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For Report to be presented to the 55th session of the Human Rights Council
(Regarding the use of unlawful solitary confinement)

The Special Penitentiary Service of the Ministry of Justice of Georgia, in violation of my civil rights guaranteed by the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the legislation of Georgia, subjected me to prolonged solitary confinement in a high-risk penitentiary institution.

On May 16, 2019, by the decision of the Tbilisi City Court, I was subjected to an extraordinary arrest in penitentiary Institution No. 8 of the Special Penitentiary Service of the Ministry of Justice of Georgia¹.

On June 22, 2019, the regime of my detention was tightened without legal grounds, and I was placed in a solitary cell of the high-risk Penitentiary Institution No. 6 (for convicts under serious articles) of the Special Penitentiary Service of the Ministry of Justice of Georgia.

At the same time, I was not informed of the order of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia to place me in a solitary cell of the high-risk Penitentiary Institution No. 6 (for convicts under serious articles), thereby depriving me of the opportunity to effectively appeal against the illegal actions of the Special Penitentiary Service of the Ministry of Justice of Georgia.

I have been in solitary confinement for 160 days and twice continuously for more than 30 days. The interruptions were due to objective reasons – I had two operations of a high degree of complexity – open heart (bypass surgery)² and on the spine³. There is no doubt that the sharp deterioration of my health condition is directly related to the illegal long-term solitary confinement. (see the conclusions of the forensic medical examination NR 26.263/2019med. dated 11/18/2019, carried out during the extradition arrest in penitentiary institution No. 6 of the Special Penitentiary Service)⁴ Suffice it to note that less than two months after a serious open-

¹ Ruling of the Criminal Cases Collegium of the Tbilisi City Court dated May 16, 2019.

² Certificate of health (cardiac bypass surgery).

³ Certificate of health (spine surgery).

⁴ Conclusions of the forensic medical examination NR 26.263/2019med. dated 11/18/2019.

heart operation – on November 8, 2019, at the very beginning of the court hearing, at very high pressure, I lost consciousness and was urgently hospitalized in a cardiology clinic.⁵ Despite this, the court extended my extradition arrest to a maximum of 9 months in solitary confinement in the penitentiary institution No. 6 for convicts under serious articles.

The State party to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has grossly violated its obligations under the above-mentioned international human rights treaties.

In the case of *Bandiukov v. Georgia* (3842/2020), registered with the Human Rights Committee, the State party, in paragraph 89 of the commentary⁶, tries to justify the legality of prolonged solitary confinement.

Extraction:

«In particular, under Article 14 (1) of the Rules of Procedure adopted under Decree N108 of the Ministry of Corrections and Probation of Georgia dated 27 August 2015, the following individuals are placed in Penitentiary Facility N 6: high risk convicts as well as defendants who have been sentenced to imprisonment by the court as a preventive measure and/or transferred to a prison institution in accordance with Article 55 of the “Imprisonment Code”. In accordance with paragraph 2 of the same provision, the accused is placed in a special cell in the institution, where he is monitored and controlled by visual and/or electronic means in accordance with Article 54 of the “Imprisonment Code”.⁷ Considering all the above, placing the complainant in a single cell in Penitentiary Facility N 6 is in full compliance with the requirements defined by the legislation of Georgia. »

(author's note – the State party incorrectly indicates the article of the “Imprisonment Code”. As for article 55 of the above-mentioned Code, it concerns operational investigative measures in institutions of deprivation of liberty, it is correct to read article 55¹ Law of Georgia “Imprisonment Code”⁷).

Obviously, the above statement of the Georgian authorities does not comply with international human rights treaties recognized by Georgia and the national legislation of Georgia.

I do not fit any of the criteria in the norms referred to by the defendant:

- a) I was not convicted;
- b) The Tbilisi City Court did not make a decision to settle me in the penitentiary institution No. 6 with a high level of risk;
- c) I do not fall under Article 55¹ (Investigation of crimes committed in penitentiary institutions) of the Law of Georgia «Imprisonment Code», because I have not committed crimes in penitentiary institutions.

The defendant's reference to Order No. 108 of the Minister of Probation and Execution of Punishments of Georgia⁸ when issuing Order No. 3732 of June 21, 2019, of the Director General

⁵ Certificate of health.

⁶ Commentary by the State Party (Georgia) on case 3842/2020 of 12 September 2022.

⁷ Article 55¹ Law of Georgia «Imprisonment Code».

⁸ Order No. 108 of the Minister of Probation and Execution of Punishments of Georgia.

of the Special Penitentiary Service of the Ministry of Justice of Georgia⁹ on my settlement in penitentiary Institution No. 6 is illegal and unfounded.

Order No. 3732 of June 21, 2019, of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia is discriminatory, since the illegal criterion for selecting persons for settlement in penitentiary institution No. 6 with high risk was the status of a person subject to extradition, that is, a person who is not a citizen of Georgia.

The basis for the order to transfer me to Director of Penitentiary Institution No. 8 of the Special Penitentiary Service of the Ministry of Justice of Georgia Kinkladze Nodari.¹⁰

Memo No. 25/207106 dated June 21, 2019, illegally and unreasonably, in violation of the administrative legislation of Georgia, establishes an illegal criterion for resettling me in penitentiary institution No. 6 with a high level of risk, as a person subject to extradition.

Extract from the memo of the Director of Penitentiary Institution No. 8 of the Special Penitentiary Service of the Ministry of Justice of Georgia Kinkladze Nodari to the Director General of the Special Penitentiary Service Pataridze George:

"According to subparagraph "g" of part four of Article 46 of the we send a list of the accused to be extradited, who are transferred from Penitentiary Institution No. 8 to Penitentiary Institution No. 6".

The memo and the order No. 3732 of June 21, 2019, are illegal, both from a legal and factual point of view, due to the following circumstances:

a) Paragraph "g" of Article 46 of the Law of Georgia «Imprisonment Code" applies only to convicts, and I am not a convict.

b) Overcrowding of cell 10 of Building D of penitentiary institution No. 8 could be eliminated by legal means, since at the time of issuing the order D.K. was settled in it, who was convicted under a serious article and could be legally relocated to penitentiary institution No. 6 with a high level of risk.

Violations of my civil rights are a consequence of illegal actions of state employees of the Special Penitentiary Service of the Ministry of Justice of Georgia.

Order No. 3732 of the Director General of the Special Penitentiary Service dated June 21, 2019, grossly violated my civil rights, which contradicts the administrative legislation of Georgia, the Constitution of Georgia and international human rights treaties recognized by Georgia, namely the right not to be tortured through prolonged solitary confinement, which is tantamount to torture.

Obviously, I have not had any penalties or offenses and illegal detention in solitary confinement for 160 days and twice continuously for more than 30 days violated my civil rights and is illegal punishment and inhuman treatment.

⁹ Order No. 3732 of June 21, 2019, of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia.

¹⁰ Memo No. 25/207106 dated June 21, 2019, of the Director of Penitentiary Institution No. 8 of the Special Penitentiary Service of the Ministry of Justice of Georgia Kinkladze Nodari.

Extract from the Mandela Rule adopted by the UN on May 15, 2015:

Rule 44: "For the purposes of these rules, solitary confinement means the restriction of prisoners' freedom for 22 hours or more per day without meaningful contact with people. Prolonged solitary confinement means solitary confinement for a period exceeding 15 consecutive days."

In the Decision adopted by the UN Committee against Torture in accordance with article 22 of the Convention on communication No. 672/2015, paragraph 7.2 states:

"In this case, the first question before the Committee is whether the applicant's solitary confinement for 21 days constitutes cruel, inhuman or degrading treatment or punishment, and thus constitutes a violation of article 16 of the Convention. The Committee considers that solitary confinement may amount to a violation of article 16, depending on the circumstances of the case and considering the special conditions of solitary confinement, the severity of the measure, its duration, the purpose, and its impact on the person concerned.

And further:

"The Committee recalls its recommendation that solitary confinement and isolation should be used as a measure of last resort for as short a period as possible under strict supervision and with the possibility of judicial review." (see also *AA v. Denmark (CAT/C/49/D/412/2010)*, paragraph 7.4.)

The Nelson Mandela Rules adopted by the UN in May 2015 emphasize that solitary confinement should be resorted to only as a last resort as a punishment.

Rule 45: "1. Solitary confinement should be resorted to as a last resort only in exceptional cases for as short a time as possible, subject to independent control and only with the approval of the competent authority."

The standards of the European Committee for the Prevention of Torture state:

"The principle of proportionality requires that the circumstances justify the use of solitary confinement, which is a measure that may have harmful consequences for the person in custody. In some circumstances, solitary confinement may amount to cruel and degrading treatment. In any case, all forms of solitary confinement should be as short as possible."

It should be noted that in the above-mentioned norms we are talking about the proportionality of solitary confinement as a punishment, but I was placed in solitary confinement illegally.

Even for persons legally placed in solitary confinement (for disciplinary purposes; due to their "danger" or because of their "restless" behavior; in the interests of criminal investigation; at their own request), there are strict restrictions on the duration of detention.

In my case, there were no above-mentioned grounds for placing me in solitary confinement, and I am a seriously ill person for a long time (more than 6 months) illegally experienced deprivation and suffering.

Even from a formal, but very significant point of view, Order No. 3732 of June 21, 2019, of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia is illegal because I was not familiar with it and, accordingly, had no opportunity to appeal it in court.

In violation of part 1 of Article 54 of the General Administrative Code of Georgia, he did not acquaint me with Order No. 3732 of June 21, 2019 of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia on the staging and settlement of me on June 22, 2019 in penitentiary Institution No. 6, which in itself is an illegal act and violation of my civil right to appeal issued an order.

According to part 2 of Article 54¹¹ and in accordance with Article 58 of the General Administrative Code of Georgia¹², the order — an administrative legal act does not enter into force until the moment of familiarization. This means that the actions of the employees of the Special Penitentiary Service to transfer me to penitentiary institution No. 6 were illegal.

In addition, Order No. 3732 dated June 21, 2019, establishes:

"...Article 4.

The order can be appealed to the Board of Administrative Affairs of the Tbilisi City Court (address: Tbilisi, David Agmashenebeli Alley, 12th km. No. 6) within one month after its publication or familiarization in an official manner.

Article 5.

To familiarize interested persons with the order..."

Failure to comply with article 5 of Order No. 3732 of 21.06.2019 of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia and articles 54 and 58 of the General Administrative Code of Georgia a priori indicates the illegitimacy and illegality of the above-mentioned Order.

In addition, in violation of my civil right to privacy, without any legal or factual grounds, round-the-clock video surveillance was conducted for me.

According to the legislation of Georgia, video surveillance is a punishment for illegal actions of accused/convicted persons or is applied to convicted persons under serious articles. I did not commit any illegal actions during my detention and was not convicted under serious articles.

I will cite the norms of the legislation of Georgia.

Article 54 of the "Imprisonment Code"¹³ states:

"If there is a reasonable assumption by the decision of the director of the penitentiary institution to ensure the safety of the accused/convicted or other persons and based on other legitimate interests – in order to prevent suicide, self-mutilation, violence against these or other persons, damage to property, as well as the commission of other crimes and offenses - it is allowed to carry out visual observations and control or (and) monitoring and control by electronic means. Electronic surveillance is carried out using audio and video means or (and) other technical means of control. The Service is authorized to keep records during observations and control carried out by electronic means, and information obtained because of this process. (5.07.2018 N3128);

¹¹ Article 54 of the General Administrative Code of Georgia.

¹² Article 58 of the General Administrative Code of Georgia.

¹³ Article 54 of the Law of Georgia "Imprisonment Code".

The penitentiary institution is obliged to warn the accused/convicted persons about the observation of them by electronic means or (and) audio and video recordings, except in cases provided for by the legislation of Georgia. (1.06.2017 N943);

The decision to carry out visual surveillance and control or (and) surveillance and control by electronic means is taken when the use of other means is ineffective. The decision taken must be reasonable and proportionate to the goal. "

My civil right to interfere in my personal life through illegal round-the-clock illegal video surveillance has been violated.

I was not familiar with the Order No. 3732 of the Director General of the Special Penitentiary Service dated June 21, 2019, and with the decisions on permanent video surveillance. There were no actions on my part that could be the basis of constant video surveillance.

The European Court of Human Rights in its decision on case No. 27057/06 "Gorlov and Others v. Russia" states:

"In the context of a detainee's right to respect for his or her private life, the Court ruled that placing a person under constant video surveillance during detention, which already entails significant restrictions on a person's personal life, should be considered as a serious interference with a person's right to respect for his or her privacy, as an element of the concept of "private life", and thus gives effect to article 8 of the Convention (see Van der Graaf (dec.), mentioned above, and Vasilică Mocanu v. Romania, No. 43545/13, § 36, December 6, 2016)."

The documents presented by me as evidence of violations of article 7 of the ICCPR, articles 3, 12 of the UN Convention against Torture, article 3 of the European Convention on Human Rights are prima facie and only need to verify their authenticity.

Sincerely, Aleksandr Bandiukov
November 06, 2023



Annex:

Annex 1- Ruling of the Criminal Cases Collegium of the Tbilisi City Court dated May 16, 2019

Annex 2 - Certificate of health (cardiac bypass surgery).

Annex 3 - Certificate of health (spine surgery).

Annex 4 - Conclusions of the forensic medical examination NR 26.263/2019med. dated 11/18/2019.

Annex 5 - Certificate of health.

Annex 6 - Commentary by the State Party (Georgia) on case 3842/2020 of 12 September 2022.

Annex 7 - Article 55¹ Law of Georgia «Imprisonment Code”.

Annex 8 - Order No. 108 of the Minister of Probation and Execution of Punishments of Georgia.

Annex 9 - Order No. 3732 of June 21, 2019, of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia.

Annex 10 – Memo No. 25/207106 dated June 21, 2019, of the Director of Penitentiary Institution No. 8 of the Special Penitentiary Service of the Ministry of Justice of Georgia Kinkladze Nodari.

Annex 11 - Article 54 of the General Administrative Code of Georgia.

Annex 12 - Article 58 of the General Administrative Code of Georgia.

Annex 13 - Article 54 of the Law of Georgia "Imprisonment Code".
Annex 14 - Identity card of Aleksandr Bandiukov's.