



**LEGAL ASSESSMENT OF THE CRIMINAL  
CASES LAUNCHED AGAINST  
IRAKLI OKRUASHVILI**



**2020**



## HUMAN RIGHTS CENTER

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## INTRODUCTION

The President of Georgia used her constitutional power and pardoned the leader of the political movement “Victorious Georgia” Irakli Okruashvili and former Tbilisi Mayor Giorgi Ugulava. This fact once again demonstrated huge influence of political processes on the Georgian judiciary. “I am not pardoning political prisoners. I assume full responsibility for stating that there are no political prisoners in Georgia,” stated the President of Georgia<sup>1</sup> and underlined that she shared the position of the executive authority, parliamentary majority and the ruling party Georgian Dream in regard with the political prisoners in Georgia.

Regardless of the position of the Georgian Dream or the President, considering the political context in Georgia, ongoing criminal prosecution against concrete political leaders, obscurity, shortcomings, insufficient evidence in the case files and other circumstances raise doubts among the Georgian civil society organizations and international partners that there are political motives in these cases. The international partners, without any diplomatic subtexts, directly recommended the Government of Georgia (GoG) to implement the March 8, 2020 agreement between the ruling party and the opposition political parties and free political prisoners<sup>2</sup>. Although the GoG and the opposition differently interpreted the agreement, the President of Georgia welcomed the process and the agreement and connected her decision on pardoning Irakli Okruashvili and Giorgi Ugullava with this process in order to avoid “a danger of a severe political crisis” in the country<sup>3</sup>.

The report below aims to assess the criminal cases launched against the leader of the Victorious Georgia Irakli Okruashvili - criminal proceedings, his conviction and pardoning. The document evaluates two recent criminal cases launched against Irakli Okruashvili. One case is related with the June 20-21, 2019 events, for which the police arrested Irakli Okruashvili on July 25, 2019 and accused him of the organization, management or participation in the group violence. The Tbilisi City Court announced the judgment on the case on April 13, 2020<sup>4</sup>. The second charge was brought by the prosecutor’s office in relation with the so-called Amiran (Buta) Robakidze’s case under the Article 332 Part 3 –c of the Criminal Code of Georgia – abuse of official power.

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<sup>1</sup> See the statement of the President of Georgia <https://bit.ly/3gowzmZ>

<sup>2</sup> See more information in the article of the Radio Liberty <https://bit.ly/2MqiXe2>

<sup>3</sup> See the statement of the President of Georgia <https://bit.ly/3gowzmZ>

<sup>4</sup> See full information at <https://bit.ly/3i18iVl>.

The document also analyzes the criminal case launched against Koba Koshadze, whose arrest was most probably connected with the political activities of Irakli Okruashvili.

The criminal prosecution against Irakli Okruashvili started under the previous government and he was acquitted in majority of the imposed charges. After the Georgian Dream took office, before the Law of Georgia on Amnesty<sup>5</sup> was announced on January 12, 2013, Irakli Okruashvili was considered to be a political refugee<sup>6</sup>. Finally, he was not inserted on the list of political refugees. At the same time, the Georgian Dream's government continues criminal prosecution against the active opposition politician.

## CONTROVERSY WITH THE PREVIOUS GOVERNMENT

During the governance of the United National Movement, Irakli Okruashvili, at different times, occupied the positions of the Shida Kartli regional governor, Prosecutor General, Minister of Internal Affairs, Minister of Defense and Minister of Economic Development. In 2004, on June 7, he was appointed to the position of the Minister of Interior<sup>7</sup> but several months later, on December 16 he became the Minister of Defense<sup>8</sup>.

In 2005, for the purpose of the enhanced fight against smuggling, the personnel changes started in the Shida Kartli regional police department that was viewed as a campaign to reduce the influence of Irakli Okruashvili in the region. However, the members of the government denied the spread information<sup>9</sup>. Later, in July, 2005, in his interview with the newspaper Resonance, Irakli Okruashvili openly spoke about the intrigues against him<sup>10</sup>.

On November 10, 2006, President Saakashvili carried out personnel changes in the Government of Georgia. As a result, Irakli Okruashvili left the position of the Minister of Defense and took up the portfolio of the Minister of Economics<sup>11</sup>. Since that, rumors about Irakli Okruashvili's conflict with his team members, among them with then Minister of Internal Affairs Vano Merabishvili, was spread<sup>12</sup>. Okruashvili stayed on the new position only few months and on November 17, 2006 he quitted the position of the Minister of Economic Development based on his own decision<sup>13</sup>. Almost a year after his resignation – on September 25, 2007, Irakli Okruashvili accused the President of Georgia Mikheil

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<sup>5</sup> See the Law of Georgia on Amnesty, January 12, 2013 <https://bit.ly/3eM1uZz>.

<sup>6</sup> See full information at <https://bit.ly/3ds5DSg>.

<sup>7</sup> See full information at <https://bit.ly/3hUcuX1>.

<sup>8</sup> See full information at <https://bit.ly/3fL2Cgw>.

<sup>9</sup> See full information at <https://bit.ly/3179y3C>.

<sup>10</sup> See full information at <https://bit.ly/2zU7mBf>.

<sup>11</sup> See full information at <https://bit.ly/2BpXHCN>.

<sup>12</sup> See full information at <https://bit.ly/2AYJNYu>.

<sup>13</sup> See full information at <https://bit.ly/2Yo5bPJ>.

Saakashvili of the anti-state activities<sup>14</sup> and of ordering the murders<sup>15</sup>. On the same day, speaking on Imedi TV, he said that President Saakashvili had personally ordered him to liquidate business tycoon Badri Patarkatsishvili and to physically assault former MP Valeri Gelashvili. He also stated that the official version of the death of late Prime Minister Zurab Zhvania and the evidence in the case were fabricated<sup>16</sup>.

Two days after Irakli Okruashvili voiced grave accusations against President Saakashvili and announced creation of the opposition political party, on September 27, 2017, he was arrested in the office of his political party For the United Georgia. *Charges were brought against him for the abuse of official power (Article 332 of the CCG), accepting a bribe-taking (Article 338 of the CCG,) and neglect of professional duties (Article 342 of the CCG)*<sup>17</sup>. In October 2007, almost two weeks after his arrest, Okruashvili retracted his accusations against Mikheil Saakashvili and pleaded guilty in the imposed charges<sup>18</sup>. He left penitentiary establishment after paying the 10 million GEL bail but the investigation over his case continued<sup>19</sup>. Afterwards, he was forced to flee from the country and travelled to France, where he received a status of a political refugee and an asylum<sup>20</sup>.

On March 28, 2008, the Tbilisi City Court found Irakli Okruashvili guilty of “large-scale extortion” and sentenced him to 11 years in prison in absentia. At the same time, the court lifted two charges on money laundering and professional negligence from him<sup>21</sup>.

The guilty verdict mostly relied on the testimony of Dimitri Kitoshvili, the former head of the Parliamentary Secretary of President Mikheil Saakashvili and the former Head of the Georgian National Communications Commission. Dimitri Kitoshvili himself was sentenced to five-year conditional sentence for the same case. Years later, when the government changed in Georgia, Kitoshvili altered his testimony and told the Appellate Court that he was forced to make false testimony against Okruashvili<sup>22</sup>.

On June 18, 2011, the Prosecutor’s Office of Georgia started criminal prosecution against Irakli Okruashvili for the formation and leadership of and illegal armed formation. On January 18, 2013, this charge was lifted from Okruashvili<sup>23</sup>. Besides of that, on January 8, 2013, the Chief Prosecutor’s Office of Georgia dropped prosecution with regard to those accusations, which referred to the abuse of official power and money laundering, which

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<sup>14</sup> See full information at <https://bit.ly/2zUGTn9>.

<sup>15</sup> See full information at <https://bit.ly/2BvK31m>

<sup>16</sup> Ibid

<sup>17</sup> See full information at <https://bit.ly/31cOmca>.

<sup>18</sup> See full information at <https://bit.ly/2VEX6o4>

<sup>19</sup> See full information at <https://bit.ly/2ZzB0Ew>

<sup>20</sup> See full information at <https://bit.ly/37XTx19>.

<sup>21</sup> See full information at <https://bit.ly/3dWBZno>

<sup>22</sup> See full information at <https://bit.ly/3epKWGN>.

<sup>23</sup> See full information at <https://bit.ly/3dsoZ9z>.

were connected with the period of being the Minister of Defense. The Chief Prosecutor's Office stated that there was no evidence to prove that Okruashvili really committed those crimes<sup>24</sup>.

On November 20, 2012, Irakli Okruashvili returned to Georgia; upon arrival he was arrested and taken to the Gldani prison<sup>25</sup>. The Minister of Justice Thea Tsulukiani echoed Okruashvili's return with special briefing, who stated that during the UNM government Irakli Okruashvili was persecuted on political grounds<sup>26</sup>.

In 2013, Irakli Okruashvili received a status of a political refugee<sup>27</sup> and the court lifted all charges from him and released from the courtroom. Before that, on November 1, 2012, at the session of the Parliamentary Committee on Human Rights and Civic Integration, a working group was established<sup>28</sup> to study the cases of the people convicted or persecuted based on political grounds. Initially, the working group members planned to insert Irakli Okruashvili on the list of the politically persecuted persons<sup>29</sup>. Irakli Okruashvili told Human Rights Center during the meeting in 2020<sup>30</sup> that the members of the parliamentary committee removed his name from the list based on the request of the government. Finally, based on the January 12, 2013 Law of Georgia on Amnesty<sup>31</sup>, the parliament recognized 190 inmates<sup>32</sup> as political prisoners and 25 people as political refugees<sup>33</sup>.

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<sup>24</sup> See full information at <https://bit.ly/3inU94S>

<sup>25</sup> See full information at <https://bit.ly/3eGD0Rp>.

<sup>26</sup> See full information at <https://bit.ly/2Nh4n8W>.

<sup>27</sup> See full information at <https://bit.ly/3ifW1wF>.

<sup>28</sup> See the resolution of the Parliament of Georgia about "The People Convicted and Persecuted based on Political Grounds."

<sup>29</sup> See the list published by the working group in media <https://bit.ly/3ds5DSg>

<sup>30</sup> See information about the meeting at <http://humanrights.ge/index.php?a=main&pid=20164&lang=eng>

<sup>31</sup> See the Article 22 of the Law of Georgia on Amnesty, January 12, 2013 <https://bit.ly/3eM1uZz>

<sup>32</sup> See the full list at <https://info.parliament.ge/file/1/BillReviewContent/24682?>

<sup>33</sup> See the full list at <https://info.parliament.ge/file/1/BillReviewContent/24683?>

## CHAPTER I

### CRIMINAL CASE COMMENCED IN CONNECTION WITH THE JUNE 20-21 EVENTS

#### 1. Indictment

In accordance with the July 26, 2019 indictment<sup>34</sup>, Irakli Okruashvili was accused of the leadership of group violence that is accompanied by violence, raid, damage or destruction of another person's property, use of arms, armed resistance to or assault on representatives of public authorities (Article 225 Part 1 of the CCG). In addition to that, he was accused of the participation in group violence (Article 225 Part II of the CCG).

In accordance with the indictment, Irakli Okruashvili participated in the violent actions committed during the June 20-21, 2019 events, and he verbally and demonstratively called on the protesters to break the cordon of the law enforcement officers by force and enter the protected territory of the building of the Parliament of Georgia. He, among others, personally participated in the group violence, which aimed to surmount the police cordon deployed alongside the parliament building and to break into the protected territory. As a result of the violent action, representatives of the law enforcement bodies and the participants of the protest demonstration received various injuries. The active and passive special equipment of the police was also damaged and destroyed.

Based on these accusations, Irakli Okruashvili was arrested on July 25, 2019<sup>35</sup>. The prosecutor's office accused him of the leadership of the group violence (Article 225 Part 1 of the CCG) and participation in the group violence (Article 225 Part II of the CCG).

#### 2. Assessment of the charges brought against Irakli Okruashvili – Article 225 of the Criminal Code of Georgia

In accordance with the Article 225 Part 1 of the CCG, "organization or management of a group activity accompanied by violence, raid, damage or destruction of another person's property, use of arms, armed resistance to or assault on representatives of public authorities shall be punished by imprisonment for a term of six to nine years."

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<sup>34</sup> See the indictment, Tbilisi 26.07.2019, Document N0013218149.

<sup>35</sup> See full information at <https://bit.ly/36Tylc5>



Before 2007 legislative amendments<sup>36</sup>, the norm was named as “mass disorder”. It entailed crowd, several hundred people committing the action. Nowadays, the scope of this provision widened and it can be committed by a group of people composed of two persons or more. At the same time, at least two persons shall participate in the violence (Part 2). In accordance with the criticism by the legal scientists about the private part of the criminal law, a law-maker additionally widened the scopes of this provision and with the acting edition, participation of three persons, including an organizer, is enough to regard the action as group violence<sup>37</sup>. Besides that Article 225 Part 1 of the CCG mentions such alternative actions, one of which shall necessarily be committed during the group action in order to qualify the action under this article. Violence is on the list. There is an opinion in the scientific literature that one of the actions mentioned in the disputed article, as well as the violence, cannot be considered to be a committed offence unless it is committed by an organized group. At the same time, it is important to note that organization of group violence is demonstrated with specific signs like: selection of the place for the disorder, fixing the time and selecting method of the action, collecting group of people in concrete area and more. Leadership of the group violence may be demonstrated in giving instructions to the group members during disorder, what to do and also by calling on them not to stop violence, and more<sup>38</sup>.

The action provided<sup>39</sup> under the Part 1 of the article is accomplished not only when the person organizes the group violence, but when the organization or leadership of the group violence is accompanied by violence, raid and more<sup>40</sup>. Despite that, the crime has formal composition because it is not necessary that these violence actions were followed with negative outcome. For example, violence may not result into a physical pain either<sup>41</sup>. Also, damage of other’s property may not result into a significant loss and more. If the group violence ends up with the abduction of property, grave injury of health or death, the action will be qualified based on the totality of crimes.

As for the Part 2 of the Article 225 of the CCG, in accordance with the provision, “Participation in the act provided for by paragraph 1 of this article - the responsibility is envisaged for the participation punishable by paragraph 1 of this article.” Therefore, the Part 1 punishes an organizer or leader of the group violence and the Part 2 punishes

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<sup>36</sup> See the Law of Georgia on the Amendments to the Criminal Code of Georgia, 2007

<sup>37</sup> See M. Lekveishvili, N. Todua, G. Mamulashvili, Private Part of the Criminal Law, Book 1, fifth edition, publishing house Meridiani, Tbilisi 2014, p. 599

<sup>38</sup> Ibid p. 600

<sup>39</sup> In the literature “group action” is also mentioned as “group violence.” The Supreme Court of Georgia also uses the same term

<sup>40</sup> See M. Lekveishvili, N. Todua, G. Mamulashvili, Private Part of the Criminal Law, Book 1, fifth edition, publishing house Meridiani, Tbilisi 2014, p. 600

<sup>41</sup> In the literature “group action” is also mentioned as “group violence.” The Supreme Court of Georgia also uses the same term

ordinary participant of the group action, which is accompanied by the alternative actions envisaged in the Part 1. Among them is violence, which may be demonstrated into beating, breaking the door of or breaking into the protected area, minor or grave injury of another person's health, etc. In accordance with the widely spread opinion in the legal literature, there must be several significant circumstances to qualify an action under the Article 225 Part 2 of the CCG:

1. The group action, for the participation in which an individual can be charged under the Article 225 part 2 of the CCG, shall necessarily be an organized action. The fact that conjunction "or" is used between the "organization" and "leadership" does not exclude the abovementioned. The issue is that a different person can be an organizer and a leader of the same action, and unless conjunction "or" is used in the definition, these people could not be fall under the regulation of the part 1 of the article<sup>42</sup>. Therefore, it is true that the organizer of the group violence may be not identified but when qualifying the action under the Article 225 Part 2 of the CCG, it is necessary to determine that the group action, participation of which an individual is charged for, was preliminarily organized. For the substantiation of this argument, we can refer to one of the 2018 rulings of the Supreme Court of Georgia, where the court defined similar actions as group violence and not as organization of group violence. The resolution stated: "unidentified individuals or group of people organized a group violence for the purpose of protest, as a result of which the protesters blocked the Street "Tch" and did not obey the lawful demands of the police officers to unblock the road."<sup>43</sup>
2. Participation in the action provided by the part 1 of the abovementioned article means – co-perpetration. In accordance with the Article 22 of the CCG, "A principal is a person who immediately commits or has immediately participated in the commission of a crime together with another person (joint principal) [...]". As defined by the Supreme Court of Georgia, an individual shall perpetrate at least one of the listed actions in the Article 225 Part 1 of the CCG to determine that he/she has committed the crime. These actions are: violence, raid, damage or destruction of another person's property, use of arms, armed resistance to or assault on representatives of public authorities. The Supreme Court underlines that unless an individual perpetrates at least one of the listed actions, he/she cannot be regarded as a perpetrator and shall not be punished under the Article 225 Part 2 of the CCG. The Court concluded that "the participation of the defendant in the group violence, who was standing together with the participants,

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<sup>42</sup> See M. Lekveishvili, N. Todua, G. Mamulashvili, Private Part of the Criminal Law, Book 1, fifth edition, publishing house Meridiani, Tbilisi 2014, p. 600

<sup>43</sup> See the November 9, 2018 ruling of the Criminal Law Chamber of the Supreme Court of Georgia case №23-28833.-18.

was not proved. In one of the episodes, he was moving around the area by car, was making voice signals, was scolding police officers, was shouting and whistling [...]”<sup>44</sup>.

3. The crime punishable under this law means only intention. Subjectively, motive and objective of the action does not have any meaning for the qualification. It may be revenge against a public official or agency and other personal motive, which shall be taken into account when determining the punishment<sup>45</sup>. We should also exclude anti-state goal of the action. The accusation against the actions listed in the law is demonstrated with direct intention, but with regard to the results, which are not necessary for the completion of the action and which may be a result of group violence (minor or less minor injury of health, devastation or damage of other’s property), intention may be direct and indirect. Consequently, an individual, who co-perpetrates any of the actions punishable under the Article 225 Part 11, shall be aware that his action is unlawful and shall have a desire to receive the result of the unlawful action<sup>46</sup>. If a person is charged under the Article 225 Part 2 of the CCG, it should also be proved that he was acting intentionally<sup>47</sup>. It is not necessary that the action had a result to declare it as a committed crime. It is important to determine that the fact of armed resistance really happened. In this view, organization of group action is formal offence.

*Georgian Democracy Initiative (GDI) analyzed the same document when evaluating the charges brought against Irakli Okruashvili under the Article 225 of the CCG<sup>48</sup>. In accordance with the GDI’s analysis, although the court made number of correct and fair clarifications in the judgment, particularly those made with regard to the accusations under the Article 225 Part 1 of the CCG, Irakli Okruashvili’s case and judgment contain significant miscarriages.*

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<sup>44</sup> Ibid

<sup>45</sup> See M. Lekveishvili, N. Todua, G. Mamulashvili, Private Part of the Criminal Law, Book 1, fifth edition, publishing house Meridiani, Tbilisi 2014, p. 600

<sup>46</sup> Ibid

<sup>47</sup> See the November 9, 2018 ruling of the Criminal Law Chamber of the Supreme Court of Georgia case №23-28833.-18.

<sup>48</sup> See the Legal Analysis – Irakli Okruashvili’s Case, GDI 2020 <https://bit.ly/2Bv2WB8>.

### 3. Assessment of the Tbilisi City Court's judgment

#### 1) Article 225 Part 1 of the Criminal Code of Georgia (leadership of group violence)

The Tbilisi City Court clarified in its judgment that the Prosecutor's Office of Georgia tried to prove guiltiness of Irakli Okruashvili in the commission of the crime punishable under the Article 225 Part 11 of the CCG (*leadership of group violence*) in two episodes. In accordance with the indictment, *the first episode* referred to the fact when Irakli Okruashvili approached law enforcement officers at the entrance of the Parliament of Georgia on Tchitchinadze Street; *the second episode* fully relied on the testimony of only one witness police officer, who stated that protesters tried to break into the yard of the Parliament building and had noticed Irakli Okruashvili thereto, who was shouting together with the crowd: "Go ahead, go ahead!" and was moving towards the Parliament's building. According to the witness, people were throwing various subjects, were pushing the police officers with the iron railing. They seized a shield from him. The witness police officer said that 2-3 minutes before the fact he saw Irakli Okruashvili and Zaal Udumashvili.

**First episode:** In accordance with the judgment of the Tbilisi City Court, signs of criminal offence were not identified in the first episode of the case, which could prove Irakli Okruashvili's guiltiness in the leadership of the group violence. It must be noted that a fundamental right to the fair trial, first of all, means to convict a person based on true, compliant, evident and trustworthy evidence, that is an irreplaceable method to deliver the guilty judgment and at the same time, in terms of sufficiency, proves the guiltiness of the defendant beyond reasonable doubts.

**The prosecution failed to present such evidence to the court during the court proceedings, which could prove participation of Irakli Okruashvili's companions in the group violence that on its side excludes Irakli Okruashvili's leadership of the group violence.**

At the same time, testimonies of the two police officers, who were witnesses of the Prosecutor General's Office, could not prove the guiltiness of Okruashvili, because in the contrary to that, the defense side brought 6 witnesses, who testified to the court that Irakli Okruashvili did not commit violence and did not call on the others to commit violence in the area mentioned by the police officers. One of the witnesses presented in the court was in Tchitchinadze street when Irakli Okruashvili arrived there and the 5 other witnesses accompanied the defendant.

The prosecution also showed a video to the court, where the witness is standing next to Irakli Okruashvili. The witness also indicated at himself in the video. As the assessment of the court judgment revealed, besides the two police officers, the prosecution did not have any other witnesses, who could describe unlawful action of the defendant or neutral evidence, like recordings of the video-cameras, which could show the activities of the defendant, which could convince the court in the guiltiness of the defendant. *Finally, as a result of legal analysis of the examined evidence the court determined that in the first episode, the position of the prosecution to find the defendant guilty in the imposed charges lacked trustworthy and sufficient evidence, as the testimonies of the witness police officers and other direct eyewitnesses interrogated during the court hearings could not prove perpetration of the crime; above that, their testimonies were consequent and compliant. They created different grounds for the assessment of essential factual circumstances and therefore they could not prove perpetration of the offence by the defendant.*

**Second episode:** in accordance with the HRC trial monitoring report, one of the witnesses testified to the court that Irakli Okruashvili was calling on them “Go Ahead, Go Ahead!”, he, together with the crowd tried to break into the internal yard of the Parliament of Georgia<sup>49</sup>. The witness stated that he also noticed Zaal Udumashvili (one of the leaders of the UNM), who soon turned back and left the area, but Okruashvili stayed on the site and was pushing police officers. The witness also told the court that like Zaal Udumashvili, the defendant could also leave the area but he did not<sup>50</sup>. At the court proceeding, the prosecutor showed the video, where the witness recognized himself and showed where Irakli Okruashvili and Zaal Udumashvili were standing. Although it was difficult to distinguish the faces in the video, the witness stated that he clearly remembered where he was standing and could recognize himself in any video. The defense side inquired whether others were also shouting and calling on the people to break into the internal yard of the Parliament of Georgia and the witness answered – yes<sup>51</sup>. He added that Irakli Okruashvili did not abuse anybody physically. The witness said that he did not hear any other words from the defendant. The witness added that people standing behind them were pushing him, too. Finally, during the assessment of the factual circumstances and evidence, the court paid attention to the testimonies made by the witness police officers and other individuals/witnesses interrogated in the court and stated that they did not prove the fact that Irakli Okruashvili made similar appeals. *Namely, in accordance with the judgment of the Tbilisi City Court, the words “Go ahead, Go ahead!” could not become grounds to assess the action as a leadership of a group violence without identifying its context and addressees. Above that, there was no valid*

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<sup>49</sup> Report of the HRC court monitor on the case related with June 20-21, trial on merits: 10.01.2020 13:20-14:12 pm

<sup>50</sup> Ibid

<sup>51</sup> Ibid

*evidence to prove that he really shouted the mentioned words.* For example, the witness police officer told the court that during five minutes Irakli Okruashvili was standing on his right. He, together with the others, was pushing the police officers but he did not hear Okruashvili shouting anything<sup>52</sup>.

According to the assessment of Human Rights Center, in this episode, the Tbilisi City Court correctly referred to the rule of evidence assessment and standards of substantiation. The court did not find the witness testimonies and relatively the interrogation protocols, which as a rule were prepared by one person, as sufficient and valid evidence to prove the guiltiness. In accordance with the HRC trial monitoring report, in one case, the defense side indicated at the parts of the testimonies of the witnesses taken during the investigation process, in which the texts had equal spelling mistakes that proved that the investigators had preliminarily drafted the testimony texts and offered the witnesses to sign them only afterwards. The court rejected those testimonies as they did not contain accurate description of the actions committed by individuals and among them by the defendant<sup>53</sup>. *Besides that, the court did not give preference to the police officers' testimonies and remained suspicious over the validity of their testimonies too. Similar evidence could not meet the minimal standard of evidence beyond reasonable doubt but even the minimal standard. In accordance with the judgment, there was not totality of such evidence provided by the parties, which were compliant and excluded all doubts, which could enable the court to conclude in accordance with the standard of beyond reasonable doubt that the defendant committed the unlawful action he was charged for.*

The Criminal Procedure Code of Georgia determines obligation of legality, reasonability and fairness of the court judgment<sup>54</sup>. A court judgment shall be considered reasoned if it is based on the body of incontrovertible evidence that has been examined during the court hearing<sup>55</sup>. A judgment of conviction shall be based on incontrovertible evidence<sup>56</sup>. It is necessary to convict an individual based on the judgment of conviction based on a totality of agreed evidence<sup>57</sup> beyond reasonable doubt<sup>58</sup>. "The standard beyond

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<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> See the Article 259 Part 1 of the CPCG at <https://bit.ly/3f7Wuig>

<sup>55</sup> Ibid Article 259 Part 3

<sup>56</sup> See Article 31 Paragraph 7 of the Constitution of Georgia at <https://bit.ly/2NV6yza>

<sup>57</sup> See Article 82 Part 3 of the CPCG at <https://bit.ly/3f7Wuig>

<sup>58</sup> See Article 3 Paragraph 13 of the CPCG at <https://bit.ly/3f7Wuig> "Beyond reasonable doubt - a totality of evidence required for a court to pass a judgment of conviction, which would convince an objective person of the culpability of the person."

reasonable doubt obliges the court to fairly resolve conflict between the evidence, appropriately examine the evidence.<sup>59</sup>

*In compliance with the principle of adversarial proceedings, in the criminal proceedings against Irakli Okruashvili, the evidence presented to and examined by the court relied only on such evidence, whose reasonability needed additional proofs that were not provided in this particular case and the court received only such evidence, which did not allow to consider them as reliable. Therefore, the Tbilisi City Court acquitted Irakli Okruashvili in the charge brought against him under the Article 225 Part 1 of the CCG (management of the group violence).*

**International standard:** The national common courts of Georgia actively refer to the European standards of the fair trial. The common courts of Georgia not only refer to the Article 6 of the European Convention on Human Rights and the Case Law, but also build their argumentations on the views of various judges of the European Court, recommendations of the various institutions of the Council of Europe and standards in established in their resolutions. The national courts consider the proceedings in totality as it is determined by the case law of the ECtHR and assess whether the restriction of the right to defense had legitimate objective after what they examine whether the restriction of this right was balanced with procedural guarantees or not. During the evaluation of the evidence provided in the criminal case against Irakli Okruashvili, the judge referred to the clarifications of the ECtHR in the case *Ochelkov v. Russia*, according to which, “*the police officers’ statements are of little value as they were not supported by any evidence.*”<sup>60</sup> This argument brought by the judge shall be evaluated positively. He correctly quoted the rulings of the Strasbourg Court to clearly demonstrate full relevance of the judgment delivered by the national court with the respective standards of the ECtHR. This approach is particularly important with regard to the restriction of rights. At the same time, it is important that the common courts correctly used the practice of the ECtHR during the qualification of the action in order to meet the requirements of the Article 3 of the Convention and on the other hand not to degrade the fundamental importance of the prohibition by the Article 3 with incorrect qualification.

## **2) Article 225 Part 2 of the Criminal Code of Georgia (participation in group violence)**

*The court convicted Irakli Okruashvili for the action punishable by the Article 225 Part 2 of the CCG (participation in group violence).*

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<sup>59</sup> See the January 22, 2015 ruling of the Constitutional Court of Georgia over the case *Zurab Mikadze vs Parliament of Georgia* <https://cutt.ly/cu9Naf>.

<sup>60</sup> See the ECtHR ruling on the case *Ochelkov v. Russia*, April 11, 2013, paragraph 90

The Tbilisi City Court concluded that Irakli Okruashvili perpetrated unlawful action when pushing the police cordon, and also, when resisting one of the police officers by grabbing and pulling him with his arm. As the court judgment reads, *the verdict of conviction relied on the testimonies of four witness police officers. As for the neutral evidence, the video-recordings were requested from the TV-Companies, which were presented during the court hearing as well as the legally problematic habitoscope expertise conclusions.* More precisely, Irakli Okruashvili's lawyer asked the expert during the hearing whether other people were also detected in the video and if yes, whether they were also identified. The defense side several times repeated the question because of the obscure and indirect answer of the expert<sup>61</sup>. At the same time, the judge also repeated and clarified the question to him. According to the expert's testimony, other people were also detected in the video but he only examined the identification of the person mentioned in the indictment, which coincided with the description of Irakli Okruashvili. At the same time, expert's description was general for what the defense side asked the expert to read the description, which he used for the identification of the person in the video. The description was also general and obscure – "thin, middle-height young man. He was wearing short-sleeve shirt [...]."<sup>62</sup>

*According to the assessment of Human Rights Center, the court judgment fully relies on the literature reviewed in the analysis of the Article 225 of the CCG in the previous chapter<sup>63</sup>. It is practically acceptable, when a judge refers to legal literature and opinions expressed in various document in his/her judgment, but in a similar situation, the judge shall evaluate whether similar justification of the judgment does not worsen the rights of the defendant and, relatively does not contradict the national and international human rights laws and judicial practice. When there is no joint position over complicated legal issues and existing circumstances worsen the rights of the defendant, it is risky when the judge refers to the scientific literature in his/her judgment while this position is significant evidence based on which the conviction of the defendant was built upon.*

It is about the action, which did not cause physical pain – clarification of the violence punishable under the Article 225 of the CCG, which the court did not examine and consequently did not evaluate whether the defendant participated in any of the actions punishable by the Article 225 Part 1 of the CCG (violence, raid, damage or destruction of another person's property, use of arms, armed resistance to or assault on representatives

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<sup>61</sup> See the report of the HRC court monitor on the case related with June 20-21, trial on merits: 23.10.2019, 11:15 – 11:40 am

<sup>62</sup> Ibid

<sup>63</sup> See M. Lekveishvili, N. Todua, G. Mamulashvili, Private Part of the Criminal Law, Book 1, fifth edition, publishing house Meridiani, Tbilisi 2014, p. 600



of public authorities) in order to convict him for the action punishable by the Part 2 of the same article.

Furthermore, the court leaves such important issues beyond assessment, like organization of group action, because a defendant may be held responsible for the perpetration of this action only when there is an organized group. In Okruashvili's case, the court not only did not evaluate whether the violence against police officers had an organized manner, but did not mention it at all and did not clarify major peculiarities of the group action, which the prosecution claimed to be committed by Irakli Okruashvili. At the same time, when the objective signs of the *corpus delicti* are examined in coherence with the criminal law and the constitution, with high probability, the action of the defendant could not be qualified as "violence" due to the intensivity presented in his case files as it is envisaged in the Article 225 Part 2 of the CCG. The abovementioned ruling of the Supreme Court of Georgia also proves this opinion. Therefore it is unclear what the ground of the court's conviction judgment was without the assessment of the significant part of the objective *corpus delicti*.

HRC's court monitor identified a significant issue related with the evidence, when the defense side claimed that the testimonies of the two police officers were equal. It proved that they had signed already written testimonies; consequently, the court should not have taken those testimonies into account. The court did not share the position of the defense side and clarified that the witnesses had made the testimonies in compliance with the adversarial principle, which was also proved by video-recordings and "the attempt of the defense side to discredit the testimonies of the witnesses could not affect their validity and trustworthiness"<sup>64</sup>.

Generally, in relation with the admissibility of evidence, the common courts of Georgia correctly state that although the Article 6 of the European Convention on Human Rights defends the right of a person to fair trial, it does not determine the rules of the evidence admissibility. It is within the competence of the domestic legislation<sup>65</sup>. Additionally, the common courts of Georgia correctly declare that with the case law of the ECtHR, as a rule, evidence and its relevance are evaluated on the level of the domestic courts<sup>66</sup>. The common courts of Georgia rely on the declaration of the ECtHR that it is not within its competence to deliver opinion about the relevance of the provided evidence, about guiltiness or innocence of the defendant<sup>67</sup>. However, the domestic courts should also take

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<sup>64</sup> Report of the HRC court monitor on the case related with June 20-21, trial on merits: 10.01.2020 13:20-14:12 pm

<sup>65</sup> See *Schenk v. Switzerland*, Application no. 10862/84, ECtHR ruling July 12, 1988, paragraphs 45-46

<sup>66</sup> See case *Barberà, Messegue, Jabardo v. Spain*, application nos. 10588/83, 10589/83, 10590/83, Ruling of December 6, 1988, paragraph 68.

<sup>67</sup> See *Popov v. Russia*, application no. 26853/04, Ruling of July 13, 2006, paragraph 188

into account that the ECtHR may not agree with the evaluation of the evidence by the national courts and examine how substantiated the judgment of the domestic court is in relevance with the Article 6 of the Convention. This standard is problematic in the disputed case, because the judge did not clarify why the witness statements were similar and if they were similar why he did not question their trustworthiness.

Besides that, although the criminal proceedings in the court are conducted in compliance with the adversarial principle, it does not free the court from the obligation to substantiate why the evidence is trustworthy and why it does not cause doubts in the third impartial person, because the judge makes decision to rely his/her judgment on the concrete evidence.

For example, in accordance with the clarifications of the Criminal Code of Germany and the Federal Constitutional Court of Germany, the court shall get convinced in the guiltiness or innocence of the defendant based on the assessment of the totality of the evidence presented during the trial on merits. On its side, the court is free to evaluate the evidence presented during the trial on merits. There are no legal acts regulating evaluation or consequence of various evidence<sup>68</sup>. Despite, the court shall examine all circumstances, which are decisive to assess the evidence (validity, trustworthiness). The circumstances, which demonstrate validity or invalidity of the witness testimonies, shall be referred in the motivation part of the judgment<sup>69</sup>. The absence of similar justification in the reasoning part of the judgment results into the mistake of the judge and consequently encourages the upper instance of the court to annul the previous judgment.

When examining the accusation of Irakli Okruashvili, the court did not consider that similar testimonies may raise reasonable doubts of the third impartial person over preliminarily agreed statements of the witnesses, which were signed by them at a later stage.

The judgment reveals that the main evidence the court relied on was the video-recording. The prosecutor's office and the court believe Irakli Okruashvili grabbed and pulled the police officer with his hand and overcame the resistance of the police which was qualified as a violent action by the court. However, as the analysis of the judgment reveals, the video does not sufficiently prove that Irakli Okruashvili really committed the action. Presumably, the prosecutor's office considered the abovementioned case as important to prove an intentional action of Irakli Okruashvili, who was moving towards the building of the parliament of his own will and not by the crowd of people. In contrary to that, in

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<sup>68</sup> See the collected judgments of the Federal Constitutional Court of Germany 38 p. 105 and next

<sup>69</sup> Ruling of the Federal Constitutional Court of Germany, October 8, 2009, 2 BvR 547/08, footnote 9

this particular episode, when allegedly the defendant grabbed the police officer, the video showed how many people pushed Irakli Okruashvili and forced him to change the trajectory of the crowd's movement. It is proved by the testimonies of several witnesses and other evidence in the case files, which were ignored by the court. The court fully shared the position of the prosecutor's office that Irakli Okruashvili was acting according to the preliminary intention, while it is not proved at all. Also, there is no non-stop video-recording of the process in the case files. It may be said that throughout the entire process, the court unfairly imposed the verification burden on the defendant that contradicts the principle of adversarial proceedings and principle of equality of arms guaranteed by the Criminal Procedure Code of Georgia. In addition to that, the court did not follow the principle of *in dubio pro reo*, which in accordance with the Article 31 Paragraph 7 of the Constitution of Georgia, authorizes the court that any suspicion that cannot be proved in accordance with the procedures established by the law shall be resolved in the defendant's favor.

The court qualified the actions of Okruashvili as violence – grabbing and pulling of the police officer with a hand that is in conflict with the law. Namely, the judge copy pasted the opinion quoted in the legal literature, which states that the “violence” mentioned in the Article 225 of the CCG may not result into a physical pain either. Similar definition in the Article 225 Part 1 of the CCG is problematic considering the contextual meaning of the provision, because its objective is to eliminate the unlawful action, which may cause grave results and the court shall necessarily verify its judgment with high standard and qualified assessment of the identified results.

*The court neglected the requirements of the provision and without identification and assessment of the individual signs of the offence, qualified the action of the defendant as violence while for the objectives of the Article 225 of the CCG, the “violence” shall be clarified as more intensive physical impact rather than in other ordinary cases. It is also worth to note that Irakli Okruashvili's action could not be qualified under the Article 126 of the CCG because this provision punishes the action which causes physical pain.*

In the below analyzed case, the court clarified the physical influence with less intensiveness as “violence in group actions,” that is legally problematic. Similar clarification raises questions in terms of the outcome because **out of many people, together with whom Irakli Okruashvili participated in the “group violence”, the law enforcement officers selected only Irakli Okruashvili as an offender and arrested him. Consequently, the criminal prosecution started only against him though it was absolutely possible to identify other people participating in the same action and were standing around him. With similar approach, commencement of the criminal**

**prosecution against Okruashvili can be evaluated as a politically motivated discrimination.**

The issue of imposed sanctions is also problematic. The court clarified the provision so that any physical impact can fall under its regulation. It originates a risk that when bringing charges against the individual by prosecution any similar action may fall under the regulation of the Article 225 of the CCG and in all cases the person may be charged for the organization of group violence regardless the fact the signs of these action were identified or not. Besides that, there is high probability that the members of the judiciary authority will share the clarifications in the below presented judgment and make similar clarifications in other judgments too that will finally result into the establishment of malicious court practice. **As a result, it is possible that like Irakli Okruashvili's case, the defendants in other criminal cases may be convicted to disproportionate and unreasonable punishments** that violate the principle of proportionality and fairness of the punishment guaranteed by the constitution and the European Convention on Human Rights.

In accordance with the clarification of the Constitutional Court of Georgia: *“the punishment imposed for any action shall be reasonable and proportionate to the outcome of the concrete crime inflicted to individuals/societies.”<sup>70</sup>*

It needs to be underlined that in Irakli Okruashvili's case, the court's clarification of the Article 225 of the CCG is incorrect. It does not take the objective of the law-maker into account that is to qualify only the crimes committed against state authority and public interest with this article and not to apply it with regard to other criminal cases, too, regulated under other articles of the CCG. The clarifications made in Irakli Okruashvili's case turns the Part 2 of the Article 225 of the CCG into a tool of repression for the concrete government against its opponent politicians and it does not have any connection with the objectives of this provision. In case of the abovementioned clarifications, during mass disorders, individuals, who participate in similar actions, automatically fall under the regulations of the Part 2 of the Article 225 and the Government has freedom of action to select concrete unwilling individuals among them and punish only them. The signs of similar approach are observed in the criminal case against Irakli Okruashvili.

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<sup>70</sup> See the July 14, 2017 ruling of the Constitutional Court of Georgia №1/9/701,722,725 over the case Jambul Gvianidze, Davit Khomeriki and Lasha Gagishvili v. the Parliament of Georgia

#### 4. Case of Koba Koshadze

Before Irakli Okruashvili's detention, on July 17, 2019, one of his bodyguards, driver and relative of his family Koba Koshadze was arrested, who was accused of the commission of the crime punishable under the Article 236 of the Criminal Code of Georgia – illegal purchase-possession-carriage of firearms<sup>71</sup>. Additionally, before his arrest, Irakli Okruashvili made scandalous statements where he openly spoke that he assisted the government in the criminal prosecution against the members of the previous government<sup>72</sup>. At the same time, he stated that in 2016 he was requested to decline his claims for the TV-Company Rustavi 2 but he refused to do so<sup>73</sup>. On July 19, 2019 Irakli Okruashvili launched a court dispute over the TV-Company Rustavi 2. He appealed the court to freeze the assets of the TV-company<sup>74</sup>. On July 25, 2019 Irakli Okruashvili was arrested<sup>75</sup>.

Connection with the political activities is the first and most important criterion to determine the status of a political prisoner. "Potential political prisoner" is a person whose "fundamental guarantees" are allegedly violated. In accordance with the first criterion of the Council of Europe, *"a person deprived of his or her personal liberty is to be regarded as a 'political prisoner' if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association."*<sup>76</sup> Wide interpretation of this criterion can be applied with regard to the cases, where imprisonment of a person may be connected with the political activity of their close relative. Arrest of the family member or relative of an active politician may be directly or indirectly connected with the intention to deprive the person from political activities or/and warn him/her to stop similar activities. Similar interpretation plays significant role in the Georgian reality because we observed similar so-called warnings against political opponents of the authorities in the recent history of Georgia during the previous governments, too. As a result of the interpretation of this criterion, arrest of such a person can be regarded as a taking a political hostage. Therefore, in accordance with the existing practice, in 2012, the Georgian human rights organizations determined the criteria, according to which **"an individual may be**

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<sup>71</sup> See the statement of HRC at <https://bit.ly/2ZA2fPf>

<sup>72</sup> See <https://bit.ly/2AfD2R8>.

<sup>73</sup> See <https://bit.ly/2AfD2R8>.

<sup>74</sup> See information at <https://bit.ly/2WG3Th4>

<sup>75</sup> See the statement of HRC <https://bit.ly/3gm4VHa>

<sup>76</sup> See the manual about the political prisoners in Georgia, Tbilisi, 2012, p 12 <https://osgf.ge/files/publications/GEO.pdf> .

**regarded as a political prisoner, who ... (c) was detained, arrested or imprisoned because of the political activities of his/her family member, relative or close person.<sup>77</sup>**

Factually and contextually a similar case was identified in the criminal case commenced against Irakli Okruashvili. At the same time, detention of Koba Koshadze can be compared with the arrest of Nora Kvitsiani on July 26, 2009, who was a sister of Emzar Kvitsiani, former governor of the Kodori Gorge. In that period, Emzar Kvitsiani escaped the law enforcement bodies and was sought for the attempted rebel for a long time. In parallel to that, a criminal case was launched against Nora Kvitsiani based on several articles of the criminal law. She was accused of the formation of illegal armed formation, illegal storage of weapon and misappropriation of the state property when she occupied the position of the village governor. Nora Kvitsiani was arrested during the so-called Kodori Gorge developments. Before the arrest, she was a governor of the village Adjari in the Kodori Gorge. Nora Kvitsiani did not plead guilty and claimed that she was innocent. She connected her arrest with the criminal prosecution started against her brother, Emzar Kvitsiani, who was hiding from police. In that period, HRC regarded Nora Kvitsiani as alleged political prisoner<sup>78</sup>. Case of Nora Kvitsiani was mentioned in the reports of the international human rights organizations, too<sup>79</sup>.

On July 19, 2019, the Tbilisi City Court sentenced Koba Koshadze to imprisonment. The defense side requested 10 000 GEL bail for the defendant but the judge satisfied the solicitation of the prosecutor and sentenced Koshadze to imprisonment. Koshadze denies accusation and claims that a firearm was planted on him. Irakli Okruashvili claims the same, who stated that the firearm was planted on Koshadze because they could not oppress him<sup>80</sup>. Koshadze stated that when driving to Tbilisi, police stopped him and started to search his car; at the same time, according to Koshadze's testimony, one of the officers planted a firearm in his car: *"I saw that a gun was near the hand-break next to me; I smiled and told him it was not mine; he asked "what did you see?" I told him I saw the same thing what he did (...) he asked "Is Makarov yours?" I said it was not mine... "How it is not yours? You will learn later whom it belongs and how." They started to write a protocol"*<sup>81</sup>.

On March 5, 2020, based on the prosecutor's solicitation, the judge at the Tbilisi City Court changed the imprisonment into 5 000 GEL bail for Koba Koshadze and the defendant left the penitentiary establishment. The Tbilisi City Court still continues proceedings over the criminal case against him.

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<sup>77</sup> Ibid, p 32

<sup>78</sup> See the report of HRC "Political Prisoners in Georgia", p 16, 2009 <https://bit.ly/3dmlcK7>.

<sup>79</sup> See the joint report of FIDH and HRC "After the Rose, The Thrones: Political Prisoners in Post-Revolutionary Georgia", 2009 p 26 <https://bit.ly/3dpOhVI>

<sup>80</sup> See the statement of Irakli Okruashvili <https://bit.ly/2M5qeQk>

<sup>81</sup> See information at <https://bit.ly/3c5sprsZ>.

## CHAPTER II

### SO-CALLED BUTA ROBAKIDZE'S CASE

#### 1. Indictment

In accordance with the November 19, 2019 indictment<sup>82</sup>, Irakli Okruashvili abused his official power against the requirements of the public agency, for acquiring benefits for another person, which has resulted in the violation of the physical person's rights and considerable violation of the lawful interests of the agency and considerable offending of the victim's dignity (edition of the CCG acting before May 30, 2006).

In accordance with the indictment, late at night on November 24, 2004, at about 2:00 am, on the Akaki Tsereteli Avenue in Tbilisi, close to the Didube Pantheon, patrol police officers stopped a BMW, where a driver and five more passengers were sitting. During their personal search, patrol inspector Grigol Basheleishvili accidentally fired from his service gun and gravely wounded Amiran (Buta) Robakidze, one of the passengers in the left armpit, who died on the site. The Minister of Internal Affairs Irakli Okruashvili was reported about the accident on the same night; he ordered the senior officials of the MIA, who had arrived at the site, "to protect the reputation of the patrol police" and stage the scene as if armed group members had assaulted the police officers. In accordance with this instruction, the senior officials of the MIA planted firearms and ammunition on the deceased Buta Robakidze and others sitting in the car.

In accordance with the indictment, afterwards, based on the order of that time Prosecutor General of Georgia Zurab Adeishvili, the investigation was conducted with wrong qualification by enclosing fabricated evidence to the case files and wrong reports of the MIA officials. As a result of the fabricated evidence, the people sitting in the car – Giorgi Kurdadze, Irakli Mikaberidze, Kakhaber Azariashvili, Levan Dangadze and Akaki Bartaia were arbitrarily convicted under the Article 353 Part 2, Article 236 Parts I and II of the Criminal Code of Georgia. Deceased Amiran (Buta) Robakidze was regarded as a member of the criminal formation. These activities resulted into a considerable violation of the physical person's rights and lawful interests of the state, as well as the offending of the victim's dignity.

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<sup>82</sup> Indictment, Tbilisi 19.11.2019, Document N0013730396.

According to the November 20, 2019 indictment on the separation of the criminal case, pursuant to the Article 110 Part I of the CPCG, for the prompt and effective justice, Irakli Okruashvili's case was separated from the abovementioned case<sup>83</sup>.

**Irakli Okruashvili was charged of the crime punishable under the Article 332 Part 3 – “c” of the CCG – abuse of official powers by an official.**

## 2. Findings from the trial monitoring

When the prosecutor's office of Georgia brought charges against Irakli Okruashvili over the so-called Amiran (Buta) Robakidze's case, Okruashvili was already defendant in the criminal case related with the June 20-21, 2019 events, where he was charged under the Article 225 Parts 1 and 2 of the CCG and was in pre-trial imprisonment based on the court ruling.

The prosecutor's office resumed investigation over Amiran (Buta) Robakidze's case on November 12, 2012 and lifted all charges from the previously convicted people claiming that the accusation against them was fabricated<sup>84</sup>. After the investigation was resumed, Irakli Okruashvili was first interrogated on February 26, 2018. According to the defendant's testimony, he saw the video of November 24, 2004 years later on TV for the first time. Later, the convicts - former head of the Public Relations Service at the MIA Guram Donadze and the former head of the Tbilisi main department of the Patrol Police Zurab Mikadze gave testimonies with regard to Buta Robakidze's case; they were found guilty after five-year long court proceedings. In November 2019, Guram Donadze and Zurab Mikadze wrote confession testimonies to the representatives of the investigative body. On April 8, 2020, the convicts, under the status of witness, made testimonies against Irakli Okruashvili at the trial and stated that the defendant Okruashvili had ordered them to fabricate the criminal case in order not to “harm the reputation of the patrol police” and added that the former minister was informed about everything. It is noteworthy that after these testimonies, Guram Donadze and Zurab Mikadze were released from prison based on the plea-agreement. The defense side claimed that their freedom was result of the agreement between the prosecutor's office and the convicts in exchange of their testimonies against Irakli Okruashvili<sup>85</sup>.

On April 15, 2020, the Tbilisi City Court examined the annulment of the measure of constraint against Irakli Okruashvili over Buta Robakidze's case after the prosecutor solicited not to cancel the pre-trial imprisonment for the defendant. By that time, the

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<sup>83</sup> See the indictment on the separation of the criminal case, 20.11.2019, Tbilisi Document N0013737417.

<sup>84</sup> See full information at <https://bit.ly/3eT97hj>.

<sup>85</sup> See the statement of the defense side at <https://bit.ly/2ZP7SLv>.



Tbilisi City Court had already convicted Irakli Okruashvili in the case related with June 20-21 events. Therefore, he was already in prison. Nevertheless, according to the prosecutor's clarification, although Irakli Okruashvili was already convicted and he was serving his term in prison, there was ground to annul the judgment and in this case, in order not to hinder the execution of justice, the prosecutor solicited not to change the measure of constraint – imprisonment.

Irakli Okruashvili's defense lawyers did not agree with the position of the prosecutor's office. They said, there were no threats against the execution of justice as the defendant was already in prison. As for the annulment of the verdict, which means the possibility to appeal the judgment of the first instance court, the lawyers stated that the prosecutor's solicitation was not well-reasoned. At the same time, on April 25, 2020, a nine-month term of the pre-trial imprisonment was due to expire.

With regard to the revision of the measure of constraint, the court clarified that based on the Article 230<sup>1</sup> of the Criminal Procedure Code of Georgia, if imprisonment is used against the defendant as a measure of constraint, periodically, at least once in two months, the presiding judge shall, on his/her own initiative, review the necessity of leaving the accused in custody<sup>86</sup>. Also, the judge stated that before reviewing this issue, there are several circumstances: 1) context of the nine-month pre-trial imprisonment and constitutional provision is applied in all stages of the case examination regardless the fact the defendant is sentenced to the nine-month pre-trial imprisonment for several cases simultaneously or not; 2) if the judgment of the first instance court is appealed, the Appellate Court was not able to deliver the judgment before April 25, 2020; 3) as for changing the measure of constraint into a bail, it would have a formal character because the defendant was already convicted in another criminal case (June 20-21); 4) there is no threat to influence the witnesses because two most important witnesses<sup>87</sup> were already questioned.

As a conclusion, the judge clarified that there are several new considerable circumstances with regard to the review of this issue and because of the constitutional requirement with regard to nine-month pre-trial imprisonment<sup>88</sup>, he had to examine the issue in ten days. The judge clarified that he fully shared the solicitation of the defense side to fully annul the imprisonment. Consequently, on April 15, 2020, the Court, based on the Articles 192, 205 and 230<sup>1</sup> of the CPCG, decided to cancel the imprisonment imposed on Irakli Okruashvili as a measure of constraint.

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<sup>86</sup> See the Article 230<sup>1</sup> of the CPCG <https://bit.ly/2NX6WNT>

<sup>87</sup> Meaning Guram Donadze and Zurab Mikadze, who were already questioned

<sup>88</sup> See the judgment №3/2/646 of the plenum of the Constitutional Court of Georgia on the case Giorgi Ugulava v. the Parliament of Georgia, September 15, 2015, at <https://bit.ly/3dSQoB1>.

When Guram Donadze and Zurab Mikadze were interrogated in the court, Judge Lasha Chkhikvadze did not allow the HRC court monitor to attend the hearing and monitor the process though the hearing was held in the large courtroom<sup>89</sup>. The hearing was closed for the journalists, too and the journalist of the TV-Company Main Channel, who was permanently covering the proceedings over Irakli Okruashvili's case, protested the decision of the judge<sup>90</sup>. It is interesting that on the previous day, when the other judge was leading the hearing of another criminal case against Irakli Okruashvili, which is related with the June 20-21 events, the judge allowed the HRC monitors to attend the hearing without any obstacles. HRC protested the unjustified practice of the Tbilisi City Court when judges selfishly and unlawfully closed court hearings claiming on the COVID-19 related emergency situation. Also, according to the HRC assessment, such a contradictory and unjustified approach of the judges to different cases raise doubts that ongoing examination of the criminal cases against Irakli Okruashvili is tendentious and partial<sup>91</sup>. According to the assumption of the defense lawyer, the HRC monitors and journalists were not allowed into the courtroom because Guram Donadze and Zurab Mikadze were being interrogated in the court<sup>92</sup>, who were so-called golden witnesses for the prosecution. The Tbilisi City Court was informed in written and verbal forms that HRC was monitoring the trials. It is also noteworthy that unlike the June 20-21 events, the court refused the HRC monitors to attend the hearings of the so-called Amiran (Buta) Robakidze's case on March 26 and April 2, 2020. In the course of the trial monitoring, HRC monitors observed two facts when the scheduled court hearings were postponed or, just the opposite, the hearing was held a day earlier than it was scheduled but the respective updated information was not published on the website of the Tbilisi City Court.

On April 13, 2020, the Coalition for Independent and Transparent Judiciary published a statement with regard to the closure of the court proceedings in the common courts of Georgia and other related problems under a state of emergency<sup>93</sup>. In accordance with the statement, the practice has been inconsistent with this regard. Some criminal trial judges allow representatives of monitoring organizations to attend trials, while the majority of judges restrict their attendance by wrongfully citing the regulations. Thus, they disregard the existing regulations<sup>94</sup> and establish a faulty practice.

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<sup>89</sup> See the HRC statement <https://bit.ly/3eYJ34d>

<sup>90</sup> See the comment of the HRC executive director from 2:29 minute <https://cutt.ly/LuMHjNh>.

<sup>91</sup> See the HRC statement <https://bit.ly/31G3VcR>

<sup>92</sup> See the comment of Irakli Okruashvili's lawyer Mamuka Tchabashvili to the HRC <https://cutt.ly/JuMHISe>.

<sup>93</sup> See the statement of the Coalition at <https://bit.ly/3dZke6X>

<sup>94</sup> See the recommendation of the High Council of Justice with regard to the measures to be taken in the common courts for the prevention of the spread of the COVID-19, March 13, 2020 <https://cutt.ly/Yu0Ujic>.

On May 15, 2020, Human Rights Center, to respond the closure of the court hearings under a state of emergency and other related miscarriages, addressed the Secretary of the High Council of Justice. HRC called on the HCoJ and the chairpersons of the common courts to promptly respond to the abovementioned problems and requested to allow impartial observers to monitor the proceedings into the criminal cases remotely that requires official confirmation of the court to have access to the respective URL. The HRC also requested reaction to the miscarriages identified in the court proceedings in the Tbilisi City Court not to violate one of the key elements of the fair trial – principle of openness and allow the monitors to personally or remotely attend the hearings of high profile criminal cases<sup>95</sup>.

*According to the evaluation of Human Rights Center, by prohibiting the HRC monitors to attend the court hearings the publicity of the trials is blatantly violated. Full or partial closure of the court hearings contradicts the principle of just state and rule of law and undermines the right of an individual to have access to the fair trial.*

### **3. Problems related with the pre-trial imprisonment and remoteness of the crime**

*It is important to note that after the new charge was brought against Irakli Okruashvili with regard to the so-called Buta Robakidze's case, the term of the nine-month pre-trial imprisonment started independently from the one, which had started with regard to the June 20-21 related criminal case. It shall be evaluated as problematic because in accordance with the September 15, 2015 ruling № 3/2 646 of the Constitutional Court of Georgia<sup>96</sup>, the norm in the Criminal Procedure Code of Georgia, based on which it was allowed to start a new nine-month pre-trial imprisonment term while the second pre-trial imprisonment term is in progress, was declared as unconstitutional<sup>97</sup>.*

*As clarified by the Constitutional Court of Georgia, remand detention may be repeated in two instances: (1) when an offence is committed after the first detention or (2) when the information about the previously committed offence became known after the first remand detention. However, in both instances, imposing two simultaneous remand detentions on a defendant contradicts the requirements of the Constitution of Georgia*

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<sup>95</sup> See the HRC statement at <https://bit.ly/2DcHTV3>

<sup>96</sup> See the ruling № 3/2 646 of the Constitutional Court of Georgia, September 15, 2015, § 34.

<sup>97</sup> See the Article 205 Part 2 of the CPCG <https://bit.ly/3guWGsB>

*unless the charges are brought or/and request on imprisonment are artificially dragged out and they are used to artificially expand the remand detention*<sup>98</sup>.

The Prosecutor's Office of Georgia brought charges against Irakli Okruashvili for the criminal case reviewed in this chapter several days before the 15 years limitation term of the criminal case, regulated by the Article 71 Part 1 – "c"<sup>99</sup> of the CCG<sup>99</sup>, was due to expire. This fact, within the frames of reasoned assumption, creates doubts that the Prosecutor's Office of Georgia aimed to overlap the terms of the remand detention for both criminal cases with as shortest time as possible and to keep the defendant in pre-trial detention as long as possible. These facts indicate at the interests of the government in the criminal prosecution against the defendant.

Formally, the Tbilisi Appellate Court verified in its judgment, that the prosecutor's office had learned about the 2004 crime later that hindered them to bring charges against Irakli Okruashvili before November 19, 2019 because the existing evidence with regard to the alleged abuse of official powers failed to create the standard of reasoned assumption, based on which, the prosecutor's office could bring charges against Irakli Okruashvili over Buta Robakidze's case<sup>100</sup>. Having that, it is a reasonable doubt that before the 15-year term of the remoteness of the criminal case was due to expire, in fact in the last few days, the prosecutor's office already had information about the committed crime and delayed the commencement of the criminal prosecution until the most appropriate date for them came. Similar approach of the prosecutor's office, pursuant to the abovementioned clarification of the Constitutional Court of Georgia, contradicts the Constitution of Georgia and other international human rights documents.

The institute of remoteness, together with other human rights components and guarantees of the fair trial, aims to achieve various legitimate objectives. Simultaneously, it is very important that each legislative regulation relied on the reasoned and fair balance of interests so that it served the public objectives and did not cause unjustified, unlawful infringement of the rights of concrete individuals. For that, the regulation adopted by a law-maker shall be admissible, necessary and proportionate.

*The Article 103 of the CPCG determines that "an investigation shall be carried out within a reasonable period, which shall not exceed the limitation period prescribed by the Criminal Code of Georgia for criminal prosecution of the given crime."<sup>101</sup> Article 100 of the CPCG obliges an investigator, prosecutor to initiate an investigation when notified*

<sup>98</sup> See the Ruling №3/1/574 of the Constitutional Court of Georgia, May 23, 2014 on the case Giorgi Ugulava v. the Parliament of Georgia, <https://bit.ly/3gnDI73>.

<sup>99</sup> See the Article 71 of the CCG at <https://bit.ly/2NWPyc8>

<sup>100</sup> See the ruling of the Tbilisi Appellate Court on the rejection of the appeal of the defense side, №13/1959-19, p. 8

<sup>101</sup> See the Article 103 of the CPCG at <https://bit.ly/3guWGsb>

*of the commission of an offence, and this obligation is not related with any time-frame<sup>102</sup>. Only Article 105 of the CPCG determines the grounds for terminating the investigation – if a period of limitation for criminal liability determined by the Criminal Code of Georgia has expired (Article 105 Part 1 – e of the CPCG)<sup>103</sup>.*

Pursuant to the Article 71 Part 1 – “c”<sup>1</sup> of the CCG, a person shall be released from criminal liability, if: 15 years have passed after the crimes provided for by Articles 332-3421 of this Code, unless they constitute particularly serious crimes<sup>104</sup>. As it was already noted, in the criminal case reviewed in this chapter, the Prosecutor’s Office of Georgia brought charges against Irakli Okruashvili for the crimes punishable under the Article 332 Part 3 – “c” of the CCG that refers to the abuse of official powers by an official<sup>105</sup>. It is noteworthy that the term of remoteness for the mentioned crime was 10 years (Article 71 Part 1 – “c” of the CCG, edition in force before November 24, 2004), while pursuant to the amendments introduced to the Criminal Code of Georgia on July 25, 2006, the limitation term for this crime became 15 years (Article 71 Part 1 – “c”<sup>1</sup> of the CCG). The criminal charges were brought against Irakli Okruashvili in the period of increased limitation period – on November 19, 2019.

*This fact is worth to be taken into account because, if the prosecutor’s office acted pursuant to the edition of the Criminal Code of Georgia, which was in force in the moment of the commission of the offence, it should have been impossible to bring charges against Okruashvili on November 19, 2019 as the limitation term was already expired.* The position of the opponents of this position may rely on the fact that the law first of all underlines the “reasonable” time-frame of the investigation and mentions the limitation term for the criminal prosecution only afterwards. Unfortunately, the Code itself does not clarify the “reasonable term”, and its definition and determination of the investigation time-frame depends only on the views of the prosecution. Therefore, other persons participating or interested in the criminal case do not have any leverage to determine the time-frame for the investigation as the right and rules of the appeal are not determined. Nowadays, there is no leverage to prevent the state from using this legislative shortcoming for its benefit. Thus, a citizen is not protected “[...] naturally, the government has wide margin of appreciation in determining criminal policy. The state based on the Rule of Law serves ensuring free and safe human, therefore in order to achieve this aim it should be armed with suitable and sufficient effective mechanisms. On this matter fight against crime constitutes strong and important instrument in state’s disposal. By this instrument state ensures protection of order is society, state security and other legitimate constitutional aims, which results in avoidance, prevention of violation of rights and freedom of an individual. However

<sup>102</sup> Ibid - Article 100 of the CPCG

<sup>103</sup> Ibid - Article 105 Part 1 – “e” of the CPCG

<sup>104</sup> See Article 71 of the CCG at <https://bit.ly/2NWPyc8>

<sup>105</sup> See the Article 332 of the CCG at <https://bit.ly/2NWPyc8>

responsibility of state is very high on correct use of the mentioned instrument. The instrument should not become the source of violation of values for protection of which state authority is constitutionally obliged to use it. In this process a state is obliged to correctly assess the risks threatening the state and the society, objectively evaluate real dangers and use reasonable, extremely necessary and at the same time sufficient mechanisms for neutralizing them. Therefore, regulating certain activities by the law, setting restriction and use of suitable measures of responsibility for violating such general rules falls within the scope of the state authority. Obviously, in this process, the state needs to be very careful in order to prevent groundless restriction of human liberty via setting restriction on certain acts and at the same time state response on commission of restricted act should not be excessive, disproportionate. Such response by itself implies limitation of scope of human liberty by the state. The state should not interfere in human liberty (human rights) more intensively than it is objectively necessary, because an aim of such approach would turn into the restriction of individual and not protection of him/her.<sup>106</sup>

As for the July 25, 2006 edition of the Criminal Code of Georgia, it determines the 15-year limitation term for the crimes provided by the Article 332 Part 3 –“c” of the CCG as an exception from other grave crimes. Article 71 of the CCG in the same edition of the law stipulates<sup>107</sup> that *“an individual is discharged of the criminal liability if fifteen years limitation term determined for the crimes provided in the Articles 332-342<sup>1</sup> of this code has expired.”* It should be taken into account that on July 25, 2006 three amendments were introduced to the Criminal Code<sup>108</sup> and as the analysis of the criminal case files revealed, the Prosecutor’s Office of Georgia decided to act pursuant to the edition of the Criminal Code of Georgia which worsens the states of the defendant worst of all since November 11, 2004<sup>109</sup>. This fact creates strong legal ground to start dispute over the violation of the constitutional principle on the prohibition of the retroactive power of the law. Moreover, use of this edition of the Criminal Code of Georgia, with high probability, was purposefully chosen by the state prosecution, which aimed to start criminal proceedings against the active opposition politician. In this view, normative content of the second sentence in the Article 3 Part 1 of the CCG, according to which, a criminal law that criminalizes an act or increases punishment for it shall not have retroactive force. If it happens, it may be regarded as unconstitutional in relation with the Article 31 Paragraph 9 of the Constitution of Georgia<sup>110</sup>.

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<sup>106</sup> See the Judgment N1/4/592 of the Constitutional Court of Georgia, 24.10.2015, Beka Tsikarishvili v. the Parliament of Georgia <https://bit.ly/3f0MN5t>

<sup>107</sup> See Article 71 of the CCG, edition of the July 25, 2006

<sup>108</sup> See the CCG, edition of the July 25, 2006

<sup>109</sup> See the CCG, edition of the November 11, 2004

<sup>110</sup> See the Article 31 Paragraph 9 of the Constitution of Georgia <https://bit.ly/2ZA7G0d>

It must be noted that with regard to the abovementioned issue, **the Constitutional Court of Georgia has already released judgment on May 13, 2009<sup>111</sup>**, in which the Court clarified the content of the constitutional provision (second sentence of the Article 31 Paragraph 9 of the Constitution of Georgia). The Court also determined whether the institute of limitation is regulated under the constitutional notion of “responsibility” and offered categorical difference between the true and wrong retroactive force and imposed different constitutional defense standard on those cases, where the use of retroactive power of the law for the increase of the term of limitation, may become the ground to establish faulty practice by the criminal prosecution bodies, which we observed in the case of Irakli Okruashvili. It is necessary to note that if the term of limitation is increased, granting a retroactive power to the law causes reanimation of the reality, which was rejected with the expired limitation term and which was removed from the law by a law-maker. In a similar situation, an individual has a lawful expectation that repressive measures will no longer be applied against him/her. Above that, Article 3 of the CCG prohibits retroactive effect to a legal norm, which determines criminalization of the action or makes the punishment more severe<sup>112</sup>.

When the code does not allow the defense side or any other interested party to determine or clarify the “reasonable” limitation term and it depends only on the views and will of the investigator, no mechanisms to prevent prolongation or acceleration of the investigation process are available. Therefore, the criminal case may become a political instrument for the state against its opponents to make them silent or change their conduct that many times happened in the past and is expected in future, too<sup>113</sup>. Pursuant to the present national legislation, determination of the criminal offence of an individual depends only on the will of the investigation, as well as determination of his/her guiltiness and finally restoration of justice in relation with him/her. When a person expects prompt and effective investigation to restore his breached rights, but the legislative acts include obscure terminology and unclear notations, realization of these expectations are always related with the views of the investigator, political or other peculiarities, which are impossible to foresee and there is a high probability of the blatant violation of basic human rights and freedoms<sup>114</sup>.

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<sup>111</sup> See the May 13, 2009 judgment N1/1/428,447,459 of the Constitutional Court of Georgia on the case “Public Defender of Georgia, citizen of Georgia Elguja Sabauri and the Citizen of the Russian Federation Zviad Mania vs. the Parliament of Georgia”

<sup>112</sup> See the Article 3 of the CCG

<sup>113</sup> See the judgment of the Constitutional Court of Georgia on the case “citizen of Georgia Gevorg Babayan v. the Parliament of Georgia” <https://bit.ly/2Zmw9GL>.

<sup>114</sup> Ibid

## PRESIDENT'S PARDON

In Georgia, pardon power is the exclusive constitutional authority of the President, who is the head of the State. The Article 53 Paragraph 2 –“g” of the Constitution of Georgia determines that: *“a countersignature shall not be required for legal acts of the President of Georgia related to pardoning convicts.”*<sup>115</sup> The pardon mechanism aims to effectively implement the criminal law policy of the country. In accordance with the Article 78 of the Criminal Code of Georgia, *“Pardon shall be granted by the President of Georgia to individually a specific person.”*<sup>116</sup>

Human Rights Center already reviewed two documents signed between the Government of Georgia and the opposition political parties on March 8, 2020 in the report - *Legal Assessment of the Two Criminal Cases Launched against Giorgi Ugulava*<sup>117</sup>. According to the opposition members, the second document stressed out the shortcomings in the judicial system<sup>118</sup>. The document acknowledges that the “highest standards” shall be strived in the judicial system. The document mentions that according to the reached agreement, now and in the future, it is necessary to address inappropriate politicization of Georgia’s judicial and electoral processes. The document underlines the scopes of authority of the President of Georgia and in this regard, within her constitutional powers, to use the Pardon Power as one of the instruments to free the people imprisoned based on alleged political motives and selective justice. On March 9, 2020, the President of Georgia Salome Zurbashvili stated that she will grant a pardon based on her own judgment<sup>119</sup>.

On March 10, 2020, Chairman of the US Senate Foreign Relations Committee Jim Risch and Senator Jeanne Shaheen echoed the agreement between the Government of Georgia and majority of opposition political parties in Georgia. Jim Risch stated that he expected to see the release of politically-motivated detainees imminently. Senator Jeanne Shaheen stated that the reached agreement is crucial for their nation’s democracy<sup>120</sup>. The second document is regarded as an agreement on the release of the people imprisonment based on alleged political motives to ensure conduct of the fair parliamentary elections in the country (use of the Pardon Power by the President of Georgia). Besides that, the members of the opposition political parties stated that they will support the implementation of the

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<sup>115</sup> See the Article 53 Paragraph 2 –“g” of the Constitution of Georgia at <https://bit.ly/3gt9GP4>

<sup>116</sup> See the Decree of the President of Georgia <https://bit.ly/2M2PVB1>.

<sup>117</sup> See the Legal Assessment of the Two Criminal Cases Launched against Giorgi Ugulava, Human Rights Center, 2020 <https://bit.ly/3gpTXQX>

<sup>118</sup> See the joint statement at <https://cutt.ly/vuMZCjZ>.

<sup>119</sup> See Salome Zurbashvili’s comment about pardoning the so-called political prisoners at <https://bit.ly/3cKBCfz>.

<sup>120</sup> See the statements of the chairman of the US Senate Foreign Relations Committee Jim Risch and Senator Jeanne Shaheen at <https://bit.ly/35zzXXK>



issues agreed in the Memorandum of Understanding signed by the opposition and the ruling power<sup>121</sup>, after the requirements of the second document signed on March 8, 2020 – Joint Agreement<sup>122</sup> are fully satisfied, which refers to the immediate release of the alleged political prisoners. The Members of the European Parliament also made clear messages to the Government of Georgia. Particularly important was the critical letter of 26 MEPs to the Prime Minister of Georgia Giorgi Gakharia, where the renewed criminal prosecution against the members of the opposition political parties was also mentioned<sup>123</sup>.

As a result of huge international pressure, on May 15, 2020, the President of Georgia pardoned the leader of the political party Victorious Georgia Irakli Okruashvili and the former Tbilisi Mayor and a leader of the political party European Georgia Gigi Ugulava. Both convicts left prison on the same day – on May 15, 2020. Some politicians and representatives of the nongovernmental organizations were suspicious over the independence of the president's decision though the members of the ruling party categorically denied the information. However, as it was revealed later, before issuing the Pardon Act, the President of Georgia had informed the Chairman of the Georgian Dream Bidzina Ivanishvili about her decision<sup>124</sup>.

All in all, the members of the opposition political parties and the diplomats or other international partners who facilitated the dialogue between the GoG and the opposition political parties, positively evaluated the pardon act issued by the President of Georgia. The US Embassy in Georgia also released a statement to echo the decision<sup>125</sup>. The Member of the European Parliament Andrius Kubilius positively evaluated the pardoning by the President and said it was “significant step taken forward in Georgia.”<sup>126</sup> Besides that, the Chairman of the US Senate Foreign Relations Committee Jim Risch and Senator Jeanne Shaheen also echoed the pardoning of the opposition political leaders in Georgia. They said it was an important step in the implementation of the March 8 agreement that will modify Georgia's electoral system and bring an end to political interference in the judiciary<sup>127</sup>.

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<sup>121</sup>See the Memorandum of Understanding <https://bit.ly/2Z1hL7G>

<sup>122</sup> See joint statement: <https://ge.usembassy.gov/wp-content/uploads/sites/165/JointStatement.pdf>

<sup>123</sup> See the joint statement at <https://civil.ge/archives/341052>

<sup>124</sup> See the President's statement at <https://cutt.ly/iuMLu2s>.

<sup>125</sup> See the joint statement of the facilitators of the dialogue at <https://bit.ly/3f1tGbr>

<sup>126</sup> See the statement of the MEP <https://bit.ly/2TJpmEV>.

<sup>127</sup> See the joint statement of the US Senators at <https://bit.ly/3d1nQG7>

## ALLEGED POLITICAL MOTIVE

This chapter, based on the international practice and in the view of the Georgian context, analyzes the criteria necessary to grant the status of a political prisoner to an individual and the details of the former Minister of Internal Affairs of Georgia and the leader of the political party Victorious Georgia Irakli Okruashvili.

On June 26, 2012, the Parliamentary Assembly of the Council of Europe adopted the resolution which established the criteria about the status of a political prisoner. Pursuant to the established criteria<sup>128</sup>, *"A person deprived of his or her personal liberty is to be regarded as a "political prisoner" if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities."*<sup>129</sup> Besides that, this criterion coincides with the criteria established by the Amnesty International. Namely, the case contains *"obvious political element;" "the government did not ensure the fair trial over the case in compliance with the international standards."*<sup>130</sup>

Political assessment promptly followed Irakli Okruashvili's detention. Various opposition political parties and international partners evaluated his arrest as a political decision, the US Senators and Congressmen were particularly critical. Furthermore, on April 14, 2020, the US Embassy in Georgia also released a statement, which read: *"The timing and circumstances of Irakli Okruashvili's arrest raised concerns about political interference and the selective use of justice."*<sup>131</sup> Above that, the US Embassy noted that the case casts a shadow over the impartial application of justice – a concern the March 8 Joint Statement<sup>132</sup> was intended to dispel. At the same time, **after the April 13, 2020 conviction judgment passed against Irakli Okruashvili over June 20-21 event related criminal case, he, together with Gigi Ugulava, was regarded as a political prisoner by the international partners<sup>133</sup> and the members of the opposition political parties<sup>134</sup>.**

In accordance with the case files, 18 individuals were charged for the alleged violations during June 20-21, 2019 events. *Each of them was standing on the frontline of the protest demonstration and had active contact with the police.* Except for the small group of the people,

<sup>128</sup> See the criteria of the political prisoner elaborated by the June 26, 2012 Resolution of the PACE

<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18995&lang=en>

<sup>129</sup> Ibid

<sup>130</sup> See the manual about the political prisoners in Georgia, Tbilisi 2012 <https://cutt.ly/SuMZnD6>.

<sup>131</sup> See the statement of the US Embassy at <https://bit.ly/2D2aiNd>

<sup>132</sup> See the joint statement at <https://bit.ly/2D2aiNd>

<sup>133</sup> See at <https://bit.ly/2D2aiNd>; also at <https://bit.ly/2zVe2Pr>.

<sup>134</sup> See the statements of the opposition political parties at <https://netgazeti.ge/news/442658/>; also <https://bit.ly/2YWBHYp>.

whom the prosecutor's office regarded as allies of Irakli Okruashvili, in order to prove his leadership or/and participation in the group violence in the court, hundreds more people were around Irakli Okruashvili in front of the parliament, who could be identified in the video files.

As the case files revealed, *the Prosecutor's Office of Georgia selected only Irakli Okruashvili to start criminal prosecution against, among those several hundreds of demonstrators standing in front of the Parliament of Georgia, who may not were pushing the police cordon and did not directly use physical force against them, but allegedly pushed the crowd forward to resist the police cordon or simply shared the vision and goal of the public protest.* The judge examining the case did not pay attention to this important detail. With this reality, the court created a practice, which has no legal connection with the objective of the norm and which may turn the Article 225 of the CCG into a weapon of the political repression.

**On November 19, 2019, a new criminal charge was brought against Irakli Okruashvili in the penitentiary establishment. The Prosecutor's Office accused him of the abuse of official powers in relation with the 2004 accident, when he was the Minister of Internal Affairs<sup>135</sup>. The charges were brought against him few days before the 15-year limitation term of the crime was due to expire. The state prosecution relied on the edition of the Criminal Code of Georgia which worsened the state of the defendant most of all editions, which were in force since November 11, 2004<sup>136</sup>.**

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<sup>135</sup> See the HRC statement at <https://bit.ly/3iymsxx>

<sup>136</sup> See the Criminal Code of Georgia, edition of November 11, 2004

## CONCLUSION

The analysis of the cases in the above document revealed several fundamentally crucial material and procedural-legal violations as a result of the selective justice and alleged political motives of the state in relation with the cases with political context. In order to identify possible political motives, the criteria necessary to grant political status to an individual elaborated by the Council of Europe and the international organization Amnesty International, were analyzed.

Based on these criteria, as well as the findings from the trial monitoring carried out by Human Rights Center, based on the information obtained during the interviews with Irakli Okruashvili's lawyers and the documents provided by them, based on the analysis of the international practice, the respective Case Law of the ECtHR, judgments of the domestic common courts and the Constitutional Court of Georgia, we concluded that: *ongoing criminal prosecution and verdict passed against Irakli Okruashvili with regard to the accusation under the Article 225 Part 1 of the CCG (leadership of the group violence) contained significant shortcomings:*

- ✓ *Interpretation of the term "violence" as presented by the court for the objectives of the Article 225 of the CCG is problematic;*
- ✓ *The norm, as it is offered by the court in terms of its meaning and form, does not only present a wrong interpretation of the provision but it extremely worsens the rights of the defendant;*
- ✓ *the clarification of the norm by the court, creates a possibility for the prosecutor's office to use it as a political weapon against opponents and Irakli Okruashvili's case serves a good example of it;*
- ✓ *the Prosecutor's Office of Georgia **discriminatively** selected only Irakli Okruashvili to start criminal prosecution against, among those several hundreds of demonstrators standing in front of the Parliament of Georgia, who may not were pushing the police cordon and did not directly use physical force against them, but allegedly pushed the crowd forward to resist the police cordon or simply shared the vision and goal of the public protest;*
- ✓ *regardless several lawfully correct and fair clarifications of the court with regard to the accusations against Irakli Okruashvili under the Article 225 of the CCG, based on which Irakli Okruashvili was acquitted in one part of the imposed charge, the content of the evidence included in the conviction judgment is to be questioned;*
- ✓ *the guilty verdict relied only on the testimonies of four police officers;*
- ✓ *several days before Irakli Okruashvili's detention, his driver and relative Koba Koshadze was arrested based on the alleged political motive and it was a warning message to Okruashvili;*

- ✓ *several days before the 15-year limitation term was due to expire over so-called Amiran (Buta) Robakidze's case, the criminal charges were brought against the defendant, who was already in the nine-month pre-trial detention and the court sentenced him to a new nine-months pre-trial detention independently from the previous nine-month pre-trial imprisonment imposed for the June 20-21 case;*
- ✓ *The state prosecution used the edition of the Criminal Code of Georgia which worsened the state of the defendant the most of all previous editions of the Code, which were in force since November 11, 2004<sup>137</sup>.*

The Tbilisi City Court continues examination of the so-called Amiran (Buta) Robakidze's case. By now, Irakli Okruashvili's case is under the particular focus of the international organizations. On March 9, 2020 the representatives of the International Federation for Human Rights (FIDH) observed the hearing of his case<sup>138,139</sup>. HRC monitor observes the court hearings of Irakli Okruashvili's case<sup>140</sup> and the organization will assess the process after the court proceedings are over and judgment is announced on the case.

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<sup>137</sup> See the Criminal Code of Georgia, edition of November 11, 2004

<sup>138</sup> See the HRC information <https://bit.ly/2NVNlxp>

<sup>139</sup> See the statement of the FIDH representative <https://bit.ly/3cqAbSU>.

<sup>140</sup> See the statement <https://bit.ly/2O99k4l>