LEGAL ASPECTS OF PROCRASTINATION IN PROCEEDINGS REGARDING CASES WITH ALLEGED POLITICAL MOTIVES

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HUMAN RIGHTS CENTER

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1. INTRODUCTION

The purpose of the current document is to assess the issues of criminal liability of the defendants in cases with alleged political motives where the prosecution process and court hearings are procrastinated. Further, this document aims to emphasize the trends observed in the assessed cases, which may indicate alleged political motives and instances of selective justice.

The analysis of the outcomes of the monitoring of the criminal cases assessed in the document, along with the relevant public sources, has revealed that in the cases observed by the Human Rights Center (HRC), the prosecutor in charge failed to issue an indictment against certain individuals within a reasonable time despite that the Prosecutor's Office quite possibly could have possessed a body of evidence collected during the investigation phase showing a probable cause that an individual had committed a crime, thereby warranting his/her indictment.[1]

In turn, the deliberate procrastination in commencing the criminal prosecution by the prosecutor poses a threat to the accused persons to exercise the right to conduct investigations, gather and present evidence, file motions, and other rights granted to them under Article 38 of the Criminal Procedure Code.[2] Furthermore, in instances involving political motives, the prosecutor's office has a possibility to "revive" cases at any time, within the statute of limitations, by presenting new charges against the individuals, subsequently resulting in the resumption of criminal prosecution proceedings. At this juncture, some doubts arise regarding the availability of political motives behind the charges, and subsequently regarding the application of selective justice against the person.

Selective justice, in turn, jeopardizes the safeguarding of the right to a fair trial in accordance with both international standards and national laws.

2. METHODOLOGY

The monitoring of the cases with alleged political motives is being carried out per the monitoring methodology the court proceedings designed by HRC, aiming to assess the compatibility of judicial proceedings regarding the cases monitored, as well as the compatibility of domestic legislation with international standards regarding the right to a fair trial, while at the same time aiming to identify and analyze the possible deficiencies in criminal and administrative cases, as well as alleged political motives therein.

[1] On November 19, 2019, in the prison, charges were brought against Irakli Okruashvili for the above offense several days prior the expiration of 15 years of limitation period. *See*: Human Rights Center monitors judicial proceedings of 22 cases with alleged political motives, https://rb.gy/crg4t2 [08.05.2023].

[2] Article 6(3) of the European Convention on Human Rights enumerates the minimum rights that individuals accused of a criminal offense should possess.

The court proceedings are monitored by two Legal Monitors who have undergone specialized training in the monitoring of court proceedings. At the initial stage, a special questionnaire for court monitoring was developed to ensure appropriate monitoring. After every court hearing, the Legal Monitors process the information received from the court hearing, later to be analyzed and applied by the legal analyst for relevant reports.

The court monitoring is based on the strict principles of objectivity and non-interference in court proceedings. Along the principles of non-interference, impartiality, and objectivity, with the purpose to respect the independence of the judiciary, HRC releases the information regarding the court hearings and conclusions to the parties of the proceedings, media, and the public.

3. INDICTMENT OF AN INDIVIDUAL AND COMMENCEMENT OF CRIMINAL PROCEEDINGS.

The indictment of an individual is one of the fundamental components of criminal prosecution, which must end with a specific outcome for the accused. As per the Code of Criminal Procedure, "[t]he grounds for the indictment of a person shall be the body of evidence that is sufficient to establish probable cause that the person has committed a crime". [3] On the other hand, the Code provides a legal definition of probable cause which is as follows: "a totality of the facts or information that, (together) with the totality of the circumstances of a criminal case in question, would satisfy a reasonably prudent person to conclude that a person has allegedly committed a crime".[4] Under procedural law, the decision on the indictment as a defendant (provided that the person concerned is not yet detained) means the commencement of criminal prosecution against the person.[5] If the alleged perpetrator of the crime is already detained, the initiation of criminal prosecution is considered to have commenced at the time of the detention.[6] In such cases, the decree (decision) on the indictment shall continue the criminal prosecution that started immediately after the detention. At the next stage, the prosecutor shall determine the time and venue for serving charges and this procedure shall take place not later than 24 hours after the decree was issued.[7] Thus, "both procedural actions (i.e., issuing the decision on indictment and serving the charges) define each other and constitute the element of criminal prosecution".[8]

During the investigation stage, the facts of the case and the obtained evidence serve as the foundation for commencing criminal prosecution against an individual. The law does not provide a definition of what constitutes sufficient evidence to show probable cause. The latter is an

[3]Article 169(1) of the Criminal Procedure Code.
[4]Article 3(11) of the Criminal Procedure Code.
[5]Article 167(1) of the Criminal Procedure Code.
[6] Ibid.
[7]Article 169(2) of the Criminal Procedure Code.
[8]Meurmishvili B., *Commencing and Conducting the Criminal Prosecution in the Georgian Criminal Proceedings*, Ivane Javakhishvili Tbilisi State University, Faculty of Law, Tbilisi, 2014, p. 129.

evaluative issue, therefore the initiation of criminal proceedings is a discretionary power of the prosecutor and in deciding about the matter, the prosecutor shall be guided by the public interest.[9] If there is sufficient evidence to indict an individual, the prosecutor may issue a bill of indictment against the individual.[10] The bill of indictment must be clear, explicit, and unambiguous, so the defense can develop their arguments in time and effectively.[11] Every person under indictment shall be also informed about the guarantees provided by the right to a fair trial.[12] According to the case-law of the European Court of Human Rights, "it is essential that criminal proceedings adhere to the principle of adversarial proceedings and equality of arms".[13] This includes informing the accused and granting them access to the necessary information and documents for the preparation of their defense.[14] The Convention explicitly provides for the requirement that the relevant authorities promptly and comprehensively inform the accused, in a language they understand, about the nature and grounds of the charges brought against them.[15] Furthermore, the bill of indictment must include information regarding both the factual and legal basis of the charges.[16] Namely, the accused has the right to be informed of the nature of the alleged crime in the commission of which he/she is accused and also about the legal basis supporting such allegations.[17] Otherwise, the criminal proceedings cannot be deemed fair.[18]

According to the assessment of the Constitutional Court of Georgia, "[t]he decision on indictment as a defendant" belongs to constitutional terms [...], while the relevant constitutional provision requires that the criminal prosecution of an individual and bringing charges against him/her may not be based on materially false, falsified, insufficiently reliable, or predominantly dubious evidence.[19] Furthermore, "[t]he significant resources available to the State to investigate the facts and circumstances pertaining to the crime may not be misused".[20]

Stemming from the above, the principle of the equality of arms includes the obligation to fully inform the accused and to allow them the opportunity to effectively prepare their defense, which, in turn, serves the interests of justice and ensures adherence to the principle of the rule of law.

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[9] Article 16 of the Criminal Procedure Code.
[10] Article 169(2) of the Criminal Procedure Code.
[11] *Mattoccia v. Italy*, no. 23969/94, § 60, 25 July 2000.
[12] Review of the Compatibility with European Standards of Georgia's Criminal Procedure Code and Related Legislative Provisions, the European Union for Georgia, Council of Europe, November 2, 2020, p. 22.
[13] *Öcalan v. Turkey* [GC], § 140, 2005; *Foucher v. France*, § 34, 1997.
[14] *Albrechtas v. Lithuania*, no. 1886/06, § 73, 19 January 2016; *Garcia Alva v. Germany,* no. 23541/94, § 39, 13 February 2001; *Fodale v. Italy*, no. 70148/01, § 41, 2006.
[15] Article 6(3)(a) of the European Convention on Human Rights.
[16] *Kamasinski v. Austria,* no. 9783/82, § 79, 19 December 1989; *I.H. and Others v. Austria*, no. 42780/98, 20 April 2006.
[17] *I.H. And Others v. Austria,* no. 42780/98, § 30, 20 April 2006.
[18] *Pélissier and Sassi* v. France [GC], § 52, 1999; *Dallos v. Hungary*, § 47, 2001.
[19] Judgement №1/1/548 of the Constitutional Court of Georgia from January 22, 2015, on the case Georgian citizen Zurab Mikadze against the Parliament of Georgia, II-22.
[20] Ibid, II-24.

4. IMPORTANCE OF PROMPT INITIATION OF CRIMINAL PROSECUTION

Under Article 8(1) of the Code of Criminal Procedure, "the accused has a right to a fair trial", which includes *inter alia* the right to prompt and timely criminal proceedings. Furthermore, the initiation of criminal prosecution in due time is crucial for the right of the accused to speedy justice. In collecting the evidence sufficient to commence the criminal prosecution i.e., when there are a body of evidence, which is sufficient for detaining a person or indicting him as a defendant, the prosecutor must decide whether or not to initiate criminal prosecution against the person. Where a person is not indicted in timely manner, he/she would lack the possibility to enjoy the procedural guarantees,[21] meaning that he would lack the possibility to engage, with or without the counsel, in the collection of evidence,[22] to conduct investigation, to request that investigative actions are carried out and to request to be provided with evidence of the prosecution in order to be able to deny the charges or mitigate the punishment, the defendant would not be able to participate in the investigative action conducted following the motion file by the defendant or his/her defense counsel.[23] In this regard, the position of the Constitutional Court of Georgia noted that: "[r]easonable and precisely defined legal norms must strike a balance between the inherent advantage the prosecution may have over the defense and enable the accused to effectively safeguard their own interests, which in turn, serves the interests of justice".[24]

According to the Code of Criminal Procedure, "[b]efore a preliminary hearing, a person may be indicted due to a single crime for no longer than nine months".[25] Accordingly, the duration of criminal prosecution should not exceed 9 months.[26] Where new charges are brought against the accused, the aforesaid 9-month period shall be suspended, and the period shall commence from the date the new charges are served. As soon as the term of criminal prosecution with respect to the new charges (in this case also 9 months) expires, the criminal prosecution against the accused shall be terminated. In case the criminal prosecution against the accused was dismissed on the aforementioned grounds, no similar charges may be brought against the individual.[27]

[21]According to Article 38(5), of the Code of Criminal Procedure, "the accused must have reasonable time and means to prepare their defense".
[22]Article 39 of the Code of Criminal proceedings.
[23] Article 38(7) of the Criminal Procedure Code.
[24]Judgement №1/1/548 of the Constitutional Court of Georgia from January 22, 2015, on the case Georgian citizen Zurab Mikadze against the Parliament of Georgia.
[25]Article 169(8) of the Criminal Procedure Code.
[26] *See:* Judgment N3/2/574 of the Constitutional Court of Georgia from May 23, 2014, on the case *Giorgi Ugulava v Parliament of Georgia*.
[27]Article 169(8) of the Criminal Procedure Code.

4.1. Complaining about the deliberate procrastination of criminal prosecution

To safeguard the rights of the accused, Article 169(9) of the Criminal Procedure Code provides that within 10 days of receiving the bill of indictment, the accused may lodge a complaint with the superior prosecutor or, depending on the venue of the investigation, with the District (City) Court regarding the deliberate procrastination of launching the prosecution. "In case the complaint is granted, all evidence obtained after the grounds for commencing criminal prosecution were at hand, will be declared inadmissible".[28] Therefore, it is precisely the inadmissibility of evidence that will be considered during the proceedings.[29] The said remedy may be used only when the commencement of prosecution against the defendant is still procrastinated even following the bill of indictment is served. Otherwise, the accused will not be able to exercise the right to lodge the complaint.

Deliberate procrastination in prosecution shall be considered the cases where "a long period has elapsed between obtaining the evidence proving the accusations and initiating legal proceedings against the defendant".[30] However, it is noteworthy that the complexity and volume of cases may objectively lead to a prolonged investigations. Therefore, the issue of whether the initiation of prosecution has been delayed or not shall be determined on a case-by-case basis, taking into account the assessment of particular factual circumstances of the case. According to the definition provided by the Constitutional Court of Georgia, "the State has a constitutional obligation to carry out criminal prosecution, investigation, and the administration of justice in a focused, effective, and fair manner".[31] The margin of appreciation given to the State "has been set by the obligation requiring that the system/model selected for the investigation and administration of justice [...] safeguards the rights of all the actors involved in the proceedings, thus, on the one hand, protecting certain persons against insupportable charges and wrongful convictions and on the other hand serving the legitimate interests of the affected individuals.[32] Unjustifiable procrastination in the investigation after issuing the bill of indictment clearly contradicts the principles mentioned above, thereby disregarding the requirements of rapid justice and fair proceedings. Furthermore, fair justice cannot be possibly provided without a "thorough, effective, and impartial investigation".[33]

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[28] Meurmishvili B., *Commencing and Conducting the Criminal Prosecution in the Georgian Criminal Proceedings*, Ivane Javakhishvili Tbilisi State University, Faculty of Law, Tbilisi, 2014, p. 118; *See* Article 169(9) of the Criminal Procedure Code.

[29] Ibid.

[30] Meurmishvili B., *Commencing and Conducting the Criminal Prosecution in the Georgian Criminal Proceedings*, Ivane Javakhishvili Tbilisi State University, Faculty of Law, Tbilisi, 2014, p. 45.

[31] Judgment №1/8/594 of the Constitutional Court of Georgia from September 30, 2016, on the case Citizen of Georgia Khatuna Shubitidze against the Parliament of Georgia, II-29.

[32] Ibid.

[33] Judgement № 1/4/557,571,576 of the Constitutional Court of Georgia from November 13, 2014, on the case Citizens of Georgia - Valerian Gelbakhiani, Mamuka Nikolaishvili and Aleksandre Silagadze versus the Parliament of Georgia, II-22.

4.2. Review of publicly available information requested from the Supreme Court of Georgia and the Prosecutor's Office regarding cases involving deliberate procrastination in criminal prosecution

An individual's complaint regarding deliberate procrastination in initiating criminal prosecution is heard by the superior prosecutor or the District (City) Court, depending on the place of investigation.[34] To assess the effectiveness of the complaint mechanism against the deliberate procrastination in criminal prosecution and to obtain statistical information related to the remedy, the HRC requested public information and received written responses from both the General Prosecutor's Office of Georgia[35] and the Supreme Court of Georgia.[36]

The response received from the General Prosecutor's Office of Georgia indicates that they do not maintain specific records regarding Article 169 of the Criminal Procedure Code.[37] Accordingly, it is unspecified what kind of statistical information the Prosecutor's Office has regarding the complaints with respect to deliberate procrastinations in initiating criminal prosecution. In particular, it is unknown how often the aggrieved persons apply to the superior prosecutors with such complaints and how many complaints are granted (respectively, how many are rejected) and whether the granting the complaints results in inadmissibility of all the evidence obtained during the investigation in connection with the charges brought against the person in the relevant cases.

As for the information requested from the Supreme Court of Georgia,[38] the data shows that, in 2020, 1 complaint was heard in the District (City) courts of Georgia, while in 2021 there were 7 such hearings. In the Appellate Courts, there was 1 complaint heard in 2020, while 4 complaints in 2021. Furthermore, in 2020-2021, none of the complaints heard in the District (City) and Appellate Courts were granted.[39] As for the data from 2022, a total of 12 complaints were heard in the District (City) Courts and 3 of them were granted. In the Appellate Courts, in 2022, a total of 7 complaints were heard, among these complaints, 2 complaints were granted[40] (see the chart for more details).

[34] Article 169(9) of the Criminal Procedure Code.
[35] HRC Application NOL-6383.
[36] HRC Application NOL-6409.
[37] Letter №13/9640 received from the General Prosecutor's Office of Georgia.
[38] Letter № P-106-23 of the Supreme Court of Georgia.
[39] Letter № P-106-23/1 of the Supreme Court of Georgia.
[40] Ibid.

Statistics of complaints heard by district (city) and appellate courts regarding deliberate procrastinations in the initiation of criminal prosecution

YEARS	COMPLAINT	DISTRICT (CITY) COURT	COURTS OF APPEAL
2020	Heard	1	1
	Granted	0	0
2021	Heard	7	4
	Granted	0	0
2022	Heard	12	7
	Granted	3	2

The statistics from the General Courts of Georgia confirm that the lodging of complaints regarding deliberate delays in initiating the criminal prosecution is not an effective remedy as the instances of approaching the court with such complaints and that of the courts granting such complaints are few. It goes beyond the scope of this analytical document to study in depth the reasoning behind the rejection of complaints by courts. It is important that defendants and their lawyers use the remedy to the largest extent possible and provide substantiated grounds for the complaints, so the courts are able to reject them because of poor substantiation.

5. OUTCOMES OF PROCRASTINATION IN COMMENCING CRIMINAL PROSECUTION AND JUDICIAL HEARINGS OF CASES

When carrying out criminal prosecution against an individual, it is imperative to safeguard the guarantees protected by the right to a fair trial. “Prosecution proceedings are characterized by their inherent logic of intense interference into individual freedoms, therefore, according to a reasonable requirement, states governed by the rule of law shall provide the necessary leverage and mechanisms to prevent groundless, unfair prosecution and conviction of individuals”.[41] The notion of fair trial rests on the principle of striking a fair balance between private and public interests; specifically, the administration of criminal justice must not result in disregard of an

[41] Judgment №1/8/594 of the Constitutional Court of Georgia from September 30, 2016, on the case Citizen of Georgia Khatuna Shubitidze against the Parliament of Georgia", II-27.

individual's private interests or ungrounded conviction. The purpose of the rights heard to the defendant within the framework of a fair trial is to ensure an opportunity for quality defense, which means "placing the accused on equal terms with the prosecution and counterbalancing any advantage the prosecution enjoys".[42] Further, the "[i]ndictment of an individual as a defendant creates legal grounds for initiating prosecution proceedings against him/her, with the ultimate goal of doing the justice in the case".[43] According to Article 8 of the Criminal Procedure Code, the accused has the right to rapid justice, which entails the need to strike a fair balance between the promptness of the legal proceedings and administering justice in a due manner. "Rapid and effective justice are the elements of the right to a fair trial. The elements require that the court consider the case within a reasonable time, while the court to employs the necessary mechanisms to enable effective protection of the rights".[44] On the other hand, „the procrastination of justice undermines the efficiency and credibility of the judiciary, equaling to the refusal to administer the justice".[45] Neither the criminal procedure law of Georgia nor the norms of international law specifically establish the reasonable duration of legal proceedings. The reasonable time for the proceedings is evaluated on a case-by-case basis,[46] considering several factors such as the complexity of the case, the actions of the prosecuting authority, the severity of the charges, etc. Although there are no set rules for determining what is the reasonable time, the ECtHR holds that the cases exceeding the reasonable time-frame are those where the duration of the proceedings before the court of single instance exceeded three years, before the courts of two instances exceeded five years and before the courts of all three instances exceeded six years".[47]

5.1. Risks of infringing the principle of adversarial proceedings and equality of arms

According to Article 62(5) of the Constitution of Georgia, "[l]egal proceedings shall be conducted on the basis of equality of arms and the adversarial proceedings". In order for the accused to effectively exercise their right to a defense, it is important that they are timely provided with information about the initiation of prosecution against them, as the principle of adversarial proceedings and equality of arms becomes operative as soon as the prosecution is initiated.[48] Based on this principle, "the party has the right to file a motion, obtain, request through the

[42] *Gachechiladze K., Right to Receive Information about Charges: Analysis of ECtHR Case-Law, Ivane* Javakhishvili Tbilisi State University, Master of Law, Faculty of Law, p. 7, https://rb.gy/3yevnd [5/8/2023].

[43] Judgement № 1/4/557,571,576 of the Constitutional Court of Georgia from November 13, 2014, on the case Citizens of Georgia - Valerian Gelbakhiani, Mamuka Nikolaishvili and Aleksandre Silagadze versus the Parliament of Georgia, II-14.

[44] Judgement № N2/7/779 of the Constitutional Court of Georgia from March 31, 2019, in the case of Citizen of Georgia Davit Malania versus the Parliament of Georgia, II-14.

[45] Commentary on the Criminal Procedure Code of Georgia as of October 1, 2015, was prepared by the American Bar Association Rule of Law Initiative (ABA ROLI), Tbilisi, 2015, p. 70.

[46] Ibid, p. 71.

[47] Trial Monitoring Report, OSCE, Bureau of Democratic Institutions and Human Rights, Warsaw, 2014, https://rb.gy/hjf1ve [08.05.2023].

[48] Article 9(1) of the Criminal Procedure Code.

court, present and examine all relevant evidence in accordance with the procedure established by this Code".[49] If there is sufficient evidence to indict an individual, but the status of the accused is not granted to them in a timely manner, it would be evident that the accused would not only be prevented from obtaining evidence on his/her own initiative but also from enjoying other rights granted by the Procedural Code. "The purpose of granting the status of an accused to a person within the criminal proceedings serves the legitimation of investigative actions on the part of investigation authorities, on the one hand, and equipping the person concerned with appropriate procedural guarantees".[50] Furthermore, "one of the fundamental aspects of a fair trial is the adversarial nature of criminal proceedings, where the principle of equality of arms is observed starting from the initiation of the prosecution spreading throughout all stages of the proceedings".[51] According to the interpretation by the Constitutional Court of Georgia, "[t]he actual definition of the principle of equality of arms in criminal proceedings entails that both parties to the proceedings enjoy equal and reasonable opportunities to present their evidence in the court and to influence the course and final outcome of the proceedings. The above principle hinders the prosecution from being granted unbalanced privileges and thus limiting the possibility of the prosecution to artificially increase their influence on the resolution of the case".[52] Thus, "the legal protection is deemed effective when it meets the requirements of timely, fair, and effective justice". The fundamental right to a fair trial dictates that a judicial decision must be rendered within a reasonable time without unjustified procrastination, because unjustified delays in the administration of justice undermine the public trust in justice".[53]

5.2. Risks of politicized justice

Procrastination in criminal justice cases might not only violate the rights of the accused provided by the procedural law but also raises doubts about possible politicized justice carried out against individuals. It should be noted that there is no definition of "politicized justice" as a term in the legal literature. "Politicized justice" evokes only negative connotations".[54] In the instances where the initiation of an investigation or prosecution against an individual, or the resumption of a suspended investigation/prosecution is preceded by the political activities of the person, a question arises: are the allegations against him/her at these moments politically motivated? By all means, in such instances, justice cannot be restored.[55] Therefore, in hearing criminal cases,

[49] Article 9(2) of the Criminal Procedure Code.

[50] Judgement № 1/4/557,571,576 of the Constitutional Court of Georgia from November 13, 2014, on the case Citizens of Georgia - Valerian Gelbakhiani, Mamuka Nikolaishvili and Aleksandre Silagadze versus the Parliament of Georgia, II-14.

[51] Commentary on the Criminal Procedure Code of Georgia as of October 1, 2015, was prepared by the American Bar Association Rule of Law Initiative (ABA ROLI), Tbilisi, 2015, p. 84.

[52] Judgement № 2/13/1234, 1235 of the Constitutional Court of Georgia from December 14, 2018, on the case Citizens of Georgia: Roin Mikeladze and Giorgi Burjanadze against the Parliament of Georgia, II-74.

[53] Judgement № 3/2/577 of the Constitutional Court of Georgia from December 24, 2014, on the case Human Rights Education and Monitoring Center (EMC) and Georgian citizen Vakhushti Menabde against the Parliament of Georgia, II-7.

[54] Khubua G., Constitutional Court between the Law and Politics, Constitutional Law Review, N9, 2016, p. 4

[55] The judgment №1/8/594 of the Constitutional Court of Georgia from September 30, 2016, on the case Citizen of Georgia Khatuna Shubitidze against the Parliament of Georgia", II-32.

the judiciary, as an independent branch of the government, bears the crucial function of examining the charges brought against the individual in terms of the charges being substantiated and supported by legal arguments. The court must safeguard, inter alia, human rights, the principles of democracy and the rule of law, and other values enshrined in the Constitution. "The role of the court as an impartial, objective, and independent institution is crucial in the process of administration of justice".[56]

5.3. Application of the principle of sentence absorption in procrastinated criminal cases

The Criminal Code envisages the principle of unconditional absorption of punishments in the cases of multiple offenses,[57] with the exception being the case of repeat offense.[58] This means that when imposing a final sentence for multiple offenses, the more severe sentence shall absorb the less severe sentence, while when imposing equal sentences, one sentence shall absorb the other sentence.[59] For example, if a person has committed several crimes (and we do not have a case of repeat offense), there will be a case of multiple offenses and the principle of absorption of punishments shall apply. Specifically, the more severe sentence absorbs the less severe one, and in the case of the imposition of equal sentences, one sentence shall absorb the other. As for repeat offenses, the Criminal Code provides that[60] - "[i]n the case of a repeat crime, when there are multiple offenses and the final sentence has to be imposed, the more severe sentence shall absorb the less severe one, or alternatively, the definite sentences shall be combined in full or in part". Further, in the case of repeat offenses, the term of imprisonment imposed as a final sentence may not exceed 30 years".[61]

It should be noted that the principle of absorption of sentences appeared after the amendments of April 17, 2013, to the Criminal Code[62], and before that the principle of accumulation of sentences was in effect. Specifically, in the case of multiple offenses, the punishment was imposed for each offense separately, and for the effective final sentence, every sentence was summed up. As a result, the court adhered to the practice of imposing relatively harsh sentences. According to the explanatory note accompanying the legislative changes of April 17, 2013,[63] the reason for the adoption of the draft law was that "the principle of absolute accumulation of sentences resulted in unduly severe and disproportionate punishments, thereby yielding a sense

[56] Judgement № 2/7/636 of the Constitutional Court of Georgia from December 29, 2016, on the case of Citizen of Georgia Davit Tsinkladze against the Parliament of Georgia", II-35.
[57]Article 59(2) of the Criminal Code of Georgia.
[58]Article 59(3) of the Criminal Code of Georgia.
[59]Article 59(2) of the Criminal Code of Georgia.
[60]"A repeat offense shall mean the commission of an intentional crime by a person who has previously been convicted for an intentional crime." Criminal Code, Article 17(1).
[61]Article 59(3) of the Criminal Code.
[62]Law of Georgia on Amendments to the Criminal Code of Georgia, 546-IIs, website, May 8, 2013, https://rb.gy/g5ykif [08.05.2023].
[63]Explanatory note on the Draft Law of Georgia on Amendments to the Criminal Code of Georgia", p. 1, https://rb.gy/ee19qw [05.08.2023].

of injustice. Further, the principle of absolute accumulation of sentences [...] [deprived the judge from opportunity] to administer justice in accordance with the principle of individualization of punishment".[64] Finally, according to the explanatory note, "[t]he amendments to the Criminal Code had a positive impact on both individuals charged with criminal offenses and judges, the latter would be provided with the opportunity to rule for the imposition of sentences independently in individual cases".[65]

6. MONITORING ANALYSIS OF THE CRIMINAL CASES INVOLVING MIKHEIL SAAKASHVILI

For the time being, there are 2 completed and 3 ongoing criminal cases against Mikheil Saakashvili, all of which are being monitored by HRC.[66] It should be noted that Saakashvili was summoned by the Prosecutor's Office as a witness on two occasions: first on March 27, 2014, and then again on July 28, 2014. The third president did not appear on summons in the prosecutor's office; however, the prosecutor's office served the charges against him on the same day. In 2014, Saakashvili was also charged with additional charges, (dispersal of the November 7 rally, battery of Valery Gelashvili, misappropriation of budgetary assets, and granting pardons to individuals convicted for Girgvliani's murder).[67]

On June 28, 2018, the Tbilisi City Court rendered a judgment of conviction against Mikheil Saakashvili charged with battery against Valery Gelashvili and sentenced him to 8 years in prison. However, through the Law on Amnesty from December 28, 2012, the sentence was reduced by a quarter and the accused was sentenced to 6 years of imprisonment as a result of multiple convictions and was deprived of the right to hold any public office and local self-government bodies for 2 years and 3 months.[68] The second judgment of conviction rendered against Saakashvili concerns the case of Sandro Girgvliani and the abuse of power by a state political official. In this case, on January 5, 2018, Saakashvili was sentenced to 3 years of imprisonment.[69] In the closed cases, Mikheil Saakashvili was sentenced to imprisonment in absentia. Specifically, on January 5, 2018, he was sentenced to 3 years of imprisonment, and on June 28, 2018, to 6

[64] Ibid.
[65] Ibid, p. 2.
[66] See Human Rights Center monitors judicial proceedings of 22 cases with alleged political motives, 2 February 2023 https://rb.gy/crg4t2 [08.05.2023].
[67] 4+1 cases against Saakashvili: What Does the Prosecutor's Office Incriminate the Former President, Publika https://rb.gy/ymdmkg [08.05.2023].
[68] See Assessment of the Right to Be Tried within a Reasonable Time in the Ongoing Criminal Cases against Mikheil Saakashvili, Human Rights Center, p. 4, https://rb.gy/1vr7ya [05.08.2023].
[69] Assessment of the Right to be Tried within a Reasonable Time in the ongoing Criminal Cases against Mikheil Saakashvili, Human Rights Center, p. 4, https://rb.gy/1vr7ya [05.08.2023].

years of imprisonment. Thus, there were multiple offenses.[70] Further, since there has been no repeat offense committed, following the principle of sentence absorption (when another sentence is to be served with the principal sentence concurrently),[71] the more severe punishment absorbed the less severe one, meaning that the 6-year prison sentence absorbed the 3-year prison sentence, resulting in effective sentence of 6 years of imprisonment imposed on Mikheil Saakashvili.[72]

The former President was arrested in Georgia on October 1, 2021[73] and placed in a penitentiary facility. Thus, from October 1, 2021, the 6-year prison term commenced.

At this stage, there are 3 criminal cases ongoing against Mikheil Saakashvili: the case of dispersal of the November 7 rally, misappropriation of budgetary assets and illegal border crossing.[74] In the case of the November 7 rally dispersal, Saakashvili has been charged under Article 333(3)(b)(c) of the Criminal Code (the use of violence and offending the personal dignity of the victim, which violated the rights of an individual and resulted in a significant violation of the legal interests of society and the state), further, Saakashvili was also charged under the Article 333(2), (exceeding the official powers by a public political official, causing substantial violations of the rights of an individual, the legal interests of the state and society).[75] This crime is punishable by imprisonment ranging from 5 to 8 years.[76]

In the case of misappropriation of budgetary assets, Mikheil Saakashvili is charged with Article 182(2)(a)(d) as well as Article 182(3)(b) (misappropriation in large quantities, committed by a group with a preliminary agreement and using the official position), the punishment for these charges is imprisonment ranging from 7 to 11 years.[77] It should be noted that Saakashvili was indicted in the case of the November 7 rally dispersal on July 28, 2014. Therefore, the criminal prosecution against him began from that period, and on August 2, 2014, he was remanded in custody.[78] It should be noted that on August 13, 2014, he was charged with misappropriation of

[70] *See* Article 16(1) of the Criminal Code. "Multiple offenses mean commission of two or more acts provided for by an article or paragraph of the article of this Code for committing none of which the person has been convicted".
[71] "A repeat offense means the commission of an intentional crime by a person who has previously been convicted for an intentional crime." Criminal Code, Article 17(1).
[72] *See* The Statement of the Prosecutor's Office of Georgia 01.10.2021, https://rb.gy/8lanxe [08.05.2023].
[73] What do we know about the details of Mikheil Saakashvili's arrest at this moment, Publika, https://t.ly/4INZ [08.05.2023].
[74] *See* in detail HRC monitors judicial proceedings of 22 cases with alleged political motives https://rb.gy/crg4t2 [08.05.2023].
[75] 4+1 cases against Saakashvili: - what does the prosecutor's office incriminate the former President, Publika https://rb.gy/ymdmkg [08.05.2023].
[76] Article 333 of the Criminal Code.
[77] The Statement of the Prosecutor's Office of Georgia 01.10.2021, https://rb.gy/8lanxe [08.05.2023].
[78] Assessment of the Right to Be Tried within a Reasonable Time in the Ongoing Criminal Cases against Mikheil Saakashvili, Human Rights Center, p. 5, https://rb.gy/1vr7ya [5.8.2023].

budgetary assets.[79] "Despite the fact that the criminal prosecution for these cases began in 2014, the court hearings are still pending".[80]

The hearing in the proceedings against the third president is still pending with the Tbilisi City Court. The proceedings are at the stage of examination of the prosecution's evidence.[81]

Some discussions may be prompted by the issue that in the case the judgment is reached in a relatively short period concerning the cases of the November 7 rally dispersal and the misappropriation of budget assets, how the term of the sentence must be determined?

As mentioned previously, with the arrest of Mikheil Saakashvili on October 1, 2021, the 6-year prison term commenced. Thus, he still has to serve approximately more than 4 years of the remaining sentence. If within the next 4 years or after 4 years, a judgment of conviction is rendered regarding the above two cases, then under Article 59(2) of the Criminal Code the principle of absorption of sentences shall be applicable. As long as the charges for the case of misappropriation of budgetary assets carry a sentence ranging from 7 to 11 years of imprisonment, the above sentence would absorb the sentence for November 7 of 5 to 8 years of imprisonment. On the other hand, according to Article 59(4) of the Criminal Code, "the final sentence shall be the sentence that was served under the first judgment of conviction either in full or in part". Therefore, the sentences rendered for the latest two cases shall be reduced by the part of the sentences already served for the first two cases (case of battery of Valery Gelashvili and case of Girgvliani).

As for the current fifth case against Mikheil Saakashvili, i.e., the case border crossing case, on October 20, 2021, the prosecutor's office served charges against the Ex-President under Article 344(1) of the Criminal Code.[82] Up to this date, the evidence of the parties has been examined. In the event the judgment of conviction is rendered also in this case, there would be multiple judgments as provided by Article 59(4) of the Criminal Code. In particular, the court has the discretionary power to choose either partially or fully add the outstanding sentence imposed by the previous judgment to the sentence imposed by the latest judgment, or alternatively let the sentence imposed by the latest judgment to absorb the outstanding sentence imposed by the previous judgment.

[79] 4+1 cases against Saakashvili: - what does the prosecutor's office incriminate the former President, Publika https://rb.gy/ymdmkg [08.05.2023].
[80] For details on this issue, see Assessment of the Right to be Tried within a Reasonable Time in the ongoing Criminal Cases against Mikheil Saakashvili, Human Rights Center, https://rb.gy/1vr7ya, [08.05.2023].
[81] HRC monitors judicial proceedings of 22 cases with alleged political motives https://rb.gy/crg4t2 [08.05.2023].
[82] Saakashvili was charged with illegal border crossing, Netgazeti, https://rb.gy/dzesin/ [08.05.2023].

7. MONITORING ANALYSIS OF THE CRIMINAL CASES INVOLVING IRAKLI OKRUASHVILI

On July 26, 2019, the leader of the party Victorious Georgia, Irakli Okruashvili, was charged in the case related to the events of June 20-21.[83] He was arrested on July 25, 2019. The Prosecutor's Office accused him of managing group violence during the events of June 20-21, 2019 (Article 225(1) of the Criminal Code) and participating in the violence (Article 225(2) of the Criminal Code).[84] The Tbilisi City Court found Irakli Okruashvili guilty of committing the crime (participation in group violence) under Article 225(2) of the Criminal Code of Georgia, and under the judgment of April 13, 2020, he was sentenced to 5 years in prison on the charges of participating in the crime. Okruashvili left the penitentiary facility on May 15, 2020, based on the Act of Pardon by President Salome Zourabichvili. Thus, from July 25, 2019, to May 15, 2020, he served approximately 1 year in a penitentiary facility.

It is noteworthy that despite the act of pardon, Okruashvili appealed the judgment to the Tbilisi Court of Appeals. Judge Vepkhvia Lomidze upheld the judgment of the court of first instance.[85] Irakli Okruashvili filed an appeal against the judgment to the Supreme Court. However, the Court of Cassation found the appeal inadmissible by its ruling from November 1, 2022, thus, the judgment of the Appellate Court remained in effect.[86]

There is another pending case against Irakli Okruashvili, which is the case of Amiran (Buta) Robakidze case[87] In this case, the bill of indictment was served upon him on November 19, 2019, while he was in a penitentiary facility, just a few days before the expiration of the 15-year limitation period for a criminal prosecution, as stipulated in Article 71(1)(c[1]) of the Criminal Code. In the analytical document assessing the ongoing criminal proceedings against Irakli Okruashvili, HRC stressed that "these circumstances created reasonable doubts that the intention of the Prosecutor's Office of Georgia was to ensure that the periods of pretrial detention overlap to the least degree possible, so the accused would be remanded in custody for the longest period possible, which in its turn indicates the interest on the part of the authorities in carrying out criminal prosecution against the accused".[88] Further, the case also showed some problems in terms of calculating the 9-month period of pretrial detention, as after the new charges were served, the commencement of the 9-month period of pretrial detention stipulated by the

[83] See in detail Legal assessment of criminal cases ongoing against Irakli Okruashvili, HRC, 2020, https://rb.gy/wafrr8 [08.05.2023].
[84] Ibid, p. 8.
[85] HRC monitors judicial proceedings of 22 cases with alleged political motives https://rb.gy/crg4t2 [08.05.2023].
[86] Decision № 468AP-22 of the Supreme Court of Georgia from November 1, 2022.
[87] For details on this case, see Legal Assessment of the Criminal Cases Ongoing against Irakli Okruashvili, HRC. 2020. p. 23, https://rb.gy/wafrr8 [5/8/2023].
[88] See ibid, p. 28.

Constitution of Georgia started anew, independently of the case of June 20-21.[89] Currently, the hearing of the case is at the stage of examination of the evidence of the prosecution.[90]

Thus, when the charges were served against Irakli Okruashvili for the case of Amiran (Buta) Robakidze, Okruashvili was already indicted as a defendant for the case of June 20-21, 2019. Furthermore, the Prosecutor's Office resumed the investigation of the latter case on November 12, 2012, with Okruashvili being first questioned on February 26, 2018.[91] Accordingly, a renewed investigation has been ongoing since 2012, and the indictment was served against him only in 2019. However, under Article 169(1) of the Code of Criminal Procedure "the grounds for the indictment of a person shall be the body of evidence that is sufficient to establish probable cause that the person has committed a crime". According to Paragraph 2 of the same Article, "[w]hen there are sufficient grounds for bringing charges, the prosecutor may issue a decree on the indictment of the person". Criminal prosecution against a person begins immediately after the person is detained or indicted as a defendant.[92]

Despite the fact that the investigation into the aforementioned case was resumed in 2012, the Prosecutor's Office was capable since then to have sufficient evidence to indict Irakli Okruashvili as a defendant and initiate criminal prosecution against him. However, he was indicted seven years later, when the 15-year limitation period for criminal prosecution would expire in only a few days. "This raised doubts that the prosecutor's office probably had information about the alleged crime and deliberately procrastinated the commencement of criminal prosecution waiting for a more convenient time to bring charges".[93] It is worth noting that the ruling of the Tbilisi Court of Appeals reads that "the information about the offense from 2004 became known to the Prosecutor's Office at a later stage, which hindered the indictment of Irakli Okruashvili until November 19, 2019 as the evidence available evidence prior to that date failed to show probable cause to make the Prosecutor's Office indict Irakli Okruashvili in the case of Amiran (Buta) Robakidze".[94]

As mentioned above, the court hearings of Buta Robakidze's case are still pending with the court. Irakli Okruashvili (along with Zurab Adeishvili) is charged under Article 332(3)(c) of the Criminal Code envisaging the abuse of power by a state-political official. The crime carries a prison term of five to eight years.[95] If Irakli Okruashvili is found guilty and a judgment of conviction is rendered, the principle of sentence absorption, as provided by Article 59(2) of the Criminal Code,

[89] Ibid, p. 27.
[90] HRC monitors judicial proceedings of 22 cases with alleged political motives https://rb.gy/crg4t2 [08.05.2023].
[91] Legal Assessment of Ongoing Criminal Cases against Irakli Okruashvili, HRC, 2020, https://rb.gy/wafrr8 [08.05.2023].
[92] Article 167(1) of the Criminal Procedure Code.
[93] See Legal Assessment of the Criminal Cases Ongoing against Irakli Okruashvili, HRC. 2020. p. 28, https://rb.gy/wafrr8 [08.05.2023].
[94] See The ruling of the Tbilisi Court of Appeals on inadmissibility of the appeal №. 1ბ/1959-19, p. 8.
[95] Article 332(3) of the Criminal Code.

shall be applicable to him as there is no instance of a repeat crime.[96] Specifically, according to Article 59(4) of the Criminal Code, "[a] sentence shall be imposed in the manner provided for by paragraph 2 or -3 of this Article, provided that after the judgment had been delivered it was found out that the convicted person is also guilty of another crime committed before the first judgment of conviction was rendered". In this case, the final sentence shall include the sentence that has been fully or partially served under the first judgment". Because Irakli Okruashvili had already been sentenced in the case related to the events of June 20-21 and was serving his sentence from July 25, 2019, to May 15, 2020, in the event a judgment of conviction is also rendered against him in the case of Buta Robakidze, his final sentence would include the sentence served in the first case.

8. MONITORING ANALYSIS OF THE CRIMINAL CASES INVOLVING GIORGI UGULAVA

In 2013, multiple charges were brought against the former mayor of Tbilisi. One of them was the Tbilservice Group case, in which he was charged on February 22, 2013. The investigation was incriminating him in the breach of the second and third paragraphs of Article 182 (appropriation-embezzlement) of the Criminal Code.[97] "Gigi Ugulava was arrested on another charge in 2014 and remained in pretrial detention for over 14 months. The former mayor of Tbilisi filed an appeal with the Constitutional Court regarding the duration of his pretrial detention. The court determined that the term of pretrial detention should not exceed 9 months. Gigi Ugulava remained in pretrial detention for over 14 months. On September 17, 2015, the Tbilisi City Court released the former Mayor of the capital, Gigi Ugulava, in accordance with the judgment of the Constitutional Court. However, he spent only one day outside the prison. On September 18, the Tbilisi City Court sentenced Gigi Ugulava to 4 years and 6 months in prison in the Tbilservice case.[98] In January 2017, the Court of Appeal granted in part Gigi Ugulava's appeal in the Tbilservice Group case and reduced his prison term.[99]

Regarding the activities of the Tbilisi Development Fund, Giorgi Ugulava was charged on December 18, 2013, under Article 182(2)(d) of the Criminal Code, as well as Article 182(3)(a)(b) (misappropriation by using official position, by an organized group).[100] Under the ruling by the Tbilisi City Court of February 28, 2018, the charges against Giorgi Ugulava were subsumed under

[96]According to the Article 17(1) of the Criminal Code, "[a] repeat offense shall mean the commission of an intentional crime by a person who has previously been convicted for an intentional crime." He was convicted for the crime committed in 2019, while in the case of Buta Robakidze, Okruashvili is charged with the crime allegedly committed by him in 2004. Therefore, there is no case of a repeat offense.

[97] Gigi Ugulava's Case: Why Was He Sentenced to Imprisonment, Publika, https://rb.gy/zpilsh [08.05.2023].

[98] Ibid.

[99] Ibid.

[100] *See:* Legal Assessment of the Criminal Cases Ongoing against Giorgi Ugulava, Human Rights Ccenter, 2020. p. 4-5, https://rb.gy/2pevyy [05.08.2023].

Article 333(1) of the Criminal Code.[101] The court hearings of this case lasted approximately 5 years. Giorgi Ugulava was found guilty of committing a crime under Article 333(1) of the Criminal Code of Georgia and sentenced to imprisonment for 1 (one) year and 8 (eight) months as a primary punishment. Based on Article 43 of the Criminal Code of Georgia, additional punishment was imposed on Ugulava, depriving him of the right to be appointed to any public office for a period of 8 months. Based on Article 16 of the Law of Georgia on Amnesty of December 28, 2012, Giorgi Ugulava was sentenced as a primary punishment to 1 (one) year and 3 (three) months, and 22 (twenty-two) days of imprisonment, and as an additional punishment was deprived of the rights to be appointed in any public office 6 (months).[102] It is noteworthy that in the case of the Tbilservice Group, the sentence imposed under the judgment of the Tbilisi City Court on February 28, 2018, was fully absorbed by the sentence rendered under the judgment of the Chamber for Criminal Cases of the Tbilisi Court of Appeals from January 6, 2017, under Article 59(2)(4) of the Criminal Code of Georgia. Thus, since Giorgi Ugulava had already served the sentence from 2015 to January 6, 2017, as ruled by the Court of Appeals, he was released from prison on January 6, 2017.[103] The Prosecutor's Office appealed the verdict of the Tbilisi City Court of February 28, 2018, to the Court of Appeals and the Supreme Court. The Court of Appeals upheld the judgment of the Tbilisi City Court,[104] while the Court of Cassation, by judgment from February 10, 2020, agreed with the arguments of the prosecution and found Ugulava guilty of a crime under Article 182(2)(d) and Article 182(3)(a)(b) of the Criminal Code. The Court rendered a sentence of 9 (nine) years of imprisonment as the primary punishment against Giorgi Ugulava, while depriving him of the right to be appointed to any public office for 8 (eight) months as an additional punishment under Article 43 of the Criminal Code.[105] This sentence was reduced to half under the Law on Amnesty. The halved term of 4.5 years was reduced by 1 year, 3 months, and 22 days under Article 59(4) of the Criminal Code, which had been already served by Ugulava in the penitentiary facility and consequently, he was sentenced to imprisonment for 3 years, 2 months and 8 days, the term of deprivation of the right to be appointed to any public office for 4 (four) months was considered to have been served in full.[106]

In the end, Giorgi Ugulava was pardoned by the President of Georgia, Salome Zourabichvili, and he left prison on May 15, 2020.[107]

The "revival" of the Tbilisi Development Fund case by the investigation authorities and the initiation of criminal prosecution, despite the violation of the 6-month term for hearing the

[101]Ibid, p. 8.
[102]Legal Assessment of the Criminal Cases ongoing against Giorgi Ugulava, HRC, 2020, p. 8-9 https://rb.gy/2pevyy [05.08.023].
[103] Ibid, p. 9.
[104] Ibid
[105]Ibid, p. 12.
[106]Legal Assessment of the Criminal Cases ongoing against Giorgi Ugulava, HRC, 2020, p. 12, https://rb.gy/2pevyy [08.05.2023].
[107] Gigi Ugulava left prison, Netgazeti, https://rb.gy/yxawrg [08.05.2023].

cassation appeal, "has raised doubts regarding the political motives associated with the case".[108] It should be noted that on July 4, 2014, Giorgi Ugulava was arrested on the charges under Article 194 (2)(3) of the Criminal Code. The court remanded Ugulava in custody for 9 months under a measure of restraint. On July 28, 2014, a new charge was brought against him under Article 333(1) of the Criminal Code for the Case of November 7.[109] In the latter case, remand in custody could not be applied against him as he already was in custody.

Accordingly, the 9-month period of pretrial detention for the charges brought on July 4, 2014, was to expire on April 2, 2015. It was clear that the court would not be able to render the judgment in such a brief time. Therefore, within the new charges, the Prosecutor's Office filed a motion with the court on August 4, 2014, requesting the preliminary hearings of Ugulava's case to be scheduled. On March 14, 2015, the Prosecutor's Office filed a motion to the Criminal Panel of Tbilisi City Court requesting to remand Giorgi Ugulava in custody as a measure of restraint. On March 15, 2015, the judge granted the motion, and the defendant Giorgi Ugulava was remanded in custody as a measure of restraint. Ugulava appealed the decision to the Constitutional Court. The court granted his constitutional claim".[110] Based on the judgment of the Constitutional Court, the criminal trial judge released Giorgi Ugulava from custody on September 17, 2015. However, on September 18, 2015, after a single day of freedom, Ugulava was placed again in Matrosov Prison following the judgment of the Tbilisi City Court. According to the judgment, in connection with the Tbilservice Group episode, he was sentenced to 4 years and 6 months of imprisonment.[111]

It should be noted that on February 9, 2023, the European Court of Human Rights partially granted the application lodged by Giorgi Ugulava. From July 2014 to September 2015, the applicant challenged the compliance of the restraining measure (remand in custody) applied against him in relation to two criminal charges with the provisions of the European Convention on Human Rights. He further claimed that the sole objective behind remanding him in custody was to exclude him from political participation.[112] The ECtHR established a violation of Article 5(1) of the European Convention on Human Rights immediately in relation to pretrial detention from April 2 to September 17, 2015, as the 9-month period of pretrial detention had already expired. Moreover, within the case, a violation of Article 5(3) of the Convention was also established, because according to the Court's assessment, after February 18, 2015, the national courts failed to dully substantiate the necessity of prolongation of the pretrial detention. Under the judgment of the ECtHR, the state was ordered to pay EUR 10,000 in moral damages.[113]

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[108] See in detail Legal Assessment of Ongoing Criminal Cases against Giorgi Ugulava, HRC, 2020, https://rb.gy/2pevyy [08.05.2023].
[109] Ibid, p. 23-24.
[110] Ibid, p. 24-25.
[111] Ibid, p. 26.
[112] *Ugulava v. Georgia,* no. 5432/15, § 114, 9 February 2023.
[113] *Ugulava v. Georgia*, no. 5432/15, 9 February 2023.

Currently, the criminal case against Giorgi Ugulava and Aleksandre Gogokhia is split into separate proceedings in the Tbilisi City Court. The Prosecutor's Office charges the defendants with the commission of the offenses under Article 194 and Article 362 of the Criminal Code, meaning the legalization of illicit income (money laundering) and making or using a forged document, seal, stamp or letterhead and inducing others to accept them as genuine. Moreover, in the same case, the state prosecution charged Ugulava with abuse of official power on the episode of City Park and with the organization of group action and with coercion on the episode of Marneuli. Currently, this criminal case is at the stage of hearing on the merits.[114]

9. CONCLUSION

Prompt initiation of criminal prosecutions, as well as adjudicating the cases within a reasonable time are essential to protect the rights of the accused and increase public trust in the judiciary. Procrastination of justice may result in a violation of the rights of the accused to a fair trial and a violation of all procedural rights related to both the investigation stage and the fair hearing of cases in the court. These rights include the following: Prompt justice, equality of arms, and adversarial proceedings. According to the Constitutional Court of Georgia, "[i]n the criminal justice system, the state confronts an individual (the accused) with significant resources, power, state tools of prosecution, and coercive measures. For this reason, the Constitution of Georgia and other normative acts primarily aim to safeguard the interests of the accused, so as to prevent groundless prosecutions and conviction of individuals as criminals by the State due to abuse of power, arbitrariness, or mistakes".[115]

Deliberate procrastination of criminal prosecution by the Prosecutor's Office, despite the existence of sufficient evidence that reasonably suggests the person committed a crime, deprives the accused of the right to enjoy the procedural rights granted to them by the law. Thus, the legislator directly connects the application of the principle of adversarial proceedings and equality of arms with the commencement of criminal prosecution. Moreover, the Prosecutor's Office bears a legal obligation to conduct a comprehensive investigation and carry out criminal prosecution in accordance with the law.

To remove doubts of bias or politicized justice and to safeguard the rights of the accused, it is crucial that criminal justice is administered in a timely manner, adhering to the principles laid down in the procedural law. At the same time, it is essential for the court to fulfill its constitutional duties and ensure the protection of the accused against groundless criminal prosecution, unlawful convictions, and violations of human rights.

[114] HRC monitors judicial proceedings of 22 cases with alleged political motives, https://rb.gy/crg4t2 [08.05.2023].
[115] Judgment №1/8/594 of the Constitutional Court of Georgia from September 30, 2016, on the case *Citizen of Georgia Khatuna Shubitidze against the Parliament of Georgia,* II-27.