

# MONITORING THE COURT PROCEEDINGS OF THE CASES WITH ALLEGED POLITICAL MOTIVES



## Summary Report



2022

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Non-governmental organization the HUMAN RIGHTS CENTER (HRC) was founded on December 10, 1996 in Tbilisi, Georgia. The HRC aims to increase respect for human rights, fundamental freedoms and facilitate the peace-building process in Georgia.

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- Human Rights House Network; [www.humanrightshouse.org](http://www.humanrightshouse.org)
- Coalition for International Criminal Court; [www.coalitionfortheicc.org](http://www.coalitionfortheicc.org)

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## INTRODUCTION

The Report below reflects the outcomes of the monitoring of the court proceedings of the criminal and administrative cases with alleged political motives for the period between February 1, 2021, and November 30, 2021. The report also presents the results of the monitoring of the ongoing court hearings on the fact of assault on a media representative allegedly for political reasons.

As a result of trial monitoring, Human Rights Center collected valuable and comprehensive information. With the collected information, the tendencies in the court proceedings of the criminal and administrative cases were evaluated, violations into the allegedly politically motivated, high-profile criminal cases were identified and analyzed. The Report reviews those issues, which made it necessary to start the trial monitoring as well as evident problems observed during the monitoring of the court proceedings of criminal and administrative cases.

Like in 2020, the national and international standards of fair trial are not met. At the same time, in 2021, allegedly politically motivated court proceedings of both administrative and criminal cases against the representatives of the political parties and civil society increased.

Human Rights Center monitors the criminal cases that are allegedly politically motivated in the general courts of Georgia within the frames of the project Legal Aid and Human Rights Monitoring. The Project of monitoring the court proceedings, which was commenced in 2020<sup>1</sup>

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<sup>1</sup> Note: throughout the 2020-2021 project the HRC prepared 12 analytic documents, 2 interim and 2 summary reports, among them: 1) Report - Legal Assessment of the Criminal Cases Ongoing against Giorgi Ugulava. <https://bit.ly/33SqhZx>. 2) Legal Analysis of the Cases connected with the Events of June 20-21, 2019, <https://bit.ly/2XUIHFh>. 3) Legal assessment of ongoing criminal cases against Irakli Okruashvili. <https://bit.ly/31NEpka>. 4) Criminal Case of Giorgi Rurua: legal analysis <https://bit.ly/2CkSOfd>. 5) Legal Assessment of ongoing Criminal Case against Nika Gvaramia: <https://bit.ly/33NghAb>. 6) Monitoring the Court Proceedings of the Cases with alleged Political Motives: Interim Report: <https://bit.ly/2JZ0eZh>. 7) Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report: <https://bit.ly/2X54qNc>. 8. Monitoring the Court Proceedings of the Cases with Alleged Political Motives – Interim Report, 2021 <http://www.hrc.ge/290/eng/>; 9. Cases Connected with the Events of June 20-21, 2019: A Political Justice and Disputed Amnesty, Legal Analysis, 2021 <http://www.hrc.ge/files/1032021%20ivnisis%20movlenebi-en.pdf>

continued in 2021 from February 1, 2021, 1 to December 30, 2021<sup>2</sup>.

From February 1, 2020 to November 30, 2021 the Human Rights Center's court monitors monitored court proceedings of 42 criminal and administrative cases. In 2021, the monitors attended 140 court hearings of 42 cases during 11 months.

The court finished examination of one part of the 42 cases; second part is still examined in the first instance court and some of them are heard in the Tbilisi Appellate Court.

On October 11-19, 2021, the representatives Human Rights Center (HRC) and the International Federation for Human Rights (FIDH) met with the representatives of the European Parliament. The meeting with the European officers was organized by the FIDH<sup>3</sup>. During the meeting, the representatives of HRC presented the information about the progress of legal proceedings with alleged political motives and the reports prepared by HRC on the cases with alleged political motives. Further, HRC provided information about gaps and trends identified during the monitoring of assemblies and demonstrations. During the meeting, the parties mentioned the gaps and challenges in the field of justice administration and judicial authorities.

In September 2021, the HRC and FIDH released a joint document - Update on the human rights situation in Georgia<sup>4</sup>, which reviews the Municipal Elections 2021 and political context, issues related with the independence of judiciary authority, right to freedom of peaceful assembly and secret surveillance problem.

All in all, like in 2020, in 2021 too, disproportionality of criminal proceedings launched against politicians and activists, alongside with material and procedural violations, creates well-grounded doubts on the national and international levels over the selective justice and political motives into the criminal and administrative cases reviewed in this report.

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<sup>2</sup> Note: As part of the project, Human Rights Center court monitors have monitored a total of 221 court hearings from February 2020 until November 30, 2021.

<sup>3</sup> See the statement of the HRC: <http://www.hrc.ge/300/eng/>

<sup>4</sup> See: Update on the human rights situation in Georgia: International Federation for Human Rights (FIDH) Human rights Centre (HRC) Georgia September 2021 <http://hrc.ge/files/172update%20on%20HR%20situation.pdf>

## **METHODOLOGY**

The monitoring over the cases with alleged political motives was carried out by the methodology of court proceedings monitoring elaborated by Human Rights Center with the participation of the field experts aiming at the legal assessment of the compliance of the court proceedings under the monitoring and that of the national legislation with the international standards of a fair trial, further aiming at identifying and analyzing possible deficiencies in the proceedings of the cases of criminal and administrative offenses, further identifying and analyzing the alleged political motives of the government.

The monitoring of the court proceedings was carried out by three legal monitors who received special training on the court monitoring. In order to conduct monitoring in the right manner, a special questionnaire for court monitoring was developed at the initial stage. After each court hearing, the legal monitors process the information received from the court hearing later analyzed and applied by the legal analyst for the relevant reports. In each published document, the analyst has analyzed the compliance of the court proceedings with the international standards, the Case Law and the international obligations.

The report below relies on various documents published in the frame of the court monitoring of the selected cases and the findings of the previous surveys. At the same time, the indictments, motions of the defense side and prosecutor, court decisions, interim judgments, verdicts/judgments in the case files were also analyzed.

The court monitoring is based on the strict principles of objectivity and non-interference in the court proceedings. Along with the principles of non-interference, impartiality, and objectivity, with a purpose to consider the independence of the court authorities, the Human Rights Center makes the information available regarding the court hearings and the opinions to the parties of the proceedings, media, and the public.

### **THE CASES WITH ALLEGED POLITICAL MOTIVES**

A total of 42 cases have been monitored by HRC since February 2020 to present, hearing of some of which are currently completed in the courts.

**1. The Case of Mamuka Khazaradze, Badri Japaridze and Avtandil Tsereteli.** The former Chair of the Supervisory Council of TBC Bank, Mamuka Khazaradze, and his deputy, Badri Japaridze (at the time being the leaders of the political organization Lelo for Georgia and members of the Georgian Parliament) are charged under article 194(2)(a) and (3)(c) of the Criminal Code envisaging the legalization of illicit income in large amounts carried out by an organized group. While the charges brought against the father of the owner of TV company TV Pirveli, Avtandil Tsereteli, imply the assistance in the legalization of illicit income (article 25 and article 194(2)(a)(3)(c) of the Criminal Code). The criminal case is on the stage of hearing on the merits in Tbilisi City Court. The presiding judge is Giorgi Ebanoidze within the same court. At this stage of the hearing, some pieces of evidence are being examined and witnesses are interrogated.

**Outcomes of the court monitoring:**

From February to November 30, 2021, 8 court hearings were held on the case. The court proceedings are delayed that may result into the violation of the right to rapid and effective justice.

At the trials, the conclusions prepared by the Kingdom of the Netherlands was examined. The witnesses of the prosecution were interrogated. The witness testimonies cannot prove that the defendants committed the criminal offence. As for the conclusion, the prosecution had applied to the Kingdom of the Netherlands for legal assistance, and after receiving a reply from there opted not to give the opinion in evidence as of the case file. The defense wanted to enter the opinion into the case file as evidence along with some important documents as attached. The prosecution disagreed with the defense and stated that the prosecution would agree to the inclusion of the opinion in the criminal case file as evidence only where the documents attached to the opinion were presented in full amounting to 203 pages as submitting them “in portions” to the court would change the entire context.

The defense disagreed with the prosecution. Further, the defense disagreed with the motion of the prosecution to include the rest of the documents as evidence. The defense noted that at the previous hearing the prosecution had refused to submit the opinion of the Dutch Government as evidence. The judge mentioned the same reminding the prosecution that



they had refused at the previous hearing to place the opinion and the relevant documents in the case file. Eventually, the parties agreed that the CD mentioned by the prosecution would be handed over to the defense, and where a sheet enlisting the opinion and attached documents were also provided, the defense would agree that both the disc and the documents attached to the opinion be placed in full in the case file as evidence.

**2. The case of an attack on journalist Vakhtang Sanaia.** On February 25, 2021, journalist Vakhtang Sanaia was attacked by three drunk persons. The journalist was with his family members, including an infant child, and was trying to mount a rise in a road with his vehicle assisted by the representatives of the rescue guard in the efforts. According to Sanaia, the defendants physically assaulted him, threatened him, and attacked his family members. On the same day, the Ministry of Interior arrested three people on charges of group violence. According to the information by the Ministry of Interior, the accused persons being drunk used physical violence against Vakhtang Sanaia preliminary exchanging with him some verbal remarks. The three detainees were charged under Article 156(2)(a), Article 151(1), and Article 126(1)(b)(c) of the Criminal Code of Georgia. The case was heard on the merits by the City Court, the presiding judge is Giorgi Keratishvili

### **Outcomes of the court monitoring**

From February 2021 to present, 5 court hearings were held on the case. On August 25, 2021, Tbilisi City Court rendered judgment on the case of the attack on Vakhtang Sanaia: The court sentenced the accused Suliko Sakevarishvili to 6 months of imprisonment and community service for exerting physical violence against Vakhtang Sanaia on discriminatory grounds, further, the judge found Giorgi Sakhelashvili and Vazha Gigauri guilty under Articles 126 and 156 of the Criminal Code and sentenced them to 6 months of imprisonment. In addition, Vazha Gigauri was fined with GEL 2,500.

The court sentenced all three defendants to a minimum sentence of 6 months imprisonment, which expired on August 25 i.e. on the day of rendering the judgment. As a result, they left prison the same day. Moreover, the judge, with an oral reference to the COVID regulations, did not allow the lawyer of the aggrieved journalist, Vakhtang Sanaia, to enter the courtroom, thus restricting the lawyer from attending the hearing,

which constitutes unjustified interference in the professional activities of the lawyer.

Human Rights Center believes that the lenient attitude of the judiciary towards the attack on the journalist and his family members poses another threat of increasing aggression towards critical media. The main purpose of the punishment is to prevent new offences in future, to re-socialize of the offender and to restore justice. The minimal sanction applied by the Tbilisi City Court fails to achieve the mentioned goals, creates feeling of impunity and encourages future violence against media representatives.

**3. The case of Iveri Melashvili and Natalia Ilychova (the case of cartographers).** HRC monitors are observing the criminal cases ongoing against Iveri Melashvili, the former director of the Bordering Relations Service of the Department for Neighboring Countries within the Ministry of Foreign Affairs, and against, Natalia Ilychova, former chief inspector of the Land Border Defense Department of the Border Police under the Ministry of Interior. They are charged under Article 308.1 of the Criminal Code envisaging the action against Georgia aimed at transferring the entire territory or part of Georgia to a foreign country and/or separating part of the territory from the territory of Georgia. On January 28, 2021, following the petition by the prosecution, presiding judge Lela Kalichenko changed the measure of restraint applied against the defendants with remand on bail of GEL20 000 each. Further, the court granted the motion of the prosecution to dismiss Iveri Melashvili from his job. The case was assigned to judge Nino Natchkebia for hearing on the merits. At the current stage of the hearings, the evidence of the prosecution is being examined.

#### **Outcomes of the court monitoring:**

Iveri Melashvili and Natalia Ilychova were arrested on October 7, 2020, one month before the parliamentary elections. On January 28, 2021, in parallel with the hearing, representatives of the opposition and the civil sector gathered in the yard of Tbilisi City Court in support of Melashvili and Ilychova and reiterated that they had been detained illegally.

At the same time, in order to collect the amount of the bail, the civil movement Shame spread information on the social network, and as a result within a couple of hours the citizens of the campaign to assist the release

of the accused managed to collect the full amount of the bail GEL 40,000<sup>5</sup>.

**The case is still examined in the Tbilisi City Court and the witnesses of the prosecution are interrogated.**

**4. Giorgi Mumladze Case: Giorgi Mumladze**, a civil activist, is accused of committing an illegal act under Article 353(1) of the Criminal Code of Georgia implying a resistance towards a police officer, a special penitentiary officer, or other government officials with an aim to interfere in his/her activities of maintaining public order, to cease or alter his/her activities, further to coerce an officer to a manifestly unlawful act committed with violence or threat of violence. The case is still pending with Tbilisi City Court.

**Outcomes of the court monitoring:**

From February 2021 to November 2021, 4 court hearings were held on the case.

The prosecution failed to present any document at the court hearing proving the fact of the offense. The defense, therefore, argued that the police could not act lawfully in a situation where there was no offense. Consequently, the arrest was also unlawful. Only the police officers in the status of witnesses confirmed the fact of the offense at the court hearing. The presented evidence did not confirm the fact that Mumladze had committed a crime and made a motion to dismiss the criminal case.

At the pre-trial hearing, the court rejected the motion of the defense to dismiss the criminal case. According to the court, there is some consistent evidence in the case and a judgment of conviction could be rendered. The court also clarified that the defense's assessment of the fact goes beyond the assessment admissible at the pre-trial hearing and the circumstances should be assessed by examining the evidence at the stage of hearing the case on the merits. According to the judge, the decision to prosecute reads that instead of obeying the police officers, Giorgi Mumladze inflicted bodily injuries on them. Accordingly, in order to seek out the truth in the case, it would be necessary to examine the evidence presented by the parties<sup>6</sup>. The main issue at the hearing was the assessment of the legality

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<sup>5</sup> See the statement of the civil movement Shame: <https://bit.ly/3BU18OI>

<sup>6</sup> HRC Court Monitor Report on Giorgi Mumladze Case: June 01, 2021.

of the administrative detention, and subsequently the criminal detention<sup>7</sup>.

*According to the assessment by HRC, a criminal act shall be deemed committed and reacted on where a law enforcement officer acts on a legal basis, within the constitutional framework. In this case, the police did not act on legal grounds. Even where the action (defacement of the image of the city) was an administrative offense, the police still did not have the right to arrest him. Such a report of the administrative offense shall be drawn up by the Supervision Service of the City Hall. This is actually the practice: in the case of such offense, the police shall establish it as a fact, and based on this the City Hall Supervision Service shall draw up a relevant report. Detention shall follow the actual offense and not the prevention of the offense. However, there is no evidence on the case file proofing that Mumladze was committing an offense. The police acted in a prevention measure not reacting to the fact of the offense. Moreover, the search record proves that he neither had spray paint in his bag nor personally with him. As disproportionate force was used during the arrest the action of Mumladze to release himself was fully legitimate.*

**5. The case of Malkhaz Machalikashvili:** On July 6, 2021, Malkhaz Machalikashvili was arrested by the police during a rally on Rustaveli Avenue. According to the defense counsel, Machalikashvili was present at the protest rally For Freedom and was expressing his protest. Violent groups active on the other side recognized Malkhaz Machalikashvili, verbally abused him, and physically assaulted him as the group was trying to cross the fence and create threats for Machalikashvili. Malkhaz Machalikashvili was taken away from the scene by the police and as it turned out he was consequently arrested for disobeying the order of the police and for violating the public order, the offense –under Articles 166 and 173 of the Code of Administrative Offenses. On July 7, the defense filed a motion with the court to suspend the hearing of the case on the merits, so the defense could study the case files and obtain additional evidence. On the same day, Machalikashvili was released from the courtroom as 48-hour term of the administrative detention had expired. The case is being heard by Koba Chagunava, a judge of the Administrative Cases Panel of Tbilisi City Court.

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<sup>7</sup> HRC Court Monitor Report on Giorgi Mumladze Case: June 14, 2021.

## **Outcomes of the court monitoring:**

From February of 2021 to November 30, 2021, 2 court hearings were held on the case. The case is over in the first instance court.

All the witnesses for the prosecution were police officers. The witness police officers were describing the factual circumstances rather in a convincing manner, their testimonies were inconsistent and varied in each case. There was a case when the same witness police officer on one occasion claimed that Malkhaz Machalikashvili resisted the police arresting him, and on another occasion stated that Machalikashvili had not resisted the police at all.

No neutral/objective evidence was submitted by the prosecution. Only the testimonies of police officers being most likely subjectively interested were presented at the hearing<sup>8</sup>.

As for the fact of carrying a knife, Machalikashvili said that he lived in a camp for 4 years and needed a knife for living purposes to cut some things. He submitted that he had a small knife, which he also had in his pocket on July 6, at the time of his arrest; the knife mechanically unfolded in his pocket the day before (July 5) in the result of being pushed while the camp was invaded by violent groups; he took the knife out of his pocket to fold it again.

Despite the evidence presented by the defense proofing the innocence of Machalikashvili, on July 30, 2021, Tbilisi City Court announced the decision mentioning only the operative part of the verdict. In particular, the case was dismissed in connection with Article 173 of the Code of Administrative Offenses, while Machalikashvili was found guilty under Article 166(1) and Article 174(4) of the same Code and was fined with GEL 500<sup>9</sup>.

**6. The case of Beka Papashvili, Zurab Berdzenishvili, Paata Kharatishvili, and Tite Gedenidze:** HRC monitored the court proceedings against four civil activists: Beka Papashvili, Zurab Berdzenishvili, Paata Kharatishvili, and Tite Gedenidze, arrested on June 3, 2021, in front of the premises of the General Prosecutor's Office where

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<sup>8</sup> HRC Court Monitor Report on Malkhaz Machalikashvili Case: July 23, 2021

<sup>9</sup> HRC Court Monitor Report on Malkhaz Machalikashvili Case: July 30, 2021.

a protest rally was taking place in connection with the events in Ninotsminda Children's Boarding School. The activists were detained under Article 173 of the Code of Administrative Offences of Georgia envisaging disobedience to a lawful order of the law enforcement officer. The case was heard by Tbilisi City Court, the presiding judge is Lela Tsagareishvili. On August 2, 2021 the resolution part of the judgment was announced. Administrative proceedings against Beka Papashvili under the Article 173.1 of the Code of Administrative Offences was dropped because of absence of administrative incident. Tite Gedenidze, Paata Kharatishvili and Zurab Berdzenishvili were found guilty under the Article 173.1 of the Code of Administrative Offences and were fined with 2000 GEL.

**7. The Case of Akaki Khuskivadze and Akaki Kobaladze.** HRC was monitoring the court hearings of the criminal case ongoing against Akaki Khuskivadze and Akaki Kobaladze. The accused are charged with committing the criminal acts under Article 339.1, Article 150.2(b), and Article 151.2(a) of the Criminal Code of Georgia envisaging the following offense: directly offering to official money for his/her benefit, so that he/she take certain action during the exercise of his/her official rights and duties for the benefit of the bribe-giver, further a threat of damaging health, when the person threatened began to have a reasonable sensation of fear that the threat will be carried out, the act committed by a group of persons, i.e. coercing him/her mind to perform an action abstaining from the performance of which is his/her right, the act committed by a group of persons. Moreover, Akaki Kobaladze is accused of illegal purchase and storage of ammunition, the offense provided for by article 236(3) of the Criminal Code of Georgia. On December 10, 2020, Tbilisi City Court remanded the detainees on bail. They had to pay GEL 10,000 in bail. Judge Giorgi Keratishvili within Tbilisi City Court is hearing the case on the merits.

#### **Outcomes of the court monitoring:**

At the court hearings the evidence of the prosecution are examined. An investigator and a senior investigator of Vake-Saburtalo Main Division of the Ministry of Internal Affairs were examined as witnesses before the court. The investigators elaborated about their investigative actions, in particular, the search of the apartment based on the report and other urgent investigative actions.

The defense asked one of the witnesses whether the activities of Akaki Khuskivadze were the basis for the search. In particular, his involvement in the election events and his activity in deciphering the election fraud schemes of the authorities. To this question, the investigator replied that the basis of the search was a report<sup>10</sup>. The defense side claims that the search conducted based on the report was connected with the political activities of Khuskivadze.

### **The case is examined in the Tbilisi City Court.**

**8. The Case of Civil Activists:** HRC monitored the trial of 7 activists (Irakli Pavlenishvili, Givi Tsintsadze, Parnavaz Grigolia, Vano Magalashvili, Nikoloz Kvitatiani, Nikoloz Narsia, and Davit Digmelashvili) arrested during the protest rally of January 16, 2021. The activists were detained under Articles 166 and 173 of the Code of Administrative Offenses of Georgia envisaging petty hooliganism and disobedience to a lawful order of a law enforcement officer. The court terminated the administrative proceedings in the part of Article 166 while holding the activists as offenders in the part of Article 173 and imposed on each of them a fine of GEL 1,200. The case was heard by Judge Natia Merabishvili.

**9. The case of Bezhan Lortkipanidze:** Bezhan Lortkipanidze, an employee of the public organization Nakresi, was charged under Article 225(2) of the Criminal Code envisaging the management, organization, and participation in group violence. Bezhan Lortkipanidze does not plead guilty. The charges are related to the events of June 20-21, 2019. Field biologist and wildlife researcher Bezhan Lortkipanidze was arrested on June 20, 2019. He was remanded in custody for 2 months. At the time being, the accused has been remanded on bail of GEL 5,000 as a measure of restraint. Judge Davit Mgeliashvili within Tbilisi City Court is hearing the case on the merits.

Bezhan Lortkipanidze was amnestied on September 7, 2021. More precisely, the Parliament of Georgia passed the Amnesty Law drafted by the ruling party – Georgian Dream in relation with the June 20-21 events<sup>11</sup>. In accordance with the law, all individuals convicted or conditionally

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<sup>10</sup> HRC Court Monitor Report on the Case of Akaki Kobaladze and Akaki Khuskivadze: June 28, 2021

<sup>11</sup> See the Law of Georgia on Amnesty <https://bit.ly/3ypvcOT>

convicted for the crimes committed in relation with the June 20-21, 2019 events, were discharged of the criminal liability, who have not rejected the amnesty. The amnestied person will be discharged of criminal liability too.

**10. The Case of Besik Tamliani, Zurab Budaghashvili, Tsotne Soselia, and Kakhaber Kupreishvili.** Besik Tamliani, Zurab Budaghashvili, Tsotne Soselia, and Kakhaber Kupreishvili were charged under Article 225(2) of the Criminal Code of Georgia envisaging the participation in 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. In the given case a plea agreement was concluded between the Prosecutor's Office and the accused persons: Zurab Budaghashvili, Tsotne Soselia, and Kakhaber Kupreishvili. On March 23, 2020, the measure of restraint used against Besik Tamliani was changed with remand on bail of GEL 4,000. He left the prison. In the 2020 parliamentary elections, Besik Tamliani was a candidate for MP of the Parliament of Georgia from the electoral list of the opposition bloc UNM - Strength in Unity. The criminal case against Besik Tamliani is still pending in Tbilisi City Court. The criminal case is being heard by judge Aleksandre Iashvili.

**11. The Case of Nikanor Melia:** Former MP Nikanor Melia has been charged under Article 225(1) (2) of the Criminal Code of Georgia envisaging the organization of and participation in group violence. The current case pending with Tbilisi City Court is connected with the events of June 20-21, 2019. On February 17, 2021, the court granted in full the motion of the Prosecutor General of Georgia, Irakli Shotadze, to replace the measure of restraint used against the accused with remand on imprisonment. On May 10, 2021, the court also granted the motion of the prosecution to change the measure of restraint applied against the accused to a lighter one. In particular, remand in custody as a measure of restraint applied against Nikanor Melia was changed to remand on bail of GEL 40,000. The bail was allocated by the European Endowment for Democracy (EED) under an agreement between the opposition and the government. The hearing on the merits of the criminal case is going on in Tbilisi City Court, the presiding judge is Nino Chakhnashvili.

**HRC has observed the criminal case ongoing against Nikanor Melia in the document Legal Analysis of the Criminal Cases connected with**



## **the Events of June 20-21, 2019<sup>12</sup>.**

### **Outcomes of the court monitoring:**

From February to November 30, 2021, 20 court hearings were held on the case<sup>13</sup>.

During the reporting period, some political statements were expressed by the defense in almost all of the court hearings. The defense also focused on the political motives of the case.

On April 13, 2021, the defense made a motion to enter new evidence into the case files. In particular, the defense requested to admit in evidence the interview of Irakli Kobakhidze spread on TV media. In the interview, Irakli Kobakhidze, the chairman of the Georgian Dream, talks about the discussion among the officials held on 17, 2021, at 17:00 regarding the use of various means to enforce custody as a measure of restraint against Nikanor Melia.

There were frequent verbal confrontations between the accused and the judge, as well as between the judge and the defense counsels. The judge tried to restrict the speech of the defendant and his defense counsels on the occasions when they conveyed political messages. However, the judge oftentimes failed to talk over the defense due to the loud remarks made by the defense and so she on many occasions was unable to stay in charge of the proceedings. Further, the judge failed to ensure the maintenance of order in the courtroom for which she had specific levers as provided by the law. In particular, the procedures described in Article 85 of the Criminal Procedure Code.

Referring to the high public interest, the defense has repeatedly made a motion for live coverage of the court proceedings which the court usually rejected. In this regard, the defense stated that there was some impression that the judge did not wish the current events happening at the court proceedings to be made known to the public, and further suspected that the judge had already made a decision as instructed by some high-ranking

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<sup>12</sup> See the Legal Analysis of the Cases connected to the Events of June 20-21, 2019, Human Rights Center. 2020: <https://bit.ly/2XUIHFh>

<sup>13</sup> HRC Court Monitor Report on Nikanor Melia Criminal Case: 17-Feb-21; 08-Apr-21; 13-Apr-21; 29-Apr-21; 10-May-21; 13-May-21; 21-May-21; 25-May-21; 27-May-21; 03-Jun-21; 10-Jun-21; 15-Jun-21; 24-Jun-21.

officials to change the measure of restraint against Nikanor Melia from remand on bail to remand in custody.

The defense also requested to enter into the case files the minutes of the interview with the former officer of the Ministry of Internal Affairs, Ivane Gulashvili. In the interview, Gulashvili mentions that following the order of the Deputy Minister of Internal Affairs, the video recordings from the cameras located in front of the Parliament of Georgia and that of the side facade were destroyed. The defense was denied access to the video recordings. Neither the prosecution could obtain the recordings as the recordings were destroyed before the prosecution arrived at the scene of the crime, which is also confirmed by the Report of the Public Defender on the events of June 20-21, 2019. *The defense argues that the evidence intended for the case files has been deliberately destructed as there are signs of involvement in and interest of high-ranking officials and law enforcement agencies with the case.*

According to the defense counsel, since all the above factual circumstances became known on March 21, 2021, the defense could not ensure the submission of the evidence before the hearing of the case on the merits. Therefore, the defense counsels made a motion under Articles 93 and 233 of the Criminal Procedure Code to enter the interviews of Irakli Kobakhidze and Ivane Gulashvili into the case files as new evidence and to include the mentioned persons in the list of persons to be examined. The motion was rejected by the court.

Stemming from the outcomes of the court monitoring, we may conclude that the testimonies of the prosecution witnesses questioned in the case related to the events of June 20-21, 2019 fail to prove clearly the culpability of Nikanor Melia.

The principle of equality of arms and adversarial proceedings shall be observed in the court proceedings. The parties shall have the opportunity to freely make motions and express their opinion on the motions of the opposing party. However, some problems stem from the issue of assessing and granting the motions made by the defense, as in some cases the grounds for rejecting the motions are abstract and unsubstantiated.

**12. The case of Nikanor Melia and Zurab Adeishvili.** The proceedings are ongoing at the Tbilisi Court of Appeals. Nikanor Melia

together with the former Minister of Justice Zurab Adeishvili is charged with the offense under Article 332 of the Criminal Code envisaging the abuse of official power. Admittedly, Nikanor Melia was found innocent at the court of the first instance in the charges under Article 2051 of the Criminal Code envisaging the concealment of property by means of fraudulent or sham transactions. Judge Vepkhia Lomidze is reviewing the case within the Court of Appeals.

**13. The Case of Mikheil Saakashvili and Teimuraz Janashia:** Former President of Georgia, Mikheil Saakashvili and former Head of Special State Protection Service, Defense Teimuraz Janashia have been charged under Article 182(b) of the Criminal Code envisaging misappropriation of budgetary funds in large amounts (GEL 8,837,461). According to the Prosecutor's Office, in accordance with the existing agreement between Mikheil Saakashvili and Teimuraz Janashia and the instructions issued by the President, from September 2009 to February 2013, the state funds in the amount of GEL 8,837,461 were embezzled in secret for various services rendered to the President of Georgia and to other individuals in Georgia and abroad. The case is being heard at Tbilisi City Court, the presiding judge is Badri Kochlamazashvili.

**During the monitoring, HRC released an analytical document: the assessment of the right to be tried within a reasonable time in the criminal cases ongoing against Mikheil Saakashvili<sup>14</sup>.**

#### **Outcomes of the court monitoring:**

The evidence of the prosecution were examined at the court proceedings. On February 2, 2021 the defense requested the decision of remand in custody to be reversed. The defense submitted that the case was politically motivated. According to the defense, it was evident that remand in custody applied against Saakashvili failed to comply with the grounds for using custody as a measure of restraint, so the defense requested the decision of remand in custody to be reversed. As for Temur Janashia, he is not in pre-trial detention.

The judge, without providing any adequate legal reasoning with a ‘one

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<sup>14</sup> See Assessment of the right to a trial within a reasonable time in the ongoing criminal cases against Mikheil Saakashvili, Human Rights Center, 2021: <https://bit.ly/3lQ4qcA>

size fits all approach’ upheld the ruling of remand in custody as a measure of restraint. The judge only clarified that there were no new circumstances, no formal and factual grounds on which the court could assess the issue of changing or revoking the measure of restraint in the form of remand in custody.

On March 30, 2021, there was held another hearing of the criminal case. The issue of the measure of restraint used against Saakashvili in the form of remand in custody was reviewed following the motion by the defense. However, the judge again upheld the applied measure of restraint in the form of remand in custody on the grounds that there was extensive evidence to be examined, numerous witnesses to be questioned and so the defendants could exert an influence on the witnesses<sup>15</sup>.

*According to the assessment by HRC, the argument brought by the judge does not provide the grounds for using the custody as a measure of restraint and does not serve a legitimate purpose as despite the measure of restraint used against the accused persons they are still at large, so logically the risks named by the judge do exist anyway at this stage.*

On November 15, 2021 the court examined the motions and statements of the parties, among them the motion on transporting Mikheil Saakashvili to the court hearing that was rejected. According to the statement of the court, they addressed the special state service, which, due to security of Mikheil Saakashvili, could not ensure his presence at the court hearing.

**14. The Case of Mikheil Todua (Mikhailo):** On December 25, 2013, under the judgment rendered by Tbilisi City Court, Mikheil Todua was sentenced to 9 years of imprisonment. He was convicted of a drug offense, namely purchasing, storing, and consuming club drugs. On October 11, 2019, the convict was commuted to house arrest for 2 years and 11 months. He was instructed to be at the place of residence from 21:00 to 08:00. On November 11, 2020, Tbilisi City Court heard a motion by the Tbilisi Probation Bureau to lift the house arrest imposed against Mikheil Todua and to apply imprisonment against Mikheil Todua on the grounds that he had violated the terms of house arrest and performed at a party organized by Girchi on October 17 at 22:00. Following the judgment delivered by

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<sup>15</sup> HRC Court Monitor Report on the Criminal Case of Mikheil Saakashvili: March 30, 2021.

the judge, the submission from the Probation Bureau regarding the use of imprisonment as a punishment was rejected. The Probation Bureau approached the court with an alternative request at the hearing, which was granted by the judge, and Mikheil Todua was ordered to stay home from 19:00 to 08:00, instead of 21:00-08:00.

**15. Case of Nodar Rukhadze.** HRC observed the court hearing of the administrative case of Nodar Rukhadze, an activist of the movement Shame arrested on February 23. The law enforcement officers detained him under Article 173 of the Code of Administrative Offenses of Georgia. The judge held Nodar Rukhadze as an offender and imposed on him a fine of GEL 2,000. The case was not appealed to a higher court.

### **Outcomes of the court monitoring:**

During the reporting period, 1 court hearing was held on the case.

At the court hearing, the prosecution elaborated on the offense committed by Nodar Rukhadze. The statements by the prosecution were of a superficial and general character. The party could not substantiate specifically in what the offense was expressed, why the arrest was a necessary means for preventing the offense, and whether proportional force was used against the detainee (7 police officers were involved in the arrest of Rukhadze).

The representatives of the Ministry of Interior were repeating themselves that Nodar Rukhadze was standing at the side gate of the Parliament through which vehicles were constantly coming in and out due to "some event" taking place in the Parliament that day. At the court hearing, the representatives of the Ministry stated that Nodar Rukhadze was addressing them with the term 'slaves' which was insulting to them. However, when asked by the judge, the officers failed to clarify the substance of the offense constituted by the fact of naming them 'slaves' in connection with Article 173 of the Code of Administrative Offenses. The video footage clearly shows that Nodar Rukhadze did not call the police "slaves". Afterward, the police submitted that Rukhadze was calling them 'slaves' while driven away in the police car, however failing to provide evidence of this fact at the hearing.

*According to the assessment by HRC, even where the expectations of the police were true that Nodar Rukhadze would not leave the area when*

*vehicles were entering or exiting the gates of the Parliament, the need to arrest him could not be substantiated. Failure to comply with a lawful request of the police (meaning to leave the territory and move further) does not in the first place create a need to arrest a person.*

*The police officers could not bring the substantiation of the threats to eradicate which the arrest was necessary and why it was not enough to simply push Nodar Rukhadze to the side for a moment when vehicles were to enter or leave the gates of the Parliament. Why could not the seven police officers regulate the issue by halting the vehicle for a while and removing Nodar Rukhadze two meters away from the gate if the health of Rukhadze or those in the vehicle were endangered? Alternatively, if there was another kind of danger creating the necessity to remove and arrest him, what was that danger? Further, the issue of why the "maintenance of order at the event" constituted the greater public interest than the exercise of freedom of expression by one person could not be substantiated.*

*As for the fact why 7 officers were arresting him, the officers referred that Rukhadze was resisting the arrest. Further, despite the resistance by Nodar Rukhadze, substantiation was needed for the risks that would exist in the case of not using force by the police. Moreover, what kind of public good would be at the risk, and why was the eradicating of the risk prevailing the other public good<sup>16</sup>.*

**16. The Case of Giorgi Ugulava (Airport Case).** In accordance with the indictment by the Prosecutor's Office from December 11, 2019, Giorgi Ugulava is charged with committing the offense under Article 126(1) of the Criminal Code of Georgia. According to the version of the prosecution, Giorgi Ugulava inflicted bodily harm to B.G. The defense on the contrary states that B.G. in a provocative manner assaulted Giorgi Ugulava and Giorgi Gabashvili, the leaders of European Georgia. About a year later, on June 3, 2021, Tbilisi City Court with presiding judge Badri Kochlamazashvili began a hearing on the merits of the case.

**Outcomes of the court monitoring:**

From February 1 to November 30, 2021, 3 court hearings were held

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<sup>16</sup> HRC Court Monitor Report on the administrative detention case of Nodar Rukhadze: February 23, 2021.

on the case.

On June 3, 2021, began the hearings on the merits of the ongoing criminal case against Giorgi Ugulava. At the hearing, the court found out that the parties were not engaged in negotiations over a plea agreement. The prosecution stated that the Article in question (Article 126 of the Criminal Code) was under the scope of amnesty law if there would be consent on the part of the victim entered into the case files. Giorgi Ugulava clarified that he refuses the amnesty and will fight to the end to prove the truth through the court because the attack on him at the airport was organized by the State Security Service on behalf of Bidzina Ivanishvili.

The prosecution reiterated the position that it is important to listen to the position of the victim and to refer the case for amnesty regardless the fact of whether the accused agrees to the amnesty. The judge clarified that the amnesty could not be applied to the case and the prosecution could not be terminated unless there was the consent of both parties in the case files.

At the hearings, the victims, witnesses and experts are interrogated.

#### **17. The Case of Giorgi Ugulava (Tbilisi Development Fund Case).**

The Supreme Court of Georgia found Giorgi Ugulava the former Mayor of Tbilisi and one of the leaders of the Party European Georgia guilty of committing the offense provided for by articles 182(2)(d) and (3)(a)(b) of the Criminal Code of Georgia envisaging the unlawful appropriation or embezzlement of another person's property or property rights by using official position. By the Judgment of the Supreme Court from February 10, 2020, Giorgi Ugulava was sentenced to imprisonment with a term of 3 years, 2 months, and 8 days. *He was released from prison based on the Act of Pardon of the President of Georgia from May 15, 2020.* The case of Giorgi Ugulava was heard in the Supreme Court under the chairmanship of former Prosecutor General, Shalva Tadumadze.

**18. The Case Giorgi Ugulava and Aleksandre Gogokhia.** The criminal case launched against Giorgi Ugulava the former Mayor of Tbilisi is on the stage of hearing on the merits in Tbilisi City Court. The Prosecutor's Office charged the accused persons with committing the offense under Article 194 of the Criminal Code envisaging the legalization of illicit income (money laundering). Moreover, the state prosecution on the same case charged Ugulava with abuse of official power on the episode

of City Park and with the organization of group action and with coercion on the episode of Marneuli. The case will be heard by judge Valerian Bugianashvili of Tbilisi City Court. No court hearings were held on the case during the reporting period.

**During the monitoring, Human Rights Center published a document: Legal Analysis of the Criminal Cases ongoing against Giorgi Ugulava<sup>17</sup>.**

The following grave violations were identified in the criminal case ongoing against Giorgi Ugulava: namely, 6-month term to examine the cassation lawsuit was violated; one of the judges examining the case – Shalva Tadumadze was not recused; before the case was sent to the court, Shalva Tadumadze was the Prosecutor General of Georgia. 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. The multi-volume case was studied and verdict was passed in thirteen days; the case was examined by the cassation court without oral hearing, while there was high public interest over the case due to alleged political motives in it; besides that, there were other probable signs of selective justice.

**19. The Case of Irakli Okruashvili and Zurab Adeishvili** i.e. the case of *Buta Robakidze*. Irakli Okruashvili and Zurab Adeishvili are charged under article 332(3)(c) of the Criminal Code envisaging the abuse of power by a state political official. The case concerns the incident that took place near Didube Pantheon in Tbilisi on November 24, 2004, when the police patrol stopped a car of BMW brand with a driver and five passengers in the car. In the process of seizing and personal examination of the persons, one of the patrol officers, Grigol Basheleishvili accidentally triggered the weapon and shot Amiran (Buta) Robakidze in the left armpit heavily wounding him causing his death at the scene. According to the prosecution decision, the information on the same night was reported to the Minister of Internal Affairs, Irakli Okruashvili, who instructed the high officials arriving at the scene that they had “to save the

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<sup>17</sup> Legal Assessment of the Criminal Cases ongoing against Giorgi Ugulava, Human Rights Center. 2020: <http://hrc.ge/files/43gigi%20ugulava-eng.pdf>



reputation of the patrol police” and to give the incident the appearance of an armed assault on the police officers. Further, according to the prosecution decision, following the instructions of the then Prosecutor General of Georgia, Zurab Adeishvili, and the investigation was conducted in legal terms in the wrong direction manifested in the affirmation of falsified in procedural terms and reaffirming the versions by high-ranking officials of the Ministry of Interior.

The case hearings were resumed on June 9, 2021, by judge Lasha Chkhikvadze after the case was suspended for several months. The hearings were resumed with examinations of the evidence submitted by the prosecution. In the reporting period, only 2 hearings were held of the case.

On November 19, 2019, the new charge (so-called Amiran (Buta) Robakidze’s case) was brought against Irakli Okruashvili in the penitentiary establishment. The Prosecutor’s Office of Georgia accused him of the abuse of power with regard to the crime committed in 2004 while he was the Minister of Interior of Georgia<sup>18</sup>. The charges were brought against him several days before the 15-years term of remoteness of the crime expired. The state prosecution relied on the edition of the Criminal Code of Georgia which worsened the state of the defendant most of all editions, which were in force since November 11, 2004<sup>19</sup>.

**20. The Case of Irakli Okruashvili.** The Leader of the party Victorious Georgia, Irakli Okruashvili was accused under article 225 of the Criminal Code related to the events of June 20-21, 2019 envisaging the organization of group violence and participation in the violence. Following the judgment from April 13, 2000, Okruashvili was sentenced to 5 years of imprisonment as he was charged with participation in the offense. Based on the Act or Pardon of the President, like Giorgi Ugulava, Okruashvili also left the penitentiary institution on May 15, 2020. Notwithstanding the pardon, Okruashvili appealed the judgment before Tbilisi Court of Appeals, and the hearings of the case have not begun yet. In the Court of Appeals, Judge Vepkhvia Lomidze will hear the case.

**During the monitoring, HRC published an analytical document: Legal Assessments of the Criminal Cases ongoing against Irakli**

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<sup>18</sup> See the HRC statement: <https://bit.ly/3e2TmoZ>

<sup>19</sup> See the Criminal Code of Georgia, edition November 11, 2004

## **Okruashvili<sup>20</sup>.**

Multiple fundamentally crucial material and procedural-legal violations were revealed in the case related with the June 20-21, 2019 events. The verdict of conviction relied on the testimonies of four witness police officers. As for the neutral evidence, the video-recordings were requested from the TV-Companies, which were presented during the court hearing as well as the legally problematic habitoscope expertise conclusions. The court neglected the requirements of the provision and without identification and assessment of the individual signs of the offence, qualified the action of the defendant as violence while for the objectives of the Article 225 of the CCG, the “violence” shall be clarified as more intensive physical impact rather than in other ordinary cases.

Also, out of many people, together with whom Irakli Okruashvili participated in the “group violence”, the law enforcement officers selected only Irakli Okruashvili as an offender and arrested him. Consequently, the criminal prosecution started only against him though it was absolutely possible to identify other people participating in the same action and were standing around him. With similar approach, commencement of the criminal prosecution against Okruashvili can be evaluated as a politically motivated discrimination. Several days before Irakli Okruashvili’s detention, under alleged political motives, one of his bodyguards, driver and relative of his family Koba Koshadze was arrested.

**21. Case of Koba Koshadze** – Koba Koshadze, a bodyguard of Irakli Okruashvili, leader of the political party for Victorious Georgia, was accused of the commission of the crime punishable under the Article 236 of the Criminal Code of Georgia – illegal purchase-possession-carriage of firearms. After the prosecutor’s office solicited the court to change the measure of restraint, the judge at the Tbilisi City Court changed the imprisonment into 5 000 GEL bail for Koba Koshadze and the defendant was freed from the courtroom. The Tbilisi City Court has not started trials on merits on this case for more than one year already.

**Human Rights Center analyzed the criminal case against Koba Koshadze in the document - Legal Assessments of the Criminal Cases**

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<sup>20</sup> See “Legal Assessments of the Criminal Cases ongoing against Irakli Okruashvili,” Human Rights Center, 2020: <http://hrc.ge/files/152OKRUASHVILI-eng.pdf>

**ongoing against Irakli Okruashvili<sup>21</sup>. Multiple legal violations are revealed in this document.**

**22. The Case of citizens detained near the premises of Isani District Election Commission.** HRC observed the administrative legal proceedings of 7 persons detained on November 4, 2020, at a protest rally in front of the premises of Isani District Election Commission under articles 166 and 173 of the Code of Administrative Offenses. According to the decision by the judge, the proceedings against only one of the 7 detainees were terminated. Only 3 persons were found to have committed offenses under article 173 of the Code, and 3 for both: articles 166 and 173 of the Code. One of them was subject to a sanction of 5 days of administrative detention, and the other 5 were subject to 3 days of detention.

**Outcomes of the court monitoring:**

From February 1 to November 30, 2021, 4 court hearings were held on the case<sup>22</sup>.

At court hearings, patrol police officers testified that civil activists were swearing both at the police officers and the representatives of the authorities. The protesters also tried to block the road to which they were not allowed. They were therefore arrested for disobeying the lawful request of the police.

During the examination of the video footage which was 55 minutes long, the court monitor could enter the use of obscene words (swearing) twice. The judge also examined other video evidence showing the facts of alleged assaults. However, it was impossible to identify the person who uttered the insulting words in the examined video. Consequently, the video submitted by the police did not prove that the civil activists were swearing in their direction.

Further, the video did not record the arrest of several activists to which the representatives of the Ministry of Interior also agreed. It could be seen that several people were being arrested and placed in a patrol car. The treatment of civil activists and the force used by the police against them

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<sup>21</sup> Ibid

<sup>22</sup> Reports of HRC Court Monitor on the case of the citizens detained near the premises of Isani District Election Commission: 11-Mar-2021; 19-Mar-21; 02-Apr-21; 29-Jun-21.

was disproportionate: the number of police officers exceeded the number of persons to be detained.

**23. The Case of Lasha Chkhartishvili:** On June 20, 2020, Tbilisi City Court found one of the leaders of the Labor Party, Lasha Chkhartishvili as an administrative offender under article 173 of the Code of Administrative Offenses and imposed on him a fine in the amount of GEL 3,500. Judge Manuchar Tsatsua rendered the judgment in three court sessions. Chkhartishvili appealed the judgment to Tbilisi Court of Appeals, but the admission of the appeal was rejected.

**24. The Case of Giorgi Javakhishvili and Tornike Datashvili.** The court found Giorgi Javakhishvili and Tornike Datashvili guilty under article 225(2) of the Criminal Code envisaging the leadership, organization of group violence, and participation in group violence. The above case was heard in the conjunction with the case of Irakli Okruashvili related to the events of June 20-21, 2019, however, the case was split into separate proceedings and after the plea agreements were reached with the accused persons: Javakhishvili and Datashvili, they were released shortly afterward.

**25.** The court of first instance is hearing **the criminal case launched against Mikheil Saakashvili, Ivane Merabishvili, Zurab Adeishvili, Davit Kezerashvili, and Gigi Ugulava** with written evidence of the prosecution being examined. The case concerns the dispersal of the protesters *en masse* on November 7, 2007, invading TV Company Imedi and “seizing” the TV Company.

On November 10, 2021, the court annulled the imprisonment as the measure of restraint against Mikheil Saakashvili. The Court decided it was necessary to use the imprisonment as the restraint measure. However, as Mikheil Saakashvili is already convicted on two other criminal cases and consequently, he is sentenced to 6-year imprisonment, the annulled measure of restraint on November 7 case does not change the factual circumstances as he stays in the penitentiary establishment.

The defense side did not attend the revision of the measure of restraint – the lawyers left the courtroom in protest as the penitentiary service and

the court, through the violation of the national and international laws, did not ensure presence of the defendant Mikheil Saakashvili at the court hearing.

On this case, besides Mikheil Saakashvili, charges are brought against that time high officials: Ivane Merabishvili, Zurab Adeishvili, Davit Kezerashvili, and Gigi Ugulava. Due to the complexity of the case, the case is heard by a panel of judges in Tbilisi City Court with presiding judge Nino Eleishvili.

**26. The Case of Giorgi Rurua:** one of the founders and shareholders of TV company Main Channel (Mtavari Arkhi), and one of the organizers of the protest demonstrations of June 20- 21, 2019, is charged under Article 236(3)(4) of the Criminal Code (illegal purchase, storage, and carriage of firearms); he was also charged under Article 381(1) of the Criminal Code envisaging the failure to execute a court decision or interference with the execution of a court decision. On July 30, 2020, the judge of the criminal panel of Tbilisi City Court, Valerian Bugianishvili rendered a judgment of conviction against Giorgi Rurua sentencing him to 4 years of imprisonment. The court found Giorgi Rurua guilty of both charges. Following a pardon act by the President of Georgia, on April 27, 2021, the convict was released from the penitentiary facility<sup>23</sup>. The President made the decision after the Agreement of April 19, 2021 (Charles Michel Document) was signed by the opposition parties, according to which a legal mechanism of release should have been applied to Giorgi Rurua. Prior to the Agreement, on March 31, 2021, the President of Georgia, Salome Zurabishvili, stated that she would not pardon Giorgi Rurua, citing the fact that "the public knew better than herself why she would not make the decision."<sup>24</sup>

Further, the judgment rendered by the first instance of the court has been appealed by the defense with Tbilisi Court of Appeals.

**During the monitoring, Human Rights Center published an analytical document: The Criminal Case of Giorgi Rurua: Legal Analysis<sup>25</sup>.** Many material and procedural violations were identified in

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<sup>23</sup> See more information: <https://bit.ly/2VHvnGE>

<sup>24</sup> See more information: <https://bit.ly/3lmCaxY>

<sup>25</sup> See: The Criminal Case of Giorgi Rurua: Legal Analysis," Human Rights Center, 2020: <http://hrc.ge/files/150RURUA-case-eng.pdf>

this case.

In the moment of personal search and various investigative/procedural activities, Giorgi Rurua was unlawfully deprived of the rights and freedoms, which are guaranteed under the Constitution of Georgia and the international acts on human rights. Namely: the defendant was denied the possibility to contact his lawyer and family members<sup>26</sup>; he was not explained his rights and the grounds for the arrest at the moment of arrest<sup>27</sup>, that is guaranteed under the Criminal Procedural Code of Georgia<sup>28</sup>; both personal search of Giorgi Rurua and search of his car<sup>29</sup> were conducted with the violation<sup>30</sup> of the Criminal Procedure Code of Georgia<sup>31</sup>; in drawing up the report of personal search and in sealing the firearm the requirements of the Criminal Procedure Code were violated; the procedural violations existing on the case together with opinions of various experts puts under doubts the relatedness of Giorgi Rurua with the firearm and the authenticity of the evidence; number of facts indicate to the doubtful origin of the silencer of the firearm; the investigator carried out number of investigative actions without the participation of the defense lawyer<sup>32</sup>; the aggravation of charges against Giorgi Rurua lacks constitutional grounds, and more. Also, the video records of bringing Giorgi Rurua to the Department are not attached to the case files; they did

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<sup>26</sup> See the Article 13 Paragraph 4 of the Constitution of Georgia:

<https://matsne.gov.ge/en/document/view/30346?publication=36>; also see the February 21, 1990 ruling of the European Court of Human Rights on the case van der Leer v. NLD, application 11509/85, Paragraph 27; also see: Grabenwarter/ Pabel, 2012, p 205.

<sup>27</sup> See: "The Criminal Case of Giorgi Rurua: Legal Analysis," Human Rights Center, 2020:

<http://hrc.ge/files/150RURUA-case-eng.pdf>

<sup>28</sup> See the Criminal Procedure Code of Georgia, Article 38

<https://matsne.gov.ge/ka/document/download/90034/64/en/pdf>

<sup>29</sup> See the Articles 119 and 120 (6) of the Criminal Procedure Code of Georgia

<https://matsne.gov.ge/ka/document/download/90034/64/en/pdf>; also the report of HRC monitor: 10.03.2020

<sup>30</sup> See Guide on Article of the European Convention on Human Rights (Right to respect for private and family life, home and correspondence), European Court of Human Rights, 2019, Article 8. p 88. Available at: <https://bit.ly/2YRHdWk>.

<sup>31</sup> See the Criminal Procedure Code of Georgia, Article 121

<https://matsne.gov.ge/ka/document/download/90034/64/en/pdf>

<sup>32</sup> See the judgment №12/503,513 of the Constitutional Court of Georgia on the case Citizens of Georgia – Levan Izoria and Davit-Mikheili Shubladze vs. the Parliament of Georgia, II – 55; April 11, 2013 <https://bit.ly/3hhsQIS>; also see: the Judgment № 2/3/182,185,191 of the Constitutional Court of Georgia on the case Citizens of Georgia Piruz Beriashvili, Revaz Jimsheleishvili and the Public Defender of Georgia vs. the Parliament of Georgia, Paragraph 2, January 29, 2003.

not have those files. The existence of this record was important as Giorgi Rurua claimed that he had foam pad in his pocket when he entered the premises of the police and the video-files should have shown it. Consequently he could not have firearm in his pocket, which was discovered during his personal search in the police. Giorgi Rurua claimed that he did not have firearms in reality.

**27. The Case of Nika Gvaramia** - The founder of a TV Company Mtavari Arkhi and the Director-General of the same TV company, Nika Gvaramia is charged under article 220 of the Criminal Code envisaging the abuse of managerial, representative, or other special powers in an enterprise or other organization against the lawful interests of this organization for acquiring benefits or advantage for oneself or another person, which has resulted in considerable damage. The case is being heard at Tbilisi City Court with evidence of prosecution being examined.

#### **Outcomes of the court monitoring:**

**During the monitoring, HRC published an analytical document: Legal Assessments of the Criminal Case ongoing against Nika Gvaramia<sup>33</sup>.**

The principles of legal certainty and protection against arbitrariness are not adhered in the case, which are considered to be a common threat to the Convention and the rule of law. It is unknown if the Office of the Prosecutor General of Georgia has given due consideration to the decisive circumstances in the criminal case against the defendant. These aspects could have proven of critical importance in considering the disputed actions non-criminal and finding the defendant innocent; Further, the criminal relevance of the issue arising in the given corporate legal relationship also comes into question. In this case, the scope of the abuse of power is completely unclear - it is defined by the prosecuting authority to the defendant's detriment, and arbitrarily. It has so far been unknown whether the prosecution has discussed the use of legal alternatives to criminal prosecution; it disregarded the fact that the director's decisions were discussed with and approved by the partners and shareholders and, in the director's opinion, for which he had reasonable grounds, after

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<sup>33</sup> See: Legal Assessments of the Criminal Case ongoing against Nika Gvaramia, Human Rights Center, 2020; <http://hrc.ge/files/41gvaramia-eng.pdf>

analyzing short and long-term risks, he served the best interests of the corporation, which was also agreed with the above persons concerned.

According to the assessment of Human Rights Center, the court shall comprehensively examine and evaluate whether the action was a criminal offence or shall it be considered in the terms of the corporate law. The court shall take into account the content of charges, its execution in time and space, the actions taken by different authorities (including arbitrary interpretation of a criminal norm) and other factual circumstances that unequivocally point to the possible use of selective justice against a person with different political views.

**28. The administrative case of Aleksi Machavariani, Nodar Rukhadze, and Giorgi Mzhavanadze:** Aleksi Machavariani was detained by the police for an offense under Article 173(1) of the Code of Administrative Offenses, envisaging disobedience to a lawful order or request of a law enforcement officer, or committing any other wrongful action against the officer.

Nodar Rukhadze and Giorgi Mzhavanadze were detained by the police for the offense under Article 166(1) of the Code of Administrative Offenses (petty hooliganism: cursing in public places, chasing on citizens in an assaulting manner, and other such acts that violate public order) and also for the offense under Article 173(1) of the Code of Administrative Offenses, envisaging disobedience to a lawful order or request of an officer of a law enforcement body, or committing other wrongful actions against the officer.

Both cases were joined into one case during the hearing in the court of first instance, where all three detainees were found guilty of committing an offense under the relevant articles of the Code of Administrative Offenses of Georgia. Aleksi Machavariani was fined with GEL 1,000, Nodar Rukhadze with GEL 1,500, and Giorgi Mzhavanadze was sanctioned with 3 days of administrative detention. The judgment was appealed in appellate court.

**29-30-31. The case of Levan Imerlishvili, Giorgi Esiashvili, and Mindia Ambardnishvili (the case of former officers of riot police):** the accused are charged under article 333(3)(b) of the Criminal Code of Georgia envisaging “the acts in excess of the official powers by an official



or a person equal thereto resulting in the substantial violation of the rights of natural or legal persons, or of the lawful interests of the public or the State.”

Former riot police officers - Levan Imerlishvili, Giorgi Esiashvili, and Mindia Ambardnishvili were arrested in summer 2019. For some time the accused were remanded in custody. At the moment, they are remanded on bail of GEL 10,000 (ten thousand). The reason for changing the measure of restraint for Levan Imerlishvili was the deterioration of the health condition of the accused; the Court agreed with the opinion and granted the motion by the defense counsel.

### **The outcomes of the observations of the court hearings:**

During the HRC monitoring, no court hearings were held in the ongoing cases against Levan Imerlishvili and Mindia Ambardnishvili. The hearing of Levan Imerlishvili's case was scheduled several times, however, it was postponed on every occasion.

As to Giorgi Esiashvili, during the monitoring, 4 court hearings were held. The prosecution witnesses were interrogated, among them were the experts of the Samkharauli National Bureau of Forensic Expertise.

On March 18, 2021, following the petition from the defense the statement concerning the reconciliation of the victims with the accused (there are two victims in the present case) and the document of full compensation of the damage by the accused was included in the criminal case files under consideration. According to the statement, the victims admit that they have no claim in this case and welcome reaching a plea agreement with the accused.

On April 22, 2021, Tbilisi City Court granted the motion of the defense on the revocation of the additional measures applied against the accused Giorgi Esiashvili. As the additional measure, the following was used: an obligation to inform the investigating authority, and without the consent of the latter not to leave the residence, and to appear to the investigating authority once a week.

Giorgi Esiashvili fully agrees with the allegations put against him. According to the media, Levan Imerlishvili also pleads guilty, while Mindia Ambardnishvili's lawyer reports that his client has not acted ultra

vires and needs no amnesty, as he will be acquitted in this case.

**32. The case of defendants arrested on the counter-demonstration on July 5, 2021** – According to the statement of the Ministry of Internal Affairs of Georgia, several protesters of the counter-demonstration were arrested under the charges of the crimes committed against the public, persecution of journalists, and interfering with journalistic activities at the counter-demonstration against the March of Dignity announced by Tbilisi Pride on July 5-6, 2021 in Tbilisi. HRC is monitoring the trial of the defendants Mukhran Dadvani, IRakli Tsignadze, Nikoloz Guledani, Bakar Maisuradze, Tornike Gabliani, Vano Burduli and Davit Kochiashvili. The cases against all defendants are unified and they are examined by the Judge Besik Bugianiashvili at the Tbilisi City Court. The state prosecution accuses them of committing an illegal act under the Article 225 Part 2, Article 156 Part 2 – “a” and “b”, and Article 154 Part 2 of the Criminal Code of Georgia.

**33-34-35. Cases of administrative offences of Tato Cherkezishvili, Giorgi Gagnidze and Ioseb Tabatadze** – Judge Koba Chagunava at the Administrative Cases Panel of the Tbilisi City Court examined the administrative offence cases of Cherkezishvili, Gagnidze and Tabatadze separately. In accordance with the report, which was presented at the court hearing, on July 6, 2021 two protest demonstrations were held on the Rustaveli Avenue. The police made cordon between the two protests to protect the protesters from the aggression of the participants of counter-demonstration. Reportedly, the participants of the counter-demonstration were aggressive. At the same time, they tried to break the cordon of the police by force to attack the protesters. They were throwing eggs and bottles at them. According to the testimonies of the police officers, the offenders did not obey their lawful demands and verbally insulted them. The judge found all three defendants guilty and fined them with 2 500 GEL under the administrative law; one of the defendants was fined with 2 200 GEL.

HRC monitored the court hearings of the cases of the former riot police officers – Levan Imerlishvili, Giorgi Esiashvili and Mindia Ambardnishvili; the organization also observed the hearings of the cases of the participants of homophobic counter-demonstration to evaluate the approach of the prosecutor’s office and the judiciary authority towards

these cases; to compare how the right to fair trial will be respected with regard to the mentioned allegedly politically motivated cases; also, to legally analyze the decisions of the court on those cases, where the victims are journalists and civil activists.

At the court hearings on the criminal cases against the participants of the homophobic counter-demonstration held until November 30, 2021, the parties made only introductory speeches. The defendants do not plead guilty in any of the imposed accusations and claim they are innocent.

### **36. Case of Mikheil Saakashvili, illegal crossing of the state border**

– the prosecutor’s office brought new charge against the third president of Georgia Mikheil Saakashvili on illegal crossing of the state border of Georgia, punishable under the Article 344 Part 1 of the Criminal Code of Georgia. In accordance with the prosecutor’s office<sup>34</sup>, on September 28, at around 23:00, a vessel *Vilnius*, having departed from the Port of Chornomorsk, Ukraine, entered Poti Port. On September 29, at 01:04, a SCANIA semi-trailer truck loaded with milk products owned by IKA TRANS LLC was unloaded from the said vessel. At first, the vehicle stopped on the bridge, after which Elguja Tsomaia, the driver, parked it at a parking lot before clearing the customs. After passing several dozen meters, he stopped the truck on Poti Port premises and went to the back door of the trailer. Mikheil Saakashvili got out of the trailer and got into the cabin of the truck from the right side. By this act, Mikheil Saakashvili illegally crossed the state border of Georgia, by bypassing the customs control with Elguja Tsomaia’s aid. The Tbilisi City Court examines the case of Mikheil Saakashvili.

#### **The outcomes of the observations of the court hearings:**

On November 16, 2021 the first hearing of the case was held in the court. As it was announced at the trial, defendant Mikheil Saakashvili wants to participate in the case examination process in the courtroom but because of his health conditions and his personal security, the Special Penitentiary Service did not bring the defendant to the court. Also, judge Kurtanidze, without preliminary agreement with the defense side, requested the Special Penitentiary Service to ensure physical presence or online attendance of the defendant in the courtroom. Mikheil Saakashvili

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<sup>34</sup> See the statement of the prosecutor’s office: <https://bit.ly/3e2GC1H>

refused to attend the hearing online. The Tbilisi City Court continues examination of the case.

**37. Case of Davit Nebieridze, Kakhaber Kvaratskhelia, Boris Kurua and Irakli Dzidziguri.** On November 10, 2021, the law enforcement officers arrested the participants of the protest demonstration in front of the State Security Service for petty hooliganism and disobedience to the lawful request of the police officers. The arrest reports read that the detainees were cursing the police officers and hindered the transport movement as they were standing on the road. Judge Lela Tsagareishvili found all 4 detainees guilty and relied only on the testimonies and arrest reports of the patrol inspector when passing the verdict. Irakli Dzidziguri was fined with 2 000 GEL and the other three were sentenced to 1, 4 and 5 day administration detention.

**38. Case of Elene Khoshtaria.** On July 11, 2021, on the day when the cameraman of the TV Company TV Pirveli Lekso Lashkarava deceased, a protest demonstration was held in Tbilisi. The leader of the political party Droa Elene Khoshtaria flashed the red paint over the wall of the premises of the Government Administration. Despite the warning from police officers, Khoshtaria did not obey them and due to petty hooliganism and insulting a police officer, a report of administrative offense was drawn up against her. Elene Khoshtaria did not appear at any hearing scheduled at the Tbilisi City Court. At the stage of the evidence examination, the court examined the video footage, which showed a struggle of Khoshtaria with the police officers and her flashing the paint over the wall, as well as her attempts to break the cordon. According to the representative of the administrative body, the brought evidence cumulatively match each other, due to which they requested the court to hold Khoshtaria as an administrative offender. Judge Koba Chagunava at the Administrative Case Panel of the Tbilisi City Court found Elene Khoshtaria guilty and fined her with 2 200 GEL.

**39. Case of Zurab and Shalva Tsotsorias, Elguja Tsomaia and Giorgi Narimanidze.** These persons were arrested under the charge of concealment of the crime of Mikheil Saakashvili's entry to Georgia. They are charged under the Article 375 Part 2 of the Criminal Code of Georgia, which applies to the concealment of a grave crime without preliminary agreement and is punishable by the imprisonment with term from 1 up to 4

years.

On October 4, 2021 Judge Jemal Kopaliani at the Tbilisi City Court granted the motion of the prosecutor's office and left Elguja Tsomaia in custody. Law enforcement officers arrested Elguja Tsomaia on October 1 for giving shelter to the wanted Saakashvili in his flat. According to the investigation, Elguja Tsomaia was informed that citizen of Ukraine Mikheil Saakashvili was wanted in Georgia for the commission of grave crime. "Nevertheless, on September 30, 2021 he gave his apartment located in Tbilisi to Saakashvili to hide and live in."

The investigation claims that on September 29, 2021, having illegally crossed the border, Mikheil Saakashvili was transported by the personal car of Zurab and Shalva Tsotsorias, who took him to a village in Samegrelo region. The judge Giorgi Gelashvili at the Tbilisi City Court, on October 5, 2021, based on the solicitation of the prosecutor's office, imposed the pre-trial imprisonment on Tsotsorias, the father and the son, as a measure of restraint.

Giorgi Narimanidze, a driver of the trailer, the fourth defendant in the case of the third president, does not plead guilty. The investigation claims Giorgi Narimanidze was in the truck, which took Mikheil Saakashvili from Abasha to Tbilisi; he knew the route of the third president entering the country and covered this information. The investigation is ongoing under the Article 375 Part 2 of the Criminal Code of Georgia that is concealment of the grave crime without preliminary agreement. Initially, the cases of the mentioned defendants were examined separately but later, based on the prosecutor's resolution, the cases were unified.

**40. Case of Giorgi Tabagari** – LGBT activist and head of the Tbilisi Pride Giorgi Tabagari stated that Old Tbilisi police department started administrative proceedings against him. The case was related with the episode of July 5, 2021 when violent homophobic groups assaulted journalists and citizens in Tbilisi streets and police asked Tabagari to come to their raided office. The police officer stated that in response Tabagari verbally insulted him. The proceedings started against Giorgi Tabagari on verbal assault of the police officer that is punishable under the Article 173 Part 1 of the Code of Administrative Offences of Georgia. The court examined all evidence in the case files and on October 22, 2021 the judge

at the Administrative Case Panel of the Tbilisi City Court found Giorgi Tabagari guilty in the episode of July 5, 2021, which referred to the verbal assault of the police. The judge gave verbal reprimand to Tabagari.

**41. Case of Alika Kuprava** was examined by Judge Tsitsino Rokhvadze of the Administrative Case Panel at the Tbilisi City Court. According to the clarifications of the police representative, on November 8, 2021, Alika Kuprava was walking nearby Ketevan Tsamebuli Avenue N 61 in Tbilisi, close to the site of public gathering. The police claimed that Kuprava was aggressive, was shouting and insulting the police officers, who in response called on the citizen to calm down but he did not obey. Consequently, based on the Articles 166 and 173 of the Code of Administrative Offences, they arrested Alika Kuprava. The court heard the parties and did not satisfy the solicitation of the defense side to recuse the judge.

**The outcomes of the observations of the court hearings:**

At the preparatory session, the court heard the solicitations of the parties. The person who drew up the administrative offence report represented the administrative body at the hearing; he solicited to interrogate the persons (three persons), who personally arrested the defendant. The solicitation was satisfied. As the defenders of Alika Kuprava had not acquainted with the case files, the judge announced one-hour break. Afterwards, the defenders solicited to interrogate all persons in front of the court, whose interrogation protocols were enclosed to the case files and requested to postpone the session.

The defense lawyers stated that the persons were on the site, where alleged administrative offence took place. The representatives of the administrative body stated that the interrogated persons did not see what happened there. They were performing their duties at that moment (in the saloon, sewing workshop, etc.) and also, all of them had refused to appear in the court.

The court refused to postpone the hearing as the previous session was already postponed for two weeks and the parties had enough time to ensure presence of the witnesses in the court. The judge added that she would announce a break and the party could bring the witnesses. The defense side said it was not reasonable time to bring witnesses to the court and had to

cancel their solicitation. Additionally, the defense lawyer solicited to declare the interrogation protocols inadmissible, which were enclosed to the case files. The judge said it was not a criminal case and they could not discuss admissibility of the evidence. The court would examine all submitted evidence and will make respective decision, where the court will state whether it shares or rejects the presented evidence.

The defense lawyers of Alika Kuprava solicited recuse of the judge. In their substantiation the lawyers clarified that the judge had some aggression towards them for unknown reason and imposed time-limits on them. The court deliberated the protocol resolution and did not grant the solicitation based on the Articles 284, 285 and 31 of the Civil Procedure Code of Georgia. The court concluded that solicitation on the recusal because of time limitation is not well grounded because the court is authorized to determine timeframe for the party. The judge said the court itself is restricted in time. Because of limited number of courtrooms and busy schedule, the judge tried to administer the justice.

The defense side solicited to require and present the video footage on the arrest. The representative of the administrative body clarified that the patrol police officers are equipped with the bodycams and not the criminal police officers; therefore they could not present the video-recordings of the arrest. At the same time, **the representative of the administrative body said no violence took place during the arrest and the bodycams could not provide additional information.**

The court rejected the solicitation to postpone the hearing to obtain additional evidence. The party did not submit the evidence and stated that they do not have video recordings. The court several times stated during the trial that the parties had enough time to ensure presence of the witnesses at the court and to obtain additional evidence, including video footage.

The defense lawyers of Alika Kuprava mentioned the case law of the European Court of Human Rights and stated that the court can follow the procedural rules of the criminal law when examining the administrative case. In their solicitation the defense side requested to invite the prosecutor based on the Article 235 of the Code of Administrative Offences and to involve him as an independent prosecutor in the case. They said there is

no prosecution in the case and the judge is implementing this function that means she is no longer independent. The judge deliberated the protocol decision and did not grant the solicitation.

At the hearing on merits, the judge clarified his rights and responsibilities to Alika Kuprava and explained the probable sanction. The court heard the solicitations of the administrative body and explanations of the defense side.

Alika Kuprava clarified in details what happened on the day of his arrest. Namely, on November 8, 2021, several journalists contacted him and told that MIA had arranged iron barriers in the backyard of the parliament building and they wanted to hear his assessments of the fact as a civic activist and a lawyer. After one-hour lecture, he went to the tailor's, where he learned about the arrest of Vano Magalashvili. The latter was in the backyard of the parliament together with Alika Kuprava and evaluated the arrangement of the iron barriers together with him. Vano Magalashvili was arrested for making violent announcement on TV. Kuprava said, entering the tailor's workshop, four persons arrived at the bus stop. They were hiding behind the bus-stop. Alika Kuprava claimed they were representatives of the State Security Service, who had his photo and asked him whether it was him. After notification, they said investigation was started against him for making violent announcement and had to accompany them to the police office. Kuprava said he had not made similar announcement and if the investigation had started, the police had to send him official notification about it. Having refused to be interrogated, the strangers started to arrest him and seized his phone. Kuprava asked them to allow to make a call but they did not allow. Kuprava said, one of the police officers had received an instruction on whatsapp to immediately seize a phone from him to prevent from making a call.

Alika Kuprava stated at the court hearing that **the police officers present in the courtroom were not those who arrested him and that they had arrived at the 11<sup>th</sup> division**. After detention, on the way to the police office, they clarified to Alika Kuprava that he was arrested for resistance. As for another charge under the Article 166 of the Code of Administrative Offences, he learned about it only in the police unit.

During the interrogation of the witnesses, the officers who arrested



him testified to the court that Alika Kuprava was cursing in public place. He was expressing dissatisfaction against the state and insulted them too. The alleged perpetrator was using the following words: “Their time will finish,” “we will finish them,” “you are slaves.” The police officers said they suggested him to respect the public order and after he disobeyed their lawful demands, the officers had to arrest Alika Kuprava.

One of the witnesses said he did not remember who shackled him – he or another officer; neither who seized the cell phone from the detainee. None of the three witnesses recalled who was driving the police car, when they arrested Kuprava.

**The witness testimonies, from the perspective of the objective observer, were not reliable. About 11 days had passed since the arrest. None of the witnesses recalled who was driving the police car and who shackled the detainee.**

After the interrogation of the witnesses, the court asked the representative of the administrative body to present those protocols, which contain the information provided by the interrogated witnesses. In those protocols everybody stated that they had not seen anything.

Although the judge did not want to postpone the hearing and several times rejected the motion of the defense side, in the end, she postponed the hearing. The judge ordered the administrative body and the defendant to obtain video-footage if it existed at all and present it at the next hearing to determine whether the fact of offence had occurred.

The conduct of the judge at the court hearings is worth to mention. She had controversy polemics with the defendant and his defense lawyers; she accepted their statements as personal insults and in one occasion she told Alika Kuprava: *“Your behaviors are evident here too.”*

*The long description and analysis of Alika Kuprava’s case was caused by all those systemic problems identified in this one case, which are present in the Code of Georgia on Administrative Offences and which impacts the judiciary practice, particularly when the court examines the cases, where the code is used as a tool of political revenge.*

**42. Case of Tsoetne Lomidze.** Judge Lela Tsagareishvili of the Administrative Case Panel at the Tbilisi City Court examined this case.

According to the clarifications of the MIA, on July 12, 2021, at King Erekle II street in Tbilisi, protest rally was held in front of the Georgian Dream’s office. Police was deployed on the site, who tried to protect the public order, respond to and prevent offences. Member of the Girchi – More Freedom Tsotne Lomidze was also participating in the protest. He was throwing eggs towards the police officers. He also hindered the police to detain other persons under the administrative law. The MIA representatives arrested Tsotne Lomidze for administration offence under the Article 173 Part 1 of the Code of Administrative Offenses. He spent 48 hours in pre-trial detention. After the term expired, he was freed and then summoned to the court to examine his case.

### **The outcomes of the observations of the court hearings:**

The evidence examined at the court hearing did not prove the fact of administrative offence; no neutral evidence were presented. Also, the defense side claimed that the witness, who attended the court hearing, was not the police officer, who arrested Lomidze. Nevertheless, the court found Tsotne Lomidze guilty in committing the administrative offense and gave verbal reprimand as a sanction.

## **EVALUATION OF THE TREATMENT OF MIKHEIL SAAKASHVILI IN PENITENTIARY ESTABLISHMENT**

On October 1, 2021, ex-president Mikheil Saakashvili disseminated information that he was in Georgia. Initially, the ruling party Georgian Dream denied the information and claimed that Saakashvili was in Ukraine and had not left the territory of the Ukraine. Later, the PM Irakli Garibashvili, together with the Minister of Interior Vakhtang Gomelauri and the head of the State Security Service Grigol Liluashvili, held briefing and stated that Mikheil Saakashvili was arrested<sup>35</sup>. On the same day, in protest, Saakashvili started hunger strike and stated that his arrest was politically motivated act.

Considering the worsened health conditions and risks related with the delayed hospitalization of the hunger-striking prisoner, the Ministry of

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<sup>35</sup> See more information: <https://www.ambebi.ge/article/265917-mixeil-saakashvili-dakavebulia-premieri/>

Justice invited a council of doctors, whose conclusion was announced by media. Namely, on November 8, 2021 the Radio Liberty/Free Europe published the information from the summary protocol of the council, according to which *“patient [Mikheil Saakashvili] is at high risk of multi-systemic complication. He requires immediate treatment in multi-profile, high-technology medical center immediately, where it will be possibility to provide him with the following medical services: cardio-vascular, neurological, medical and diagnostic radiological, hematological, endocrinological, nutritional therapy.”*<sup>36</sup>

After this information was disseminated, the representatives of the ruling party, among them the PM Irakli Garibashvili, made statements that it was excluded to take the third president from custody to civil hospital and in case of necessity he will be taken only to a jail hospital. It is noteworthy that the PM is not authorized to make decisions on the transfer of a prisoner to another place, as well as to a different medical institution.

On October 29, 2021, PM Garibashvili spoke about “the right of a prisoner to suicide.” Namely, in relation with hunger-striking Mikheil Saakashvili, Irakli Garibashvili said: ***“I cannot say anything about the finish now... if a person harms his health... furthermore, the law states that an individual has right to suicide.”***<sup>37</sup> Garibashvili also added – “when a person states that he is on a hunger-strike, he must not eat half kilogram honey.” Besides PM Garibashvili, the chairperson of the political party Georgian Dream Irakli Kobakhidze also commented on the hunger-strike of the ex-president – “this man eats and drinks; he asks for 3 liters of lemonade and drinks it.” In protest of these statements, Saakashvili refused to get any medical service.

Numerous statements made by the state authorities also contribute to the inhuman and degrading treatment aimed at worsening the situation of the prisoner, inciting him to reject medically recommended nutrients required to sustain his life and force him into total starvation.<sup>38</sup>

On November 6, 2021, the Special Penitentiary Service released

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<sup>36</sup> See information of Radio Liberty/Free Europe <https://www.radiotavisupleba.ge/a/31551550.html>

<sup>37</sup> See full information: <https://bit.ly/31VYp8j>

<sup>38</sup> See the joint statement of the NGOs to the Council of Europe Committee for the Prevention of Torture (CPT) <http://www.hrc.ge/314/eng/>

video-footage, which shows that Mikheil Saakashvili gets special food in the medical unit of the prison N12 in presence of the medical personnel. This footage was released to prove that the hunger-striker had stopped the strike<sup>39</sup>.

On November 8, 2021 media reported that Saakashvili no longer was in Rustavi penitentiary establishment and was moved to another facility. Almost one and half hour later, the Special Penitentiary Service confirmed the disseminated information that in order to prevent further complication of the health conditions and due to high risks, Mikheil Saakashvili was taken from penitentiary establishment N12 to Gldani jail hospital N18<sup>40</sup>. The lawyers and the family members said they did not have information about the removal of Saakashvili from Rustavi prison.

Before Mikheil Saakashvili was taken to jail hospital N18, on October 24, 2021, representatives of the Public Defender of Georgia checked the readiness of Medical Facility No. 18 for the possible admission of the third President of Georgia, Mikheil Saakashvili. The inspection revealed that the situation in the facility, in terms of medical care, does not fully comply with the report or recommendations issued by a multifunctional group of doctors on October 23, 2021, and there are also some safety risks. Interviews with the administration and medical staff of Medical Facility No. 18, as well as inspection of infrastructure and medical equipment, revealed that the facility has the necessary resources to meet the medical needs of prisoners (including hunger strikers). However, the report issued by the multifunctional group of doctors regarding the medical needs of Mikheil Saakashvili directly refers to the need of implementation of certain medical procedures, which, unfortunately, is impossible to be provided in Facility No. 18<sup>41</sup>.

On November 4, 2021, Public Defender's representatives again inspected Facility No. 18 for the possible admission of the third President of Georgia, Mikheil Saakashvili. The purpose of the visit was to monitor the degree of compliance of the facility with the medical standards

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<sup>39</sup> See the footage released by the Special Penitentiary Service <https://www.facebook.com/watch/?v=1240785649667305>

<sup>40</sup> See the statement of the Special Penitentiary Service <https://www.facebook.com/moc.gov.ge/photos/a.381689191907118/4495903583818971/>

<sup>41</sup> See the statement of the Public Defender: <https://bit.ly/30HqdNk>

indicated in the new reports of the medical council (dated November 3, 2021 and October 28, 2021). Public Defender's representatives checked what changes were made in the facility after the previous visit paid on October 24, 2021. The inspection revealed<sup>42</sup> that the current situation in the facility, in terms of medical care, unfortunately, still does not fully comply with the reports and recommendations made by the multifunctional group of doctors on November 3, 2021 and October 28, 2021. [...] consequently if Mikheil Saakashvili is transferred to Medical Facility No. 18, he will not be provided with all the necessary medical services specified in the report of the council.

Also, the Public Defender reiterates that placing a prisoner of the category of Establishment No. 12 in a facility where he may have contact with other prisoners creates safety and disorganization risks for both Establishment No. 8 and Establishment No. 18. Thus, Mikheil Saakashvili's personal safety and conditions conducive to dignity cannot be ensured in the facility.

Regardless the abovementioned circumstances, on November 8, 2021 Mikheil Saakashvili by force and falsely<sup>43</sup>, fully ignoring the standards of prisoner's treatment and principles to get informed consent of the patient, was taken to jail hospital N18. It shall be underlined that Mikheil Saakashvili several times refused to get medical service in the prison facility N18<sup>44</sup>.

On the next day after Mikheil Saakashvili was taken to prison facility N18, Public Defender released a statement, where she once again underlined that *"Medical Establishment No. 18 does not meet the recommendations issued by the council and that the placement of Mikheil Saakashvili in the facility clearly violates the obligation of the State to respect human dignity. Accordingly, the Public Defender calls on the Minister of Justice/Penitentiary Service to immediately transfer the third President of Georgia, Mikheil Saakashvili, to an alternative medical facility."*

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<sup>42</sup> See the statement of the Public Defender: <https://bit.ly/3sfSFRH>

<sup>43</sup> See Mikheil Saakashvili's letter, Radio Liberty/Free Europe: <https://www.radiotavisupleba.ge/a/31551875.html>

<sup>44</sup> See full information: <https://mtavari.tv/news/61169-mikheil-saakashvilis-pozitsiaa-rom-ar-cava>

In medical establishment N18, Mikheil Saakashvili became subject of verbal insults from the side of other inmates and media disseminated video footage of these incidents<sup>45</sup>. At the same time, the verbal aggression towards the ex-president had continuous and permanent character and they are aggressive not only towards prisoner Saakashvili but towards those people, who visit him in the facility, the Public Defender among them. Nino Lomjaria said that she entered the facility fully covered with facemask and full equipment but the prisoners started shouting her surname too.<sup>46</sup> The fact that the Penitentiary Service does not try to combat the aggression of other prisoners, creates well-grounded doubts that these incidents were orchestrated by the authority.

On November 9, 2021 the international organization Amnesty International echoed the transfer of Mikheil Saakashvili to the jail hospital and evaluated it as degrading treatment, violation of right to privacy and limited access to adequate medical care. The Amnesty International noted that it is not only selective justice but political revenge<sup>47</sup>.

On November 10, 2021, the European Court of Human Rights decided on interim measure over Saakashvili's case<sup>48</sup>. The European Court of Human Rights decided on November 10 on interim measure to urge Mikheil Saakashvili, jailed Georgian ex-President to call off his hunger strike. The Court further decided that the Georgian Government should inform it on Saakashvili's state of health, as well as the medical hospital treatment dispensed in the prison hospital; and that the authorities should ensure the ex-President's safety in prison in general and should provide him with appropriate medical care for the post-hunger strike recovery period.

On November 10, 2021, the group of experts of the psycho-rehabilitation center of the victims of violence and torture *Empathy* disseminated the statement, in accordance with which, in prison facilities Mikheil Saakashvili became subject of degrading treatment, psychological

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<sup>45</sup> See the aggression of the inmates of Gldani prison towards Mikheil Saakashvili [video]; Main Channel: <https://bit.ly/3GFjy5x>

<sup>46</sup> See more information: <https://bit.ly/3IY9WVA>

<sup>47</sup> See the statement of the Amnesty International:

[https://twitter.com/amnesty/status/1458068111547117572?ref\\_src=twsrc%5Etfw&fbclid=IwAR27AEo25isj2DpDh4IF1mB4FiM33bMkNGRCGweCwjUTHg87JVqJD3CHS-I](https://twitter.com/amnesty/status/1458068111547117572?ref_src=twsrc%5Etfw&fbclid=IwAR27AEo25isj2DpDh4IF1mB4FiM33bMkNGRCGweCwjUTHg87JVqJD3CHS-I)

<sup>48</sup> See more information: <https://www.radiotavisupleba.ge/a/31555455.html>

oppression and when transferring him to the medical establishment N18, the ex-president became victim of psychological torture, as well as of physical torture and attempted non-voluntary medical intervention that made the patient to reject the medical service that places his life at risk and requires immediate measures to take him to another civil medical institution.

On November 11, 2021, the Special Penitentiary Service of the Ministry of Justice of Georgia released an extract from the video-footage of Mikheil Saakashvili's forcible transfer to medical establishment and explained it with high public interests to his case<sup>49</sup>. The Public Defender of Georgia stated that the Ministry of Justice/Special Penitentiary Service violated the prisoner's right to honor, dignity and privacy by releasing the footage showing the placement of Mikheil Saakashvili in Medical Establishment No. 18 against his will<sup>50</sup>.

On November 11, 2021, the State Inspector's Service released a statement<sup>51</sup>, which stated that they had commenced examination of the fact of forced transfer of the third President of Georgia Mikheil Saakashvili to N18 Penitentiary Establishment and his placement in the cell. "Having in mind the circumstances, namely, that the Special Penitentiary Service has not confirmed the existence of such recordings as of today, and thus they have not been requested on the basis of the court order, publishing these recordings (which at the same time, constitutes evidence of the criminal case under investigation by the State Inspector's Service) by the Special Penitentiary Service and the Ministry of Justice threatens conduct of the effective investigation."

On November 20, 2021 after Mikheil Saakashvili's health conditions became particularly grave and he lost conscious, he was taken from Gldani medical establishment N18 to Gori Military Hospital<sup>52</sup>.

The actions taken by the state, first of all, blatant violation of the rights of the hunger-striking prisoner and patient, may be evaluated as inhuman and degrading treatment of the prisoner. The Government does not ensure

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<sup>49</sup> See the footage released by the Special Penitentiary Service" <https://bit.ly/3sc2KyS>

<sup>50</sup> See the statement of the Public Defender of Georgia: <https://bit.ly/3FawTT6>

<sup>51</sup> See the statement of the State Inspector's Service: <https://stateinspector.ge/en/article/statement-of-the-state-inspectors-service/130>

<sup>52</sup> See full information: <https://www.radiotavisupleba.ge/a/31570227.html>

Mikheil Saakashvili's presence at the court hearing of his case that is violation of the national and international laws as a defendant has right to fair trial that includes the right to attend the court hearings personally if he/she asks for it.

On October 12, 2021, the NGOs released joint statement, according to which, there are signs of politically motivated justice against Mikheil Saakashvili. Clear examples of this are several statements made by the Prime Minister of Georgia in the case of Mikheil Saakashvili, where he openly and unequivocally confirms that the conviction of the third president of Georgia is of political nature, is conditioned by the decision of the ruling political force and has nothing to do with impartial and independent justice. Also, according to the NGOs assessment, for years, including when the Georgian Dream was in power, the justice system could not meet even the minimum requirements of the rule of law and justice for all. Too often, the ruling political force would completely ignore the criticism and recommendations of local and international organizations about systemic shortcomings in the justice system and the risks of political justice. Despite the numerous legislative changes and so-called "reform", the judiciary is still characterized by a high degree of politicization, while the executive does not shy away from strengthening political influence over the independent branch of government<sup>53</sup>.

On October 13, 2021 Human Rights Center made a statement about the imprisonment of ex-president Mikheil Saakashvili and ongoing criminal prosecution against him, which includes the findings from the monitoring of the court proceedings. The HRC has identified several significant problems: The criminal proceedings against Mikheil Saakashvili have been delayed and the rights of the accused to a fair trial and trial within a reasonable time have been violated in contradiction to the principles of the rule of law and the obligations of Georgia under the Constitution and international treaties; In the criminal proceedings ongoing for almost 7 years against former President, Mikheil Saakashvili, the procrastination of the court hearings remains a problem affecting the reputation of the court system, the efficiency of the justice, and the trust of the public in the judiciary in general. The right to a hearing within a reasonable time releases the persons awaiting trial from prolonged

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<sup>53</sup> See the full statement: <http://www.hrc.ge/291/eng/>



uncertainty. Moreover, the right helps to minimize the measures restraining the freedom of the accused used for the purposes of court hearings; the delays in the hearings on the merits of the criminal cases ongoing against Mikheil Saakashvili contribute to procrastination of the proceedings and potentially negatively affect the right to rapid justice; in order to shape public opinion about the fact that Saakashvili is guilty, the authorities make various statements before the court judgment is rendered, thus violating the presumption of innocence<sup>54</sup>.

## **RIGHT TO BE TRIED IN REASONABLE TIME**

In accordance with the Article 6 Paragraph 1 of the European Convention on Human Rights, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law<sup>55</sup>.

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 fair trial includes the right to be tried within the reasonable time, which on its side has impact on the accessibility to the court and reasonably rapid justice. Also, the European Charter on the Status for Judges states that the state has the duty of ensuring that judges have the means necessary to accomplish their tasks properly, and in particular to deal with cases within a reasonable period (General Principle 1.6).

Besides the mentioned, the Criminal Procedure Code of Georgia determines the right of the defendant to the expediency of justice within the time limits prescribed but this right may be relinquished if so required for the appropriate preparation of the defense<sup>56</sup>. It also entitles the court to prioritise the review of the criminal case in which the accused has been r

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<sup>54</sup> See the HRC statement: <http://www.hrc.ge/292/eng/>

<sup>55</sup> See the ECHR, Article 6(1) [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

<sup>56</sup> See the Article 8(2) of the Criminal Procedure Code of Georgia: <https://matsne.gov.ge/ka/document/download/90034/64/en/pdf>

emanded to custody<sup>57</sup>.

In accordance with the international standards, the right to trial within a reasonable time releases the persons awaiting trial from prolonged uncertainty. Further, this right helps to minimize the time of measures restraining the freedom of the accused used for the purposes of court proceedings. As what the issue of a reasonable time concerns, the European Court of Human Rights takes into account important factors such as the complexity of the case, the behaviors of the applicant, and that of the relevant administrative and judicial authorities<sup>58</sup>.

In the reporting period, the problems related to trial within reasonable time were identified. Some of the cases were suspended with unreasonably long time. In some of the suspended cases, there were accused persons in detention. The delay or suspension in hearings took place in some of the cases because of actions or inactions on the part of the prosecution, some of them were suspended because of the defense and in exceptional cases, following the initiative of the court referring to various reasons<sup>59</sup>. At the same time, the intensification of court hearings on such cases in the pre-election period is a particularly negative trend.

The abovementioned instances potentially impact the right to rapid justice because permanent delays and postponed hearings contribute to the delayed justice. However, it is worth to mention that there is no rule which establishes the reasonable timeframe. In general, the European Court of Human Rights states that if a case is examined in the first instance court for more than three years, in the two instances of court for more than five years and in all three instances for more than six years, then it is delayed justice<sup>60</sup>.

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<sup>57</sup> Ibid Article 8(3)

<sup>58</sup> See *Pretto and others v Italy*, ECtHR, December 8, 1983, para 31-37, *Pedersen and Baadsgaard v Denmark*, ECtHR, December 17, 2004, para 45 and see General Comment No.32, citing from the paper Comment. 113, para. 35.

<sup>59</sup> **For example:** *Case of Bezhan Lortkipanidze*; *case of Besik Tamliani*; *Case of Nikanor Melia and Zurab Adeishvili*; *Case of Mamuka Khazaradze, Badri Japaridze and Avtandil Tsereteli*; *Case of Iveri Melashvili and Natalya Ilichova (so-called cartographers case)*; *case of Giorgi Mumladze*; *case of Mikheil Saakashvili and Teimuraz Janashia*, *Case of Irakli Okruashvili (second instance)*; *case of Levan Imerlishvili, Giorgi Estiashvili and Mindia Ambaridishvili (case of the former riot police officers)*; *case of Giorgi Ugulava*.

<sup>60</sup> See: Trial Monitoring Report, OSCE, ODIHR, Warsaw, 2014:  
<https://www.osce.org/files/f/documents/6/a/130676.pdf>

## PRESUMPTION OF INNOCENCE

The international instruments of human rights protection like UDHR<sup>61</sup>, ICCPR<sup>62</sup> and ECHR<sup>63</sup> require that each person accused in an offense “has a right to be presumed innocent until proved guilty under the law [...]”<sup>64</sup>. The presumption of innocence and freedom is guaranteed by the Articles 6 and 48 of the EU Charter of Fundamental Rights, by Article 7 of the American Convention on Human Rights, with the principles of the defense of all detainees or imprisoned persons, and more. The Constitution of Georgia states that 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<sup>65</sup>. The Criminal Procedure Code of Georgia repeats the same principles and states that inviolability of personal dignity and respect of the presumption of innocence shall be guaranteed in all aspects of court proceedings<sup>66</sup>.

Presumption of innocence determines the legal status of a defendant both in criminal proceedings and in all other civil relations he/she participates in. It is in force in the moment the criminal liability is commenced and continues throughout the entire criminal proceedings *res judicata* until the verdict is rendered. Otherwise, presence of preliminarily formulated opinion may make the process and court hearing formal. Consequently, the court shall implement its duties with the respect of the innocence of the defendant so that the accused person had possibility to comprehensively enjoy the right to defense<sup>67</sup>.

*Ratione personae* of the presumption is applied for both physical and legal persons and all parties – the body responsible to conduct the process and the defense side, as well as parties of the process, media, all branches of the government, stakeholders are obliged to respect it. The

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<sup>61</sup> See: Universal Declaration of Human Rights, Article 11 (1). <https://bit.ly/3oAiJIC>

<sup>62</sup> See: International Covenant on Civil and Political Rights, Article 14 (2). <https://bit.ly/3gyFhAo>

<sup>63</sup> See European Convention on Human Rights, Article 6(2). <https://bit.ly/3gp9925>

<sup>64</sup> See the Universal Declaration of Human Rights, Article 1(1) <https://bit.ly/3qB9sLM>

<sup>65</sup> See the Article 31(5) of the Constitution of Georgia  
<https://matsne.gov.ge/en/document/view/30346?publication=36>

<sup>66</sup> See the Articles 4(1), 5(1) and 5(3) of the Criminal Procedure Code of Georgia;  
<https://matsne.gov.ge/ka/document/download/90034/64/en/pdf>

<sup>67</sup> See: Barbera, Messegúe and Jabardo v. Spain, ECtHR, 13/06/1994, §77; Janosevic v. Sweden, ECtHR, 23/07/2002, §97

representatives of the influential actors shall refrain from making the statements containing preliminary conclusions about the court decision<sup>68</sup>.

In the reporting period, in parallel with the court hearings of one of the criminal cases, the statements were disseminated from the state officials referring to the participation in other possible crimes by the accused. These statements referred to the grave crimes committed long ago into which no investigation was ever launched by the investigation authorities. Moreover, in several cases, in parallel to the court proceedings, in speaking with media the representatives of the government were referring to other criminal case or cases for which the accused was convicted. Such statements made by particular politicians can be assessed as an attempt of unjustified demonization of the accused and influencing the justice in this way.

The European Court of Human Rights many times noted that presumption of innocence includes not only the statements of the court or participatory sides but also it is applied to the state representatives if their statements may influence the public opinion about the defendant and consequently cause preliminary assessment of the facts that is the prerogative of only the competent judiciary body<sup>69</sup>. If the statement of a state official indicates at the guiltiness of the defendant before the guilty judgment is issued, it will be the violation of the presumption of innocence<sup>70</sup>.

## SELECTIVE JUSTICE

Pursuant to the European Convention on Human Rights, equality is prohibition of all discriminations<sup>71</sup>. Universal Declaration on Human Rights states that all individuals are equally protected from discrimination<sup>72</sup>. The Constitution of Georgia, national legislation and the

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<sup>68</sup> See: Kakabadze and others v Georgia, ECtHR 02/01/2013, §77; OSCE/ODIHR, Trial Monitoring Report, Georgia. 09/12/2014, §96; see also: Ilgar Mammadov v Azerbaijan, ECtHR, 22/05/2014, §125- 128; Ismoilov and others v Russia, ECtHR, 24/04/2008, §160-170; Sead., Böhmer v. Germany, ECtHR, 03/10/2002, §54, 56; Nešfák v. Slovakia , ECtHR 27/02/2007, §88-89.

<sup>69</sup> See: Fatulaev vs. Azerbaijan, ECtHR, April 22, 2010, paragraph 159-160

<sup>70</sup> Ibid: paragrapj 159-160

<sup>71</sup> See the European Convention on Human Rights and Fundamental Freedoms, Rome, November 4, 1940, [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

<sup>72</sup> See: Universal Declaration on Human Rights, December 10, 1948, <https://bit.ly/33U0FuG>

judiciary practice shares the case law of the ECtHR and establishes the standards within the scope of the Article 14 of the Constitution<sup>73</sup>. The Article 14 of the Constitution of Georgia guarantees equality not only in the listed cases, but also in all other cases where individuals may appear in unequal environment. However, as the Constitutional Court of Georgia clarified, the principle of equality before the court means not only legal and also factual equality but also the state shall act in accordance with this principle in legal proceedings<sup>74</sup>.

Accordingly, the principle of equality before the law requires the state to have adequate response to all violations and start respective procedural and investigative activities objectively, impartially and transparently. All similar response shall be conducted in due respect of the Constitution and international standards, domestic law, with high standard of justification and maximum public informing.

The legally deficient practice of criminal prosecution of the high-rank officials of the former government, and the problems identified after the examination of the cases related to the events of June 20-21, 2019 and July 5-6, 2021, the ignorance of international and national standards, further, the gross violations of the human rights, the instances of nonresponse to the offenses on the part of police officers raise questions regarding the selective justice from the state and regarding the purposeful launch of criminal prosecution against certain persons expressed in the wish of punishing the persons and arresting them.

## **THE PROBLEM OF CONFIDENTIAL COMMUNICATION WITH DEFENSE LAWYERS**

The relation between the defense lawyer and the client – defendant is confidential. The communication of a person with his/her potential defense lawyer, occurring before the person is recognized as the accused, shall also be confidential. In accordance with the Article 43 of the Criminal Procedure Code of Georgia, interference or restriction of communication between the defendant and his/her lawyer from the side Also, the

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<sup>73</sup> See the Article 14 of the Constitution of Georgia, <https://matsne.gov.ge/en/document/view/30346?publication=36>

<sup>74</sup> See the Young Lawyers vs. the Parliament of Georgia, August 22, 2018 <https://bit.ly/3nf6YRg>

communication between the accused and his/her defense lawyer may only be restricted by means of visual surveillance.

The Constitution of Georgia guarantees the right to defense<sup>75</sup>. In accordance with the Criminal Procedure Code of Georgia, “the accused may choose a defense lawyer and use his/her services, also may replace the defense lawyer any time.”<sup>76</sup> In the context of the criminal law, the right to have defense lawyer includes the right of a person to be represented by the defender and the guarantee to receive information about this right as well as the right to give and receive information from the lawyer confidentially and enjoy the right to get free service of the defense lawyer<sup>77</sup>.

The right of the defendant to have confidential communication with the defense lawyer is one of the fundamental elements of the fair trial which is based on the Article 6 Paragraph 3 – c of the ECHR. Pursuant to the clarifications of the ECtHR, service of the defense lawyer will lose all meaning if the communication between the defendant and the lawyer is surveilled<sup>78</sup>. The ECtHR in this context refers not only to the verbal communication between the defendant and the lawyer but also to the written communication between them.

During the monitoring, some interruptions were noticeable in confidential and privileged communication between the defense lawyers and the client. Because of the COVID-19 pandemic, the separate placement of the accused and their defense lawyers affected negatively the confidential and privileged communication among them<sup>79</sup>. There was a case when in the remote session the defense counsel requested to suspend the session because he was not provided with confidential communication with the client. Mostly, the defendants/convicted did not have possibility to agree the positions with the defense lawyers that may be evaluated as

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<sup>75</sup> See the Article 31, Paragraph 3 of the Constitution of Georgia:  
<https://matsne.gov.ge/en/document/view/30346?publication=36>

<sup>76</sup> See the Article 38 Paragraph 5 of the Criminal Procedure Code of Georgia:  
<https://matsne.gov.ge/ka/document/download/90034/64/en/pdf>

<sup>77</sup> See the legal digest of international fair trial rights, quotation from the book, 7, p 138  
<https://www.osce.org/odihr/94214>

<sup>78</sup> See *S. v. Switzerland*, ECtHR, 28/11/1991.

<sup>79</sup> For example, in the case of *Mikheil Saakashvili the lawyers stated that the right to confidential communication with the defense lawyer was violated.*

the violation of the fair trial.

## **MISCARRIAGES IN REMOTE COURT HEARINGS**

In the reporting period, several court hearings were held remotely. The hearings held remotely because of the coronavirus pandemic became in general a significant challenge in terms of the right to a fair trial. For most of the defendants, this was an impediment to their ability to communicate confidentially with defense counsels.

Besides that, like in 2020<sup>80</sup>, because of some technical defects, the problems remained with the visual clarity of the witness and understanding what they were saying. Where more than two or more persons were speaking simultaneously the voice could be heard and the participants of the process, including the judges had to repeat the questions they put delaying and making impossible to continue the sessions. Several times, the cases were reported when the voice of the participants were doubled and/or was heard unclearly. This problem remains unresolved to this day. Moreover, in most of the cases, the court hearings began late or they were adjourned<sup>81</sup>.

As what the possibility of the court monitors to attend the hearings concern, the problems stem also from the fact that the remote or physical attendance to the court session was possible only after the court monitor applied with a written formal request to the judge hearing the case and asked him/her the permission to attend the hearing.

## **FINDINGS FROM THE TRIAL MONITORING OF THE CASES OF ADMINISTRATIVE OFFENCES**

Trial monitoring of the cases of administrative offences revealed that the failure of the Code to provide a specific standard of proof and that of the burden of proof for holding a person liable for an offense results in holding persons as offenders based only on the report of the offense and statements of the police officer who has drawn up the report; The most of

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<sup>80</sup> See the Monitoring Court Proceedings of the Cases with Alleged Political Motives, Summary Report, 2020 <http://www.hrc.ge/100/eng/>

<sup>81</sup> HRC trial monitoring reports: 02.02.2021; 03.30.2021; 25.08.2021.

the court judgments are unsubstantiated and are drafted in 'one size fits all' manner; in particular, the courts fail to provide subsumption of the action of the person vis-a-vis the offense described in the norm, and thus the courts refer only to the data of the reports on detention and offense and to the explanatory statements at the court hearing of the law enforcement officer who drew up the report. All evidence is obtained by one agency/person and the body of evidence exists only formally.

Human Rights Center studied 14 cases of administrative offences under Article 166 (petty hooliganism), Article 173 (disobedience to the lawful request or order of a police officers), and Article 174<sup>1</sup> of the Code of Administrative Offences of Georgia, which were examined by the Tbilisi and Kutaisi City Courts in 2020-2021. The persons were arrested under the administrative law in all 14 mentioned cases. In 5 out of 14 cases, the legal proceedings were partly terminated because of lack of offence. However, violation of other articles was identified; in the rest of the cases, the facts of offence were identified and the following sanctions were used: verbal reprimand in 2 cases; fine in 11 cases and imprisonment in 3 cases.

The common courts examined the mentioned cases through the violation of the rights guaranteed by the Constitution of Georgia that is primarily caused by the normative content of the Code of Administrative Offences of Georgia.

## **THE PRACTICE OF ADMINISTRATIVE ARRESTS AND ADMINISTRATIVE DETENTIONS**

As in previous years, during the reporting period, law enforcement agencies are continuing to actively use the mechanisms provided by the Code of Administrative Offences against protesters prejudicing the right to assembly and demonstration. As the monitoring revealed, the detention of the participants of the peaceful assembly was mainly conducted under Article 166 (*Petty hooliganism*) of the Code of Administrative Offences and Article 173 (*Disobedience to a lawful request of the enforcement officer*), and also under Article 150 (*Defacement of the image of the self-governing unit*).

According to Article 166 of the Code of Administrative Offences of Georgia, petty hooliganism shall be considered the acts of cursing in



public places, abusive chasing on citizens, and other such actions that violate public order and peaceful life of the public.

According to Article 173 of the Code of Administrative Offenses of Georgia, as an administrative offense shall be considered the disobedience to a lawful order or request of a law enforcement officer, that of an officer of the military service, of the Special State Protection Service, or enforcement police when they are performing official duties.

The Code of Administrative Offenses of Georgia (by Article 150) considers as defacement of the image of the self-governing unit the arbitrary execution of various inscriptions, drawings, symbols on the facades of buildings, shop windows, fences, columns, trees, plantations, posters, banners, as well as placing the banners in the places not designated for such purposes.

In the above cases, the Code of Administrative Offenses of Georgia provides for administrative arrest and administrative detention. Administrative arrest shall serve as a provisional measure, while administrative detention is the most severe sanction for an administrative misdemeanor. Both the administrative arrest and administrative detention under the existing Code of Administrative Offenses which do not meet modern human rights standards, pose threats for the protection of liberty and security of a person and the right to a fair trial. This is evidenced by the fact that during the reporting period officers of the Ministry of Interior used the arrests/detentions against many protesters or civil activists during the protests or other political rallies on the grounds that they were disturbing public order and disobeying the orders of law enforcement officers.

The cases identified during the monitoring of the court hearings prove that the court establishes the fact of the offense without verifying the lawfulness of the acts by the police and in the cases where the court does verify that, the verification bears merely a formal character. In such cases, the court limits itself with determining whether the police have the right to take any particular actions in general, and fails to assess the justification and rightfulness of the exercise of the powers granted by the law to the police in the cases brought before the court. By following such a practice, the police are allowed to restrict the right of the protesters to choose the

place and manner of the protest rally without any justification, further to deprive the protesters of their liberty and to carry out harsh measures against the protesters in an unlawful manner.

## **EXAMINATION OF EVIDENCE AND CASE PROCEEDINGS**

Most of the administrative proceedings under the monitoring of HRC were conducted in a superficial and formalistic manner: The examination of the evidence never happens at the court hearings with the police officer, the author of the report of the offense verbally stating the content of the report. And shortly after such a procedure, the judge announces the penalty imposed on the person. The formalistic nature of the hearing is also confirmed by the length of the hearing often lasting only for a few minutes.

As evidence at the court proceedings mainly stand the reports on administrative offenses and on detentions, the personal report of a police officer or a verbal statement by him/her which repeats the data recorded in the report on administrative offense. In seldom cases, the written statements of witnesses are brought as evidence mainly that of other police officer witnesses. In exceptional cases, there is neutral evidence i.e. video recordings taken from body cameras. In the latter cases, the information on the video often did not reflect the real facts as except the few cases it was impossible to identify the persons and identify the fact of an offense. Further, as witnesses were questioned the police officers who did not take part in deterring the offense and detaining the persons.

As what the act of disobedience to the request or order of a police officer concerns, the reports on the offense do not read what was the request from the police officer towards the person, and neither the court assesses such requests. During the hearings, the courts do not examine the issue of legality/illegality of the request/order of the police officers only establishing the fact of disobedience of the person as provided by the reports on the offense, while assessing as petty hooliganism the facts of verbal assault, abusive language, obscene language towards the police or in general, screaming, talking loud in the street using bad language and such acts without the general courts adjudicating the issue whether the verbal abuse violated the public order.

Rather in a biased manner, the court agrees with the content of the

report on the offense without referring to any particular evidence and without assessing them<sup>82</sup>. The Court generally assumes that law enforcement officers act in good faith, thus the court fully agrees with the factual circumstances presented by the officers and with the explanatory statements of the summoned police officers, without evaluating the neutral evidence and information provided by the defense.

## **UNSUBSTANTIATED JUDGEMENTS OF THE COURTS**

As a result of the monitoring of the court proceedings, it was found out that the reports on administrative offenses do not describe the specific factual circumstances that were considered as offenses by the court. There is no reasoning provided in the court judgments about the nature and character of such acts. Without any assessments, the court holds that the person violated public order and disobeyed a lawful request from the police failing to assess and refer to the action in which the disobedience manifested itself.

Another trend identified during the monitoring was the cases when the courts applied the wrong subsumption in addition to the first one. In the vast majority of cases, the continued action of violating the public order despite the request on the part of the police would not be considered an aggravating circumstance but would be subsumed to an additional offense under Article 173 of the Code of Administrative Offenses. In general, Article 173 of the Code of Administrative Offenses implies disobedience to the police officer when the officer exercises his/her rights and duties, and if there are no sufficient factual and legal grounds in the case files to prove such disobedience to any particular legal request, this may not serve as the reason for imposing additional penalties. As for the continuation of the violation of the public order despite the request to stop the unlawful conduct, this is already an aggravating circumstance and does not constitute a basis for separate subsumption.

When applying an administrative penalty, in most cases, the court does not substantiate why it applies the penalty; neither does the court assess the aggravating or mitigating circumstances, and the personal

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<sup>82</sup> The Public Defender of Georgia draws attention to such trends in the amicus curiae opinions : <https://constcourt.ge/ka/judicial-acts?legal=1936>

characteristics of the offender. The court limits itself to the assessments of the factual circumstances in general terms. Moreover, the court does not assess what specific facts give rise to aggravating circumstances or what personality traits characterize the offender that would justify the application of the penalty. The court does not refer either to the specific evidence that the judgment of the court is based on.

## **THE JUNE 19-21, 2019 EVENTS RELATED LAW ON AMNESTY AND POLITICALLY MOTIVATED CASES**

On September 7, 2021, the Parliament of Georgia adopted the Amnesty Law concerning the June 19-21, 2019 protests, which was initiated by the ruling party Georgian Dream. In accordance with the Amnesty Law<sup>83</sup>, every individual will be freed of criminal culpability, penalty, and probation under the bill. The person who is granted amnesty will be presumed not to have been convicted.

The April 19, 2021 document titled ‘A way ahead for Georgia’ envisages as one of the subject matters the adoption of the Amnesty Law, as the reaction to the issues of perceived polarized justice. According to the relevant paragraph, "in the interest of Georgia’s political stability and in order to implement this agreement, the signatories commit to address, within one week of signing this agreement, the two cases of perceived politicized justice, either by an amnesty and/or by taking such steps as to produce an equivalent outcome. In particular, within one week of signature of the agreement, a party represented in Parliament shall initiate an amnesty law for all violations and convictions stemming from the 19-21 June 2019 protests.<sup>84</sup>”

On April 27, 2021, it turned out that the ruling party Georgian Dream had a fundamentally different approach to the amnesty law than the part of the opposition who took up their seats in the Parliament. In particular, according to the opposition<sup>50</sup>, the law on amnesty must provide for the specific articles of the Criminal Code to which the act of amnesty would

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<sup>83</sup> See the Law of Georgia on Amnesty

[https://www.matsne.gov.ge/ka/document/view/5199308?fbclid=IwAR02goE73nBsDw3PfeuRhMP3bxzy3opEXn-InLjhguEQNgqg-8NXFj6fy\\_M&publication=0](https://www.matsne.gov.ge/ka/document/view/5199308?fbclid=IwAR02goE73nBsDw3PfeuRhMP3bxzy3opEXn-InLjhguEQNgqg-8NXFj6fy_M&publication=0)

<sup>84</sup> See ‘A way ahead for Georgia’. Proposal by President of the European Council Charles Michel to the representatives of Georgian politics: <https://bit.ly/3yntUED>

be effective, while Georgian Dream states that the amnesty should cover all articles except for the offenses under Articles 117, 144<sup>1</sup> -144<sup>3</sup> of the Criminal Code of Georgia envisaging an intentional grievous bodily harm, torture and degrading or inhuman treatment.

Disproportional forces and methods used by the police during the dispersal of the peaceful demonstration on June 20-21, 2019, caused a mass violation of the rights of the protesters and justifiably left the impression of punishing the protesters. Because of using disproportional forces for dispersing the demonstration, the facts of ill treatment on the part of law enforcement officers when arresting the protesters and in the following periods, illegal interference with the journalistic activities and inefficient investigation of the cases we may deal with the violation of the right of prohibition of torture under Article 3 of the European Convention both in terms of substantive and procedural rights. The investigative bodies did not commence investigations in relation with June 19-21 events under these articles at all.

Human Rights Center prepared legal analysis - Cases Connected with the Events of June 20-21, 2019: A Political Justice and Disputed Amnesty<sup>85</sup>. HRC emphasized that it is unacceptable to apply the act of amnesty/pardon in relation to the offenses committed by state representatives against the right to be protected from inhuman and degrading treatment or punishment, which occurred during the dispersal of the June 20-21 rally.

Pursuant to the case law of the European Court of Human Rights, the application of amnesty to the persons who have committed the crimes of inhuman or degrading treatment (regardless of whether the investigation is being conducted at the national level under the right subsumption) is contrary to Article 3 of the European Convention. Such an outcome makes illusory the safeguards created by the prohibition of illtreatment<sup>61</sup>. Consequently, the application of amnesty to the persons who were responsible on the part of the State for the offenses against the prohibition of inhuman and degrading treatment is a violation of international law.

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<sup>85</sup> See Cases Connected with the Events of June 20-21, 2019: A Political Justice and Disputed Amnesty, Legal Analysis, 2021 <http://www.hrc.ge/files/1032021%20ivnisis%20movlenebi-en.pdf>

The very fact under what subsumption the investigation is conducted at the national level, is not relevant for the purposes of Article 3 of the Convention. Therefore, irrespective of the fact, that the investigation against the enforcement officers arrested following the dispersal of June 20-21 demonstration was not carried out under the proper subsumption, namely under Article 144(3) of the Criminal Code of Georgia, the acts committed by some of the officers have to be assessed as inhuman and degrading acts eliminating the possibility of using amnesty against the mentioned persons according to the binding standards established by the European Court. Furthermore, the European Court of Human Rights interprets the principles and legal terms provided for in the European Convention and its Additional Protocols in their autonomous meaning. The interpretation of the ECtHR may not coincide with the meaning given to these terms and principles by the national law of the states.

The Amnesty Law already concerned a wide range of persons. Although his guiltiness was not proved by case files, civil activist Bezhan Lortkipanidze pleaded guilty and accepted the amnesty. As for the accused riot police officers arrested in relation with the June 20-21, 2019 events, they also accepted the amnesty. The member of the National Movement Besik Tamliani rejects the amnesty, who is charged under the criminal law and his case is examined in the Tbilisi City Court.

## **CONCLUSION**

The Summary Report on the results of the court monitoring of the 125 cases by HRC includes the problematic issues of a fair trial as identified by the monitors and the legal analyst to have a systemic nature during the monitoring. The report reviews almost all aspects of the problematic legal proceedings on criminal and administrative offences, which were analyzed in the view of the international standards and best practices.

Like in 2020, the trial monitoring revealed a number of shortcomings in various areas, such as: the right to a trial by an independent court established by law, public confidence in the criminal justice system, the right to a public hearing, the presumption of innocence, the right to dignity and honor, the right of the convicted/accused to health protection, the right to liberty, equality of arms, the right to be tried within a reasonable time,

the right to call and question witnesses, the rights to a reasoned court judgment, the right to a lawyer at the stage of detention and witness protection, the right to reasoned judgment, the right of a defendant to attend the court hearing, selective justice and political motives. Also, the actions of the state, first of all blatant violation of the rights of the hunger-striking prisoner and patient that may be evaluated as inhuman and degrading treatment.

There were some cases identified during the reporting period where the government officials mentioned the culpability of the accused persons before the court rendered the judgment, thus violating the presumption of innocence contributing to the appearance of the accused as offenders in the public eye. Moreover, such statements have a negative impact on shaping public opinion on the impartiality and political neutrality of the prosecutor's office.

In the cases of administrative offenses and administrative arrests, the claims of the authorities to hold the person as an offender were oftentimes unsubstantiated and drawn up in a 'one size fits all' manner; Almost 100% of the evidence presented by them was the testimony of witness police officers.

In many cases, the issue of granting the motions of the defense is problematic; the grounds for rejecting the motions are unsubstantiated and/or insufficient.

Based on the above observations and assessments, it was revealed that the rights of a fair trial were not fully guaranteed in the cases monitored by HRC. Although the shortcomings identified during the court hearings may not have violated the right to a fair trial *per se*, the combination of certain individual cases, individual legislative gaps and generally problematic practice of the courts put at the risk the full protection of the right to a fair trial in accordance with international standards and human rights law. This has raised concerns, both nationally and internationally, about the independence and impartiality of the prosecution authorities and the judiciary as a whole; also, in terms of public perceptions.

## RECOMMENDATIONS

### To the Judiciary:

- Judges should ensure a fair trial and increase the trust of the public towards the justice system by justifying the decisions by high standard of proof, adhering to the Bangalore Principles of Judicial Conduct;
- In order to exercise public control over the judiciary, the courts should ensure that the principle of publicity of the hearing is observed - any interested person is allowed to attend the hearing when there are no grounds for closing the hearing as provided for by law;
- In cases of high public interest, courts are to ensure that hearings are held in large courtrooms;
- In the event of a change in the date and time of the hearing, the changes shall be posted on the website of the court within a reasonable time;
- To ensure full, comprehensive and impartial examination of the cases of administrative offences;
- To ensure examination of the cases of administrative offences in due respect to the principles of equality of arms and impartiality;
- To ensure higher level of substantiation of the court decisions on the cases of administrative offences;
- To ensure correct distribution of the burden of proof in the process of examination of administrative offence cases, not to grant primary legal power to the evidence presented by only one part and to evaluate all evidence equally and comprehensively;
- To evaluate the evidence submitted to the court as well as the legality how they were obtained;
- The judges shall ensure an order at the court hearings. To allow persons leaving the courtroom, especially court monitors, to return with the consent of the court bailiff;
- The courts must consider each charge against each defendant, with reference to the evidence. The courts to explain in the judgment why the evidence was shared or denied;



- The courts should not allow a bill of indictment as an evidence.
- The courts shall ensure the obligatory presence of the defendant at the court hearings and shall not hinder them to realize this right;
- In remote proceedings, the hearings should be technically well equipped; also the confidentiality of lawyer-client communication during the remote court proceedings must be ensured.

**To the Prosecutor’s Office:**

- When interviewing witnesses and victims, the behavior of the prosecution to ensure that the fundamental human rights, respect for human dignity and humane treatment are observed;
- To approach the measures of search and seizure with increased responsibility;
- To promote the restoration of public confidence in the independence and impartiality of the prosecution.

**To Investigative Bodies:**

- To immediately ensure impartial, prompt and effective investigation of the facts of interference in the professional activities of the journalists;
- To ensure that the facts of the interference in the professional activities of journalists are qualified accordingly;
- To ensure thorough and objective conduct of the investigation process to identify all persons involved in the violent events of July 5-6 and to identify the organizers of the actions and to prosecute them legally in an appropriate manner;

**To the High Council of Justice:**

- To promote restoration of the public confidence in the independence and impartiality of the judiciary authority;
- To issue recommendations to regulate in legal terms the participation of monitors and persons concerned in court proceedings, at the same time protecting the interests of those involved in the proceedings;
- To monitor the proper implementation of the

recommendations approved by the Council in the general courts.

**To the Ministry of Justice/Special Penitentiary Service:**

- To follow the conclusions of the multi-functional group of doctors and obligation to ensure adequate honorable environment for the prisoner and to select alternative medical institution for the prisoner.

**To Defense Lawyers:**

- To immediately notify the court of the facts impeding the exercise of the right to confidential and privileged communication.