



**TRENDS OF TERMINATING THE POWERS OF
OPPOSITION MPS FOLLOWING THE JUDGMENTS WITH
ALLEGED POLITICAL MOTIVES**

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1. INTRODUCTION

The constitutional reforms implemented in Georgia in 2017 transformed the political system of the country into a model of parliamentary governance. The new constitutional arrangement expanded the powers of the Parliament, on the one hand, restricted the powers of the President, on the other hand, and as a result, the institutional role of the Parliament, and the influence of MPs has significantly increased in political processes.

Within the project Legal Aid and Human Rights Monitoring HRC is closely monitoring the trials against MPs. During the monitoring, HRC published several reports and analytical documents¹describing various legal or procedural violations. The gathered information showed that criminal prosecutions against several opposition party leaders and MPs in Georgia made the issue of impartiality, independence and trustworthiness of the investigative bodies and judiciary urgent again. In number of cases, criminal prosecution against political leaders caused quite reasonable doubts among the Georgian public and political groups and among international partners about the existence of political motives.

An alleged political motives to gain political advantage are particularly evident where the criminal prosecution is sought against MPs i.e. against the persons authorised and capable to significantly influence the political and lawmaking process. The aim of the Document is to assess the legal and procedural aspects of the decisions adopted by the legislative and judicial authorities in such criminal proceedings taking into account the international practice and Georgian realities.

2. ELECTIONS OF THE PARLIAMENT OF GEORGIA OF THE 10TH CONVOCATION AND THE BOYCOTT BY THE OPPOSITION

As of today, the Parliament of Georgia of the 10th convocation does not fully reflect the original distribution of forces as determined by the voters according to the official data of the Central

¹Note: In 2020-2021, HRC prepared 12 analytical documents, 2 interim and 2 final reports: 1) Report - Legal Assessment of the Criminal Cases Ongoing against Giorgi Ugulava. <https://bit.ly/33SqhZx> . 2) Legal Analysis of the Cases Connected with the Events of June 20-21, 2019, <https://bit.ly/2XUIHFn>. 3) Legal Assessment of Ongoing Criminal Cases against Irakli Okruashvili. <https://bit.ly/31NEpka>. 4) Criminal Case of Giorgi Rurua: Legal Analysis <https://bit.ly/2CkSOfd>. 5) Legal Assessment of Ongoing Criminal Case against Nika Gvaramia: <https://bit.ly/33NghAb>. 6) Monitoring the Court Proceedings of the Cases with Alleged Political Motives: Interim Report: <https://bit.ly/2JZ0eZh> . 7) Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report: <https://bit.ly/2X54qNc>; 8. Monitoring Court Proceedings of the Cases with Alleged Political Motives: Interim Report, 2021. <http://www.hrc.ge/290/geo/>; 9) Cases relating to the Events of June 20-21, 2019: Political Justice and Disputed Amnesty, 2021.<http://www.hrc.ge/files/10220-21%20june.pdf>; 10) Monitoring Court Proceedings of the Cases with Alleged Political Motives (Final Report), 2021.<https://bit.ly/3FAP59h> . 11) The Prisoner's Right to Healthcare– the Analysis of Court Proceedings Conducted against Mikheil Saakashvili and that of the Accompanying Events. 2022⁶. <http://www.hrc.ge/434/geo/>. 12) Monitoring Court Proceedings of the Cases with Alleged Political Motives, Final Report (April-June 2022) <http://www.hrc.ge/395/geo/>

Election Commission in 2020². According to the Constitution, the Parliament of Georgia consists of 150 members, however, at the time being the number of MPs does not exceed 141³. The reason for this is the abandonment of the seats by the opposition MPs by their own will or the premature termination of the MP powers to some of the MPs.

⁴According to Article 130 of the Election Code of Georgia, " where an MP of Georgia who was elected under the party list of a party independently running in the elections withdraws, his/her seat shall be occupied by the next successful candidate for MP in the party list within one month, provided that the candidate gives his/her consent within 15 days after the vacancy is created. Otherwise, the vacancy shall be taken by the next successful candidate in the list, etc. Where there is no candidate remaining in the party list, the seat of the MP of Georgia shall be cancelled." Because of the protest announced against the results of the 2020 Elections, five opposition parties - the United National Movement, European Georgia, Labor Party, Strategy Aghmashenebeli and Lelo have annulled ⁵ the election lists, the seats of the above parties have been cancelled and no longer filled. Consequently, after the Parliament has terminated powers to several MPs, no one could occupy the vacant seats in the Parliament.

The results of the 2020 Parliamentary Elections were published by the CEC on December 3. The seats were distributed among the political parties in the following manner: Georgian Dream - Democratic Georgia 90 seats from which 60 MPs were elected through the proportional system and 30 through the majoritarian one. The opposition parties gained 60 MPs in total.

In the first round of the elections, no candidate could win more than 50% of the votes in 17 out of 30 majoritarian constituencies, so the second round was needed to identify the winner in the districts; the second round took place on the background of protests and boycotts by the opposition parties⁶. The boycott was due to the violations⁷ identified in the vote counting process, further in terms of intimidating and bribing the voters and using administrative resources for the election purposes. Despite the boycott of the opposition parties, the second round of elections was held on November 21, 2020 in all of the seventeen majoritarian districts. According to the results of the repeat voting, candidates of Georgian Dream won in all the majoritarian districts. Although the opposition parties did not participate in the elections and called on their supporters to boycott the elections, the opposition candidate and their election number were formally still available in the ballot papers as prescribed by the law⁸. Consequently,

²See: Central Election Commission (CEC) 2020, Summary Statement about the Election Results:

<https://cesko.ge/ge/siakhleebi/pres-relezebi/singleview/4123458>

³More information: <https://parliament.ge/parliament-members>

⁴Article 130 of the Election Code of Georgia: <https://matsne.gov.ge/ka/document/view/1557168>

⁵see: Statement by Opposition Parties from December 11, 2020 <https://www.radiotavisupleba.ge/a/30995344.html>

⁶More information. <https://civil.ge/ka/archives/383564>

⁷See: Assessments by foreign policy experts. <https://www.isfed.ge/geo/blogi/2020-tslis-archevnebi-saqartveloshi-ukrainasa-da-moldovashi-sagareo-politikis-eqsperita-mosazrebebi>

⁸Election Code of Georgia: <https://matsne.gov.ge/ka/document/view/1557168?publication=77>

MPs from Georgian Dream were able to gain the most of the votes in the seventeen majoritarian districts filling the vacant seats as the opposition no longer was active in the elections.

Initially, all the opposition parties that managed to overcome the electoral threshold announced the elections to be rigged refusing to take the seats in the Parliament⁹. In the beginning of December 2020, 51 opposition MPs in boycott addressed the Parliament of Georgia with written formal requests to cease their powers as prescribed by the Constitution of Georgia and Rules of Procedure of the Parliament. The Committee on Procedures and Regulations of the Parliament studied the applications by the MPs finding them authentic and reasonable to terminate the authority of the MPs, however, on February 2, 2021, at the Spring Session, the parliamentary majority refused to participate in the voting and did not allow any of the 51 requests¹⁰.

The decision by the parliamentary majority set a dangerous precedent for deinstitutionalization. Despite the fact that opposition MPs were refused termination of their powers, most of them refused to take seats in the Parliament of the 10th convocation¹¹. Consequently, boycotting MPs did not attend more than half of the meetings in the spring session serving as additional grounds to terminate the authorities of the MPs as envisaged by the Constitution. Were the Parliament still to refuse to terminate the powers to the MPs notwithstanding the two grounds, this could set a dangerous precedent causing an irreparable harm to the Parliament already lacking the trust in the public eye. According to the Georgian Dream representatives, their refusal to participate in the vote was a preventive mechanism against the sabotage of the parliament's activities by the opposition at the same time giving the opposition another chance to maintain MP seats¹², however, if the opposition MPs still choose to sabotage the Parliament, then the Parliament would hear the issue of termination of their powers at the autumn session.

In parallel to these events, a dialog between the opposition and the ruling power was launched with facilitation by the ambassadors of the US and EU to remedy the political crisis created in the country¹³. The President of the European Council Charles Michel functioned as the main mediator around the negotiating table. After six months of negotiations, in the spring of 2021, an agreement called 'A way ahead for Georgia' was signed between the parties¹⁴, also known as Charles Michel's Agreement. The document consisted of five main points. The signatory MPs were obliged to engage in parliamentary activities. Inter alia, paragraph 4 governed the distribution of power within the Parliament: opposition MPs were to chair five parliamentary committees. Further, the opposition MPs were to hold the positions of chair of the parliamentary delegations representing Georgia in the following international forums: The Euronest

⁹More information: <https://civil.ge/ka/archives/380168>

¹⁰More information: <https://www.radiotavisupleba.ge/a/31081922.html>

¹¹More information: <https://civil.ge/ka/archives/380168>

¹²More information: <https://netgazeti.ge/news/516092/>

¹³More information: <https://civil.ge/ka/archives/382166>

¹⁴ The whole document: https://www.eeas.europa.eu/sites/default/files/mediacia_samomavlo_gza_sakartvelostvis.pdf

Parliamentary Assembly, EU-Georgia Parliamentary Association Committee, Council of Europe Parliamentary Assembly and OSCE Parliamentary Assembly. In the future, other positions had to be distributed using such an inclusive formula as the D'Hondt method minimizing the disproportionality. The Agreement turned out to be a product of compromises by both sides, whereas its implementation should have further strengthened the parliamentary institution and reduce polarization. However, the process of implementation was carried out against the background of confrontations.

3. VICIOUS PRACTICE OF TERMINATION OF THE PARLIAMENTARY AUTHORITY

According to the Constitution¹⁵ of Georgia and the Rules of Procedure of the Parliament¹⁶, the grounds for early termination of the MP powers shall be the following:

- An MP applies to the Parliament with a formal written request to terminate his/her powers;
- An MP takes the position incompatible with the status or engaged in incompatible activities;
- During the regular sessions, an MP failed to attend more than half of the meetings without excusable reasons;
- An MP is found guilty by a final court judgment;
- Following a court decision, an MP is recognised as a support recipient and is hospitalized in a relevant medical facility;
- The court recognized him/her as a missing person or declared him/her dead;
- He/she died;
- He/she lost the Citizenship of Georgia;
- His/her powers are to be ceased under the judgment of the Constitutional Court.

Following the 2020 Elections, the political party Alliance of Patriots received 4 seats. Under the party list of the Alliance of Patriots, Irma Inashvili, Giorgi Lomia, Gocha Tevdoradze and Avtandil Enukidze had to take seats in the Parliament. On December 21, 2020, three MPs, except Avtandil Enukidze like other 51 opposition candidates, refused to take seats and applied to the Parliament with a request to terminate their MP powers. Despite the fact that the members of the Alliance of Patriots addressed the Parliament later than others, on January 4, the Parliament voted for the termination of their powers earlier than doing the same for the rest of the MPs. The fact that the majority rapidly voted in favour of terminating the powers of the MPs from the Alliance

¹⁵ Constitution of Georgia. <https://matsne.gov.ge/ka/document/view/30346?publication=36>

¹⁶ Rules of Procedure of the Parliament of Georgia: <https://matsne.gov.ge/ka/document/view/1691403?publication=44>

of Patriots, while maintaining the powers to the other 51 MPs left an impression of applying double standards and differentiated approach among the public and political circles.

Although a written formal request serves under the Constitution as one of the grounds to terminate the powers to MPs, the law does not regulate the instances when the Parliament is allowed to refuse the termination and reject the request. The constitutional provision requiring the formal written request by MPs to be heard and voted in the parliament's session, serves a securing mechanisms for the cases where the MP's request was filed as a result of a pressure. However, since the Committee for Procedures and Regulations of the Parliament examined the applications finding them authentic, the Parliament was obliged to take same decisions in both cases.

4. TERMINATION OF MP POWERS TO NIKANOR MELIA

The Parliament has shown a differentiated approach when hearing the issue of termination of powers to the opposition MPs against whom criminal proceedings were initiated. While the legislation explicitly specifies the list of the reasons for terminating the powers to MPs, the law also provides that the final decision about the termination shall be made by the Parliament. The above competence of the Parliament has become a subject of disputes when the MP powers were ceased to the former chairperson of the United National Movement Nikanor Melia on the grounds of the judgment of conviction rendered by the court, while the voting at the regular session appeared with a formalistic nature as it took place without any deliberations and examinations. At that time, MPs in majority were referring to the obligation by the Parliament [to terminate powers to Melia as this was provided by the Constitution of Georgia with the voting to be only an automatic procedure](#)¹⁷.

4.1. Case of Cartu Bank

By the judgement from December 2, 2019, Tbilisi City Court found that in the case of Cartu Bank¹⁸ MP Nikanor Melia was guilty under Article 332 of the Criminal Code of Georgia¹⁹. He was sentenced to pay fine of GEL 25,000 as primary punishment. Further, under Article 43(2) of the Criminal Code of Georgia²⁰, Nikanor Melia was deprived the right to hold office for another 3 years following the ancillary order by the judge. Since the allegations concerned the offense committed before 2012, pursuant to Article 16 of the Law of Georgia on Amnesty from December

¹⁷See: Statement by Gia Volski, the first Vice-Speaker of the Parliament - <https://www.interpressnews.ge/ka/article/576829-gia-volskis-ganmartebit-gadacqvetileba-romelic-parlamentma-nika-meliastvis-mandatis-chamortmevaze-unda-miigos-ara-politikuri-aramed-mekanikuri-gadacqvetileba/>

¹⁸More information: <https://netgazeti.ge/news/410717/>

¹⁹ Article 332 of the Criminal Code of Georgia: <https://matsne.gov.ge/ka/document/view/16426?publication=243>

²⁰ Article 43 of the Criminal Code of Georgia: <https://matsne.gov.ge/ka/document/view/16426?publication=243>

28, 2012, the ancillary order issued against Nikanor Melia depriving him of the right to hold office was reduced by a quarter²¹. Eventually, he was fined with GEL 25,000 and deprived of the right to hold office for 2 years and 3 months. On December 9, 2019, the operative part of the judgment of Tbilisi City Court was sent to the Committee on Procedures and Regulations of the Parliament of Georgia. According to Resolution N5544 by the Parliament from December 12, 2019, under the Constitution of Georgia and the Rules of Procedure of the Parliament, MP powers of Nikanor Melia were prematurely terminated.

The Parliament referred to Article 39(5)(d) of the Constitution of Georgia²² stipulating for early termination of MP powers where: the MP is found guilty of crime under the final judgment of the court. However, against the background of possibility that the Appellate Court or the Supreme Court would reverse the judgement rendered by the court of first instance, we may consider the decision by the Parliament to be adopted in a rapid and unjustified manner.

According to assessments by HRC, the Parliament of Georgia should not have considered the judgment rendered by the court of first instance as the final judgment²³. Because of the rapid decision made by the Parliament of Georgia, even in the case Nikanor Melia was acquitted by the Appellate Court or by the Supreme Court, his MP powers could no longer be restored. The decision by the Parliament made the appeal against the judgment by Tbilisi City Court meaningless thus violating the right to a fair trial enshrined in Article 31(1) of the Constitution of Georgia²⁴. The mentioned right implies the possibility to appeal before the superior court the judgment of conviction rendered by the court of first instance and the possibility to enforce the judgment of the superior court.

Finally, on December 23, 2019, the decision of the Parliament was appealed before the Constitutional Court of Georgia²⁵. The constitutional claim was seeking to held unconditional the resolution by the Parliament terminating the powers of the MP.

In the capacity of a friend of the court, on February 10, 2020, the Public Defender of Georgia addressed the Constitutional Court of Georgia regarding the constitutional claim of Nikanor Melia²⁶. The document reviews the cases when the judgment of conviction may serve as grounds for lifting the MP authorities. As dictated by the laws and court practice, the judgment of

²¹ The Law of Georgia on Amnesty, Article 16. <https://matsne.gov.ge/ka/document/view/1819020?publication=0>

²² Article 39 of the Constitution of Georgia. <https://matsne.gov.ge/ka/document/view/30346?publication=36>

²³ See: Reports by HRC: Monitoring Court Proceedings of the Cases with Alleged Political Motives (April-June 2022). <http://www.hrc.ge/files/reports/218sasamartlo%20procesebis%20monitoringi-geo.pdf>

²⁴ Article 31 of the Constitution of Georgia. <https://matsne.gov.ge/ka/document/view/30346?publication=36>

²⁵ See: Constitutional claim: Nika Melia against the Parliament of Georgia. <https://www.constcourt.ge/ka/judicial-acts?legal=5003>

²⁶ Opinion of the Public Defender of Georgia as a Friend of the Court <https://www.ombudsman.ge/geo/2sasamartlo-megobris-mosazrebatnadabarekomendatsiebi/sakhalkho-damtsvelma-sakonstitutsio-sasamartlos-nikanor-melias-sakmeze-sasamartlos-megobris-mosazrebit-mimarta>

conviction rendered against MPs shall not by default cause termination of their authorities. The document outlines the concept of 'final judgment' to bear an autonomous meaning, however, when terminating the powers of MPs one must observe the principle of proportionality. The opinion of the friend of the court tried to determine the issue of proportionality. In particular, the termination of the authority to MPs may be possible only where the court of first instance has sentenced the MP to imprisonment as a means of punishment. In cases where the court rules a non-custodial sentence against the MP as a measure of punishment, the authorities of the MP may be terminated only after he/she has a possibility to appeal against the judgement or only after the timeframes for the appeal have expired.

The Constitutional Court accepted the claim for hearing on the merits under Article 25(1) (the right to hold public office) and Article 39(5)(d) (termination of MP powers only on the grounds of judgment of conviction). The Constitutional Court rejected the claim in the part of the right to a fair trial, as the powers of Melia were terminated by the Parliament and not by the court. Due to the complexity and significance of the matter, the constitutional claim was heard by the Plenum of the Court failing to identify the violations in spite of the relevant arguments²⁷.

4.2. Case of Nikanor Melia: events of June 20-21

Nikanor Melia as an MP was charged also in the criminal case relating to protest rallies of June 20-21, 2019. The Prosecutor's Office of Georgia was incriminating to Melia organisation of group violence and participating in the violence under Article 225(1)(2) of the Criminal Code. On June 25, 2019, the Office of the Prosecutor General of Georgia filed a motion with the Parliament to lift Nikanor Melia's MP immunity and to apply the measure of restraint in the form of custody as to be applied by the court²⁸. In accordance with Article 39 of the Constitution of Georgia and Article 11(1) of the Rules of Procedure of the Parliament, an MP may be detained only following the preliminary consent by the Parliament. Under the Constitution of Georgia, MPs are protected by immunity²⁹, however, the immunity shall not serve as a guarantee against impunity when committing a crime. MPs may not be legally prosecuted for any opinions expressed during the fulfillment of their obligations in Parliament, however, the immunity may be lifted where there is a reasonable assumption that they have committed a crime. According to the arguments of the Prosecutor General, there were both formal and factual grounds available to apply the measure of constraint in the form of custody against the accused Melia. The Prosecutor General stated that the measure of restraint shall be applied in the cases where there is a reasonable

²⁷ Judgment №3/2/1473 of the Plenum of the Constitutional Court of Georgia from September 25, 2020, regarding the case Nikanor Melia v. Parliament of Georgia: <https://bit.ly/3M8uLxW>

²⁸More information: <https://netgazeti.ge/news/518763/>

²⁹ The Law of Georgia on the Status of a Member of the Parliament <https://matsne.gov.ge/ka/document/view/32458?publication=32>

assumption that the accused would disappear, commit a new crime and hinder the administration of justice and obtaining of the evidence.

According to the assessment by HRC³⁰, the proposal submitted by the Prosecutor General of Georgia had merely a formalistic character. The proposal failed to substantiate number of important aspects justifying the need of remanding in custody, while the practice of the ECtHR brought as an argument by the Prosecutor's Office failed to correspond to the case of Nikanor Melia when weighed against the facts and standard of proof. According to the Report of the Venice Commission, the procedure for using and waiving the immunity must be precise, transparent, impartial, and clearly defined. The Commission points out that under the current conditions the parliamentary immunity operates mainly as a safeguard for the parliamentary minority. This means that only the guarantees for individual liberty enshrined in Article 10 of the ECHR as well as in the Constitution of Georgia cannot serve as a safeguard against the potential legal disputes which could be initiated by the executive branch as well as by other members of the society due to the opinions and attitudes expressed by MPs. Such legal disputes, de facto, may restrict the freedom of MPs to express own opinions to the extent that would undermine the possibility to effectively use the mandate of MPs. Therefore, the parliamentary immunity and special rules for exempting MPs from legal liability provide the safeguards for MPs against legal prosecution on the part of political opponents, the executive branch and other members of the society. Furthermore, one of the most important subjects of the parliamentary immunity is the freedom of expression enjoyed by MPs. The freedom of speech has even greater meaning and is subject to more enhanced protection for MPs as compared to the regular citizens of the country³¹.

Nevertheless, on June 26, 2019, on the background of the boycott by the opposition parties, the Parliament in a special sitting lifted the MP immunity to Nikanor Melia with 91 votes against none³² to allow the Prosecutor's Office to file a motion with the court requesting the arrest of Nikanor Melia.

4.3. Evaluation of court judgments

On June 27, 2019, Tbilisi City Court rejected the motion of the Prosecutor's Office and remanded the MP on bail instead of remanding in custody. The court held that the purpose of the measure of restraint may be achieved with less severe measure of paying GEL 30,000 in bail. The defendant was ordered to pay the bail within 20 days. Under the court ruling, Nikanor Melia had to fulfill additional obligations, namely, he was banned from: Leaving his residence (home)

³⁰ Report by Human Rights Center on Monitoring the Cases with Alleged Political Motives, 2020<http://www.hrc.ge/113/geo/>

³¹see: 2014 Report by the Venice Commission concerning the Scope and Lifting of Parliamentary Immunities.[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)011-e)

³²More information: <https://civil.ge/ka/archives/397920>

without informing and consent of the investigative body; making public statements at places of public gathering; communicating in any manner with witnesses. Melia was further ordered to surrender his passport and ID to the investigative body. Finally on the background of the increased bail and imposition of other obligations, the court found that the purposes of the measure of restraint would be fully achieved. The court also ruled that in case of violating the condition of the bail and other obligations as imposed by the court, the measure of restraint in remand on bail applied against the accused may be replaced with a more severe measure. Also in this case, when deciding the issue of the measure of restraint, Tbilisi City Court was guided only by the norms prescribed by the Criminal Procedure Code and failed to deliberate the specific issues regarding the MP authority. Under the Criminal Procedure Code, when deciding the issue of the measure of restraint, the court shall inter alia consider the occupation of the accused, however, in the above case the court failed to take into account and respectively to deliberate the issue of the occupation. On the other hand, had the court considered such significant circumstances, this could particularly impact the outcomes of the court ruling.

Both parties appealed to the Court of Appeal to reverse the ruling by Tbilisi City Court. The defense party requested the cancellation of additional restrictions ruled by the court of first instance, while the Prosecutor General's Office requested in its appellate appeal to apply custody against Nikanor Melia as a measure of restraint. By the decision of the Court of Appeals from July 2, 2019, the ruling by Tbilisi City Court was upheld. Moreover, the Court of Appeals ordered the Prosecutor's Office to carry out electronic monitoring on the movement of Melia through a tether³³. When Melia appeared on TV Caucasus on September 10, 2019, this was assessed by the Prosecutor General's Office as a violation of the conditions of the measure of restraint³⁴. According to the Prosecutor's Office, the participation of Melia in the sociopolitical program was a breach of the obligations imposed by the court. The defendant was warned that in case of repeat public appearance, more severe measure of restraint would be applied against him. The Prosecutor's Office further stated that a consent was given to Nikanor Melia to appear in the Parliament of Georgia, while the communication with media could be perfectly maintained from home.

Such position of the Prosecutor's Office contradicts in full with the specific nature of the right to be involved in public activities as envisaged by the MP mandate. Politicians always need to meet the members of the public, representatives of various organizations and must enjoy the right to speech and expression without obstacles; all the above could not be effectively fulfilled without leaving the house. Therefore, against the background of the ruling by the court applying the measures of restraint, the refusal by the Prosecutor's Office to allow Melia leave the house may

³³See: Statement by Tbilisi City Court in relation to Nikanor Melia's case <https://tcc.court.ge/ka/Decision/nikanori-melias-sheefarda-girao-da-daekisra-damatebiTi-valdebulebebi>

³⁴See: Statement by the Prosecutor's Office of Georgia <https://pog.gov.ge/news/saqarTvelos-generaluri-prokuraturis-gancxadeba-1-1>:

take place for the very clear and legitimate reasons, while the lack of such reasons would in the first place infringe the interests of the voters. When there is an urgency, with the ban being the only and necessary remedy, the court must restrict the rights in a foreseeable manner under a clear and explicitly regulated procedure. Therefore, revoking the mandate to the representative directly elected by the public or otherwise restricting him/her in the rights, not only prejudice the right of the person holding the mandate to take a public office, but also the will of the voters delegating the mandate to the public official³⁵.

4.4. Outcomes of the court monitoring

From February 2021 to June 2022, 22 hearings were held in the courts³⁶. On almost every hearing, the defense was voicing political statements. The defense referred to the political motives in the case, further, on willful destruction of evidence, engagement of politicians and interests of high-ranking officials from legal enforcement bodies. The defense counsel were referring to the high public interest asking the court to allow broadcasting of the hearings which the court rejected. In this regard, the defense party argued that non-disclosure left an impression that the court did not wish the public to be aware of the events taking place at the hearing which raised doubts that the judge had already taken the decision to replace the bail with custody as a measure of restraint against Nikanor Melia. On April 13, 2021, the defense made a motion to enter new evidence into the case files. In particular, the defense requested to admit in evidence the interview of Irakli Kobakhidze spread through TV media. In the interview, Irakli Kobakhidze, the chairperson of the Georgian Dream, talks about the discussion among the officials held on 17, 2021, regarding the use of various means to enforce the custody as a measure of restraint against Nikanor Melia. According to the defense counsels, since the interview was released late, the defense could not provide the evidence before the hearings on the merits. Stemming from the outcomes of the court monitoring, we may conclude that the testimonies of the prosecution witnesses questioned in the case related to the events of June 20-21, 2019 fail to proof clearly the culpability of Nikanor Melia. The principle of equality of arms and adversarial proceedings was more or less observed during the court proceedings. The parties had the opportunity to freely make motions and express their opinion on the motions of the opposing party. However, some problems stemmed from the issue of assessing and granting the motions made by the defense, as in some cases the grounds for rejecting the motions were abstract and unsubstantiated.

³⁵ Report by Human Rights Center on Monitoring the Cases with Alleged Political Motives, 2020 <http://www.hrc.ge/113/geo/>

³⁶ HRC Court Monitor Report on Nikanor Melia Criminal Case: 17.02.2021; 08.04.2021; 13.04.2021; 29.04.2021; 10.05.2021; 13.05.2021; 21.05.2021; 25.05.2021; 27.05.2021; 03.06.2021; 24.04.2021; 02.06.2021 10.06.2021; 15.06.2021; 24.06.2021; 02.06.2022.

5. EARLY TERMINATION OF MP AUTHORITIES TO BADRI JAPARIDZE

On February 7, 2022, the Committee on Procedures and Regulations of the Parliament of Georgia heard the issue of premature termination of MP powers to Badri Japaridze, the founder of opposition political party Lelo³⁷ because of the final court judgment taking effect holding Japaridze guilty of the offense. Under letter N1-946 / 22 sent by Tbilisi City Court from January 28, 2022, to the Parliament of Georgia, it was confirmed that Badri Japaridze, MP of Georgia, has been convicted (Case N1 / 4607-19) and found guilty of the offense under Article 180 (2) (a) and (3) (b) of the Criminal Code of Georgia.

Consequently, the Committee on Procedures and Regulations of the Parliament of Georgia found that in accordance with Article 39(5)(d) of the Constitution of Georgia and Article 6(2)(d) of the Rules of Procedure of the Parliament of Georgia, the powers of MP Badri Japaridze should have been terminated in a premature manner. On February 15, 2022, at the plenary session, the Parliament voted on the issue of termination of the powers to the MP and with the support of 77 votes MP powers of Badri Japaridze were terminated³⁸.

5.1. Case of money laundering

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 party *Lelo for Georgia*) are charged by the Prosecutor's Office of Georgia under Article 194(2)(a) and (3)(c)³⁹ of the Criminal Code envisaging the legalization of illicit incomes in large amounts carried out by an organized group. While the charges brought against the father of the owner of TV company *TV Pirveli*, Avtandil Tsereteli, implies the assistance in the legalization of illicit income (Article 194(2)(a)(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. In particular, the court could not identify the commission of money laundering by Mamuka Khazaradze and Badri Japaridze i.e., in the charges brought against them by the prosecution, however, the charges were shifted from money laundering and subsumed under the article of fraud. Under 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 large quantities) of the Criminal Code sentencing them to 7 years of imprisonment each⁴⁰. Further, according to the judgment, Khazaradze and

³⁷More information: <https://netgazeti.ge/news/586325/>

³⁸More information: <https://www.radiotavisupleba.ge/a/31704724.html>

³⁹ Article 194 of the Criminal of Georgia. <https://matsne.gov.ge/ka/document/view/16426?publication=243>

⁴⁰More information: <https://www.radiotavisupleba.ge/a/31650371.html>

Japaridze were released from prison sentences because of the limitation period of the criminal prosecution.

5.2 Outcomes of the court monitoring

HRC has been monitoring the case from the court of first instance and is still monitoring periodically informing the public about results through ⁴¹ its reports. Both parties appealed to the Court of Appeals to reverse the judgment by Tbilisi City Court. The prosecution argued that the elements of money laundering are evident in the case, but judge from the first instance misinterpreted the relevant article with regard to the facts of the dispute and the evidence produced. Meanwhile, the defense was requesting to reverse the judgment by the first instance court and render a judgment of acquittal against the defendants.

- **Arguments by the prosecution**

On September 30, 2022, the prosecution presented their closing arguments at Tbilisi Court of Appeal. In his closing arguments, the prosecutor argued that new subsumption by the judge hearing the case in the court of first instance must be considered unlawful and unsubstantiated. Further, the prosecution asserted that the appellate appeal by the defense stems only from their own judgments lacking the grounds of evidence. Whereas, the arguments regarding the funds withdrawn from the bank are not valid and serve only the purpose of the defendants to avoid the punishment. The evidence examined during the proceedings proved the fact of crime committed by the convicts including the elements of money laundering. The prosecutor holistically elaborated on the facts of the crime with regard to each of the convicted persons. The prosecutor argued that money laundering was the purpose of converting and transferring the money to different accounts by the defendants. According to the prosecutor, Khazaradze and Japaridze were not only aware of the criminal origin of the money, but they also participated in the offense, which is explicitly proved by the examined evidence. The prosecutor stated that the elements of classical money laundering were evident in the case and appealed to the court to reverse the judgment of the court of first instance and accept in full the arguments by the prosecution in the part of subsuming the case to the fraud article.

- **Arguments by the defense**

On July 4, 2022, at the next court hearing in Tbilisi Court of Appeals, the defense elaborated on the appellate appeal lodged by the prosecution. The defense counsel argued that money laundering is a complicated and diverse legal matter and in order to identify such crimes it is necessary: 1) the existence of illegal income when it is not possible to prove the sources of such

⁴¹Monitoring Court Proceedings of the Cases with Alleged Political Motives (Final Report) 2021.
<http://hrc.ge/files/reports/188sasamartlos%20monitoringi-geo.pdf>

income. 2) allocating and manipulating with such funds when the money is released into circulation. 3) return of the funds in the form of income i.e. profit. According to the defense counsel, none of the above-mentioned stages were involved through the actions of the defendants, and most importantly, they have not received any income. The defense counsel further argued that the impugned transactions at the moment of implementation have been verified by the National Bank. Under the applicable regulations, transactions on the sums greater than GEL 30,000 shall be subject to the channels of the National Bank as provided by the anti-money laundering regulations, while in the current case the National Bank did not find the transactions to be questionable.

In the closing arguments, the defense underlined the fact which according to the lawyers is one of the main nonsenses that could be found in the case. In particular, the court of first instance rendered the judgment under Article 180 of the Criminal Code meaning the article covered by the amnesty law, thus revealing once again the fact that the court of first instance was operating outside the law. Although the defendants were not to serve the sentence, they still suffered irreparable harm, as their reputation was prejudiced due to the unsubstantiated court judgment allowing third parties to challenge them in civil proceedings and lastly following the absurd allegations, the convicted Badri Japaridze lost the MP authorities. Moreover, at the court of first instance, the right to defense was significantly violated, as the defense had built its strategy and produced respective evidence to preclude the allegations in [fraud], while the defense has been given the opportunity to prove the absurdity of the allegations only in the court of appeals.

2023. On January 20, appellate hearing of the “money laundering” case was completed. The panel of judges with presiding judge Merab Jorbenadze heard the closing arguments by the parties and left for deliberations to render a judgment. On January 26, 2023, the Court of Appeals found Mamuka Khazaradze, Badri Japaridze and Avtandil Tsereteli guilty of fraud committed by a group upholding thus the judgment of the City Court.

6. CRIMINAL CASE OF LEVAN KHABEISHVILI

The Prosecutor's Office of Georgia brought allegations against the MP Levan Khabeishvili, currently the Chairperson of political party United National Movement for the offense under Article 126(1) (committing violence) of the Criminal Code. As induced from the case files, on January 24, 2020, Levan Khabeishvili physically assaulted, Irakli Zarkua, the then deputy Chairperson of Tbilisi City Council in the corridor of the premises. The Prosecutor's Office of Georgia filed a motion with Tbilisi City Court to remand Levan Khabeishvili on bail of GEL 3,000. However, the motion was granted in part and the accused was remanded on bail of GEL 2,000. At this stage, the case is being heard on the merits at Tbilisi City Court. Speaking of the case details, Levan Khabeishvili and his defense counsel claim that Levan Khabeishvili had been

instigated right before the confrontation took place in the corridor, which was recorded in the video footage broadcast on various TV channels. Moreover, according to the defense, the case is politicized and aimed at removing Khabeishvili from parliamentary activities. In case the allegations are proved, the MP powers of Khabeishvili would be prematurely terminated, thus continuing the trend of terminating the authorities to the opposition MPs.

6.1. Outcomes of the court monitoring

On April 17, 2022, a single hearing was held over the criminal matter⁴². In monitoring the hearing, the prosecutor was not duly prepared for the hearing which was even noted by innuendo of the trial judge. The prosecution summoned and questioned 6 witnesses at the trial, who submitted information not substantially related to establishing the truth about the current case. None of the witnesses was questioned by the defense. All six witnesses worked in Old Tbilisi and Mtatsminda Police Division in 2020 as inspectors and – investigators. According to the witnesses, the prosecutor instructed them to investigate the case based on the footage broadcast by the television on January 24, 2020, showing the violence exercised against the accused, Levan Khabeishvili, and another victim in the case Irakli Zarkua. The prosecutor asked the witnesses what kind of investigative actions had been taken in connection with the case. According to the witnesses, they have interviewed several eyewitnesses. Further, specific details about the investigative actions are already present in the case files in the forms of investigative reports which were considered by both parties as conclusive evidence during the pre-trial hearing. The witnesses further informed the court about the footage, which were already known to the general public through various media outlets. When the witness (investigator Eka Tevzadze) was asked by the prosecutor about the information contained in the video recordings, the defense counsel objected as these recordings should be examined by the court in a separate session anyway, so creating a prejudice on the issue would hinder further objective considerations. The judge sustained the objection and dismissed the question posed by the prosecution. At this point the date of the next session is not determined. The last judicial session on the case was scheduled for May 2022, but was postponed following the motion by both parties.

7. STEPS TOWARD WEAKENING THE PARLIAMENTARY OPPOSITION

On February 7, 2022, the Committee on Procedures and Regulations of the Parliament of Georgia when hearing the matter of premature termination of the MP powers to Badri Japaridze also heard and supported the issue to prematurely terminate the MP powers to Shalva Natelashvili, Labour Party leader and Elene Khoshtaria, leader of the party Droa⁴³. In the latter cases, the

⁴² HRC Court Monitor Report on Criminal Case of Levan Khabeishvili. April 17, 2022

⁴³More information: <https://www.radiotavisupleba.ge/a/31704326.html>

powers of Natelashvili and Khoshtaria were terminated under Article 6 of the Rules of Procedure of the Parliament⁴⁴ envisaging such termination in cases where an MP is absent at the parliamentary sessions without excusable cause. Before the voting on the issue, the statement of NGOs and political parties was released calling on the ruling party not to support the revocation of parliamentary mandates of the MPs⁴⁵. In the case of Badri Japaridze, there was an important factor that party Lelo had cancelled its party lists and so in the case of termination of MP powers to Badri Japaridze, no one could replace him leaving the party with one seat less in the Parliament. As for the premature termination of MP powers to Shalva Natelashvili and Elene Khoshtaria, the Parliament had already refused to annul their MP seats when the MPs addressed the Parliament with the formal written request to do so. In this regard, it is noteworthy that in contrast to the previous case of voting by the Committee, Shalva Natelashvili had publicly announced his intention to be involved in parliamentary activities. Additionally, Natelashvili's public statements about not to take a seat in the Parliament were deemed to serve the means of the boycott. However, the Parliament of Georgia failed to follow the mandatory procedure provided by Article 91 of the Rules of Procedure.

Despite the public appeals, on February 15, 2022, the parliamentary majority supported the decision to terminate MP powers to the opposition MPs. The decision made by the Parliament may be assessed as a step to weaken the parliamentary opposition resulting in failures in the supervisory functions of the Parliament. The above argument is confirmed by the fact that after losing 3 seats in the Parliament, the opposition's chances to create a temporary investigative commission to study the alleged facts of violent, degrading, inhuman and humiliating treatment exerted against the third President of Georgia, Mikheil Saakashvili became questionable⁴⁶.

In accordance with the relevant provisions in the law⁴⁷, temporary investigative commission may be created in the Parliament to study only specific issues, with the purpose of examining the facts of violations of the legislation by state bodies and officials. The right to initiate the establishment of temporary investigative commissions is granted to the Chairperson of the Parliament, parliamentary committees, parliamentary factions and at least 1/5 members of the Parliament. Moreover, the opposition shall be represented in such commissions by no less than half of the members of the commission, also the chair or the secretary of the commission shall be an opposition MP. In February 2022, 52 opposition MPs supported the initiative by the United National Movement to set up an investigative commission, however, after the Parliament

⁴⁴ Rules of Procedure of the Parliament of Georgia: <https://parliament.ge/legislation/reglament>

⁴⁵ More information: <https://www.radiotavisupleba.ge/a/31696097.html>

⁴⁶ More information: <https://www.radiotavisupleba.ge/a/31685356.html>

⁴⁷ Law on Temporary Investigation Commission of the Parliament of Georgia
<https://www.matsne.gov.ge/ka/document/view/33010?publication=5>

prematurely terminated the MP powers to Badri Japaridze, Elene Khoshtaria and Shalva Natelashvili, the necessary 50 votes could not be found, so the initiative has failed.

CONCLUSIONS

One of the main constitutional functions of parliaments in the parliamentary republic is to monitor the activities of the Government. However, the reports by the international partners criticize inter alia the inefficient parliamentary control in Georgia. After the constitutional amendments from 2017⁴⁸, the role of the Parliament as a supervisory body has significantly increased. By supervising the accountable bodies, the Parliament of Georgia shall ensure the democratic governance, streamlined functioning of independent bodies and balance of power. In order to adjust the law to the Constitution of Georgia, in 2018, some amendments were introduced to the Rules of Procedure of the Parliament of Georgia⁴⁹. The procedure for the parliamentary supervision has been adopted and new mechanisms of control were introduced such as the Minister's Hour and Topical Inquiry Group. The procedure for creating temporary investigative commissions was simplified, the concept of interpellation was introduced and the procedure for declaring distrust to the government was streamlined. The Prime Minister of Georgia shall present annual reports speaking before the Parliament once in a year; the report shall review the activities of the Government with the Parliament acting as the key institution to grant the legitimacy to the Government of Georgia. Furthermore, beyond the Government, the scope of the parliamentary control has been extended to all the accountable bodies, all the levels of territorial units and state institutions as envisaged by the Constitution of Georgia, Rules of Procedure of the Parliament, Law on the Status of Members of the Parliament⁵⁰ and other legal acts. In addition, parliamentary control covers important institutions such as: The State Audit Office, National Bank, Public Defender, Board of Trustees of Public Broadcaster, members of the National Communications Commission, Personal Data Protection Inspector, Legal Aid Service, State Security Service and Prosecutor General. Despite the imperative norms of separation of powers between the branches of government, the Parliament of Georgia has an important role in determining the policy of the judiciary, electing the Chairperson and judges of the Supreme Court and 3 members of the Constitutional Court. Further, the Parliament elects 5 members of the High Council of Justice and 2 members of the Disciplinary Panel of Judges for general Courts.

In practice, when exercising the supervisory functions, the opposition has a particularly important role. The original boycotts by the opposition parties weakened the legislative body and significantly deepened the political crisis, however, since the opposition lawmakers decided to be involved in the parliamentary work presenting specific initiatives of parliamentary control, the

⁴⁸ Constitutional amendments from 2017: <https://matsne.gov.ge/ka/document/view/3811818?publication=2>

⁴⁹ Rules of Procedure of the Parliament: <https://matsne.gov.ge/ka/document/view/4401423?publication=38>

⁵⁰ Law of Georgia on the Status of Members of Parliament: <https://matsne.gov.ge/ka/document/view/32458?publication=32>

unlawful termination of MP powers to the opposition leaders has gained an alarming trend the purpose of which is to hinder full implementation of the parliamentary supervising functions. The main initiators to exercise the parliamentary control mechanisms in most cases are the opposition MPs, while the reduction in the number of opposition MPs in the legislature shall minimize the possibility to implement the controlling functions.

Whereas, the responsibilities and powers of MPs have increased, more significant effects are caused by the legal persecutions and related procedures taken against MPs, particularly in the cases when the initiation of investigative proceedings coincides with significant political events, such as: Elections, mass protests or initiatives by the opposition to set up parliamentary investigative commissions.

According to assessments by HRC, such actions by the authorities could be explained by narrow political motives. In particular, as it is evident from the political developments, the authorities lack the interest to work with the parliamentary opposition in a constructive political manner. Therefore, using the judgments of conviction rendered against the opposition MPs as a ground, the parliamentary majority may find it useful to weaken the parliamentary opposition through prematurely terminating the powers to some of the opposition MPs.

Taking into consideration the existing reality, there is a reasonable doubt that in the future, the MPs distinguished by public political activities would be threatened to lose MP powers which is clearly indicative of the alarming trend.