

LEGAL ASSESSMENT OF THE CRIMINAL CASES LAUNCHED AGAINST GIORGI UGULAVA



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INTRODUCTION

In the past few years, criminal proceedings started against several political leaders in Georgia that raised questions over partiality and independence of investigative bodies and judiciary authority.

In some instances, criminal liability of political leaders raises quite well-grounded doubts of the Georgian society, politicians and international partners with regard to political motives of the imposed charges.

Despite increasing number of accusations against the Government of Georgia, there is no common position in the Georgian society about the criminal prosecution and liability of opposition political leaders or activists.

The analytical document below aims to assess the criminal cases launched against the former Tbilisi City Mayor Giorgi Ugulava through the analysis of the international practice and Georgian context.

The former mayor of the Georgian capital Giorgi Ugulava was a prominent opposition political leader, and the Government of Georgia may have some political interests to launch the criminal cases against him. The accusations of the political opposition parties, statements of the international partners and the questions of the Georgian society are the reasons why HRC found it important to monitor ongoing criminal cases against the active politician.

The survey was conducted based on the study and analysis of the decrees on evidence in the criminal cases, solicitations of the defense side and prosecution, court rulings, interim decisions, verdicts, two judgments of the Constitutional Court of Georgia with regard to Giorgi Ugulava's case, the materials provided by the lawyers, criteria of a political prisoner elaborated by the Council of Europe and international organization Amnesty International and the international practice. In addition to that, the survey provides comparative legal analysis of the national legislation and the case law in relevance to the respective case law of the European Court of Human Rights.

The number of criminal cases launched against Giorgi Ugulava, chronology of bringing charges and imposing compulsory measures against him, dragged out or/and accelerated proceedings and other factual circumstances cause concerns of local and international human rights organizations and raise doubts over alleged political motives in them. Therefore, these cases require particular scrutiny of an independent observer. If there are political motives, there is high probability of unfair litigation that may blatantly violate the rights and basic freedoms guaranteed by the Constitution of Georgia and European Convention on Human Rights.

CASE OF THE TBILISI DEVELOPMENT FUND

⇒ Main points of the charge brought against Giorgi Ugulava over the case of the Tbilisi Development Fund

Charges were brought against Giorgi Ugulava in relation with the activities of the Tbilisi Development Fund on December 18, 2013. In accordance with the evidence decree, the LEPL Tbilisi Development Fund, several times, illegally funded the pre-election activities of the political party before the 2012 Parliamentary Elections. For the purpose, Giorgi Ugulava - the Tbilisi City Mayor, who also chaired the Tbilisi organization of the United National Movement, Giorgi Sabanadze – the chairman of the LEPL Tbilisi Development Fund, Aleksli Tabuashvili - the head of the city service of the municipal procurements at the Tbilisi City Hall and organizational secretary of the UNM's Tbilisi office, and Davit Alavidze - deputy city mayor planned in autumn of 2011 and then created an organized group of some public officials and servants. According to the plan, the group members, upon preliminary agreement and in coordination, for joint goals, unlawfully wasted the funds of the Tbilisi Development Fund on the pre-election activities of the UNM.

In accordance with the indictment, based on the preliminarily agreement of the organized group, from August to November 2011, upon the decision of the mayor Giorgi Ugulava and respective resolution of the city government, 100 000 000 GEL was accumulated on the accounts of the LEPL Tbilisi Development Fund in the JSC Liberty Bank to cover the pre-election expenses of the political party. Afterwards, based on the order of the Mayor Giorgi Ugulava, the chairman of the LEPL Tbilisi Development Fund Giorgi Sabanadze applied to the JSC Liberty Bank on November 9, 2011 to prepare plastic cards for 719 specialists, who were to assess the building of the Fund. However, according to the prosecution's allegation, those people were not employees of the Fund but were the activists of the political union United National Movement.

In accordance with the indictment, in Tbilisi, every month, UNM activists - heads of 719 election districts and about 20 000 micro-coordinators, used to get salaries from the ATM machines with their plastic cards. However, the real owners of the plastic cards did not know where the money was coming from.

According to the prosecutor's office, from November 2011 till June 2012 (including), the members of the organized criminal group, for the interests of the political party, unlawfully wasted particularly large amount of money - 13 852 497 GEL of the LEPL Tbilisi Development Fund.

Pursuant to the indictment, after the salaries paid to the fictitious employees of the Tbilisi Development Fund – so called "building assessment specialists" amounted to 40

000 GEL, from where the company was obliged to pay income tax¹ and the real owners of the cards could learn about criminal activities, based on the order of Giorgi Ugulava, Tbilisi City Mayor and chairman of the UNM Tbilisi organization, it was decided to stop paying the salaries via electronic transactions and to continue funding the UNM activists by paying them salaries in cash.

In accordance with the indictment, from November 2012 to October 2012 (including), Tbilisi City Mayor Giorgi Ugulava and other members of the organized criminal group unlawfully wasted particularly large amount of sum - 48 180 960 GEL of the LEPL Tbilisi Development Fund on the needs of the political party.

Giorgi Ugulava was charged under the Article 182 Part II – d and Part 3 – “a” and “b” of the Criminal Code of Georgia (*embezzlement of another person’s property or property rights using the official position by an organized group*).

⇒ **The December 21, 2013 ruling of the Criminal Law Panel of the Tbilisi City Court**

On December 21, 2013, Prosecutor Malkhaz Kapanadze petitioned the Criminal Law Panel of the Tbilisi City Court and requested to use imprisonment as a compulsory measure against Giorgi Ugulava in order to prevent him to hide from the judiciary proceedings, to combat his illegal activities and to ensure execution of the judgment. Pursuant to the prosecutor’s solicitation, in the course of the investigation, they had identified that much important evidence were destroyed. Also, the prosecutor noted that Gigi Ugulava was already convicted on February 21, 2013 for the similar crime - waste of the money of Ltd TbilService Group using the same scheme.

The court examined the solicitation of the prosecutor and concluded not to satisfy it and imposed a bail – 5 000 GEL on Gigi Ugulava.

Pursuant to the Article 198 Part I of the Criminal Procedure Code of Georgia, a compulsory measure shall be applied to ensure that the accused appears in court, to prevent his/her further criminal activities, and to ensure execution of the judgement. Remand detention or any other compulsory measure may not be applied against the accused if the purpose stipulated by this paragraph can be achieved through another less severe measure. In addition to that, pursuant to the Article 6 Part 3 of the Criminal Procedure Code of Georgia, preference shall always be given to the most lenient form of restriction of rights and liberties. Article 198 Part 5 of the same law states that when deciding to apply a compulsory measure and its specific type, the court shall take into consideration the personality, occupation, age, health status, marital and material status

¹ See the Article 206 of the Tax Code of Georgia

of the accused, restitution made by the accused for damaged property, violation of any of the previously applied measures of restraint, also in accordance with the ECtHR case law – probable length of punishment and evidence , and other circumstances.

⇒ **December 22, 2013 ruling of the Tbilisi City Court**

After the abovementioned ruling was announced, which was positively evaluated, next day – on December 22, 2013, the same judge, **without the participation of the parties**, examined the solicitation of the prosecutor’s office to remove Gigi Ugulava from the position of the Tbilisi City Mayor and satisfied it.

Pursuant to the Article 159 of the Criminal Procedure Code of Georgia, an accused person may be removed from his/her position (work) if there is a probable cause that by staying at that position (work), he/she will interfere with an investigation, with the reimbursement of damages caused as a result of the crime, or will continue criminal activities.

Based on the prosecutor’s solicitation, with the court decision, accused Giorgi Ugulava was removed from the position of the Tbilisi City Mayor before the court passed final judgment.

The ruling was appealed in the Appellate Court but on December 26, 2013, the Tbilisi Appellate Court upheld the December 22, 2013 ruling of the Tbilisi City Court with the ruling №1c/791-13.

⇒ **May 23, 2014 Judgment of the Constitutional Court of Georgia in the case – Giorgi Ugulava vs the Parliament of Georgia**

On February 11, 2014, Gigi Ugulava’s lawyers lodged constitutional lawsuit in the Constitutional Court of Georgia against the decision of the court to remove the Tbilisi City Mayor from his position.

On May 23, 2014, the Constitutional Court of Georgia passed judgment² and satisfied the constitutional lawsuit of Giorgi Ugulava. With the judgment, normative context of the Article 159 of the Criminal Procedure Code of Georgia was declared unconstitutional, which removes the officials elected based on general, equal and direct elections and through secret balloting from the positions. Also, the second sentence of the Article 160 Part 1 of the same law was declared unconstitutional, which allows the court to make similar decisions without oral hearing.

² See the May 23, 2014 Judgment of the Constitutional Court of Georgia; Citizen of Georgia Giorgi Ugulava v. the Parliament of Georgia <https://bit.ly/2YDdJD3>

The Constitutional Court also ruled that removal of an individual from the position without oral hearing disproportionately restricts the right to fair trial and constitutional rights.

⇒ **The February 28, 2018 judgment of the Tbilisi City Court over the case of the Tbilisi Development Fund**

With the February 28, 2018 judgment of the Criminal Law Panel of the Tbilisi City Court, the charges brought against Gigi Ugulava under the Article 182 Part II – d and Article 3 – “a” and “b” of the Criminal Code of Georgia were requalified into the Article 333 Part I of the Criminal Code of Georgia.

The Tbilisi City Court did not share the position of the prosecution, which claimed that the action committed by Giorgi Ugulava contained the signs of the crimes punishable under the Article 182 of the CCG (embezzlement) and decided to change the qualification of the imposed charge into the Article 333 Part I of the CCG (exceeding official powers), that may be assessed as correct qualification because the Article 182 of the CCG envisages punishment for the unlawful appropriation or embezzlement of another person's property or property rights provided this property or property rights was lawfully held or managed by the embezzler. The necessary sign of the unlawful appropriation or embezzlement is to misappropriate another person's property for unlawful possession. In case of waste, the perpetrator acknowledges that he/she appropriates another person's property, which was managed by him/her and with his/her action harms the property owner. The perpetrator acts with self-interest and aims to gain unlawful income at other person's expense. At the same time, when this crime – embezzlement - is committed, another person's property is not only under lawful ownership of the perpetrator but also he/she has some rights over it like it was in Giorgi Ugulava's case but was not confirmed by the court. Therefore, Giorgi Ugulava was found guilty for the crime punishable under the Article 333 Part 1 of the CCG and was sentenced to imprisonment for 1 year and 8 months in length. Above that, he, pursuant to the Article 43 of the CCG, was deprived of the right to occupy an official position in state agency for 8 months.

Based on the Article 16 of the Law of Georgia on December 28, 2012 Amnesty, finally, Giorgi Ugulava's imprisonment term was one year, three months and 22 days and deprivation of the right to occupy an official position in the state agency for six months.

With the punishment imposed based on the February 28, 2018 judgment pursuant to the Article 59 Part 2 and 4 of the CCG, the principle of concurrent sentence was applied because of Giorgi Ugulava was already convicted under the January 6, 2017 judgment of the Criminal Law Chamber of the Tbilisi Appellate Court for the TbilService Group

Case. With the January 6, 2016 judgment, the Tbilisi Appellate Court had reduced the punishment term over the TbilService Group Case, which was imposed in 2015. Consequently, Giorgi Ugulava had already served the sentence passed by the Tbilisi Appellate Court as he was in prison from 2015 to January 6, 2017. Therefore on January 6, 2017 Giorgi Ugulava left prison.

⇒ **The December 10, 2018 judgment of the Criminal Panel of the Tbilisi Appellate Court**

The prosecutor's office appealed the judgment of the first instance court claiming that it was unlawful and ungrounded and requested to aggravate the charges against Giorgi Ugulava. On the other hand, Giorgi Ugulava's lawyer also appealed the judgment of the first instance court and requested to annul it and release Giorgi Ugulava from prison. The Appellate Court did not satisfy either appeals, fully shared the judgment of the first instance court and ruled that the defendant exceeded his official powers that is punished under the Article 333 of the CCG, which applies to exceeding of official powers by an official that has resulted in the substantial violation of the lawful interests of the public or state. *Consequently, the February 28, 2018 judgment of the Criminal Panel of the Tbilisi City Court was upheld by the Tbilisi Appellate Court as lawful, well-grounded and fair.*

⇒ **The February 10, 2020 Ruling of the Supreme Court of Georgia**

Any Chamber of the Supreme Court (other than the Chambers of Disciplinary and Qualification Cases) is a court of review examining, under procedures defined by procedural law, appeals of the decisions of courts of appeals, also examining, where provided and under procedures determined by law, any other cases falling within its jurisdiction³.

The Criminal Law Chamber of the Supreme Court of Georgia, considered the qualifications of Giorgi Ugulava's actions differently from previous two instances of the court and ruled that the judgment of the Appellate Court was not lawful and amended it. According to the Chamber's assessment, the Tbilisi Appellate Court incorrectly qualified the charge. Namely, **the Cassation Court did not share the position of the Appellate Court to qualify the charge with the Article 333 of the CCG,** because, according to the Supreme Court, by applying this general norm, incorrect practice of the criminal proceedings is established, which aims to qualify all crimes committed by an official or person equal thereto as exceeding of official powers.

³ See Article 16 of the Organic Law of Georgia on Common Courts

The cassation court apparently paid particular attention to the differentiation of the legal benefits of the Article 182 and Article 333 of the CCG, with which it verifies the amended qualification of the charge. Namely, the cassation court clarified that Article 333 of the CCG applies to abuse of power. Its subject is a state official or a person equal thereto, whose action substantially violated the rights of a physical or legal person, public or state interests; as for the Article 182 of the CCG, it applies to an economic crime committed against property rights. Part 2 – “d” of the same article applies to the crime qualified as an offence committed through the abuse of official power and another person’s property is the subject, which is under the lawful ownership or management of the perpetrator.

There is an impression, that the Supreme Court’s chamber, in this particular case, strictly singled out only one special character – economic nature of the crimes committed by a public official or equal person in order to use the qualification under the Article 182 (embezzlement) instead the Article 333 of the CCG regardless the fact whether both signs – economic nature and lawful ownership or management – are cumulatively presented in it.

The cassation chamber did not agree with the argumentation of the Tbilisi Appellate Court, according to which, pursuant to the Organic Law of Georgia on Local Self-Governments and Law of Georgia on the Capital of Georgia – Tbilisi, the municipal assembly is authorized to approve and amend the budget of the Tbilisi City Hall and the City Hall, as an executive collegial body, executes the decisions of the assembly. *The Cassation Chamber clarified that it cannot share the verification of the Tbilisi Appellate Court, according to which, “the abovementioned individuals were separate members of the government and they were not the only persons who were authorized to transfer the funds of the City Hall to the accounts of the Fund”, because the funds accumulated on the bank accounts of the Fund were managed according to the preliminarily elaborated criminal scheme of the organized group, whose member was Gigi Ugulava and the concrete offensive activities are directly connected with the embezzlement of particularly large amount of budget funds of the City Hall. At the same time, the transfers were made based on the decrees of the Tbilisi City government and Giorgi Ugulava was the member of the government.*

The Criminal Law Chamber of the Supreme Court of Georgia, unlike previous two instances of the court, ruled that Giorgi Ugulava’s action shall be qualified in accordance with the Article 182 Part II – “d” and Part III – “a” and “b” of the Criminal Code of Georgia, that entails unlawful appropriation or embezzlement of another person’s property which was lawfully held or managed by the misappropriator or embezzler, committed by using the official power and by an organized group. In order to prove that, the Criminal Law Chamber of the Supreme Court stated that the crime punishable under the Article 182 of the CCG –

embezzlement is an offence of economic nature, namely it is committed against property. Therefore, the objective side of the offence is provided in the form of embezzlement. The person committing it, as a special subject, shall hold or manage “another person’s property” under an undisputed authority. *Unlike the Appellate Court, the Criminal Law Chamber of the Supreme Court clarified that this authority shall cumulatively mean implementation of various lawful or unlawful actions implemented by holding, managing, selling of the property or other actions related to it.*

The Cassation Chamber acted in accordance with the Article 301, Article 307 Part I – “c” and Part III of the Criminal Procedure Code of Georgia and found Gigi Ugulava guilty under the Article 182 Part II – “d” and Part III “a” and “b” of the Criminal Code of Georgia and sentenced him to nine-years imprisonment; above that, based on the Article 43 of the CCG, he was deprived of the right to occupy official position in the state agency for 8 months.

Also, pursuant to the Article 12 of the December 28, 2012 Law of Georgia on Amnesty, the imposed imprisonment term was half-reduced for Giorgi Ugulava and finally he was sent to prison for 4 years and 6 months and was deprived of the right to occupy the position in the state institution for 4 months.

Besides the abovementioned, convicted Giorgi Ugulava with January 6, 2017 judgment of the Criminal Law Panel of the Tbilisi Appellate Court was sentenced to imprisonment for 1 year, 3 months and 22 days and with additional punishment he was deprived of the right to occupy the position in the state institution for 6 months. It was calculated into the imposed prison term.

Finally, Giorgi Ugulava has to serve imprisonment term of 3 years, 2 months and 8 days in length and an additional punishment, based on which he was deprived of the right to occupy position in the state institution for four months was concluded already served.

ALLEGED POLITICAL MOTIVE AND JUDICIAL MISCARRIAGES

This chapter, based on the international practice and in the view of Georgian context, analyzes the criteria necessary to grant the status of a political prisoner to an individual and the details of Gigi Ugulava's cases, former Tbilisi City Mayor, were assessed in this regard.

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 prisoner⁴.

It is noteworthy that term "political prisoner" does not mean full innocence of such individuals. In some cases, political prisoners are guilty, but, the fact that they committed a crime shall not be used by a government for its purposes and the punishment, due to political goals, shall not be irrelevantly severe⁵.

Granting the status of a political prisoner does not discharge an individual from criminal liability and it does not contain moral assessment of his/her action unlike – "prisoner of conscience." According to the definition of the Amnesty International, "prisoner of conscience" is an individual who is imprisoned because he/she peacefully expressed his/her political, religious or scientific views, or does not advocate violence. In similar case, it is not determined that an individual has committed a crime⁶.

Anyone, who is granted status of a political prisoner, does not automatically gets right to claim immediate and non-conditional release from prison, instead he/she shall be guaranteed to have access to fair trial.

Pursuant to the criteria of the CoE, "a prisoner" may receive a status of "a political prisoner" if his/her imprisonment was result of violation of procedural guarantees and there is a ground of assumption that it was associated with the political motives of the government⁷. Above that, these criteria coincide with the ones of the Amnesty

⁴ 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>

⁵ See criteria of the CoE <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17179&lang=en>

⁶ See the Research of the Amnesty International: "Yugoslavia Prisoners of Conscience" p. 23 <https://www.amnesty.org/download/Documents/200000/eur480201985en.pdf>.

⁷ See <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17179&lang=en>.

International. Namely: the case contains “obvious political element”; “the Government fails to ensure fair trial in accordance with the international standards.”⁸

According to the criteria of the CoE and the Amnesty International, Human Rights Center identified a set of procedural-legal shortcomings in the criminal cases against Giorgi Ugulava.

1. 6-month term to examine the cassation lawsuit was violated

In accordance with the Article 31 of the Constitution of Georgia, every person has the right to apply to a court to defend his/her rights. The right to a fair and timely trial shall be ensured. The right to a fair and timely trial includes to examine the case in a reasonable timeframe, which on its side, affects access to court and relatively the justice. Besides that, the Article 6 of the Convention on Human Rights and Basic Freedoms guarantees right to fair trial, when determining civil rights and obligations or researching the reasonability of any criminal charge, everybody is entitled to have a right to fair and public hearing of his/her case by independent and impartial court⁹.

Pursuant to the case law of the ECtHR, **reasonable time** for the civil cases, **is counted** after the litigation starts while **for the criminal cases, it is counted from the moment the criminal charges are brought against the defendant**¹⁰.

In the case of the Tbilisi Development Fund, in the frame of the practical aspects of the access to justice, violation of six-month term of examining the cassation lawsuit is substantial violation of the Criminal Procedure Code of Georgia.

The court was entitled to finish case examination **in July 2019**, instead, through the violation of the requirements of the Article 303 Part 8 of the Criminal Procedure Code of Georgia, the Criminal Law Chamber of the Supreme Court announced its ruling in the case **on February 10, 2020**.

At the same time, in terms of effective judiciary, it is important to evaluate how ready the judiciary system is to defend human rights within the reasonable timeframe and to take respective measures against the violation of their rights.

In this regard, in relation to the trust towards independence and partiality of the court, *it is essential to evaluate such factual circumstances, which are connected with the activities of*

⁸ See Manual on Political Prisoners in Georgia, Tbilisi, 2012 http://assembly.coe.int/Communication/2012-06-26_ENpressajdoc21.pdf.

⁹ See the rulings of the ECtHR over the cases: *Dombo Beheer B.V. v. the Netherlands*, and *Levages Prestations Services v. France*,

¹⁰ See Case of *buchholz v. Germany* 1981, 6 May 1981: <https://www.legal-tools.org/doc/36ea8a/pdf/>

Giorgi Ugulava, as a leader of the political party European Georgia, which became particularly active after the large-scaled protest demonstrations in Tbilisi on June 20-21, 2019.

“Revival” of the case of the Tbilisi Development Fund against Giorgi Ugulava by (after the six-month term for the cassation lawsuit was already expired) coincided with the ongoing tense and significant political processes in Georgia in time and space, in which Ugulava played an active role. Current social-political developments undermined political stability of the acting government, for which the GoG took several repressive steps¹¹. It significantly influenced the public trust towards judiciary authority and feeling of justice in the state and raised questions over the “selective justice” and political motives of the state.

Therefore, prompt and qualified justice, which is one of the indicators of the fair trial, has huge practical importance. Right to fair trial is fiction, unless it is realized reasonably, for the restoration of breached rights within the reasonable timeframe. Unless the court ensures defense of the right and existence of timely mechanisms of the restoration of breached rights, not only the right to fair trial but even the idea is lost. It, quite fairly, indicates at the signs of influence of state authority on the judiciary authority, when the state tries to use them for its political interests.

2. There was ground to recuse one of the judges – Shalva Tadumadze

When the case was examined in the appellate court and the prosecutor’s office lodged the cassation lawsuit to the Supreme Court of Georgia, Shalva Tadumadze was the Prosecutor General of Georgia. On December 12, 2019, the Parliament of Georgia supported the appointment of Shalva Tadumadze, former prosecutor general, on the position of a judge in the Supreme Court of Georgia. There were acute questions over independence and partiality of Tadumadze. Therefore, the decision of the parliament was largely criticized by human rights civil society organizations but through neglecting the opinion of the civil society, Shalva Tadumadze was elected to the position of the judge in the Supreme Court of Georgia¹². Although Shalva Tadumadze did not personally represent the Prosecutor’s Office in the Appellate Court, when it examined Giorgi Ugulava’s case, it is important to mention that there is a strictly vertical subordination system established in the Georgian Prosecutor’s Office, where all prosecutors are obliged to follow the instructions of the superior prosecutor and all

¹¹ See the report State of Human Rights in Georgia, 2019, Human Rights Center <http://hriddc.org/admin/editor/uploads/files/pdf/report2020/annual%202019-eng.pdf>

¹² See http://coalition.ge/index.php?article_id=220&clang=1; see also http://coalition.ge/index.php?article_id=236&clang=1

employees of the office shall be subordinated to the Prosecutor General¹³. The vertical subordination and communication is particularly actual when the cases against former senior officials or other high-profile cases are litigated.

When the cassation court examined the case, convicted Giorgi Ugulava's lawyer solicited the Criminal Law Chamber of the Supreme Court of Georgia to recuse Judge Shalva Tadumade. According to the solicitation, when the prosecutor's office presented the in the Appellate Court, and then lodged the cassation lawsuit in the Supreme Court, Shalva Tadumadze was the Prosecutor General. Considering the high public resonance and political interest in the case, the defense side believed it was impossible that the Prosecutor General of Georgia was not interested in the ongoing litigation and results of the proceedings in the appellate court. In parallel to that, the defense side stated that it was impossible that prosecutors of the Office of the Prosecutor General had not informed Judge Shalva Tadumadze about the case. Therefore, the defense side stated that there were basis to recuse the judge in accordance with the Article 59 Part I –“a” of the Criminal Procedure Code of Georgia (*A judge of the court session may not participate in criminal proceedings if there are other circumstances that question his/her objectivity and impartiality*). The solicitation of the defense side was not supported.

It is interesting that former deputy prosecutor general Mamuka Vasadze self-recused the case based on the same ground, who had to examine the case against Giorgi Ugulava in the Supreme Court of Georgia.

In accordance with the ECtHR case law, personal opinion and conduct of the judge in the court shall provide feeling of his/her impartiality in the society. A judge, whose partiality is questioned, **shall not participate in the case examination.** A judge shall respect and comply with the law, the judge's oath and responsibilities in performing judicial duties. His/her decision should not depend on the interests of any political or social party, public pressure or any other influence and/or fear of criticism¹⁴. Impartiality of a judge is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made¹⁵.

The European Court of Human Rights has already ruled violation in the case, where an individual participated in two cases – in the first case he acted as the legal

¹³ See the Organic Law of Georgia on the Prosecutor's Office, Article 9

¹⁴ See the Judges Ethics Code of Georgia, Article 2

¹⁵ See the Bangalore Principles of Judicial Conduct, Value 2 – Impartiality

representative of the defendant against the applicant, while later he acted as a judge in the case against the same person¹⁶.

Partiality of the judge, who examined the case of Gigi Ugulava in the Supreme Court, who before that acted as a prosecutor general when the same case was examined in the lower instance of court, is questioned.

According to the assessment of the Public Defender of Georgia, Gigi Ugulava's case includes shortcomings in terms of impartiality of the judge, as well as with regard to the appointment of a judge on the basis of the law¹⁷.

It is noteworthy that in a case, where similar miscarriage related with the judges' appointment procedures were identified, ECtHR's chamber ruled violation of the right to fair trial¹⁸.

3. Multi-volume case was studied and verdict was passed in thirteen days

Giorgi Ugulava's defense lawyers stated during the meeting with the HRC monitors that **judges - Merab Gabinashvili and Shalva Tadumadze, studied the case, where dozens of witnesses were questioned, and passed verdict within 13 working days.** The lawyers believe this circumstance raises doubts that they did not substantially study the case and made the decision in accordance with the political orders.

A court judgement shall be legitimate, reasoned and fair¹⁹. It is impossible that the court judgement met these requirements, unless the accused person's right to fair trial was not ensured during the court proceedings. During the substantial examination of the case, the evidence is examined and it is important that the right to fair trial is guaranteed that, first of all, shall be realized by comprehensive and impartial examination of the evidence and case circumstances.

4. Case was examined by the cassation court without oral hearing

Giorgi Ugulava was convicted for particularly grave crime without oral hearing, while, the first and second instances of the court had qualified his charge as less grave. The Supreme Court of Georgia changed the qualification of the charge brought against Giorgi Ugulava without enabling him and his lawyer to present their positions.

¹⁶ See *Wettstein v. Switzerland* 33958/96, paragraph 47. <https://hudoc.echr.coe.int/fre?i=001-63679>

¹⁷ See the Statement of the Public Defender of Georgia <https://bit.ly/2yrx7rG>

¹⁸ See *Cudmundur Andri Astradson v. Iceland* 26374/18. <https://hudoc.echr.coe.int/fre?i=001-191701>.

¹⁹ See the Criminal Procedure Code of Georgia, Article 259

The Criminal Procedure Code of Georgia authorizes the cassation court, like the appellate court, to examine the case without oral hearing but unlike the appellate court, the cassation court is not restricted with the categories of the crimes and claim of the lawsuit. Relatively, if the cassation court concludes it is necessary to organize oral hearing of the case and invite the person to attend it to correctly qualify the charge, the court may invite him/her to the process. Besides that, **oral hearing of the case is the important part of the right to fair trial.**

Consequently, if there are no particular circumstances that may justify cancelled oral hearing, Article 6 Paragraph I of the European Convention on Human Rights right to public hearing means oral hearing at least in front of the first instance²⁰. Having that, *the Criminal Law Chamber of the Supreme Court of Georgia could examine Giorgi Ugulava's case with oral hearing as there were disputed facts related with the case circumstances and qualification, which were necessary to be considered orally and it could promote the public trust towards the court judgment. Therefore, there is an impression that the case examination without oral hearing, which was subject of high public interest, aimed to hold judicial process in secret and avoid public criticism.*

5. Probable defendant and selective justice

It is noteworthy that the prosecutor's office did not charge, even did not question the Tbilisi City Vice-Mayor Davit Ninidze at least as a witness in front of the court, who had signed the acts, based on which the LEPL Tbilisi Development Fund had allocated funds and for whose embezzlement Giorgi Ugulava was convicted. Based on this circumstance, one may assume that the prosecutor's office and the court did not aim to implement impartial justice but they wanted to apply selective justice against Gigi Ugulava in order to hinder his political activities.

6. Assessment of alleged violation of the principle "prohibition of repeated conviction" in Giorgi Ugulava's case

Ugulava's lawyer, part of the society and politicians assumed that *the principle of the prohibition of repeated conviction* was violated in relation with Giorgi Ugulava. They appealed that in 2017, the Supreme Court of Georgia upheld the qualification of less grave crime over the similar case against Giorgi Ugulava (so-called Ltd TbilService Group case) for which he had already served his term. Therefore, Giorgi Ugulava's lawyer Beka Basilaia believes that with the February 10, 2020 judgment, Ugulava was punished twice.

²⁰ See Fischer v. Austria, § 44; <https://hudoc.echr.coe.int/fre-press?i=001-59475>. Salomonsson v. Sweden, § 36. <file:///C:/Users/Administrator/Downloads/001-60736.pdf>.

HRC has different position with regard to this allegation and believes that the action, for which Giorgi Ugulava was convicted, did not originate from the identical or substantially similar facts of the so-called Ltd TbilSerevice Group case. Above that, there is no unity of concrete circumstances, which refers to the same accused person and the convicted person is completely inter-connected in time and space with those factual circumstances, for which he serves imprisonment term in the penitentiary establishment.

Pursuant to the Article 31 Paragraph 8 of the Constitution of Georgia, no one shall be convicted again for the same crime. The same right is guaranteed under the Article 4 of the Protocol No 7 of the European Convention on Human Rights. The norm aims to protect an individual from the resumption of already finished criminal prosecution against him/her for the same crime. Prohibition of the repeated conviction aims to ensure legal peace and to respect human honor with it. It refers to the particularly fundamental right guaranteed under the Convention, which, as stipulated in the third paragraph of the Article 4, Protocol No 7 of the Convention, shall not be derogated in time of war or other public emergency²¹. Prohibition of the repeated conviction aims to ensure stability of material legal power of the judgment²². Its key component is the notion of “one and the same crime.” *Principle of the prohibition of the repeated conviction (ne bis in idem) is clarified in the precedential judgment of the ECtHR - Zolotukhin v. Russia²³, which envisages a relatively innovative approach. ECtHR ruled that Article 4 of Protocol No. 7 prohibits, among other things, repeated convictions based on the same conduct of the accused if in essence the conduct was substantially similar to that previously shown.*

According to the assessment of Human Rights Center, similar circumstances are not identified in Giorgi Ugulava's case.

The principle of prohibition of repeated conviction is violated when there are four cumulative elements: (1) during the new conviction there is a previous judgment of the first instance court in the criminal case; (2) new conviction is used for the same action;

²¹ See Different Understanding of the Constitutional Principle on Inadmissibility of Double Punishment for the Same Action Pursuant to the CoE and EU Law; See, Turava, *European Criminal Law*, 2010, 137; Turava, *Criminal Law, Crime Doctrine*, 2011, 140

²² See NJW (47) 2004, 279.

²³ See the February 10, 2009 ECtHR ruling on the case Zolotukhin v. RUS, application 14939/03, par. 53 <https://hudoc.echr.coe.int/eng?i=001-80962>

this issue is not homogenously settled in the rulings of the Strasbourg Court²⁴; (3) regardless of legal power, repeated criminal prosecution or conviction is applied in the same state²⁵; (4) absence of newly discovered circumstances to renew proceedings. It is also important to underline that the principle of the repeated conviction is not violated if it refers to the resumption of the proceedings based on new circumstances²⁶. We did not identify any of the abovementioned circumstances in Giorgi Ugulava's case; consequently, the state did not violate the principle of the prohibition of the repeated conviction.

THE CASE OF THE AIRPORT INCIDENT

The criteria elaborated by both the Amnesty International and CoE include all cases, where alleged political motives are identified in the detentions. In accordance with one of the criteria, **an individual is a political prisoner, who has not committed a criminal case and his/her case was completely fabricated.** More precisely, the case when an individual was detained based on inadequate and disputed evidence and there is reasoned assumption that the evidence or/and witness statement is fake, based on which the individual was imprisoned.

The criteria elaborated by the representatives of the Georgian human rights CSOs in 2012 are also interesting, which, in due respect to the Georgian context, stated that **a crime may be provoked with political motives.** In accordance with the document, sharing the criteria determined by the CoE and Amnesty International, and in due respect to the Georgian practice and tendency, an individual may become a political prisoner if **he/she was detained, arrested or his/her freedom was restricted for an offence or a crime, which was provoked based on political motives, by the government or/and other interested individuals**²⁷.

²⁴ See three rulings of the ECtHR CASE OF GRADINGER v. AUSTRIA, 23.10.1995; <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57958%22%7D>. Oliveira v. Switzerland, 30.7.1998: <https://hudoc.echr.coe.int/eng?i=001-5334>;

29. 5. 2001, Franz Fischer v. AUT. <https://hudoc.echr.coe.int/fre-press?i=001-59475>.

²⁵ See the ECtHR ruling of July 20, 2004 over the case Nikitin v. RUS, application 50178/99, para 37; http://sutyajnik.ru/rus/echr/judgments/nikitin_eng.html;

March 15, 2005 ruling over the case Horciag v. ROU, application 70982/01

²⁶ See the July 20, 2004 ruling of the ECtHR over the case Nikitin v. RUS, application 50178/99, para 37; http://sutyajnik.ru/rus/echr/judgments/nikitin_eng.html;

²⁷ See the Manual about Political Prisoners, 2012, P. 32

<http://www.humanrights.ge/admin/editor/uploads/pdf/angarishebi/hrh/politikuri%20patimrebi-gzamkvlevi-geo.pdf>

In this regard, another case launched against Giorgi Ugulava attracts attention – the so-called airport incident case.

On December 11, 2019, at about 12:00 am, B.G and D.P attacked Giorgi Ugulava and Giorgi Gabashvili, who were sitting in the café *Efes Bear Port* in the departure hall of the Tbilisi Shota Rustaveli International Airport; they verbally and physically assaulted Giorgi Ugulava and Giorgi Gabashvili.

Based on the December 11, 2019 indictment, Giorgi Ugulava was charged under the Article 126 Part 1 of the Criminal Code of Georgia. According to the indictment, Giorgi Ugulava had injured B.G.

As the first statement of the accused person in the court and the court ruling read, on December 12, 2019, **prosecutor Tamar Zakutashvili petitioned the Tbilisi City Court. She requested the Tbilisi City Court to impose a bail of 5 000 GEL on the accused Giorgi Ugulava and as an additional measure to order him to hand passport and ID documents to the investigative bodies** to combat his further criminal activities and to ensure execution of the judgment and other goals of procedural law.

The judge concluded that in order to prevent the accused person to destroy the evidence and influence the witnesses, bail would be an adequate compulsory measure. Therefore, he satisfied the solicitation of the prosecutor.

On December 18, 2019, the defense side petitioned the City Court with the solicitation for video recordings and the court refused them on the same day clarifying²⁸ that the defense side has right to examine the video-recordings based on the respective permission and if the obtained information improves the state of the accused person, the defense side may submit relevant solicitation to the court. The Appellate Court also upheld the ruling of the City Court in its December 25, 2019 ruling²⁹.

On February 18, 2020, patrol police together with investigator Grigol Javakhia, based on the January 28, 2020 ruling #1c/1374-20 of the Tbilisi City Court, the defense side examined the WD recordings of the surveillance camera. The recordings revealed that B.G and D.P had ambushed Giorgi Ugulava and Giorgi Gabashvili. The examination of the recording revealed that Giorgi Ugulava and Giorgi Gabashvili, being in the café-bar *Efes Beer Port*, became subjects of B.G and D.P-s attention and they are waiting for the

²⁸ See the refusal on the solicitation for the investigative activities, ruling #20703-19 of December 19, 2019

²⁹ See the refusal on the solicitation for the investigative activities, ruling #33072301900340443 of December 25, 2019

appropriate moment to assault them, which, as the lawyer clarified, *was successfully executed*. Besides that, the solicitation shows, that **the examination of the video-recordings disclosed another interested person, who purposefully starts video-recording as soon as the incident started**. Afterwards, he enters the room of the departure hall of the airport, where citizens are not allowed to enter, and speaks with the security officers and other employees. The lawyer clarified that this person is an officer, who was preliminarily informed about the planned attack, for which Gigi Ugulava was charged. It is noteworthy that his companion Giorgi Gabashvili has victim status in the same case³⁰.

The case files revealed that the defense side sent application to the prosecutor in charge of the case and attached the video-recording, as clarified by the lawyer, where B.G (who attacked Giorgi Ugulava and Giorgi Gabashvili in the Tbilisi International Airport) participated in provoking incidents during peaceful protest demonstrations. In his communication, the lawyer indicated that there is a high probability that B.G acts according to the instructions of the representatives of law enforcement bodies. Additionally, in the airport, he may have implemented the order of any state official. **This allegation is reinforced with the circumstance that the incident happened in the neutral zone of the departure terminal, where Giorgi Ugulava's personal guards cannot enter and defend him**. Giorgi Ugulava's lawyer petitioned the prosecutor in charge of the case and requested to change the qualification of the case from Article 126 into Article 332 of the Criminal Code of Georgia, which refers to the abuse of professional power by the individuals, who ordered B.G and D.P to attack the leaders of the opposition.

On March 9, 2020, the Tbilisi City Court satisfied the solicitation of the defense side over the case of the Tbilisi Airport incident and annulled the 5 000 GEL bail imposed on Giorgi Ugulava as a compulsory measure. Judge Aleksandre Iashvili discharged Giorgi Ugulava from the obligation to hand his passport to the investigative body. *No more hearings of this case were held afterwards*.

ONE-DAY FREEDOM AFTER 14-MONTH PRETRIAL IMPRISONMENT

It is important to analyze one more case launched against Giorgi Ugulava. Namely, in accordance with the indictment, on July 4, 2014 Giorgi Ugulava was arrested for the charge punishable under the Article 194 Part 2 and 3 of the Criminal Code of Georgia and the court sentenced him to nine-month pretrial imprisonment. After this judgment, on July 28, 2014 Giorgi Ugulava was charged under the Article 333 Part I of the CCG

³⁰ See information at <https://netgazeti.ge/news/413364/>

over the so-called November 7 case. Naturally, the prosecutor's office did not solicit any form of compulsory measure in the case as Giorgi Ugulava was already in prison for the other charge. It must be noted that for the charge brought against him on July 4, 2014, the nine-month preliminary imprisonment term was due to expire on April 2, 2015 after what, in accordance with the acting law, he was to be immediately released.

At that time, it was already evident that the court was unlikely able to pass the judgment in the case even after the nine-month. Therefore, the prosecutor's office tried to manipulate with the obscurity in the law and extend Ugulava's nine-month pre-trial imprisonment with the new nine-month pre-trial imprisonment term under the second accusation. It directly indicated at the particular interest of the state prosecution to extend pretrial imprisonment term for the former mayor. It is noteworthy that on July 4, 2014 the EU released a statement underling that the EU was closely following the arrest of a United National Movement (UNM) opposition party leader Gigi Ugulava and called on the GoG to ensure "that the judicial process is fully independent, transparent, and free of political influence, in line with the commitments undertaken by Georgia when it signed the Association Agreement with the European Union last week on 27 June 2014³¹."

Under the new charge, on August 4, 2014, the prosecutor's office solicited the court to fix the date of the pre-trial hearing of Giorgi Ugulava's case³². Afterwards, the term of pre-trial session was many times extended and the prosecutor's office did not appeal the court with the request of compulsory measure against Giorgi Ugulava throughout eight months after the charges were brought against him³³.

In the period from July 28, 2014 to March 13, 2015 no new evidence were obtained against Giorgi Ugulava. Nevertheless, on March 14, 2015, the prosecutor's office solicited the Criminal Law Panel of the Tbilisi City Court to use imprisonment as a compulsory measure against Giorgi Ugulava³⁴. On March 15, 2014 the judge satisfied the solicitation and repeatedly sentenced defendant Giorgi Ugulava to imprisonment³⁵. The defense side appealed the decision in the Investigative Panel of the Appellate Court but with the March 20, 2015 ruling, the Appellate Court did not accept the solicitation of the defense side³⁶.

³¹ See the statement of the EU, July 4, 2014 <https://agenda.ge/en/news/2014/1629>

³² See <https://www.constcourt.ge/ka/judicial-acts?legal=1478>

³³ See <https://www.constcourt.ge/ka/judicial-acts?legal=1967>

³⁴ See <https://www.constcourt.ge/ka/judicial-acts?legal=1478>

³⁵ Ibid

³⁶ Ibid

On April 30, 2015, Giorgi Ugulava lodged the constitutional lawsuit to the Constitutional Court of Georgia to declare the extension of the nine-month imprisonment term as unconstitutional³⁷. With the September 15, 2015 ruling of the Constitutional Court of Georgia, Giorgi Ugulava's lawsuit with regard to the nine-month imprisonment term was satisfied³⁸. The Constitutional Court of Georgia ruled that imprisonment of a defendant equally ensures achievement of the goals of compulsory measure in each case. Relatively, nine-month term for each criminal case was to be calculated within this period of time, which the defendant spent in imprisonment for other criminal proceedings ongoing against him. According to the abovementioned clarifications, when calculating the imprisonment term under the March 15, 2015 ruling, Giorgi Ugulava's imprisonment term was to be calculated into the pre-trial imprisonment term, which had already spent in prison under the July 28, 2014 charge (over the case of November 7)³⁹. At the same time, the Court found the normative context of the Article 205 Part 2 of the Criminal Procedure Code of Georgia unconstitutional, which allowed the court to send a defendant to prison for concrete criminal case, if he had spent nine months in imprisonment in the frame of ongoing criminal case proceedings after the sufficient ground of bringing new charges against him/her was determined⁴⁰. In case of Giorgi Ugulava, in the frame of other case, he had already spent nine months of pre-trial imprisonment in prison⁴¹.

The ruling of the Constitutional Court of Georgia should have become the basis of Gigi Ugulava's release. However, formally, the common courts were entitled to pass the final decision on the release of the defendant Ugulava from pretrial imprisonment⁴².

After the Constitutional Court satisfied Giorgi Ugulava's lawsuit with regard to the terms of pre-trial imprisonment, the defense side solicited immediate release of Giorgi Ugulava. The defense side clarified that, although no compulsory measure was used against Gigi Ugulava over this case, pursuant to the ruling of the Constitutional Court of Georgia, any judge could consider the issue of Giorgi Ugulava's release from pre-trial imprisonment.

³⁷ See <https://matsne.gov.ge/ka/document/view/2998549>

³⁸ Ibid

³⁹ Ibid

⁴⁰ See the ruling of the Plenum of the Constitutional Criminal Court of Georgia №3/2/646, September 15, 2015 <https://matsne.gov.ge/ka/document/view/2998549?publication=0>

⁴¹ See Case Giorgi Ugulava v. the Parliament of Georgia <https://matsne.gov.ge/ka/document/view/2998549>

⁴² See <https://matsne.gov.ge/ka/document/view/2998549?publication=0>

On September 17, 2015, the Court satisfied the solicitation of the defense side and Giorgi Ugulava was released from the courtroom after 14-month pretrial imprisonment⁴³. Gigi Ugulava, who was set free on September 17, 2015, next day, on September 18, 2015, based on the judgment of the Tbilisi City Court, after one-day freedom, was sent back to the so-called Matrosov Prison. According to the judgment, with regard to the TbilService Group episode, he was sentenced to imprisonment for 4 years and 6 months. The Judge did not satisfy the solicitations of the defense side and the defendant to give one-week time to prepare the final speech⁴⁴.

INTERNATIONAL REACTIONS ABOUT THE CHARGES BROUGHT AGAINST GIORGI UGULAVA

The February 10, 2020 judgment of the Criminal Law Chamber of the Supreme Court against Giorgi Ugulava was critically assessed by the western partners. Several hours after the Court's judgment was released, the US Republican Congressman and Chairman of the Georgia's Support Group **Adam Kinzinger** reacted to it⁴⁵ and tweeted that *"To say this is disturbing would be an understatement. Using courts as a weapon is NOT democracy."* Several hours later after Kinzinger's statement, **Senator Jim Risch** also criticized the ruling of the Supreme Court. Senator Risch chairs the Foreign Affairs Committee of the US Senate. He stated: *"As I told the Georgian foreign minister last week, the collapse of judicial independence and persecution of the opposition is unacceptable behavior."*⁴⁶

Alongside with the US politicians, the US Embassy in Georgia also expressed its position with regard to the detention/imprisonment of people in parallel to ongoing political development. **"The U.S. Embassy is disappointed that the timing and context of the conviction and sentencing of an opposition leader last night has put the dialogue at risk"**⁴⁷.

The Foreign Affairs Minister of Lithuania also criticized Giorgi Ugulava's imprisonment. He tweeted that is *"Concerned by the court decision to sentence G. Ugulava, one of the leaders of European Georgia. The judiciary shouldn't be used to*

⁴³ See <https://bit.ly/2z3ny2a>

⁴⁴ See <https://bit.ly/3d3uFX4>

⁴⁵ See <https://twitter.com/repkinzinger/status/1226955819201245192?lang=en>

⁴⁶ See the statement of Senator Risch <https://twitter.com/SenateForeign/status/1227019806395600896>

⁴⁷ See the statement of the US Embassy <https://ge.usembassy.gov/u-s-embassy-statement-on-political-dialogue-and-conviction-of-opposition-leader-february-11/>

persecute the opposition, which is a must for democratic societies. Upcoming parliamentary elections will be a litmus test for democracy in Georgia⁴⁸.”

The critical letter of 26 members of the European Parliament to the Prime Minister of Georgia Giorgi Gakharia is particularly important, which criticized the renewed prosecution against the members of the opposition political parties. The letter mentions the judgment of the Supreme Court of Georgia and arrest of Giorgi Ugulava. According to the MEPs, the current case launched against Gigi Ugulava raises questions regarding the procedure, timing and motivation behind the ruling of the Supreme Court.

The most notable part of the letter is that representatives of all political group of the European Parliament signed it, among them are the members of the political group (Social-Democrats-S&D), whose member is the ruling political party of Georgia – “Georgian Dream –Democratic Georgia.” Namely, among the signatories are – 10 members of the EFA, 6 members of the EPP, 7 members of the S&D and 3 members of the RENEW⁴⁹.

According to the under-signatory MEPs, as real allies of Georgia, the MEPs “worry over Georgia backsliding regarding the rule of law and democratic principles.” According to their assessment, impartial, transparent and independent judiciary system is a foundation of a democratic society. *While the selection and appointment of new Supreme Court judges for lifetime tenure lacked transparency and merit-based objectivity. MEPs called on the Georgian Parliament to ensure that “the judges who remain to be selected meet highest professional and reputational standards.”*

The MEPs noted that it is necessary to uphold the rule of law and end political influence on the judiciary. According to their assessment, the political influence on the judiciary seems increasing. They also mention the statement of the chairman of the ruling political party Bidzina Ivanishvili, where he threatened the opposition with jail time, as well as reopening of previously dormant criminal cases which put several opposition leaders under investigation or in custody.

On March 6, 2020, the statement of the Vice-President of the European People’s Party (EPP) *Siegfried Muresan was published*, where he stated that if events will continue to negatively develop in Georgia, the European Parliament may consider the issue of sanctions. **The MEP also mentioned Giorgi Ugulava’s case and noted that prosecution**

⁴⁸ See the statement <https://www.georgianjournal.ge/politics/36232-embassies-and-politicians-commenting-on-gigi-ugulavas-arrest.html>

⁴⁹ See the statement <https://civil.ge/archives/341052>.

and arrest of opposition politicians is not a norm. He also underlined that in some instances, rule of law is not functioning and judges are under oppression⁵⁰.

Georgian human rights civil society organizations expressed concern over the judgment passed against Gigi Ugulava. The statement, which is signed by 12 organizations, reads that the ruling is a continuation of the government's **political persecution** of the opposition and that it **is problematic due to a number of reasons**⁵¹.

According to the assessment of the Public Defender of Georgia, the practice of European Court of Human Rights determines that the personal attitude and behavior of a judge should create the sense of impartiality in the society. A judge, whose impartiality raises obvious questions, should not participate in the consideration of the case⁵².

It must be noted that Georgian politicians, who were the members of the Georgian Dream in the past and opposed Giorgi Ugulava, also criticized the arrest of Ugulava. Among them was ex-president Giorgi Margvelashvili⁵³, ex-PM Giorgi Kvirikashvili⁵⁴, Aleksandre Elisashvili⁵⁵ and MP Tamar Chugoshvili⁵⁶. They evaluated the court judgment as political prosecution.

OBJECTIVES AND SIGNIFICANCE OF THE POLITICAL AGREEMENT OF MARCH 8, 2020

On March 8, 2020, the Government and opposition parties signed two documents of agreement⁵⁷. We may state that the separation of the topics of agreement was rational. Also, in the process of the consensus achievement, the role of the US Ambassador Kelly Degnan, Head of the EU Delegation in Georgia Carl Hartzell, German Ambassador Hubert Knirsch, Head of the CoE Office in Georgia Cristian Urse and US Deputy Ambassador Elizabeth Rude, was particularly outstanding⁵⁸. As the opposition leaders,

⁵⁰ See the statement of the EPP Vice-President Siegfried Muresan <https://bit.ly/2KsP7EA>.

⁵¹ See the statement of CSOs at <https://bit.ly/2L1KH87>

⁵² See the statement of the Public Defender with regard to the judgment of the Supreme Court against Gigi Ugulava <https://bit.ly/2zZtM3z>

⁵³ See Giorgi Margvelashvili's statement at <https://bit.ly/3cMEXKW>.

⁵⁴ See Giorgi Kvirikashvili's statement at <https://bit.ly/2zsUHVj>.

⁵⁵ See Aleksandre Elisashvili's statement <https://bit.ly/3cVGfml>

⁵⁶ See Tamar Chugoshvili's statement <https://bit.ly/2S5tRsO>.

⁵⁷ See 1) Memorandum of Understanding https://ge.usembassy.gov/wp-content/uploads/sites/165/Memorandum-of-Understanding.pdf?_ga=2.144348789.1719382843.1588687416-1519128025.1515774247; 2) joint statement: <https://ge.usembassy.gov/wp-content/uploads/sites/165/Joint-Statement.pdf>

⁵⁸ See information on the website of the Parliament of Georgia <https://bit.ly/2WuOIzn>

before starting negotiations with the government, requested to release the detained political leaders, this issue was settled with the separate document. The Memorandum of Understanding includes the details about the election system. **The second document regulates the issue of the imprisoned opposition leaders and activists. The document acknowledges that the parties agree that “highest standards” shall be ensured in the judiciary system. The document stressed out that it is necessary to address actions that could be perceived as inappropriate politicization of Georgia’s judicial and electoral processes and avoid any such actions in the future**⁵⁹.

The document also refers to the authority of the President of Georgia, and we may assume that one of the instruments for the release of the detainees may be the President’s pardon to fix the legal problem.

In the follow-up public statements, the representatives of the opposition stated that they believe similar provision in the document meant the “government will free political prisoners;” while the representatives of the government believed “there are no political prisoners” in Georgia and the judiciary system shall independently regulate legal issues regarding the defendants.

On March 9, 2020, the President of Georgia Salome Zurbishvili stated that she will grant a pardon based on her judgment. She added that the pardoning has clearly prescribed procedures that were adopted last year. She said, there is no single person in this country who is subject to specific preferential pardoning regulations and every individual is aware how to appeal the President.⁶⁰

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 expect to see its full implementation in the coming weeks and months. He said, earlier this year, my colleague Senator Shaheen and I wrote to Prime Minister Gakharia to express our concern with recent events in Georgia and advise that the Georgian government put an end to democratic backsliding. Senator Shaheen said, the reached agreement is crucial for their nation’s democracy*⁶¹.

⁵⁹ See the joint statement at <https://ge.usembassy.gov/wp-content/uploads/sites/165/Joint-Statement.pdf>

⁶⁰ See the statement of the Georgian President Salome Zurbishvili about pardoning of the so-called political prisoners <https://bit.ly/3cKBCfz>.

⁶¹ See the statements of the chairman of the US Senate Foreign Relations Committee Jim Risch and Senator Jeanne Shaheen at <https://bit.ly/35zzXXK>

CONCLUSION

Although starting from 2012, on the institutional level, many positive reforms were implemented to free the judiciary authority from political influence and to ensure independence of judges, nowadays, the questions over the cases with political context processed in the courts and over the criminal cases against Giorgi Ugulava, prove that the independence of the judges is challenged.

In this research, *in order to identify alleged political motives in the criminal cases processed against Giorgi Ugulava*, in respect to the international practice and Georgian context, the criteria necessary to grant political status to an individual elaborated by the Council of Europe and the international organization Amnesty International, were analyzed. The CoE elaborated the criteria on May 3, 2001 and they were applied for the identification of political prisoners in Armenia and Azerbaijan in 2001-2004. On June 26, 2012, the Parliamentary Assembly of the Council of Europe adopted the resolution, which determines the criteria about “political prisoners”. Although the experts group did not consider the case of Georgia, their criteria may be applied during the assessment of the cases processed in Georgia⁶². Shortcomings in Gigi Ugulava’s case were identified based on those criteria. *Namely, the 6-months term to examine the cassation lawsuit was violated; one of the judges examining his case in the Supreme Court of Georgia – Shalva Tadumadze was not recused, who before that was the chief prosecutor (prosecutor general) when the city and appellate courts examined the case of Ugulava; the multi-volume case was examined and judgment was passed within 13 working days; the cassation court processed the case without oral hearing while there was high public interest in the case because of alleged political motives in it; there are few other signs of selective justice.*

After the Supreme Court of Georgia violated the six-month term to consider the cassation lawsuit in Giorgi Ugulava’s case, it started the examination of the case in an accelerated manner, which coincided with the politically active period and new charges brought against the defendant by the investigative bodies. In addition to that, other judgments of the court, strict statements of the international partners and influential politicians cast doubts over the political motives in these cases and allegation that the Government of Georgia used the judiciary authority for political revenge.

⁶² See the Manual about Political Prisoners, 2012

<http://www.humanrights.ge/admin/editor/uploads/pdf/angarishebi/hrh/politikuri%20patimrebi-gzamkvlevi-geo.pdf>

When the investigation started against Giorgi Ugulava seven years ago, in parallel to which criminal prosecutions were launched against some more opposition party leaders, there were well-grounded doubts that the Government uses the criminal prosecution against opponents as an instrument of oppression.

Dragged out investigations and court proceedings against the representatives of various opposition political parties has acquired quite a common nature. Apparently, the Government effectively uses this method to indirectly oppress its opponents and activates old cases when it is advantageous. In this regard, it is worth to mention, that the common courts are processing one more case against Giorgi Ugulava, which refers to the mass dispersal of the demonstrators and raid in the TV-Company Imedi 13 years ago, on November 7, 2007. Ex-president Mikheil Saakashvili and few more former senior officials– Ivane Merabishvili, Zurab Adeishvili, Davit Kezerashvili and Giorgi Ugulava are also charged in the case⁶³. Human Rights Center monitors court proceedings in those cases and the report on monitoring findings will be published in future.

⁶³ See the press-release of Human Rights Center
<http://humanrights.ge/index.php?a=main&pid=20135&lang=eng>