



MONITORING OF COURT PROCEEDINGS OF CASES WITH ALLEGED POLITICAL MOTIVES

(Summary Report)



2023

HUMAN RIGHTS CENTER



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THE REPORT WAS PREPARED BY HUMAN RIGHTS CENTER (HRC).

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The Report was prepared with the financial support of the US National Endowment for Democracy (NED). The views expressed in the Report are those of HRC and do not necessarily reflect the views of the donor. Therefore, NED is not responsible for the content of the text laid here.

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1. INTRODUCTION

The current report reflects the outcomes of the monitoring of court proceedings of cases regarding criminal and administrative offenses as well as civil litigations with alleged political motives between 1 July 2022 and 25 June 2023.

As a result of monitoring of court proceedings, the HRC has collected significant, voluminous information. Based on this information, it was possible to assess the existing trends regarding cases of criminal and administrative offences and civil cases, as well as to identify and analyze the violations in the proceedings of high-profile criminal cases with alleged political motives. The report highlights the issues prompting the court monitoring. Further, the report analyzes the flaws identified during the monitoring of criminal and civil cases, as well as those related to administrative offenses.

Similar to 2021, challenges persist with respect to compliance with the national and international standards of the right to a fair trial. Moreover, since 2022, the number of court proceedings with alleged political motives involving leaders of political parties, representatives of civil society and media have increased.

HRC monitors the criminal proceedings in cases with alleged political motives in the general courts of Georgia, within the frames of the project Legal Aid and Human Rights Monitoring. The Project of monitoring of court proceedings and protest rallies* that began in 2020, was resumed on 1 February 2021, and ended on 30 December 2021**.

* In 2020-2021, HRC prepared 11 analytical documents, 2 interim and 2 final reports. These rights include the following: 1) Legal Assessment of the Criminal Cases Ongoing against Giorgi Ugulava available at: <https://bit.ly/33SghZx>; 2) Legal Analysis of the criminal cases related to the events of June 20-21, 2019. available at: <https://bit.ly/2XUIHFN>; 3) Legal Assessment of Ongoing Criminal Cases against Irakli Okruashvili, available at: <https://bit.ly/31NEpka>; 4) Legal Analysis of Criminal Case of Giorgi Rurua, available at: <https://bit.ly/2CkSOfd>; 5) Legal Assessment of the Ongoing Criminal Case against Nika Gvaramia, available at: <https://bit.ly/33NghAb> ;6) Monitoring of the Court Proceedings of the Cases with Alleged Political Motives - Interim Report, available at: <https://bit.ly/2JZ0eZh>; 7) Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report, available at: <https://bit.ly/2X54qNc>; 8. Monitoring Court Proceedings of the Cases with Alleged Political Motives: Interim Report(2021) available at: <https://rb.gy/xuev>; 9) Cases Relating to the Events of June 20-21, 2019: Political Justice and Disputed Amnesty, 2021, available at: <https://rb.gy/frq2>; 10) Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report (2021), available at: <https://bit.ly/3FAP59h1>; 11) The Prisoner's Right to Health care – the Analysis of Court Proceedings against Mikheil Saakashvili and of the Accompanying Events (2022), available at: <https://rb.gy/2pia>; 12) Assessment of the Right to be Tried within a Reasonable Time in the Cases Ongoing against Mikheil Saakashvili (2021), available at: <https://rb.gy/jkzex>; 13) Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report (April–June, 2022), available at: <https://rb.gy/ehwq>; 14) Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report (2022), available at: <https://rb.gy/r2q8>.

** Within the scope of the project, the HRC Court Monitors have monitored a total of 236 court hearings from February 2020 to December 2021.

From 1 July 2022 to 25 June 2023, HRC Monitors observed, in total, 21 criminal cases, 3 civil cases, 7 cases regarding administrative offenses and 1 motion regarding the deferral of a criminal sentence.

During the reporting period, the Court Monitors observed 157 hearings. Out of 32 cases, some are completed, and some are pending with the first instance court. In addition, a number of judgments have been appealed to the Tbilisi Court of Appeals.

Monitoring results and significant findings are published in the reports and analytical documents that can be found on HRC website www.hrc.ge under Reports and Research.

2. METHODOLOGY

The monitoring project over the cases with alleged political motives was carried out by HRC, based on methodology of monitoring the court proceedings designed by HRC with experts' involvement, the purpose of which is to assess the compliance of the monitored court proceedings and domestic legislation with international standards of fair trial, and to identify and analyze alleged political motives and shortcomings in the cases of criminal, civil law and administrative offenses.

During 2022-2023, the monitoring of the court proceedings was carried out by three court monitors who received special training on the court monitoring. The methodology developed by HRC included working with a special questionnaire prepared particularly for the court proceedings with alleged political motives. The court legal monitors prepared reports after each hearing in which they described the details of the hearings. After reading analyzing reports supplied the legal monitors, the legal analyst used the processed information to prepare analytical documents and public reports.***

The current report is also informed by the various documents published about the cases under monitoring and the findings obtained in the research. Furthermore, motions of the defense and prosecution, judgments, rulings, and decisions made by the courts were additionally studied during the research.

*** From July 2022 to May 2023, HRC prepared 4 analytical documents: 1) The Prisoner's Right to Health care – the Analysis of Court Proceedings against Mikheil Saakashvili and of the Accompanying Events (2022), available at: <https://rb.gy/2pia>, [15.06.2023]. 2) Acts of Pardon and Amnesty Applied to the Cases with Alleged Political Motives(Legal Analysis), available at: <https://rb.gy/nj38p>, [12.06.2023]; 3) Trends of Terminating the Powers of Opposition MPs Following the Judgments with Alleged Political Motives, available at: <https://rb.gy/z3hm1>, [12.06.2023]; 4) Legal Aspects Concerning the Procrastination of the Hearings with Alleged Political Motives, available at: <https://rb.gy/ujm7r> [26.06.2023].

The monitoring of court proceedings is strictly based on the principles of objectivity and non-interference in the court proceedings. Moreover, in parallel with the monitoring, due to the great public interest in high-profile proceedings with alleged political motives, HRC regularly provided the public, the media, and the parties to the proceedings with essential information about the court hearings and relevant findings.

3. CASES WITH ALLEGED POLITICAL MOTIVES

From July 1, 2022, to June 25, 2023 (hereinafter, “the reporting period”), the court monitors of HRC observed court proceedings regarding 32 cases with alleged political motives, including: 21 criminal cases, 3 civil cases and 7 cases on administrative offenses; the report includes monitoring outcomes regarding 1 motion on the deferral of a criminal sentence.

During the reporting period, HRC court monitors observed 157 court hearings in total.

◆ 1. The Case of Iveri Melashvili and Natalia Ilychova (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 a certain part of the Georgian territory. The defendants were remanded in custody from October 8, 2020, till January 28, 2021. On January 28, 2021, following the motion by the prosecution, the Presiding Judge Lela Kalichenko changed the measure of restraint applied against the defendants with a remand on bail of GEL 20,000 each. Further, the Court granted the motion of the prosecution to dismiss Iveri Melashvili from his job. In order to collect the amount of the bail, the civil movement “Shame” disseminated information on the social network. As a result, within a couple of hours, many citizens joined the campaign to assist in the release of the accused persons, collecting the full amount of the bail - GEL 40,000. The case is being heard by Tbilisi City Court. Iveri Melashvili and Natalia Ilychova were arrested on October 7, 2020, one month before the parliamentary elections.

Outcomes of the court monitoring:

14 court hearings were held on the case during the reporting period.

Some former members of the Delimitation and Demarcation State Commission are being examined as witnesses. Although the court proceedings are held intensively, the prosecution has not yet completed examination of all the witnesses. Stemming from the results of the monitoring of the court proceedings, the testimonies of prosecution witnesses that have been examined in court could not clearly confirm the culpability of Iveri Melashvili and Natalia Ilychova, in particular, the witnesses failed to identify in what the criminal nature of the act committed by the defendants was manifested. The witnesses were just asserting that Iveri Melashvili was the head of the group of experts within the Commission having the largest competence in the field, but they failed to mention in what particularly the alleged criminal act of his was manifested.¹ At the same time, part of the witnesses questioned in the court confirmed that during the work of the Commission, Iveri Melashvili was always firmly protecting the positions of the country having a moral position on the issue.²

Moreover, to the questions posed by the parties to the witnesses about the maps and the issues related to them, including the markings, the border line, etc., the witnesses kept replying that they did not have information or could not read the map. Further, in response to questions regarding the content of the report signed by one of the witnesses, the same witness stated that he could not remember what the content of the report was, as a lot of time had passed since then and that he only participated in the sessions formally.³

During the hearing, the judge was active to the minimal extent. The judge was practically not involved in examination of the witnesses and evidence.

When monitoring the proceedings, we learned that before opening, the defense was not aware of the witnesses the prosecution was going to examine.

During the reporting period, the monitoring identified no instances of significant procedural violations. The principles of equality of arms and adversarial proceedings were observed. The parties had the opportunity to freely make motions and express their opinion on the motions of the opposing party. Consequently, the parties in the proceedings had all the opportunities to sufficiently exercise their procedural rights.

The hearings of the case are going on in the Tbilisi City Court.

¹ HRC Court Monitor Report on the Criminal Case of Iveri Melashvili and Natalia Ilychova (case of Cartographers): 24.02.2023.

² HRC Court Monitor Report on the Criminal Case of Iveri Melashvili and Natalia Ilychova (case of Cartographers): 24.01.2023.

³ HRC Court Monitor Report on the Criminal Case of Iveri Melashvili and Natalia Ilychova (case of Cartographers): 28.11.2023.



2. The Case of Besik Tamliani, Emzar Siukaev, Kakhaber Keshikashvili, Stepane Gikoshvili and Lasha Samkharadze

On April 26, 2023, hearings on the criminal case were finalized against Besik Tamliani, Emzar Siukaev, Kakhaber Keshikashvili, Stepane Gikoshvili and Lasha Samkharadze. At the court session, the prosecutor made a motion to complete a plea agreement with Besik Tamliani, Emzar Siukaev, and Lasha Samkharadze. Under the plea agreement, the defendants admitted that they had resisted the police through violence during a rally in front of the Tbilisi City Court on November 29, 2021 (Article 353(1) of the Criminal Code).

When asked by the judge whether the defendants understood the content of the plea agreement and whether they agreed to the provisions of the plea agreement, accused Besik Tamliani stated he had to agree to the plea agreement because of his family situation (health condition of his mother), but implicitly he believed he was innocent of any crime.⁴ During the trial, the Judge further explained that it is a right of a defendant rather an obligation to sign a plea agreement. Accordingly, the Judge asked the defendants once again if they agreed to sign the plea agreement, to which the defendants gave positive responses. Consequently, the Court approved the plea agreement. Under the plea agreement, Besik Tamliani, Emzar Siukaev, and Lasha Samkharadze were found guilty of committing the offense under Article 353(1) of the Criminal Code and were sentenced to 2 years of imprisonment, which counted as a conditional sentence. Further, the offenders were placed on probation, and they have to register each month with the Bureau of Probation.

As for other persons accused in this case - Kakhaber Keshikashvili and Stepane Gikoshvili opted out of accepting the plea agreement. In the closing arguments, the prosecution requested the Court to find these two defendants guilty of the crime under Article 353¹ (attack on law enforcement officers) of the Criminal Code. The Judge rejected the motion by the prosecution and subsumed the charges from article 3531(1) (assault on the law enforcement officers) to Article 353¹ (violence/threat against the law enforcement officers), as the judge found that the submitted evidence failed to prove the element of assault against the police. The Court sentenced the two defendants to 2 years in prison. However, the imposed sanction counted as conditional sentence, and the offenders were placed on probation with an obligation to register each month with the Bureau of Probation.

Outcomes of the court monitoring:

20 court hearings were held on the case during the reporting period.

⁴ Court Monitoring Report by the HRC Monitor of the case of Besik Tamliani, Emzar Siukaev, Kakhaber Keshikashvili, Stepane Gikoshvili and Lasha Samkharadze: April 26, 2023.

Unlike other proceedings, this time the monitoring found the judge to be rather actively involved in the examination of evidence provided by the defense and there was an instance when the judge regarded the testimony by a defense witness to be unreliable. For example, one of the witnesses questioned on the trial held on October 12, 2022, explained in his testimony that people gathered in front of the court on November 29, 2021, were peacefully protesting the trial against the third President of Georgia, while the tension was exacerbated following the police actions to remove cameramen of TV stations from the concrete fence located next to the court. At that moment, one of the camera operators was injured. The police did not allow people to get closer to the injured person and this caused the tension. Even though the credibility of this testimony of the witness was not doubted by the prosecution, judge Lasha Chkhikvadze said that the testimony of the witness contained many inaccuracies.⁵ Furthermore, at the November 10, 2022, hearing, the judge was again actively involved in the examination of a defense witness.⁶

The monitoring found that the judge showed a rather indifferent attitude when examining the video evidence of the defense. More precisely, after the video evidence presented by the prosecution depicting the developments on the rally were, the court seemed to show little interest in examining the video evidence of the defense. Moreover, considering the reply by the judge - “we- all have already seen what is on the footage,” - there was an impression that the court was formally examining the evidence of the defense in a formalistic manner.⁷ Although the content of video presented by both parties does not differ significantly from each other, the legal arguments of the prosecution and defense may vary in relation to the events shown in the footage. It should also be noted that the case files lacked the police body camera recordings. Therefore, in such cases, it would be significant for the thorough examination of the case that the court to pay equal attention to the examination of the evidence of both parties.⁸

3. The Case of Besik Tamliani

In the context of protest rallies of June 20, 2019, Besik Tamliani was 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 reached between the Prosecutor’s Office and some of the accused persons: Zurab Budaghashvili, Tsotne Soselia and Kakhaber Kupreishvili. Besik Tamliani did not accept the

⁵ Court Monitoring Report by the HRC Monitor of the case of Besik Tamliani, Emzar Siukaev, Kakhaber Keshikashvili, Stepane Gikoshvili and Lasha Samkharadze: 12.10.2022.

⁶ Court Monitoring Report by the HRC Monitor of the case of Besik Tamliani, Emzar Siukaev, Kakhaber Keshikashvili, Stepane Gikoshvili and Lasha Samkharadze: 10.11.2023.

⁷ Court Monitoring Report by the HRC Monitor of the case of Besik Tamliani, Emzar Siukaev, Kakhaber Keshikashvili, Stepane Gikoshvili and Lasha Samkharadze: October 12, 2022.

⁸ Court Monitoring Report by the HRC Monitor of the case of Besik Tamliani, Emzar Siukaev, Kakhaber Keshikashvili, Stepane Gikoshvili and Lasha Samkharadze: October 26, 2022.

application of the Law on Amnesty adopted on September 7, 2021, by the Parliament of Georgia concerning the events of June 20-21 and carried on defending his rights.

Outcomes of the court monitoring:

During the reporting period of monitoring, 5 court proceedings were held on the case.

At the hearing held on May 8, 2023, it was found that Tamliani ultimately agreed on September 7, 2021, the Law on Amnesty adopted by the Parliament in relation to the events of June 20-21 to be applied to him. Tamliani stated at the proceeding that his decision was due the family situation (the health condition of his mother); were this his will, he would go to the end in fight for the justice, but at the time being other people were depending on him, so he could not disappoint them.⁹ The judge explained to the accused his rights and asked him to tell the court whether there were any pressure in making the decision. The accused stated that he gave consent to the application of the Law on Amnesty on his own will.¹⁰

The hearings of the case are completed in the Tbilisi City Court. The criminal case was heard on the merits by judge Zviad Sharadze.

In the above hearings, the monitoring identified no instances of significant procedural violations. The principles of equality of arms and adversarial proceedings were observed. The parties had the opportunity to freely make motions and express their opinion on the motions of the opposing party. Consequently, the parties in the proceedings had all the opportunities to sufficiently exercise their procedural rights.



4. The Case of Nika Gvaramia

The founder of 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. On May 16, 2022, Nika Gvaramia was sentenced by Tbilisi City Court to 3 years and 6 months of imprisonment. Judge Lasha Chkhikvadze heard the case. The judgment by the City Court (first instance court) was appealed in the Tbilisi Court of Appeals.

⁹ HRC Court Monitor Report on Besik Tamliani Case: May 08, 2023.

¹⁰ Ibid.

Outcomes of the court monitoring:

During the reporting period of monitoring, 6 hearings were held on the case in the Court of Appeals.

On November 2, 2022, judges at the Tbilisi Court of Appeal, Merab Jorbenadze, Lavrenti Maglakelidze and Davit Mamiseishvili rendered the judgment of conviction against Nika Gvaramia, Nika Gvaramia is the Director General of TV Company Rustavi 2 and the founder of newly established *Mtavari Arkhi*. Gvaramia was found guilty of abusing power (in both episodes: selling advertisement and vehicle case). He was sentenced to 3 years and 6 months as effective penalty.¹¹

The said decision of the Court of Appeals was challenged in the Supreme Court.

On 19 June 2023, the Supreme Court dismissed motions by both parties and refused to overrule the decision of the Court of Appeals.¹²

On 22 July 2023, the President of Georgia Salome Zurbishvili pardoned Nika Gvaramia.¹³

Based on the results of monitoring of the court hearings of criminal cases against Nika Gvaramia, HRC published some analytical documents: [Legal Assessment of the Ongoing Criminal Case against Nika Gvaramia](#).¹⁴

5. The Case of Mikheil Saakashvili and Teimuraz Janashia

Ex-President of Georgia, Mikheil Saakashvili and former Chief of the State Security Service, Teimuraz Janashia, were charged under Article 182(3)(b) of the Criminal Code envisaging the misappropriation or embezzlement of budgetary funds in large amounts (GEL 8,837,461). The prosecution argues that, in accordance with the prior agreement between Mikheil Saakashvili and Teimuraz Janashia, at the instructions issued by the then President, state funds in the amount of GEL 8,837,461 were secretly embezzled from September 2009 to February 2013, in relation to various services rendered to Mikheil Saakashvili and other individuals in Georgia and abroad. The case is being heard at the Tbilisi City Court, with Judge is Badri Kochlamazashvili presiding.

Outcomes of the court monitoring:

¹¹With regard to the judgment by the Court of Appeal, please refer to: The Court Remanded Nika Gvaramia in Custody in the Case with Alleged Political Motives; Statement by Human Right Center, 02.11.2022, available at: <https://rb.gy/jwa2y> 6/13/2023].

¹² The Supreme Court Did Not Overrule the Decision of the Court of Appeals and Dismissed the Appeal, Interpressnews, available at: <https://rb.gy/8v79l> [26.06.2023].

¹³ The President Pardoned Nika Gvaramia, Radio Liberty, available at: <https://rb.gy/r49qc> [26.06.2023].

¹⁴See: Legal Assessment of the Criminal Cases Ongoing against Nika Gvaramia, HRC, 2020, available at: <https://rb.gy/n7k0j> [14.06.2023].

During the reporting period 5 court hearings were held on the criminal case. Moreover, because of the health condition of Mikheil Saakashvili, all the hearings were adjourned.



6. The Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava

The Tbilisi City Court is hearing a criminal case against Mikheil Saakashvili and former high-ranking officials regarding charges of the mass dispersal of the protesters on November 7, 2007, intrusion in the premises of, and “taking control over” the TV company “Imedi”, as well as the allegedly unlawful expropriation of the Mtatsminda Park and Rustavi Metallurgical Plant, owned by the Patarkatsishvili family. Due to the complexity of the subject matter, the case is being heard by a panel of judges in the Tbilisi City Court with Judge Nino Eleishvili presiding. The hearing of the case is at the stage of examination of the evidence of the prosecution. Throughout the year, the hearings have been adjourned several times due to the deterioration of Mikheil Saakashvili’s health.

Outcomes of the court monitoring:

During the reporting period of monitoring, 9 court proceedings were held on the case.

Based on the health certificate produced by medical center Vivamedi, the hearings as a rule were postpone for some other dates because of Mikheil Saakashvili's health condition¹⁵. Further, a report furnished at the court hearing by the Special Penitentiary Service read that Saakashvili was offered to appear before the court or participate remotely in the hearing, but considering his health condition, he refused to participate in the hearing and also refused the hearing to be resumed without his participation. The same report mentioned that that Saakashvili's attending physician consider unreasonable to transport Saakashvili to the court for the hearings¹⁶.

Also, at the hearings from July 18, May 5, 2022, November 9, December 22, 2022, and February 15, March 22, May 5, 2023, and March, the court reviewed the measures of restraint applied against David Kezerashvili and Zurab Adeishvili.¹⁷ The court disagreed with the arguments by the defense and asserted that no factual and formal grounds had been altered as referred when remanding the defendants in custody. Further, no new circumstances had emerged that would

¹⁵ Court Monitoring Report by the HRC Monitor in the Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava: 18.07.2022; Court Monitoring Report by the HRC Monitor in the Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava: 14.09.2022; Court Monitoring Report by the HRC Monitor in the Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava: January 25, 2023.

¹⁶ Court Monitoring Report by the HRC Monitor in the Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava: February 15, 2023.

¹⁷ On November 10, 2021, the measure of restraint applied against Mikheil Saakashvili for the November 7 case was revoked. Please refer to Monitoring Court Proceedings of the Cases with Alleged Political Motives: Report, 2022, p. 28, available at <https://rb.gy/r2q8> [25.04.2023].

work to change the measures of restraint already applied. In the end, the court upheld the remand in custody.¹⁸

It should be noted that all other defendants did not attend any of the hearings.

The results of the court monitoring for 2021-2022 are reflected in the final reports of the cases with alleged political motives.¹⁹

Case hearings are ongoing in the Tbilisi City Court.



7. The Case of Mikheil Saakashvili regarding the Border Crossing

The Prosecutor's Office charged the third President of Georgia – Mikheil Saakashvili – with the illegal crossing of the state border, under Article 344(1) of the Criminal Code of Georgia. According to the Prosecutor's Office, the investigation established that, on September 28, 2021, a ship named Vilnius departing from the Port of Chernomorsk in Ukraine reached the Poti Port. On September 29, a SCANIA trailer truck owned by the IKA TRANS LLC loaded with dairy products debarked from the said ship. Mikheil Saakashvili was in the trailer, and managed cross the state border of Georgia bypassing the state control with the assistance of Elguja Tsomaia. The case is being heard in the Tbilisi City Court. The evidence of the parties has now been examined in full. While the defendant seeks to give testimony about the case before the Court, this has not been made possible due to his health condition. Since late April 2022, the hearings were systematically called on a weekly basis. However, in early December 2022, the judge took a leave, and the date of the next hearing is unknown thereafter.

Outcomes of the court monitoring:

During the reporting period of monitoring, 13 court hearings were held on the case.

During the reporting period, based on the health certificate produced by medical center Vivamedi and the report furnished by the Special Penitentiary Service, hearings as a rule were postponed for some other dates because of Mikheil Saakashvili's health condition.

¹⁸ Court Monitoring Report by the HRC Monitor in the Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava: 18.07.2022; Court Monitoring Report by the HRC Monitor in the Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava: 14.09.2022; Court Monitoring Report by the HRC Monitor in the Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava: 09.11.2022; Court Monitoring Report by the HRC Monitor in the Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava: 22.12.2022; Court Monitoring Report by the HRC Monitor in the Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava: 15.02.2023; Court Monitoring Report by the HRC Monitor in the Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava: 22.03.2023; Court Monitoring Report by the HRC Monitor in the Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava: May 05, 2023.

¹⁹ Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report, April-June 2022, HRC. pp. 12- 13. Available at: <https://rb.gy/sknw>[25.04.2023]; Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report (2022), HRC. pp. 16-18, 27- 28, available at: <https://rb.gy/udcm> [25.04.2023].

At the hearing of October 19, 2022, the defense made a motion to adjourn the proceedings for 1 month, as Mikheil Saakashvili's health condition was deteriorating day by day and it was necessary to wait for the opinion of experts. In hearing the motion, the judge stated that there was no need to postpone the hearing for a month, as he would adjourn the hearing every case when medical clinic Vivamedi would submit a certificate.²⁰ At the hearing of November 2, 2022, the defense made the same motion for postponing the hearing for a reasonable period., on. This time the court granted the motion and postponed the hearing of the case for 2 weeks.²¹

The Case of Border Crossing is the fifth ongoing criminal case against Mikheil Saakashvili. For two other cases he has been sentenced to imprisonment and is serving the sentence.

Based on the results of monitoring of the court hearings of criminal cases against Mikheil Saakashvili, HRC published two analytical documents: 1. [The Prisoner's Right to Healthcare – the Analysis of Ongoing Court Proceedings against Mikheil Saakashvili and of the Accompanying Events. 2022](#); 2. [Assessment of the right to be tried within a reasonable time in the cases ongoing against Mikheil Saakashvili, 2021](#).



8. The Case of Elguja Tsomaia, Giorgi Narimanidze, Zurab and Shalva Tsotsorias

Elguja Tsomaia, Giorgi Narimanidze, Zurab Tsotsoria and Shalva Tsotsoria were arrested on charges of concealing a crime after ex-president Mikheil Saakashvili arrived in Georgia. They have been charged under Article 375(2) of the Criminal Code i.e., for concealing a serious crime without prior promise - punishable with one to four years of imprisonment. On October 4, 2021, Judge Jemal Kopaliani of Tbilisi City Court granted the motion of the prosecution to remand Elguja Tsomaia in custody. On October 1, law enforcement officers detained Elguja Tsomaia for having provided his flat to Saakashvili, who was a wanted fugitive. According to the investigation, Elguja Tsomaia knew that Mikheil Saakashvili, a citizen of Ukraine, was wanted in Georgia for committing a serious crime. Nevertheless, on September 30, 2021, he proactively enabled Saakashvili to temporarily hide in his flat in Tbilisi. The investigation argues that on September 29, 2021, after the illegal crossing of the border by Mikheil Saakashvili, Zurab and Shalva Tsotsorias drove Saakashvili in their car to one of the villages in Samegrelo.

On October 5, 2021, judge Giorgi Gelashvili within the Tbilisi City Court remanded Zurab and Shalva Tsotsorias in custody through applying a measure of restraint as requested by the prosecutor's office.

²⁰ Court Monitoring Report by Human Rights Center on Mikheil Saakashvili Border Crossing Case: 19.10.2022.

²¹ Court Monitoring Report by the Human Rights Center Court Monitor: Mikheil Saakashvili Border Crossing Case: 02.11.2022.

Giorgi Narimanidze, the driver of the truck who is the fourth person detained in the case of the third President, pleaded not guilty. According to the investigation, Giorgi Narimanidze was in the truck in which Mikheil Saakashvili arrived from Abasha to Tbilisi; he was aware of the way the President entered the country and concealed this information. The investigation is being carried under Article 375(2) of the Criminal Code of Georgia, envisaging the concealment of a serious crime without prior promise. Initially, the criminal cases of the persons accused in this case were heard separately, and later, based on the prosecutor's decision, they were joined into one case.

Outcomes of the court monitoring:

In 2022-2023, during the reporting period, 1 court session was held on the case on December 19, 2022.

The case was pending with judge Giorgi Keratishvili, but – after his appointment as a Judge as the Court of Appeals –the case was reassigned to Valerian Bugianishvili. Because of the substitution, Judge Valerian Bugianishvili had to ascertain with the parties from which stage to resume the proceedings. Interestingly, the parties to the proceedings considered the evidence brought by each party to be indisputable, hence the proceedings moved to the stage of closing arguments. The prosecutor stated that the plea bargaining was in progress with respect to all four defendants, upon their own initiative. The defense agreed with the statement. The judge informed the parties that he would postpone the hearing for 1 month and requested that the parties provide their final decision on the plea agreement, as well as information and regarding the stage on which the court hearings were to be resumed.²² No court session has been held on this case since 19 December 2022.



9. The Case of Mamuka Khazaradze, Badri Japaridze and Avtandil Tsereteli

Former Chairman 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*) are charged under Article 194(2)(a) and (3)(c) of the Criminal Code envisaging the legalization of illicit incomes in substantial amounts carried out by a group of persons. While the charges were brought against the father of the owner of the TV company *TV Pirveli*, Avtandil Tsereteli, for aiding in the legalization of illicit income (Article 25, Article 194(2)(a) and 194(3)(c) of the Criminal Code).

On January 12, 2022, Tbilisi City Court rendered the judgment on the case of Mamuka Khazaradze, Badri Japaridze and Avtandil Tsereteli. The Court requalified the charges brought

²² Court Monitoring Report by HRC Court Monitor on the Case of Elguja Tsomaia, Giorgi Narimanidze, Zurab and Shalva Tsotsorias: 19/12/2022.

against Mamuka Khazaradze and Badri Japaridze from legalization of illicit income (money laundering) to fraud, while the charges against Avtandil Tsereteli were changed from participation in the money laundering to participation in fraud. However, in the judgment announced on January 12, Judge Giorgi Arevadze found Mamuka Khazaradze and Badri Japaridze guilty of the offenses under Article 180(2)(a) (fraud committed by more than one person with a preliminary agreement) and 180(3)(b) (fraud committed in copious quantities) of the Criminal Code, sentencing each of them to 7 years of imprisonment. Further, according to the judgment, Khazaradze and Japaridze were released from prison sentences because of the expiration of the statute of limitations.

Both parties appealed the judgment before the Tbilisi Court of Appeals.²³ The prosecution stressed that the elements of money laundering were present in the case, but the Judge misinterpreted the relevant Article with respect to the factual circumstances and the evidence presented. Accordingly, the Judge should have rendered a judgment of conviction for the action the accused were charged for. According to the defense, there were neither elements of money laundering nor fraud, accordingly, the Judge should have rendered judgment of acquittal. The defense was requested to overturn the judgment of conviction and render the judgment of acquittal against all the defendants.²⁴

During the reporting period, the hearings of the case were also ended at the Tbilisi Court of Appeals. The case was heard by the Chamber of Criminal Matters with Judge Merab Jorbenadze presiding. On January 20, 2023, the Chamber adjourned deliberations and declared the sentence on January 26. The Court of Appeals found Mamuka Khazaradze, Badri Japaridze and Avtandil Tsereteli guilty of fraud committed by a group of persons, thus upholding the judgment of the City Court.

Outcomes of the court monitoring:

During the reporting period of monitoring, 6 court hearings were held on the case.

During the hearing in the Court of Appeals, the prosecution, based on its evidence, was arguing that the defendants had committed a typical crime of money laundering. The defense argued that the defendants did not commit an offense, neither money laundering nor fraud, because there was not a victim or an aggrieved person in the case. During the hearing, the defense was referring to the structure of the bank's activities bringing as evidence to refute money laundering allegations, inter alia, loan agreements signed with *TBC Bank* and Georgian companies *Samgori M* and *Samgori Trade*. According to the defense, the persons examined as witnesses in the court

²³ See: Amicus Curiae submitted by the Public Defender of Georgia, 2020, available at: <https://rb.gy/47n8b> [14.06.2023].

²⁴Monitoring Court Proceedings of the Cases with Alleged Political Motives– Final Report (2022). April-June) P. 19-20. <https://rb.gy/ehwq>; Court Monitoring Report of the HRC Court Monitor on the Case of Mamuka Khazaradze, Badri Japaridze, Avtandil Tsereteli: 27/05/2022.

were never instructed by Khazaradze or Japaridze. Further, the first instance court did not take into account the testimony of the Director of the *TBC Bank*, noting that the testimony was not essential to the proceedings.²⁵ Finally, according to the defense, the Court had assumed the functions of the Prosecutor's Office and found the defendants guilty of fraud.²⁶

On the other hand, the prosecution argued that changing the qualification of the charge by the Judge of the first instance was fundamentally wrong and was based on an erroneous legal assessment of the facts. According to the prosecution, the case files demonstrate elements of the money laundering, as the money was converted; this comprises of several components, and, overall, constitutes money laundering.²⁷

The defendant, Mamuka Khazaradze stated during the sessions held in the Court of Appeals that the defendants were targets of political persecution. The case was politically motivated and aimed at "defaming" them in order to stop the construction of the Anaklia Port.²⁸ According to Khazaradze, the government has partially achieved its goal and the Anaklia project, being in essence of great importance for Georgia, has been suspended at this stage. According to the accused, the main goal of the Prosecutor's Office was to discredit him, manifested by the fact that the authorities began a campaign of defamation against him even before he was charged alongside Bardi Japaridze. This was followed by a briefing by the Prosecutor's Office, stating that Mamuka Khazaradze and Badri Japaridze were charged for allegedly committing money laundering. Mamuka Khazaradze also spoke about the absurdity of the accusations. According to him, the only goal of the government is to damage his and Badri Japaridze's reputation both in Georgia and abroad.²⁹

The judgment of the Court of Appeals was appealed by both parties in the Supreme Court. So far, the Supreme Court has not assessed the admissibility of the cassation appeal.

No substantial violations of procedural law were observed during the hearings before the Court of Appeals.

²⁵Court Monitoring Report of the HRC Court Monitor on the Case of Mamuka Khazaradze, Badri Japaridze, Avtandil Tsereteli: 21/10/2022.

²⁶Court Monitoring Report of the HRC Court Monitor on the Case of Mamuka Khazaradze, Badri Japaridze, Avtandil Tsereteli: 25/11/2022.

²⁷Court Monitoring Report of the HRC Court Monitor on the Case of Mamuka Khazaradze, Badri Japaridze, Avtandil Tsereteli: 16/12/2022.

²⁸Court Monitoring Report of the HRC Court Monitor on the Case of Mamuka Khazaradze, Badri Japaridze, Avtandil Tsereteli: 21/10/2022.

²⁹Court Monitoring Report of the HRC Court Monitor on the Case of Mamuka Khazaradze, Badri Japaridze, Avtandil Tsereteli: 20/01/2023.



10. Criminal case of Akaki Khuskivadze and Akaki Kobaladze

HRC is monitoring the court proceedings of the criminal case ongoing against Akaki Khuskivadze and Akaki Kobaladze. The accused are charged under Article 339(1), Article 150(2)(b), and Article 151(2)(a) of the Criminal Code of Georgia, envisaging, respectively, the following offenses: bribery, coercion committed by a group of persons, threat committed by a group of persons.

In addition, Akaki Kobaladze is accused of the illegal purchase and storage of ammunition, the offense provided for by Article 236(3) of the Criminal Code of Georgia. On December 10, 2020, the Tbilisi City Court remanded the detainees on bail in the amount of GEL 10,000 in bail. The hearing of the case is at the stage of examination of the evidence of the defense.

Outcomes of the court monitoring:

During the reporting period, 9 court hearings were held on the case.

The case is related to the death of Tedo Gobejishvili, the Chairperson of the Isani District Election Commission during the 2020 Parliamentary Elections, who was found by his family members deceased in his apartment on November 7, 2020. According to the investigation, the defendants, - on behalf of one of the political parties - offered Tedo Gobejishvili USD 50,000 in exchange for making a statement regarding the electoral fraud and his subsequent resignation from the office.³⁰

At the court session of September 19, 2022, the defense made a motion requesting to reach a preliminary agreement with the prosecution to consider testimonies of defense witnesses as indisputable evidence (except for 3 witnesses). The prosecution filed a motion with a request that testimonies of the 3 witnesses be deemed indisputable as well. The Court granted the motions of the parties and held that testimonies and investigative actions conducted with their participation shall be considered indisputable without further examination.³¹

Initially, Judge Giorgi Keratishvili was hearing the case. After Keratishvili his appointment as a Judge at the Court of Appeals, the case was assigned to Judge Lasha Chkhikvadze. At the hearing on November 21, 2022, the Judge requested the parties to specify the stage from which they wanted to resume the hearings of the case. The prosecution asserted that it was the right of the defense to determine the issue. The defense was not willing to restart the hearing from the beginning or re-examine the witnesses. The Court agreed to the arguments by the defense and ordered to proceed the examination of the evidence of the defense.³²

³⁰ Two persons are arrested on the case of death of District Election Commission, Netgazeti, available at: <https://rb.gy/ox8ph> [12.06.2023].

³¹ HRC Court Monitor Report on the Criminal Case of Akaki Khuskivadze and Akaki Kobaladze. 19.09.2022.

³² HRC Court Monitor Report on the Criminal Case of Akaki Khuskivadze and Akaki Kobaladze. 21.11.2022.

Akaki Kobaladze's mother-in-law was examined as a witness in the court. According to her, she was with her young grandson in the house of Akaki Kobaladze when police officers conducted a search and seized ammunition as material evidence for the case. The witness stated that the child got scared after seeing police officers, hence she had to leave the police officers and go to the child's room. Since she had no information about the procedural actions conducted at home, she refused to sign the search report. However, at this moment, her son-in-law - Akaki Kobaladze called her on mobile phone and told her to sign the report. According to her, she had never seen ammunition in her son-in-law's house.³³

Akaki Kobaladze's sister-in-law and his son's godfather were questioned as witnesses before the court,³⁴ as well as Akaki Kobaladze's wife, who noted in her testimony that her family had a close relationship with the family of the deceased Tedo Gobejishvili. As for the existence of a weapon - she stated that her husband did not have weapons and she never saw a weapon in the house either.³⁵

Akaki Kobaladze was questioned as a witness before the Court. According to his statement, Akaki Khuskivadze and himself had friendly and business relations. At the same time, Tedo Gobejishvili was his childhood friend. He also stated that neither he nor Akaki Khuskivadze made any threats to Tedo, nor did they attempt to bribe him. Furthermore, when asked whether there was ammunition in his house, the witness answered that he had no information about it, as he was not at home.³⁶

Akaki Khuskivadze was also questioned as a witness. According to him, Akaki Kobaladze, Tedo Gobejishvili and Levan Tananashvili were close friends. Accordingly, neither he nor Akaki made any threats or offered a bribe.³⁷

Currently, the hearings are reaching the final stage.



11. The Case of Nikanor Melia

The former MP - Nikanor Melia was charged with an offense under Article 225(1) and 225(2) of the Criminal Code of Georgia, envisaging the organization of, and participation in group violence. The case is linked to the events of June 20-21, 2019. On February 17, 2021, the Tbilisi City 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 in custody. On May 10, 2021, the Court also granted the motion of the prosecution to change the said measure of restraint to a

³³ HRC Court Monitor Report on the Criminal Case of Akaki Khuskivadze and Akaki Kobaladze. 12.12.2022.

³⁴ HRC Court Monitor Report on the Criminal Case of Akaki Khuskivadze and Akaki Kobaladze: 13.01.2023.

³⁵ Court Monitoring Report of HRC Court Monitor on the Criminal Case of Akaki Khuskivadze and Akaki Kobaladze: February 03, 2023.

³⁶ Court Monitoring Report of HRC Court Monitor on the Criminal Case of Akaki Khuskivadze and Akaki Kobaladze: 28.02.2023.

³⁷ HRC Court Monitor Report on the Criminal Case of Akaki Khuskivadze and Akaki Kobaladze. 11.05.2023.

less severe one. In particular, remand in custody as a measure of restraint applied against Nikanor Melia was replaced with a bail of GEL 40,000. To this end, the necessary funds were 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 the Tbilisi City Court, with Judge is Nino Chakhnashvili presiding.

Outcomes of the court monitoring:

During the reporting period of monitoring, no hearings were held on the case. The results of the court monitoring for 2021-2022 are reflected in the final reports of the cases with alleged political motives.³⁸

HRC has reviewed the ongoing criminal case against Nikanor Melia in the document [Legal Analysis of the Criminal Cases related to the Events of June 20-21, 2019](#).³⁹



12. The Case of Giorgi Ugulava and Aleksandre Gogokhia

The criminal case against Giorgi Ugulava, the former Mayor of Tbilisi, is at the stage of hearing on the merits in the Tbilisi City Court. The Prosecutor's Office charged the defendants with the commission of the offenses under Article 194 and Article 362 of the Criminal Code, envisaging, respectively, the legalization of illicit income (money laundering) and making, sale or use of a forged document, seal, stamp or letterhead. Moreover, the state prosecution charged Ugulava with the abuse of official powers in the episode of *City Park* as well as with organizing a group activity, alongside the coercion with respect to the Marneuli episode.

Outcomes of the court monitoring:

During the reporting period, no court proceedings were held on the case.

The results of the court monitoring for 2021-2022 are reflected in the Summary Reports regarding the cases with alleged political motives.⁴⁰ According to these reports, number of instances of violations of procedural norms identified as a result of court monitoring. In particular: “[t]he 6-month limitation for reviewing the cassation appeal was disregarded as one of the judges reviewing the case, - Shalva Tadumadze, who served as a Prosecutor General during the lower court hearings - has not been recused. The defense argued that circumstances for

³⁸ See Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report, April-June 2022, HRC, pp. 12-9, available at: <https://rb.gy/sknw> [30.03.2023]; Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report, 2022 the so called HRC, pp. 16-18, available at: <https://rb.gy/udcm> [30.03.2023].

³⁹ Legal Analysis of the Criminal Cases related to the Events of June 20-21, 2019. Human Rights Center, 2020, available at: <https://rb.gy/x1yn> [30.03.2023].

⁴⁰ See Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report, April-June 2022, HR, p. 9, available at: <https://rb.gy/sknw> [30.03.2023]; Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report, 2022, Human Rights Center, pp. 16-18, available at: <https://rb.gy/udcm> [30.03.2023].

excluding the participation of a judge under Article 59(1)(e) Criminal Code were at hand (circumstances that question the objectivity and impartiality of a judge). However, the motion by the defense was rejected. The Court examined voluminous case files and rendered a judgment of conviction only in 13 days. At the same time, the Supreme Court examined the case without oral hearing notwithstanding a high public interest in the case due to the alleged political motives”.⁴¹

HRC reviewed some legal issues in relation to the case ofof Giorgi Ugulava and Aleksandre Gogokhia in the document [Legal Assessments of the Criminal Cases ongoing against Giorgi Ugulava](#).⁴²



13.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, being in charge of group violence or participation therein. Following the judgment of April 13, 2020, Okruashvili was sentenced to 5 years of imprisonment as he was found guilty of participation in the said crime. Based on the Act or Pardon of the President, like Giorgi Ugulava, Okruashvili also left the penitentiary facility on May 15, 2020. Despite the pardon, Okruashvili appealed the judgment to the Tbilisi Court of Appeals. Judge Vepkhvia Lomidze upheld the judgment of the court of first instance. Irakli Okruashvili appealed the decision to the Supreme Court, however, on November 1, 2022, the Supreme Court found the appeal inadmissible. Consequently, the judgment of the Court of Appeals remains in force.⁴³

Outcomes of the court monitoring:

During the reporting period, no court proceedings were held on the case.

During the monitoring, the HRC published an analytical document: [Legal Assessments of the Ongoing Criminal Cases against Irakli Okruashvili](#).⁴⁴

⁴¹ See Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report, 2022, Human Rights Center. Pp. 23-24, available at: <https://rb.gy/udcm> [30.03.2023].

⁴²Legal Assessment of the Criminal Cases ongoing against Giorgi Ugulava, HRC, 2020, available at: <https://rb.gy/cpm0n> [30.03.2023].

⁴³Decision № 468AP-22 of the Supreme Court of Georgia from November 1, 2022.

⁴⁴ See Legal Assessment of the Criminal Cases Ongoing against Irakli Okruashvili, HRC, 2020, available at: <https://rb.gy/wafrr8> [30.03.2023].

14. The Case of Irakli Okruashvili and Zurab Adeishvili

This case is known as the case of Buta Robakidze. Irakli Okruashvili and Zurab Adeishvili were 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 the 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. After stopping the vehicle, in the process of personal searches, one of the patrol officers, Grigol Bashaleishvili, accidentally triggered the service weapon and shot a passenger who was got out from the car - Amiran (Buta) Robakidze - in his left armpit, heavily wounding him and causing his death at the scene. The same night, per the prosecution's decision, this information was reported to the Minister of Internal Affairs, Irakli Okruashvili, who instructed the high-ranking officials arriving at the scene "to save the reputation of the patrol police" and to give the incident the appearance of an armed assault on the police officers by an armed group. Further, following the bill of indictment, under the instructions of the then Prosecutor General of Georgia, Zurab Adeishvili, the investigation was legally flawed insofar as the falsified evidence was procedurally validated and the version of high-ranking officials of the Ministry of Internal Affairs were reaffirmed. On November 19, 2019, charges were brought against Irakli Okruashvili while he was in a penitentiary facility, a few days before the expiration of the statute of limitations of 15 years.⁴⁵

Outcomes of the court monitoring:

During the reporting period, 8 court hearings were held on the case.

Hearing of the case is at the stage of examination of the evidence of the prosecution: then acting officials of the Ministry of Internal Affairs of Georgia are being questioned as witnesses before the Court, alongside the friends of Buta Robakidze. The prosecutor who was in charge of the case that time, Irakli Tsereteli, was also examined. On September 15, the Court examined Levan Gvazava, the Deputy Head of one of the departments within the Ministry of Internal Affairs. According to Gvazava, he has been involved in the fabrication of evidence and is currently serving his sentence. Gvazava stated that police officer Bashaleishvili accidentally triggered the weapon, but later another version was made up in that the investigation had to be commenced into the facts that some individuals fired from BMW vehicle at the police. When asked by the defense counsel whether the witness was certain that Okruashvili and Adeishvili made the decision and gave respective orders, the witness responded that he had no precise information in this regard,

⁴⁵ See more: Monitoring Court Proceedings of the Cases with Alleged Political Motives: Report, 2022, p. 24-25, available at: <https://rb.gy/r2q8> [04.04.2023].

and could only assume so, as Irakli Okruashvili and Zurab Adeishvili were the high-ranking officials in charge.⁴⁶

The principles of adversarial proceedings and equality of arms are observed during the proceedings. The parties have the opportunity to freely make motions and express their opinion on the motions and evidence of the opposing party.

The legal assessment of the case is reflected in the HRC Analytical Document: [“Legal Assessment of the Ongoing Criminal Cases against Irakli Okruashvili”](#).⁴⁷

◆ 15. The Case of Koba Koshadze

Koba Koshadze – one of the bodyguards of Irakli Okruashvili, the leader of the party *Victorious Georgia* – was charged under Article 236 of the Criminal Code envisaging the illegal purchase, storage and carriage of firearms and ammunition. After the Prosecutor’s Office approached the Court with a motion to change the measure of restraint, the Court lifted the measure or restraint in the form of custody and remanded the accused on bail of GEL 5,000 instead. Koba Koshadze was released from the courtroom. Judge Giorgi Arevadze hears the case.

No court hearings of the case were scheduled for 2022-2023.

HRC reviewed the ongoing criminal case against Koba Koshadze in the document: [“Legal Assessments of the Ongoing Criminal Cases against Irakli Okruashvili”](#).⁴⁸

◆ 16. The Case of Megis Kardava

Tbilisi City Court hears the criminal case of Megis Kardava - former high-ranking official of the Ministry of Interior Affairs and Military Police – who was extradited from Ukraine to Georgia,. The prosecution charged him of having tortured three prisoners in Penitentiary Facility N8 in 2011. Megis Kardava has been charged under Article 144¹ (2) of the Criminal Code, specifically - for torture envisaging 9 to 15 years of imprisonment as a sanction. The case is being heard on the merits, and the evidence is being examined. The defendant stated that the case against him is politically motivated, hence he does not trust Georgian courts and refuses to participate in the court hearings.

Outcomes of the court monitoring:

⁴⁶ Court Monitoring Report of HRC Court Monitor on the Criminal Case of Irakli Okruashvili and Zurab Adeishvili: 15/09/2022.

⁴⁷ See: Legal Assessment of Ongoing Criminal Cases against Irakli Okruashvili, HRC, 2020, available at: <https://rb.gy/wafrr8> [04.04.2023].

⁴⁸ Legal Assessment of ongoing Criminal Cases against Irakli Okruashvili, HRC, 2020, available at: <https://rb.gy/wafrr8> [30/03/2023].

During the reporting period, including March, 3 court hearings were held on the case.

The defense challenged the legality of the extradition proceedings. According to the defense counsels, the prosecutor who was completing documents to extradite the defendant Megis Kardava from Ukraine, was arrested on charges of document forgery and corruption. Because of this, the defense began to look into the issue of the lawfulness of Megis Kardava's extradition. As a result, it was revealed that the document building the grounds for the extradition of the accused might have been fabricated. The defense counsel and the defendant himself referred to the General Prosecutor's Office of Ukraine in writing to request the launching of an investigation in this regard and, at the moment, they await a formal response from the addressee. The defense filed a motion to enclose a new evidence to the case files: a letter sent to the General Prosecutor's Office of Ukraine requesting the investigation into the alleged fabrication of the extradition documents concerning Megis Kardava. The Judge granted the motion and ordered that the letter be enclosed to the case files.⁴⁹

During the reporting period, no significant procedural violations have been identified in the case. The principle of equality of arms and adversarial proceedings was observed in the court proceedings. The parties had the opportunity to freely make motions and express their opinion on the motions of the opposing party.

The hearings on the merits of the case are ongoing at the Tbilisi City Court.



17. The Case of Giorgi Mumladze

Giorgi Mumladze, a civil activist, is accused of committing a criminal offense under Article 353(1) of the Criminal Code of Georgia i. e. resistance to a police officer, an employee of the Special Penitentiary Service or other representatives of authority, using violence or threat of violence, with the purpose of interfering with the protection of public order, terminating or changing his/her activity, and coercing him/her into committing a manifestly unlawful act.

According to the Ministry of Internal Affairs, “the investigation established that on April 14 of the current year, during the protest rally near the office of the political party *Georgian Dream*, Giorgi Mumladze resisted and physically insulted the police officers performing their duties”.⁵⁰ Accordingly, he was charged with resisting two police officers and two episodes of physical abuse.

On May 31, 2023, the Tbilisi City Court announced the operative part of the judgment, according to which Giorgi Mumladze was found guilty on both counts and was fined GEL 5000 as a penalty.⁵¹

⁴⁹ HRC Court Monitor Report on the Criminal Case of Nika Gvaramia: 18/10/2022.

⁵⁰The officers of the patrol police detained a person, the statement by the Ministry of Internal Affairs, 14/04/2021, available at: <https://rb.gy/xmx67> [12.06.2023].

⁵¹ Court Monitoring Report by HRC Court Monitor on Giorgi Mumladze Criminal Case: 31.05.2023.

Outcomes of the court monitoring:

During the reporting period, 11 hearings were held on the case.

A prosecution witness failed to appear before the Court, which resulted in the postponement of one of the hearings.⁵² A persistent problem in the case was the untimely opening of the court hearings. One of the hearings started 45 minutes late. The Judge did not explain the reason for the delay of the hearing.⁵³

During one of the hearings, a Samkharauli forensic expert was examined; the said expert had carried out a trasological examination of a jacket belonging to the injured police officer to determine whether there was any damage on the right part of the jacket. According to the witness, the examination revealed no damage to the jacket.⁵⁴ During the hearing, the defense argued that Giorgi Mumladze did not commit a crime and therefore his arrest was unlawful. According to the defense, the fact of the alleged offense committed by Giorgi Mumladze was confirmed only by the witness police officers, and the prosecution failed to present any other evidence. Therefore, the defense made a motion at the pre-trial hearing to have the court terminate the criminal proceedings.⁵⁵

Regarding the case of Giorgi Mumladze, the assessment of the Human Rights Center is reflected in the [Final Report of Court Monitoring of the Cases with Alleged Political Motives](#) (2022).⁵⁶



18. The Case of Giorgi Rurua

Giorgi Rurua - one of the founders and shareholders of the TV company *Mtavari Arkhi*, one of the leaders and a participant of the protest demonstrations of June 20-21, and November 2019 -is charged under Articles 236(3) and 236(4) of the Criminal Code (illegal purchase, storage and carriage of firearms). Rurua is also charged under Article 381(1) of the Criminal Code, implying 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 the Tbilisi City Court, Valerian Bugianishvili, rendered a judgment of conviction against Rurua, sentencing him to 4 years of imprisonment. The Court found Giorgi Rurua guilty of both charges. Following the Act of Pardon by the President of Georgia, on April 27, 2021, the convict was released from the penitentiary facility. The President made the said decision after the Agreement of April 19, 2021 (Charles Michel Document) was signed by opposition parties, which implied that a legal mechanism of release

⁵² Court Monitoring Report of HRC Court Monitor on Giorgi Mumladze Criminal Case: 15/07/2022.

⁵³ Court Monitoring Report of HRC Court Monitor on Giorgi Mumladze Criminal Case: 25/10/2022.

⁵⁴ Court Monitoring Report of HRC Court Monitor on Giorgi Mumladze Criminal Case: 24/03/2023.

⁵⁵ See more: Monitoring Court Proceedings of the Cases with Alleged Political Motives: Report, 2022, p. 10-11, available at: <https://rb.gy/r2q8> [06.04.2023].

⁵⁶Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report, 2022, p. 10-11, available at: <https://rb.gy/r2q8> [06.04.2023].

should have been applied to Giorgi Rurua. Despite the pardon, Giorgi Rurua challenged the judgment of the City Court in the court of higher instance. The case is currently being heard by the Tbilisi Court of Appeals.

During the monitoring, HRC published an analytical document: "[The Criminal Case of Giorgi Rurua - Legal Analysis](#)".⁵⁷

No court proceedings were held on the case during the reporting period.

Substantive and procedural law violations identified in the case, along with the findings of the 2021-2022 court monitoring are reflected in the Summary Reports of court monitoring regarding cases with alleged political motives⁵⁸



19. The Case of Kakha Kaladze v. Journalist Maia Mamulashvili and TV Pirveli

The Tbilisi City Court heard the civil case - Mayor of Tbilisi, Kakha Kaladze v. Journalist Maia Mamulashvili and TV Pirveli. The journalist claimed that the Tbilisi Mayor was involved in corruption deals, and that he received GEL 60 million from procurement tenders. Kakha Kaladze demanded that the statements against him be denounced, and GEL 100 000 be imposed on the respondents in moral damages.

The hearings on the merit of the case ended on November 30, 2022. Judge Zaal Maruashvili announced the operative part of the judgment, according to which the Court granted in part Kakha Kaladze's claim, and journalist Maia Mamulashvili and TV Pirveli were found liable to pay GEL 15 000 collectively, in moral damages. The Court ordered Maia Mamulashvili to denounce the false statements in the same manner and through the same means as the information was disseminated.

Outcomes of the court monitoring:

During the reporting period, 4 court proceedings were held on the case.

The court monitoring revealed that the proceedings regarding this case were fast-tracked, as compared to other civil cases of the same category. In general, civil cases are pending before the Tbilisi City Court for several years.⁵⁹ The hearing of the case at hand was completed in 2 months

⁵⁷The Criminal Case of Giorgi Rurua: Legal Analysis, Human Rights Center, 2020, available at: <https://rb.gy/fb0n> [30.03.2023].

⁵⁸ See Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report, April-June 2022, HRC. P. 9, available at: <https://rb.gy/sknw> [30.03.2023]; Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report (2022), HRC. P. 16-18, available at: <https://rb.gy/udcm> [30.03.2023].

⁵⁹For many years, many organizations have been referring to the procedural delays in court proceedings within the Tbilisi City Court; See: Compliance with Procedural Time Limits for Considering Cases and Preparing Judgments in Tbilisi City Court - Practice of 2015-2018, Institute for Development of Freedom of Information, available at: <https://rb.gy/qa12i> [24.04.2023].

and the Court declared the operative part of the judgment. Completion of the hearings in such a brief period of time raised a question as to what factual circumstances might have led the Court to adopt a different approach regarding the timeframes.

The public might have an impression the court employs non-uniform approaches in terms of the procedural time limits regarding cases of the same category. Such a public opinion may damage the authority of the judiciary, since it is a legitimate public interest that courts to ensure the conduction of hearings in civil claims in a due and timely manner, irrespective of the outcomes of the hearings.⁶⁰ Ultimately, such an alleged selective approach on the part of courts will negatively affect the authority of the judiciary.

Like in other cases, this case involved technical problems in the courtroom, which hindered the process of examining video evidence by the parties. At the hearing held on October 28, the respondent filed a motion, claiming to not have received the video evidence presented by the plaintiff on October 6, and thus the respondent had no opportunity to study the case files. It is noteworthy that the plaintiff handed the video evidence recorded on a single CD to the Court, which was retained by the Court, while it was agreed between the parties and the Court that the respondent would receive this evidence. Eventually, neither the plaintiff nor the court had sent the evidence to the respondent's lawyer. Subsequently, the Judge announced a technical break during the hearing to give the respondent an opportunity to observe the video evidence in the courtroom. However, the courtroom was not equipped with the technical means required for examining the video evidence. As a result, the lawyer of the plaintiff withdrew the said evidence.⁶¹

The monitoring identified no instances of significant procedural violations. The principle of equality of arms and adversarial proceedings was observed in the court proceedings. The parties had the opportunity to freely make motions and express their opinion on the motions of the opposing party.



20. The Case of GMI Rights Management against the Labor Party

Hearings of the civil case - GMI Rights Management against the Labor Party are completed in the Tbilisi City Court. The subject of the dispute was copyrights infringement, namely - the public reading of Murman Lebanidze's verse "I am afraid" by the leader of the *Labor Party* - Shalva Natelashvili - as well as its unauthorized use in the election clip. On behalf of the Copyright Union, GMI Rights Management claimed EUR 50 000 in damages, to be paid by the *Labor Party*. On April

⁶⁰ Taking into account alternative mechanisms for the resolution of disputes regarding the fair trial of the case within a reasonable time and the role of the judge in the judicial process, Consultative Council of European Judges (CCJE), conclusion N6, 2004, p. 19.

⁶¹ The Court Monitoring Report by HRC Monitor on the Civil Case Kakha Kaladze against journalist Maia Mamulashvili and TV Pirveli: 28.10.2022.

11, 2023, the judgment of Judge Gocha Didava within the Panel for Civil Matters of the Tbilisi City Court was published, whereby the Court rejected the claim of GMI Rights Management.

Outcomes of the court monitoring:

During the reporting period, 4 court hearings were held on the case.

The court monitoring revealed that, similar to the case of Kakha Kaladze v. Journalist Maia Mamulashvili and TV Pirveli, the hearings of the current case were also fast-tracked and complied with the time limits provided by the Code of Civil Procedure.

The monitoring identified no instances of significant procedural violations. The principle of equality of arms and adversarial proceedings was observed in the court proceedings. The parties had the opportunity to freely make motions and express their opinion on the motions of the opposing party.

21. The Case of deferral of Mikheil Saakashvili's sentence.

On February 6, 2023, the Tbilisi City Court completed the hearings regarding the motion by the defense counsels of the third President of Georgia - Mikheil Saakashvili – seeking to exempt him from the sentence or alternatively to suspend his sentence due to the deterioration of his health. The ruling was announced on February 6, 2023. The Judge hearing the case rejected the motion of the defense. Judge Giorgi Arevadze, within the Criminal Panel of Tbilisi City Court was hearing the case. Within the timeframe set forth by the procedural law, the ruling of the first instance court was appealed to the Tbilisi Court of Appeals. On March 2, 2023, Judge Ekaterine Kululashvili within the Chamber for Criminal Matters of the Tbilisi Court of Appeals upheld the judgment of the court of first instance without an oral hearing.

Outcomes of the court monitoring:

Hearings of the case were held regularly, several times a week, from December 14, 2022. In total, 14 court hearings were held on the case during the reporting period.

At the initial stage, the accused wanted to attend the hearings, however, given the recommendation of his doctor, he requested the Court to allow remote participation in the hearing, which was not made possible due to the lack of technical equipment. Mikheil Saakashvili participated in the court hearing remotely on February 1, 2023.⁶²

Georgian and foreign experts were called as witnesses at the court hearing. Among them, members of the Concilium under the Public Defender's Office were examined. According to the

⁶² Court Monitoring Report by the HRC Court Monitor on the Criminal Case of Deferral of Sentence of Mikheil Saakashvili: 01.02.2023.

Concilium, Mikheil Saakashvili's condition was grave, and his health was deteriorating with each day. Mikheil Saakashvili was diagnosed with cachexia, anorexia, anemia, cognitive disorders, and dementia.⁶³ Experts made medical explanations regarding Mikheil Saakashvili's health and employed medical vocabulary. Further, the parties and their respective experts used different terminology to describe the same diagnosis or disease. In particular, this was related to the facts of intoxication and the detection of heavy metals in the body, as well as the diagnoses of encephalopathy and neuropathy, which were given distinct medical and legal assessments by the parties and the experts. For example, the witness experts could not answer how exactly would the permissible doses of lead and arsenic in the human body compared to the doses of these elements detected in Saakashvili's body. The witnesses were trying to maneuver the conversation by and giving different explanations when asked about such issues.

On February 3, 2023, the General Director of the medical center Vivamedi, was examined as a witness in the court, where she stated that Mikheil Saakashvili mistrusts the clinic, insults the staff, and constantly puts them under pressure. Moreover, according to her, Mikheil Saakashvili intentionally refuses to take high-calorie food, and his lawyers and family members support him in this. The witness mainly focused on the fact that Mikheil Saakashvili and his entourage are doing everything to aggravate Saakashvili's condition, because "the key to his freedom lies in his illness. [...] I think they deliberately want to reduce his body mass index and argue so that he be removed from the facility", she stated.⁶⁴

On February 6, 2023, the parties made their closing arguments.

According to the defense, the penitentiary service did not seek to find out whether Mikheil Saakashvili's health condition was indeed serious or not. According to his lawyer, Shalva Khachapuridze, a statement that Saakashvili aggravated his own condition by refusing food intake was plainly made up. He noted that "the evidence presented by the defense, the conclusion of the Empathy Center, the testimonies of foreign and Georgian experts and the confirmed diagnoses (mental disorder, unspecified dementia, nervous system disease, digestive system disease - in the stage of cachexia) indicate that grounds for releasing Saakashvili from serving the sentence are at hand".⁶⁵

In his closing arguments, the representative of the Penitentiary Service asserted that, in the present case, there were no grounds for releasing the convict from serving the sentence or deferring the sentence. According to the party, the gravity of Mikheil Saakashvili's health condition was not confirmed by relevant reliable evidence, because according to the assessment

⁶³ Ibid.

⁶⁴ Court Monitoring Report by the HRC Court Monitor on the Criminal Case of Deferral of Sentence of Mikheil Saakashvili: 03.02.2023.

⁶⁵ Court Monitoring Report by the HRC Court Monitor on the Criminal Case of Deferral of Sentence of Mikheil Saakashvili: 06.02.2023.

of the Penitentiary Service, the information presented in the report of the Empathy Center was not reliable in this regard: “The conclusion is not categorical, it is unsubstantiated and lacks the supporting evidence, hence it cannot serve as evidence to confirm the serious illness of the convicted person”, - said the representative of the Penitentiary Service. As argued by the same party, from the day the convict entered the penitentiary system, he has been provided with adequate medical services - both in the penitentiary facility and in the public medical clinic. According to the same representative, it is perfectly possible to provide any medical service to Mikheil Saakashvili in relation to all officially established diagnoses. “Starvation, taking little food is an attempt of self-harm on his part, which serves the only purpose - to avoid the imposed punishment”, said the representative of the penitentiary service at the court session held on February 6.⁶⁶ He drew attention to the misdemeanors committed by Mikheil Saakashvili in the penitentiary facilities and the criminal cases that were initiated against Mikheil Saakashvili after being in the penitentiary facility. Accordingly, from the point of view of the Penitentiary Service, in order to make a decision on this case, the Court had to take into account the personality traits of the convict, the crimes committed by him in the past, the motive, the purpose and the consequences of the crime, the risk of repeating the crime, as well as the behavior shown by the convict when serving the sentence.

After the Court of Appeals rejected Mikheil Saakashvili’s request to defer the sentence, the lawyers applied to the European Court of Human Rights (ECtHR) seeking an interim measure. The European Court of Human Rights rejected the petition of the lawyers to apply the interim measure and to order the Georgian government to transfer Mikheil Saakashvili abroad for treatment. According to Mikheil Saakashvili’s lawyer, Shota Tutberidze, “this is not the final judgment of the European Court on Saakashviliss case, where the Court would hear the case on the merits regarding the violation of Saakashvili’s fundamental rights [...] In this procedural matter, the ECtHR did not order the Georgian government to immediately transfer Saakashvili to Warsaw, at least until the end of hearing the application”.⁶⁷ According to Rati Bregadze, the Minister of Justice of Georgia, “all the actions of the State were appropriate from the date of his entry and were corresponding to the highest standards of human rights”.⁶⁸



22. The Case of Jelal Kiqava

The Prosecutor’s Office charges Jelal Kiqava, the supporter of Ex-President Mikheil Saakashvili under Articles 366(1) and 366(2) of the Criminal Code - contempt of court, which was manifested

⁶⁶Court Monitoring Report by the HRC Court Monitor on the Criminal Case of Deferral of Sentence of Mikheil Saakashvili: 06.02.2023.

⁶⁷Tutberidze: Strasbourg's response concerns the interim measure, the hearing of the case continues, Formula, May 12, 2023, available at: <https://rb.gy/2gdfm> [31.05.2023].

⁶⁸Bregadze: The Strasbourg court rejects Saakashvili’s request to be transferred to Warsaw, Formula, May12, 2023, available at: <https://rb.gy/3d69i> [31.05.2023].

by insulting the participant of the judicial proceeding and the Judge. Jelal Kiqava is a member of the Adjara regional organization of the *National Movement*. On March 28, 2022, Jelal Kiqava was sent from the courtroom and imposed a fine of GEL 500 because of arguing with prosecutors during the hearing of the criminal case against Mikheil Saakashvili. After a period of one month, the Prosecutor's Office decided to initiate criminal prosecution against Jelal Kiqava for being in contempt of court. Judge Konstantine Kopaliani hears the case.

Outcomes of the court monitoring:

During the reporting period of monitoring, 2 court hearings were held on the case.

The last proceeding was held on December 16, 2022, with the parties admitting the evidence available in the case files to be indisputable.⁶⁹

The hearings on the merits have been completed. The court has not yet rendered the judgment.

The monitoring identified no instances of significant procedural violations. The principle of equality of arms and adversarial proceedings was observed in the court proceedings. The parties had the opportunity to freely make motions and express their opinion on the motions of the opposing party.



23. The Case of Kakha Kukava

On October 7, 2022, the Tbilisi City Court finalized the hearings on the administrative case against the leader of the party *Free Georgia* - Kakha Kukava, as well as Arsen Nadiradze and Mikheil Sakandelidze. The defendants were accused by the National Bureau of Enforcement under the Ministry of Justice of Georgia of committing the offense under Article 173(1) of the Administrative Offenses Code of Georgia (non-compliance with the lawful order or demand of the police officer, or verbal abuse of and/or any other abusive act against him/her while he/she is in the line of duty). Judge Nino Shcherbakov within the Chamber of Administrative Matters of the Tbilisi City Court agreed with the arguments of the administrative body, thus fining Kakha Kukava and Mikheil Sakandelidze with GEL 2200 each, and fining Arsen Nadiradze with GEL 2000. The defense did not agree with the decision of the Tbilisi City Court and appealed to the Tbilisi Court of Appeals.

Outcomes of the court monitoring:

During the reporting period, two hearings were conducted.

During the process, the HRC monitor was hindered from attending the court proceedings freely. Namely, the assistant to the Judge refused to provide information to the HRC monitor regarding

⁶⁹ Court Monitoring Report of HRC Court Monitor on Jelal Kiqava is a Criminal Case: 16.12.2022.

the timing and courtroom for the proceedings on the basis that the monitor was not a party; however, under Article 62(3) of the Constitution of Georgia, the court shall hear cases in public sessions (the closed hearing of the case is only permitted in the cases provided by the law).⁷⁰ Consequently, the court hearing is public, and everyone can attend it.⁷¹ Furthermore, despite the public interest regarding the case, the court hearings were held in small courtrooms, not allowing in fact other people except the parties to attend the hearing.

24. The Case of Levan Khabeishvili

The Prosecutor's Office of Georgia brought charges against Levan Khabeishvili – a current MP and the Chairperson of political party *United National Movement* - for the offense under Article 126(1) (violence) of the Criminal Code. According to the case files, on January 24, 2020, Levan Khabeishvili physically assaulted Irakli Zarkua, the then Deputy Chairperson of the Tbilisi City Council in the corridor of the premises of the City Council. The Prosecutor's Office of Georgia filed a motion with the Tbilisi City Court, seeking to remand Levan Khabeishvili on bail of GEL 3,000. The motion was partly granted, and the accused was remanded on bail of GEL 2,000.

No court proceedings were held on the case during the reporting period. The last hearing on the criminal case was held on April 17, 2022.⁷²

Outcomes of the court monitoring:

The results and key findings of court monitoring related to Levan Khabeishvili's criminal case are reflected in the analytical document prepared by HRC - [Trends of Terminating the Powers of Opposition MPs Following the Judgments with Alleged Political Motives](#).⁷³

The hearings on the merits of the case are ongoing in the Tbilisi City Court.

25. The Case of Davit Kezerashvili

The Court of Appeals finalized the hearings of the appeal by the former Defense Minister of Georgia Davit Kezerashvili and the Head of the Procurements Department of the said Ministry - Alexandre Ninua. In March 2022, the Tbilisi City Court awarded damages of EUR 5 060 000 to be paid by both respondents collectively in favor of the Ministry of Defense. Under the judgment of March 21, 2023, the Court of Appeals granted Alexandre Ninua's appeal. He was released from the obligation to pay the damages, whereas Davit Kezerashvili was ordered to pay the total amount of EUR 5 060 000 (equivalent in GEL) in favor of the Ministry of Defense. The case was

⁷⁰ Constitution of Georgia, Article 62(3), Official Gazette of the Parliament of Georgia, 31-33, 24/08/1995.

⁷¹ See Organic Law of Georgia, on General Courts, Article 13, Official Gazette of Georgia, 41, 08/12/2009.

⁷² HRC Court Monitor Report on Criminal Case of Levan Khabeishvili, 17.04.2022.

⁷³ Trends of Terminating the Powers of Opposition MPs Following the Judgments with Alleged Political Motives, HRC, 2023, available at: <https://rb.gy/sik5> [03.04.2023].

heard by the Panel of Civil Matters, comprised of Judges: Otar Sichinava, Gocha Jeiranashvili and Lasha Tavartkiladze.

Outcomes of the court monitoring:

During the reporting period of monitoring, 2 court hearings were held on the case.

According to the judgment of the Supreme Court of Georgia from 2021, Davit Kezerashvili was found guilty of crimes under Article 182(2)(d), and Article 182(3)(b) of the Criminal Code of Georgia and sentenced to 10 years of imprisonment. Further, Kezerashvili was deprived of the right to be appointed to any public office for 3 years. This sentence was halved based on the Law of Georgia on Amnesty of December 29, 2012, and finally, Davit Kezerashvili was sentenced to 5 years in prison, and he was deprived of the right to take any public office for a period of 1 year and 6 months. The Prosecutor's Office accused Kezerashvili of the unlawful appropriation of EUR 5 060 000. It should be noted that before the Supreme Court rendered the judgment of conviction, Davit Kezerashvili was found innocent by two court instances. When the Supreme Court rendered the judgment of conviction, the Presiding Judge was Shalva Tadumadze, who was serving as the acting Prosecutor General at the stage of case investigation. Thus, the appellant believed the above facts were raising doubts about the possible bias of the Court.

The judgment by the Supreme Court has served as a ground for the Ministry of Defense of Georgia to sue Kezerashvili and demand EUR 5 million in damages. The Court of first instance allowed the claim, which was appealed to the Court of Appeals by the defense.

Furthermore, the appellant argued that the case had a political context, as before the proceedings were initiated against Davit Kezerashvili, the Prime Minister speaking on TV called him a fraud and criminal. The statement by the Prime Minister coincided with the allegations brought against Davit Kezerashvili.⁷⁴ The appellant further argued that the judgment by the Tbilisi City Court regarding the amount of damages was unsubstantiated – “the judge failed to deliberate on the amount of damages, but nevertheless ordered Davit Kezerashvili to pay EUR 5 million in favor of the Ministry of Defense on the basis of the court's judgment”, - the appellant stated in the Court.⁷⁵



26. The Case of Zviad Kuprava

Zviad Kuprava, a member of Tbilisi City Municipal Assembly and of the political party *United National Movement*, is accused of the crime envisaged by Article 126 (violence) of the Criminal Code. According to the bill of indictment issued by the Prosecutor's Office, during the parliamentary elections of October 31, 2020, Zviad Kuprava assaulted a citizen near one of the

⁷⁴ Court Monitoring Report of HRC Court Monitor on Davit Kezerashvili Criminal Case: 17.02.2023.

⁷⁵ Ibid.

election districts, inflicting upon him bodily injuries and physical pain. At the time being, the case is being heard by judge Gizo Ubilava within the Panel of Criminal Matters within the Tbilisi City Court.

Outcomes of the court monitoring:

Three court hearings were held on the case during the reporting period.

The court monitoring found that initially, in 2020, an investigation began on the basis of Zviad Kuprava’s statement. In particular, a person who was officially recognized as a victim in the case provoked conflict and exerted violence on Zviad Kuprava himself. According to the defendant, the case instituted against him bears political motives, as the witnesses of the prosecution were in close relation with the government representatives.⁷⁶

The hearings on the merits of the case are ongoing in the Tbilisi City Court.



27. The Case of Zurab Girchi Japaridze and Nika Mosiashvili

During the reporting period, 3 hearings were held.

Zurab Girchi Japaridze, the leader of the political party *Girchi - More Freedom*, and Nika Mosiashvili - a member of the same party - were administratively detained at the protest held in front of the Parliament on March 7, 2023. The persons are charged under Article 166 (petty hooliganism) and Article 173 (disobedience to the legal order of the police) of the Administrative Offenses Code of Georgia. After the expiration of the 48-hour limit of the administrative detention, the Judge hearing the case ordered their release. None of the defendants attended the hearing due to their health conditions. Zurab Japaridze was COVID-19 positive, while Nika Mosiashvili was undergoing treatment in a healthcare facility for a brain concussion that he suffered due to injuries received during the detention. The defense counsels requested to enclose uninterrupted video recordings from the scene to the case files as evidence, and to have the hearing adjourned due to the defendants’ health, which was granted by the Judge. The case is being heard by Judge Irakli Chikashua within the Panel of Administrative Matters of the Tbilisi City Court.

Outcomes of the court monitoring:

Two court hearings were held on the case during the reporting period.

At the hearing of May 17, 2023, the defense counsel of Japaridze and Mosiashvili filed a motion for recusing the judge stating that, based on subjective and objective assessment tests, the attitude of the judge towards the case was to be perceived as unfair. Further, the defense counsel

⁷⁶ Court Monitoring Report of HRC Court Monitor on Zviad Kuprava Criminal Case: 31.01.2023.

said that the actions by the Judge taken at the first hearing threatened Japaridze's and Mosiashvili's health and caused them moral and physical suffering by refusing to postpone the hearing - even though Japaridze was COVID positive and had high blood pressure, while Mosiashvili had a head injury. Further, according to the defense counsel, the Judge did not give the defense a reasonable time to study the case files. Moreover, when the Judge was leaving the courtroom he had a mobile phone in the hand, which created an impression that he was communicating with a third person.⁷⁷ The Ministry of Internal Affairs did not agree with the motion, noting that there were no legal grounds for recusing the Judge. The Judge dismissed the motion, explaining that the Court did not intend to cause harm to anyone; at the first hearing, the Court and the spectators were waiting for the ambulance and medical team to arrive.⁷⁸

By the second motion, the defense counsel requested to have the investigation authorities submit continuous footage depicting the events that took place near the Parliament. According to the defense counsel, the defense filed a complaint with the investigation authorities about the violence exerted against Japaridze and Mosiashvili, and requested them to hand over the case files, which was refused on the grounds that Japaridze and Mosiashvili were not in the status of victims. The defense counsel was given the opportunity to review the recordings of the 112 cameras with the Public Safety Command Center, as well as the footage requested by journalists that was never spread on TV. The Ministry of Internal Affairs did not agree with the petition and stated that on April 13, the Ministry of Internal Affairs released information according to which the filming equipment was damaged, therefore there was no footage. The defense asserted once again that they were referring to the footage that the investigation authorities provided to the journalists, and on which the voice can be heard. Further, the footage fully depicts the perimeter surrounding the place of detention, showing that the persons called as witnesses in the case, claiming to have arrested Japaridze and Mosiashvili, were not present at the place at all at that time. The Court did not hear the motion.⁷⁹

The representative of the Ministry of Internal Affairs also filed a motion requesting to enclose two CDs to the case files as evidence. The representative of the Ministry of Internal Affairs argued that, according to the latter recordings, Japaridze and Mosiashvili were forcefully pushing the riot police officers and trying to break through the police cordon. Zura Japaridze and Nika Mosiashvili stated that they were not pushing against the police cordon but were just standing there. According to the defense counsel, the video had nothing to do with the case, as the footage might have been taken at a different time. Moreover, according to the defense counsel, the offense must be proven not only by police testimony or reports, but also by a body of evidence. According

⁷⁷ Court Monitoring Report of HRC Court Monitor on the Administrative Offense Case of Zurab Girchi Japaridze and Nika Mosiashvili: 17.05.2023.

⁷⁸ Ibid.

⁷⁹ Court Monitoring Report of HRC Court Monitor on the Administrative Offense Case of Zurab Girchi Japaridze and Nika Mosiashvili: 17.05.2023.

to the lawyer, it is in the State's interest to find Japaridze and Mosiashvili administratively liable in this case, while the Court is responsible for protecting them from repression. The Court granted the motion by the representative of the MIA.⁸⁰

The hearings on the case are ongoing in the Tbilisi City Court.



28. The Case of Giorgi Mumladze (Administrative)

On March 8, 2023, another activist, Giorgi Mumladze, was administratively detained at the protest held in front of the Parliament. He is charged under Article 166 (petty hooliganism) and Article 173 (disobedience to the lawful order of the police officer) of the Administrative Offenses Code of Georgia. Upon the first appearance of the defendant before the Court, the Judge ordered the release of Mumladze due to the expiration of the 48-hour term time limit for administrative detention. . At the hearing held on April 10, 2023, an examination of evidence was completed. The parties to the proceedings presented their arguments, closing arguments and rebuttals. According to the existing schedule, the judgment shall be announced on April 26, 2023. The case is being heard by Judge Manuchar Tsatsua within the Panel of Administrative Matters of the Tbilisi City Court.

Outcomes of the court monitoring:

Two court proceedings were held on the case during the reporting period.

At the hearing held on April 10, 2023, Giorgi Mumladze argued the MIA could not provide specific evidence that would prove he had resisted the police. Further, Mumladze stated that one of the police officers was lying that he had detained Mumladze. According to Giorgi Mumladze, the case should have been dismissed due to the absence of an offense, as the Court must not rely only on the testimony of police officers.

In his turn, the representative of MIA argued that Giorgi Mumladze insulted the police as confirmed by the police officers examined as witnesses. Regarding the warning given before the detention of the protesters, the representative of the Ministry of Internal Affairs stated that the warning was made at the rally through special means.⁸¹

On April 26, 2023, the Tbilisi City Court announced the operative part of the decision, according to which the Court found Giorgi Mumladze liable for committing the administrative offense and imposed a fine of GEL 2 000.⁸²

⁸⁰ Ibid.

⁸¹ Court Monitoring Report by HRC Court Monitor on Giorgi Mumladze Administrative Case: 10.04.2023.

⁸² Court Monitoring Report of HRC Court Monitor on Giorgi Mumladze Administrative Case: 26.04.2023.

29. The Case of Nadim Khmaladze

Civil activist Nadim Khmaladze was detained on March 8, 2023, near the Freedom Square in Tbilisi. The Ministry of Internal Affairs brought charges against him for the actions under Article 166 (petty hooliganism) and Article 173 (disobedience to the lawful demand of the police officer) of the Administrative Offenses Code – allegedly committed on March 7, during the rally. The case is being heard by Judge Nino Eukidze within the Panel of Administrative Matters of the Tbilisi City Court.

Outcomes of the court monitoring:

Three court proceedings were held on the case during the reporting period.

The right to a public hearing of the case is an important element of the right to a fair trial,⁸³ which, apart from the defendant, also extends to the public. According to the Constitution of Georgia, “[t]he court hearings shall be open for the public. Closed hearings shall be permitted only in cases provided for by law. A court judgment shall be declared publicly”.⁸⁴ According to the Constitutional Court, “the public and oral hearing of the case excludes “secret justice”, [...] It restrains the State’s temptation to abuse the power and dispels doubts regarding such arbitrariness. The oral hearing of the case strengthens the trust of the parties and the public in justice”.⁸⁵

As a result of the monitoring of these and other administrative offense cases, the following trend was identified: the information about the judge hearing the case, the date of the hearing, and the courtroom is not posted for the public neither directly in the court building nor on the official website of the court. Further, the people wishing to attend the hearings often have to wait for a few hours, as the hearing of administrative offenses never begins on time as scheduled. For example, Nadim Khmaladze’s case was scheduled for March 21, 2023, 11:00 AM, but the court hearing began 4 hours late.⁸⁶

At the hearing held on March 27, 2023, the defense lawyers stated there was no evidence in the case files indicating that Nadim Khmaladze committed an offense. During the hearing, the lawyer read out the report of the police officer, the administrative offense report, and the administrative arrest report - all drawn up by MIA officers - which contained a number of inaccuracies. In particular, none of three documents indicated the exact date of the commission of the

⁸³ See Judgment N3/2/574 of the Constitutional Court of Georgia from May 23, 2014, on the case *Giorgi Ugulava vs Parliament of Georgia*, II-60.

⁸⁴ Constitution of Georgia, Official Gazette of the Parliament of Georgia, 31-33, 24/08/1995, Article 62(3).

⁸⁵ See Judgment N3/2/574 of the Constitutional Court of Georgia from May 23, 2014, on the case *Giorgi Ugulava vs Parliament of Georgia*, II-63.

⁸⁶ Court Monitoring Report by HRC Court Monitor on Nadim Khmaladze’s Administrative Offense Case: 21.01.2023.

administrative offense and the identity of the alleged perpetrator.⁸⁷ Regarding the vagueness of the reports, the Court asked the MIA representatives to specify the date (March 7 or March 8) of the offense they were holding Nadim Khmaladze liable for. According to the MIA representative, Nadim Khmaladze was held liable for the administrative offense committed on March 7, and the report may carry a technical mistake, indicating that “at the rally on March 7-8, an unidentified person was violating the public order and was shouting offensive words addressed to the police officers”.⁸⁸

According to the defense, the administrative body was trying to protect the State interests and discredit Nadim Khmaladze. According to Nadim Khmaladze himself, he has participated in numerous protests over 30 years, and no one could testify that he ever insulted or swore at the police officers. According to Khmaladze, the facts brought by the MIA representative were not true.⁸⁹

The police officer claiming to have detained Nadim Khmaladze was examined in the case. The defense counsels asked him - where and when exactly he detained Nadim Khmaladze, and where he was taken after the detention. The witness could not name the exact place or time of the detention. The officer only said that Nadim Khmaladze was taken to the police station located on 113 Aghmashenebeli Street.⁹⁰ The defense lawyers stated in this regard that the witness never took part in the detention of Nadim Khmaladze; they filed a motion requesting that the MIA present the exhaustive data regarding cellular towers linked to the the mobile phone of the police officer, and submit the recordings of video surveillance cameras from the police station to which the accused was taken after the detention. The Judge stated that these facts were not related to the case; rather - the party was questioning the lawfulness of the detention, which was not to be assessed at the hearing. Consequently, the Court rejected the motion.⁹¹

On May 8, 2023, the Court announced the decision, holding Nadim Khmaladze administratively liable and imposing on him a fine of GEL 2000.



30. The Case of Koka Kobaladze

A case of administrative offense is pending with the Tbilisi City Court against Koka Kobaladze, a member of the *For Georgia* political party. The MIA brought administrative charges against him under Article 166 (petty hooliganism) and Article 173 (disobedience to the police) of the Administrative Offenses Code. According to the facts of the case, a protest rally was held on Rustaveli Avenue in Tbilisi, on March 7-8, 2023. The protesters were against the adoption of the

⁸⁷ Court Monitoring Report by HRC Court Monitor on Nadim Khmaladze’s Administrative Offense Case: 27.03.2023.

⁸⁸ Court Monitoring Report by HRC Court Monitor on Nadim Khmaladze’s Administrative Offense Case: 27.03.2023.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

draft law on Transparency of Foreign Influence, passed by the Parliament of Georgia in the first reading. Different police units were deployed at the scene. On March 8, the police began dispersing the protest. At that moment, one of the protesters fell on the ground when being detained at the rally near Liberty Square. As soon as Koka Kobaladze saw the fact, he went toward the person to help, which was perceived by the police as interference into the process of detention. As a result, Kobaladze was also detained.

Outcomes of the court monitoring:

During the reporting period, 3 court hearings were held on the case. In one of the instances, the court requested to postpone the hearing as, according to the Judge, the Court was provided with case files on that same day, time was needed time to study them. In the second instance, the hearing was postponed due to a motion by a party.

The hearing on May 8, 2023, was opened with statements by the parties. According to the MIA representative, on March 9, 2023, at the rally in front of the Parliament, Koka Kobaladze violated the public order and was shouting offensive words addressed to the police, to which the police officer reacted. Further, MIA argued that Kobaladze was hindering the police officer in detaining other persons, which formed grounds for his administrative detention. However, the defense argued that Koka Kobaladze never violated the public order, and the relevant video evidence was produced to the Court proving this. According to Koka Kobaladze himself, he has not violated the Code of Administrative Offenses. He was detained near the Liberty Square Subway Station, where there was no protest, but the police did not allow people to move towards the Parliament from there. According to him, the footage showed 6 police officers physically assaulting a peaceful citizen. The citizen was asking for help. Kobaladze instinctively looked in that direction when the police removed him to the sidewalk. After that, two police officers approached him, declaring that he was under arrest, and he would be informed of the grounds of the detention at the police station.⁹²

The hearings of the case are ongoing in the Tbilisi City Court.

31. The Case of Nata Peradze

The proceedings of an administrative case against a civil activist, Nata Peradze, offense ended in the Tbilisi City Court. The MIA is charged Peradze under Article 173 (disobedience to the lawful demand of the police officer) of the Administrative Offenses Code. Judge Irakli Chikashua held Peradze administratively liable under the judgment from May 30, 2023, imposing on her a fine of GEL 2000.

⁹² Court Monitoring Report by the HRC Court Monitor 'on the Administrative Offense Case of Koka Kobaladze: 08.05.2023.

Outcomes of the court monitoring:

Three court proceedings were held on the case during the reporting period.

On May 22, 2023, at the stage of hearing the parties' explanations, the MIA representative informed the Court that Nata Peradze disobeyed the lawful order of the police officer, as she refused to move away from the road and verbally insulted one of the police officers. The police considered her action as a violation of Article 173 of the Administrative Offenses Code (disobedience to the lawful order of the police officer). According to the representative of the administrative body, this fact was confirmed by the police officer and the video evidence presented before the Court.⁹³

Nata Peradze stated in her introduction speech that she and other activists were not immediately on the airport premises but on the parking lot, which is at least 20 meters away from the airport. They were holding banners and protesting peacefully. According to Nata Peradze, after the detention, she was taken to the Isani District Department where she was mocked and spoken to in a disrespectful manner by the law enforcement officers; only after having waited for a long while, she was allowed to use the bathroom and drink some water. According to her lawyer, Nata Peradze was in the vicinity of the airport, but she has not insulted the law enforcement officers, and the administrative body itself provided no reliable evidence of her doing so.⁹⁴

At the same hearing, the parties made closing arguments. The defense party emphasized low standards of evidence presented by the administrative body. In particular, MIA presented a video recording where Nata Peradze's voice can be heard as she is verbally insulting a law enforcement officer. However, the few second long video did not suffice to determine the date, place, and time of the event.

32. The Case of Shushana Matsaberidze and Tamar Khundadze

On May 19, 2023, the members of the political union *Droa* - Shushana Matsaberidze and Tamar Khundadze – were administratively detained during the protest held near the Tbilisi International Airport. Both persons were charged under Article 173(1) (disobedience to the lawful order of the police) of the Administrative Offenses Code.

The case is being heard by judge Irakli Chikashua within the Panel of Administrative Matters of Tbilisi City Court.

Outcomes of the court monitoring:

⁹³ Court Monitoring Report by the HRC Court Monitor on Nata Peradze's Administrative Offense Case: 22.05.2023.

⁹⁴ Ibid.

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

On May 24, 2023, at the court hearing, the parties made statements, posed questions to each other, and examined the evidence. According to the MIA representative, Shushana Matsaberidze verbally insulted the police officers who were performing their official duties. She did not seize the action despite numerous lawful orders by the police officer, which served as the basis for her detention. As for Tamar Khundadze, the MIA representative stated that she hindered police officers in detaining Levan Tarkhnishvili at the protest. The police attempted to remove Tamar Khundadze away from the setting, but she was resisting them, and this became the basis for her detention.⁹⁵

According to the lawyer, Shushana Matsaberidze and Tamar Khundadze have not violated the law, they are politicians and enjoy a broader freedom of expression. At the same time, they were at the parking lot, which is 20 meters away from the airport. The lawyer also pointed out that the administrative detention report did not indicate the specific insulting words Matsaberidze used against the police officer. At the same time, according to the defense, the detaining police officers tend not to appear before the court for the administrative cases, as this was the case in the current hearing. For example, one of the patrol-officers who testified that the protesters insulted him, by calling him “Putin's slave” was examined at the same hearing. He declared to have directly witnessed how Shushana Matsaberidze insulted his partner. The same witness incorrectly indicated the place of detention. Matsaberidze herself stated in court that she did not remember whether this witness was present at the protest or not.⁹⁶

At the same hearing, another witness of the defense was examined confirming that they never heard Shushana Matsaberidze using the word “slave” against the police officer.⁹⁷

During the rebuttal, the defense counsel once again emphasized the fact that the witness of the administrative body gave the Court inaccurate testimony in regard to Tamar Khundadze, as the witness was not present at the protest when the detention took place. Furthermore, the police officers caught Tamar Khundadze by the neck and were pulling her by hair, thus the police abused their authority. As a result, harm was inflicted upon the health of the detainee, as confirmed by the medical certificate. Further, when using the word “slave”, Shushana Matsaberidze and Tamar Khundadze were referring to the existing system and not directly to the police officers.⁹⁸

On June 12, 2023, the hearings of the case were completed in the Tbilisi City Court. The court announced the operative part of the judgment, holding Shushana Matsaberidze and Tamar

⁹⁵ Court Monitoring Report by the HRC Court Monitor on the Case of Shushana Matsaberidze and Tamar Khundadze Case: 24.05.2023.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

Khundadze administratively liable. Further, the court imposed a fine of GEL 2000 against Shushana Matsaberidze and applied a verbal warning against Tamar Khundadze.

4. THE RIGHT OF THE ACCUSED TO PROMPT JUSTICE

The Constitution of Georgia⁹⁹ and the Criminal Code of Georgia¹⁰⁰ guarantee the right to a fair trial, which encompasses, *inter alia*, the right of the defendant in the criminal proceedings to have his/her case heard in a prompt and timely manner.¹⁰¹ In the instances where there is a delay in prosecution and judicial hearing, the proper exercise of the right to a fair trial is placed under risk. Under the criminal procedural law, the decision on indictment as a defendant (provided the person concerned is not yet detained) shall be directly linked to the commencement of criminal prosecution against the person.¹⁰² Therefore, where a person is not indicted as a defendant in reasonable time, he/she would lack the possibility to use the rights granted by the procedural law,¹⁰³ meaning that he/she would lack the possibility to involve his/her defense counsel to collect evidence,¹⁰⁴ to conduct investigation, to request carrying out of investigative actions and to request to be provided with evidence of the prosecution in order to be able to deny the charges or mitigate the punishment, the defendant would not be able to participate in the investigative action conducted following the motion file by the defendant or his/her defense counsel.¹⁰⁵ Further, in case of delaying the criminal prosecution, the accused may not be given enough time and opportunity to prepare his/her defense strategy, which may interfere with the guarantees of the right to a fair trial.¹⁰⁶

Within the monitoring conducted by the HRC, as a result of observing the court proceedings in the case of Irakli Okruashvili and studying the relevant case files it was revealed that the bill of indictment related to the case of Amiran (Buta) Robakidze¹⁰⁷ was issued against Irakli Okruashvili while he was in a penitentiary facility - on November 19, 2019, a few days before the expiration of the statute of limitations of 15 years regarding the criminal prosecution - as provided by Article 71(1)(c¹) of the Criminal Code of Georgia. In the analytical document assessing the ongoing criminal proceedings against Irakli Okruashvili, HRC pointed out that “these circumstances

⁹⁹ See Article 31(1) of the Constitution of Georgia.

¹⁰⁰ See Article 8(1) of the Criminal Procedure Code.

¹⁰¹ *Ibid.*

¹⁰² Article 167(1) of the Criminal Code.

¹⁰³ According to Article 38(5) of the Code of Criminal Procedure, "the accused must have reasonable time and means to prepare their defense".

¹⁰⁴ Article 39 of the Code of Criminal Procedure.

¹⁰⁵ Article 38(7) of the Criminal Procedure Code

¹⁰⁶ Rules for obtaining evidence and justifying legal documents, Guidelines for Lawyers, Council of Europe, 2021, p. 37.

¹⁰⁷ See in detail Legal Assessment of the Criminal Cases Ongoing against Irakli Okruashvili, HRC, 2020, available at: <https://rb.gy/wafrr8>, [29.05.2023].

created reasonable doubts that the intention of the Prosecutor's Office of Georgia was to ensure the lesser overlap possible between the periods when the accused would be placed under detention with respect to these two cases, so he would be remanded in custody for the longest period possible; this in its turn indicates to the interest on the part of the authorities in carrying out criminal prosecution against the accused".¹⁰⁸ It is noteworthy that the resumed investigation began from 2012, thus the bill of indictment was served to him 7 years later, in 2019. However, Article 169(1) of Code of Criminal Procedure "the grounds for the indictment of a person shall be the body of evidence that is sufficient to establish probable cause that the person has committed a crime". According to Paragraph 2 of the same Article, "[w]hen there are sufficient grounds for bringing charges, the prosecutor may issue a decree on the indictment of the person". Criminal prosecution against a person begins immediately after the person is detained or indicted as a defendant.¹⁰⁹

Taking into account the above, there is an assumption that the Prosecutor's Office might have collected a body of evidence that would be sufficient to indict a person as a defendant and to initiate a criminal prosecution. Nevertheless, the delay in the initiation of criminal prosecution created a risk that the procedural rights of the accused would be violated. Furthermore, the hearings of the case are pending with the Tbilisi City Court, and no hearings were held during the reporting period.

Therefore, prompt initiation of criminal prosecution and adjudication upon cases within a reasonable time are essential to protect the rights of the accused and increase public trust in the judiciary. The Constitutional Court of Georgia held that "the reasonable and precisely defined legal norms must strike a balance between the inherent advantage the prosecution may have over the defense and enable the accused to effectively defend their own interests, which in turn, serves the interests of justice".¹¹⁰

¹⁰⁸Ibid, p. 28.

¹⁰⁹ Article 167(1) of the Criminal Procedure Code.

¹¹⁰Judgement №1/1/548 of the Constitutional Court of Georgia from January 22, 2015, on the case *Georgian citizen Zurab Mikadze against the Parliament of Georgia*.

5. THE APPLICATION OF ARTICLE 25 OF THE CODE OF CRIMINAL PROCEDURE BY JUDGES TO CASES WITH ALLEGED POLITICAL MOTIVES

Article 25 of the Criminal Procedure Code provides the guarantees of adversary proceedings and equality of arms in criminal proceedings. According to the Article, the parties have an equal opportunity to obtain and present evidence in court. To obtain and present the evidence is the responsibility of the parties. Whereas the court shall create equal conditions for the parties without giving preference to one of the parties or even create such a feeling in a neutral observer. According to the interpretation of the Constitutional Court, the principle of equality of arms in criminal proceedings “hinders the prosecution from being granted unbalanced privileges and thus “limiting the possibility of the prosecution to artificially increase their influence on the resolution of the case”.¹¹¹

Adversarial proceedings include the following stages: 1. The adjudicating judge must be neutral and act as arbitrator who shall arrange, supervise, monitor, and control the criminal proceedings; 2. Only the parties may present evidence. Accordingly, the court is prohibited from independently presenting and examining the evidence; 3. The parties submit and examine evidence in court in compliance with the requirements of the law - for instance, when witness testimony is given orally, both parties can pose questions to the witness, etc.¹¹²

Notwithstanding the above, “the adversarial system allows for flexibility”,¹¹³ and judges have appropriate procedural powers. In this regard, it is important to analyze the third sentence of Article 25(2) of the Criminal Procedure Code, reading that “the judge may in exceptional cases, in agreement with the parties, pose follow-up questions if this is necessary to ensure a fair trial”. The above provision was reviewed by the Constitutional Court based on in the Constitutional Submission N1478.¹¹⁴ According to the author of the Submission “the criminal case shall be assessed and adjudicated in final judgment made by the judge who shall also identify and assess the facts deemed significant for the final resolution of the case. The judge shall have a possibility to put follow-up questions without consent of the parties, which are necessary to avoid unclarity

¹¹¹Judgement № 2/13/1234,1235 of the Constitutional Court of Georgia from December 14, 2018, on the case Citizens of Georgia: Roin Mikeladze and Giorgi Burjanadze against the Parliament of Georgia, II-74.

¹¹² Herbert D., Chkhaidze G., Counseling in Criminal Proceedings for *Georgian Lawyers publishing house Meridiani*, Tbilisi, 2014, p. 20.

¹¹³ Ibid

¹¹⁴Judgment No 3/2/1478 of the Constitutional Court of Georgia of December 28, 2021, on the case the Constitutional Submission by the Tetritskaro District Court regarding the constitutionality of Article3(20), Sentence 2, Article25(2), Sentence 3, Article48(1) and (2), (5) Sentence 1, and (7) Sentence 1 of the Criminal Procedural Code of Georgia.

and to resolve the matter in question as dictated by the needs of ensuring a fair trial”.¹¹⁵. In the above case, the Constitutional Court found the normative meaning of the Article to be unconstitutional restricting the hearing judge in the possibility to put questions during the proceedings. According to the Constitutional Court, “the interest in establishing the truth in criminal matters may not be depended on the will or responsibilities of the parties”.¹¹⁶ Accordingly, “an individual judge shall create guarantees for administering of justice in a fair and due manner, therefore, the judge must participate in the process of examining the evidence”.¹¹⁷ Moreover, “passivity and artificial restraints of the court may lead to injustice: conviction of an innocent person or release of a guilty person from responsibility”.¹¹⁸ However, inclusion of the judge “must not interfere with the proper examination of the evidence by the parties and with refutation of the evidence of the other party. [...] It the role of the judge to examine the evidence presented in court, to promote clarity, but not to create new evidence”.¹¹⁹

Thus, under the judgment of the Constitutional Court of Georgia, judges have a possibility to participate in the process of examining the evidence presented by the parties, put questions to the witnesses, and engage in the process of direct or cross-examination of the witness. Moreover, the judge shall "exercise the right to put questions to witnesses under the condition of reasonable judicial self-restraint",¹²⁰ in particular, “during the direct or cross-examination of witnesses, with his own participation, he should not interfere with the proper examination of the evidence by the parties and refutation of the evidence of the other party”.¹²¹ Moreover, “the involvement of the judge in the process of evidence examination must not cause feelings of court bias. The judge must not assume the functions of a party”.¹²²

As noted above, the court monitoring revealed that in the case of Besik Tamliani, Emzar Siukaev, Kakhaber Keshikashvili, Stepane Gikoshvili, and Lasha Samkharadze, the judge was actively involved in the process of examining the evidence, thus creating the impression that judge Lasha Chkhikvadze was doubting the reliability of the testimony given by a particular witness, as well as in authenticity of some of the evidence. For instance, there was an instance when despite the fact that the credibility of the testimony of the witness was not doubted by the prosecution,

¹¹⁵Judgment No. 3/2/1478 of the Constitutional Court of Georgia dated December 28, 2021 on the case "Constitutional submission to the Tetrtskaro District Court regarding the constitutionality of Article3(20), Sentence 2, Article25(2), Sentence 3, Article48(1) and (2), (5) Sentence 1, and (7) Sentence 1 of the Criminal Procedural Code of Georgia", I-9.

¹¹⁶ Ibid, II-40.

¹¹⁷ Ibid.

¹¹⁸ Ibid

¹¹⁹ Ibid, II-42.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid, II-43.

judge Lasha Chkhikvadze stated that the testimony of the witness contained many inaccuracies.¹²³

As stated above, in order to properly understand the content of the testimony of the witness, the judge may pose questions. However, in doing so, the judge must observe relevant requirements, namely: the question must serve the purposes of a thorough examination of the case and fair trial, and this “must not prejudice the constitutional imperative for equality of arms and adversarial proceedings, and/or impartiality of the court”.¹²⁴

Thus, according to the judgment of the Constitutional Court of Georgia from December 28, 2021, the posing of questions by the judge to the witness without prior permission from the parties shall no longer considered a breach of the principle of adversarial proceedings and equality of arms. Nevertheless, in order to protect the procedural rights of the parties, to the courts shall use their authority during the examination of evidence in accordance with the aforesaid standards and within the scope of "judicial self-restraint" - as ruled by the Constitutional Court.

6. THE COURTS’ NON-UNIFORM APPROACH REGARDING THE COMPLIANCE WITH PROCEDURAL TIMEFRAMES FOR HEARING CIVIL LAWSUITS

An integral element of the right to a fair trial is hearing of the case within a reasonable time. The reasonableness of the length of proceedings, is to be determined “in the light of the circumstances of the case, the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation”.¹²⁵ Hearing the case in reasonable time is one of the important challenges for Georgia, “jeopardizing the right to a fair trial”.¹²⁶ Further, according to the European Court of Human Rights, the courts’ heavy workload cannot serve as a justification for excessive delays.¹²⁷ It remains the responsibility of the Contracting State to organize its courts in such a way as to guarantee for

¹²³ See above: Court Monitoring Report by the HRC Monitor of the case of Besik Tamliani, Emzar Siukaev, Kakhaber Keshikashvili, Stepane Gikoshvili and Lasha Samkharadze: Lasha Samkharadze: 12.10.2022.

¹²⁴Judgment No 3/2/1478 of the Constitutional Court of Georgia of December 28, 2021, on the case the Constitutional Submission by the Tetrtskaro District Court regarding the constitutionality of Article3(20), Sentence 2, Article25(2), Sentence 3, Article48(1) and (2), (5) Sentence 1, and (7) Sentence 1 of the Criminal Procedural Code of Georgia.

¹²⁵ *Mikulić v. Croatia*, no. 53176/99, § 38, 7 February 2002.

¹²⁶Compliance with Procedural Time Limits for Considering Cases and Preparing Judgments in Tbilisi City Court - Practice of 2015-2018, Institute for Development of Freedom of Information, available at: <https://rb.gy/cdv3c> [22.05.2023].

¹²⁷ *Kharitonashvili v. Georgia*, no. 41957/04, § 44. See also: *G.H. v. Austria*, no. 31266/96, § 20.

everyone’s right to the determination of their civil rights and obligations within a reasonable time”.¹²⁸

Thus, even with a backlog of cases, the court proceedings must be organized in such a manner that safeguards the right to trial within a reasonable time – an element of the right to a fair trial enshrined in the Constitution of Georgia and Article 6 of the European Convention on Human Rights.

During the reporting period, the court monitoring found that proceedings of civil lawsuits in the cases of Kakha Kaladze against Journalist Maia Mamulashvili and TV Pirveli and GMI Rights Management against the Labor Party were held within the time limits as envisaged by the Civil Procedural Code.¹²⁹ And this happened against the background that the delay of the hearings of civil cases is one of the problematic issues for the Georgian justice system with civil litigation proceedings continuing for years. The determination of matters within a reasonable time for civil proceedings should be welcomed, however, it is interesting to know the reasons for such a non-uniform approach on the part of the court. In other words, was there any justification for the Court’s different approach? In this regard, an opinion might be voiced that the consideration of the case of Kakha Kaladze against Journalist Maia Mamulashvili and TV Pirveli within the time frame established by the Civil Procedure Code was prompted by the fact that the case concerned the Mayor of Tbilisi. In the second case, - GMI Rights Management against the Labor Party - the Court’s adherence to the time frame established by the Civil Procedure Code might have been prompted by the fact that the case concerned one of the opposition parties.

Therefore, hearing the above two cases by the Tbilisi City Court with a reasonable time unlike other similar cases could lead the public to assume that the court employs a non-uniform approach toward the cases of same category to observe the temporal limits set forth by the procedural law. Such an assumption among the public may prejudice the authority of the judiciary and the proper functioning of the system. This perception may also hinder the protection of the rule of law, given the public interest in due resolution of civil matters, which also implies the timely consideration of cases by the courts, regardless of the outcomes in each particular case.¹³⁰ Therefore, in order to increase public trust in the judiciary, it is important for the courts to consider all cases and not to allow that certain cases be prioritized over others based on unjustified and unsubstantiated grounds. Any such action on the part of the courts may result in public distrust regarding the independence and impartiality of the judiciary.

¹²⁸ Ibid.

¹²⁹ See Article 59(3) of the Criminal Code.

¹³⁰ Taking into account alternative mechanisms for the resolution of disputes regarding the fair trial of the case within a reasonable time and the role of the judge in the judicial process, Consultative Council of European Judges (CCJE), conclusion N6, 2004, p. 19.

7. CONCLUSIONS

The Report on the court monitoring results with respect to 31 cases by HRC underlined the challenges regarding the right of a fair trial as identified by the monitors and the legal analyst during the reporting period. The Report analyzed the procedural and factual flaws in the criminal, administrative, and civil law cases with alleged political motives, and assessed them against the international standards.

Like in the previous reporting period, the monitoring of the court hearings and evaluation of the information directly related to the cases, identified for the current year the flaws in the judicial system. These include the following: non-uniform approach of the court to respecting the time-limits stipulated by the procedural law, technical malfunctions of the courtrooms, delays in opening the hearings, and adjournment of the proceedings. Further, the monitoring found the problems with respecting the right to healthcare of the convicted/accused persons, and challenges with fully adhering to the principles of equality of arms and adversarial proceedings, and respecting the right of the accused to prompt justice, etc. Moreover, by delaying the initiation of criminal prosecution and violating the principle of hearing the cases in a reasonable manner, the public may have mistrust of the investigative authorities and the judicial system.

The proceedings on cases of administrative offenses face the significant challenges in terms of the following issues: ensuring public hearings, disseminating information about the hearing in an appropriate manner, frequently unsubstantiated, “general-purpose” written requests by the administrative body requesting the court to hold persons administratively liable, which, oftentimes, are not supported by a body of objective and convincing evidence.

Moreover, it is concerning that government officials publicly talk about the culpability of specific individuals before the court judgment is rendered. Such actions violate the presumption of innocence and undermine the impartiality and independence of the prosecutor's office and the judiciary, which is guaranteed by the Constitution.

8. RECOMMENDATIONS

To the Judiciary:

- To contribute to strengthening the public trust in the justice system while taking into account the rules of judicial conduct.
- To ensure that, when examining the evidence presented by the parties in criminal proceedings, judges take into account the standard established by the Constitutional Court of Georgia, and thus exercise their authority within the scope of "judicial self-restraint", without assuming the functions of the parties or raising doubts as to the impartiality of the court in a prudent observer.
- Ensure the hearing of cases within a reasonable time and exclude any doubts regarding bias or selective justice.
- To proactively update the information on the date and time of the court proceedings on the website In order to ensure strict adherence to the principle of public hearing.
- To ensure the proper functioning of the technical equipment in the courtrooms, for the purpose of comprehensive examination of video evidence.
- To ensure that Judges consider cases regarding administrative offenses in a comprehensive, all-encompassing, objective, impartial and fair manner.
- To ensure that judges distribute the burden of proof in administrative cases per the requirements set forth by law and abstain from giving preference to the evidence presented by either party without examining the evidence.

To the Prosecutor's Office:

- Not to jeopardize the full exercise of the defendants' right by delays in the initiation of investigation and criminal prosecution.
- To contribute to strengthening public trust in the independence and impartiality of the Prosecutor's Office.

To the High Council of Justice

- To promote the independence of the judicial branch and individual judges, and to increase the quality and efficiency of justice.