



საქართველოს იუსტიციის სამინისტრო  
საქართველოს მთავარი პროკურატურა  
Ministry of Justice of Georgia  
Office of Chief Prosecutor of Georgia



KA011397213599617

№ 13/502

2017 / 01 / 04

ქ.თბილისი

To: Mr. Bjørn Engesland, Secretary General, Norwegian Helsinki  
Committee

Ms. Brigitte Dufour, Executive Director, International Partnership  
for Human Rights

Ms. Justina Tylaite, Director, International Elections Study Center

Ms. Stefanie Schiffer, Chair of Board, European Platform for  
Democratic Elections

Dear Sirs/Madams,

You have requested the Office the Chief Prosecutor of Georgia to clarify several issues regarding the investigations over the attack on international election observers in Jikhashkari, Georgia.

We have the honour to submit our observations over these issues within our capacity.

Whether the charges are commensurate with the offence

One of the primary concerns raised in your letter is that the investigation should have been opened into assault, threat and robbery.

Prior to going into the details of accusation, we would like to give a brief overview of the incident as established by the investigation.

At about 23:30 on October 8, 2016, after the polling station #79 in Jikhashkari was closed and the election commission was going through the procedure of vote count, Manuchar Gabechava, Giorgi Mkheidze and other yet-to-be identified persons broke into the building and verbally abused the commission members. When Gabechava noticed that Mr. Pascal Messerli, one of the foreign observers, was recording the raid, he cuffed the observer while his unknown co-perpetrators took away his mobile phone. Unknown suspects also took away Ms. Shorena Messerli's mobile phone. In addition, Gabechava physically harassed another foreign observer Ms. Polina Bakhtina, while

Mkheidze verbally abused the members of election commission, scattered the ballot papers on the floor and ran over them. Several days later, Shoren Messerli's mobile phone was found and submitted to the police.

Following the investigation Mr. Mkheidze was arrested on charges of interference with the work of elections commission under Article 163 of the Criminal Code of Georgia (CCG). His case was later submitted to Zugdidi District Court for examination on the merits.

As for Mr. Gabechava, he was arrested on November 3 on the charges of: 1. interference with the work of elections commission, Article 163 of the CCG and 2. battery and other forms of violence inside the polling station, Article 162<sup>1.1</sup> of the CCG.

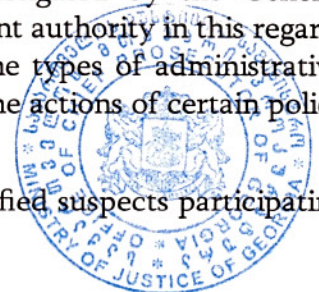
We would like to hereby clarify, that Article 162<sup>1.1</sup> of the CCG imposes criminal liability specifically for battery or other forms of violence at polling station, location of election commission or adjacent territories, or during the pre-election agitation or campaign events from the moment of appointing the elections until summing up the final results. Second paragraph of the same Article covers the cases when the aforesaid offense results in intentional minor health damage. Since the offense at issue was committed during the elections period and did not result in minor health damage, the act was qualified under Article 162<sup>1.1</sup> of the CCG. If the offence would not have been committed during the elections period, alternative qualification would be battery under Article 125.1 of the CCG, which entails fine, community service or correctional work as a penalty. Notably, Article 162<sup>1.1</sup> of the CCG prescribes two years of imprisonment, which is a harsher sentence compared to the former. Graver crimes against health are covered by Article 117 and Article 118 of the CCG, which envisage criminal liability for intentional grave and serious damage to health respectively, setting considerably harsher penalties than those mentioned above. Although, the latter two articles were irrelevant to the present case since the results of forensic medical examinations appointed in relation to the victims of this incident have established that the injuries sustained by them did not belong to the category of the health damage that would allow us to qualify the offence under Article 117 or Article 118 of the CCG. Hence, the offence of Mr. Gabechava falls under Article 162<sup>1.1</sup> of the CCG.

As per the issue of the alleged robbery, in accordance with the CCG, requisite mens rea of the offence of robbery is a direct intent to misappropriate an object. In light of the evidence obtained by investigation, the perpetrators took the mobile phone away from the observers to stop them from recording their attack on the polling station after which they left it at another place. All of the above-mentioned activities exclude the intent of misappropriation on the part of alleged perpetrators. Hence, the intent of misappropriation was not established. For that reason, the prosecution has not pressed the charges of robbery.

Therefore, we would like to submit that the legal qualifications of the charges filed against the alleged offenders in relation to the incident in question are in full conformity with the existing legislation of Georgia.

In your letter, you also raised a question as to why an administrative or criminal case into negligence of duty by the police was not opened. We would like to note, that the inquiry carried out in relation to the incident did not reveal the elements of the criminal offense in the actions of the police officers in question. Although, the conduct of the policemen are intensively investigated by the General Inspection of the Ministry of Internal Affairs of Georgia, which is a competent authority in this regard. The General Inspection has started an internal inquiry, which is one of the types of administrative proceedings and is aimed at revealing the signs of disciplinary violations in the actions of certain police officers.

It is of notice that the investigators are still attempting to track the unidentified suspects participating



in the incident alongside Gabechava and Mkheidze. They have conducted numerous investigative actions, including but not limited to interviewing the eye-witnesses and submitting the mobile phones for an IT examination. Investigation is ongoing and please be assured that all necessary measures are taken to bring all responsible persons to justice.

Understanding the great importance of protecting international observers and fully acknowledging the significance of resolving this case in the shortest possible terms, the Office of the Chief Prosecutor of Georgia remains open for any questions and discussions regarding this incident.

We would be happy to assist you further.

Yours Sincerely,

On behalf of the Office of the Chief Prosecutor of Georgia



Irakli Dondoladze

