



MONITORING COURT PROCEEDINGS OF THE CASES WITH ALLEGED POLITICAL MOTIVES

Interim Report

2020



HUMAN RIGHTS CENTER

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TABLE OF CONTENTS

INTRODUCTION	4
METHODOLOGY.....	5
I. THE CASES WITH ALLEGED POLITICAL MOTIVES	6
SELECTIVE JUSTICE AND ALLEGED POLITICAL MOTIVES	14
PRESUMPTION OF INNOCENCE.....	15
RIGHT TO BE TRIED IN REASONABLE TIME	16
RIGHT TO JUSTIFIED JUDGMENT	16
II. COURT HEARINGS HELD REMOTELY	18
LEGISLATION REVIEW	18
PROBLEMS RELATED TO REMOTE LEGAL PROCEEDINGS.....	19
PROBLEMS RELATED TO ADMISSION TO COURT SESSIONS	20
III. THE PROBLEM OF CONFIDENTIAL COMMUNICATION WITH DEFENSE COUNSELS	21
PROBLEM OF QUESTIONING THE WITNESSES.....	22
CONCLUSION.....	23

INTRODUCTION

The current Interim Report reflects the outcomes of the monitoring of the court proceedings of the criminal and administrative cases with alleged political motives for the period of February 1, 2020, and August 15, 2020. The Human Rights Center (HRC) implements the monitoring through the project *Public Events Monitoring* supported by the US Foundation *National Endowment for Democracy* (NED) starting from February 1 and lasting until December 31.

From the beginning of the monitoring until the period of the Interim Report of August 12, the court monitors of HRC have monitored 80 court proceedings on 20 cases. During the monitoring process, 4 analytical documents were published analyzing the results of the court proceedings *per sue* as well as the issues outlined in the examination of the criminal cases¹. From the 20 cases, on 3 cases judgments have been rendered, 14 criminal cases remain at the first instance of courts for hearings, and 3 cases are appealed to Tbilisi Court of Appeals.

As a result of changes in the government in October 2012, the Office of the Prosecutor General began criminal investigations against government officials of various ranks based on the alleged criminal actions. International observer organisations like the local observer organisations expressed great interests in the cases. Among them we have to mention OSCE/ODIHR report, where it is stated that taking into account the obligations undertaken by Georgia *vis-a-vis* OSCE, Georgia faced a challenge to conduct the cases in a transparent manner, under the rule of law and fair trial standards². Local organisations were also monitoring and assessing the court proceedings³. *Inter alia* in 2013, HRC published the report of the court monitoring on the cases of former high-rank officials⁴ reflecting the monitoring results of one year⁵.

¹see: 1) Legal Assessment of the Criminal Cases Ongoing against Giorgi Ugulava, Human Rights Center. 2020: <https://bit.ly/33SqhZx>. 2) Legal Analysis of the Cases related to the Events of June 20-21, 2019, Human Rights Center. 2020: <https://bit.ly/2XUIHFu>. 3) Legal Assessment of the Criminal Cases Ongoing against Irakli Okruashvili, Human Rights Center. 2020: <https://bit.ly/31NEpka>. 4) Criminal Case of Giorgi Rurua, Legal Analysis, Human Rights Center. 2020: <https://bit.ly/2CkSOfd>.

²see: The Report of Court Proceedings, OSCE/ODIHR. Warsaw, 09-Dec-14.

³ E.g. See also Interim Report of Court Monitoring of High-Profile Criminal - Cases Transparency International Georgia. 2013: <https://transparency.ge/ge/content/stub-683> ; see also - Georgian Young Lawyers Association - The Report of the Monitoring on the Criminal Cases of Tbilisi and Kutaisi City Courts. Period: July-December, 2013: <https://bit.ly/2Yu919Q>

⁴See the Report in full On the link:

<http://humanrights.ge/admin/editor/uploads/pdf/monitoringis%20angarishi%20kartuli%20sabolo2.pdf>

⁵The financial supporter of the project was US Foundation National Endowment for Democracy (NED).

In the recent years, the interest of observer organisations has increased towards the criminal cases ongoing against high-rank officials of the former government⁶ when the Prosecutor's Office of Georgia resumed the investigation into the suspended or interrupted criminal cases and submitted some of the cases to the court for hearings. Moreover, the investigation was launched against the activists and political leaders participating in the protest demonstrations of June 20-21 and November 2019. The object of observation by the international and local organisations is also the public protests of recent years related to various issues ongoing with the demand of significant changes in the state.

According to the assessments of HRC, criminal prosecution against political leaders in certain cases creates quite reasonable doubts among the Georgian public and political groups and international partners about the existence of political motives. In the cases where the political motives do exist, the probability of unfair legal proceedings is much higher that may brutally violate the Constitution of Georgia as well as the rights and freedoms guaranteed by the European Convention of Human Rights⁷.

METHODOLOGY

The monitoring over the cases with alleged political motives is carried out by the methodology of court proceedings monitoring elaborated by the Human Rights Center aiming at the legal assessment of the court proceedings under the monitoring, and of the national legislation against the international standards of fair trial, further aiming at identifying and analyzing possible deficiencies on the cases of criminal and administrative offenses, further identifying and analyzing the alleged political motives of the government.

The court proceedings monitoring is carried out by three court monitors who received special training on court monitoring. On the initial stage, a questionnaire was worked out for the court monitors. After each court session, the court monitors lay down the information which is summed up and used for the analyses and reports by the legal analyst. Each published document analyses to what extent the court proceedings and legal proceedings, in general, comply with international standards, recognized practice and international obligations. Furthermore, our monitoring is based on the strict principles of objectivity and non-interference into the court proceedings.

⁶see: Information - representatives of Fidh will monitor the court proceedings against Irakli Okruashvili:
<http://humanrights.ge/index.php?a=main&pid=20081&lang=geo>

⁷see: Report - Legal Assessment of the Criminal Cases Ongoing against Giorgi Ugulava. Human Rights Center. 2020
:<https://bit.ly/33SqhZx>:

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

I. THE CASES WITH ALLEGED POLITICAL MOTIVES

By the reporting time, 20 cases with alleged political motives came under the attention of the Human Rights Center, the hearings in the court for the part of the cases are completed.

1. **Case of Giorgi Ugulava (so-called case of Tbilisi Development Fund).** The Supreme Court of Georgia found Giorgi Ugulava the former mayor of Tbilisi and one of the leaders of *European Georgia* guilty in committing the offense provided for by Article 182(2)(d) and 182(3)(a)(b) meaning the unlawful appropriation or embezzlement of another person's property or property rights by using official position. By the Judgment of the Supreme Court from February 10, 2020, Giorgi Ugulava was sentenced to imprisonment with a term of 3 years, 2 months and 8 days. He was released from prison based on the Act of Pardon of the President of Georgia from May 15, 2020.
2. **Case of Giorgi Ugulava and Aleksandre Gogokhia.** The criminal case ongoing against Giorgi Ugulava, former Mayor of Tbilisi is on the stage of hearing on merits in Tbilisi City Court. The Prosecutor's Office incriminates to the accused the commission of the offense under Article 194 of the Criminal Code of Georgia envisaging the legalization of illicit income (money laundering). Moreover, the state prosecution charges Ugulava with abuse of official power on the episode of *City Park* and with organizing group action and coercion on the episode of Marneuli.
3. **Giorgi Ugulava case (so-called Airport Case).** In accordance with the Decree of the Prosecutor's Office from December 11, 2019, Giorgi Ugulava is charged with committing the offense under Article 126(1) of the Criminal Code of Georgia. According to the version of the prosecution, Giorgi Ugulava inflicted bodily harm to B.G. The defense on the contrary states that B.G. in a provocative manner assaulted Giorgi Ugulava and Giorgi Gabashvili, the leaders of *European Georgia*. The case is handed to a judge for hearings on merits, but the hearings have not yet begun.

*During the monitoring, the Human Rights Center published a document **Legal Analysis of the Criminal Cases ongoing against Giorgi Ugulava**⁸.*

According to the assessment of HRC, during the hearings of the so-called case of Tbilisi Development Fund by the Supreme Court of Georgia several violations have been identified, in particular:

- *The term of 6 months for hearing the cessation appeal was violated.*
- *One of the judges Shalva Tadumadze who was the main prosecutor on the case in the rank of Prosecutor General did not recuse himself due to the conflict of interests;*
- *The Supreme Court studied the multi-volume case in 13 days and rendered the judgment;*
- *The Court of Cessations reviewed the case without oral hearing while there was a high public interest to the case due to the alleged political motives;*
- *On the so-called Airport Incident Case, Giorgi Ugulava instead of being held as a victim due to the verbal and physical assaults conducted against him was charged with an offense under Article 126(1) of the Criminal Code of Georgia; 5. There are other signs of selective justice in this case.*

4. **Case of Nikanor Melia** - The former MP Nikanor Melia is charged under Article 225(1) and (2) of the Criminal Code of Georgia envisaging the organisation of group violence and participating in the violence. The criminal case is linked with the protest demonstrations of June 20-21, 2019.

7

*The Human Rights Center has observed the criminal case ongoing against Nikanor Melia in the document **Legal Analysis of the Criminal Cases Related to the Events of June 20-21, 2019**⁹. Significant violations are identified in the **analytical document**:*

- *The demand of the Prosecutor's Office to remand Nikanor Mela in custody was of 'one size fits all' approach and it did not sufficiently substantiate why the strictest measure of restraint should have been used against him i.e. pretrial detention.*
- *There is no substantiation in the resolution of the Parliament on restricting the powers of MP to Nikanor Melia, and later in the ruling of Tbilisi City Court to prematurely terminate the powers of MP.*

⁸See *Legal Assessment of the Criminal Cases ongoing against Giorgi Ugulava*, Human Rights Center. 2020: pp. 31 <https://bit.ly/33SqhZx>.

⁹see: *Legal Analysis of the Criminal Cases connected to the Events of June 20-21, 2019*; Human Rights Center. 2020: <https://bit.ly/2XUIHFh>.

- *The Office of the Prosecutor General has brought a number of cases from the European Court of Human Rights (ECtHR) the majority of which does not correspond to the case of Nikanor Melia neither in terms of facts and nor in terms of standard of justification;*
- *When restricting the powers of MP, Tbilisi City Court did not take into account the number of justified assessments made by the **Friend of the Court** of the Public Defender of Georgia; as a result, the rights of Nikanor Melia as an MP were restricted disproportionately.*
- *In hearing the case, Tbilisi City Court did not view in general context the requirements under the Constitution of Georgia, the criminal procedural legislation and the Rules of Procedure of the Parliament. Moreover, the court did not take into account the specific signs characteristic of the immunity of an MP.*

5. **The case of Nikanor Melia and Zurab Adeishvili.** In the above criminal case, the legal proceedings are going on in Tbilisi Court of Appeals. Nikanor Melia together with the former Minister of Justice, Zurab Adeishvili is charged with the offenses under Article 332 of the Criminal Code of Georgia envisaging the abuse of official power. Admittedly, Nikanor Melia was found innocent at the first instance of court for the charges under Article 205¹ of the Criminal Code envisaging concealment of property by means of fraudulent or sham transactions.

8

6. **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 organisation of group violence and participation in the violence. Under the Judgment from April 13, 2000, he was sentenced to 5 years of imprisonment for the charges of accompliceship. Based on the Act or Pardon of the President, like Giorgi Ugulava Okruashvili left the penitentiary institution on May 15. Notwithstanding the pardon, Okruashvili appealed the judgment to Tbilisi Court of Appeals where the hearings on the case will begin in September 2020.

7. **Case of Irakli Okruashvili (so-called Buta Robakidze case).** Irakli Okruashvili was charged under Article 332(3)(c) of the Criminal Code envisaging the abuse of power by a state political official. The case concerns the incident that took place near Didube Pantheon in Tbilisi on November 24, 2004, when the police patrol stopped a car of BMW brand with a driver and five passengers in the car. In the process of seizing and personal examination of the persons, one of the patrol officers, Grigol Basheleishvili accidentally triggered the weapon and shot on to the left

arm-pit of Amiran (Buta) Robakidze heavily wounding him causing his death at the scene. According to the decree of the prosecution, the information on the same night was reported to the Minister of Internal Affairs, Irakli Okruashvili who instructed the high officials “to save the image of the patrol police” and to give the incident the appearance of an armed assault on the police officers.

*During the monitoring, on July 8, 2020, the Human Rights Center published an analytical document **Legal Assessments of the Criminal Cases ongoing against Irakli Okruashvili**¹⁰.*

The following violations have been identified in the criminal case related to the events of June 20-21, 2019:

- Several days before arresting Irakli Okruashvili, his personal driver and related person to the family, Koba Koshadze was arrested as a warning and with alleged political motives;
- The interpretation of the court of the term *violence* seems problematic for the purposes of Article 225 of the Criminal Code of Georgia;
- The interpretation of the norm provides for the possibility to use the norm as a political weapon on the part of the bodies of criminal prosecution, exemplary is the case of Irakli Okruashvili;
- From the hundreds of protesters, the Prosecutor's Office of Georgia chose in a discriminatory manner only Irakli Okruashvili as a person to prosecute criminally;
- Significant questions are raised above the content of evidence used in the judgment of conviction and the standard of proof beyond a reasonable doubt used for proving the offense.
- The judgment of conviction was based on the testimonies of 4 police officers, and what the case of

Buta (Amiran) Robakidze concerns:

- Several days before the expiration of the period of limitation of 15 years for the criminal prosecution, new charges were brought against Okruashvili and he as an accused remanded in custody for the period of 9 months was again

¹⁰see: *Legal Assessment of the Criminal Cases ongoing against Irakli Okruashvili*, Human Rights Center. 2020: <https://bit.ly/31NEpka>.

remanded in custody with a new period of 9 months commencing independently from the 9 month period used on the case of June 20-21;

- The State Prosecution applied the version of the Criminal Code worsening to the most extent the situation of the accused since November 11, 2004.

8. Case of Koba Koshadze. The Case of Koba Koshadze, a member of the guard of Irakli Okruashvili, of the leader of the party *Victorious Georgia* was charged with an offense under Article 236 of the Criminal Code envisaging 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 canceled the measure of restraint in the form of custody and remanded the accused on bail of GEL 5,000. Koshadze was released from the court room.

*The Human Rights Center observed the criminal case ongoing against Koba Koshadze in the document **Legal Assessments of the Criminal Cases ongoing against Irakli Okruashvili**¹¹.*

9. Case of Giorgi Rurua. Giorgi Rurua, one of the founders and shareholders of TV company *Mtavari Arkhi*, and one of the organizers of the protest demonstrations of June 20-21, 2019, is charged under Article 236 (3) and (4) of the Criminal Code (illegal purchase, storage and carriage of firearms); he was also charged under Article 381(1) of the Criminal Code envisaging the failure to execute a court decision or interference with the execution of a court decision. On July 30, 2020, the judge of criminal panel of Tbilisi City Court, Valerian Bugianishvili rendered a judgment of conviction against Giorgi Rurua sentencing him to 4 years of imprisonment. The court found Giorgi Rurua guilty of both charges. The President of Georgia refuses to pardon the convict. The defense is filing an appeal against the judgment of the first instance court with the Tbilisi Court of Appeals.

During the monitoring, on July 27, 2020, several days before the judgment was rendered Criminal Case of Giorgi Rurua, the Human Rights Center published an analytical document

¹¹See *Legal Assessment of the Criminal Cases ongoing against Irakli Okruashvili*, Human Rights Center. 2020: <https://bit.ly/31NEpka>.

*Criminal Case of Giorgi Rurua: Legal Analysis*¹². The organisation identified the following problematic issues on the case:

- The accused was denied at the moment of arrest to contact a lawyer and family members;
- No rights and duties were explained to the detainee.
- The personal search of Giorgi Rurua right as well the search of his car was carried out with significant violations of the criminal procedural law.
- In drawing up the report of personal search and in sealing the firearm the requirements of the Criminal Procedure Code were violated.
- The procedural violations existing on the case together with the opinions of various experts put under doubt the relatedness of Giorgi Rurua with the firearm and the authenticity of the evidence.
- The investigator carried out a number of investigative actions without the participation of the defense counsel¹³.

10. 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 organisation *Lelo for Georgia*) are charged under Article 194(2)(a) and (3)(c) of the Criminal Code envisaging the legalization of illicit income in large amounts carried out by an organized group. While the charges brought against the father of the owner of TV company *TV Pirveli*, Avtandil Tsereteli, implies the assistance in the legalization of illicit income (Article 25 and Article 194(2)(a) and (3)(c) of the Criminal Code). The criminal case is on the stage of hearings on merits in Tbilisi City Court.

11. 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 organisation against the lawful interests of this organisation for acquiring benefits or advantage for oneself or another person, which has resulted in considerable damage.

¹²See *Criminal Case of Giorgi Rurua: Legal Analysis*, Human Rights Center. 2020: <https://bit.ly/2CkSOfd>.

¹³See *Criminal Case of Giorgi Rurua: Legal Analysis*. Human Rights Center. 2020: pp. 20-21. <https://bit.ly/2CkSOfd>.

12. **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(b) of the Criminal Code envisaging the unlawful appropriation or embezzlement of budgetary funds in large amounts (GEL 8,837,461) by an organized group. The criminal case is being heard on merits by Judge Badri Kochlamazashvili in Tbilisi City Court.
13. **Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava.** Against Ex-President Mikheil Saakashvili criminal proceedings are ongoing in Tbilisi City Court related to the mass dispersal of protesters, and invading and seizing TV Company *Imedi*. Beside Mikheil Saakashvili, charges are brought against that time high officials: Ivane Merabishvili, Zurab Adeishvili, Davit Kezerashvili and Gigi Ugulava. Due to the complexity of the case, the case is being heard by a panel of judges in Tbilisi City Court. The court sessions are chaired by Judge Nino Eleishvili.
14. **Case of Lasha Chkhartishvili.** On June 20, 2020, Tbilisi City Court found one of the leaders of *Labor Party*, Lasha Chkhartishvili as an administrative offender under Article 173 of the Code of Administrative Offenses and imposed on him a fine in the amount of GEL 3,500. Judge Manuchar Tsatsua rendered the decision in three court sessions. Chkhartishvili appealed the decision to Tbilisi Court of Appeals.
15. **Case of Besik Tamliani, Zurab Budaghashvili, Tsotne Soselia and Kakhaber Kupreishvili.** Besik Tamliani, Zurab Budaghashvili and Tsotne Soselia are charged under Article 225(2) of the Criminal Code of Georgia envisaging the participation in group violence accompanied by violence, raid, damage or destruction of another person's property, use of arms, armed resistance to or assault on representatives of public authorities. In the given case a plea agreement was concluded between the Prosecutor's Office and the accused persons: Zurab Budaghashvili, Tsotne Soselia and Kakhaber Kupreishvili. On March 23, 2020, the measure of restraint used against Besik Tamliani was changed with remand on bail of GEL 4,000. He left the prison. The hearing of the criminal case against Besik Tamliani will be resumed in Tbilisi City Court.
16. **Case of Bezhan Lortkipanidze.** An employee of the public organization *Nekresi*, Bezhan Lortkipanidze was charged under Article 225(2) of the

Criminal Code envisaging the leadership, organization of and participation in the group violence. Bezhan Lortkipanidze does not plead guilty. The charges are related to the events of June 20-21, 2019. A field biologist and researcher of wild nature, Bezhan Lortkipanidze was arrested on June 20, 2019, and he was remanded in custody for 2 months. At the time being, the measure of restraint is changed to remand on bail. The court proceedings are not over yet.

17. **18-19. Cases of Former Officers of Special Forces.** Levan Imerlishvili, Giorgi Esiashvili and Mindia Ambardnishvili are charged under Article 333(3)(b) of the Criminal Code of Georgia envisaging the exceeding of the official powers by an official or a person equal thereto that has resulted in the substantial violation of the rights of natural or legal persons, or of the lawful interests of the public or the State. The cases against the former officers of special forces are heard in Tbilisi City Court by several judges separately.
20. The Human Rights Center also monitors the case of **Giorgi Javakhishvili and Tornike Datashvili**. The court found Giorgi Javakhishvili and Tornike Datashvili guilty under Article 225(2) of the Criminal Code envisaging the leadership, organisation of and participation in a group violence. The above case was heard in the conjunction with the case of Irakli Okruashvili related to the events of June 20-21, 2019, however, the case was split into separate proceedings and after a plea agreement was reached with the accused persons: Javakhishvili and Datashvili, they were released shortly afterward.

From the information obtained through the monitoring, HRC is of an impression that the conclusion of plea agreements is a result of the purposeful policy of the prosecution and the court, for in such cases the persons admit the charges brought against them, and the court without examination can render the judgment of conviction. In making the decision about plea agreements, the court has to check whether the accusations are justified, whether the demanded punishment is legal, whether there is reliable evidence on the case to prove the guilt etc. In the given criminal cases the above requirements are not met.

At the time being, from the participants of the protest demonstrations of June 20-21, 2019 only Bezhan Lortkipanidze and Besik Tamliani do not plead guilty and are not going to conclude a plea agreement because they declare themselves innocent.

SELECTIVE JUSTICE AND ALLEGED POLITICAL MOTIVES

The arrests of the high-rank officials of the former government and the cases of the arrests activists during the events of June 20-21, 2019, made the events ongoing in Georgia an object of a scrupulous observation both in terms of a foreign and national point of view and at the same time caused a concern that the ongoing court proceedings might be politically motivated¹⁴.

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

Besides the above-mentioned, both at the local¹⁵ and international levels¹⁶, the representatives of various organisations and institutions openly discuss that despite the efforts of the government during the recent years to reform the judicial system and separate them from the executive branch, the systemic deficiencies still remain creating potential possibilities to exert pressure on judges from other branches of power affecting negatively the public opinion about an independent judiciary in Georgia.

Some of the instances of launching criminal prosecutions coincide with harsh and significant political processes in which the accused and convicted persons are involved actively, and after which a number of repressing steps were made on the part of the government¹⁷. And this in turn affects significantly the feeling of justice within citizens and trust towards the judiciary in the state and again raises the questions on conducting *selective justice* by the State and regarding getting interested in the political motives.

By all means, the principle of equality before the law requires that the state have an adequate reaction to all offenses and violations and start a respective investigation and

¹⁴See The statement of the US Embassy on the arrest of Irakli Okruashvili: <https://bit.ly/36BrWCi> ; Statements of Jim Risch, US Senator, Chairman of the Senate Foreign Relations Committee and Jeanne Shaheen, US Senator: <https://bit.ly/3e0ZxbN> ; see Joint Statement: <https://bit.ly/2AxeT9n>; see The Statement of the members of the European Parliament: <https://bit.ly/3fmLQUN>.

¹⁵See for instance the statement of non-governmental organizations: <https://bit.ly/30PDhNW>.

¹⁶See 1) Joint Statement of the members of the European Parliament: <https://civil.ge/archives/341052>; 2) see The statement of Siegfried Muresan, vice President of European People's Party (EPP): <https://bit.ly/2KsP7EA> ; Statements of Jim Risch, US Senator, Chairman of the Senate Foreign Committee and Jeanne Shaheen, US Senator: <https://civil.ge/ka/archives/342004>.

¹⁷See Situation with Human Rights in Georgia. 2019. p.48. Human Rights Center: <https://bit.ly/33THjXo>.

procedural actions in the offenses irrespective whether are committed by the high-rank officials, protesters and police officers but this shall happen in an objective, impartial and transparent manner. Every such reaction must be conducted with strict observance of the constitutional norms and requirements of the law as well as with a high standard of proof and maximal information of the public.

PRESUMPTION OF INNOCENCE

The requirement that a person accused of the criminal case must be held innocent until his guilt is proved beyond a reasonable doubt, hinders the stigmatization of the person and the potential possibility to deprive him of liberty. Respect for the presumption of innocence implies that the state officials and other influential actors must abstain from the statements at any stage of the proceedings carrying preliminary conclusions about the outcomes of the court's investigation. The international instruments of human rights protection like UDHR¹⁸, ICCPR¹⁹ and ECHR²⁰ require that each person accused in an offense "has a right to be presumed innocent until proved guilty under the law [...]"²¹.

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

¹⁸See Universal Declaration of Human Rights, article 11 (1). <https://www.un.org/en/universal-declaration-human-rights/index.html>.

¹⁹See International Covenant on Civil and Political Rights, article 14 (2). <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²⁰See Universal Declaration of Human Rights, article 6 (2). https://www.echr.coe.int/Documents/Convention_ENG.pdf

²¹See Universal Declaration of Human Rights, article 1 (1). <https://www.un.org/en/universal-declaration-human-rights/index.html>.

RIGHT TO BE TRIED IN REASONABLE TIME

ICCPR and ECHR provide for the right of an accused to be tried in reasonable time²². According to the Human Rights Committee of the UN, “an important aspect of the fairness of a hearing is its expeditiousness” and that concerns all the stages of the court proceedings, and this is of special importance when the accused remains in custody²³.

In the reporting period, the problems related to trial within reasonable time were identified. Some of the cases were suspended with unreasonably long time. In some of the suspended cases, there were accused persons in detention. The delay or suspension in hearings took place in some of the cases because of actions or inactions on the part of the prosecution, some of them were suspended because of the defense and in exceptional cases, following the initiative of the court referring to various reasons.

In some of the criminal cases, the sessions were held in an expeditious manner. For example, the hearings of the criminal case against Giorgi Rurua were held several times a week (3-4 days per week). *However, the issues of scheduling the sessions and the number of sessions were agreed with the defense.* In some of the cases the hearings began and judgment were rendered with a long delay without any explanations, for example on the criminal case of Giorgi Ugulava the period of limitation of 6 months was violated for the cessation appeal²⁴.

The cases described above have a potential effect on the right to rapid justice, for the consecutive interruptions and suspensions of the proceedings contributes to the delay in justice.

RIGHT TO JUSTIFIED JUDGMENT

The persons accused in criminal offense have the right to publicly rendered²⁵ and justified judgment. This right is based on the public character of the court hearings, and protects persons against the administration of justice in secret and in an arbitrary manner and promotes the trust towards the court through provision of information on

²²See ICCPR, article 9(3) and ECHR, article 5(3) ensure the right of each accused under custody “to be tried in reasonable time or to be released.” ICCPR, article 14(3) ensures the right “to be tried without undue delay” for all the persons against whom charges are brought and further ECHR, article 6(1) ensures that “everyone is entitled to a fair and public hearing within a reasonable time”.

²³See General Comment N32, citing from the work, Note 113, paragraphs 27 and 35. <https://www.refworld.org/docid/478b2b2f2.html%20>.

²⁴See *Criminal Case of Giorgi Rurua: Legal Analysis*. Human Rights Center. 2020: pp. 14. <https://bit.ly/2CkSOfd>.

²⁵See CCPR, article 14(1); ECHR, article 6(1); the Constitution of Georgia, article 85(1). see: *Satter v Switzerland*, ECtHR, February 22, 1984, para. 33; *Werner v Austria*, ECtHR, November 24, 1997, para 52-60, *Preto and others v Italy*, ECtHR, December 8, 1983, para 21-28.

the grounds of judgments to the parties and the public²⁶. Despite that the right to justified judgment is not explicitly provided for by the Criminal Procedure Code, it is admitted that “the court judgment shall be legal, justified and fair”²⁷.

During the monitoring three main problems were identified with regard to the court rulings and judgments: 1) insufficient and inadequate assessment of the evidence, 2) lack of legal analysis and 3) lack of assessment of the facts used for imposing the sanctions.

Furthermore, the trend was evident that the ruling allowing the pretrial detention, also the judgment and other decisions were abstract and unjustified. Moreover, against almost all the persons arrested during the events of June 20-21, no plea agreement was concluded because of the reason that the motions were not justified. However, afterwards, before the expiration of the 9 month pretrial detention period, without having identified new facts the court approved the terms of the plea agreements concluded between the defense and prosecution, after which the court rendered judgments of conviction against all the accused and released them from the court room.

In most of the cases, the judgments are based on the statement of the witnesses made at the stage of investigation. In number of judgments, the single evidence connecting the accused with the criminal action is the testimony of one or several witnesses (in most of the cases of the police officers)²⁸. Considering that the convictions were based predominantly on the testimonies, the court had to explain in factual findings how the evidence were held reliable beyond any reasonable doubt. Instead of this, in the judgment are given only a short summary of the testimonies and the truthfulness of the witness and the consistency of the testimony provided by the witness are not assessed.

In number of cases, the court did not hear the individual charges with regard the individual accused persons. Despite the attempts of the court to explain why some of the witnesses were “unconvincing” or why some of the charges were not proved beyond the reasonable doubt, the court mentioned only in some cases the reasons because of which the testimonies of the witnesses were considered truthful, relevant and having evidential value. Therefore, such practice does not meet the requirements of the Criminal Procedure Code according to which a judgment shall also indicate the evidence on which the court findings are based, and the reason for which the court admitted certain evidence and rejected other evidence²⁹. Stemming from the above,

²⁶See Ryakib Biryukov v Russia, ECtHR, July 7, 2008 para 30. <https://hudoc.echr.coe.int/eng?i=001-84452>.

²⁷See Criminal Procedure Code of Georgia, Article 259 (1), about the requirement of reasoning part of the judgment of conviction or judgment of acquittal, see Article 273 and 275 of the Criminal Procedure Code of Georgia. <https://matsne.gov.ge/ka/document/view/90034?publication=124>.

²⁸ e.g., Criminal cases of Irakli Okruashvili, Nikanor Melia and of the persons related to the events of June 20-21. see: *Legal Analysis of Criminal Cases connected to the Events of June 20-21, 2019*; Human Rights Center. 2020: <https://bit.ly/2XUIHFN>.

²⁹See Article 273 of the Criminal Procedure Code. <https://matsne.gov.ge/ka/document/view/90034?publication=124>.

insufficient and inadequate assessment of the evidence, the lack of legal analysis and the lack of assessment of the factors for imposing the punishment, on the cases under the monitoring, contributed to the violation of the right to reasoned judgment and hindered the efficient use of the right to appeal.

In sum, as it was evident during the monitoring and research, on the cases with alleged political motives, the court adopts decisions based on a vague judgment. This problem is especially harsh in relation to remanding in custody on the cases of former high-rank officials. Such an approach violates the requirements provided for by the legislation of Georgia and by the case law of ECtHR which were discussed in the analytical document assessing the above cases.

II. COURT HEARINGS HELD REMOTELY

LEGISLATION REVIEW

According to the decree of the President of Georgia from March 21, 2020, because of the threats of the coronavirus pandemic, the state of emergency was declared, and a number of civil rights was restricted³⁰. Furthermore, the Decree provided for the possibility of holding the court sessions including the hearing under the criminal procedural legislation remotely. Relevant amendments were made to the Criminal Procedure Code of Georgia³¹, further, the High Council of Justice adopted the package of recommendations³² aiming at the safe implementation of justice in times of pandemic.

Besides the above-mentioned, the European Commission for the Efficiency of Justice (CEPEJ) elaborated a declaration named Lessons Learned and Challenges Faced by the Judiciary During and After Covid Pandemic.³³ According to the assessment of the Commission, the existence of the pandemic crisis cannot justify the interruption in the court systems or violating the right to a fair trial. Moreover, after the crisis ends, the court systems must get ready for new waves of the pandemic.

After the expiration of the temporary rules under the Presidential Decree, there was no legislative basis in the criminal procedural law for holding the proceedings remotely. Exactly with this purpose, on May 22, 2020, the legislative amendments were made, and

³⁰See Decree of the President of Georgia N1 from March 21, 2020, article 7.

<https://matsne.gov.ge/ka/document/view/4830372?publication=0>

³¹See Criminal Procedure Code of Georgia. <https://matsne.gov.ge/ka/document/view/90034?publication=124>

³²See Recommendation N1 of the High Council of Justice from March 13, 2020: <https://bit.ly/2E0tII9>.

³³See the European Commission for the Efficiency of Justice (CEPEJ), Declaration of Lessons Learned and Challenges Faced by the Judiciary During and After Covid Pandemic. <https://rm.coe.int/declaration-en/16809ea1e2>.

the common courts of Georgia were granted the right until July 15, 2020, to hold the proceedings remotely via electronic means of communications³⁴. After the above-mentioned, the court proceedings are held remotely and also in the administrative premises of the court, in the court rooms.

PROBLEMS RELATED TO REMOTE LEGAL PROCEEDINGS

During the monitoring, the remote character of the court sessions created repeated problems of technical nature. The court and the penitentiary system were not ready for such a challenge. Because of the technical problems the proceedings sometimes started in delay by hours, that substantially hindered the conduct of the court proceedings and in some cases served for suspensions of the proceedings. Some of the judges noted that where more than 5-7 participants joined the program link, the software gets overloaded and works slowly³⁵.

The problem of communication via Webex became a significant problem. Where more than two or more persons were speaking simultaneously the voice could be heard and the participants of the process, including the judges had to repeat the questions they put that delayed and made impossible to continue the sessions. Several times, the cases were reported when the voice of the participants are doubled and/or is heard unclearly.

After the launch of the court session, some other technical defects appeared. Almost every remote session was characterized by technical problems hindering the participants of the proceedings to be fully involved in the process. The technical problems caused delays in starting the sessions and suspensions of the sessions. The suspensions of the sessions were caused by the problems that were linked to the visual and audio problems of the process of the sessions and were evident during the whole session³⁶.

Positively can be outlined the practice of the judges when they asked the parties if they could hear the other participants of the process etc.

Besides the above-mentioned, a serious problem is the lack of technical infrastructure in the penitentiary. In the penitentiary institutions, there is not enough special rooms for ensuring the remote participation of the accused in the remote court sessions. Further, problematic remains the quality of the Internet connections and insufficient number or

³⁴See Law of Georgia N5973 from May 22, 2020: <https://matsne.gov.ge/ka/document/view/4876514?publication=0>.

³⁵The reports prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearings on merits: 04.05.2020.

³⁶See also the Special Report of Georgian Young Lawyers Association: *Justice in Times of Pandemics*. 2020: <https://bit.ly/2DLrsQ0>.

lack of technical equipment, therefore it is necessary to resolve the problem and take steps to remedy the interruptions for the participation of accused in remote court sessions.

On the similar problems refers to the Report³⁷ of the Public Defender according to which the remote court sessions become a challenge in terms of the right to a fair trial. On the court hearings, for the absolute majority of the accused, there was no possibility for the confidential communication with the defense counsel. When questioning the witnesses the court could not verify the truthfulness of the victim. Because of the technical defects, the problems remain with the visual clarity of the witnesses and with understanding what they were saying. On some of the sessions, the problems related to translation were identified.

PROBLEMS RELATED TO ADMISSION TO COURT SESSIONS

UDHR, ICCPR, and ECHR, further the national legislation provide for the right to public hearing³⁸. The Human Rights Committee underlines the significance of the right and states that publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large³⁹.

20

According to the assessment of the Public Defender, in the process of monitoring during the coronavirus pandemic, it was evident that there is no common approach regarding the placement of the schedules of the sessions and regarding the admission of the court monitors to the sessions. The Special Report of the Public Defender notes that some of the judges directly opposed the presence of the trustees of the Public Defender at the court session and as a result the trustees of the Public Defender were unjustifiably denied the possibility to attend the sessions⁴⁰.

During the monitoring by HRC, on the court session of April 2, 2020, Judge of Tbilisi City Court, Lasha Chkhikvadze did not allow HRC court monitor to the hearing of the case of Irakli Okruashvili. About the fact, HRC⁴¹ and later *the Coalition for Independent*

³⁷See Special Report of the Public Defender: *Report of Monitoring of the Court Sessions of the Criminal Cases held Remotely.* 2020: <http://www.ombudsman.ge/res/docs/2020071409521056052.pdf>.

³⁸see: UDHR, article 10 and 11(1); ICCPR, article 14 (1); ECHR, article 6 (1).

³⁹See General Comment N32 article 14: Article 14: Right to equality before courts and tribunals and to a fair trial, Human Rights Committee, UN. Doc. CCPR/C/GC/32, July 9 - 27, 2007, para. 28
<https://www.refworld.org/docid/478b2b2f2.html%20>.

⁴⁰see: see: Special Report of the Public Defender: *Report of Monitoring of the Court Sessions of the Criminal Cases held Remotely.* 2020: <http://www.ombudsman.ge/res/docs/2020071409521056052.pdf>.

⁴¹See the Statement: HRC objects the closure of court proceedings on the cases with alleged political motives.
<http://humanrights.ge/index.php?a=main&pid=20118&lang=geo>.

*and Transparent Justice*⁴² disseminated statements regarding the closure of court sessions during the state of emergency and regarding other types of deficiencies and called the High Council of Justice and the Chairperson of the Supreme Court to react promptly to the deficiencies identified in the court hearings in order not to violate one of the main elements of the principle of a fair trial - the principle of publicity and not to allow that the publicity of the proceedings be restricted in full. Moreover, on April 16, 2020, HRC appealed in writing on the same issue to the High Council of Justice. From the response of the High Council of Justice, it is evident that the court practice and the attitude of the Council do not comply with each other. In particular, the Council explained to HRC that the court system lacked the possibility to involve court monitors in the remote proceedings. And this happens when in some of the cases, the monitors following the consent of the court attended the proceeding remotely. This indicates to the fact that the High Council of Justice did not acquire in full the information about the problem and the needs⁴³.

Moreover, the problem also was that the attendance to the court session was possible only after the court monitor applied with a written formal request to the judge hearing the case and asked him/her permission to attend the session. Finally, as the reasons for denying the court monitors to attend the sessions was named the possible technical problems which would occur in case of their participation in remote sessions.

III. THE PROBLEM OF CONFIDENTIAL COMMUNICATION WITH DEFENSE COUNSELS

Confidential and privileged communication between the defense counsel and the client is a core of fair trial. According to the practice of ECtHR, where the accused participates in the court sessions remotely, it is necessary that he/she is technically equipped with a means of confidential interaction with the defense counsel⁴⁴.

During the monitoring, some interruptions were noticeable in confidential and privileged communication between the defense counsel and the client. The separate placement of the accused and their defense counsels affected negatively the confidential and privileged communication among them. There was a case when in the

⁴²See the Statement regarding closure of the proceedings in common courts under the condition of the emergency situation and regarding other kinds of deficiencies: http://coalition.ge/index.php?article_id=243&clang=0.

⁴³ Response N323/1072-03 of the High Council of Justice from April 22, 2020 to the Statement of HRC from April 16, 2020.

⁴⁴ Judgment of the European Court of Human Rights on the case *Marcello Viola v Italy* 45106/04, para 63-67, further, *Sakhnovskiy v Russia* [GC], 21272/03, para 98. <https://hudoc.echr.coe.int/fre?i=001-101568>.

remote session the defense counsel⁴⁵ requested to suspend the session because he was not provided with confidential communication with the client⁴⁶.

Mostly, the advice on particular issues given by the defense counsel to the accused was heard by every participant of the hearing. Therefore, the accused lacked the possibilities to adjust the positions during the hearing with the defense counsels that could be considered as a violation of the right to a fair trial.

PROBLEM OF QUESTIONING THE WITNESSES

The testimonies of the witnesses often comprise the main evidence on the criminal cases. In order to ensure equality of the parties, the parties must have equal possibilities to call and question their witnesses and that of the opponent party. CCPR and ECHR ensure that every person accused of the criminal offense has a right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him⁴⁷. This is right is a fundamental guarantee of a fair trial as it equalizes the prerogatives and powers of the prosecutor. The same right is guaranteed by the national legislation.

During the monitoring of the remote court sessions, the problem was to establish that a witness was alone and was testified freely without any influence. The Public Defender also emphasized the problem⁴⁸.

When questioning the witnesses remotely as a rule no items could be seen before them (laying on the table for instance). Problematic is also establishing the identity of the witness. Usually, the identity of the witness joined remotely is confirmed by the party in the court room. Moreover, a witness who is not questioned yet may listen to another witness⁴⁹. Further, there is no possibility to state or exclude that other persons are present with a witness and dictate to the witness the information.

⁴⁵E.g. During the court hearings of the case against Irakli Okruashvili.

⁴⁶See the reports prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Last seen: 04-May-20.

⁴⁷See International Covenant on Civil and Political Rights, 14 (3) (e).
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; ECHR, article 6 (3) (d).
https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁴⁸see: Special Report of the Public Defender: *Report of Monitoring of the Court Sessions of the Criminal Cases held Remotely*. 2020: <http://www.ombudsman.ge/res/docs/2020071409521056052.pdf>.

⁴⁹This problem is also emphasized by the organisation *Rights Georgia* in the Report *Efficiency and Accessibility of the Electronic Justice*: <https://article42.ge/ka/siakhleebe/article/82798>

CONCLUSION

In the result of monitoring number of deficiencies were identified in various directions including notably the following: The right to be tried by a court established under the law, the public trust towards the criminal law system, right to public hearing, the presumption of innocence, the right not to testify against oneself and right to remain silent, right to freedom, equality of the parties, right to be tried in reasonable time, the right to call and question witnesses, the right to have an attorney at the stage of arrest and protection of witnesses, selective justice and political motives.

During the monitoring, many problems were identified in terms of accessibility to the proceedings. First of all, we have to admit the problem of providing accurate information about the dates, time and location of the court proceedings that had a regular character and impeded the possibility for the public to attend the proceedings.

In the most of the cases under the monitoring, the accused were the persons well-known to the public regarding whom the statements about the alleged political motives had a great interest in the society and many people wished to attend the hearings; however, the proceedings were held in the court rooms of more or less adequate size and not everyone could attend the sessions⁵⁰.

The sessions held remotely became a significant challenge in terms of a right to a fair trial. For the absolute majority of the accused, there was no confidential communication possible with the defense counsel. When questioning the witnesses, the court could not verify the truthfulness of the victim. Because of technical defects, the problems remain with the visual clarity of the witness and understanding what they were saying. In most of the cases, the court session began in late or they were suspended.

In sum, it was identified that on the cases under the monitoring of HRC the right to a fair trial was not ensured by the system of criminal justice of Georgia. Despite the fact that the deficiencies identified during the court hearings do not expressly violate the right to fair trial *per se*, the combination of some individual cases, particular legislative defects and generally problematic court practice, further, the existence of selective justice and alleged political motives has threatened and threatens the protection of the right to a fair trial in accordance with international standards and human right laws.

⁵⁰ E.g., At the court proceedings of the criminal case of Giorgi Rurua not every interested person, court monitor, media and other organisation could attend the sessions because the public interest on the case was high.