. The training activity enabled the managers employed in the Service to deepen their knowledge of modern management standards;
- In parallel with the increase of the awareness of the Service and the public interest towards its activities, the representatives of the Service have active communication with stakeholders, as well as with representatives of other private and public institutions and the media. In order to improve and enhance the communication skills of the staff, with the support of the Council of Europe, a training cycle was implemented in 2021 - effective communication skills. Additionally, training activities related to telephone services were organized. In order to maximally consider the interests and needs of vulnerable groups, training on communication with people with disabilities was planned and implemented. The staff was also trained in media communication issues, covering the following important issues: briefing, commenting, the art of debate, clear and concise presentation of opinions, and more;
- As the demand from various private or public institutions for conducting trainings was growing every year, the development of a team of in-house trainers was an important start in 2020. For this purpose, the Service identified those employees with relevant skills who were willing to be trainers. In 2021, in order to strengthen the trainers team, with the support of the United Nations Development Programme (UNDP), a training of trainers (ToT) was conducted, during which 18 employees of the Service underwent both theoretical and practical training;

- Service staff also received training on the following topics: sexual harassment, public service management and leadership, data visualization, cybercrime;
- In order to improve the quality of drafting decisions or other documents, the staff of the Service was trained on legal writing issues.
- Employees newly appointed in public sector got involved in professional training programs for civil servants, covering important issues such as public service ethics, administrative proceedings, professional communication and teamwork, efficient service and time management.





05

**Institutional Development
Projects**

5. Institutional Development Projects

The Service took an active care on the refinement of internal organizational procedures and practices. A number of important projects have been implemented for this purpose, among which the following are especially noteworthy:

- In order to increase the efficiency of human resource management and to introduce systemic approaches, in 2021, with the support of the United Nations Development Programme (UNDP) and the involvement of a field expert, an analysis of the existing human resource management system was carried out, as a result of which a human resource management policy, human resource management strategy and action plan for 2022-2024 were developed. Based on the prepared documents, on the one hand, it became possible to identify the current system and related challenges, and on the other hand, to set future goals and plans to improve and enhance the human resource management system;
- In 2021, with the support of the United Nations Development Programme (UNDP) and the involvement of experts in the field, a study of communication channels and practices within the organization was conducted to identify and overcome challenges and create effective internal communication mechanism. The experts prepared a concrete vision and recommendations on the measures to be taken in this direction to improve the situation. As the existence of effective internal communication has a significant impact on the formation of a unified organizational culture, employee satisfaction, effective implementation of the goals and objectives set by the organization, the next step was to build the system based on the recommendations and its practical implementation;
- In order to take into account and strengthen the gender aspects of the work of the Service, with the support of the United Nations Women (UN Women), a Participatory Gender Audit (PGA) was carried out in the Service in 2021 by certified and competitively selected experts. An appropriate report was prepared on the basis of analysis of existing documentation and established practices in the service, as well as information obtained through direct interviews with service managers, mid-level managers and other employees. The document discusses in detail the legislation regulating the service and its activities in all areas in terms of gender. Specific recommendations were also made for the improvement of legislation, as well as for the protection of investigative and personal data and taking into account gender in other aspects, as well as for strengthening the qualifications and capabilities of staff in this area. In order to implement the prepared recommendations in practice, the next step of the report was to develop an appropriate plan and implement it;

- In order to promote a non-discriminatory and healthy work environment, in 2021, the Service, in cooperation with the United Nations Women (UN WOMEN) and in coordination with the Human Rights Secretariat of the Government of Georgia, developed and implemented a prevent and respond mechanism to sexual harassment. According to the developed rule, a specific, confidential procedure-oriented rule was established, which allowed the victim of sexual harassment to file his/her complaint and have a fair trial. In addition, within the mechanism, specific individuals with high sensitivity and relevant knowledge were identified in the Service, whose duty was determined to raise the awareness of employees within the organization, to provide counseling and support to the employees in connection with the alleged fact of sexual harassment. Following the introduction of the mechanism, all staff members were trained to be provided with the information they needed.

06

**Improving the Technological,
Infrastructural and Technical
base**

6. Improving the Technological, Infrastructural and Technical base

06

Since 2019, a number of technical and software innovations have been introduced in the infrastructure and information systems of the State Inspector's Service. These innovations and changes were aimed at improving the operation of the Service and the automation of work processes in the field of personal data protection, as well as the effective implementation of the new investigative function.

Since 2020, the State Inspector's Service has faced a new challenge. In 2020, the spread of the COVID-19 and the declared pandemic in the world created a number of problems in various spheres of public life, including labor relations. 2021 was no exception in this regard. On the one hand, it was necessary to strictly follow the regulations imposed in the country in order to provide a safe working environment for the employees of the service, and on the other hand, the need to effectively manage the work processes of the Service and use the Service infrastructure was on the agenda. Accordingly, the work processes of the employees were carried out in a hybrid manner - in remote and on-site working modes. In order to run these processes smoothly, the necessary software tools and platforms have been introduced.

In order to run the workflow remotely, a number of software tools and platforms were introduced, which substantially facilitated the smooth production of both internal and external communications. The measures taken also included technical planning of employees' remote working process, relevant technical changes to the server, network and security systems, maintenance of laptops for remote employees, and training to prepare for new processes.

Further, in 2021, in order to effectively launch the new Office of the Investigative Department in Batumi, the purchase, installation and preparation of jobs were provided in a timely manner. It is noteworthy that after the full launch of the Service's investigative direction, the server infrastructure resources used for the respective direction were significantly replenished. In 2021, with the financial support of the European Union, additional server infrastructure was procured, installed and maintained in order to conduct the work of the investigative direction of the Service.

Besides, with the administrative support of the European Union Financial and UN Project Services Office (UNOPS), Juvenile interrogation rooms in Kutaisi and Batumi offices were fully equipped with modern European standard equipment.

Since 2020, active work has been underway to introduce a video conferencing system. This will facilitate communication between the territorial offices of the State Inspector's Service, conduct important local or international meetings in a secure online format, and develop distance learning. With the administrative support of the European Union Office for Financial and UN Project Services Office (UNOPS), modern standard teleconferencing systems were procured for all offices of the State Inspector's Service in early 2022.

In 2021, the following electronic products were introduced in the Service:

- An electronic system for sending short text messages (SMS) has been developed and implemented in order to effectively manage the work processes necessary for communication between the various departments of the Service;
- In order to automate the work processes in the Investigative Department of the State Inspector's Service, with the direct involvement of the IT staff of the Service, automated systems for planning investigative actions and complete statistical accounting of investigative processes were implemented, carried out with the support of the Office of the UN High Commissioner for Human Rights (OHCHR);
- In order to develop the local information exchange network and place important documents in one space in an easily accessible form for users, a technical task of an internal electronic information system (intranet) was developed, which was planned to be implemented in 2022 with the financial support of international partners;
- A special electronic module has been developed to ensure effective and timely monitoring of assignments and recommendations issued by the State Inspector's Service to various private or public organizations in the field of personal data protection. It should be noted that the automation of the process of execution of instructions issued by the Service was also envisaged in the audit report on the effectiveness of personal data protection in 2019 conducted by the State Audit Office. The electronic module was developed with the support of the United States Agency for International Development (USAID) Democratic Governance Initiative (GGI) project.

VII. Cooperation

01

**Cooperation with Public and
Private institutions**

1. Cooperation with Public and Private institutions

The State Inspector's Service cooperated with the Parliament of Georgia to implement the necessary legislative changes to ensure institutional strengthening of the Service and increase the efficiency of the Service. In particular:

- a) In 2021, a comprehensive report on the activities of the State Inspector's Service for 2020 was submitted to the Parliament of Georgia, in which, together with the achievements of the Service, the legislative and practical challenges facing by the Service were discussed. Despite numerous communications with the Parliament of Georgia (including a meeting of the State Inspector with the Speakers of the Parliament of Georgia), the report was not discussed in the Parliament of Georgia;
- b) The Service has actively coordinated with the Committee on Human Rights and Civil Integration of the Parliament of Georgia to expedite the consideration of the draft law on Personal Data Protection prepared by the Service and submitted to the Parliament of Georgia in 2019, although this law has not been adopted yet;
- c) Besides, on December 24, the State Inspector's Service submitted a legislative proposal to the Parliament of Georgia (the legislative proposal includes amendments to 14 legislative acts, including: the Law of Georgia on the State Inspector Service, the Criminal Procedure Code, the Code of Administrative Offenses of Georgia, the Law of Georgia on the Police and the Organic Law on the Prosecutor's Office) for the purpose of institutional strengthening of the Service; However, instead of the above proposal, the Parliament, without the involvement of the State Inspector's Service, considered and decided to abolish the State Inspector's Service;
- d) The Service also actively cooperated with the Committees on Human Rights and Civil Integration and Legal Affairs, in the process of amending various legislative acts, and submitted its views on the changes to be made, on its own initiative or at the request of Parliament.

The Service also actively cooperated with the President of Georgia. In 2021, the State Inspector met with the President of Georgia twice. The meetings discussed the challenges facing the State Inspector's Service and the steps to be taken to strengthen the service.



The Service actively cooperated with other public and private institutions in the process of preventing possible human rights violations, as well as responding to violated rights.

In order to prevent illegal processing of personal data, the Service provided oral/written consultations to public and private institutions, as well as, in case of referral, carried out expertise of internal regulations (normative and individual acts) and conducted trainings to raise staff awareness.

- In 2019 - more than 600 representatives of public and private sectors, including local self-government bodies, schools, universities and medical institutions were given the opportunity to acquire and deepen their knowledge on data protection;
- In 2020 - more than 1000 representatives of the public, private and non-governmental sectors were given the opportunity to acquire and deepen knowledge on data protection;
- In 2021 - More than 50 activities were carried out for the representatives of public, private sector and educational institutions, as well as for students and pupils, where more than 1500 people participated.

In 2021, the first working meeting was organized with the persons working on personal data protection issues in public agencies and the "Network of Public Servants" was established. The meeting was attended by about 60 representatives of various public agencies and its purpose was to further strengthen coordination.

In 2021, as part of a partnership between the State Inspector's Service and the United States Agency for International Development (USAID) Democratic Governance Initiative (GGI), the State Inspector's Service introduced a distance learning platform for anyone interested in personal data protection, both private and public. It enables anyone including the representatives of the private and public sector to raise their qualification and professional standard remotely, in a time and space convenient for them. In the first phase, the distance learning platform is equipped with a personal data protection training module, which is tailored to the specifics of the health sector and provides a detailed overview of data protection issues in this area. It was planned to create other training modules through this platform. The distance learning platform is free and accessible to all. It is adapted to the needs of persons with disabilities.

With the support of the International Center for Migration Policy Development (ICMPD), a guide and accompanying training module on personal data processing in the field of migration was prepared, aimed at staff of agencies involved in this field (Ministry of Internal Affairs, Ministry of Foreign Affairs and Ministry of Labor, Health and Social Affairs) to identify their needs and train them in terms of personal data protection. It should be noted that in 2021, in connection with the mentioned issue, a training activity was also organized for the staff of the Ministry of Internal Affairs of Georgia by the Service.

In 2021, in three major cities: Batumi, Zugdidi and Kutaisi, with the support of the Council of Europe (CoE), meetings with representatives of local public agencies, the judiciary and law enforcement agencies were organized to prevent human rights violations, attended by 83 representatives of public institutions. The meetings discussed the problematic issues and local challenges mentioned in the report of the State Inspector's Service, both in terms of investigation and personal data protection.

02

**Cooperation with Higher
Educational Institutions and
Development of Youth Projects**

2. Cooperation with Higher Educational Institutions and Development of Youth Projects

In the framework of the week dedicated to the International Personal Data Protection Day in 2021, at the initiative of the Service and with the support of the European Union (EU) and the United Nations Development Programme (UNDP), a meeting was organized with representatives of higher education institutions to strengthen cooperation with universities. The aim was to educate the next generation with the necessary knowledge of personal data protection for the public and private sectors, to expand the teaching of personal data protection issues in student curricula, and to involve students in the process of raising public awareness.

It is noteworthy that within the framework of the memorandums signed with the universities, in 2021 essay competitions, a summer school, a project of "Ambassadors for Personal Data Protection" were organized. A number of awareness-raising activities were also planned and implemented to promote student development.

The project "Ambassadors for Personal Data Protection" launched by the Service in 2020 continued in 2021. The students participating in the project, with the support of the European Union (EU) and the United Nations Development Programme (UNDP), underwent training aimed at further theoretical education and improvement of practical skills on personal data protection issues. In 2021, the participants in the project "Ambassadors for Personal Data Protection" held 16 informational and working meetings with students, pupils and teachers from different schools in Georgia, young people from border regions and other stakeholders, both online and in person. 409 listeners took part in the meetings organized by the Ambassadors for Personal Data Protection.

In order to further continue the project, the Service announced a competition for the second stream of Ambassadors for Personal Data Protection in 2021. The application was submitted by about 100 interested people living in different regions of Georgia. However, due to the abolishment of the Service, the competition procedures were suspended.

With the support of the European Union (EU) and the United Nations Development Programme (UNDP), in 2021 a photo contest was announced for schoolchildren - "My personal data is mine". About 100 students of private and public schools operating in Georgia took part in the competition. A number of interesting works were presented, which reflected the importance of personal data protection seen through the eyes of minors.

In 2021, in collaboration with the Institute for the Development of Freedom of Service and Information (IDFI), with the financial support of the Embassy of the Kingdom of the Netherlands in Georgia, an essay competition on personal data protection was organized. 60 students of higher education institutions took part in the competition, of which the authors of the best 15 essays were identified by a bi-staffed commission during an online conference. The best essays were published in the form of an electronic journal. It should be noted that the participants of the competition were actively supported in the process of preparing the essays by the participants of the "Personal Data Protection Ambassadors Project".

In 2021, the Service and the Institute for the Development of Freedom of Information (IDFI) organized a summer school for personal data protection students. The project was supported by the Embassy of the Netherlands in Georgia and the Swedish International Development Agency (SIDA). About 200 applicants from higher education institutions participated in the project, from which the best 20 students were selected. The participants of the summer school underwent a one-week training course with the involvement of the Service, the Institute for Development of Freedom of Information and experts in the field. Summer school participants were given the opportunity to do an internship at the Service.

It is noteworthy that the service was planning youth projects aimed at raising awareness of a similar nature in the field of investigation. Among them, in 2022 it was planned to hold mock trials and debate tournaments.

03

**Cooperation with the Public
Defender**

3. Cooperation with the Public Defender

The State Inspector's Service actively cooperated with the Public Defender's Office at all stages of its activities: providing the requested information smoothly, as well as holding periodic joint meetings to discuss human rights challenges and the work of the Service.

In 2021, the State Inspector received 263 letters from the Public Defender's Office requesting information (124 letters were received in 2020). The vast majority of incoming letters concerned the request for information on the response of the State Inspector in terms of investigation (content of the requested information - whether the investigation was launched, when and under what article; whether the investigation is underway and under what article; in a specific criminal case: what investigative/procedural actions were carried out; whether a person is recognized as an accused or a victim). The incoming letters also referred to reports of possible crimes, facts of possible illegal processing of data, requests for statistical information, possible misconduct by the investigator (one case) and more.

In 2021 (as well as in 2020) a joint working meeting was held between the Public Defender's Office and the State Inspector's Service. The parties discussed the legal and practical issues of the activities under the mandate of the State Inspector's Service, in particular the investigation of crimes committed by a representative of a law enforcement body, and the challenges in this regard; the importance of effective exchange of information on the situation in detention and prison facilities and on individual complaints was discussed. The conversation also touched upon the issues and findings presented in the annual report submitted to the Parliament by the Public Defender and the State Inspector.

04

**Cooperation with
Non-governmental Organizations**

4. Cooperation with Non-governmental Organizations

Since its establishment, the State Inspector's Service has closely cooperated with the civil sector to ensure transparent management and accountability.

During 2019-2021, the Service actively held meetings with representatives of non-governmental organizations. The purpose of the meetings was to acquaint them with the report on the activities of the Service and to encourage discussion on current issues. The meetings discussed the results of the State Inspector's activities, key achievements and challenges.

In 2020-2021, several important projects were implemented with the cooperation of the State Inspector's Service and non-governmental organizations

In 2021, in cooperation with the Center for Innovation and Reform, and with the support of the United Nations Development Programme (UNDP), the project "Establishing a High Standard of Personal Data in Georgia" was implemented. The project developed a methodology for assessing the state of personal data protection. Within the framework of the same project, a model system of personal data protection was introduced in three pre-selected state agencies.

In 2021, in order to inform about the activities of the Service and further close cooperation, the Service organized a meeting with 13 non-governmental organizations and representatives of community initiative groups that are actively working on ethnic and national minority issues in the regions (including Kvemo Kartli and Samtskhe-Javakheti). During the meeting, they were informed about the activities of the Service, its powers and the ways of future cooperation were outlined. Also, in the languages of ethnic minorities, triplets were prepared on personal data protection, which, in order to raise the awareness of the local population, were given to non-governmental organizations operating in the regions.

In 2020, the Center for Social Justice and the Institute for the Development of Freedom of Information (IDFI), with the support of the Open Society Foundations (OSGF), conducted a study on the effectiveness of the State Inspector's Service. This is the first document that assessed the work of the Independent Investigation Mechanism in Georgia and the challenges it faces. The presentation of this research was held in 2021, with the involvement of the non-governmental sector and government agencies.

The project "Promoting Personal Data Protection in Georgia" was implemented in cooperation with the Institute for Development of Freedom of Information (IDFI) and with the support of the Embassy of the Kingdom of the Netherlands. The goal of the project was to unite the forces of the Service and the non-governmental sector in the field of raising awareness and protection of personal data. Within the project, a number of projects were implemented in 2021: thematic recommendations and collections, videos were prepared; informational materials were published, including in the languages of ethnic minorities and in a form accessible to persons with disabilities; competitions were held with the participation of students; trainings were conducted to strengthen the capacity of the State Inspector's staff. These projects have significantly contributed to increasing the efficiency of the State Inspector's Service, raising public awareness and raising the standard of personal data processing in various sectors.

In addition to the projects, NGOs applied to the Service with various requests. In 2021, NGOs applied to the State Inspector's Service in 40 cases (29 letters were received in 2020). The letters concerned: cases of alleged illegal processing of personal data and/or alleged crimes committed by officials, request for information on the response carried out and statistics prepared by the Service in the field of personal data or investigation.

VIII. International Relations

01

**Cooperation with International
Organizations and the
Diplomatic Corps
Accredited in Georgia**

1. Cooperation with International Organizations and the Diplomatic Corps Accredited in Georgia

Despite the challenges associated with the pandemic and the difficulties associated with setting up a new Service, in order to establish a high standard of personal data protection and ensure an effective investigation the Service has been active in the international arena. This included working closely with international partners and organizations, as well as establishing links with fellow agencies.

In 2021, the Service actively collaborated with representatives of international organizations, the diplomatic corps and support projects, resulting in a number of activities aimed at institutionalizing the Service, raising public awareness and developing staff capacity.

In order to maximally support the process of Georgia's association and integration with the European Union, as well as the approximation of human rights standards, the State Inspector's Service paid special attention to fulfilling its obligations under the EU-Georgia Association Agenda and Action Plan. A clear example of this is that virtually all activities and commitments made by the Service in 2019-2021 have been thoroughly and fully fulfilled. Exceptions are the activities related to the adoption of the new Law of Georgia on Personal Data Protection. Since the Law on Personal Data Protection initiated in 2019 has not been adopted by the Parliament of Georgia so far, the Service has not been able to carry out any follow-up activities related to the law and its adoption. It should be noted that the State Inspector's Service also took an active part in the preparation of the draft EU-Georgia Association Agenda 2021-2027.

In 2021, the State Inspector's Service participated in the review of the Georgian National Report on Human Rights within the framework of the 3rd cycle of the UN Universal Periodic Review. The Service provided information on reforms implemented to combat ill-treatment. Establishment of the State Inspector's Service was positively assessed by the Member States and additional recommendations were issued to ensure the effectiveness of the fight against ill-treatment by further institutional and functional strengthening of the Service.

In 2021, the State Inspector's Service established the format of annual meetings with the diplomatic corps of partner countries of Georgia and international organizations - a donor coordination mechanism. Through this mechanism, the results of the State Inspector's Service in all three areas, significant achievements and challenges identified in practice, as well as future plans, priorities and opportunities for joint cooperation were presented to the international partners.

In addition, the State Inspector's Service regularly held face-to-face meetings with local representatives of international organizations in Georgia and with the heads of diplomatic missions of Georgia's partner countries.

02

**Participation of the Service in
Various International Formats**

2. Participation of the Service in Various International Formats

Effective positioning in the international arena and close cooperation with partners significantly contribute to the establishment of a high standard of human rights protection and democratic values.

In 2021, the Service actively participated in international formats, bilateral or multilateral meetings, and continued to coordinate with counterpart agencies in other countries:

- In 2021, the Service represented itself at the Bureau and Plenary Sessions of the Committee established under the 108th Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.³¹ In 2021, the State Inspector's Service also took an active part in the development of data protection standards within the Committee of the Convention and submitted written comments on the draft recommendations developed by the Committee. Among them, the draft guide on the protection of individuals with regard to the processing of personal data in the course of political campaigning, which was discussed at the 41st plenary session of the 108th Convention Committee and was taken into account;
- The State Inspector's Service represented Georgia at the plenary sessions of the Special Committee on Artificial Intelligence (CAHAI) of the Council of Europe in Strasbourg. The Committee was established in 2019 by the Committee of Ministers of the Council of Europe and its member was a representative of the State Inspector's Service from Georgia. In 2021, the Committee prepared a document addressing the Committee of Ministers of the Council of Europe and defining what essential elements should be included in the future multilateral agreement/convention on artificial intelligence;

³¹ The 108th Convention Committee brings together the Contracting Parties to the 108th Convention, as well as observers from other States and international and non-governmental organizations. It is responsible for clarifying the provisions of the Convention and improving their implementation. In addition, in order to effectively protect the personal data of individuals, it develops global standards for the protection of personal data through multilateral cooperation and sharing of views.

- The State Inspector's Service, as the host of the 2019 Spring Conference of European Data Protection authorities, last year joined a working group on the future issues of the same conference as an organizer.³² In 2021, the Service actively participated in the Spring Conference Working Group in the development of the future plans of the Forum and conducted a survey together with the co-organizing agencies on the format of the conference or desired changes in the future directions. In addition, the Service participated in the development of the 2022 Spring Conference Program;
- In 2021, the State Inspector's Service participated in a two-day intensive European Case Handling Workshop, during which representatives of the Service were introduced to certain aspects and recent practices of the case review of their counterparts in European countries.³³ It is noteworthy that in early 2021 the Service submitted an application to host the next European case management workshop, which was approved. Accordingly, the State Inspector's Service has been selected as the 2022 Host Agency.

The Service actively participated in the Global Privacy Assembly³⁴ activities and information sharing process and was involved in the working groups. The Assembly acts through its annual meetings, the attendance of which is important for each member of the Assembly, since in addition to discussing and debating current issues, the meetings also share members' practical experiences, which is especially important for newly established oversight bodies with relatively little practice, such as the State Inspector's Service for instance. During the reporting period, the Service was also represented at the 43rd Annual Conference of the Global Privacy Assembly. In addition, the Service has been actively involved in the work of working groups set up within the Assembly and has worked with the world's leading data protection authorities on a variety of global data protection issues. In the process, the Service became aware of standards and approaches in other countries and introduced practices in Georgia to fellow agencies (for example, by participating in forums and meetings, as well as by completing various questionnaires). In addition to active participation in ongoing working groups, during the reporting period, the Service was additionally a member of the International Enforcement Cooperation Working Group (IECWG), which provided a new opportunity for the State Inspector's Service to be involved in the study of international affairs.

At the 43rd regular session of the Global Privacy Assembly (GPA), a resolution was prepared co-authored (co-sponsored) by the State Inspector's Service - on the digital rights of children.

³² The Spring Conference of European Data Protection Supervisors is a top-level international forum on personal data protection. In the framework of the annual meetings, the forum's European Data Protection Supervisors discuss important challenges in this area, ways to address them, and share best practices in data protection.

³³ The European Case Handling Workshop provides a unique opportunity for data protection professionals to share their hands-on experience on the challenges and ways to handle personal data cases, as well as providing guidance to data processors or enforcing data protection legislation.

³⁴ The Global Assembly for the Protection of Personal Life (GPA) is a leading international forum in the field of privacy and personal data protection. It brings together more than 130 member bodies from around the world. Among them is the State Inspector's Service, which has been an accredited member of the Assembly since October 26, 2015.

For the State Inspector's Service the rights of minors, especially the inviolability of their privacy and the protection of personal data, have always been a priority. To this end, the Service has used another powerful international platform and has been actively involved in the Digital Education Working Group of the Global Privacy Assembly (GPA), which has developed mentioned resolution.

The resolution includes important recommendations to Member States on the rights of children in the digital environment and their awareness; with respect for their fundamental rights; in the context of personal data protection, regarding the protection of children when using data for commercial purposes; additionally, the inclusion of children's views in the process of introducing child rights regulations and targeted services.

03

**Cooperation with
Peer Agencies**

3. Cooperation with Peer Agencies

The State Inspector's Service paid great attention to the development of regional cooperation at all stages of its activities. Bilateral working formats were implemented during the reporting period in order to enhance cooperation with peer agencies within the region, to share Georgian practices and successful examples.

In 2021, the Service established connection with independent investigative mechanisms with world-leading and long-standing institutional experience. In particular, the Service held remote working meetings with the Independent Office of Police Conduct of England and Wales (IOPC) and the Special Investigation Bureau of the Province of Ontario, Canada (SIU). During the meetings, the staff of the State Inspector's Service got acquainted with the functions of the colleges and the specifics of the investigative activities. For the State Inspector's Service, as a newly established institution, cooperation with these investigative services was of particular importance in terms of introducing best practices in the investigation of crimes by officials in Georgia, strengthening the professional skills of employees and improving the quality of their work.

In 2021, the State Inspector's Service hosted the Ukrainian Parliamentary Commissioner for Human Rights and representatives of the Ukrainian delegation, and held a remote working meeting with representatives of the Information Security Committee and the Personal Data Protection Office of the Ministry of Digital Development, Innovation and Aerospace Industry of Kazakhstan. The purpose of the meetings was to share with colleagues the experience in the field of institutional development and personal data protection of the State Inspector's Service, as well as to discuss common challenges and prospects for future cooperation.

In addition, at the request of international organizations, associations or partner agencies - the Service shared the requested information and experience. Among them, in order to develop various regulatory norms, standards or approaches, the Service participated in a number of surveys.

In addition, the State Inspector's Service provided written advice to the National Center for Personal Data Protection of Moldova on the practical aspects of the implementation of EU directives regarding users' access to data in the field of telecommunications.

In addition, the State Inspector's Service provided written advice to the National Center for Personal Data Protection of Moldova on the practical aspects of the implementation of EU directives regarding users' access to data in the field of telecommunications.

04

**International Agreements
and Expertise**

4. International Agreements and Expertise

In 2021, the State Inspector's Service joined the Global Cross Border Enforcement Cooperation Arrangement (GCBECA). The agreement is part of the Global Privacy Assembly (GPA) and aims to facilitate the exchange of information and enforcement cooperation between data protection oversight bodies. The parties to the agreement also include: the personal and data protection oversight bodies in Canada, Australia, Germany, the United Kingdom, Ireland and supervising bodies around the world.

In order to maintain a high standard in the process of transferring personal data from Georgia to other countries, in 2021, the State Inspector's Service conducted legal examinations of 21 international treaties and agreements concluded on behalf of Georgia, in 17 of which recommendations were issued. As part of the expertise, the Service reviews the draft agreement, the legislative and institutional mechanisms in place in the field of personal data protection in the State party, and assesses the general risks of human rights violations in data processing, based on which a recommendation for amendments to the draft agreement are issued.

From the first day, the Office of the State Inspector has been actively supporting the acceleration of the signing of the modernized (108+) Convention³⁶ and, as a result, the introduction of the European standard of personal data protection in Georgia. In particular, in 2019, the State Inspector's Service prepared the draft Law of Georgia on Personal Data Protection, which is in line with the Modernized Convention and the General Regulation on Data Protection of the European Union. Also, in 2020, an expert opinion was prepared on the compliance of the draft law with Convention 108+ and a working meeting was held, during which the draft law was discussed in detail, challenges related to its implementation, compliance with the 108+ Convention and measures to be adopted and subsequently implemented. However, to date, Georgia has not signed the Modernized Convention. Ratification of the 108th modernized Convention by Georgia would be an important step forward both in terms of improving the right to personal data protection and Georgia's integration into the European Union. Accordingly, the State Inspector's service still hopes that Georgia will accede to the 108+ Convention in the near future.

³⁶ The 1981 Council of Europe Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data is the world's first international legal instrument in the field of personal data protection. Since its adoption, the Convention has had a profound impact on the development of this field of law worldwide and on the establishment of a high standard of data protection. However, in the wake of the development of large-scale personal data outflows, information technology and data processing methods, in response to new challenges, it was modernized in 2018 and opened for signature. The Modernized Convention (108+) provides important innovations, including the strengthening of data subjects' rights and new principles such as accountability, and transparency; Member States no longer have the option of completely restricting the application of the Convention to certain cases of data processing (for example, data processing for national security and defense purposes). Also, the role of the Convention Committee, which until now was only equipped with an advisory mandate, is being strengthened. It shall examine the compliance of the national laws of the Member States with the Convention and the effectiveness of the measures taken by it to implement the Convention.

05

**Participation in
International
Workshops / Conferences**

5. Participation in International Workshops / Conferences

In order to get acquainted with international and European standards and share experience, as well as to promote best practices, the Service has actively participated in various international conferences and workshops.

The Service participated in joint workshops organized by the Organization for Economic Co-operation and Development (OECD) and the Global Privacy Assembly (GPA) to address data management and privacy challenges in the fight against COVID-19. During the meetings, participants shared their experiences on these issues.

The State Inspector's Service also delivered a speech at the International Forum on Privacy and Data Protection (IFPDP), which focused on the modern world, including technological development, data processing, challenges, current regulations, trends and cooperation between countries.

The service also participated in events related to artificial intelligence and digital technologies. For the first time, the Service attended one of the leading global security forums in the Eastern European region, where, among other topics, issues such as strengthening artificial intelligence regulation, secure digital space and consumer protection were discussed. The service was also presented at a conference organized by the Government of Hungary in cooperation with the Council of Europe on the challenges of artificial intelligence policy and its coordinated policies and practices. In addition, the report of the service was presented at the international conference - "Cyber and Digital Security", where the focus was made on data protection reforms in Georgia and Service's experience.

The service was also actively involved in regional data protection formats. In particular, it participated in the drafting of the 21st meeting of the Central and Eastern European Data Protection Authorities (CEEDPA) and presented reports directly at the meeting in several sessions. This association is a union of supervisory bodies of 17 countries and aims to promote international standards for the protection of personal data, to share the experience and practices of the Member States. Georgia became a member of the union in 2014. It is noteworthy that during the 21st session of the reporting period, the Service chaired a session on the protection of personal data in the event of a COVID-19 pandemic. In addition, a representative of the Service presented a report on a session on EU and Council of Europe personal data protection standards and their implementation, including in non-EU countries. The Service briefed peer agencies on its renewed mandate, shared recent achievements, challenges, practices, and heard about measures taken to address similar challenges in other countries.

06

**International Visits and
Experience-sharing**

6. International Visits and Experience-sharing

06

From 2019 to date, the State Inspector's Service has taken significant steps to develop strategic relationships at the international level.

The Service has worked intensively with bodies within the Council of Europe. Among them, in 2020, meetings were held with the Council of Europe Commissioner for Human Rights, Director of the Council of Europe's Department of Public Information and Crime; and in 2021 - with members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and with the Head of the Georgia Office of the Council of Europe in Georgia. During the meetings, issues related to the activities of the Investigative Department of the State Inspector's Service were discussed.

In 2021, a representative of the State Inspector's Service on behalf of Georgia attended the 30th session of the UN Commission on Crime Prevention and Criminal Justice and presented a report on the legislative, technical and political aspects of the effective functioning of independent investigative agencies.

07

**Promoting the Establishment of
International Standards**

7. Promoting the Establishment of International Standards

In 2021, the State Inspector's Service for the first time began publishing a monthly information document, "World Practice". The purpose of the information document was to inform the public about current events in the field of personal data protection in the world, international practices and the latest trends and to provide it to any interested person in an easily understandable form. The "World Practice" included interesting cases from the activities of the world's leading data protection supervisors, a brief overview of important documents prepared by international standard-setting organizations, and the case law of the European Court of Human Rights and demonstrated the impact of the latest technologies on privacy and personal data protection rights. For the citizens, the information document was a good opportunity to follow the current world trends in the field of personal data protection in Georgian and to better see Georgia's place globally.

In order to constantly update the knowledge of the representatives of the Investigative Department and to apply in the daily activities the practice European Court of Human Rights, preparation of the digest of the decisions of the European Court of Human Rights has started. The prepared digests were related to the violation of substantive and procedural parts of Articles 2 and 3 of the European Convention on Human Rights, important topics such as: suicide and self-harm of persons under effective state control; use of handcuffs and other restraining measures; murder of a person arrested/detained by representatives of state bodies, infliction of physical harm on them; degrading or inhuman treatment or punishment of detainees or prisoners. It is also noteworthy that an electronic portal for internal consumption has been created, on which all of them are available in electronic format.

In order to develop and deepen international relations, the Service has developed guidance documents - a strategy for cooperation with international partners and a standard for communication with international partners. The Strategy on Cooperation with International Partners for 2022-2024 defines the strategic goals set by the Service, both in terms of personal data protection and investigation (including raising awareness of the Service at the international level as an effective, reliable, responsible and one of the leading agencies in terms of data protection at the regional level, deepening bilateral cooperation with international strategic partners, expanding the cooperation network, increasing support for the Service, etc.). The document also lists the relevant objectives to achieve these goals and the activities required to accomplish them. The standard of communication with international partners lays down the principles, means of communication, defines general rules and other important issues.

IX. Communication with the Media and Public

IX. Communication with the Media and Public

The State Inspector's Service has taken a range of significant steps to establish an independent, impartial and human rights-oriented supervisory body, increase awareness about the Service and promote public confidence. Raising awareness in the wider community was an important challenge. At the same time, high expectations towards the Service increased the importance of accurate communication with target groups especially in those circumstances when in 2019 the Service was established as a new agency and was mandated to start exercising investigative function.

The activities of the State Inspector's Service are founded on the principles of public accountability, openness and transparency from the very first day of its establishment. To this end, the Service proactively published its activities-related information, spoke openly about the challenges it faced, actively cooperated with the media and provided detailed answers on the questions of the public; regularly disseminated information on cases of high public interest to ensure accountability to the public; periodically held briefings and press conferences; the State Inspector and its other staff participated in various television broadcasts, talk shows, and programs. Besides, with the support of donor organizations, meetings were held with the media representatives, where journalists were informed about the Service development, functions and the results of its activities, key trends, challenges faced by the Service and future priorities.

In 2019, 2020 and 2021, the State Inspector's Service appeared in media 9886 times, including, 3876 times - on television, 999 times - in the print media, 4354 times - in internet and 657 times - on radio broadcasting.³⁷

In order to ensure proper access to information for all age group and audience, the State Inspector's Service actively used websites and social network in parallel with the media.

Furthermore, the Service proactively published statistical information about its activities: information cards, graphic video footages, quarter, and annual reports. The published materials included information on the number of applications submitted to the Service, issued consultations, inspections, launched investigations and other crucial issues.

³⁷ These data are provided by the research company IPM.

01

**Creation of new brand
book and webpage**

1. Creation of new brand book and webpage

Along with the formation of the new institution, the name change, and the expansion of the role of the Service in the field of human rights - the brand book of the Service was completely renewed, and a new logo and the website of the agency were developed.

A new webpage was launched in 2019 (www.personaldata.ge) for the purpose of improving public communication and information on personal data protection issues. At the end of 2019, after the State Inspector's Service started exercising the investigative function, an additional webpage was set up - www.stateinspector.ge for ease of access to information on investigative function. As a result, both pages have been merged under the main webpage of the Service (www.sis.gov.ge). The webpages have been developed with the support of the European Union (EU) and the United Nations Development Programme (UNDP) and further refined with the support of the European Union (EU) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). It represents a modern, interactive and user-friendly digital space, fully adapted for citizens with visual disabilities. All new developments and statements of the State Inspector's Service were published on these webpages. Besides, any interested party could remotely apply to the State Inspector's Service through these webpages within 24 hours. .

The number of visitors to the websites of the State Inspector's Service was 161 038 during May 10, 2019 - end of 2021.

02

Activities on social media

2. Activities on social media

In the modern world, social networks are one of the best means for informing the public. These platforms allow to provide information to persons of different ages, interests, status and professions in a simple way. In view of that every citizen is the target audience for the State Inspector's Service, social networks are the best way of communication with them.

The State Inspector's Service has published systematically various materials, including, educational articles; information banners; quizzes and tests; video lectures; case-law together with relevant key findings and recommendations for prevention policy, digest on personal data protection and key cases from the world practice, on its official website and Facebook. The Service also regularly streamed live videos via Facebook.

The Service marked significant dates and actively published educational information, thematic notifications and relevant articles. The State Inspector's Service annually focused on marking the following dates:

- January 28 - International Data Protection Day;
- May 10 – the day of the State Inspector's Service
- May 25 - GDPR Enactment Day;
- April 7 - World Health Day;
- June 1 - International Day for Protection of Children;
- November 1 - Investigative Department Enactment Day;
- December 10 - International Human Rights Day
- start of the educational process in schools
- elections of the country

Campaigns dedicated to each day provided the public with useful information on issues within the competence of the Service

The number of visitors on the official Facebook page of the State Inspector's Service was 102 753. The number of page likes increased by 11,669 users while, as of today, the number of subscribers to the page of the Service is 38,100. The materials published on the Facebook page of the State Inspector's Service were accessed by 981,053 people since the Service started functioning.

03

Pandemic-driven Changes in the Public Relations Strategy

3. Pandemic-driven Changes in the Public Relations Strategy

Coronavirus infection has created different reality for public relations – in-person activities have been replaced by remote communication, and public awareness activities have moved to the internet space. Along with the new challenges, the State Inspector's Service has swiftly modified the strategy for communication with the public. A range of projects, events and activities have been organized and implemented, using various and modern communication channels, digital and multimedia platforms, educational activities:

- For this first time, the Service started developing video lectures, which were posted on the official pages of the Service in the Internet space. 3 video lectures were published on the following issues: Security of Personal Data in the Internet space, Data Processing in the Healthcare Sector, Rules of video surveillance and security of personal data obtained in this way. The video lectures posted on the Facebook page of the State Inspector's Service were viewed by 231 000 persons;
- For the purpose of supporting the citizens and organizations, the State Inspector's Service, as the body responsible for the personal data protection, has developed recommendations on the protection of personal data during the pandemic, covering the following issues: data processing by health institutions; processing of employee's data by employer organizations, personal data processing during the distance learning process; protection of personal data in the online trading;
- The Service examined and publicly shared information about the functions and privacy policy of one of the most popular applications during the pandemic - TikTok, coupled with the recommendations of leading data protection organizations of various countries with respect to this application;
- In order to increase interaction, the Service regularly streamed live videos via social network on various issues of public interest, with a total number of 25 000 viewers.

In addition to the above-noted, the Service actively participated in thematic online conferences and events.

04

**Public Awareness Survey on
Personal Data Protection**

4. Public Awareness Survey on Personal Data Protection

In November 2021, with the support of the United States Agency for International Development (USAID) Good Governance Initiative (GGI), a Public Awareness Survey on Personal Data Protection was conducted. The study intended to determine the awareness, knowledge level and attitudes of the Georgian society with respect to the personal data protection. In total, 1,203 citizens aged 18 and over, selected by a random sampling, were interviewed through a telephone survey.

The survey identified the level of awareness of respondents and their attitudes towards the collection, storage and disclosure of personal data.

The survey revealed the following main trends:

- The vast majority of respondents (96%) agree with the statement that the personal data protection is part of human rights, including the right to privacy;
- The protection of personal data is crucial for the vast majority of citizens (93%);
- 60% of the Georgian population has heard about the personal data and their protection. It is noteworthy, however, that only 2% of respondents are able to name five examples of personal data without being helped with suggestions;
- The vast majority of respondents (98%) believe that public and private institutions shall ensure the security of personal data in their possession. However, in addition to that, the citizens' knowledge about the threats related to unlawful (excessive) processing of personal data was low;
- Six out of ten interviewed respondents believe that the reduction of the threats of unlawful / excessive use of their personal data is possible, however, more than half of the respondents find it difficult to name a specific action that will help them in overcoming such dangers.

The results of the study show that despite the numerous awareness-raising campaigns carried out by the authority supervising personal data protection over the years, significant steps are still to be taken to provide citizens with in-depth information about their personal data, rights and potential risks.

X. Budget of the State Inspector's Service and its Performance

X. Budget of the State Inspector's Service and its Performance

Pursuant to Article 10 of the Law of Georgia on the State Inspector's Service, the activities of the Service are financed from the state budget of Georgia and the necessary budget allocations are determined by a separate code.

In 2021, the approved budget of the State Inspector's Service amounted to 9 million GEL, and the staff included was 125 employees.³⁸

In 2021, the implementation of high-priority projects launched in 2020 has continued by the State Inspector's Service. Besides, due to the current situation in the country as a result of the spread of the coronavirus infection (COVID-19), business trip and representation expenses reduction practice was retained. For the same reason, in 2021 (similar to 2020) there were delays in competitions announced for filling vacant positions in the Service. These circumstances enabled the Service to use the savings generated in the line of remuneration (in the amount of GEL 950,000) for financing the repair-rehabilitation works of an administrative building in Tbilisi and developing the material-technical base. However, the amendments to the Law of Georgia on the State Inspector's Service on abolishing this institution have hampered the implementation of its plans in this direction.

In view of that, the cash execution of the 2021 budget amounted to 7.11 million GEL.

Nº	Line Items of Budget Classification	Adjusted Plan	Cash Execution
1	Remuneration	4 345 000	4 303 102.73
2	Goods and Services	2 040 000	1 786 520.90
3	Social Security	101 000	99 081.22
4	Other expenses	74 000	54 841.26
5	Nonfinancial assets	2 440 000	867 178.77
Grant total		9 000 000	7 110 724.88

³⁸ The 2019 budget of the State Inspector's Service was 5 million GEL (4.4 million - budget allocation, 0.6 million - Government Reserve Fund), and the staff included was 116 employees. In 2020 the approved budget of the State Inspector's Service amounted to 7 million GEL, and the staff included was 125 employees.

01

Conducted Procurements

1. Conducted Procurements

The public procurement plan of the State Inspector's Service for 2021 was set at GEL 3 118 200. The State Inspector's Service has implemented important projects to ensure the development of infrastructure and material-technical base, including: the arrangement of the administrative building located in the Autonomous Republic of Adjara (Batumi) and its equipment with appropriate material-technical means has been completed; Repair and rehabilitation work of the administrative building located in Tbilisi has started.

The prevalence of coronavirus infection (COVID-19) in 2021 has had a significant impact on the procurement process of the Service. Since the market research is an important stage in the implementation of the procurement, the existing and / or expected international or local regulations significantly hindered the process of identifying potential suppliers, determining the estimated value and ascertaining the delivery time. Consequently, despite the efforts of the Service, in some cases, thorough market research was associated with long deadlines, while due to the circumstances changed directly during the procurement procedures, part of the announced e-tenders did not take place or ended with a negative result.³⁹

³⁹ The State Inspector's Service publishes detailed information on conducted public procurements on its official website every year (once a quarter).

02

**Paid Remunerations,
Supplements and Bonuses**

2. Paid Remunerations, Supplements and Bonuses

In 2021, employees of the State Inspector's Service (including the State Inspector and Deputy State Inspectors) were paid salaries in the amount of GEL 3 664 805.02, and salary for special rank in the amount of GEL 19 901.35

In 2021, GEL 383 356.36 was paid as a supplement to the employees of the State Inspector's Service, of which GEL 232 698.49 was paid to the employees with special ranks pursuant to the mandatory supplement provided for in the law of Georgia on the State Inspector's Service, GEL 9 529.87 was paid as a mandatory supplement in line with Article 26, Section 1 of the Law of Georgia "on Public Service", and GEL 141 128.00 was paid for addition functions and overtime work. In 2021, GEL 235 040.00 was paid as a bonus to the staff of the State Inspector's Service.

As for the persons employed under the employment contract, in 2021 the total amount of remuneration of 9 such employees amounted to GEL 127 599.47 of which GEL 8 554 was paid as a supplement and GEL 5 600 – as a bonus.⁴⁰

	Salary	Salary for special rank	Mandatory Supplement (for special rank)	Supplement issued for additional functions and overtime work	Bonus	Number of employees
2019	1 673 977.33	2 288.04	25 930.80	44 804.00	152 740.00	79
2020	3 104 456.46	15 609.89	180 013.9	63 730.11	0 ⁴¹	102
2021	3 664 805.02	19 901.35	242 228.36	141 128.00	235 040	110

⁴⁰ In 2019, the total amount of remuneration of 7 employees under the employment contract amounted to 59 522.39, of which bonus amounted to GEL 4 752, while the supplement was not given. As for 2020, the total amount of remuneration for 6 employees under the employment contract amounted to 72 575.46, of which supplement amounted to GEL 2 701, while bonus was not given.

⁴¹ The reason for not issuing bonus in 2020 was conditioned by the situation created by the corona virus. It is also noteworthy that the State Inspector's Service returned GEL 1 million from its budget to the state budget.

03

Vehicles

3. Vehicles

As of 2021, 28 units of vehicles were owned by the State Inspector's Service, the actual cost of maintenance of which amounted to GEL 41 886.00, and the fuel cost - GEL 157 404.41.⁴²

It should be noted that the State Inspector's Service operates countrywide from three cities – Tbilisi, Kutaisi and Batumi, which is associated with almost daily transportation to different regions of Georgia. As the insufficient number of vehicles hindered the movement to all necessary territorial units. or sometimes made it impossible, the State Inspector's Service announced electronic tenders in December 2021 for the purchase of 7 additional operational vehicles. However, the announced electronic tenders were terminated by the decision of the Service due to the amendments made in the Law of Georgia on the State Inspector's Service on abolishing the institution.

⁴² As of 2019, 16 units of vehicles were owned by the State Inspector's Service, the actual cost of maintenance of which amounted to GEL 14 995.00, and the fuel cost - GEL 25 112.74. As of 2020, 16 units of vehicles were owned by the State Inspector's Service, the actual cost of maintenance of these vehicles amounted to GEL 16 806.00, and the fuel cost - GEL 76 891.00.

04

**Real Estate owned
by the Service**

4. Real Estate owned by the Service

04

As of 2021, 5 real estates were owned by the State Inspector's Service. East Division of the Investigative Department of the Service is housed in a leased private property.

№	Name and Address of the Real Estate	Type of right	Function
1	Tbilisi, N. Vachnadze Str. №7	State Property with the right to use	Administrative building housing 7 Departments of the Service
2	Tbilisi, M. Asatiani Str. №9	Private Property, lease	Administrative building housing East Division of the Investigative Department together with 3 other Departments
3	Kutaisi, Ir. Abashidze Ave. №22	State Property with the right to use	Administrative building housing West Division of the Investigative Department
4	Batumi, Mazniashvili Str. №54	State Property with the right to use	Administrative building housing Investigative Department's Division of Autonomous Republic of Adjara
5	Tbilisi, Kosta Khetagurov Str. №2 / St. Nikoloz Str. №2	State Property with the right to use	Building where after the repair-rehabilitation, employees of the Service will be working
6	Tbilisi, Tskhneti, Guramshvili Str. №39	State Property with the right to use	Building handed over to the Service for the purpose of launching the investigative function, however, it is in need of repair-rehabilitation works

In 2020, building located on Khetagurov Street, Tbilisi was transferred to the State Inspector's Service for use. Since the building needs to be repaired and rehabilitated, relevant works have started in 2021, which are currently suspended due to the amendments made in the Law of Georgia on the State Inspector's Service on abolishing the Service.

05

Other Expenses

5. Other Expenses

In 2021, the telecommunication (local and international telephone calls) costs of the State Inspector's Service amounted to GEL 22 573.44 (in 2019, this cost amounted to GEL 10 348.92 GEL, and in 2020 – to GEL 18 976.71).

In 2021, the cost of placing advertisement by the State Inspector's Service amounted to GEL 3,675.00 GEL (in 2019, this cost amounted to GEL 3,176.31, and in 2020 – to GEL 1 319.42). Only public awareness activities were subject to advertising.

06

**Financial Support Provided by
Donor Organizations**

6. Financial Support Provided by Donor Organizations

Donor organizations actively assisted the Service in technical equipping and introducing electronic products.

Donor Organization	Form of assistance	List of provided assistance	Cost	Status
		2021		
EU and UN joint project “Human Rights for All, Phase II”, Office of the High Commissioner for Human Rights (OHCHR), Tbilisi	Intangible asset	Adding new functionality on the Service’s webpage (stateinspector.ge)	GEL 2 728	Completed
United Nations Office for Project Services (UNOPS)	Tangible asset	Server equipment	GEL 296 000	Completed
United Nations Office for Project Services (UNOPS)	Tangible asset	Equipment for interviewing rooms adapted to minor	GEL 31 137	Pending
United Nations Office for Project Services (UNOPS)	Tangible asset	Teleconferencing system	-	Pending

USAID Good Governance Initiative (GGI)	Intangible asset	Distance Learning Platform	GEL 28 646.78	Completed
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Donor Organization	Form of assistance	List of provided assistance	Cost	Status
2020				
EU and UN joint project “Human Rights for All, Phase II”, Office of the High Commissioner for Human Rights (OHCHR), Tbilisi	Tangible asset	Biological sample bag	GEL 952.94	Completed
United Nations Development Programme (UNDP)	Intangible asset	Statistics Program	GEL 12 186	Completed
EU and UN joint project “Human Rights for All, Phase II”, Office of the High Commissioner for Human Rights (OHCHR), Tbilisi	Tangible asset	Forensic equipment	GEL 26 983.57	Completed
U.S.A. Embassy’s Bureau of International Narcotics and Law Enforcement Affairs	Tangible asset	Stationary and mobile radio stations	GEL 103 685.88	Completed

Donor Organization	Form of assistance	List of provided assistance	Cost	Status
2019				
United Nations Development Programme (UNDP)	Service	Logo and JSC Goods branding	GEL 14 539.58	Completed
United Nations Development Programme (UNDP)	Intangible asset	Website design and development	GEL 14 621.26	Completed

XI. Abolishment of the State Inspector's Service

01

**Adopted Legislative
Amendments**

1. Adopted Legislative Amendments

On 25 December 2021, the State Inspector's Service and all its staff learnt through the media that the Parliament of Georgia decided to abolish the State Inspector's Service

In particular, on 22 December 2021, the Parliament of Georgia initiated and, in an expedited manner (December 30), without wide public discussions, voted for the amendments to the Law of Georgia on the State Inspector's Service and the Law of Georgia on Personal Data Protection, according to which from March 1, 2022:

- The State Inspector's Service is abolished and replaced by two Services - the Special Investigative Service and the Personal Data Protection Service;
- The State Inspector (who was elected by the Parliament of Georgia for a fixed term of 6 years expiring on July 3, 2025) and her deputies are removed from the positions;
- Other employees of the State Inspector's Service are allocated to the Special Investigative Service and the Personal Data Protection Service (the original version of the draft law provided for the dismissal of all employees of the Service, although this provision was later changed).

The process of drafting the law was completely conspiratorial. Its drafting was unknown to the State Inspector's Service as well as international organizations and other experts in the field. The date of initiating the draft law and accelerated process of its examination coincided with the pre-New Year period, when absolute majority of the representatives of international and diplomatic corps were not present in Georgia.

As an argument for abolishing the State Inspector's Service, the Parliament of Georgia indicated that accumulation of two functions – personal data protection and investigative functions created a conflict of interest and endangered the protection of data. Furthermore, it was mentioned that by this, the recommendation issued by the non-governmental sector in 2018 on establishing an independent investigative service was fulfilled. It is noteworthy that the conflict of interest between these two functions (personal data protection and investigation of crimes committed by officials) was not seen by the Parliament of Georgia in 2018 when establishing the State Inspector's Service and this recommendation of the NGOs was not deemed as a reasonable argument. Besides, before initiating the draft law, the Parliament of Georgia has not asked any questions about the performance of these two functions to the Service and has not heard the report of the Service submitted to the Parliament on 31 March 2021, which reflected the work of the Service during the coexistence of these two functions.

The adopted laws fail to increase the personal data protection standard and investigate the crimes committed by officials in a more effective way for the following reasons:

- The draft laws are copies of the existing laws. Not a single word is supposed in the draft law about strengthening the Service. Any of the recommendations issued by the international organizations and non-governmental sector are not reflected. Neither the challenges, underlined in the 2020 Report on the Activities of the State Inspector's Service submitted to the Parliament of Georgia, are addressed;
- A range of new crimes from the Criminal Code of Georgia are to be added to the investigative jurisdiction of the entity. However, most of these crimes is beyond the purpose/idea for which the independent investigative mechanism was created and serves the purpose of distracting from main function. It is also noteworthy that these newly added provisions do not apply to the employees of the prosecutor's office.
- The law of Georgia on Personal Data Protection fails to incorporate any of the provisions of the draft law on Personal Data Protection which has been submitted to the Parliament of Georgia back in 2019 with the aim to establish a high standard of personal data protection in Georgia;
- The new laws fail to provide better guarantees for ensuring the security of tenure of the heads of these two new Services. On contrary, the procedure for their election has worsened - the new legislation does not require a parliamentary majority for election of the heads (consequently, they may be elected by a majority of attending members of Parliament). This weakens the public confidence towards the newly established institutions and their legitimacy, endangers their independence and poses the risk of dismissal of their heads by the Parliament of Georgia at any time (as it happened in the case of the State Inspector);
- The provision of the law, which entitled the Parliament of Georgia to invite the State Inspector at any time by the majority of the total composition at the session and/or the Committee of the Parliament to present the information on the current activities of the State Inspector, are removed. This diminishes the role of the newly created institutions, as the use of the parliamentary arena is essential for independent institutions

The State Inspector, Londa Toloraia assessed the abolition of the State Inspector's Service highlighting that: "The State Inspector's Service will never be against progressive reforms. However, it is obvious, that this initiative is not a reform – it's an operation against an independent institution and its independent staff. This is a punishment of the Service for: its independence; faithful attitude to the job; being law-abiding institution; adopting legitimate decisions towards public institutions; their critical and different position on the reform on separation of investigative and prosecutorial functions; the proposals submitted to the Prosecutor's Office upon which initiation of criminal prosecution was requested against officials, however none were satisfied; implementing new standards for investigating the official misconducts; our different

position on the Law of Georgia on Information Security and many other factors. The members of the Parliament in their comments expressed clear and direct dissatisfaction towards the decisions of the Service several times. No institution has been reorganized/restructured through these methods; all the more – no elected positions and independent institutions were abolished prematurely. This process endangers all the elected officials, creates a feeling of uncertainty and pressure on their activity. At the same time, this is a clear message to all civil servants that for their fairness they may become unemployed one day.”

02

International Reactions

2. International Reactions

The decision of the Parliament of Georgia on abolishing the State Inspector's Service was followed by critical reactions from the international organizations and diplomatic representatives of Georgia's partner countries. They called on the Parliament of Georgia to suspend the consideration of draft law in an expedited manner and ensure involvement of all stakeholders in the process.



Ambassador of the European Union to Georgia, Carl Hartzell - "We still do not see any objective reasons for the unexpected and hasty dismantlement of the State Inspector's Service last December and for the early termination of the mandate of the State Inspector." As he noted, effective democratic oversight of the security sector and proper data protection remain Georgia's commitment.

Acting Head of the EU Delegation Asunción Sánchez Ruiz – "The process initiated this week in the Georgian Parliament to adopt, in an expedited procedure, a law that will lead to the abolition of the current State Inspector's Service bears high risks for Georgia's democracy."

"Whereas there could be reason to legislate to improve the investigative and data protection functions currently vested in the State Inspector's Service, such changes should be done in an open and transparent process, with a meaningful, broad debate, including civil society and the State Inspector's Service itself. The State Inspector's Service is Georgia's independent mechanism for investigating ill-treatment and abuse of power committed by law enforcement officials and is thus a key institution for a



⁴³ Available at the following link:

<https://www.interpressnews.ge/ka/article/695896-karl-harce-li-kvlav-ver-vxedavt-inspektoris-samsaxuris-moulodnelad-da-nachkarevad-dashlis-mizezebs-usaprtxoebis-sektorze-demokratiuli-zedamxedveloba-da-monacemta-satanado-dacva-sakartvelos-valdebulebad-rcheba>

well-functioning democracy and for the protection of human rights. The European Union was engaged in the creation of this Service and has invested substantial financial and human resources in its development. We are, therefore, very disappointed to see these actions, and regret the fact that it has not proved possible for EU representatives to engage with the Parliament on this matter."⁴⁴

Deputy Head of the EU Eastern Partnership Bilateral Relations Division Dorota Dlouchy – Suliga - “Quite worrying developments – the law that would abolish the State Inspector’s Service under expedite procedure in the Parliament. EU was engaged in its creation and invested substantial resources in its development.”⁴⁵



Member of the European Parliament, Viola von Cramon - “Very disturbing what’s going on in Georgia over Christmas. Government tries to abolish one of the most professional, well-functioning state institutions, the State Inspector’s Service. This doesn’t look like a promising start for 2022 democracy and rule of law.”⁴⁶



⁴⁴ Available at the following link:
<https://bit.ly/3LUK3HD>

Available at the following link:
⁴⁵ https://twitter.com/DOROTADLOUCHY?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eeserp%7Ctwgr%5Eauthor&fbclid=IWAR1WLI2IOD0QFGUXRL_DGT4PF-QXI7-AMUULR1JWXK4KSIX7PO72AXC18

Available at the following link:
⁴⁶ <https://twitter.com/VIOLAVONCRAMON/STATUS/1476232894930636804?s=20&fbclid=IWAR35FKSH49SKYFNGGWKZ3EH-ET7AOU6M2HSCLBXCORBPBUUSHJXLBZDQVQ>



US Embassy in Georgia - “Last week, the ruling party undermined government accountability by abolishing the State Inspector’s Service, which is mandated to investigate police abuse and protect data privacy, undermined the independence of individual judges by amending the Law on Common Courts, and undermined faith in the judiciary by appointing yet another Supreme Court judge using a flawed selection process. No credible reasons were provided to the public for why these actions needed to be rushed through without appropriate consultations.

The lack of transparent discussion or analysis of the amendments is particularly troubling. Whether intended or not, the ruling party sent the message that independent oversight of the government or dissenting voices, even when prescribed by law, will be answered with retaliation, discipline, and dismissal.

The United States supports Georgia’s sovereignty and stability every day through our long-standing security cooperation and economic development programs. Strong democratic institutions and adherence to the rule of law are Georgia’s best defenses against Russian aggression. Steps that weaken democratic institutions, such as the judiciary or independent oversight agencies, damage Georgia’s aspirations for NATO and European Union membership, and undermine the basic freedoms that are the foundation of Georgian culture and society.”⁴⁷



Council of Europe Commissioner for Human Rights Dunja Mijatovic - “The Georgian Parliament should reject draft legislation undermining the independent functioning of the State Inspector’s Service. I call on the Georgian Parliament to refrain from adopting, in an expedited manner and without proper consultation with the relevant stakeholders, the draft law aiming at the abolition of the State Inspector’s Service which is an independent institution responsible for personal data protection and investigation of certain crimes committed by law enforcement officials. This draft legislative proposal also provides for the dismissal of the State Inspector and all those employed by the Service. If adopted, this draft law can only weaken the independent functioning of the national human rights protection mechanisms in Georgia.”⁴⁸

⁴⁷ Available at the following link:
<https://bit.ly/3M8RC23>

⁴⁸ Available at the following link:

https://georgia.un.org/en/168152-united-nations-concerned-over-decision-georgian-authorities-abolish-state-inspectors-service?fbclid=IwAR1J0EMQKLGFR6NOWCS5Z3US_2N8JJSHTFBKLLSDTSBPOSN0W7E50BUHNY

United Nations - “United Nations concerned over the decision of Georgian authorities to abolish the State Inspector’s Service.

The United Nations Country Team in Georgia expresses its regret over the decision of Georgian authorities to abolish the State Inspector’s Service. On 13 January 2022 the President has signed a new law abolishing the State Inspector’s Service and creating two separate institutions: Special Investigative Service and Personal Data Protection Service.

The lack of convincing justification for abolishing the State Inspector’s Service and the absence of compelling rationale for stripping the State Inspector of her six-year mandate sends a chilling message to independent institutions of human rights protection.

We are concerned that the substantial broadening of the list of crimes falling within the mandate of a newly created Special Investigation Service entails a serious risk of overburdening the agency and distracting its team from fulfilling its primary mandate to combat impunity. We recall the recommendation by UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia (2015) stating concerns ‘at the risk that unduly broad jurisdiction, whether exclusive or discretionary, may make the task of the [State Inspector] overly burdensome [if] ... offences committed by law enforcement agents that are not part of the core group of torture or cruel, inhuman or degrading treatment or punishment... [fall within its mandate]’.

We call on the authorities to request the opinion of relevant international institutions on the compliance of these decisions with the international standards.”⁴⁹



⁴⁹ Available at the following link:

https://georgia.un.org/en/168152-UNITED-NATIONS-CONCERNED-OVER-DECISION-GEORGIAN-AUTHORITIES-ABOLISH-STATE-INSPECTORS-SERVICE?FBCLID=IWAR1J0EMQKLGFR6NOWCS5Z3US_2N8JSGHTFBKLLSDT5BP0SNOW7E50BUHNY

UN OFFICE OF HIGH COMMISSIONER FOR HUMAN RIGHTS, GENEVA - “Deep concern over proposals for Parliament to abolish State Inspector's office, an independent institution with key role in torture prevention and privacy protection. We call for the initiative to be withdrawn & To ensure independence of national human rights mechanisms.”⁵⁰



Ambassador Extraordinary and Plenipotentiary of Norway to Georgia, H.E. Helene Sand Andresen - “Worried about rushed process to split the State Inspector’s Service, dismiss all employees. Request Georgian Parliament to take inclusive and considered approach. The State Inspector’s Service should be enabled and empowered to fill its role as independent human rights institution - an asset for Georgian democracy.”⁵⁰



Ambassador Extraordinary and Plenipotentiary of the Federal Republic of Germany to Georgia, H.E. Hubert Knirsch - “It is difficult to understand why the project on State Inspector's Service is being considered in an expedited manner. The State Inspector's Service is an important element of Georgia's government system. It is good when changes in institutional matters are made after careful consideration and only as many changes are made as it is needed.”⁵²



⁵⁰ Available at the following link:

https://twitter.com/UNHUMANRIGHTS/status/1475408100458999811?s=20&fbclid=IWAR3URXN1DCYD7L9K3R6AF3NSLEVGDJJUSTQRA1RD_0MW3URDQ6PWYKVE

⁵¹ Available at the following link:

<https://twitter.com/SANDANDRESEN/status/1475768651282362371?s=24&fbclid=IWAR2RWYALO-OFRTAZMUHAAM-GSBDXODK0C03AI1LYPWQAMMDXKSFQZHUVVM>

⁵² Available at the following link:

<https://bit.ly/35FQY6Z>

Ambassador Extraordinary and Plenipotentiary of the French Republic to Georgia, H.E. Diego Colas - “When dealing with key democratic checks and balances, we call for reforms to take place carefully, with wide consultations, with appropriate transitions, avoiding chilling effect on incumbents.”⁵³



Diégo Colas
@ColasDiego

I share the concerns about the ongoing reform of 🇧🇪 State Inspector @DPAofGeorgia. When dealing with key democratic checks + balances, we call for reforms to take place carefully, with wide consultations, with appropriate transitions, avoiding chilling effect on incumbents.



Clare Allbless
@ClareAllbless

Very worrying news regarding the sudden proposal to dismantle the State Inspector's Service @DPAofGeorgia. I hope any decision will be afforded the time, care and openness it requires, involving all relevant stakeholders. #independentinstitutions #HumanRights

3:45 PM · Dec 29, 2021 · Twitter for iPhone

Deputy Head of Mission at the British Embassy, Clare Allbless - “Hope any decision will be afforded the time, care and openness it requires, involving all relevant stakeholders.”⁵⁴

Ambassador Extraordinary and Plenipotentiary of the Kingdom of the Netherlands to Georgia, H.E. Maaïke van Koldam - “Concerned about initiative towards dissolving the State Inspector's Service, important human rights institution, leading to dismissal of all staff. Open and transparent process needed, broad consultation including with the Personal Data Protection body of Georgia itself. Trust and independence are key.”⁵⁵



Maaïke van Koldam
@MaaikewanKoldam

Concerned about initiative towards dissolving State Inspector's Office 🇧🇪, important #HumanRights institution, in a rushed manner leading to dismissal of all staff. Open & transparent process needed, broad consultation incl with @DPAofGeorgia itself. Trust & independence are key.

6:50 PM · Dec 28, 2021 · Twitter for iPhone

⁵³ ხელმისაწვდომია შემდეგ ბმულზე:
https://mobile.twitter.com/colasdiego/status/1475851295554736134?source=twitter&fbclid=IwAR0U5NZP7VHJYSW-IB2YDAEL1MMRWIBX3ZSLERFBU_8LXLR6MBMNW13MWU

⁵⁴ ხელმისაწვდომია შემდეგ ბმულზე:
https://twitter.com/clareallbless?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauth%7Ctwclid=IwAR2CF9-HYEY8GZBOE7JIBZLQZ5FTBJHDELSJ7CDPWMMMSK3ICK7_MCF3KS

⁵⁵ ხელმისაწვდომია შემდეგ ბმულზე:
<https://twitter.com/maaikevankoldam/status/1475841600584658949?source=twitter&fbclid=IwAR02VG2PSU4TOODSD4CGBSXENUGIWAROYITGRXOXJVBX4GRCGMYIQFH0UG>

Ambassador Extraordinary and Plenipotentiary of the Czech Republic to Georgia, H.E. Petr Mikyska - „We EU Member States Ambassadors and CDAs had meeting with Londa Toloraia yesterday. Circumstances of planned abolition of the State Inspector’s Service, dismissal of all employees and timing of this rushed action are worrisome, not helping to checks and balances democratic system working properly.”⁵⁶



Associate director of the Europe and Central Asia Division at Human Rights Watch, Giorgi Gogia – “In highly controversial, nontransparent and possibly retaliatory move, during holiday break Georgian Parliament initiates reforms to dissolve the State Inspector’s Office, independent body created in 2018 to investigate abuses committed by law enforcement. Would be a clear setback.”⁵⁷

⁵⁶ Available at the following link:
https://twitter.com/mikyska_petr/status/1476092568492548101?fbclid=IWAR1WLI2IODQFGUXRL_DGT4PF-QIXI7-AMUULR1JWXK4KSIX7PO72AXC18

Available at the following link:
⁵⁷ https://twitter.com/giorgi_gogia?fbclid=IWAR0LGVJ39Z8HRRWIVGFVYLLQNL3U3VEK2LVEIR_U5MJLSK1-TIBT4B0QJ4

www.sis.gov.ge