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Is effective investigation feasible without proper evidence?

POLICY BRIEF

Executive Summary

The political dialogue and reform section of the Association Agenda includes conducting thorough, independent and effective investigations as part of the fight against cruel and inhuman treatment. However, the effectiveness of investigations into allegations of torture and other ill-treatment in prisons is undermined by deficiencies in gathering and preserving necessary evidence. Specifically, the collection of medical and other evidence does not comply with relevant international or European standards and fails to secure information that investigations can draw upon later.

While the Public Defender of Georgia as well as the National Preventive Mechanism (NPM) and international and European actors have highlighted the problem in numerous reports, the government agencies responsible have not pursued actions to rectify the situation. Georgia's normative framework/regulations and practices need to be brought into compliance with relevant international and European standards. In addition, CCTV records need to be stored for a longer period of time in order to have access to these when necessary for conducting investigations.

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Introduction

One of the preconditions of the effective investigation of torture and other acts of ill-treatment is proper documentation of prisoner injuries, as this provides evidence that can be used by investigatory bodies. This should be followed by reporting of these injuries to respective law-enforcement agencies, such as the Chief Prosecutor's Office in Georgia.

The Public Defender's reports¹ emphasise the country's poor performance in securing medical evidence for investigation. For years, documentation of prisoner injuries by medical staff has been problematic to the extent that the Chief Prosecutor's Office claimed that they were unable to effectively investigate allegations of ill-treatment due to lack of evidence².

According to data published by the NPM,³ the number of injuries, including self-inflicted and those sustained in everyday life or inflicted by others, is particularly high in some prisons, including Gldani Prison No. 8, Kutaisi Prison No. 2, Rustavi Prison No. 6, Ksani Prison No. 15 and Rustavi Prison No. 17. However, the exact origin of the injuries is not always properly documented.

The other problem noted by the Public Defender and NPM in their reports is that CCTV recordings in prisons, which could serve as another source of evidence, are only kept for up to 24 hours. They would provide invaluable evidence to investigations were they to be preserved for longer periods of time.

Review of International and European Standards

The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol,⁴ provides a set of international guidelines for documenting torture and its consequences. It establishes minimum standards for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body. According to the Istanbul Protocol, the examination of an alleged victim of ill-treatment should include a physical examination, forensic evaluation and psychological appraisal.

These are the six questions that need to be answered:⁵

- (a) Are the physical and psychological findings consistent with the alleged report of torture?
- (b) What physical conditions contribute to the clinical picture?
- (c) Are the psychological findings expected or typical reactions to extreme stress within the cultural and social context of the individual?

¹ Annual Reports of the Public Defender, Situation of Human Rights and Freedoms in Georgia, 2014 and 2015 and previous reports

² Meeting of the Inter-agency Council on Combating Ill-treatment Coordination Council, held on October 20, 2015

³ Public Defender of Georgia, National Prevention Mechanism, Tbilisi 2015, p. 25, available in English at: <http://www.ombudsman.ge/uploads/other/3/3779.pdf> (last accessed on 10 October 2016)

⁴ Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN, New York and Geneva 2004, available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf> (last accessed on 5 October 2016)

⁵ Ibid, para 105, p. 22

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(d) Given the fluctuating course of trauma-related mental disorders over time, what is the time frame in relation to the torture events? Where in the course of recovery is the individual?

(e) What other stressful factors are affecting the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role, etc.)? What impact do these issues have on the victim?

(f) Does the clinical picture suggest a false allegation of torture?

The protocol also recommends taking colour photographs of injuries when torture allegations are made.

In its 23rd General Report, the CPT emphasises the significance of accuracy and timeliness when documenting and reporting medical evidence. This is necessary for the effectiveness of investigations and the accountability of perpetrators in order to serve 'as a strong deterrent against the commission of ill-treatment in the future.'⁶

According to paragraph 74 of the 23rd General Report, the systematic proper medical screening by prison health staff should include:

i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), ii) a full account of objective medical findings based on a thorough examination, and iii) the health-care professional's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings. The record should also contain the results of additional examinations carried out, detailed conclusions of specialised consultations and a description of treatment given for injuries and of any further procedures performed.

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the prisoner. Further, it would be desirable for photographs to be taken of the injuries, and the photographs should also be placed in the medical file. In addition, a special trauma register should be kept in which all types of injury observed should be recorded.⁷

⁶23rd General Report of the CPT, p. 35, CPT/Inf (2013) 29, Strasbourg, 6 November 2013, available at: <http://www.cpt.coe.int/en/annual/rep-23.pdf> (last accessed on 10 September 2016)

⁷Ibid, para 74, p. 36

Findings

Collection of medical evidence

According to the Public Defender's report,⁸ the practice of prisoner injury documentation is problematic and inadequate as it does not allow for the effective identification of evidence of allegations of ill-treatment. Different manifestations of the problem include the following:

Mostly, the origin of injuries is not specified. There are traumas of unclear origin, questionable character and location. These are cases in which the prisoner does not explain the origin of the injury or declares that this is an everyday life injury (e.g. inflicted as a result of falling off the bed), but its location and character create doubts that the injury could be inflicted by another person.

Even in the latter case, the prison doctor should ascertain the cause of injury by fully examining the body and checking the credibility of the purported origin to remove any doubts about possible violence. Based upon the character and location of the injuries, the prison doctor should make a determination as to whether ill-treatment might have caused the injuries after completing the examination.

Another problem noted by the CPT in regards to medical documentation, including the registry of injuries, is the breach of confidentiality. The CPT reiterated its 'long-standing recommendation that all medical examinations (including, in particular, in the context of medical screening on arrival and recording of injuries) be conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a particular case – out of the sight of non-medical staff.'⁹

In addition, the CPT highlighted the problems associated with the failure to secure forensic, medical and other evidence (CCTV records) in a timely fashion, finding that 'recording/reporting the injuries [was performed] in a manner that left a lot to be desired.'¹⁰

During his visit to Georgia in 2015, the UN Special Rapporteur on Torture, Mr Juan Mendez noted that there was an 'overall need for improvement in quality and consistency of recording and documentation and of the medical attention offered'¹¹ during investigations of torture and ill-treatment. Specific flaws highlighted in the report were that 'reports were generally incomplete, lacking correct and complete descriptions or photographic documentation of the injury, and an interpretation of the probable cause.'¹² Mr Mendez recommended that measures be taken to ensure the routine gathering of photographic documentation of trauma injuries by medical staff and also to modify the current medical registration form to comply with the Istanbul Protocol.

In 2014, the Council of Europe office under their EU-funded project Human Rights in Prisons and Other Closed Institutions¹³, helped to develop forms for the medical documentation of injuries in compliance with the CPT standards and the UN Istanbul Protocol with the cooperation of a multidisciplinary group and involvement of local experts. In addition, prison medical staff have been trained in the

⁸Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, Tbilisi 2015, p. 26, available at: <http://ombudsman.ge/uploads/other/3/3892.pdf> (last accessed on 8 September 2016)

⁹CPT Report on its visit to Georgia in December 2014, CPT/Inf (2015) 42, 15 December 2015, Strasbourg, Available at: <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf>

¹⁰Ibid, para 18, p. 20

¹¹Report of the UN Special Rapporteur on Torture on his visit to Georgia, 1 December 2015, A/HRC, 31/57/Add. 3, Para 91, p. 15, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/273/24/PDF/G1527324.pdf?OpenElement>

¹²Ibid, para 92, p. 15

¹³Council of Europe Office in Georgia, Human Rights in Prisons and Other Closed Institutions Programme, available in English at <http://www.coe.int/en/web/tbilisi/human-rights>, last accessed on 5 October 2016. About 100 high ranking prison staff, including prison directors, prison chief doctors, doctors and nurses, were trained in CPT standards, ECtHR case law and Istanbul Protocol in 2014-2015.

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documentation of injuries in line with international and European standards, hence the competence and skills of the relevant staff have been built.

Order No35 of the Minister of Corrections¹⁴ (Article 15.2) requires that records of video surveillance systems (CCTVs) in prisons be stored for at least 24 hours. According to the Public Defender's Office,¹⁵ in spite of numerous appeals to maintain these recordings for a longer period of time, they are only held for only 24 hours. This makes it impossible for investigative bodies to retrieve any recordings when allegations of ill-treatment are made, since they will have been deleted by the time the complaint reaches the Chief Prosecutor's Office. This seriously undermines the effectiveness of investigations into allegations of torture or inhuman, degrading treatment.

Conclusions

The Public Defender and international and European bodies have made numerous recommendations about the need to improve medical documentation and gathering of medical evidence in prisons for use in investigations into allegations of torture. Regardless, Georgia's existing practices are not in line with the requirements of the Istanbul Protocol nor with the CPT standards. The same is true for gathering and maintaining other forms of evidence, e.g. CCTV recordings, which are currently kept for only a 24-hour period. These deficient practices undermine the effectiveness of investigations into allegations of ill-treatment due to the failure to secure integral, objective evidence.

This has implications for the implementation by Georgia of one of its commitments under the EU-Georgia Association Agenda, specifically as regards thorough and effective investigations into any allegation of the use of torture and ill-treatment in the penitentiary system.

¹⁴Order N 35 of Minister of Corrections (dated May 19, 2015) on setting rules for conducting visual and/ or electronic surveillance and control, keeping, deleting and destroying records, available in Georgian at: <https://matsne.gov.ge/ka/document/view/2823755> (last accessed on 10 October 2016)

¹⁵Public Defender of Georgia, Annual Report, The Situation of Human Rights and Freedoms in Georgia, Tbilisi 2015, p. 8, available in English at: <http://www.ombudsman.ge/uploads/other/3/3892.pdf> (last accessed on 10 October 2016)

Recommendations

- For the purpose of stepping up Georgia's efforts to comply with the specific requirement of Ensuring thorough investigations into allegations into the use of torture or ill-treatment, as stipulated by the EU-Georgia Association Agenda, the following measures ought to be undertaken;
- Measures for ensuring the confidentiality of medical documentation and related procedures of examination by prison doctors need to be put in place;
- Arrangements should be made for keeping CCTV video recording for reasonable periods of time (at least up to one month) to be used as an evidence, as necessary.

