

Challenges in the Investigation Process when Interfering with the Right to the Inviolability of Private Life (On the Example of Search and Seizure)

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Abstract

Criminal law cannot exist without human rights law. Every investigative or procedural action inherently involves a certain degree of interference with fundamental human rights, which may be carried out only with particular caution and exclusively for the purpose of achieving a legitimate aim. Such interference must, at the same time, be suitable, necessary, and proportionate. The court is entrusted with the function of the so-called “review” of decisions made by the investigative authority. It is precisely this authority of the court that constitutes the principal component of the legal mechanism through which the prevention of unjustified interference with fundamental human rights must be ensured. This risk becomes particularly evident where, in cases of urgent necessity, in order to discover an object, document, substance, or other item containing information relevant to the case, it is necessary to conduct a search/seizure.

The present article addresses the scientific analysis of investigative and judicial practice existing at both the national and international levels in this regard. In the course of the research, comparative legal and doctrinal analysis methods were employed. Furthermore, the identification of challenges arising during criminal investigations and their legal assessment were carried out through doctrinal analysis. The legal and practical aspects of interference with

the right to private life were also analyzed in a historical context through the use of the empirical research method.

As a result of the research, the principal finding may be formulated as follows: where a search or seizure is conducted on the basis of anonymous information or information received from a confidential informant of the operational-investigative service, and an illegal object, item, or substance is seized, such evidence may serve as the basis for a conviction only if the possession of the illegal object, item, or substance by the person concerned is confirmed not only by the testimonies of the police officers participating in the investigative action and the corresponding investigative report, but also by additional neutral evidence.

Accordingly, the main purpose of the paper is to identify the challenges arising from interference with the right to private life in the context of criminal investigations and to seek possible ways to overcome them.

In the course of working on the research topic, the methods of comparative legal analysis and doctrinal analysis were primarily employed. The identification of challenges arising in criminal investigations and their legal assessment were also carried out through the review of judicial practice and doctrinal analysis. In the present article, the legal and practical aspects of interference with the right to private life were additionally analyzed within a historical context through the use of the empirical research method.

Keywords: Human rights, Investigative and judicial practice, Criminal case investigation, Search/Seizure, Interference with human rights, Operational information, Neutral evidence, Judicial control

Review of the Literature

The relationship between criminal procedure and the protection of fundamental human rights has long occupied a central position within both legal theory and judicial practice. Modern scholarship generally recognizes that criminal law cannot function independently from human rights law, particularly because criminal investigations involve the direct exercise of coercive powers by the State. (Roberts & Zuckerman, 2010, pp. 110–134) Lauterwein emphasizes that the legitimacy of criminal law systems depends upon the existence of legal limits restricting state power and ensuring proportionality between law enforcement objectives and individual rights protection (Lauterwein, 2012, pp. 245–266). According to this approach, the rule of law requires that any interference with fundamental rights be justified by clearly defined legal standards and accompanied by effective procedural safeguards. Similar approaches are reflected in comparative criminal law scholarship, where authors emphasize that investigative powers must remain

subject to strict judicial oversight in order to prevent arbitrary interference with individual liberties.

In common law and continental legal scholarship alike, search and seizure are regarded as among the most intrusive procedural measures within criminal investigations. Baughman, Singer, and La Fond note that searches directly affect expectations of privacy and therefore require particularly rigorous procedural regulation. Likewise, Ormerod and Laird underline that coercive investigative actions demand a careful balance between the interests of effective criminal prosecution and the preservation of constitutional rights (Ormerod & Laird, 2021, pp. 201–218). The same concern is reflected in the work of Kyd, Elliott, and Walters, who observe that modern criminal procedure increasingly prioritizes procedural fairness and evidentiary reliability as essential elements of democratic criminal justice. (Kyd et al., 2020, pp. 64–81)

Within European human rights jurisprudence, the protection of private life under Article 8 of the European Convention on Human Rights has become the principal normative framework governing state interference through investigative actions. The European Court of Human Rights has consistently interpreted the concept of private life broadly, extending its protection to physical and psychological integrity, personal autonomy, identity, dignity, and social relationships. In *X and Y v. the Netherlands*, the Court emphasized that private life encompasses both physical and moral integrity, thereby establishing a broad understanding of the protected interests under Article 8 (European Court of Human Rights [ECtHR], 1985, para. 22) . This interpretation was further developed in *Gillan and Quinton v. the United Kingdom*, where the Court stressed that discretionary police powers affecting private life must be accompanied by adequate legal safeguards against arbitrariness.

The scholarly analysis of the Strasbourg Court's jurisprudence demonstrates that the requirement of legality under Article 8 includes not only the existence of a formal legal basis but also the foreseeability and accessibility of the relevant legal norms. Researchers examining the Court's case-law have noted that vague or excessively broad police discretion is incompatible with democratic standards governed by the rule of law. In this regard, judicial supervision serves as one of the principal guarantees against arbitrary interference. *Peters v. the Netherlands* further illustrates that the assessment of necessity requires balancing law enforcement objectives against the reasonable expectations of privacy enjoyed by individuals. (ECtHR, 2011, paras. 65–72)

An important area of contemporary legal scholarship concerns evidentiary reliability in cases involving operational information, confidential informants, and covert investigative activities. Comparative studies indicate

that reliance solely upon police testimony creates a significant risk of evidentiary abuse, particularly in circumstances where searches or seizures are conducted without independent witnesses or technical recording. This problem has become especially significant in post-Soviet legal systems, where concerns regarding police misconduct and evidentiary fabrication have been repeatedly discussed within both academic literature and judicial practice.

The jurisprudence of the European Court of Human Rights has also contributed substantially to this discussion. In *Ochelkov v. Russia*, the Court emphasized the limited probative value of police testimony unsupported by independent evidence. Similar reasoning appears in *Virabyan v. Armenia*, where the Court criticized domestic authorities for relying exclusively on police statements despite inconsistencies in the evidentiary record. Scholars analyzing these cases argue that independent corroboration functions not merely as an evidentiary requirement but as an institutional safeguard protecting public confidence in the fairness of criminal proceedings.

The issue of neutral evidence has acquired increasing importance in Georgian legal scholarship following the judgment of the Constitutional Court of Georgia of 25 December 2020. The Constitutional Court introduced a constitutional standard requiring corroborative neutral evidence when illegal items are discovered during searches conducted on the basis of anonymous operational information. Although Georgian academic literature addressing this issue remains relatively limited, the judgment has generated important doctrinal discussion concerning the relationship between evidentiary admissibility, procedural fairness, and constitutional guarantees of private life and fair trial rights. (Todua, 2021)

Existing studies in Georgian criminal procedural law primarily focus on the legality of urgent investigative actions, judicial control mechanisms, and the procedural standards governing searches and seizures. However, relatively little scholarly attention has been devoted specifically to the practical difficulties associated with obtaining and preserving neutral evidence during urgent searches. Likewise, insufficient analysis exists regarding the criteria for determining when obtaining such evidence is objectively impossible. As a result, judicial practice continues to demonstrate inconsistencies in the evaluation of operational information, police testimony, and procedural safeguards during investigative actions. (Supreme Court of Georgia, Analytical Department, 2024)

The present study seeks to contribute to the existing literature by combining doctrinal analysis, comparative legal research, and examination of judicial practice in order to evaluate the effectiveness of procedural safeguards governing searches and seizures in Georgia. Particular emphasis is placed on the concept of neutral evidence as a mechanism for preventing arbitrary interference with private life and ensuring the reliability of investigative

actions. By analyzing both national and international standards, the research aims to identify practical and normative deficiencies within current procedural regulation and to propose approaches capable of strengthening judicial control over coercive investigative measures.

Introduction

The relationship between criminal justice and the protection of fundamental human rights constitutes one of the defining features of a democratic legal order governed by the rule of law. Criminal proceedings inherently involve the exercise of coercive powers by the State, and therefore almost every investigative measure carries the risk of interference with constitutionally protected rights and freedoms (Ashworth & Redmayne, 2010). Among these rights, the right to respect for private life occupies a particularly important position, as it safeguards an individual's personal autonomy, dignity, bodily integrity, and protection from arbitrary state intrusion (Macovei, 2004). The legitimacy of criminal justice systems therefore depends not only on the effectiveness of crime detection and prosecution, but equally on the existence of effective procedural safeguards capable of preventing abuse of investigative authority (Sanders et al., 2010).

Search and seizure represent some of the most intrusive investigative measures available to law enforcement authorities. Such actions frequently involve interference with a person's home, property, bodily integrity, personal belongings, and private communications. Because of their coercive nature, these investigative measures create a substantial risk of arbitrary interference with private life if they are conducted without adequate judicial supervision and procedural guarantees. Consequently, democratic legal systems require that searches and seizures satisfy the principles of legality, necessity, proportionality, and legitimate purpose. The obligation to comply with these standards derives not only from domestic constitutional guarantees but also from international human rights law, particularly Article 8 of the European Convention on Human Rights (Kilkelly, 2003).

Under the legal framework of Georgia, the inviolability of private life is protected by Article 20 of the Constitution of Georgia, while procedural guarantees regulating searches and seizures are established by the Criminal Procedure Code of Georgia (Tumanidze, 2014). Although the legislation provides for judicial authorization and subsequent judicial review of urgent investigative measures, practical challenges continue to arise regarding the implementation of these safeguards. Such challenges become particularly visible in cases where searches and seizures are conducted on the basis of anonymous operational information or confidential informants, especially where investigative actions are performed without neutral witnesses or technical recording. In these situations, courts are frequently required to assess

the reliability and lawfulness of investigative measures based almost exclusively on the testimony of law enforcement officers, thereby creating a heightened risk of abuse and undermining public confidence in the administration of justice.

The issue has acquired additional significance following the judgment of the Constitutional Court of Georgia of 25 December 2020 (Decision No. 2/2/1276), which established an important constitutional standard regarding the admissibility of evidence obtained through searches conducted on the basis of anonymous operational information. According to the Constitutional Court, the use of evidence obtained in such circumstances requires corroboration by neutral evidence beyond the testimony of participating law enforcement officers. This constitutional approach reflects broader standards developed within the jurisprudence of the European Court of Human Rights, which repeatedly emphasizes the importance of effective safeguards against arbitrariness and the limited evidentiary value of uncorroborated police testimony (Trechsel, 2005).

The present research examines the legal and practical challenges arising from interference with the right to private life during criminal investigations, with particular emphasis on searches and seizures conducted under urgent necessity. The study focuses on the role of judicial control in balancing effective law enforcement with the protection of fundamental rights. In addition to analyzing the relevant provisions of Georgian criminal procedural legislation, the article examines the jurisprudence of the European Court of Human Rights, the Constitutional Court of Georgia, and national judicial practice. Particular attention is devoted to the concept of neutral evidence and its importance for ensuring the reliability and legitimacy of investigative actions.

The research employs comparative legal analysis, doctrinal analysis, and examination of judicial practice in order to identify deficiencies in existing investigative procedures and evaluate the adequacy of current legal safeguards. Through this analysis, the article seeks to contribute to the development of a more coherent procedural framework capable of minimizing unjustified interference with private life while simultaneously preserving the effectiveness of criminal investigations. The paper ultimately argues that the mandatory creation of neutral evidence during searches and seizures conducted on the basis of operational information constitutes an essential guarantee for the protection of human rights and the maintenance of public trust in criminal justice institutions.

At the outset, it should be noted that the inviolability of every individual's private life is guaranteed by paragraph 1 of Article 20 of the Constitution of Georgia (Constitution of Georgia, 1995). However, this fundamental right is not absolute. Its restriction is permissible by a court

decision or, in cases of urgent necessity provided for by law, even without such a decision.

The right to the inviolability of private life is also reinforced by Article 8 of the European Convention on Human Rights (Convention for the Protection of Human Rights, 1950), according to which everyone has the right to respect for his private and family life, his home, and his correspondence. There shall be no interference by a public authority with the exercise of this right, except in cases where such interference is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The European Court of Human Rights has indicated in a number of its judgments the impossibility of providing an exhaustive definition of the right to private life. Nevertheless, according to the interpretations developed in the case-law of the European Court of Human Rights, the right to private life includes, *inter alia*, respect for a person's physical and moral integrity.

The European Court of Human Rights has established that integrity is not limited solely to the "inner circle" of a person's private life, but also encompasses the physical, psychological, and moral unity of an individual, taking into account the "multiple aspects" of his or her physical and social identity (**X and Y v. the Netherlands, №8978/80**). However, not every instance of interference with an individual's moral and physical integrity leads to a violation of the right to respect for private life. In the case before the European Court of Human Rights- **Raninen v. Finland № (52/1996/771/972)** the Court held that the right to physical and moral integrity guaranteed by Article 8 is engaged when the conduct is not sufficiently severe to raise an issue under Article 3 of the Convention.

In the case of **Gillan and Quinton v. the United Kingdom, №4158/05**, The Strasbourg Court has held that the concept of "private life" is a broad term that is not susceptible to exhaustive definition. It encompasses a person's physical and psychological integrity. The notion of personal autonomy is an important principle underlying the interpretation of the guarantees it contains. This provision also protects the right to identity and personal development, as well as the right to establish relationships with other people and with the outside world.

In the aforementioned case — **X and Y v. the Netherlands (No. 8978/80)** — the Court held that private life is a concept that encompasses a person's physical and moral integrity, including their sexual life.

As regards the "necessity" of interference with the right to private life, the Strasbourg Court has stated that, in assessing whether an interference is "necessary," regard must be had to the reasonable requirements of protecting

the individual's private life in the exercise of the rights at issue (see **Peters v. the Netherlands, No. №21132/93**).

Interference with the right to respect for private life, as protected by the Constitution of Georgia and the European Convention on Human Rights, may only be carried out in cases strictly prescribed by law and in accordance with the established procedure.

In the case of **Gillan and Quinton v. the United Kingdom, №4158/05** The European Court of Human Rights, referring to its well-established case-law, has stated that the phrase "in accordance with the law" requires that the contested measure have a basis in domestic law and be compatible with the principle of the rule of law, which is expressly set out in the Preamble to the Convention and is inherent in the subject matter and purpose of Article 8. Accordingly, the law must be adequately accessible and foreseeable, that is, formulated with sufficient precision to enable individuals, if necessary with appropriate advice, to regulate their conduct. To meet these requirements, domestic law must provide legal safeguards against arbitrary interference by public authorities with the rights guaranteed by the Convention. In matters concerning fundamental rights, it would be contrary to the rule of law, one of the fundamental principles of a democratic society protected by the Convention, for the legal discretion granted to the executive to be expressed in terms of unfettered power. Therefore, the law must indicate with sufficient clarity the scope and manner of exercise of any such discretion conferred on the competent authorities. The degree of precision required of domestic legislation (which in any event cannot foresee all situations) depends to a considerable extent on the content of the instrument in question, the field it is designed to cover, and the number and status of its addressees.

Accordingly, the primary obligation of the State under Article 20 of the Constitution of Georgia and Article 8 of the European Convention on Human Rights is negative in nature and consists in the State refraining from interfering with these rights, except in cases provided for by national law. At the same time, these provisions also entail a positive obligation on the State, namely to take appropriate measures to ensure the effective protection of the fundamental right to private life.

According to Article 119 of the Criminal Procedure Code of Georgia (Georgian Criminal Procedure Code, 2009), a seizure and a search based on reasonable suspicion are conducted for the purpose of discovering and seizing an item, document, substance, or other object containing information that is relevant to the case. An item, document, substance, or other object relevant to the case may be seized if there is reasonable suspicion that it is kept in a specific place or with a specific person and that its search is not required. A search may be conducted in order to seize an item, document, substance, or other object relevant to the case if there is reasonable suspicion that it is kept

in a specific place or with a specific person and that a search is necessary to discover it.

By Article 120 of the same Code (Georgian Criminal Procedure Code, 2009), on the basis of a court order authorizing a search or seizure, or— in cases of urgent necessity—on the basis of an investigator’s decision, the investigator is entitled to enter a storage facility, premises, or any other property in order to discover and seize an item, document, substance, or other object containing information. Before commencing the search or seizure, the investigator is obliged to present the court order, or in cases of urgent necessity, the decision, to the person in whose premises the search or seizure is being conducted. The person acknowledges receipt of the order (or decision) by signing it. The investigator is entitled to prohibit persons present at or arriving at the place of the search or seizure from leaving or communicating with one another or with third parties until the completion of the procedure, and such prohibition is recorded in the official report. After presenting the court order or, in cases of urgent necessity, the decision, the investigator shall invite the person concerned to voluntarily hand over the item, document, substance, or other object containing information that is to be seized. If the object is voluntarily handed over, this fact is recorded in the official report; if the person refuses or fails to hand over all relevant objects, the seizure is carried out by force. During a search, the investigator seeks and seizes the items, documents, substances, or other objects specified in the court order or decision. In addition, any other objects containing information that may have evidentiary value in the case, or that clearly indicate the commission of another offence, as well as objects withdrawn from civil circulation, must also be seized. Objects discovered during the search or seizure should, where possible, be presented to the participants before being seized, and then described in detail, sealed, and, where feasible, packaged. The package must bear, in addition to the seal, the date and the signatures of the participants in the investigative action. Documents are not sealed where seizure is carried out due to their content. During the search or seizure, the investigator is entitled to open locked storage spaces, premises, or compartments if the person refuses to open them voluntarily. A personal search of a person present at the scene is permissible if there is reasonable suspicion that the person has concealed an item, document, substance, or other object to be seized; such a case is considered urgent necessity and the personal search may be conducted without a court order. The lawfulness of a search or seizure is subject to judicial review in accordance with the procedure established by the Code.

By Article 121 of the same Code (Georgian Criminal Procedure Code, 2009), an investigator is entitled, upon the existence of reasonable suspicion, to seize—by means of a personal search carried out in accordance with the procedure provided for in Article 120 of this Code—an item, document,

substance, or other object containing information that is relevant to the case and is discovered on a person's clothing, in items in their possession or in a vehicle, or on or within their body. If there is reasonable suspicion that a detainee is carrying a weapon or intends to dispose of evidence incriminating them in the commission of an offence, the detaining officer is entitled to conduct a personal search in accordance with the procedure established by this Code without a court order, and this shall be recorded in the detention report. In such a case, no separate report on the personal search is drawn up. The lawfulness of the personal search is subject to judicial review in accordance with the procedure established by this Code.

By Article 112(5) of the same Code (Georgian Criminal Procedure Code, 2009) defines the cases of urgent necessity strictly established by national legislation, the justification of which must be provided by the prosecutor, namely:

- when delay may result in the destruction of factual data important to the investigation;
- when delay would make it impossible to obtain factual data important to the investigation;
- when an item, document, substance, or other object containing information relevant to the case is discovered during the conduct of another investigative action (if it is found only as a result of a superficial inspection);
- when there is a real threat to life or health.

For the purposes of Article 119 of the Criminal Procedure Code of Georgia, in order for interference with the fundamental right to the inviolability of private life to be lawful, in the case of a search conducted without a court order, as well as in the case of a seizure, the prosecutor is, first and foremost, obliged to substantiate, on the basis of the materials of the criminal case, the existence of at least one of the legally defined circumstances of urgent necessity for carrying out such investigative actions and, by referring to unequivocal circumstances, to confirm the lawfulness of their conduct.

In investigative and judicial practice, there are frequent cases where, on the basis of operational information received by the police, searches and/or seizures are carried out by authorized persons due to urgent necessity, without the presence of a neutral witness and without being recorded by video. Subsequently, during judicial review, it becomes difficult to establish the lawfulness of the investigative actions, as their legitimacy is confirmed only by police officers.

The present article concerns one precedent from investigative practice, where, on the basis of operational information received by the police, a search of a person's vehicle and a personal search were conducted for the purpose of

discovering a firearm, followed later by the seizure of that person's clothing; however, none of the investigative actions was attended by a neutral witness nor recorded by video. According to the defence, this constituted an unjustified interference with the right to private life, expressed in planting a weapon in the accused's vehicle and subjecting him to physical abuse.

In the present criminal case, the prosecutor filed motions with the district court requesting that the investigative actions carried out due to urgent necessity—namely the personal search of the accused, the search of the accused's vehicle, the seizure of the vehicle, and the seizure of the accused's clothing—be declared lawful.

From the materials attached to the motions, it appeared that the initiation of the criminal investigation was based on operational information received by officers of the Police Department, according to which a specific person had unlawfully acquired a firearm and ammunition, which he kept on his person and in his vehicle. That person was located near a highway, where he was to meet an unidentified individual for a criminal, street-related confrontation, during which he might have caused bodily harm with a firearm. The officers submitted a report to their superior for response, and subsequently, at the outset of the investigation, stated during questioning that the operational information had been received from an experienced and highly reliable source, whose information regarding the commission of offences had been confirmed on numerous occasions.

Thus, in the present case, it is clear that the conduct of all four investigative actions was prompted by legally provided urgent necessity; however, the materials submitted did not answer the question of whether the aforementioned investigative actions were carried out lawfully in this specific instance.

According to the protocol of the personal search, the investigative action was conducted on a roadway by police officers, during which no technical means were used, and neither video nor photo recording was carried out. In addition, no neutral person attended the investigative action. The relevant section of the protocol indicates that the person subjected to the investigative action physically resisted the police officers, as a result of which proportional coercive force was used. During the search, a black pistol with a magazine and cartridges, located between the person's waist and trousers, as well as a knife and pills found in his underwear, were seized and sealed in appropriate packages. The protocol was signed by the police officers, while the person refused to sign it.

Immediately after the completion of the personal search, that person was detained as an accused. It is noteworthy that, according to the detention protocol, the accused did not resist during the detention.

Five minutes after the completion of the detention protocol, at the same location and with the participation of the detained person, police officers conducted a search of his vehicle. During this action, no technical means were used, and neither video nor photo recording was carried out. No neutral person attended the action. As a result of the search, a firearm (automatic weapon) and other personal items were seized from the vehicle. The protocol was signed by the police officers, while the detained person refused to sign it.

Five minutes after the completion of the vehicle search, at the same location and with the participation of the detained person, the same police officers conducted the seizure of the aforementioned vehicle. During this action, no technical means were used, and neither video nor photo recording was carried out. No neutral person attended the action. The protocol was signed by the police officers, while the detained person refused to sign it.

According to the materials submitted, after the detainee was transferred to the police administrative building, the seizure of his clothing (which he was wearing)—a T-shirt, trousers, belt, and underwear—was carried out with the participation of police officers. According to the protocol, the detainee refused to voluntarily hand over his clothing and resisted, as a result of which proportional coercive measures were applied. The detainee also refused to sign this protocol.

According to the police officers' explanations, during the search of the vehicle and the personal search, as well as during the seizure of the vehicle, video or photo recording could not be carried out because the participants did not have the relevant technical means with them. Although the officers had mobile phones, due to the operational information indicating a risk of bodily harm posed by the accused, and given that he was resisting them, it was impossible to carry out recording using mobile phones. Likewise, in view of the existing risk, it was not possible to involve a neutral person in the investigative actions. Due to time constraints, it was also not possible to involve an expert who could have recorded the search using technical means. Although, following the personal search and detention, police units arrived at the scene and blocked the roads, the risk emanating from the individual persisted, and therefore it was objectively impossible both to use technical means and to involve a neutral person.

According to the police officers' explanations, before the commencement of the seizure of clothing at the police premises, other clothing belonging to the accused was brought to him from his home. Prior to the seizure, he was offered the opportunity to voluntarily remove his clothing and put on the clothing brought from his home; however, he refused and resisted. Following this, the police officers forcibly removed his clothing, including his underwear, which was sealed in appropriate packages. In response to the judge's question as to why these details were not reflected in the investigative

action protocol, the police officer stated that he did not consider it necessary. The prosecutor provided a similar explanation, stating that the inclusion of such details in the seizure protocol was not mandatory.

At the court hearing, the detainee stated that he was stopped on the roadway by police officers who ordered him to exit the vehicle. Since the car door was automatically locked, before it was opened, a police officer attempted to break the window in order to open the door, after which he opened it from the inside. At that moment, the police officers removed him from the vehicle, threw him to the ground, and began beating him on various parts of his body. According to his statement, the police officers placed a firearm in his belt. He was then handcuffed and detained. At the same time, a police officer was recording video using a mobile phone. According to the detainee, the police officers then placed an automatic firearm in his vehicle and continued to subject him to physical and verbal abuse. After he was taken to the investigative authority, before the seizure of his clothing began, he requested a lawyer; however, the police officers forcibly removed his clothing and left him naked in a room for a certain period of time. According to the detainee, his body was touched on various parts, and he was subjected to physical and verbal abuse. He stated that he is completely innocent and that such violent actions by the police were motivated by his civic activism and his position as a citizen, as a result of which they are attempting to punish him as an example.

By Decision No. 2/2/1276 of 25 December 2020 of the Constitutional Court of Georgia, the normative content of the second sentence of paragraph 2 of Article 13 of the Criminal Procedure Code of Georgia was declared unconstitutional insofar as it allowed the use as evidence of an unlawful item seized during a search, in circumstances where the possession of the seized item by the accused is confirmed solely by the testimony of law enforcement officers and, at the same time, the law enforcement officers were able, but failed to take appropriate measures to obtain neutral evidence confirming the reliability of the search, in relation to Article 31(7) of the Constitution of Georgia.

According to the legislative amendment implemented on the basis of the aforementioned decision of the Constitutional Court of Georgia, namely in accordance with paragraph 3 of Article 13 of the Criminal Procedure Code of Georgia (Georgian Criminal Procedure Code, 2009), if a search or seizure is conducted on the basis of an anonymous report or information received from a secret collaborator (confidential informant)/source of information defined by the Law of Georgia “On Operative-Investigative Activities,” in accordance with the procedure established by paragraph 1 or paragraph 5 of Article 112 of this Code, and an unlawful item, object, or substance is seized, such evidence may serve as the basis for a conviction only if the possession of the

unlawful item, object, or substance by the person is also confirmed by evidence other than the testimony of the investigator conducting the investigative action, the testimony of another investigator participating in the investigative action, the testimony of a person with operative-investigative functions participating in the investigative action, and the protocol of the relevant investigative action. This rule shall not apply where the obtaining or presentation of other evidence is objectively impossible.

In the present case, the national court did not accept the explanations of the prosecutor and the police officers participating in the investigative actions, according to which, in the interest of ensuring security, it was objectively impossible to record the conduct of the investigative actions by technical means, and for the same reason it was not possible to summon a neutral witness.

It is clear that, given the complexity of investigative actions, in all cases, due to objective circumstances, it may be impossible to corroborate a search with neutral evidence; however, it must be established that the authorized person took reasonable measures to ensure the obtaining of neutral evidence.

In the case under consideration, it is undisputed that the police officers could at least have recorded the personal search, the vehicle search, and its seizure by means of a mobile phone video recording, thereby dispelling objectively arising reasonable doubts as to the lawfulness of the investigative actions, especially when the accused, from the very first contact with the police officers, expressed protest and indicated that firearms had been planted on him.

The court also did not accept the arguments of the author of the motion and the police officers participating in the said investigative actions that it was impossible to summon a neutral witness due to the alleged risk of bodily harm at the scene, according to operational information. In circumstances where, at the very outset of the personal search, the accused was under the control of the police officers and was detained at the scene, where other police units had blocked the roads and the scene had been secured properly, the risk posed by an unidentified person referred to in the operational information lacks any real basis. Furthermore, no expert was involved in the investigative actions who could have carried out video or photo recording, which was also not unjustifiably ensured by the investigative team. Thus, the court considered that, under the conditions of the scene being secured by police units and given that the said person was under police control from the outset of the investigative actions, there was at least a real possibility to video-record the search; however, the police officers did not use this possibility. In addition, after examining the case materials and during the court hearing, it was established that there was an objectively existing possibility to have a neutral

witness present during the search and seizure of the accused and his vehicle, which the police officers also failed to ensure.

Where the admissibility of items obtained through a search and seizure conducted on the basis of operational information as evidence depends solely on the explanations of police officers, the assessment of their reliability essentially depends on what objectively caused such a situation and whether it was impossible or excessively difficult to obtain additional evidence confirming the reliability of the search. In the present case, it is evident that the police officers could have obtained evidence corroborating the reliability of the personal search and the search and seizure of the vehicle; however, they failed to do so, and therefore the degree of confidence in the actions of the police officers is significantly diminished.

It should also be noted that the receipt of operational information and acting on that basis due to urgent necessity does not always mean that the authorized person lacks the time and opportunity to prepare in advance of the search, to equip themselves with appropriate technical means, or to involve an expert, and, where possible, to ensure that the search is recorded by video. Moreover, even in cases of urgent necessity, recording the search using a mobile phone camera, which is a commonly used device today, does not usually pose insurmountable difficulties. In the present case, none of these possibilities was utilized during the conduct of the investigative actions. Furthermore, at the commencement of the investigative actions and thereafter, at a minimum, the pre-existing condition, the conduct of the search and seizure, the discovered evidentiary items before sealing and after sealing, were not documented by photographs.

Accordingly, in light of the above circumstances, taking into account the visibly apparent injuries on the accused's face and analyzing the statements he made, the court concluded that, during the personal search, the vehicle search, and the seizure of the vehicle, the requirements of Articles 13, 119, and 120 of the Criminal Procedure Code were substantially violated, and therefore the prosecutor's motion to recognize the investigative actions conducted on the grounds of urgent necessity as lawful was dismissed.

With regard to the issue under examination, one of the fundamental judgments of the European Court of Human Rights is noteworthy — "Ochelkov v. Russia," application no. 17828/05, 11 April 2013. According to the case-law of the European Court of Human Rights, the testimony of police officers carries limited probative value if it is not supported by other evidence. The Court considers it wholly unacceptable to draw final conclusions on the basis of unrealistic statements made by police officers. In such cases, the Court also notes that police officers cannot be regarded as impartial witnesses. For example, in the case of Virabyan v. Armenia (application no. 40094/05), Findings regarding a person's alleged resistance to the police were based

solely on the testimony of police officers, which contradicted other evidence in the case and was unrealistic (judgment of 2 October 2012, paragraphs 153–154). In cases where domestic courts fail to give due consideration to and properly assess contradictory testimonies, the European Court of Human Rights finds a violation of the right to a fair trial guaranteed by Article 6 of the Convention (*M.C. v. Bulgaria*, application no. 39272/98, judgment of 4 December 2003, paragraph 178).

When the State authorities have exclusive knowledge, whether in full or in part, of the course of events, as, for example, where a person is under the control of the authorities, a strong factual presumption arises in respect of injuries sustained during detention. The burden of proof lies with the authorities, who must provide a satisfactory and convincing explanation. Failing this, it may be presumed that there has been treatment contrary to Article 3 of the European Convention on Human Rights (*Aktürk v. Turkey*, application no. 70945/10, judgment of 13 November 2014, paragraph 32).

In this context, it is also appropriate to analyze the ethical standards applicable to police activity, as established both by documents adopted within the Council of Europe and by domestic normative acts of Georgia, namely: the Declaration on the Police adopted by Resolution No. 690 (1979) of the Parliamentary Assembly of the Council of Europe; Recommendation Rec(2001)10 of the Committee of Ministers of the Council of Europe to member States on the European Code of Police Ethics; and the “Code of Police Ethics of Georgia and Conduct Instructions for Certain Employees of the Ministry of Internal Affairs of Georgia,” approved by Order No. 999 of 31 December 2013 of the Minister of Internal Affairs of Georgia. These documents reflect the increasing demands placed on police officers, which are directly explained by the expectations of members of society that police activities should be carried out with respect for certain fundamental values and core principles. Such requirements should not be perceived by the police as a threat creating obstacles to the performance of their duties. On the contrary, an approach oriented towards human rights in the exercise of police functions will contribute to effective interaction between the police and society. The police constitute the most visible manifestation of State authority. Police officers, in the performance of their duties, are strictly required to respect human dignity and to protect their rights.

Accordingly, where a search or seizure is carried out against a person on the basis of operational information due to urgent necessity, for the successful conduct of subsequent judicial review, the presence of a neutral witness or full video recording of the investigative action is of decisive importance, especially where the accused is under the control of the police. The creation of neutral evidence will, in all cases, convincingly dispel objectively arising possible doubts and will provide a solid basis for

recognizing the investigative action as lawful, provided that other requirements established by law are also satisfied.

As regards the seizure of the accused's clothing, the court considered that in this case too the requirements of Articles 119 and 120 of the Criminal Procedure Code were substantially violated, as the course of the investigative action was not described in detail in the protocol. In addition, the protocol of seizure and the above-mentioned explanations of the police officers gave rise to a reasonable doubt that the accused may have been subjected to degrading treatment. According to the police officer's explanation, before the seizure of clothing began at the investigative authority, the accused's own clothing was brought to him from his home. Prior to the seizure, he was offered the opportunity to voluntarily remove his clothing and put on the clothing brought from his home; however, he refused and resisted. After that, the police officers forcibly removed his clothing, including his underwear, which was sealed in appropriate packages. In response to the judge's question as to why these details were not reflected in the investigative action protocol, the police officer stated that he did not consider it necessary. The prosecutor provided a similar explanation, stating that the inclusion of such details in the seizure protocol was not mandatory. According to the accused's statement, after being taken to the investigative authority, before the seizure of his clothing began, he requested a lawyer; however, the police officers forcibly removed his clothing, including his underwear, and left him naked in a room for a certain period of time. The police officers touched various parts of his body and subjected him to physical and verbal abuse.

By the Article 4 of the Criminal Procedure Code of Georgia (Georgian Criminal Procedure Code, 2009) a judge, a prosecutor, an investigator, and other participants in criminal proceedings are obliged, at all stages of the criminal process, to respect the dignity and inviolability of the private life of the participants in the proceedings. It is impermissible to influence a person's free will by means of torture, violence, cruel treatment, deception, medical intervention, hypnosis, as well as other measures that affect a person's memory or thinking. It is also impermissible to use threats or to promise benefits not provided for by law. Within the framework of criminal proceedings, coercion may be used only in cases provided for by law and in accordance with the established procedure.

In the present case, it was evident that the circumstances indicated in the protocol of the seizure of clothing materially differed from the explanations given by its author at the court hearing; accordingly, such inconsistencies, taken together with the statements of the accused, give rise to a reasonable doubt that the accused may have been subjected to degrading treatment, which was expressed in his forced stripping.

Thus, the court considered that all the procedural violations described above, committed during the seizure of the accused's clothing, both individually and cumulatively, undermined the reliability of the evidence obtained through such investigative action and, most importantly, its lawfulness. In light of the above, the prosecutor's motion was denied. In the court's assessment, the investigative actions carried out against the accused were conducted in material violation of the requirements of procedural law, and therefore the investigative actions were declared unlawful.

Conclusion

Thus, on the basis of the analysis of the above-reviewed national and international legal provisions, the judgments of the European Court of Human Rights and the Constitutional Court of Georgia, as well as a specific precedential example, and for the purpose of preventing possible shortcomings in investigative and judicial practice, the following observations may be formulated as a conclusion:

If a search or seizure is conducted on the basis of anonymous information or information received from a secret collaborator (confidential informant) of the operative-investigative service, and an unlawful item, object, or substance is seized, such evidence may serve as the basis for a conviction only if the possession of the unlawful item, object, or substance by the person is also confirmed by neutral evidence in addition to the testimony of police officers participating in the investigative action and the relevant protocol of the investigative action.

Neutral evidence may be considered to include the presence of an independent, neutral person or the recording of the entire investigative action by video. This rule does not apply only where the obtaining or presentation of other evidence is objectively impossible. Objective impossibility of presenting neutral evidence must be understood as based on real, objective circumstances that unequivocally establish the impossibility of presenting such evidence, for example, if a physical attack has been carried out against a police officer or if there is a real risk of an attack on the police officer or other harm to their health. In other cases, in order to avoid depriving the investigative action of its lawful basis, it is necessary, for the purpose of confirming its reliability, to ensure video recording of a search or seizure conducted on the basis of operational information due to urgent necessity, or the presence of a neutral person, which would reasonably dispel objectively arising possible doubts.

The neutrality of a person attending investigative actions is determined by their relationship to the specific criminal case, their professional activity and other personal characteristics, and their relationship with the prosecution or defence. In each individual case, any doubt as to the impartiality of the invited independent person must be excluded, and their presence at the

investigative action must not be merely formal. Only such a person may be regarded as neutral.

In order to ensure the practical implementation of the above-mentioned conclusions reached through scientific research, it is considered appropriate, as a recommendation, to provide for a clearer and more comprehensive implementation of the Judgment of the Constitutional Court of Georgia No. 2/2/1276 of 25 December 2020 within the Georgian criminal procedural legislation. In particular, it is important to establish, through foreseeable and clearly formulated procedural norms, the mandatory creation of neutral evidence during searches and seizures conducted on the basis of anonymous reports or information received from a confidential informant of the operational-investigative service. Furthermore, the concept of neutral evidence should be defined at the legislative level, and procedural norms should expressly indicate that the presence of an external neutral person during a search or seizure, or the full video recording of the investigative action, may constitute neutral evidence. Only through such an approach will it be possible to prevent unjustified state interference with the right to private life and to minimize the risk of potential unlawful influence by law enforcement authorities over society.

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