LEGAL ANALYSIS OF THE CRIMINAL CASES COMMENCED IN CONNECTION WITH THE JUNE 20-21, 2019 EVENTS

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Human Rights Center

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1. INTRODUCTION

Dispersal of the protest demonstration on June 20-21, 2019 played crucial a role in the recent history of Georgia. The multi-thousand protest demonstrations started after the Inter-Parliamentary Assembly on Orthodoxy was organized in Tbilisi, in the frame of which, the member of the Russian Duma Sergei Gavrilov sat in the chair of the Georgian Parliament's Speaker and led the session in the Russian language. The dispersal of the assembly with the excessive force drastically changed the political and social life of Georgia. Local[1] and international stakeholders expressed doubts over the independence and impartiality of the law enforcement bodies that was connected with the commenced criminal proceedings against the citizens. Criminal prosecution started against many civil activists, demonstrators and political activists; among them past crimes, guilty verdicts and imprisonment terms were revived, where alleged political motives are identified[2].

In connection with the June 20-21, 2019 events, local and international organizations[3]-[4] and state institutions[5], among them Human Rights Center[6], paid particular attention to the following issues: legitimacy and proportionality of the decision to disperse the demonstration; criminal proceedings against the individuals participating in the June 20-21 events, and court proceedings over those cases; imposed imprisonment terms and guilty verdicts; cases of interference in the journalistic activities; refusal to grant victim status to the individuals who suffered during the dispersal; facts of physical and verbal assault, ill treatment from the side of law enforcement officers and a lack of effective and impartial investigation of those facts from the side of the state.

In accordance with the assessment of Human Rights Center and other human rights organizations[7], individuals, who were under the effective control of law enforcement officers after the detention, also became subjects of ill-treatment from the side of the police officers. Physical and verbal abuse of the detainees has reached the minimum level of severity that constitutes degrading treatment against detainees and requires an investigation to identify and impose criminal liability on perpetrators. Although a long time has passed since those events, investigation into alleged facts of the excessive use of force was commenced only against a few

[1] See the statement of the Human Rights House Tbilisi and its member organizations https://bit.ly/2URFGUM, August 9, 2019
[2] See the statement of HRC https://bit.ly/37edpfs, last seen on June 6, 2020
[3] See the statement of HRC, FIDH and NHC at http://humanrights.ge/index.php?A=main&pid=19893&lang=eng
[4] See the statement of the Amnesty International at https://bit.ly/2AR3IIA
[5] See the special report of the Public Defender of Georgia "Interim Report about the Investigation of June 20-21 Events, 2020" https://bit.ly/2Afi5WV; also, the report of the US Department of State "Country Reports on Human Rights Practices: Georgia", 2020. Https://bit.ly/30karas
[6] See the legal analysis of Human Rights Center – "June 20-21 Events" http://hridc.org/admin/editor/uploads/files/pdf/hrc2019/20-21%20ivnisi-eng..pdf. *HRC's Legal Analysis was one of the sources of the US Department of State in its annual report.*
[7] See the legal analysis of the June 20-21 events by the Georgian Young Lawyers' Association, 2019 "Beyond the Lost Eye" https://bit.ly/3fEMOfl; See the initial legal assessment of the Human Rights Education and Monitoring Center (EMC) Events of 20 June: Dispersal of the Rally and Related Practices of Human Rights Violation (Initial Legal Assessment) **https://bit.ly/2zIFFLD**
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police officers and their cases are still processed in the first instance of the court (Tbilisi City Court) and no verdicts have been passed against them so far. In parallel to that, criminal proceedings are actively conducted against civil or political activists into criminal cases; some of them were already convicted of the imposed charges[8].

The below document aims to legally assess the facts of the criminal proceedings commenced after the June 20-21 events and the criminal cases against different individuals through the analysis of the international practice and the Georgian context. The document analyzed the cases of civil activists, representatives of the opposition political parties and media, whose rights guaranteed under the Constitution of Georgia and the international human rights conventions were breached: among them freedom of expression, right to be protected from ill-treatment, right to prompt and quality justice, right to fair trial.

2. METHODOLOGY

The below survey was carried based on the analysis of trial monitoring reports of the HRC monitors, of the identified problematic material and procedural-legal issues, of the information collected through the interviews with the defendants/convicted people and their lawyers, findings from various documents and survey reports. In the course of the survey, the indictments, motions of the defense and prosecution sides, court rulings, interim decisions, rulings, Amicus Curiae sent by the Public Defender of Georgia to the common courts and the Constitutional Court of Georgia, reports/conclusions of the Venice Commission, and the criteria on the political prisoners elaborated by the Council of Europe and international organization Amnesty International were analyzed.

Based on the comparative analysis of the national legislation and court rulings with the Case Law of the European Court of Human Rights, the Report reveals problematic legal issues, alleged interest of the authority in those cases, interference in the independence and impartiality of justice bodies, which blatantly violates basic human rights and freedoms.

3. CRIMINAL CASES RELATED TO THE JUNE 20-21 EVENTS

In parallel to the trial monitoring, by assessing the criminal cases listed in this document, Human Rights Center does not aim to determine guiltiness/innocence of the defendants/convicted individuals, but identify the miscarriages and problems observed in the course of criminal and judicial proceedings. At the same time, each problematic issue is assessed in coherence with the national and international laws and the standards and requirements established by the European Court of Human Rights.

[8] See the statement of Human Rights Center https://bit.ly/3equqnv; and "Legal Assessment of the Criminal Cases Launched against Giorgi Ugulava," Human Rights Center, 2020 https://bit.ly/3efzavn

3.1. Case of Irakli Okruashvili

Founder of the political party Victorious Georgia Irakli Okruashvili was arrested on July 25, 2019[9]. The prosecutor's office accused him of leadership of group violence during June 20-21, 2019 events (Article 225 Part 1 of the Criminal Code of Georgia) and participation in the group violence (Article 225 Part 2 of the CCG)[10].

The Tbilisi City Court acquitted Irakli Okruashvili in the charge brought under the Article 225 Part 1 of the CCG (leadership of a group violence[11]). The prosecutor's office of Georgia tried to prove Irakli Okruashvili's guiltiness in the imposed charge in two episodes. In accordance with the indictment, the first episode referred to the fact when Irakli Okruashvili approached law enforcement officers at the entrance of the Parliament of Georgia on Tchitchinadze Street; the second episode fully relied on the testimony of only one witness police officer, who stated that protesters tried to break into the yard of the Parliament building and had noticed Irakli Okruashvili thereto, who was shouting together with the crowd: "Go ahead, go ahead!" and was moving towards the Parliament's building[12]. *In accordance with the judgment of the Tbilisi City Court, signs of criminal offence were not identified in the first episode of the case, which could prove Irakli Okruashvili's guiltiness in the leadership of the group violence, which in accordance with the Court's clarification, excluded leadership of the group violence by Irakli Okruashvili. As for the second episode, the Court fairly concluded that words "Go ahead, Go ahead!" could not become grounds to assess the action as a leadership of a group violence without identifying its context and addressees.*

The Court found Irakli Okruashvili guilty of a crime punishable under the Article 225 Part 2 of the CCG (participation in the group violence)[13]. The Tbilisi City Court concluded that Irakli Okruashvili committed violence when he pushed the police cordon, also grabbed and pulled a police officer. The guilty verdict relied on the testimonies of four witnesses. All of them were police officers. The a*nalysis of the court judgment revealed that court's clarification of the Article 225 of the CCG in Irakli Okruashvili's case is problematic. It does not envisage the objective of a law-maker to qualify only those actions with this article, which were committed against the state authority and public interest; therefore the article shall not be applied to other relatively similar criminal cases punishable under other articles of the CCG.*

As a result of huge international oppression[14], which indicated at the signs of alleged political motives in Irakli Okruashvili's case, the President of Georgia pardoned the leader of the

[9] See information at https://bit.ly/36Tylc5 Last seen on 29.05.2020

[10] See the indictment, Tbilisi, 26.07.2019. Document N0013218149

[11] See full information at https://bit.ly/2yadhf6 Last seen on 01.06.2020

[12] See the report of the HRC monitor from the trial monitoring, trial on merits: 10.01.2020; 13:20-14:12

[13] See information at https://bit.ly/2yadhf6; last seen on 01.06.2020

[14] See the statement of the US Embassy in Georgia about Irakli Okruashvili's arrest https://bit.ly/3e98pfr; Statement of U.S. Senators Jim Risch (R-Idaho), chairman of the Senate Foreign Relations Committee, and Jeanne Shaheen (D-N.H.), https://civil.ge/archives/341896; see the joint statement https://bit.ly/2axet9n;
See the statement of the meps at https://bit.ly/3fmlqun.

political party Victorious Georgia Irakli Okruashvili based on the pardon act on May 15, 2020[15]. The convicted person left the penitentiary establishment on the same day – on May 15, 2020.

Human Rights Center actively monitors the hearings of the criminal case against Irakli Okruashvili in the court, which refers to the death of Amiran (Buta) Robakidze during the special operation of law enforcement officers in 2004. Charges against Irakli Okruashvili over this criminal case were officially brought on November 19, 2019, *a few days before the remoteness of the crime was due to expire[16]. The prosecutor's office of Georgia accused him of the crime punishable under the Article 332 Part 3 – "c" of the CCG, which refers to the abuse of official power by a political official.*

HRC will publish separated document on the legal assessment of the criminal cases launched against Irakli Okruashvili in the near future.

3.2. Nikanor Melia's case

On June 25, 2019, the Prosecutor's Office of Georgia brought charges against the Member of the Parliament, the chairman of the political council of United National Movement Nikanor Melia with regard to the leadership and participation in the group violence during the protest demonstration in front of the Parliament of Georgia on June 20-21, 2019[17].

- **Indictment**

In accordance with the indictment, during the protest demonstration of June 20, 2019, at about 21:00 pm, the Member of the Parliament of Georgia Nikanor Melia addressed the citizens of Georgia and stated that unless their requirements were satisfied within one hour, everybody should have entered the building of the Parliament of Georgia[18]. As the requirements of the protesters were not satisfied, part of the citizens gathered in front of the Parliament building, and under leadership and participation of Nikanor Melia started to use violence against the law enforcement officers deployed on the area; they used various items to assault them, damaged and destroyed the belongings of the law enforcement officers. Pursuant to the indictment, as a result of the violent action, both the police officers and citizens, who were gathered for peaceful protest, received various injuries.

- **Address of the Prosecutor General to suspend the mandate of the MP**

On June 25, 2019, the Prosecutor General's Office of Georgia addressed the Parliament of Georgia to suspend the mandate of the Member of Parliament to Nikanor Melia[19]. In accordance with the Article 39 of the Constitution[20] and the Article 11 Part 1 of the Rules of Procedures of

[15] See full information at https://bit.ly/37sxaaf; last seen on 01.06.2020
[16] See full information at https://bit.ly/2xysntz; last seen on 01.06.2020
[17] See the statement of the Prosecutor's Office of Georgia at https://bit.ly/3f0Ze0z. Last seen on 01.06.2020
[18] See the legal analysis of Human Rights Center "June 20-21 Events", p 5-6, 2019https://bit.ly/2Bg4uim.
[19] See the address of the Prosecutor General of Georgia N013/4 to the interim chairperson of the Parliament of Georgia Tamar Chugoshvili, 25.06.2019 https://bit.ly/2uqlhgi. Last seen on 01.06.2020
[20] See the Article 39 of the Constitution of Georgia at https://bit.ly/30Tq9HS

the Parliament of Georgia[21], a Member of the Parliament can be detained only with the Parliament's preliminary consent. In this light, to use imprisonment as a measure of constraint against Nikanor Melia, the Prosecutor General's Office of Georgia addressed the Parliament of Georgia to issue an order of consent in accordance with the law to arrest him[22].

In accordance with the Constitution of Georgia, the Member of the Parliament is protected with the immunity but it cannot be a guarantee if the MP commits a crime. An MP shall not be held liable for the views expressed inside or outside Parliament while performing his/her duties. However, the immunity can be removed if there is reasonable doubt about a commission of a crime[23].

In accordance with the allegation of the Prosecutor General[24], both formal and factual grounds were on place to use imprisonment as a measure of constraint against defendant Nikanor Melia. The Prosecutor General indicated in its motion that the measure of constraint is used when there is a well-grounded doubt that the defendant will hide, commit a new crime and hinder the rendering of justice and collection of evidence[25].

Human Rights Center believes that the motion of the Prosecutor General's Office to the Parliament of Georgia was formal and the significant aspects necessary to use the imprisonment against a person were not adequately verified, as for the Case Law of the ECtHR[26], which is referred by the Prosecutor's Office, considering the factual circumstances and verification standard, do not match the case against Nikanor Melia.

In accordance with the report of the Venice Commission, the procedures both for establishing and lifting immunity should be transparent and open. The Commission states that in modern life, the parliamentary immunity mostly acts as a guarantee of the monitory[27]. It means that guarantees of the individual freedom under the Constitution of Georgia cannot protect an MP from endless legal proceedings for his/her opinions and views, which may be initiated by the executive government or other members of the society. Similar legal disputes, de facto, may restrict the MPs to enjoy their right to freedom of expression[28]. Therefore, parliamentary immunity and special rules to free an MP from civil and criminal liability ensure protection of an MP from the prosecution of political opponents, executive authority and other members of

[21] See the Article 11 Part 1 of the Rules of Procedures of the Parliament of Georgia https://bit.ly/2ykqmrv

[22] See the address of the Prosecutor General of Georgia N013/4 to the interim chairperson of the Parliament of Georgia Tamar Chugoshvili, 25.06.2019 https://bit.ly/2uqlhgi. Last seen on 01.06.2020

[23] See Article 39 Paragraphs 2 and 3 of the Constitution of Georgia https://bit.ly/3eehbpj

[24] See the address of the Prosecutor General of Georgia N013/4 to the interim chairperson of the Parliament of Georgia Tamar Chugoshvili, 25.06.2019 https://bit.ly/2uqlhgi. Last seen on 01.06.2020

[25] See the Article 205 Part 2 of the Criminal Procedure Code of Georgia https://bit.ly/2blclg2

[26] See Wettstein v. Switzerland, January 26, 1993 paragraph 33, Strasbourg, Judgment of December 11, 2000 https://bit.ly/2zdawg7; see Barfuss v. The Czech Republic, August 1, 2000, Strasbourg https://bit.ly/2asintv; see Punzelt v. The Czech Republic, April 25, 2000, Strasbourg; also see Conrad v. Italy, 2000

[27] See the May 14, 2014 report of the Venice Commission https://bit.ly/2mhk9cq.

[28] See the general proposal of the Public Defender of Georgia to avoid fact of discrimination and to start fight against it https://bit.ly/2Yau7dr. Last seen on 01.06.2020

the society[29]. Above that, freedom of expression of an MP is one of the significant subjects of the parliamentary immunity. Freedom of speech is an ultimate privilege for a member of the representative body rather than for an ordinary citizen of a country[30].

Despite that, on June 26, 2019, the Parliament of Georgia, at the special session, when opposition political parties boycotted the sessions[31], with 91 votes against no objections, lifted Nikanor Melia's parliamentary immunity to enable the prosecutor's office to address the Court to arrest him[32].

- **Assessment of the Tbilisi City Court's ruling**

On June 27, 2019 the Tbilisi City Court did not share the position of the prosecutor's office and imposed a bail on the MP as a measure of constraint instead of imprisonment. The Court concluded that the objectives of the measure of constraint could be achieved with less severe measure – 30 000 GEL bail[33]. The defendant was to pay the bail within 20 days. The Tbilisi City Court made the decision with regard to the measure of constraint in accordance with the Criminal Procedure Code of Georgia and did not clarify the special mandate of the MP in its ruling.

In accordance with the Criminal Procedure Code of Georgia, when making the decision about the measure of restraint, the Court, alongside with other circumstances, takes the activities of the defendant into account though in this particular case the Court failed to take this circumstance into account. If the Court had considered this important circumstance, it could have impacted the court ruling and would not have restricted Nikanor Melia's rights and used any measure of constraint.

Based on the court's ruling, additional restrictions were imposed on Melia; namely, he was prohibited without informing and consent of the investigating authority, making public announcements at public places and any kind of communication with witnesses; he was also ordered to hand in passport and ID documents to the investigative body; finally, with the increased amount of the bail and additional restrictions, the Court concluded the objectives of the measures of constraint would be achieved completely. According to the Court's clarifications, if the bail requirements and other obligations were breached, the measure of constraint could be changed with more severe measure[34].

[29] See European Commission For Democracy Through Law (VENICE COMMISSION), REPORT ON THE SCOPE AND LIFTING OF PARLIAMENTARY IMMUNITIES Adopted by the Venice Commission at its 98th plenary session (Venice, 21-22 March 2014), Strasbourg, 14 May 2014, Study No. 714 / 2013, § 82.

[30] See the May 14, 2014 report of the Venice Commission https://bit.ly/2mhk9cq.

[31] See full information at https://bit.ly/2xjieuu, June 26, 2019, last seen on 01.06.2020

[32] See full information at https://bit.ly/2uqxckc. Last seen on 01.06.2020

[33] See full information at https://bit.ly/2uogoyz. Last seen on 01.06.2020

[34] See the statement of the Tbilisi City Court about Nikanor Melia's case at https://bit.ly/3chutxn last seen on 01.06.2020

- **Assessment of the Tbilisi Appellate Court's ruling**

On July 2, 2019 Tbilisi Appellate Court upheld the ruling of the Tbilisi City Court. Besides that, the Appellate Court ordered the prosecutor's office to monitor the movement of Nika Melia with the special tracking bracelet[35].

Regardless of the electronic monitoring, in accordance with the public statements of the Prosecutor's Office of Georgia[36], on September 10, 2019, Nikanor Melia demonstratively violated the prohibition imposed by the Tbilisi City Court Judgment, when he left his place of residence, went to the TV-Company Kavkasia and participated in the TV-program. According to the Prosecutor's Office, Nikanor Melia's participation in the public-political TV-program was violation of the prohibition imposed by the court. The defendant was clarified that in case of repeated violation, a more severe measure of constraint may be applied. The PO added that Nikanor Melia was given consent to appear in the Parliament of Georgia. In addition, he had full communication with the media from his home[37].

The strict position of the Prosecutor's Office contradicts the authority of public activities of an MP. An MP may need permanent communication with people and representatives of various organizations; he/she shall enjoy unlimited right to freedom of expression that cannot be effectively achieved without leaving a place of residence. Therefore, within the scope of the measure of constraint imposed by the court, the Prosecutor's Office may refuse the MP to leave house only for clear and very important legitimate purposes, which, if violated, may harm the best interests of the electorate. At the same time, in exceptional cases, if it is the only and necessary option, the court may restrict the right through contemplated, clear and strictly regulated procedures, which are based on the fair balance of best interests. So, seizure of the mandate granted to an MP through direct election or its restriction not only violates the right of the mandate-bearer to occupy the position in a public agency, but also restricts the will of those voters, who granted the mandate to the public official[38].

In accordance with the report of the Venice Commission, rules on parliamentary immunity today function primarily as a minority guarantee and it cannot be perceived as a personal privilege of any MP[39]. Therefore, the ruling of the Tbilisi Appellate Court does not meet the requirements of the Constitution of Georgia either. Namely, it contradicts the proportionality of the restriction of power.

[35] See full information at https://bit.ly/3dk2nbz. Last seen on 01.06.2020

[36] See the statement of the Prosecutor's Office of Georgia with regard to Nikanor Melia's case, September 13, 2019 https://bit.ly/37m9uym last seen on 01.06.2020

[37] Ibid

[38] See the constitutional lawsuit https://bit.ly/37E4Aw9.

[39] See the May 14, 2014 Report of the Venice Commission at https://bit.ly/2mhk9cq.

- **Trial monitoring**

Human Rights Center's monitor observes the hearings of Nikanor Melia's criminal case in the court. Based on the findings from the trial monitoring, one might assume that the testimonies of the witnesses in the June 20-21 events related criminal case fail to prove guiltiness of Nikanor Melia. As of now, the principle of equality of arms and adversarial principle are respected during the proceedings[40]. The parties are able to make solicitations and express their opinions about the solicitations of the opposite party without delay. *The most recent hearing of the criminal case, which was scheduled on March 18, 2020, was postponed for uncertain time because of the spread of the COVID-19 and related state of emergency in the country. The date of the next hearing is not scheduled yet.*

- **Amicus Curiae of the Public Defender of Georgia to the Tbilisi City Court on Nikanor Melia's case**

The Public Defender considers that a substantial restriction on freedom of speech may be seen as a disproportionate restriction of the exercise of authority by a parliamentarian[41]. Therefore, on November 28, 2019, the Public Defender filed an amicus curiae brief with the Tbilisi City Court[42].

The Public Defender, after the Constitutional Court of Georgia, is the second independent constitutional body in Georgia, which is equipped with significant functions to defend basic freedoms and human rights on the national level. Although the Public Defender in Georgia is elected by the supreme legislative body, it is absolutely independent from the legislative body and in the frame of the abstract control mechanism of the norms, in accordance with the Article 21 – "i" of the Organic Law of Georgia on the Public Defender of Georgia, the Ombudsperson is authorized to file a constitutional lawsuit to the Constitutional Court of Georgia[43]. Legal publications often indicate that the purpose of the institute of the ombudsman in the national legal system is to fight against the violations committed by the administrative bodies[44]. The Administration of Justice is also subject of the control of majority of ombudsmen. The Administration of Justice includes administrative body of the judiciary authority, disciplinary measures against the judges and more. Ombudsman's sanctions, in this particular case, include only giving recommendations to the judges with regard to respective problematic issues or to the officials authorized to impose disciplinary measures on judges, also about the disciplinary liabilities to be imposed on a violator, etc.[45]

[40] See the Article 9 of the Criminal Procedure Code of Georgia https://bit.ly/3dn6u6r.

[41] See the statement of the Public Defender about the Amicus Curiae on Nikanor Melia's Case at https://bit.ly/3ddgwpr

[42] See the Amicus Curiae on Nikanor Melia's case https://bit.ly/30i8Vnj.

[43] See the Article 21 –"i" of the Law of Georgia on Public Defender https://bit.ly/3exuunq.

[44] See the comment on the Constitution of Georgia, chapter 2; Georgian citizenship. Baic human rights and freedoms, p 576 https://bit.ly/2upjigf.

[45] See Kucsko-Stadlmayer, Gabriele (Hrsg.), Europäische Ombudsmann-Institutionen. Eine rechtsvergleichende Untersuchung zur vielfältigen Umsetzung einer Idee, Wien, 2008, S. 29, 54-61.

As for the amicus curiae on Nikanor Melia's case, according to the Public Defender, the inability to carry out parliamentary activities, such as to make public statements, as well as the obligation to warn the Prosecutor General's Office about arriving at TV channels for participating in programs, is an important problem. In addition, it is unclear why the Member of Parliament should not be allowed to participate in TV programs from the building of the TV channels instead of his own home. Even the elementary parliamentary activity, such as arrival at the administrative building of the Parliament, depends on the good will of the Prosecutor General's Office.

The Public Defender considers that a substantial restriction on freedom of speech should only be used in an extreme case and should not restrict free political debate in the Parliament. The Public Defender also draws attention to the practice of the Constitutional Court of Georgia, according to which, the officials democratically elected by people have special legitimacy, and limiting their authority requires special grounds and justification. The Public Defender further considers that a substantial restriction on freedom of speech should only be used in an extreme case and should not restrict free political debate in the Parliament[46]. According to the Public Defender, the measures used against Nikanor Melia, namely: communication with the witnesses, prohibition to cross the state border and electronic monitoring disproportionally restricted his ability to undertake parliamentary activities. In accordance with the Amicus Curiae, the restriction of movement shall not be applied for the administrative building of the parliament, in order to meet the requirement of the Constitution and enable the MP to perform his main duties. At the same time, similar restrictions are not justified in respect to the criminal law. More precisely, if Nikanor Melia is prohibited to make public statements to prevent him from committing a new crime, neither could he be allowed to have communication with media and be interviewed; if he was allowed to communicate media, it is unclear, why the MP was allowed do it from his house but not from the premises of the TV-Company while being under electronic monitoring to prevent him from hiding from the investigation.

The Public Defender of Georgia also refers to the clarification of the Constitutional Court of Georgia: "It is particularly important to protect the officials democratically elected by people from groundless and selfish restriction of the authority delegated on them by the electorate.[47]"According to the source of legitimacy of a public official, their constitutional status, competence and responsibility, the guarantees of their independence and inviolability differ and consequently, the pre-conditions and procedures to interfere in these rights shall also differ[48].

Regardless many substantiated and critically important assessments of the Public Defender of Georgia, the Tbilisi City Court did not take the Amicus Curiae of the Public Defender into account on Nikanor Melia's case.

[46] See the May 14, 2014 Report of the Venice Commission https://bit.ly/2mhk9cq.

[47] See the May 23, 2014 ruling of the Constitutional Court of Georgia on the case: "Citizen of Georgia Giorgi Ugulava v. The Parliament of Georgia," II-27 https://bit.ly/2yhxqzs.

[48] Ibid II-23

With the rulings of the Tbilisi City Court and the Tbilisi Appellate Courts, with the restricted freedom of expression of the MP, we may observe disproportionate restriction of his authority that comes in conflict with the Constitution of Georgia.

The rights of the MP Nikanor Melia would not have been restricted so disproportionally, if the Tbilisi City and Appellate Courts had considered the case in complicity of the requirements of the Constitution of Georgia, Criminal Procedure Code of Georgia and the Rules of Procedures of the Parliament of Georgia and if the court had taken the peculiarities of the MP's immunity into account.

- **Early termination of Nikanor Melia's parliamentary authority**

On December 2, 2019, the Tbilisi City Court found MP Nikanor Melia guilty of the so-called Cartu Bank's case[49] based on the Article 332 Part I of the CCG[50]. The Court imposed 25 000 GEL bail on him. At the same time, in accordance with the Article 43 Part 2 of the CCG[51], Nikanor Melia was deprived of the right to occupy an official position for three years. Based on the Article 16 of the December 28, 2012 Law of Georgia on Amnesty[52], the additional sanction imposed on Nikanor Melia with regard to the deprivation of the right to occupy the official position was reduced at ¼. In the end, Nikanor Melia was ordered to pay 25 000 GEL bail and was restricted to occupy an official position for 2 years and 3 months.

The resolution part of the Tbilisi City Court's December 9, 2019 judgment was sent to the Committee of Procedures and Regulations of the Parliament of Georgia[53]. Based on December 12, 2019 Resolution N5544 of the Parliament of Georgia, in accordance with the Constitution of Georgia[54] and the Rules of Procedures of the Parliament of Georgia[55], Nikanor Melia's parliamentary authority was terminated early in term[56]. On December 23, 2019, the decision was appealed in the Constitutional Court of Georgia[57]. In the lawsuit, the applicant requested to declare the parliament's resolution unconstitutional, based on which his parliamentary authority was terminated[58].

On February 10, 2020, the Public Defender of Georgia filed an Amicus Curiae to the Constitutional Court of Georgia on Nikanor Melia's constitutional lawsuit. The amicus curiae brief explains in which case the guilty verdict may serve as grounds for deprivation of

[49] See full information at https://bit.ly/3ckb34v.
[50] See the Article 332 of the CCG at https://bit.ly/2ckthcl
[51] See the Article 43 Part 2 of the CCG https://bit.ly/2ckthcl
[52] See the Article 16 of the Law of Georgia on Amnesty at https://bit.ly/2Yom23w.
[53] See full information at https://bit.ly/2uwxjio. Last seen 09.06.2020.
[54] See the Article 39, Paragraph 5 – 'd' of the Constitution of Georgia https://bit.ly/30tucwp
[55] See the Article 6 Paragraph 1 and Article 2 – "d" of the Rules of Procedures of the Parliament of Georgia at https://bit.ly/2N95GH5
[56] See full information at https://bit.ly/2uwxjio. Last seen 09.06.2020.
[57] See full information at https://bit.ly/2zphmnw. Last seen 09.06.2020.
[58] See the case Nikanor Melia v. The Parliament of Georgia, Constitutional Court of Georgia, January 27, 2020 https://bit.ly/3drdwar.

parliamentary power. According to the practice of the Constitutional Court, the notion of a 'verdict that has entered into force' has autonomous content, and it is necessary to protect the principle of proportionality when depriving an elected MP of his/her authority[59]. **The amicus curiae brief addresses exactly the issue of proportionality. Consequently, it concludes that an MP can be deprived of his/her authority only if the court of first instance imposes custodial penalty, while in case if non-custodial penalty, an MP can be deprived of his/her authority only after there are no more opportunities for appealing against the verdict or the term of appealing expires.** The Constitutional Court of Georgia accepted the lawsuit for further consideration in relation with the Article 25 Paragraph 1 of the Constitution of Georgia[60] (right to hold public office) and the Article 39 paragraph 5 –"d" of the Constitution of Georgia[61] (the power of a Member of Parliament shall be terminated early if he/she has been convicted by a court judgment that has entered into legal force). The Constitutional Court did not accept the lawsuit in relation with the right to fair trial, as Nikanor Melia's parliamentary authority was terminated by the Parliament of Georgia and not by the Court[62].

When the judgment is considered to be enforced – when the first instance court has passed verdict or when the Supreme Court of Georgia delivers the final decision? The Constitutional Court of Georgia concluded it as a rare and significant problem. Therefore, the Plenum of the Constitutional Court, which is composed of all acting judges of the Court, examines the lawsuit.

Human Rights Center believes that the Article 31 Paragraph 5 of the Constitution of Georgia (procedural rights) – "A person shall be presumed innocent until proved guilty, in accordance with the procedures established by law and the court's judgment of conviction that has entered into legal force" – shall be clarified as the judgment of the final instance court – Supreme Court of Georgia on the concrete criminal case.

3.3. Case of Giorgi Rurua

- **Indictment**

A share-holder in the TV-company "Main Channel" Giorgi Rurua was arrested on November 19, 2019. In accordance with the indictment, Rurua was charged of the commitment of an action punishable under the Article 236 Part 3 and 4 of the Criminal Code of Georgia[63], which refers to the illegal purchase, storage and carrying of firearms, ammunition, explosives or explosive devices. In accordance with the indictment, unity of the information obtained by the prosecution in the case files indicate that according to the operative information, Giorgi Rurua, on November 18, 2019, was traveling from Tbilisi to Tskneti by his car and unlawfully carried

[59] See the Amicus Curiae brief of the Public Defender of Georgia relating Nikanor Melia's case, February 11, 2020 https://bit.ly/3fd8tdx

[60] See the Article 25 Paragraph 1 of the Constitution of Georgia https://bit.ly/2bmquyb

[61] Ibid Article 39 paragraph 5 – "d"

[62] See the case Nikanor Melia v. The Parliament of Georgia, Constitutional Court of Georgia, January 27, 2020 https://bit.ly/3drdwar.

[63] See the Article 23 Parts 3 and 4 of the CCG

firearms with him. Patrol police stopped Giorgi Rurua nearby the Vake district cemetery to search and withdraw unlawfully possessed firearms.

On December 25, 2019, one more charge was brought against the defendant Giorgi Rurua based on the Article 381 Part 1 of the CCG, which refers to failure to execute or the interference with the execution of a judgement or other court decisions. The case concerns Giorgi Rurua's refusal, to take DNA and finger tests as it was required by the court ruling.

- **Alleged political motive**

Pursuant to the criteria determined by the June 26, 2012 resolution of the Parliamentary Assembly of the Council of Europe[64] "A person deprived of his or her personal liberty is to be regarded as a 'political prisoner' if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities."[65] These criteria coincide with the criteria established by the Amnesty International. Namely, if a case contains "tangible political element"; "if the authority fails to ensure fair trial in accordance with the international standards."

The arrest of Giorgi Rurua and the criminal proceedings against him, together with the cases of Irakli Okruashvili and Giorgi Ugulava, were soon followed by political evaluations[66] from various opposition political parties, international partners, particularly from the US Senators and Congressmen. The arrest of Giorgi Rurua is mostly evaluated as a political decision and his imprisonment was declared to be a violation of the March 8, 2020 memorandum[67].

- **Trial monitoring**

Human Rights Center observes the hearings of the criminal case against Giorgi Rurua in the Tbilisi City Court. The Court started trial on merits on his case on February 10, 2020. During the monitoring several violations were identified[68], which refer to: 1) *breached right to have an access to defense; 2) clarification of the defendant's responsibilities and obligations; 3) refusal to take tests and commencement criminal proceedings against the defendant for the failure to execute the court decision (Article 381 Part 1 of the CCG); 4) issue of proportionality of the interference during taking a test, and more.*

Human Rights Center will publish separate analytical document on the criminal case against Giorgi Rurua, which will evaluate the abovementioned problems and other procedural miscarriages in more details.

[64] See the definition of a political prisoner determined by the June 26, 2012 Resolution of the PACE at https://bit.ly/3dnt6dn
[65] ibid
[66] See full information at https://bit.ly/37seotf; and also at https://bit.ly/3hrbikf.
[67] See the joint statement at https://bit.ly/3fzfw7n. Last seen on 05.06.2020
[68] HRC trial monitor's report from the court hearing of Giorgi Rurua's case

3.4. Case of Giorgi Javakhishvili and Tornike Datashvili

- **Indictment**

Pursuant to the indictment, during June 20-21, 2019 events, Giorgi Javakhishvili and Tornike Datashvili, together with other individuals, actively participated in the violent actions, which aimed to break into the administrative building of the Parliament of Georgia. Namely, Javakhishvili was beating police officers with the special tool – shield, which he had seized from the law enforcement officers and actively participated in the violent actions. As for Tornike Datashvili, he resisted the law enforcement officers, he pushed a police officer out of the police cordon by force and with his action participated in other violent actions. Both of them were charged of the crime punishable under the Article 225 Part 2 of the CCG (participation in the group violence)[69].

- **Trial monitoring**

Pursuant to the first introduction of the defendants to the court and July 27, 2019 ruling on the measure of constraint, imprisonment was used against Giorgi Javakhishvili and Tornike Datashvili. The prosecutor indicated at the risk of abscond, interference in the execution of justice and collection of evidence, risks of commitment of repeated crimes in its motion, which was shared by the court. The defense side appealed the ruling in the Tbilisi Appellate Court but the latter rejected the appeals. The upper instance court concluded that the Tbilisi City Court's ruling was substantiated and lawful[70]. On October 18, 2019, the defendants admitted the imposed charges during the court hearing[71]. At the trial, both defense lawyers solicited to change the measure of constraint. Namely, they requested to change the imprisonment into a bail. The defense lawyers informed the judge about family/economic state of the defendants and requested to change the imposed imprisonment into 2 000 GEL bail that was satisfied by the court and the defendants were released from the courtroom[72]. Afterwards, on March 4, 2020, the plea-agreement was signed with the defendants[73]. According to the defense lawyers, the defendants pleaded the imposed charges and did not argue about the evidence provided by the prosecutor's office[74].

[69] See the Article 225 Part 2 of the CCG https://bit.ly/2Bog1fo

[70] See the July 31, 2019 ruling n1c/1272 of the investigative collegium of the Tbilisi Appellate Court

[71] HRC trial monitor's report from the trial monitoring; trial on merits: **18.10.2019, 11:00- 11:16**

[72] See full information at https://bit.ly/2Afy3QY. Last seen 02.06.2020

[73] HRC trial monitor's report from the trial monitoring; trial on merits: **04.03.2020; 16:25-16:40**

[74] Ibid

3.5. Case of Tamliani, Budagashvili, Kupreishvili and Soselia

- **Indictment**

MIA carried out intensive investigation of the cases in connection with the June 20-21, 2019 events[75]. In the frame of the investigation, based on the judge's ruling, on July 4, 2019, MIA arrested four individuals: Zurab Budagashvili, Kakhaber Kupreishvili, Tsotne Soselia and Besik Tamliani. On July 5, 2019, the Prosecutor's Office of Georgia, officially brought charges against them under the Article 225 Part 2 of the CCG (participation in the group violence), accompanied by violence, raid, damage or destruction of another person's property, use of arms, armed resistance to or assault on representatives of public authorities. The crime is punished by imprisonment of four to six years.

Pursuant to the indictment, during the ongoing developments in front of the Parliament of Georgia, the defendants participated in the group violence, when they assaulted the police officers with different items and resisted them. Namely, Zurab Budagashvili several times attacked law enforcement officers with a club and used violence against them. Kakhaber Kupreishvili was throwing various subjects in the direction of the police, aggressively assaulted them and used violence against them. Tsotne Soselia attacked a law enforcement officer with a club and physically abused him. Besik Tamliani also assaulted several police officers[76].

On June 20, 2019 Besik Tamliani was arrested under the administrative law. The Tbilisi City Court sentenced him to 13-day administrative imprisonment but as a result of noisy protest demonstrations, he was released from prison on the fifth day[77]. Besik Tamliani stated that the grounds of the criminal proceedings and charges brought against him were the circumstances mentioned in the decision on his administrative imprisonment, where the prosecutor's office attached only one video-recording as an additional proof[78]. Besik Tamliani believes the criminal proceedings against him are unfair because he was already in administrative imprisonment for the same action. In accordance with the Constitution of Georgia, a citizen shall not be punished for one and the same action twice[79].

- **Trial monitoring**

On July 6, 2019, the Tbilisi City Court imposed imprisonment on all four defendants.

At the court hearing on November 8, 2019, the defense side made the introductory speeches[80]. On November 13, 2019 the interrogation of the witnesses started. Three experts - witnesses of the defense side were questioned, who conducted expertize of the video-recordings in

[75] See full information at https://bit.ly/3dp8qvm.

[76] HRC monitor's report from the trial monitoring, 29.02.2020; also see https://bit.ly/30r6gaz. Last seen 04.06.2020

[77] HRC monitor's report from the trial monitoring of Besik Tamliani's case. 29.02.2020; also see https://bit.ly/3hjmnua.

[78] See full information at https://bit.ly/3hjmnua.

[79] See the Article 31 Paragraph 8 of the Constitution of Georgia https://bit.ly/2zmeb7l

[80] HRC monitor's report from the trial monitoring of the case of the individuals charged for June 20-21 events 29.02.2020

connection with the June 20-21 case. Besik Tamliani did not attend that hearing[81]. The expertise of the video-recordings concluded that the concrete individuals, among them the defendants, participated in the June 20-21 protest demonstration. The experts did not conclude anything else from the expertise of the video-recordings. The action of the defendants, which became the basis to bring charges against them, was not examined and investigated[82]. *On November 27, 2019, there was noise during the court hearing – Zurab Budagashvili stated that in the penitentiary establishment he was forced to make testimonies against the opposition political leaders – Nikanor Melia, Giorgi Ugulava and Irakli Okruashvili. He said that he was threatened with the arrest of his relatives. Several days after his statement, Zurab Budagashvili's brother was arrested. Reportedly, the MIA arrested him under the charge of destroying the evidence obtained in the frame of the investigation of drug-related crime. The Tbilisi City Court imposed 2000 GEL bail on him[83].*

The mother of the defendant Zurab Budagashvili stated that the representatives of the law enforcement bodies permanently watched her. Human rights defenders and Zurab Budagashvili's mother requested to start investigation of this fact[84]. On December 4, 2019, it was announced during the court hearing that investigation was commenced into illegal surveillance[85].

Zurab Budagashvili, after his statement made in the courtroom, was placed in the isolation cell, which was next to a room, where a generator-like machine was working permanently and the defendant was bothered with the noise 24 hours. *The defense lawyer stated that it was done to punish him and this action can be assessed as equal to torture.* The representatives of the penitentiary department claimed that Budagashvili was moved out of the cell based on the request of his cell-mates.

On January 10, 2020, defendants Tsotne Soselia and Kakhaber Kupreishvili started hunger-strike[86]. On January 13, the defendants did not attend the trial, where the witnesses of the prosecutor's office were questioned in front of the judge[87]. The defense lawyer stated at the trial that Tsotne Soselia and Kakhaber Kupreishvili asked the prosecutor's office for plea-agreement. On January 17 and 20, none of the defendants attended the hearings. Kupreishvili and Soselia continued hunger-strike. The detainees protested the use of imprisonment term as a compulsory measure against them[88]. On January 22, two witnesses of the prosecutor's office were questioned together with the video-evidence during the trial. They failed to prove the charges brought against the defendants[89]. At the January 23 trial, where two witnesses of the prosecutor's office were questioned, only Kakhaber Kupreishvili and Besik Tamliani attended

[81] Ibid. Also see https://bit.ly/3csbel4/ Last seen 04.06.2020

[82] Ibid, also see https://bit.ly/2auyuxe.

[83] See full information at https://bit.ly/3e51qko. Last seen 04.06.2020

[84] See full information at https://bit.ly/3cv9psl. Last seen 04.06.2020

[85] HRC monitor's report from the trial monitoring of the case of the individuals charged for June 20-21 events 29.02.2020; also see https://bit.ly/3cv9psl. Last seen 04.06.2020

[86] HRC monitor's report from the trial monitoring of the case of the individuals charged for June 20-21 events 29.02.2020;

[87] Ibid

[88] Ibid

[89] Ibid

the hearing. The others did not appear in the courtroom in protest. On February 10 and 14, the witnesses of the prosecutor's office were questioned again. With the initiative of the judge, as two-month term of the pre-trial imprisonment was due to expire, the court considered the change of the compulsory measure. However, the judge did not change the compulsory measure and left the defendants in prison again[90].

At the trial on February 25, 2020 the lawyers of the defendants Kakhaber Kupreishvili and Tsotne Soselia solicited plea-agreement. ***On February 27, it was announced at the court hearing that the case of Zurab Budagashvili, Kakha Kupreishvili and Tsotne Soselia was to be examined separately. They admitted the imposed charges and negotiated the conditions of the plea-agreement[91]. At the March 6 court hearing, the prosecutor motioned to render judgment without main hearing of the case and to sign plea-agreement with the defendants.*** The judge examined the motion pursuant to the Article 212 of the Criminal Procedure Code of Georgia[92]. ***After he received "convincing" answers from the defendants, the judge approved the plea-agreement between the parties.***

According to the HRC assessment, the conditions of the plea-agreement were not substantiated in the case of these defendants either[93]. The court did not take into account and did not examine[94] the new circumstances as well as Zurab Budagashvili's statement about his intimidation in prison that contradicts the Article 2015 of the CPCG. According to the signed plea-agreement, Kakhaber Kupreishvili, Tsotne Soselia and Zurab Budagashvili were found guilty under the Article 225 Part 2 of the CCG and they were sentenced to 3-year imprisonment each though it was changed into a conditional, probation sentence. Above that, 2 000 GEL bail was imposed on each of them[95]. As the defendants stated, they pleaded guilty because the charges were politically motivated and consequently, "it was useless to stay in prison.[96]" ***Unlike them, Besik Tamliani has not pleaded guilty and refuses to sign plea-agreement.***

On March 6, 2020, another hearing of Besik Tamliani's case was held in the court. Two witnesses of the prosecutor's office were questioned – they were employees of the MIA. They spoke about the factual circumstances they were aware of. However, none of them could confirm that Besik Tamliani was in the Rustaveli Avenue. They could not recall whether they had noticed the defendant on the site of violence. On March 13, the court continued examination of the video-tape requested from the MIA's press-center. The other evidence were also examined. Besik Tamliani's contact with almost all items withdrawn during the search was not confirmed. In the end of the hearing, the defense side solicited to change imprisonment into

[90] Ibid
[91] Ibid
[92] See the Article 212 of the Criminal Procedure Code of Georgia at https://bit.ly/2AR5UQv
[93] See the Article 210 of the Criminal Procedure Code of Georgia https://bit.ly/2AR5UQv
[94] See the Article 215 of the CPCG https://bit.ly/2AR5UQv
[95] HRC monitor's report from the trial monitoring of the case of the individuals charged for June 20-21 events; plea-agreement: 06.03.2020
[96] Ibid

1000 GEL bail. The judge refused to satisfy the solicitation because no new circumstances were presented during the hearing (Article 206 of the CPCG[97]).

On March 23, 2020 Besik Tamliani was released from prison. Although the defense side did not mention new circumstances the judge did not satisfy their solicitation based on that argument on March 13. It must be noted that Besik Tamliani's 9-month pre-trial imprisonment was due to expire on April 4[98]and it could become the ground to change the measure of constraint against him. In this light, measure of constraint – imprisonment was changed into 4 000 GEL bail against Besik Tamliani[99]. Above that, the defendant is deprived of the right to leave Georgia and was ordered to hand in his passport to the investigative body.

According to the defense side's assumption, although the case files cannot prove Besik Tamliani's guiltiness, the court will most probably pass guilty verdict against him for the commission of the crime punishable under the Article 225 Part 2 of the CCG (participation in the group violence), otherwise verdicts against other individuals and legitimacy of plea agreements with the other defendants will be questioned and it will create negative impression about the alleged political motives in the June 20-21 related criminal cases in the society. Also, the court may requalify the charge into a less grave crime and pass guilty verdict afterwards.

- **Assessment of Zurab Budagashvili's solitary confinement**

Pursuant to the position of the ECtHR, the removal from association with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or degrading punishment. In assessing the fact, regard must be had to the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned[100]. Any form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation, special care units or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security, shall always be subject to authorization by law[101]. Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence[102]. Isolation for uncertain or prolonged period of time shall be viewed as ill-treatment and is prohibited[103]. In accordance with the European Prison Rules, solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible[104]. The decisive body (the court) shall primarily determine whether

[97] See the Article 206 of the CPCG https://bit.ly/2AR5UQv

[98] HRC monitor's report from the trial monitoring of Besik Tamliani's case, 23.04.2020

[99] See full information at https://bit.ly/2xvseyx.

[100] See Van der Ven v. The Netherlands Application no. 50901/99, ecthr ruling February 4, 2003 paragraph 51 available at https://hudoc.echr.coe.int/eng#{"itemid":["001-60915"]}

[101] See the Nelson Mandela's Rules, Rule 37 https://undocs.org/A/RES/70/175; UN Committee against Torture also believes it is inadmissible to isolate a prisoner based on the court ruling: see CPT's 21st general report Paragraph 56(a)

[102] See the Nelson Mandela's Rules, Rule 45 paragraph 1 https://undocs.org/A/RES/70/175;

[103] See the Nelson Mandela's Rules, Rule 45 paragraph 2 https://undocs.org/A/RES/70/175;

[104] See the European Prison Rules, Rule 60.5 https://bit.ly/3hksj2p

the special regime was regulated by the law (principle of legality) and whether it serves the legitimate objective to ensure public safety, to prevent disorder and crime; it shall evaluate the criteria of proportionality in relation with the estimated objective (necessity in the democratic society)[105]. ***In Zurab Budagashvili's case, it is unclear and unsubstantiated, there are no factual circumstance and argument why such a severe punishment was applied against him. We may declare that his solitary confinement was equal to the action prohibited by the Article 3 of the European Convention on Human Rights, which prohibits torture, inhuman and degrading punishment or treatment[106].***

3.6. Case of Moris Machalikashvili and Bezhan Lortkipanidze

- **Indictment**

Moris Machalikashvili was cousin of Temirlan Machalikashvili, killed as a result of the special operation in the Pankisi Gorge on December 26, 2017. He, for more than one year, together with his uncle Malkhaz Machalikashvili had been requesting fair investigation of Temirlan Machalikashvili's murder and punishment of perpetrators in front of the Parliament of Georgia.

On July 26, 2019, Moris Machalikashvili was arrested[107] based on the Article 225 Part 2 of the CCG together with Bezhan Lortkipanidze, who was the head of the conservation program of the Conservation Center Nakresi and a researcher of the National Geographic.

The Prosecutor's Office of Georgia blamed Moris Machalikashvili and Bezhan Lortkipanidze for the participation in the group violence during the June 20-21, 2019 protest demonstration in front of the Parliament of Georgia. With regard to Lortkipanidze, the MIA stated that he "*was particularly aggressive towards police officers, verbally and physically assaulted them and tried to break their cordon with force*"[108] The Prosecutor's Office blamed Machalikashvili, too for the violence against law enforcement officers.

- **Trial monitoring**

On July 27, 2019, the Tbilisi City Court made decision on the measure of the constraint against Moris Machalikashvili and Bezhanishvili and sent them to pre-trial imprisonment. The Tbilisi Appellate Court upheld the decision of the Tbilisi City Court with regard to Moris Machalikashvili's case. These judgments, like the court decisions on the cases of other defendants reviewed in this survey, are superficial and unsubstantiated. The court abstractly indicates that there are legal grounds to use imprisonment against the defendants. However, their arguments are not well-substantiated, which concrete evidence in the case files created

[105] See (Harakchiev and Tolumov v. Bulgaria), Applications nos. 15018/11 and 61199/12, July 8, 2014, available at http://hudoc.echr.coe.int/eng?I=001-145442. Paragraphs 203-214 and 260.
[106] See the Article 3 of the European Convention on Human Rights, available at https://www.echr.coe.int/Documents/Convention_ENG.pdf
[107] See the Article 225 of the CCG at https://bit.ly/3hirbhr
[108] See full information at https://bit.ly/2Uy8phb. Last seen 04.02.2020

assumption that real threat was coming from Bezhan Lortkipanidze and Moris Machalikashvili to hide from justice, hinder execution of justice or influence the witnesses. Imprisonment term against Machalikashvili was left in force during the pre-trial session too, though the defense side claimed there were no grounds to keep him in prison. Neither the petition to drop criminal prosecution against Machalikashvili because of lack of sufficient evidence was satisfied during the pre-trial session[109].

On August 2, 2019, the Human Rights Education and Monitoring Center (EMC) published the preliminary observations on Moris Machalikashvili's case. According to the EMC, the information presented by the Prosecutor's Office did not prove that Moris Machalikashvili had committed an act prescribed under Article 225 of the Criminal Code of Georgia. Namely, the presented evidence did not create a reasonable doubt to state that Moris Machalikashvili had an intent to act violently against Police and that he exercised offending, attacking, repeating and intense violence for that purpose. The video recording, which is the main and the only evidence, shows that he was trying to be next to his uncle, he was substantively in passive position and when he got crushed as a result of pushing between the Police and the protesters, he tries to escape from the crush. That time he moves his hand and accidentally, only once, touches the Police shield. The video tape does not show that he is attempting to break or attack the Police cordon, to exercise violence against the Police, to grab police equipment or even to attempt the self-defense[110].

On August 1, 2019, the Appellate Court examined the case of Bezhan Lortkipanidze. Before that, his wife stated that "his arrest was politically motivated and it was an example of selective justice"[111]. On August 10, 2019, the court changed the measure of constraint against Bezhan Lortkipanidze into 5 000 GEL bail[112].

At the hearing on September 17, 2019, the court left Moris Machalikashvili in imprisonment. As for the motion of Bezhan Lortkipanidze's lawyer to terminate criminal proceedings against his client, the judge did not satisfy it.

At the hearing on September 24, 2019, the judge did not satisfy any motions of the defense side again[113]. Moris Machalikashvili's lawyer Keti Chutlashvili stated that the defense side requested to remove one of the police officers from the list of witnesses. In his June 20, 2019 report the police officer wrote that he had received an operative information that Moris Machalikashvili "actively participated in various violent actions." The judge did not satisfy this solicitation

[109] See EMC's comment https://bit.ly/2Ao0bBu. Last seen 04.06.2020

[110] See the EMC's preliminary observation on Moris Machalikashvili's case at https://bit.ly/30xwfss

[111] See the statement of Bezhan Lortkipanidze's wife https://bit.ly/30Rmn1I. Last seen 07.06.2020

[112] HRC monitor's report from the trial monitoring of the case of the individuals charged for June 20-21 events; also see https://bit.ly/2AWT6aW. Last seen on 29.02.2020

[113] Ibid

either. According to the defense side, none of the witnesses stated that Moris Machalikashvili was participating in the violence[114].

On October 7, 2019, the court started trial on merits on the case. At the trial on October 8, 2019, the defense side made introduction speech. The hearing was postponed based on the motion of the prosecutor because he had another parallel hearing at the same time. On October 15, the defense side requested to change the imprisonment into a bail but it was not satisfied.

According to Moris Machalikashvili's lawyer, the evidence presented at court hearings were absolutely identical. They were composed of the interrogation protocols and big part of the interviewees were police officers[115]. Also the prosecutor's office presented a video-tape and examination reports from the site of incident, which were not relevant to alleged criminal offence committed by Machalikashvili[116].

At the trial on November 13, 2019, the defense side declared mistrust towards the witnesses, as they could not recall the events of June 20-21, 2019. At the trials on November 25 and December 19, the witnesses of the prosecutor's office – three police officers were questioned. According to the defense lawyer, none of them stated that Moris Machalikashvili used violence against police officers. Also, the testimonies of the witnesses did not match. On January 14, 2020, two more witnesses were questioned in the court but the third one did not appear, for what the process was postponed. On January 21, two more police officers were questioned. Their testimonies failed to prove the guiltiness of Bezhan Lortkipanidze in the imposed criminal charge.

On February 3, 2020, Moris Machalikashvili's lawyer Mariam Kublashvili petitioned the court to separate Machalikashvili's case from the main case. She also solicited to declare the evidence of the prosecutor's office non-disputable. The negotiations were going on plea agreement. The prosecutor's office and the defense side could not agree on the part of accusation, they had imposed on Moris Machalikashvili – namely, his participation in the state coup. The prosecutor, as Bezhan Lortkipanidze found the evidence disputed, solicited to separate Moris Machalikashvili's case from the main case.

On February 6, 2020, plea agreement was signed with the defendant Moris Machalikashvili and he was released from the courtroom[117]. The Tbilisi City Court approved the plea agreement between the parties, found Machalikashvili guilty of the crime punishable by the Article 225 Part 2 of the CCG (participation in group violence) and sentenced him to 2-year conditional sentence[118]. Moris Machalikashvili stated that he pleaded guilty but did not agree with the imposed charge in relation with his intention to break into the parliament. He said that he was protecting his uncle – Malkhaz Machalikashvili.

[114] Ibid

[115] See full information at https://bit.ly/2Ao18d2. Last seen 04.06.2020

[116] See full information at https://bit.ly/3hi6tmi. Last seen 04.06.2020

[117] See full information at https://bit.ly/3hdozi9. Last seen 04.06.2020

[118] See full information at https://bit.ly/2yhnjvu. Last seen 04.06.2020

On February 11, 2020, at the trial on merits, the prosecutor's office solicited to add new evidence to the case files. They said, that Moris Machalikashvili's case was separated from Bezhan Lortkipanidze's case, where the parties signed plea agreement and the court passed guilty verdict. This case was directly connected with the accusation against Bezhan Lortkipanidze, for what the prosecution solicited to add the verdict passed against Machalikashvili to Lortkipanidze's case. The solicitation was satisfied. The witness of the prosecutor's office was questioned at the same hearing, who spoke about the developments in front of the Parliament on June 20-21, 2019.

On February 20, 2020, the witnesses of the prosecutor's office were questioned. They did not say that the defendant used violence against the police officer or tried to break into the parliament. Two more witnesses were questioned at the trial on March 11. Afterwards, due to the spread of the Novel Coronavirus, the court did not hold hearings of the case[119].

4. PRACTICE OF PLEA AGREEMENT

Individuals arrested during the June 20-21 events, mostly were released based on plea agreement or under the bail[120]. In accordance with the Article 209 of the Criminal Procedure Code of Georgia, plea agreement means to pass a verdict without a trial on merits, when the defendant pleads guilty and agreement on the accusation or punishment is achieved[121]. In the examined cases, it is important to note that, often the defendants have to accept extremely severe conditions as they have to admit to the crimes, which they may not have committed and above that there are no neutral evidence to prove their guiltiness besides the testimonies of the police officers. The defendants need to make similar choice when imprisonment is used as a measure of constraint against them. The courts, mostly, rely on the testimonies of the law enforcement officers, who are questioned by the prosecution as witnesses in the court proceedings. The judges, mostly accept their testimonies as valid evidence.

At the same time, it shall be taken into account that the court is authorized to offer the parties to change the conditions of the plea-agreement that shall be agreed with the senior prosecutor[122]. The defendant has right to reject the plea-agreement at any stage of court proceedings before the verdict is passed but the prosecutor enjoys a wide discretion to offer the measure of punishment[123]. As for the judge, who is not authorized to interfere in the negotiations and independently, in due respect to reasonability, change the conditions of the agreement[124], may approve the plea agreement or reject it[125].

[119] HRC monitor's report from the trial monitoring of the case of the individuals charged for June 20-21 events; 31.03.2020
[120] HRC monitor's report from the trial monitoring of the case of the individuals charged for June 20-21 events; trial on merits; 20.11.2019; 16:10- 16:12
[121] See the Article 209 Part 1 of the CPCG
[122] See Article 210, Part 1 of the CPCG
[123] See Article 210 Part 2 of the CPCG
[124] See Article 210 Part 6 of the CPCG
[125] See Article 210 Part 3^1 of the CPCG

When making a decision on the plea-agreement, the court shall examine whether the accusation is substantiated, whether the requested punishment is just and whether there are valid evidence to prove the guiltiness of the defendant, etc.[126] However, these requirements were not met in the criminal cases related with the June 20-21 events. Furthermore, the representatives of the defense side told Human Rights Center that plea agreement in the surveyed criminal cases was "purposeful policy" of the law enforcement bodies, as in similar cases, for various reasons, the defendants admit the charges brought against them.

The plea-bargain has become a topic of study and criticism in Georgia many times. The problems of the plea-bargain are related with the weak legislative guarantees and the use of the plea-agreement for such an unlawful objectives like: depositing money to the state budget, inappropriate influence on the defendant in the course of investigation and more. In response to that, the judicial authority has only formal and weak control role to combat the use of the plea-agreements for unlawful goals.

5. PRACTICE OF THE USE OF THE MEASURES OF CONSTRAINT

It also constitutes a problem that the prosecutor's office often fails to provide sufficient evidence to create factual and formal grounds for the use of the measure of constraint. Relatively, the court judgments are abstract and unsubstantiated. The solicitations of the prosecutor's office on pre-trial imprisonment are mostly banal and rely on general allegations. The measures taken by the investigative body, in some instances, make an impression that they do not aim to comprehensively and impartially investigate the case but form a negative opinion about the defendant in the society. For example, Zurab Budagashvili was associated with the political party United National Movement, that created various perceptions about him for objective observers[127]. Also, biased and tendentious was the edited video-tape[128] aired by the MIA in connection with Bezhan Lortkipanidze's case, which was different from the full video-tape aired by the media at a later stage[129].

Article 3 Part 11 of the Criminal Procedure Code of Georgia determines the standard for the use of the measure of constraint[130]. Namely, in order to impose a measure of constraint on an individual, it is necessary to have substantiated assumption – unity of facts or information, which will encourage an objective person to conclude that the defendant allegedly committed the crime. In the abovementioned criminal cases, although the prosecutor's office had formulated the charges in accordance with the provision in the CPCG, the provided case files failed to create substantiated assumption that the convicts/defendants participated in the violent action, moreover, they assaulted the police officers. In order to prove the participation of an individual in group violence, the prosecutor's office shall collect such evidence, which

[126] See Article 210 Part 3 of the CPCG

[127] See full information at https://bit.ly/2udhyom. Last seen 04.06.2020

[128] See the video released by the MIA at https://bit.ly/2c5odsm. Last seen 03.06.2020

[129] See the video aired by media sources at https://bit.ly/2zaeyc0. Last seen 03.06.2020

[130] See Article 3 Part 11 of the CPCG

clearly demonstrated the intention of the individual to participate in the group violence, attack law enforcement officers and support group violence with his/her activities.

In this particular case, unity of facts and information in the indictment and case files – witness testimonies, search and evidence withdrawal protocols, examination protocols, expertise conclusions, have general character and are not sufficient basis not only for the accusation but also for the use of imprisonment as a measure of constraint.

The European Court of Human Rights[131] and the Criminal Procedure Code of Georgia[132] believe that the significant grounds to use the imprisonment as a measure of constraint are: the threat that the accused may hide from justice, or may destroy evidence, or influence the witnesses, hinder the rendering of justice or may continue committing a new crime. The imprisonment will be justified if the accused creates real and significant threat to the society and this threat cannot be neutralized otherwise. These circumstances and factors were absent in the abovementioned criminal cases.

Furthermore, in accordance with the Article 205 Part 1 of the CPCG, remand detention as a measure of restraint shall be applied only if it is the only means to prevent the accused from hiding and from interfering with the rendering of justice; from interfering with the collection of evidence; and from committing a new crime. These risks were absolutely unsubstantiated by the prosecution in the abovementioned cases.

Comparative analysis of the cases of the law-enforcement offices and protest participants detained in relation with the June 20-21 events revealed that the State often demonstrated different approach to similar cases, without reasonable and impartial grounds, that was demonstrated into the commencement of the criminal prosecution against the protesters who were sent to prison; above that, the court used the pre-trial imprisonment against all accused protesters based on banal, abstract and often identical solicitations of the prosecutors.

6. SELECTIVE JUSTICE

The Article 14 of the Constitution of Georgia guarantees that all individuals are equal before the law. The principle of equality before the law means equal respect for the human rights and basic freedoms of all individuals, who are in equal conditions and have adequate approach to the issue regulated by the law. The principle includes the legislative activities of the government, in order to grant equal privileges to the individuals in equal conditions and environment and to impose equal responsibilities on them. Different legislative regulation will not be considered to be a violation of the equality principle before the law. A law-maker has right to determine different conditions by the law, but the difference shall be substantiated, reasonable and appropriate. At the same time, it should ensure equal level of differentiation for the individuals in similar situations.

[131] See the ecthr ruling on Van Alphen v. The Netherland, 305/1988, Strasbourg July 23, 1990, https://bit.ly/3h6meix.
[132] See the Article 205 of the CPCG

When determining the violation of the Article 14 of the European Convention on Human Rights (prohibition of discrimination), the ECtHR relies on the following criteria: the Article 14 is violated if it observes: a) differentiated approach towards equal cases without reasonable and objective grounds and b) proportionality between the objective and the means used to achieve the objective is not ensured.

The principle of equality before the law requires the State to have adequate response to all violations whether they were committed by a protester or a police officer, to start respectively procedural and investigative activities, and to conduct them impartially and transparently. All similar reactions shall be performed in due respect of the Constitution and international standards, shall meet requirements of the law and satisfy high standard of substantiation, and shall provide the society with information about the conducted activities.

Criminal and administrative proceedings started against the demonstrators at night from June 20 to June 21 and afterwards were some of the examples of the selective justice in the state. An obvious difference between the number of the citizens injured and convicted for the June 20-21 events and the number of the law enforcement officers injured and convicted for the same actions prove the selective justice of the State institutions.

According to official data, June 20-21 events resulted in 275 victims who suffered bodily injuries of various severity, among them 187 were civilians, 39[133], and 73 employees of the Interior Ministry. 28 persons had to undergo surgery due to the sustained injuries. Of these, 8 underwent an ophthalmologic operation and 4 had a neurosurgical surgery[134]. It has been confirmed that 3 civilians lost their eyes due to the inflicted trauma- Mako Gomuri, Giorgi Sulashvili and Koba Letodiani[135]. Davit Kurdovanidze, can see only light from his injured eye, on which he had undertaken five surgical operations[136]. Letodiani is blind in both eyes because he had lost sight in one eye during the 1990s war in Abkhazia and then lost the sight in his second eye during the dispersal of June 20 protest demonstration. By now, the prosecutor's office has granted the victim status only to 8 citizens. However, 68 employees of the MIA received the victim status in relation with the June 20-21 events. So, the other people who received injuries do not hold official status of victims so far that means they do not have access to their criminal case files[137].

In the frame of the investigation conducted by the MIA, charges were brought against 17 participants of the protest demonstration, and all of them were sentenced to pre-trial imprisonment while the prosecutor's office used commenced criminal prosecution only against three police officers and the court sentenced only one law enforcement officer to imprisonment that was later changed into a bail.

It is a problem to grant victim status to the people who inflicted injuries. Initially, together with other people, the prosecutor's office refused Mako Gomuri and Giorgi Sulashvili to grant victim

[133] See the list of injured journalists at https://bit.ly/3e1fy1m. Last seen 04.06. 2020

[134] See the GYLA's Legal Analysis of the June 20-21 Events "Beyond the Lost Eye" at https://bit.ly/3ekoa4w

[135] See full information at https://bit.ly/3e1ftke. Last seen 04.06.2020

[136] see full information at https://bit.ly/3esnmlt

[137] See the Article 56 of the CPCG https://bit.ly/2zou1kl

status who lost eye as a result of shot rubber bullets[138]. However, after a months-long fight, they received the status[139]. Like other individuals, the journalists, who received grave injuries, have not yet received the status[140].

Human Rights Center defends legal interest of three journalists injured during June 20-21 events – Merab Tsaava (Guria News), Beslan Kmuzoff (Caucasian Knot) and Zaza Svanadze. HRC several times petitioned the Prosecutor's Office of Georgia for the victim status of the journalists but they refused each time. After the refusal, the HRC lawyers appealed the Tbilisi City Court to claim the victim status for Beslan Kmuzoff, Merab Tsaava and Zaza Svanadze. On December 9, 2019, the collegium of the Tbilisi City Court on criminal investigation, pre-trial session and trial of merits decided to decline the petition of the HRC without substantial consideration of the case files and positions of the parties. According to the HRC, the applicants could not enjoy their right to fair trial[141].

After the HRC applied to all legal mechanisms to request the Prosecutor General's Office to grant victim status to the journalists and to conduct timely, effective and unbiased investigation of their cases, the organization appealed the Strasbourg Court to determine the violation of the Article 10 (Freedom of Expression), Article 11 (Freedom of Assembly and Association) and Article 13 (Right to an Effective Remedy) of the European Convention on Human Rights. The ECtHR accepted the applications of HRC submitted on behalf of the three journalists[142].

The state has not yet taken steps to identify and punish the perpetrator law enforcement officers. At the same time, the Minister of Interior did not take over the political responsibility for the violations; neither the systemic problems revealed during the dispersal of the demonstration were analyzed and considered. The crimes allegedly committed by police officers, except few cases, the Prosecutor's Office of Georgia did not evaluate the responsibility of the senior officials of the MIA.

In accordance with the special report of the Public Defender of Georgia, three cases were separated from the main criminal cases commenced against the law enforcement officers, where the necessary evidence to launch criminal proceedings against the three police officers for injuring the citizens with physical violence and groundless use of non-lethal weapon was obtained as a result of the investigative activities carried out in July-August, 2019[143]. The prosecutor's office solicited the court to use imprisonment as a measure of constraint against the three defendants, one of who was sentenced to imprisonment (which was later changed into a bail) and the other two were released under the bail[144]. According to the Public Defender's

[138] See full information at https://bit.ly/3fgntto. Last seen 04.06.2020

[139] See full information at https://bit.ly/3fkbp42. Last seen 04.06.2020

[140] See full information at https://bit.ly/3d0ypp1. Last seen 04.06.2020

[141] See the Article 6 of the European Convention on Human Rights and Fundamental Freedoms https://bit.ly/2ATK0Mv

[142] See the press-release of HRC at https://bit.ly/2bpkv7r

[143] See the Special Report of the Public Defender of Georgia, Interim Report of the Investigation of June 20-21 Events, p. 26, 2020 https://bit.ly/2UF7Sdi.

[144] Ibid, p 27

assessment, the examination of the case files did not reveal the circumstances which could satisfy lawful obligation of the police officers' imprisonment as there was no threat of their hiding from and hindering of rendering the justice, hindering collection of evidence and concrete threat of committing a new crime[145]. As for the prosecutor's office solicitation on imprisonment, they acted to mitigate the negative feelings of the society to their request for less grave measure of constraint.

The Tbilisi City Court has not yet passed verdict over the criminal cases against the law enforcement officers. HRC monitors the hearings of those cases in the court.

7. CONCLUSION

Grave human rights violations, violations committed by police officers and practice of the criminal prosecution commenced in relation with the June 20-21 events raise many questions over the selective justice of the state towards concrete individuals, purposeful commencement of the criminal cases that instead elimination of the systemic miscarriages turned into the punishment and imprisonment of the protesters. The examination of the cases revealed that the investigation often had the only goal – to use imprisonment as a measure of constraint.

The survey revealed that:

- ✓ *The investigation into the cases related with the June 20-21 events is conducted in two directions: organization, leadership and participation in the group violence and into the facts of the use of excessive force against demonstrators from the side of police officers. The evident difference between the number of the demonstrators, who were injured and convicted for the June 20-21 events and the number of the police officers, who were also injured and convicted for the same actions on the same days, demonstrates that activities of the investigative bodies in some instances aim to punish the protesters and send warning messages to the participants of future protest demonstrations;*
- ✓ *In Irakli Okruashvili's case, solicitation of the Prosecutor General's Office of Georgia on the request of pre-trial imprisonment was unsubstantiated and banal. The motion relied on the abstract allegation and suspicious assumptions. All witnesses in the court, when the measure of constraint was discussed, were police officers;*
- ✓ *The prosecutor's office motion on the imprisonment of Nikanor Melia was also banal and the motive to use the pre-trial imprisonment as a measure of constraint was not adequately substantiated either. Besides, the Tbilisi City Court's ruling to suspend and later to terminate the authority of the parliamentarian for Nikanor Melia was not substantiated either. The Prosecutor General's Office referred to several cases processed by the ECtHR to justify its motion, but majority of them were not relevant to Nikanor Melia's case;*
- ✓ *In Giorgi Rurua's case the following legal miscarriages were identified: 1) his right to have access to defense was violated; 2) the right/obligation to clarify rights and responsibilities to the defendant was not respected by police officers; 3) commencement of the criminal proceedings*

[145] See Article 205 Part 1 of the CPCG

against the defendant for his refusal to take test based on the Article 381 Part 1 of the CCG (failure to enforce the court ruling) was problematic; 4) the issue of proportionality of interference when taking the test was problematic; and more.

- ✓ *The Tbilisi City Court, when suspending the authority of the Member of the Parliament, did not consider well-grounded evaluations of the Public Defender of Georgia in her Amicus Curiae; as a result, Nikanor Melia's rights of the Member of Parliament was unlawfully terminated. The Tbilisi City Court and the Appellate Court, in the course of the case examination, did not consider the case in complicity of the Constitution of Georgia, Criminal Procedure Code of Georgia and the Rules of Procedures of the Parliament of Georgia. At the same time, the Court did not take the MP's immunity into account at all;*
- ✓ *The rulings on the pre-trial imprisonment, verdicts and other decisions were abstract and unsubstantiated. The survey identified a tendency that plea agreements were not signed with almost all of the detainees (approximately 98%) based on the first solicitations claiming that they were not substantiated. However, afterwards, before the nine-month pre-trial imprisonment term was due to expire, without identifying new circumstances in the case files, the court used to approve the plea-agreements between the prosecutor's office and the defendant; afterwards the Court passed guilty verdicts and released the defendants from the courtroom. This problem is particularly acute with regard to the use of the pre-trial imprisonment. This approach comes in conflict with the standards established by the Georgian Legislation and the Case Law of the European Court of Human rights, which were reviewed above.*
- ✓ *There is an assumption that plea-agreements are the results of the purposeful policy of the prosecutor's office and the court, because in similar cases, the individuals admit the imposed charges and the Court passes guilty verdicts.* ***Nowadays, only Bezhan Lortkipanidze and Besik Tamliani of the people convicted for the June 20-21 events do not plead guilty and do not agree to sign the plea-agreement.***
- ✓ *In the course of the investigation carried out by the MIA, charges were brought against 17 participants of the protest and imprisonment was used as a measure of constraint against all of them; however, the prosecutor's office started criminal prosecution only against three police officers and the court sent only one of them to pre-trial imprisonment. Finally, the police officer was released under bail.*
- ✓ *The issue of granting the victim status was also problematic. As of now, only 8 civilians have victim status, while 68 officers of the MIA hold the status;*
- ✓ *The prosecutor's office and the court refuse to grant victim status to the injured protesters and journalists without any clarifications.*