CRIMINAL CASE OF GIORGI RURUA
Legal analysis

2020

HUMAN RIGHTS CENTER

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INTRODUCTION

Equality before the law is one of the hallmarks of the state under the rule of law. Irrespective of social status and political affiliations, each individual shall be liable for his or her criminal actions in an equal manner. However, because of the lack of independent, impartial and efficient investigation bodies in Georgia, governments of various times try to use the law for attaining own political objectives. Persecution on political grounds by means of criminal proceedings more than once has become a weapon in Georgian history for influencing political opponents and critical media at the hands of various governments. In this regard, the initiation of criminal prosecution against Giorgi Rurua suspiciously coincides with him appearing on public and political arena and acquiring a share in the oppositional TV company[1].

The criminal case ongoing against Giorgi Rurua, one of the owners of *Mtavari Arkhi (the Main Channel)*, came to the attention of the media, the public and the political spectrum from the day of the arrest of Rurua. In parallel to the court proceedings, and especially recently, the critical statements from the partner states of Georgia became frequent directly or indirectly connecting the investigation against Giorgi Rurua with the political motives of the government.

METHODOLOGY

The current document is based on the reports of the court proceedings prepared by the court monitor of the Human Rights Center, further it is based on the identified problematic issues of the substantive criminal law and of the procedural criminal law. In the research, the comparative and legal analysis is made based on the comparison of the national law and national court decisions with the relevant judgments of the European Court of Human Rights (ECtHR) making even more evident the various legal problems.

SUBSTANCE OF THE ALLEGATIONS

Giorgi Rurua, one of the founders and shareholders of *Mtavari Arkhi* was arrested on November 18, 2019[2]. According to the indictment, Rurua is charged with committing an offense under paragraphs 3 and 4 of Article 236 of the Criminal Code of Georgia envisaging the illegal purchase, storage and carriage of firearms and

[1] See: Information: https://bit.ly/3gY6LhL

[2] See the information if full: https://bit.ly/2Bl6XIV. Last seen: 6/26/2020.

ammunitions[3]. Further, according to the decree to prosecute, based on the information obtained through a criminal intelligence operation, on November 18, 2019, Giorgi Rurua was driving his own car within Tbilisi towards Tskneti settlement and at that moment he should have been carrying with an illegal firearm. Based on the decision to act on urgent necessity, in order to personally search him and seize the illegal weapon, Rurua was stopped by the patrol police.

On November 20, 2019, Tbilisi City Court granted the motion by the prosecution and remanded Rurua in custody for two months on the charges of illegal purchase, storage and carriage of firearms stemming from Article 205[4] of the Criminal Procedure Code[5]. As the prosecution stated, based on the facts and information in the case files, remanding in custody was the sole measure of restraint in order to avoid the accused absconding the justice, hindering the justice and collection of evidence, and committing a new offense[6].

On December 25, 2019, accused Giorgi Rurua was additionally charged with an offense under paragraph 1 of the Article 381 of the Criminal Code of Georgia envisaging the failure to execute the court decision, or the interference with the execution of the court decision[7]. The issue concerns the refusal of Giorgi Rurua in a penitentiary facility to allow investigative actions namely acquisition of DNM sample and palm prints as ruled by the court[8].

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[3]See Paragraphs 3 and 4 of Article 236 of the Criminal Code of Georgia: https://bit.ly/3ilAbI3.
[4]See Paragraph 3[1] of Article 205 of the Criminal Procedures Code of Georgia: https://bit.ly/3dN6U6r.
[5]The Report prepared by the court monitor of the Human Rights Center on the case of Giorgi Rurua. Further see the information if full: https://bit.ly/2Ap4DzP. Last seen: 6/1/2020.
[6]See Subparagraphs (a), (b) and (c) of paragraph 1 of Article 205 of the Criminal Procedure Code of Georgia: https://bit.ly/3dN6U6r.
[7]See Paragraph 1 of Article 381 of the Criminal Code of Georgia: https://bit.ly/3ilAbI3.
[8]See the information if full: https://bit.ly/2BYs1EI.

1. COURT MONITORING AND LEGAL ASSESSMENT OF THE PROBLEMATIC ISSUES IDENTIFIED ON THE CRIMINAL CASE OF GIORGI RURUA

The court monitor of the Human Rights Center was observing the court proceedings against Giorgi Rurua from the very first day of hearing the case on merits. The substantial hearings of the case began on February 10, 2020 and are still going on.

No procedural violations were identified immediately in monitoring the court proceedings. The publicity of the proceedings was impeded by the emergency situation declared at the time of spreading the coronavirus when the court hearings were held remotely and not every interested person had access to the hearings. After lifting the state of emergency, the court hearings are held in the City Court but mostly Rurua's family members, the monitors and reporters are allowed to be present at the hearings. Beyond that, other public is also able to attend the hearings but in limited numbers to be seated on the chairs with special stickers by two-meter distance and equipped with masks. Overall, there were 20 persons allowed in the court room of 45 persons and almost 20 other upset people were left outside the room - mostly the companions of Giorgi Rurua, and the activists of civil movements active since June 20-21, 2019[9].

In the result of monitoring the court sessions, the court monitor of the Human Rights Center identified possible investigative/procedural violations on the stage of investigation of the criminal case[10].

According to the statement of the accused, his constitutional rights were severely violated at the moment of his arrest, in particular:

1) <u>Right to access a lawyer</u>

According to the statement of the defence, during the arrest and on the initial stage of the investigation Rurua was denied the possibility to contact his lawyer and family members.

In accordance with Article 13 of the Constitution of Georgia, the person shall be explained his/her rights and the grounds for the arrest at the moment of arrest. A

[9]The reports prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearings on merits: 15.07.2020; 16.07.2020 etc.

[10]The reports prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearings on merits: 10.02.2020; 25.05.2020; 30.05.2020.

person may request the assistance of a lawyer immediately upon being arrested, and the request must be satisfied[11]. Moreover, according to the interpretation of the European Court of Human Rights, in the case of deprivation of liberty or in the case of any other restriction of liberty, the person shall have the right to receive the information about the grounds of his/her arrest and in the case he/she is recognized as accused, the accused shall receive the information about the charges brought against him[12]. In accordance with the court practice of the Constitutional Court of Georgia "the essence of the right to defence lays in the possibility of the person against whom the procedural measures take place to efficiently influence the respective procedures and the outcomes of the procedures[13]. Moreover, the Constitutional Court of Georgia has held on a certain case that "the detainee or accused shall be guaranteed the assistance of the defender"[14].

The right to defence is the essential element of a fair trial and generally means the possibility "to submit the evidence, express opinions, defend themselves in person or through a defence counsel"[15]. The right concerns those against whom procedural measures take place and who have legal interests to influence the measures and/or defend themselves from the negative outcomes of the measures.

On the given criminal case, the defence stated that Giorgi Rurua was unlawfully restricted in his right to defence.

2) The obligation to read the rights and duties to a detainee

According to the statement of the defence, Giorgi Rurua was detained for 6-7 hours in a manner that he was not explained the rights granted by the law[16]. This was denied by the police officers having appeared to the court proceedings as witnesses. The defence questioned a witness what rights were explained to the detainee, but the witness could not answer what rights and duties were explained to the detained Giorgi

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[11]See Paragraph 4 of Article 13 of the Constitution of Georgia: https://bit.ly/38KDcNF.

[12] See The Judgment of the European Court of Human Rights from February 21, 1990 on the case *van der Leer v NLD*, application 11509/85, paragraph 27. See further: Grabenwarter/ Pabel, 2012, p. 205.

[13]See The Judgment of the Constitutional Court of Georgia from April 11, 2013 N1/2/503,513 on the case *Georgian citizens - Levan Izoria and Davit-Mikheil Shubladze v. the Parliament of Georgia*, II-55. https://bit.ly/3hhsQIS.

[14]See The Judgment of the Constitutional Court of Georgia from January 29, 2003 N2/3/182,185,191on the case *Georgian Citizens - Piruz Beriashvili, Revaz Jimsheleishvili and the Public Defender of Goergia v. the Parliament of Georgia*, paragraph 2.

[15]See Judgment of the Constitutional Court of Georgia N3/1/574 from May 23, 2014 on the case *Giorgi Ugulava v Parliament of Georgia*, II-61. https://bit.ly/2UxenyV.

[16] The reports prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearing on merits: 10.02.2020.

Rurua[17]. According to the testimony of the witness, he has provided to the detainee the information about the right to defence.

In accordance with Article 38 of the Criminal Procedures Code of Georgia, upon arrest, or if a person is not arrested, immediately upon his/her recognition as the accused, also before any interrogation, the accused shall be notified, in the language that he/she understands, of the crime provided for by the Criminal Code of Georgia in the commission of which he/she is reasonably suspected. Further, the accused shall be handed over a copy of a record of his/her arrest, or if he/she is not arrested, a copy of a decree to prosecute as the accused[18]. Moreover, we have to admit that the right to receive the information about the procedural rights is not directly envisaged in the European Convention of Human Rights, however there is a practice of the European Court of Human Rights requiring from the judicial authorities to undertake positive measures in order to ensure the compliance with article 6[19].

Of interests would be the Judgment of the European Court of Human Rights on the case Padalov v. Bulgaria and Talat Tunc v. Turkey, where the Court demanded from the authorities to choose a proactive approach in order to inform the detainees/accused their rights to legal aid[20].

In the given case, the requirements were ignored on the part of investigation authorities as it became evident from the examination of the evidence at the hearings on merits.

3) Refusal to allow taking samples - "Failure to execute the court decision"

According to the explanation of the defence, at the moment of the arrest, Giorgi Rurua was coerced to provide DNM samples in the main premises of the Tbilisi Police Department in the office of G.M. and no document was drawn up on the procedure[21]. The purpose of the coercion was to attach onto the "seized" weapon the illegally taken DNM and proof in this way to the detainee the fact of illegal purchase, storage and carriage of the weapon.

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[17] The reports prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearing on merits: 25.05.2020.

[18] See paragraph 1 of Article 118 of the Criminal Procedure Code of Georgia: subparagraph: https://bit.ly/3dN6U6r. Last seen: 01.06.2020.

[19]See ECtHR 13 May 1980, Artico v. Italy, No. 6694/74, paragraph 36 and ECtHR 30 January 2001, Vaudelle v. France, No. 35683/97, paragraphs 52, 59 and 60. (1) https://bit.ly/3hdVPxf. (2) https://bit.ly/2UsAFBJ.

[20]See ECtHR 10 August 2006, Padalov v. Bulgaria, No. 54784/00, and ECtHR 27 March 2007, Talat Tunc v. Turkey, No. 32432/96. (1) https://bit.ly/2Am7pWF. (2) https://bit.ly/3f8DHDg.

[21] The reports prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearing on merits: 06.05.2020.

On the court hearing of May 4, 2020, a witness of the persecution, the police officer, explained that he participated in the attempt of taking samples based on the court ruling and he recalled that he was there with two investigators and an expert[22]. The witness stated that he introduced the ruling to the accused, explained his rights and duties including the warning that in the case of refusal to provide DNM samples he would be liable under the law, meaning in the case of failure to allow the execution of the court ruling, the charges would be brought against him.[23].

According to the explanations of the witness of the prosecution, Giorgi Rurua resisted to provide DNM samples at the presence of the lawyers who were encouraging him to refuse the procedure. Moreover, according to the statement of the witness, it was explained to the accused that in the case of resistance they would be obliged to use proportional force. What is most important, the witness confirmed that they were trying to take DNM samples from the accused by using force, but *he "was pushing them back and he was resisting them and they were afraid not to damage him, not to break his arm for instance as they were taking prints from the palm and samples of saliva*"[24]. On the questions from the defence in what particular the resistance was expressed, the witness responded that: "The accused Giorgi Rurua stood in an angle, he was clenching fists, and was squeezing his lips and they could not open his mouth" (formulation of the speaker maintained). On the question of the defence, whether they were trying to unclench his fingers from the fist, the answers of the witness was based on the assumptions and for this reason the defence had to put the same question several times in order to have the witness answer the question in exact terms. In response to this, the prosecution put several times a motion to remove the question. The judge did not grant the motions and the judge himself also addressed the witness to give the specified answers, or in the case the witness did not remember to say so and the like[25].

4) <u>Proportionality of the interference</u>

Paragraph 5 of Article 147 of the Criminal Procedure Code of Georgia provides for that "[t]aking a sample that causes severe pain shall be allowed only in exceptional cases and with the consent of the person from whom the sample is to be taken"[26]. Moreover, according to the interpretations of the European Court of Human Rights, the

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[22] The Report prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearing on merits: 04.05.2020.

[23] The reports of the court monitor of the Human Rights Center. Hearing on merits of the case of Giorgi Rurua: 04.05.2020

[24] The assessment by the witness (the formulations of the witness are maintained).

[25]The Report of the court monitor of the Human Rights Center. Hearings on merits of the case of Giorgi Rurua: 06.03.2020; 04.05.2020; 11.05.2020.

[26]See Article 147 of the Criminal Procedures Code of Georgia: https://bit.ly/2MLKcjh.

interference by the state authorities in excising the right shall not be allowed, except for the cases when such interference is necessary due to the national security reasons, public safety or economic wellbeing of the country, further for the reasons of preventing disorders and crime, for the reasons of safeguarding health and morals and the rights and freedoms of other persons. Further, the Court notes that the respect for the right to private life protected under Article 8 of the Convention includes the respect for the physical integrity of the person. The European Court of Human Rights provided on the case *Detlef-Harro Schmidt against Germany*[27] that, taking of a blood and saliva sample from the applicant constitutes a compulsory medical intervention which, even if it is of minor importance, must consequently be considered as an interference with his right to privacy. Such an interference gives rise to a breach of Article 8 unless it can be shown 1) that it was "prescribed by law", 2) pursued one or more legitimate aim or aims and 3) was "necessary in a democratic society" [...].

In the case of Giorgi Rurua the issue is still vague and raises some questions, even more then when the accused refers on illegally taking the DNM samples from his neck with cotton sticks[28]. Further, exactly the refusal to give samples was made as grounds for the new charges against him (Article 381 of the Criminal Code, failure to execute the court decision)[29].

Taking samples constitutes the *other* procedural actions under the Articles 147 and 148 of the Criminal Procedures Code of Georgia[30]. ***According to the assessment of the Human Rights Center, the above norms are problematic.*** In particular, in accordance with Article 31 of the Constitution of Georgia, no one shall be obliged to testify against him/herself or against the related persons as enlisted by the law. Therefore, the accused is empowered with a privilege to be protected against self-incrimination. The European Court of Human Rights considers the protection of persons/accused against self-incrimination as the cornerstone of a fair trial[31]. With the protection against self-incrimination the European Court thinks of various forms of such a protection like: The right of the accused not to testify against him/herself *(the right to remain silent).* Also, the right not to provide the prosecution with any evidence that would proof his/her guilt. On the case *Funke v. France*, ECtHR ruled that the attempt to compel the applicant

[27] see. The Judgment of the European Court of Human Rights on the case, Detlef-Harro Schmidt against Germany", 2006. https://bit.ly/3cPvIto.

[28] The Report prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearings on merits: 06.03.2020; 06.05.2020; 08.056.2020.

[29]See Article 381 of the Criminal Procedures Code of Georgia. https://bit.ly/2Yi7Uce.

[30]See Articles 147 and 148 of the Criminal Procedure Code of Georgia: https://bit.ly/2MLKcjh. Last seen: 04.06.2020.

[31] See the Judgment of the European Court of Human Rights on the case: John Murray v. The United Kingdom §44.

himself to provide the evidence of offenses he had allegedly committed, constituted the breach of Article 6, in particular the right to remain silent and not to contribute to incriminating himself[32].

On its turn, the privilege against self-incrimination is a part of fair trial as conditioned by the significance of the right. The purpose of the legislator is to place the right to be protected against self-incrimination under a special field of norm protection. The threat of infringement of the right is equally possible by testifying against oneself, and by revealing other evidence against oneself.

According the assessment of the Human Rights Center, the refusal to provide samples as the refusal against the investigative action or a passive resistance against the action should not result in criminal liability of the person. Therefore, one has to take into account number of facts and the implementation of the investigative action should be derived from an urgent necessity and for that reason, the high standard of substantiation must exist in each individual case.

Further, Giorgi Rurua had a right to refuse providing the samples because he as an accused was protected with a privilege against coercive self-incrimination. However, the investigator was authorized to take the samples envisaged in the court ruling through the use of proportional force and thus the investigative actions would not have been hindered. In accordance with paragraph 7 of Article 111 of the Criminal Procedure Code, when a person resists the carrying out of an investigative action, a proportional coercive measure may be applied[33]. Moreover, taking into account the given facts, the issue of bringing charges against Giorgi Rurua under paragraph 1 of Article 381 of the Criminal Code (failure to execute the court decision) is quite problematic.

By the ruling of Tbilisi City Court from December 28, 2019, the motion of the prosecution was granted to seize personal items of Giorgi Rurua i.e. sheets, shoes, a toothbrush, clothes, a hair brush and a tower[34]. On January 3, 2020, the investigator decided to carry out the investigative action. As the witness said at the court hearing, he could not reach Dimitri Sadzaglishvili, the defence counsel of the accused, while the second defence counsel, Shota Kakhidze refused to participate in the investigative action[35]. Later on, during the examination of the evidence of the defence, the defence counsel stated that he told the investigator that because he was not able to attend the investigative action on the same day (on Friday), the investigator should have contacted

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[32] See the Judgment of the European Court of Human Rights on the case: On the case Funke v. France §44. https://bit.ly/2UxXDHI.

[33]see: Paragraph 7 of Article 111 of the Criminal Procedure Code of Georgia: https://bit.ly/2MLKcjh.

[34]The Report prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearing on merits: 24.06.2020.

[35]The Report prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearing on merits: 01.06.2020

the other defence counsel, and further he suggested to the investigator to carry out the investigative action on January 6, 2020 (on Monday). The investigator did not decline the suggestion by the defence counsel, however later, on the same day, after several hours from the conversation with the defence counsel he nevertheless decided to seize the personal items of Giorgi Rurua form the cell without participation of defence counsels[36]. During the interrogation, the witness stated, that he decided to carry out the investigative action because there was a risk of the items to be seized might be hidden away or destroyed.

In accordance with the criminal procedural law, the accused may demand the defence counsel to be presented at the investigative action carried out with the participation of the accused. "Where the defence counsel does not participate in the scheduled investigative action, the prosecutor shall be obliged to reschedule the investigate action one-time-only for a reasonable period for no more than 5 days. [...] absence of the defence counsel shall not result in the delay of performing the urgent investigative action"[37].

Moreover, it is not clear, how could Giorgi Rurua destroy the above items when he was in the isolated cell and was under 24 hours visual and electronic surveillance.

5) Car search compliance with the procedural law

According to the statement of the defence, the search of the car of Giorgi Rurua began at 16:40 after 3 hours and 40 minutes of his first exposure to the police officers (which took place at 13:00). We further find problematic the fact, that the search of the car was conducted not at the scene but in the yard of administrative premises of Tbilisi Police Department[38]. According to the statements of the witnesses of the prosecution, the search of the car was not possible at the scene due to the narrowness of the road, created traffic jam and exaggerated interests of the people passing by. Notable also is the fact that the car was not searched immediately after bringing it to the yard of the premises of the investigation body. The search was preceded by personal search of the detainee[39].

By assessment of the Human Rights Center, at the moment of drawing up the report of personal search of Giorgi Rurua and at the moment of sealing the weapon, the requirements of

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[36]The Report prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearing on merits: 25/06/2020. 10:30-10:47.

[37]See Paragraph 7 of Article 38 of the Criminal Procedure Code: https://bit.ly/2MLKcjh.

[38]The Report prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearings on merits: 06.05.2020; 11.05.2020

[39]The Report prepared by the court monitor of the Human Rights Center on the case of Giorgi Rurua. Hearing on merits: 10/03/2020.

the Criminal Procedure Code were violated. In particular, the investigator ignored the requirements of the procedural law when he limited himself with just a general description of the weapon. According to the defence, the search report indicates only that "metallic dark firearm was seized" when searching Giorgi Rurua in person[40]. Under the criminal procedural law, reports of investigative actions which are drawn up during the process of the investigative action or upon the finalization of the investigative action, must contain the details in terms of form and content as provided for by Chapter XV of the Criminal Procedure Code. Under paragraph 6 of Article 120 of the Criminal Procedure Code, an item, a document, substance or any other object containing information that has been detected during a search or seizure, shall, if possible, be presented, before its seizure, to persons participating in that investigative action. Then, it shall be seized, described in detail, sealed and, if possible, packaged. On the packaged item, in addition to a seal, the date and signatures of the persons who participated in the investigative action shall be indicated. A document that is seized due to its contents, shall not be sealed.

In the report of personal search of Giorgi Rurua, as noted by the defence, it is indicated that the seized weapon was put in the package on which signatures, the number of the criminal case and the date of the investigative action were placed. However, the defence states that on the photoboard of the ballistic expert examination it is clearly seen that on the seal of the package only the signatures of the persons conducting the investigative action, number of the case and date are placed. On the seal, there is no signature of Giorgi Rurua and neither a special comment saying Giorgi Rurua refused to sign the seal[41]*. Further, interesting is the issue that on the part of investigators no video and/or photo was taken of the actions described in the personal search report*[42]*. Indeed, the above does not provided for by the procedural law as a mandatory measure, but still when the investigators had free access to all technical means, it is not clear why have not they took the opportunity that would assist them in proving the guilt to the accused.*

Moreover, number of facts in the case files indicate on the doubtful origin of the silencer of the weapon identified during the car research.

The investigative actions conducted without prior court authorisation, create a risk that the subjects carrying out the investigation may act *ultra vires* and infringe unjustifiably the rights of the private person as guaranteed by the Constitution. Therefore, it is necessary the consequent control by the court be efficient in order to minimize the risks of "unfair" investigations.

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[40]The Report prepared by the court monitor of the Human Rights Center on the case of Giorgi Rurua. Hearings on merits: 25.02.2020; 25.05.2020; 30.05.2020.

[41]The Report prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearings on merits: 25.05.2020; 30.05.2020.

[42]The Report prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearing on merits: 30.05.2020.

The general courts note that "the efficiency of the consequent (inspective) court control over the proceedings of search and/or seizure is of particular significance because as practice shows the absolute majority of search and seizures are carried out based on the urgent necessity without court rulings"[43] creating even more risks on the parts of investigation bodies to abuse the powers.

The risks are especially high when such investigative actions are carried out based only on operative information *(provided by so called confidents)* that is not confirmed by other evidence and in its turn the prosecutorial supervision on such information is limited under the paragraph 3 of Article 13 of the Law of Georgia *on Operative and Search Activities.* Moreover, the court completely lacks the possibility to verify the information.

The criminal procedural law provides for the possibility as an exception that search and seizure be conducted without prior authorisation, the relevant ruling of the court, in particular in the cases of urgent necessity[44]. Paragraph 5 of Article 112 of the Criminal Procedure Code directly stipulates what shall be considered as the cases of urgent necessity. According to the interpretation of the norm, the urgent necessity is the case when a delay may cause destruction of the factual data essential to the investigation, or when a delay makes it impossible to obtain the above data, or when an item, a document, substance or any other object containing information that is necessary for the case has been found during the carrying out any other investigative action (*if found as a result of single superficial examination*), or when an actual risk of death or injury exists. Accordingly, the urgent necessity means the cases when "based on the principle of proportionality, attaining the public interest under the Constitution, because of the actual objective reasons could not be possible without immediate and prompt limitations of the private interests"[45], for the delay in carrying out the investigative action may cause the destruction of the evidence proving the guilt of certain person(s), the deletion of the trace of the crime, disappearance of the offender and other irrevocable consequences.

The court shall check the lawfulness of the search and seizure carried out under urgent necessity within 24 hours from the moment the prosecutor files the motion and respective case files[46]. In order the court to find the performed search and seizure lawful, the prosecutor must provide substantiations of why the urgent necessity was there. For this reason, only the hypothetic opinions, and assumptions

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[43]Ruling 1ა/1197 of the Court of Appeals from July 14, 2016, page: 5; The ruling may be accessed at: https://bit.ly/3dM9xo9.

[44]see: paragraph 1 of Article 120 of the Criminal Procedure Code of Georgia: https://bit.ly/2YT1stT.

[45]see: Judgment N 1/3/407 of the Constitutional Court of Georgia from December 26, 2007, II point.26, para 3. The ruling may be accessed at: https://bit.ly/31vM08G.

[46]See paragraph 5 of Article 112 of the Criminal Procedure Code of Georgia: https://bit.ly/2YT1stT.

not related to the case would not suffice. For the purpose of search and seizure under urgent necessity, it is required that the urgent necessity exists not only at the beginning of the action but also during the process of the action. Therefore, as soon as the urgent necessity disappears, the investigation body may not further carry on the investigative action[47].

ECtHR notes that the presence of the applicant and other witnesses during a house search as a factor enabling the applicant effectively to control the extent of the search carried out. However, in such cases, in the absence of prior authorisation by a court and of effective subsequent scrutiny is insufficient to prevent the risk of abuse of authority by the investigators[48].

Stemming from the above, stopping Giorgi Rurua with a purpose to search under urgent necessity and conducting the action 3 hours and 40 minutes in late seems problematic. It has not been justified why the search did not take place immediately or soon after the car was moved to the site.

When testifying at the court proceedings, the accused stated that no personal search took place on him on the scene meaning the territory adjacent to *Vake Cometary*. As the accused says, the police officers moved him from his personal car directly to black car of Skoda brand and brought him to the administrative premises of Tbilisi Main Police Department. According to the statement of Rurua, the fact that he was not searched at the moment of arrest is proved by the foam pad[49]. In accordance with search report in the case files, the foam pad was seized and sealed on the place of arrest, but in fact Rurua has the foam pad at the time when he was brought to the premises of the Department. The defence requested to seize and decipher the video records of the administrative premises of Tbilisi Main Department proving that when Rurua entered the premises the foam pad was in his pocket[50]. The video records of bringing Giorgi Rurua to the Department are not attached to the case files.

6) Expert examination of the firearm

On June 3, 2020, three witnesses of the prosecution were questioned at the court hearing, these were: two experts of *Levan Samkharauli Expert Examination Bureau*

[47]See Criminal Procedure Law of Georgia, Private Part. Collective of authors, editor L. Papiashvili (2017) p. 452.

[48]See Guide on Article 8 of the European Convention on Human Rights (Right to respect for private and family life, home and correspondence), European Court of Human Rights, 2019. P. 88. Can be accessed at: https://bit.ly/2YRHdwk.

[49]The item produced from special material used by mountain-climbers and hikers to seat or lay on it. Giorgi Rurua carried the foam pad with him on protest demonstrations.

[50]The Report prepared by the court monitor of the Human Rights Center on the case of Giorgi Rurua. Hearing on merits: 16/07/2020.

and an investigator. The experts conducted fingerprints study to compare the palm prints. For the expert examination, a thing similar to the firearm seized form Giorgi Rurua was submitted, further, a clip, bullets, box in which 25 bullets were placed. In reference to the above bullets, a member of the guard of Giorgi Rurua stated at the stage of car search that they belonged to the member of the guard. The expert said that no prints were detected on the firearm, clip and bullets.

The second witness was the expert who conducted biologic and genetic expert examination based on the submission from the investigator of the Investigative Office of the Police Department of the Ministry of Internal Affairs. For the study sealed bags with materials cleaned up from the pistol firearm, trigger, clip, metal thing (probably the silencer, for the person involved in the measures referred to the silencer as a metal thing) and bullets. Specifically, for the expert examination the sealed cleaned-up materials and not the seized firearm itself and other items were submitted. On the 14 packages sent for the forensic examination, there were indicated from which item the materials were cleaned up from (sorted by the properties of the items) and submitted for the examination.

The task of the expert was to ascertain whether biological profile was identical to the sample of saliva taken from Giorgi Rurua. In the result of the expert examination, it was confirmed that from the trigger of the weapon on the sample appeared mixed profile belonging to the male gender. From the mixed profile, on the biological profile of Giorgi Rurua came a major share - main share.

The defence put a question on the court hearing: In the case the cleaned-up materials were placed on the item on purpose could the study identify this fact? With regard to the question the witness stated that it was not possible[51].

[51]The Report prepared by the court monitor of the Human Rights Center on the case of Giorgi Rurua. Hearing on merits: 03/06/2020.

2. II POLITICAL MOTIVES AND SELECTIVE JUSTICE

In accordance with the criteria established by the *Resolution of the Parliamentary Assembly of the Counsel of Europe* from June 26, 2012[52], "the detained shall be referred as a "political prisoner" provided the imprisonment took place on the background of evident violations of procedural guarantees and there are grounds to believe that this is linked with a political motives of the government"[53]. This criterion matches the criteria of *Amnesty International.* In particular: The case contains "noticeable political elements"; "the government does not ensure a fair trial under the international standards". Furthermore, no one is granted a right to be freed immediately by being recognized as a political prisoner but instead it is necessary that the person is guaranteed the right to fair trial.

The arrest of Giorgi Rurua was preceded by the events of June 20-21, 2019 and by the large scale anti-occupation demonstrations. According to the disseminated information[54], Giorgi Rurua was arrested exactly because of funding the demonstrations and the opposition TV Company - *Mtavari Arkhi.* The arrest of Giorgi Rurua and the criminal proceedings against him along the cases of Irakli Okruashvili and Giorgi Ugulava was followed by the political assessments[55] from the side of various oppositional parties and international partners especially from the side of the US senators and congressmen.

Regarding his political activities, the accused also spoke at the court proceedings. According to the statement of Giorgi Rurua, after the events of June 20-21, 2019, he was one of the organizers of the peaceful demonstrations against occupation and the government, financially supporting them and being an active participant. The demonstrations that began in June 2019 were temporarily stopped after the government promised to the public that the Parliamentary Elections of 2020 would be held under the proportional system. The demonstrations resumed in November, when the group of MPs allied with the government voted down the initiated constitutional amendments and it came out that the Parliamentary Elections would be held again under the mixed majoritarian and proportional system. Giorgi Rurua said that in November he carried on to organize the protest demonstration and was supporting them financially, he was also physically assisting the participants of the demonstrations in various works. On November 17, 2019, for instance, he organized and personally brought to the Parliament firewood so the

[52]See the Criteria of Political Prisoners under the Resolution of the Parliamentary Assembly of the Counsel of Europe from June 26, 2012: https://bit.ly/2N8X43.

[53]See the Legal Analysis of the criminal cases connected to the events of June 20-21, 2019, Human Rights Center. 2020: https://bit.ly/3dRYkmj. Last seen: 27.06.2020.

[54]See the information if full: https://bit.ly/31E2ueS. Last seen: 27.06.2020.

[55] see: Information in full: Https://bit.ly/37seotf;; further see https://bit.ly/3hrbiKF.

demonstrations could be warmed. On the demonstrations he was there for the whole night and on November 18, he was returning back home when he was arrested.

The arrest of Giorgi Rurua in most instances is assessed as a political decision of the government and recently his continuous custody is regarded as a violation of joint declaration from March 8, 2020[56].

On May 15, 2020, the President of Georgia based on the Act of Pardon released from prison Gigi Ugulava, the former Mayor of Tbilisi, one of the leaders of *European Georgia* and Irakli Okruashvili, the leader of the party *Victorious Georgia*. The both prisoners left the penitentiary facility on May 15, the day the Act of Pardon was issued. Both the oppositional parties and international partners were expecting Giorgi Rurua to be released with these two prisoners, but we have to take into account that no judgment of conviction was yet rendered against Giorgi Rurua which is required for pardoning. In accordance with Article 78 of the Criminal Code of Georgia, "[P]ardon shall be granted by the President of Georgia individually to a specific group of persons[57]. Pardon may be applied to persons convicted by Georgian courts and serving sentences on the territory of Georgia".

Moreover, the *United National Movement* party and the *European Georgia* party were referring to the release of Giorgi Rurua as a condition to support the draft Constitutional Law amending the system of Parliamentary Elections in Georgia[58]. According to the statement of the named parties, the release of Giorgi Rurua is a part of the agreement reached with the government on March 8 that the representatives of the ruling party do not agree to and categorically deny.

Before the voting procedure under the third hearing of the constitutional amendments, civil activists gathered in front of the Parliament and demanded the release of Giorgi Rurua[59]. On June 29, 2020, the Parliament of Georgia passed the constitutional amendments[60] on the irregular session by the third hearing with 117 votes against 3 votes. Before the voting, Giorgi Rurua released his statement asking MPs to participate in voting[61]. However, the factions of *European Georgia* and *United National Movement*[62] did not take part in the voting process, because according to them the agreement from March 8, 2020 was not fulfilled as Giorgi Rurua remained in custody.

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[56]see: Joint Declaration: https://bit.ly/3fzfW7N. Last seen: 27.06.2020.

[57]see: Edict of the President of Georgia: https://bit.ly/2M2PVB1..

[58]see: the information if full: https://bit.ly/2CUEIks. Last seen: 27.06.2020.

[59]see: the information if full: https://bit.ly/2BUSmDK. 29.06.2020.

[60]See The Constitutional Law of Georgia on making amendments to the Constitution Law of Georgia regarding *making Amendments to the Constitution of Georgia*: https://bit.ly/2AkWMDp.

[61]see: "It is necessary to participate in voting, we have to bring the matter to the end - Rurua": https://netgazeti.ge/news/463123/

[62]see: the information if full: https://bit.ly/38kmqVq. Last seen: 29.06.2020.

After the issuance of the Act of Pardon by the President of Georgia, the defence raised an issue at the court proceedings to change the measure of restraint to Giorgi Rurua. The defence requested GEL 10 000 in bail as a measure of restraint which was not granted. According to the assessment of the court, the remand on bail would not ensure the avoidance of the risks because of which the custody as a measure of restraint was initially used.

CONCLUSION

By monitoring the court proceedings and by studying the documents it was made clear that rights and freedoms of Giorgi Rurua as guaranteed by the Constitution of Georgia and international instruments were presumably violated during the personal search of Giorgi Rurua and during the various investigative and procedural actions. **Specifically:**

- ✓ *The accused was denied at the moment of arrest to contact a lawyer and family members.*
- ✓ *No rights and duties were explained to the detainee.*
- ✓ *The personal search of Giorgi Rurua right as well the search of his car were carried out with significant violations of the criminal procedural law.*
- ✓ *In drawing up the report of personal search and in sealing the firearm the requirements of the Criminal Procedure Code were violated.*
- ✓ *The procedural violations existing on the case together with opinions of various experts puts under doubts the relatedness of Giorgi Rurua with the firearm and the authenticity of the evidence.*
- ✓ *Number of facts indicate to the doubtful origin of the silencer of the firearm.*
- ✓ *The investigator carried out number of investigative actions without the participation of the defence counsel.*
- ✓ *The aggravation of charges against Giorgi Rurua lacks constitutional grounds. Further, the aggravation is not justified by the purposes of the criminal law. The reason for aggravating the charges against the accused became the fact that the accused refused to participate in taking the sample, the right he had under the Constitution of Georgia and under the international documents of human rights. The criminal prosecution launched under the subsumption ignores the privilege to be protected against self-incrimination constituting the violation of fair trial.*
- ✓ *the use of proportional measures for taking the sample is also a problematic issue.*