MONITORING COURT PROCEEDINGS OF THE CASES WITH ALLEGED POLITICAL MOTIVES

Summary Report

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THE REPORT WAS PREPARED BY HUMAN RIGHTS CENTER

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Non-governmental organization the HUMAN RIGHTS CENTER, formerly the Human Rights Information and Documentation Center (HRC) was founded on December 10, 1996 in Tbilisi, Georgia. The HRIDC aims to increase respect for human rights, fundamental freedoms and facilitate the peace-building process in Georgia. To achieve this goal, it is essential to ensure that authorities respect the rule of law and principles of transparency and separation of powers, to eliminate discrimination at all levels, and increase awareness and respect for human rights among the people in Georgia.

THE HUMAN RIGHTS CENTER IS A MEMBER OF THE FOLLOWING INTERNATIONAL NETWORKS:

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- World Organization against Torture (SOS-Torture – OMCT Network); www.omct.org
- Human Rights House Network; www.humanrightshouse.org
- Coalition for International Criminal Court; www.coalitionfortheicc.org

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INTRODUCTION

The current Report reflects the findings 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 December 10, 2020[1].

Despite the introduction of a state of emergency across the country in March 2020 to prevent a new coronavirus infection, HRC managed to gather significant, comprehensive and objective information as a result of monitoring the court proceedings. Based on this information, it was possible to assess the trends in criminal and administrative justice of Georgia, to identify and analyze violations in allegedly politically motivated high-profile criminal cases. The report highlights the issues that led to the need to initiate judicial monitoring, as well as the visible problems identified in the process of monitoring the cases of criminal and administrative justice.

From the beginning of the monitoring until the end of the period of the Final Report that is of December 10, the court monitors of HRC have monitored in total 96 court proceedings on the 25 cases. During the process of the monitoring 6 analytical documents were published analyzing the results of the court proceedings *per se* as well as the other problematic issues identified in the examination of the criminal cases[2].

From the 25 cases, on 8 cases judgments have been rendered, 16 cases remain at the first instance of courts for hearings, and 6 cases are appealed before the Tbilisi Court of Appeals.

After the elections October 2012, despite the changes in the government of Georgia, under the rule of *Georgian Dream*, the established practice of abuse of

[1] Human Rights Center (HRC) monitored the criminal cases within the frames of the project Public Events Monitoring. See information about the project at: https://bit.ly/37ZrLSs.

[2] see: 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 connected with the Events of June 20-21, 2019, Human Rights Center. 2020: https://bit.ly/2XUIHFn. 3) Legal Assessment of the Criminal Cases ongoing against Irakli Okruashvili, Human Rights Center. 2020: https://bit.ly/31NEpka. 4) The Criminal Case of Giorgi Rurua, Legal Analysis, Human Rights Center. 2020: https://bit.ly/2CkSOfd. Legal Assessment of ongoing Criminal Case against Nika Gvaramia: Human Rights Center, 2020: https://bit.ly/33NghAb.

justice still continues. Following the change in government, criminal proceedings were instituted against a number of high-ranking officials of the previous government. International observer organisations as well as the local observer organisations expressed great interests towards the cases[3]. Particularly noteworthy is the Report by the OSCE Office for Democratic Institutions and Human Rights (OSCE / ODIHR) which states that taking into account the commitments before OSCE, Georgia has faced the challenge of conducting these cases transparently, upholding the rule of law and standards of a fair trial[4].

In recent years, the interest of observer organisations has increased towards the criminal cases ongoing against high rank officials of the former government 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 large protest demonstrations of June 20-21, 2019 and that of November 2020[5]. The object of observation of international or local organizations is also the public protest of recent years which among other issues is connected with protest rallies organized by politicians and citizens dissatisfied with the results of the 2020 Parliamentary Elections, and with the trials of detainees[6].

In October 2020, representatives of the International Federation for Human Rights (FIDH) and Human Rights Center (HRC) held informal meetings and shared their views on the human rights situation in Georgia with representatives of the European Union (European External Action Service, European Commission, European Parliament)[7].

[3]See for instance: 1) Interim Report of Court Monitoring of High-Profile Criminal Cases. Transparency International Georgia. 2013: https://bit.ly/3qApaH5 ; see also - Georgian Young Lawyers Association - The Report on Monitoring the Criminal Cases in Tbilisi and Kutaisi City Courts. Period: July- December, 2013: https://bit.ly/2Yu919Q 3) Human Rights Center - Report on Court Monitoring the Cases of former high-ranking Officials; 2013 year: https://bit.ly/3mTVRgv.

[4]see: Report on Monitoring Court Proceedings, OSCE/ODIHR. Warsaw, 09-Dec-14.

[5]See Legal Analysis of the Criminal Cases connected with the Events of June 20-21, 2019. Human Rights Center. 2020: https://bit.ly/2XUIHFn.

[6]see: Statement by Human Rights Center: https://bit.ly/36TJRGg; also - https://bit.ly/39QGnG8.

[7]see: Statement by Human Rights Center: https://bit.ly/2JBhBiR; Also - Statement of the International Federation for Human Rights: https://bit.ly/33RPIK6.

Eventually, the disproportion between the prosecution of politicians and activists, along with the violations of substantive and procedural rights, raises reasonable doubts at national and international levels about the political motives existing in the criminal and administrative cases discussed in the current Report.

METHODOLOGY

The monitoring over the cases with alleged political motives was carried out by the methodology of monitoring the court proceedings designed by HRC aiming at the legal assessment of the court proceedings under the monitoring and of the national legislation against the international standards of a 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.

During 2020, the monitoring of the court proceedings were carried out by three court monitors who received special training on the court monitoring. The methodology developed by HRC included working with special questionnaires prepared particularly for the court proceedings which were allegedly politically motivated. Court monitors prepared reports after each hearing and described the details of the hearings. The information obtained from their reports was summarized and used by the legal analyst for the analytical documents as well as for the reports. Each published document analyses to what extent the legal proceedings in general comply with international standards, recognized practice and international obligations.

The Report also relies on information obtained by the legal analyst through interviews with accused or convicted individuals and their defence counsels, further the Report relies on various documents existing in the case files, and on some other findings of the research. Moreover, during the research, the bills of indictment, the motions of the defense and that of the prosecution, the rulings, the interim decisions, the judgments or decisions made by the courts as available in the case files have been examined.

Furthermore, the court monitoring is based on the strict principles of objectivity and non-interference into the court proceedings. Moreover, in parallel with the monitoring, due to the great public interest in high-profile proceedings with alleged political motives, HRC permanently made available to the public, the media and the parties to the proceedings important information about the court hearings and about the opinions made to this regard.

THE CASES WITH ALLEGED POLITICAL MOTIVES

Since February 1, 2020, HRC carries out the monitoring of the court proceedings in the general courts over the cases which are allegedly politically motivated. Until the end of 2020, there were **25 cases** under the monitoring of HRC, the court hearings for the part of the cases are over at the time being.

1. The 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 the prison based on the Act of Pardon of the President of Georgia from May 15, 2020. The case of Giorgi Ugulava was heard in the Supreme Court under the chairmanship of former Prosecutor General, Shalva Tadumadze.

2. The Case of Giorgi Ugulava and Aleksandre Gogokhia. The criminal case launched against Giorgi Ugulava the former Mayor of Tbilisi is on the stage of hearing on the merits in Tbilisi City Court. The Prosecutor's Office charged the accused persons with committing the offense under article 194 of the Criminal Code envisaging the legalization of illicit income (money laundering). Moreover, the state prosecution on the same case charged Ugulava with abuse of official power on the episode of the *City Park* and with the organisation of group action and with coercion on the episode of Marneuli. The case will be heard by judge Valerian Bugianashvili of Tbilisi City Court.

3. The Case of Giorgi Ugulava (so called Airport Case). In accordance with the indictment by the Prosecutor's Office from December 11, 2019, Giorgi Ugulava is charged with committing the offense under article 126(1) of the Criminal Code of Georgia. According to the version of the prosecution, Giorgi Ugulava inflicted bodily harm to B.G. The defense on the contrary states that B.G. in a provocative manner assaulted Giorgi Ugulava and Giorgi Gabashvili, the leaders of *European Georgia*. The case is handed to Judge Badri Kochlamazashvili for hearing on the merits, but the hearings have not yet begun.

During the monitoring, HRC published an analytical document *Legal Analysis of the Criminal Cases ongoing against Giorgi Ugulava*[8].

4. The 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 acts of group violence and participation in the acts of group violence. The criminal case is linked with the protest demonstrations of June 20-21, 2019.

HRC has observed the criminal case ongoing against Nikanor Melia in the document Legal Analysis of the Criminal Cases connected with the Events of June 20-21, 2019[9].

5. The case of Nikanor Melia and Zurab Adeishvili. On 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 offense under article 332 of the Criminal Code envisaging the abuse of official power. Admittedly, Nikanor Melia was found innocent at the first instance of court of the charges under article 205*1* of the Criminal Code envisaging concealment of property by means of fraudulent or sham transaction.

6. The Case of Irakli Okruashvili. The Leader of the party *Victorious Georgia*, Irakli Okruashvili was accused under article 225 of the Criminal Code related to the events of June 20-21, 2019 envisaging the organisation of group

[8]see: *Legal Assessment of the Criminal Cases ongoing against Giorgi Ugulava*, Human Rights Center. 2020: https://bit.ly/33SqhZx.
[9]see: *Legal Analysis of Criminal Cases connected with the Events of June 20-21, 2019*; Human Rights Center. 2020: https://bit.ly/2XUIHFn.

violence and participation in the violence. Following the judgment from April 13, 2000, Okruashvili was sentenced to 5 years of imprisonment as he was charged with the participation in the offense. Based on the Act or Pardon of the President, like Giorgi Ugulava Okruashvili also left the penitentiary institution on May 15, 2020. Notwithstanding the pardon, Okruashvili appealed the judgment before Tbilisi Court of Appeals where the hearings on the case have not begun yet. Judge Vepkhvia Lomidze will hear the case

7. The Case of Irakli Okruashvili and Zurab Adeishvili, the so called case of Buta Robakidze. Irakli Okruashvili and Zurab Adeishvili are charged under article 332(3)(c) of the Criminal Code envisaging the abuse of power by a state political official. The case concerns the incident that took place near Didube Pantheon in Tbilisi on November 24, 2004, when the police patrol stopped a car of BMW brand with a driver and five passengers in the car. In the process of seizing and personal examination of the persons, one of the patrol officers, Grigol Basheleishvili accidentally triggered the weapon and shot on to the left armpit of Amiran (Buta) Robakidze heavily wounding him causing his death at the scene. According to the prosecution decision, the information on the same night was reported to the Minister of Internal Affairs, Irakli Okruashvili, who instructed the high officials arriving to the scene "to save the reputation of the patrol police" and to give the incident the appearance of an armed assault on the police officers. Further, according to the prosecution decision, following the instructions of the then Prosecutor General of Georgia, Zurab Adeishvili, the investigation was conducted in legal terms in the wrong direction manifested in the affirmation of falsified in procedural terms and reaffirming the versions by high-ranking officials of the Ministry of Interior. Judge Lasha Chkhikvadze within Tbilisi City Court hears the case.

During the monitoring, HRC an analytical document *Legal Assessments of the Criminal Cases ongoing against - Irakli Okruashvili*[10].

8. The 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

[10]see.: Legal Assessment of the Criminal Cases Ongoing against Irakli Okruashvili, Human Rights Center. 2020: https://bit.ly/31NEpka.

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 or restraint in the form of custody and remanded the accused on bail of GEL 5,000. Koshadze was released from the courtroom.

HRC reviewed the criminal case ongoing against Koba Koshadze in the document *Legal Assessments of the Criminal Cases ongoing against Irakli Okruashvili*[11].

9. **The 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)(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 filling an appeal against the judgment of the first instance court with Tbilisi Court of Appeals.

During the monitoring, HRC published an analytical document - *The Criminal Case of Giorgi Rurua - Legal Analysis*[12].

10. The Case of Mamuka Khazaradze, Badri Japaridze and Avtandil Tsereteli. Former Chairman of the Supervisory Council of *TBC Bank*, Mamuka Khazaradze and his deputy, Badri Japaridze (at the time being the leaders of the political organisation *Lelo for Georgia*) are charged under article 194(2)(a)(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)(3)(c) of the

[11] Ibid: pp. 20.
[12] See: *Criminal Case of Giorgi Rurua: Legal Analysis*. Human Rights Center. 2020: https://bit.ly/2CkSOfd.

Criminal Code). The criminal case is on the stage of hearing on the merits in Tbilisi City Court.

11. The Case of Nika Gvaramia. The founder of TV Company *Mtavari Arkhi* and the Director General of the same TV company, Nika Gvaramia, is charged under article 220 of the Criminal Code envisaging the abuse of managerial, representative or other special powers in an enterprise or other organisation against the lawful interests of this organisation for acquiring benefits or advantage for oneself or another person, which has resulted in considerable damage.

During the monitoring, HRC published an analytical document *Legal Assessments of the Criminal Case ongoing against Nika Gvaramia*[13].

12. The Case of Mikheil Saakashvili and Teimuraz Janashia Ex-President of Georgia, Mikheil Saakashvili and former chief of the State Security Service, Teimuraz Janashia, were charged under article 182(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 heard on the merits by judge Badri Kochlamazashvili in Tbilisi City Court.

13. The Case of Mikheil Saakashvili, Ivane Merabishvili, Davit Kezerashvili and Gigi Ugulava. Against the Ex-President Mikheil Saakashvili a criminal proceedings are ongoing in Tbilisi City Court related to the mass dispersal of protesters, and invading and "taking over" a 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 heard by a panel of judges in Tbilisi City Court. The court sessions are chaired by judge Nino Eleishvili.

14. The 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

[13]see: Legal Assessment of the ongoing Criminal Case against Nika Gvaramia: Human Rights Center, 2020: https://bit.ly/33NghAb.

decision in three court sessions. Chkhartishvili appealed the decision to Tbilisi Court of Appeals. The court hearing has not been scheduled so far.

15. The Case of Besik Tamliani, Zurab Budaghashvili, Tsotne Soselia and Kakhaber Kupreishvili. Besik Tamliani, Zurab Budaghashvili, Tsotne Soselia and Kakhaber Kupreishvili 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. On 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. The 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. The 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 resulting 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 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 the plea agreements were reached with the accused persons: Javakhishvili and Datashvili, they were released shortly afterwards.

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

22. The Case of Mikheil Todua (Mikhailo). On December 25, 2013, under the judgment of Tbilisi City Court, Mikheil Todua was sentenced to 9 years of imprisonment. He was convicted of a drug offense, namely for the purchase, storage and use of club drugs. On October 11, 2019, the convict was commuted to house arrest for 2 years and 11 months. He was instructed to be at the place of residence from 21:00 to 08:00. On November 11, 2020, Tbilisi City Court heard a motion by Tbilisi Probation Bureau to lift the house arrest imposed on Mikheil Todua and to apply imprisonment towards Mikheil Todua on the grounds that he had violated the terms of house arrest and performed at a party organized by *Girchi* on October 17 at 22:00. Following the judgment rendered by the judge, the submission from the Probation Bureau regarding the use of imprisonment as a punishment was rejected. The Probation Bureau approached the court with an alternative request which was granted by the judge and Mikheil Todua was obliged to stay home from 19:00 to 08:00, instead of 21:00-08: 00.

23. The case of "Shame" activists. *On November 9, 2020, Alex Machavariani, Nodar Rukhadze and Giorgi Mzhavanadze, activists of 'Shame'* ***were arrested near the Parliament of Georgia during a rally of the United Opposition, which was to be organized by Shame starting from 22:00. The Ministry of Internal Affairs (MIA) argues that the administrative offenders committed petty hooliganism and disobedience to the lawful request of a law enforcement officer***

being on duty or verbally abusing the officer. *At the court proceedings held in Tbilisi City Court, the defence stated that no offense had been committed by any of the detainees. The arrests were of a preventive nature and there were no grounds for any arrests. All three detainees were found guilty of administrative offenses under the relevant articles of the Code of Georgia of Administrative Offenses.*

24. The Case of Akaki Khuskivadze and Akaki Kobaladze. HRC observes *the criminal case initiated against* Akaki Khuskivadze and Akaki Kobaladze arrested in connection with the death of the chairman of Isani District Election Commission and further observes the hearings of the case in the court. Akaki Khuskivadze and Akaki Kobaladze are charged with the offenses under articles 339(1), 150(2)(b), 151(2)(a) of the Criminal Code of Georgia envisaging directly offering to an official money for his benefit, in order that he take a certain action during the exercise of his official rights and performance of duties for the benefit of the bribe-giver, further a threat of damaging health, when the person threatened began to have a reasonable sensation of fear that the threat will be carried out, the act committed by a group of persons, i.e. coercing him mentally to perform an action abstaining from the performance of which is his right, the act committed by a group of persons. Moreover, Akaki Kobaladze is accused of illegal purchase and storage of ammunitions, the offense provided for by article 236(3) of the Criminal Code of Georgia.

On December 10, 2020, Tbilisi City Court remanded the detainees in the case of the chairman of the Isani District Commission on bail. They had to pay each GEL 10,000 in bail[14].

25. The case of Iveri Melashvili and Natalia Ilychova (so-called cartographers case). The HRC monitors are monitoring the criminal case of Iveri Melashvili and Natalia Ilychova. They are charged under article 308(1) of the Criminal Code meaning an action against Georgia aimed at transferring the entire territory or part of Georgia to a foreign country or separating part of Georgia from the territory of Georgia. On October 8, at the court proceedings in Tbilisi City Court, the accused were remanded in custody as a measure of restraint. On November 30, 2020, a hearing was held on the case of the accused in Tbilisi City

[14]see: information in detail at: https://bit.ly/3ncFSKo.

Court reviewing the change in the measure of restraint. The court did not take into account the evidence presented by the defense, nor the fact that more than 200 persons were ready to stand as a surety in order the accused to be released. Despite the fact, the court remanded Natalia Ilychova and Iveri Melashvili again in custody.

During the monitoring, HRC analyzed the criminal cases relating to the events of June 20-21, 2019 in the document *Legal Analysis of the Criminal Cases connected with the Events of June 20-21, 2019*[15].

Further, during the monitoring, HRC published -*Monitoring the Court Proceedings of the Cases with alleged political motives - Interim Report, 2020*[16].

LEGAL ASSESSMENT OF THE CASES UNDER OBSERVATION

1) Ongoing Cases against Giorgi Ugulava

In order to identify possible political motives in the cases conducted against former mayor of Tbilisi, Giorgi Ugulava, HRC, following the international practice and taking into account Georgian specifics, used the criteria for the status of political prisoners as developed by the Council of Europe[17] and also by Amnesty International[18]. The Council of Europe developed these criteria as early as May 3, 2001 and used them to identify political prisoners in Armenia and Azerbaijan during 2001-2004. On June 26, 2012, the Parliamentary Assembly of the Council of Europe adopted a resolution approving the Criteria for Political Prisoners[19].

[15]see: *Legal Analysis of Criminal Cases connected with the Events of June 20-21, 2019*; Human Rights Center. 2020: https://bit.ly/2XUIHFn.

[16]see: Monitoring the Court Proceedings of the Cases with alleged Political Motives - Interim Report; Human Rights Center. 2020. https://bit.ly/2JZ0eZh.

[17]See Council of Europe criteria: https://bit.ly/37GLp5v.

[18]See Amnesty International Survey: Yugoslavia: Prisoners of Conscience; P. 23. https://bit.ly/33NunBB.

[19]See The Criteria of Political Prisoner provided for by the Resolution of the Parliamentary Assembly of the Council of Europe from June 26, 2012: https://bit.ly/3gk8W00.

Exactly based on these criteria the severe violations in the case of Gigi Ugulava were identified, in particular, the 6-month limitation for reviewing the cassation appeal was violated; One of the judges reviewing the case, Shalva Tadumadze, who was previously the main prosecutor (Prosecutor General) during the lower court hearings has not been recused. The defense referred to a ground for recusing the judge under article 59(1)(e) of the Code of Criminal Procedure (meaning that a judge may not take part in a criminal proceeding if there are other circumstances that cast doubt on his or her objectivity and impartiality). However, the motion of the defense was not granted[20]. It should also be noted that the European Court of Human Rights has already found a violation in a case where a person participated in two cases against one party: in the first instance he acted as a defense counsel to the party to the opposing party, and later in another case he assumed the functions of a judge against the same person[21]. The fact of hearing the case of Gigi Ugulava in the Supreme Court in the capacity of a judge by the same person acting as the Prosecutor General during the trial of the same case in the lower court raises doubts about his objectivity.

The multi volume files of the criminal case of Giorgi Ugulava were examined and the judgment was rendered in 13 days; the Court of Cassation reviewed the case without an oral hearing despite a particularly high public interest in it due to alleged political motives; furthermore, there has been identified other signs of selective justice[22].

2) The Cases against Irakli Okruashvili

Tbilisi City Court acquitted Irakli Okruashvili of charges under article 225(1) of the Criminal Code of Georgia[23] (management of a group activity). In the present case, based on the principle of adversarial proceedings, the allegations brought following the evidence presented at the hearing and studied with participation of the parties relied on such evidence that required additional proof in order to verify the veracity, which in this case has not been done and only

[20]see: Article 59 (1)(e) of the Criminal Procedure Code of Georgia. https://bit.ly/2InKluz.
[21]see: Wettstein v. Switzerland, 33958/96, para. 47. https://bit.ly/39Yh2dk.
[22] See in detail: *Legal Assessment of the Criminal Cases ongoing against Giorgi Ugulava*, Human Rights Center. 2020: https://bit.ly/33SqhZx.
[23]See: paragraph 1 of article 225 of the Criminal Code of Georgia. https://bit.ly/2VSlmmp.

those evidence were admitted that due to the relatedness to the outcomes of the case could not be possibly considered as a body of reliable evidence.

However, the court found Irakli Okruashvili guilty of committing the offense under article 225(2) of the Criminal Code of Georgia (participation in group violence)[24]. The judgment of conviction was based on the testimony of only 4 police officers as witnesses. As a neutral evidence, the video recordings requested from TV companies and the opinion of the forensic portrait examination were presented at the trial which are problematic in legal terms.

The court avoided the issue of specifics of the norm and without identifying and assessing the individual elements of the criminal act subsumed the act under violence whereas for the purposes of article 225 of the Criminal Code "violence" shall be defined as more intense physical impact than under normal circumstances. Admittedly, the act of Irakli Okruashvili could not be subsumed under article 126 of the Criminal Code either[25], because this norm stipulates that only such impact that causes physical pain shall be punishable. Moreover, the law enforcers selected as an accused and consequently detained particularly Irakli Okruashvili out of plenty individuals with whom Okruashvili participated in the "group violence". Therefore, the criminal proceedings were instituted only against him, although it was fully possible to identify other protesters around him. Prosecuting Irakli Okruashvili in such a manner may be assessed as discrimination on political grounds. Noteworthy is the fact that the several days before arresting Irakli Okruashvili, the personal driver and related person to the family of Okruashvili, Koba Koshadze was arrested allegedly with political motives as a warning.

On November 19, 2019, in the prison charges was brought against Irakli Okruashvili for another offense (the so-called Amiran (Buta) Robakidze case). The Prosecutor's Office of Georgia accused Okruashvili of abuse of official power in connection with the offense having taken place at the time of his office in the capacity of the Minister of Internal Affairs in 2004[26]. The charges were brought few days before the limitation period of 15 years elapsed. The prosecution

[24]see: paragraph 2 of article 225 of the Criminal Code of Georgia. https://bit.ly/2VSlmmp.
[25]see: article 126 of the Criminal Procedures Code of Georgia. https://bit.ly/2VSlmmp.
[26]see: Statement by Human Rights Center: https://bit.ly/2M3rAuL.

applied the version of the Criminal Code that would be most detriment to the accused compared to the versions of the Code since November 11, 2004[27].

3) The ongoing Cases against Giorgi Rurua

The court monitoring and examination of the files existing on the criminal case made clear that the rights and freedoms guaranteed by the Constitution of Georgia and by the international instrument of human rights were unlawfully restricted to Giorgi Rurua, one of the founders and shareholders of *Mtavari Arkhi*, in the process of his personal search and of various procedural actions. Specifically: The accused was denied at the moment of arrest to contact a lawyer and family members[28]. The right to defence is the essential element of a fair trial and generally means the possibility "to submit the evidence, express opinions, defend themselves in person or through a defence council"[29]. The right concerns those against whom procedural measures take place and who have legal interests to influence the measures and/or defend themselves from the negative outcomes of the measures.

Moreover, no rights and duties were explained to the detainee[30] which is an immediate requirement under the criminal procedural law[31]; personal search of Giorgi Rurua and the search of his car were carried in violation of the criminal[32] procedural laws[33]; in drawing up the report of personal search and in sealing the firearm the requirements of the Criminal Procedure Code were violated; the procedural violations existing on the case together with opinions of various experts cast doubts about the relatedness of Giorgi Rurua to the firearm and the authenticity of the evidence; number of facts indicate to the doubtful origin of the

[27]see: The version of the Criminal Code of Georgia from November 11, 2004.
[28]see: Paragraph 4 of article 13 of the Constitution of Georgia: https://bit.ly/38KDcNF. Further see: see: Judgment of ECtHR from February 21, 1990on the case van der Leer v. NLD, application 11509/85, para 27. see: further: Grabenwarter/ Pabel, 2012, p. 205.
[29]see: Judgment N3/1/574 of the Constitutional Court of Georgia from May 23, 2014 on the case *Giorgi Ugulava v Parliament of Georgia*, II-61. https://bit.ly/2UxenyV
[30]The Report prepared by the HRC court monitor on the monitoring of the case of Giorgi Rurua. Hearing on the merits: 10.02.2020
[31]see: Article 38 of the Criminal Procedure Code of Georgia. https://bit.ly/2InKluz.
[32]see: Article 121 of the Criminal Procedure Code of Georgia. https://bit.ly/2InKluz.
[33]see: Further see: 8 see Guide on Article of the European Convention on Human Rights (Right to respect for private and family life, home and correspondence), European Court of Human Rights, 2019, article 8. pp. 88. Can be accessed at: https://bit.ly/2YRHdwk.

silencer of the firearm; the investigator carried out number of investigative actions without the participation of the defense counsel[34].

On December 25, 2019, accused Giorgi Rurua was additionally charged with an offense under paragraph 1 of article 381 of the Criminal Code of Georgia envisaging the failure to execute the court decision or the interference with the execution of the court decision[35]. The issue concerns the refusal of Giorgi Rurua in a penitentiary facility to allow investigative actions namely acquisition of DNM sample and palm prints as ruled by the court[36]. The aggravation of charges against Giorgi Rurua lacks constitutional grounds. Further, the aggravation is not justified by the purposes of the criminal law. The reason for aggravating the charges against the accused became the fact that the accused refused to participate in taking the sample, the right he had under the Constitution of Georgia[37] and under the international documents of human rights. The criminal prosecution launched under the subsumption ignores the privilege to be protected against self-incrimination constituting the violation of the right to a fair trial. Furthermore, problematic is also the issue of using proportional measures for taking the sample[38].

Noteworthy is the fact that the arrest of Giorgi Rurua was preceded by the events of June 20-21, 2019 and by the large scale anti-occupation demonstrations. According to the disseminated information[39], Giorgi Rurua was arrested exactly because of funding the demonstrations and the opposition TV Company *Mtavari Arkhi*.

The arrest of Giorgi Rurua and the criminal proceedings against him along the cases of Irakli Okruashvili and Giorgi Ugulava was followed by the political

[34]see: The Judgment of the Constitutional Court of Georgia from April 11, 2013 N1/2/503,513 on the case *Georgian citizens - Levan Izoria and Davit-Mikheil Shubladze v. the Parliament of Georgia*, II-55. https://bit.ly/2HLKjwb; See also: see: The Judgment of the Constitutional Court of Georgia from January 29, 2003 N2/3/182,185,191on the case *Georgian Citizens - Piruz Beriashvili, Revaz Jimsheleishvili and the Public Defender of Georgia v. the Parliament of Georgia*, paragraph 2.

[35]see: paragraph 1 of article 381 of the Criminal Code of Georgia: https://bit.ly/3ilAbI3.

[36]see: *Criminal Case of Giorgi Rurua: Legal Analysis*. Human Rights Center. 2020: https://bit.ly/2HLKjwb; See also: see: Information in full: https://bit.ly/2BYs1EI.

[37]see: paragraph 11 of article 31 of the Constitution of Georgia.https://bit.ly/38KDcNF; further see: articles 147 and 148 of the Criminal Procedure Code of Georgia: https://bit.ly/2MLKcjh.

[38]see: The Judgment of the European Court of Human Rights on the case Detlef-Harro Schmidt against Germany, 2006. https://bit.ly/3cPvIto.

[39]see: information in full: https://bit.ly/31E2ueS. Last seen: 08.12.2020.

assessments[40] from the side of various oppositional parties and international partners especially from the side of US senators and congressmen.

4. The ongoing Cases against Nika Gvaramia

Nika Gvaramia is the Director General of TV Company *Rustavi 2* and the founder of newly established *Mtavari Arkhi*. On the given case, the charges brought against Nika Gvaramia by the prosecution do not contain sufficiently clear evidence to impose criminal liability. The substance of allegations against Nika Gvaramia is based on the unprofitableness of the entrepreneurial decisions made by him in the capacity of a director of *Broadcasting Company Rustavi 2* LLC. According to the position of the Prosecutor's Office, executing an unprofitable contract and failure to receive maximum amounts constitute an illegal embezzlement of the property rights of the enterprise.

In taking the decision of assuming the disputed acts of Nika Gvaramia as criminal, it is still unknown whether the Office of the Prosecutor General of Georgia has given reasonable consideration to the decisive facts of the criminal case initiated against the accused. These aspects could have played a pivotal role in the determination that the impugned actions did not actually constituted a criminal offense and that the accused was innocent; in the criminal case, the scope of abuse of official position is completely unclear and the scope is interpreted by the prosecuting authority in a rather arbitrary manner to the detriment of the accused. It is not evident from case files whether the prosecution discussed the use of alternative legal means of prosecution; furthermore, the prosecution did not pay attention to the fact that the decisions of the director were agreed and approved by the partners, shareholders and the director reasonably believed that following the analysis of short or long term risks, the decisions served the best interests of the corporation as agreed with partners and shareholders.

The case does not follow the principles of legal certainty and safeguards against arbitrariness which are considered to be a common threat to the Convention and the rule of law. Arbitrary application of criminal laws is a case that will be subject to scrutiny by the European Court of Human Rights, especially with regard the case of the persons of dissenting political views and political

[40]see: information in full: https://bit.ly/37seotf;; further see https://bit.ly/3hrbiKF.

activists resulting in violations of article 6 (right to a fair trial) or article 7 of the European Convention (no punishment without law)[41].

According to the assessment of HRC, the court has adjudicate in depth and evaluate the extent to which the impugned act constitutes a criminal offense where the act is reviewed in the context of the corporate law. The court must take into account the substance of the allegations, making the allegations in time and space, actions taken by various authorities (including arbitrary interpretation of the criminal law) and other facts which unequivocally indicate the possible application of selective justice against persons with different political views.

5) The Cases against Nikanor Melia

On June 25, 2019, the Office of Prosecutor General of Georgia addressed the Parliament with a request to revoke an MP mandate to Nikanor Melia[42]. In accordance with article 39 of the Constitution of Georgia[43] and article 11(1) of the Rules of Procedure of the Parliament[44], the arrest of an MP is only possible with the prior consent of the Parliament. With this in mind, in order to use custody as a pretrial restraint measure against Nikanor Melia, the Office of the Prosecutor General of Georgia requested the Parliament of Georgia to issue the consent for the detention of Melia as provided for by the law[45].

The request of the Prosecutor's Office to remand Nikanor Melia in custody was of 'one size fits all' approach and it did not sufficiently substantiate why the strictest measure of restraint meaning the pretrial detention should have been used against him[46]. Moreover, there is no substantiation in the resolution of the Parliament on restricting the powers of MP to Nikanor Melia, and later there is no

[41]See European Convention on Human Rights, article 6-7. https://bit.ly/3iOnFjs.
[42]see: see 9. Submission N013/4 by the Prosecutor General to the acting Chairperson of Georgia, Tamar Chugoshvili. 25.06.2019: https://bit.ly/2UqlhGi. Last seen: 08.12.2020.
[43]see: article 39 of the Constitution of Georgia: https://bit.ly/3dHBHle.
[44]see: Article 11(1) of the Rules of Procedure of the Parliament of Georgia: https://bit.ly/3dMSEKQ.
[45]See Submission N013/4 by the Prosecutor General to the acting Chairperson of Georgia, Tamar Chugoshvili. 25.06.2019: https://bit.ly/2UqlhGi. Last seen: 08-Dec-20.
[46] Summary Report of the Human Rights Center Court Monitor on the ongoing Criminal Case against Nikanor Melia. 29.02.2020.

such substantiation in the ruling of Tbilisi City Court to prematurely terminate the powers of MP[47].

The Office of the Prosecutor General has brought 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 a standard of general proof[48]. When restricting the powers of MP, Tbilisi City Court did not take into account number of justified assessments available in the Opinion by the Friend of the Court (*amicus curiae*) of the Public Defender of Georgia[49]; as a result, the rights of Nikanor Melia as an MP were restricted disproportionally. In hearing the case, Tbilisi City Court did not consider 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 elements characteristic to the immunity of an MP[50].

By ruling from July 2, 2019, Tbilisi Court of Appeals ordered the Prosecutor's Office to carry out electronic monitoring over the movement of Nika Melia through attaching a tether on his arm. On November 1, 2020, during a protest rally of the opposition parties in front of the Parliament of Georgia, Nika Melia removed the tether and threw it away and stated that he was no longer going to wear it.

On November 3, 2020, the Office of Prosecutor General of Georgia filed a motion with the court to apply more sever measure of restraint against Nika Melia because he had removed the tether and thus had violated the terms of the measure of restraint used against him. In particular, the Office of the Prosecutor of Georgia demanded to remand Nika Melia on bail of GEL 100,000 as a measure of restraint and further apply restrictions against him on crossing the State border. Tbilisi City Court has lifted the obligation to wear the tether to Nika Melia, MP candidate for

[47] Ibid:

[48] See Case Wettstein v. Switzerland, Judgment of December 21, 1993, paragraph 33; Strasbourg, January 26, 2000: https://bit.ly/2zdaWG7; See. The case of Barfuss v. the Czech Republic, August 1, 2000. Strasbourg, https://bit.ly/2ASinTv; See. The case of Punzelt v. the Czech Republic, April 25, 2000. Strasbourg; See also Conrad v. Italy, 2000.

[49] See Statement of the Public Defender of Georgia on the opinion of a friend of the court in the case of Nikanor Melia: https://bit.ly/37azv34; see also: Opinion of a friend of the court on the case of Nikanor Melia: https://bit.ly/30i8Vnj.

[50] see: Report of the Venice Commission from May 14, 2014: https://bit.ly/2MHk9cQ

2020 Parliamentary Election a Melia, changed the measure of restraint with remand on bail and increased the sum of the bail from GEL 30,000 to GEL 70,000 GEL. Further, the court banned Nika Melia the right to cross the border without the consent of the prosecutor[51].

HRC assessed the legal proceedings initiated against Nika Melia on the part of the Office of Prosecutor General of Georgia as legally problematic and unfounded[52]. In particular, the Election Code of Georgia guarantees the inviolability of a candidate for membership to the Parliament of Georgia. According to article 122(1) of the same Code, a candidate for the membership to the Parliament of Georgia may not be detained, arrested or searched until the Central Election Commission officially publishes the final results of the elections, and in the case of announcing the person as elected by CEC, until the issue of recognition the powers of the person is finally solved unless CEC agrees to the formal request by the Office of Prosecutor General of Georgia to do so. Exception here would be the case when the person is caught at the scene of the crime, which shall be immediately reported to CEC.

Where the CEC issues a relevant ordinance, the MP candidate arrested or detained shall be immediately released. Therefore, the initiation of the legal proceedings against Nika Melia, a candidate for 2020 Parliamentary Elections shall be deemed unlawful. Moreover, the CEC ordinance granting the request under the above article shall be put to vote within 3 calendar days after receiving the formal request of the Prosecutor General of Georgia, which was not implemented on the part of the Prosecutor's Office. Consequently, in this case, the requirement of the law is also ignored. Therefore, it is unlawful to initiate the legal proceedings against the candidate in the parliamentary elections without observing the above facts and requirements.

Moreover, in the case the person is caught on the scene and there is a consent from CEC, the Prosecutor's Office shall apply for more sever measure of restraint and may not ask for altering the amount of the bail used, for under article 200(7) of the Code of Criminal Procedures, where an accused person, against whom a bail

[51]The Report prepared by the court monitor of the Human Rights Center on the monitoring of the case of Nikanor Mela. Hearings on the merits: 03.11.2020, 17:39 - 19:50. See also https://bit.ly/3qGtdSg.
[52]See Legal Assessment of in the case of Nika Melia by Human Rights Center: https://bit.ly/3ndUtW3.

was selected as a measure of restraint, violates the terms of the measure of restraint or the law, the measure of restraint shall be replaced with more sever measure under the court ruling following the motion of the prosecutor. Therefore, as an alternative to the measure of restraint, the Office of the Prosecutor General should not have requested the remand on bail of GEL 100,000, instead the prosecution should have requested remanding the person in custody, as provided for in article 205 of the Criminal Procedure Code. However, the prosecution will not be able to follow the above line due to the requirements of article 122 of the Election Code of Georgia as discussed above determining the guarantees of inviolability of a candidate for the membership to the Parliament of Georgia.

Therefore, in accordance with the requirements of article 122 of the Election Code of Georgia and article 200(7) of the Criminal Procedure Code of Georgia, the legal proceedings initiated against Nika Melia are legally unfounded and unlawful[53].

6) **Other criminal cases related to the events of June 20-21, 2019** *(Criminal cases of Javakhishvili, Datashvili, Tamliani, Budaghashvili, Kupreishvili, Machalikashvili, Soselia)*

THE PRACTICE OF APPLYING MEASURES OF RESTRAINT

In criminal cases related to the events of June 20-21, 2019, the evidence of the prosecution are not sufficient for the factual and formal grounds for the application of the measure of restraint. Consequently, the court decisions are abstract and unjustified. The motions by the prosecution requesting pre-trial detentions are mostly of 'one size fits all' approach and are based only on general reasoning. In some cases, the fragmented video footages that MIA[54] disseminated for public and used as evidence are biased as opposed to full media footage of the same cases[55].

[53]see: Legal Assessment on the case of Nika Melia by Human Rights Center: https://bit.ly/36VQDuU.
[54]See for example: Video footage released on the case of Bezhan Lortkipanidze by the Ministry of Internal Affairs: https://bit.ly/2C5odSm. Last seen: 08.12.2020. Report on the monitoring of the case of Besik Tamliani, Zurab Budaghashvili, Kakhaber Kupreishvili and Tsotne Soselia prepared by the HRC court monitor. 29.02.2020.
[55]see: Full video footage on the case of Bezhan Lortkipanidze released by the media: https://bit.ly/2zAeYc0. Last seen: 08.12.2020.

article 3(11) of the Criminal Procedure Code of Georgia lays down the standard of evidence for the application of a measure of restraint[56]. In particular, for a measure of restraint to be applied against a person, there must be a probable cause i.e. a totality of facts or information that, together with the totality of circumstances of a criminal case in question, would satisfy an objective person to conclude that a person has allegedly committed a crime.

In the given criminal cases, the case materials submitted by the Prosecutor's Office of Georgia do not constitute a reasonable cause that the convicted/accused persons participated in the group violence, let alone attacked the law enforcement officers operating on the location. In order to prove an involvement of a person in a group violence, the prosecution must have evidence that clearly shows the intention of the person to be involved in a group violence, to attack law enforcers and by his own acts facilitate the group actions. In the present case, the totality of the facts and information contained in the indictment and in the case files namely the reports of interviews with the witnesses, the reports of search and seizure, the reports of inspections, the opinions of forensic examinations are of general nature and does not provide sufficient factual grounds for the application of custody as a measure of restraint yet alone for the conviction.

For the grounds for applying custody as a measure of restraint, the Criminal Procedure Code of Georgia[57] and the European Court of Human Rights[58] consider the following circumstances as significant: the risk of absconding the justice by the accused, the risk of destructing the evidence, the risk of obstructing the justice through influencing the witnesses, and the risk of carrying on criminal acts. Remand in custody is also justified when the accused poses an obvious and significant threat to the public and this threat cannot be neutralized otherwise. However, no such circumstances and factors were available in the given criminal cases.

Beyond the abovementioned reasons, in accordance with article 205(1) of the Criminal Procedure Code of Georgia, custody as a measure of restraint may be used only where this is the sole means for avoiding as follows: Absconding the

[56]see: Article 3(11) of the Criminal Procedure Code of Georgia: https://bit.ly/2MLKcjh.
[57]see: see: article 205 of the Criminal Procedure Code of Georgia. https://bit.ly/2MLKcjh.
[58]see: Judgment Van Alphen v. the Netherland, 305/1988, Strasbourg. 23 July,1990: https://bit.ly/3h6MeIx.

justice by the accused and obstructing the justice by him; interfering with collection of evidence by the accused; committing a new crime by the accused[59]. All the same, the prosecution failed to substantiate the above risks in any terms in any of the discussed criminal cases.

A comparative analysis of the cases of law enforcers and demonstrators prosecuted in connection with the events of June 20-21, 2019 makes evident that the State shows a differentiated approach to similar cases without any reasonable and objective grounds. This was evident in the initiation of criminal proceedings against persons participating in the demonstration and in the arrests of the persons against whom in all cases custody as a pretrial measure of restraints were applied under the ruling of the courts granting the motions of the prosecution which were of 'one size fits all' approach, which oftentimes had absolutely identical wording and were entirely unjustified[60].

THE CASE OF "SHAME" ACTIVISTS

(Legal assessment)

On November 10-11, 2020, the hearings of the case of Shame activists were held at the Panel of Administrative Cases within Tbilisi City Court[61]. The parties submitted some evidence in support of the fact that the offense actually took place and some in support of the argument that the proceedings must be terminated.

MIA brought as an evidence live video footage that were broadcasted by the media depicting Alex Machavariani committing an alleged offense followed by his arrest. With regard the arrest of Nodar Rukhadze, the Ministry of Internal Affairs brought as an evidence only the testimonies of the police officers who arrested him. Regarding Giorgi Mzhavanadze, they brought to the hearing a live video footage of his arrest as well as the testimonies of police officers. The evidence (body camera recordings or other video evidence) depicting the alleged offense by

[59]see: article 205 of the Criminal Procedure Code of Georgia. https://bit.ly/2MLKcjh.
[60] Summary report of the HRC court monitor on the ongoing criminal case against former officers of special forces . 31.05.2020.
[61]see: Statement by Human Rights Center: https://bit.ly/3oFYhj7.

Nodar Rukhadze and Giorgi Mzhavanadze were not submitted by the Ministry of Internal Affairs.

At the court proceedings, the defense stated that no offense had been committed by any of the detainees. The arrests were of a preventive nature and there were no grounds for any arrests. In respect to the culpability of Machavariani, the subject matter of the hearing was the extent to which the firewood brought to the protest rally for heating was a prohibited item as provided for by article 11(2)(a)(b) of the Law of Georgia on Assemblies and Manifestations. Further, the court adjudicated on the matter of lawfulness of the request by the police officer and what in particular the disobedience of the detainee was manifested. However, in respect to the culpability of Rukhadze and Mzhavanadze, the significant facts to be established were in what the petty hooliganism was manifested, on one hand, and in what the disobedience to the lawful request of a law enforcement officer or verbal abuse of the office was manifested, on another hand.

The defense stated at the proceedings that the detained Giorgi Mzhavanadze was physically abused by the police when brought to the yard of the patrol police of the Ministry of Internal Affairs. Following the formal request by the defense counsel, the Office of the State Inspector launched an investigation into the fact. Giorgi Mzhavanadze was interrogated regarding the fact and an expert examination was scheduled.

Tbilisi City Court found all three detainees liable for committing administrative offenses under the relevant articles of the Administrative Offenses Code of Georgia.

Alex Machavariani was fined with GEL 1,000 for committing the offense under article 173 of the Code of Administrative Offenses of Georgia[62].

Nodar Rukhadze was fined with GEL 1,500 for committing the offense under articles 166 and 173 of the Administrative Offenses Code of Georgia[63].

[62]see: article 173 of the Administrative Offenses Code of Georgia. https://bit.ly/2W2OMOS.
[63]Articles 166 and 173 of the Criminal Code of Georgia. https://bit.ly/2W2OMOS.

Giorgi Mzhavanadze was sanctioned to 3 days of administrative detention for the offense under articles 166 and 173 of the Code of Administrative Offenses of Georgia[64].

According to the assessment by HRC, the evidence presented in the case did not reveal the fact that the detainees had committed the offenses. The court decision is not based on a body of evidence. The judge relied on the testimonies of patrol police officers not confirmed by video evidence of the offense.

PRACTICE OF REACHING PLEA AGREEMENTS

During the monitoring, some flaws were identified in terms of the practice of application of plea agreements and the peculiarities of this mechanism in the Georgian judiciary. The purpose of the study of using plea bargaining was to analyze specific criminal cases and the terms of the plea agreements. Further, the aim was to study the practice and interesting precedents showing the instances of problematic application of plea bargaining in the cases assessed in this document. The persons detained during the events of June 20-21 were released from prison mainly on the basis of plea agreements or on bail[65].

In accordance with article 209 of the Code of Criminal Procedure, a plea agreement means a judgment to be rendered without a substantive hearing when the accused pleads guilty and an agreement on the charges or punishment is reached[66]. In the above-mentioned cases, what is most significant, the accused had often to agree to onerous terms because due to the stretched and suspended proceedings they had to confess to a crime they may not have committed and there was no neutral evidence other than police testimony. The accused were particularly faced by the choice where custody was applied against them as a measure of restraint. The courts relied mainly on information from law enforcement officers who were questioned by the prosecution as witnesses at the

[64] Ibid:

[65] see: Report of the HRC court monitor on the cases of the persons arrested on June 20-21. Hearings on the merits: 20.11.2019, 16:10- 16:12; See also: *Legal Analysis of Criminal Cases connected with the Events of June 20-21, 2019*, Human Rights Center. 2020: https://bit.ly/2XUIHFn.

[66] see: article 209 of the Criminal Procedure Code of Georgia. https://bit.ly/2MLKcjh.

trial. Their testimonies are, in most cases, considered as reliable evidence by the courts.

The studied cases showed the instances of criminal misconduct of little significance. However, even in such cases following the request by the Prosecutor's Office the court approved the plea agreements. Plea bargaining results in specific negative legal consequences for the accused such as a judgment of conviction, an official record of criminal conviction, social stigma, and so on. In some instances, a ridiculous case law stemmed from such decisions that concerned minor offenses and irrespective the personality of the accused and his/her background instead of applying alternative legal mechanisms still the plea agreements were reached. Moreover, we should bear in mind that the court has the right to propose to the parties to change the terms of the plea agreement, and such alteration must be agreed with a superior prosecutor[67]. The accused has the right to refuse to enter into the plea agreement at any stage before the judgment is rendered, however the prosecutor is given a wide discretion in proposing the measure of punishment[68]. While the judge, lacking the rights to interfere in the process of bargaining process and to alter at his/her choice the terms of the plea agreement[69], may only approve the plea agreement or refuse to approve it[70].

In accordance with article 7 of the Criminal Code[71], "an act that, although formally containing the elements of an offense has not caused such damage that would require criminal prosecution of the offender shall not be deemed a crime." As a guiding principle, the above provision refers to the need for a less rigorous approach to particularly minor offenses. Further, in accordance with the Criminal Procedure Code, the prosecutor enjoys discretionary powers allowing him/her to abstain from the criminal prosecution in such cases and resort to alternative measures of prosecution.

In elaborating the issue of the mechanism of plea bargaining, we should note that the final decision on the case belongs to the judge. Exactly the judge shall stand as a guarantee the plea agreement would not be reached under the terms

[67]see: paragraph 1 of article 210 of the Criminal Procedure Code of Georgia. https://bit.ly/2MLKcjh.
[68]see: paragraph 2 of article 210 of the Criminal Procedure Code of Georgia. https://bit.ly/2MLKcjh.
[69]see: Paragraph 6 of article 210 of the Criminal Procedure Code of Georgia. https://bit.ly/2MLKcjh
[70]see: Paragraph 3[1] of article 210 of the Criminal Procedures Code of Georgia. https://bit.ly/2MLKcjh.
[71]see: article 7 of the Criminal Procedures Code of Georgia. https://bit.ly/3gpLTke.

detriment and unfair to the accused. The analysis of the cases revealed that the courts have a heterogeneous approach in terms of assessing the credibility of the evidence presented, in terms of lawfulness and in terms of assessing the fairness of the main or additional punishment imposed. On the cases of such category, questions legitimately arise as to whether the court acted as a guarantor of the protection of the rights and lawful interests of the accused.

The above requirements have not been observed on the criminal cases related to the events of June 20-21, 2019. Moreover, the defense counsels told HRC that plea bargaining was a "deliberate policy" of the prosecuting authorities in these criminal cases, because defendants usually for various reasons the plead guilty to the charges brought against them.

We may say that the practice of using plea bargaining in the vast majority of criminal cases has significantly hampered the development of case law. In problem cases, there are no court judgment of relevant significance. This problem also appeared in the monitoring process.

Moreover, the courts made different decisions in identical cases. Consequently, examples of uniform practice are weak and there is no uniform standard that would contribute to the development of criminal justice. The practice of plea bargaining with ‘one size fits all’ approach has posed a serious threat to the practice of generalization of court decisions. Further, the use of plea bargaining in Georgia has repeatedly been the subject of scrutiny and harsh criticism over weak legal guarantees and the mass use of plea bargaining for various illegal purposes.

PROBLEMS IN GRANTING A STATUS OF VICTIM

Recognition of a person as a victim is a necessary but insufficient component of the right to a fair trial. Such recognition in status creates a precondition for exercising other procedural rights. However, the right to a fair trial to be effective a combination of procedural safeguards are required ensuring in whole the proper exercise of the interests of the victim. Recognition as a victim is not an end in

itself, but an opportunity to protect violated rights[72]. Under the interpretation by the Constitutional Court, the law grants the victim of an offense the rights of great significance through them the victim enjoys certain procedural guarantees during the criminal proceedings, shall be informed about the course of the case and shall be equipped with the tools to control the prosecution. The protection of the mentioned rights is of outmost importance and the victim of the crime must be safeguarded so that under the decision of the prosecutor the rights and guarantees granted by law are not unlawfully restricted[73].

Issues of granting the status of victim seems problematic in the cases assessed in the current Report. Initially, along with other individuals, the Prosecutor's Office refused to grant the status of victim to Mako Gomuri and Giorgi Sulashvili, the participants of the protests of June 20-21, 2019 each of the having lost an eye from rubber bullets[74]. They were granted the status of victim after several months of struggling[75]. Among other individuals, the journalists having suffered from serious injuries have not yet been granted the status of victim[76].

HRC proceeds the cases of three journalists injured during the June 20-21 events: Merab Tsaava (Guria News), Beslan Kmuzov (Kavkazski Uzel) and Zaza Svanadze whose rights and legitimate interests are defended by the HRC lawyers. HRC has repeatedly appealed to the Prosecutor's Office of Georgia to grant the status of victim to injured journalists, however the requests were rejected. After the refusal to grant the status of victims, the defence counsels approached Tbilisi City Court to recognize Beslan Kmuzov, Merab Tsaava and Zaza Svanadze as victims.

On December 9, 2019, the Panel of Criminal Investigation, Pre-Trial and Substantive Hearings within Tbilisi City Court without hearing the cases on the merits and without considering the arguments by parties ruled to reject the claims, and the ruling may not be appealed to a higher court. According to the assessment

[72]See Minutes №1/5/1389 of the Preliminary Session of the First Panel of the Constitutional Court of Georgia, May 24, 2019. https://bit.ly/3qCwjXp.
[73]see: The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, Tbilisi 2014, pp. 347.
[74]see: Information in full: https://bit.ly/3fgNTto. Last seen: 08.12.2020.
[75]see: Information in full: https://bit.ly/3fkBp42. Last seen: 08.12.2020.
[76]see: Information in full: https://bit.ly/3d0yPP1. Last seen: 08.12.2020.

by HRC, the claimants were deprived the possibility to exercise their rights to a fair trial[77]. HRC had to apply to the European Court of Human Rights after using all available legal means at the national level to have the persons being defended by HRC recognized as victims by the Office of the Prosecutor General and to make the Prosecutor's Office conduct a timely, effective and impartial investigation. The applications refer to the violations of article 10 of the European Convention on Human Rights (freedom of expression); further, of article 11 (freedom of assembly and association); and articles 13 (effective remedy). The European Court of Human Rights found both applications by HRC as admissible[78].

According to official data, there were 275 citizens registered during the events of June 20-21 as having received health injuries of various severity, including: 187 civilians, 39 journalists[79], 73 employees of the Ministry of Internal Affairs. 28 people needed surgery due to their injuries, including 8 underwent ocular surgeries and 4 underwent neurological surgeries[80]. Moreover, three civilians lost an eye as a result of the injury[81]. While Davit Kurdovanidze can perceive only light with his injured eye after 5 surgeries. **At the moment, only 8 civilians are recognized as victims by the Prosecutor's Office.**

As a result of studying the case files, it was ascertained that the investigating authorities either do not refer to the standard of probable cause that may not limited to the establishment of the fact of the damage caused by the alleged offense, or they do not refer to any standards and simply state that they do not have sufficient evidence to grant status of victims at the particular stage of the investigation. Even in the cases where the authorities refer to the standard of probable cause , the standard implies at least the availability of the sufficient evidence to initiate criminal proceedings in the case. Consequently, the standard of probable cause is often incorrectly identified with the high standard of proof or that of the proof beyond reasonable doubt which in accordance with the Code of Criminal Procedure are to be used by a judge in a pre-trial hearing to decide on

[77]See article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms: https://bit.ly/2C2NQTH.
[78]See Press release by Human Rights Center: https://bit.ly/37FPTsB.
[79]See List of injured journalists: https://bit.ly/3e1fy1m. Last seen: 08.12.2020.
[80]See "Beyond the Lost Eye", legal assessment of the events of June 20-21; Georgian Young Lawyers Association: https://bit.ly/2UC5Rif.
[81]See More information: https://bit.ly/3e1fTkE. Last seen: 08.12.2020.

proceeding the case to the hearing on the merits and are used at the stage of rendering the judgment of conviction[82].

We shall also note that at the national level, the applicable legislation on granting the status of a victim allows for some arbitrary interpretations usually used in practice by prosecutors as a ground to unreasonably refuse the status. Therefore, the reasons for denying the status remain unclear to the victims. Moreover, particular problems stem from the legislative norms allowing the Prosecutor's Office to refuse a person with the status of a victim to study the case files "in the interest of the investigation." Even in the case where a victim is allowed to study the case files, the victim lacks the possibility to make photocopies of the files substantially complicating the involvement of the victim in the process of the investigation. Whereas, in the cases of serious or less serious crimes the Prosecutor's Office decides to terminate or not to initiate criminal prosecution, the victim in accordance with applicable law may not appeal the decision of the prosecutor in court.

PRESUMPTION OF INNOCENCE

The international instruments of human rights protection like UDHR[83], ICCPR[84] and ECHR[85] require that each person accused in an offense "has a right to be presumed innocent until proved guilty under the law [...][86]." The Constitution of Georgia stipulates that a person is presumed innocent until proven guilty in accordance with the law and the final judgment of conviction by the court[87]. The Constitution further provides for that no one is obliged to prove his/her innocence. The duty to prove the allegations rests with the prosecution and any suspicions that cannot be substantiated in accordance with the law shall be resolved in favor of the accused[88]. The Criminal Procedure Code of Georgia reiterates these

[82]see: Malkhaz Machalikashvili and Merab Mikeladze v. Parliament of Georgia; January 23, 2019. https://bit.ly/2W75WLd.
[83]See Universal Declaration of Human Rights, article 11 (1). https://bit.ly/3oAiJlC.
[84]See International Covenant on Civil and Political Rights, article 14 (2). https://bit.ly/3gyFhAo.
[85]See Universal Declaration of Human Rights, article 6 (2). https://bit.ly/3gp9925.
[86]See Universal Declaration of Human Rights, article 1 (1). https://bit.ly/3qB9sLM.
[87]See Paragraph 5 of article 31 of the Constitution of Georgia: https://bit.ly/37Pt0TY.
[88]see: Paragraph 6 of article 31 of the Constitution of Georgia: https://bit.ly/37Pt0TY.

principles and provides for that the respect for the general principles of human dignity and presumption innocence shall be reflected in all aspects of court proceedings[89]

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, on 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.

The ECtHR has repeatedly stated that the presumption of innocence applies not only to statements made by a court or to persons involved, but also to public officials whose statements may create feeling in the public that the accused is guilty of the offense and therefore would lead to a preliminary assessment of the facts which is the prerogative of the competent court[90]. Where before the court renders a judgment a statement by a public official refers to culpability of the accused, this shall be considered a violation of the presumption of innocence[91].

THE RIGHT TO REFUSE TO TESTIFY AGAINST ONESELF AND TO REMAIN SILENT

The monitoring of the case of Giorgi Rurua found that at the moment of the arrest, Giorgi Rurua was coerced to provide DNM samples in the main premises of Tbilisi Police Department in the office of G.M. and no document was drawn up on the procedure[92]. According to the defence, the purpose of the coercion was to

[89]see: Articles 4 (1), 5 (1), 5 (2) and 5 (3) of the Criminal Procedure Code of Georgia. https://bit.ly/37q4M2e.
[90]see: Fatullayev v. Azerbaijan, ECtHR, April 22, 2010, Para. 159-160.
[91] Ibid: Para. 159-160.
[92]The reports prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearings on the merits: 06.05.2020.

attach onto the "seized" weapon the illegally taken DNM and proof in this way to the detainee the fact of illegal purchase, storage and carriage of the weapon.

According to the explanations of the witness of the prosecution, the accused resisted to provide DNM samples at the presence of the lawyers who were encouraging him to refuse the procedure. Moreover, according to the statement of the witness, it was explained to the accused that in the case of resistance they would be obliged to use proportional force. What is most important, the witness confirmed that they were trying to take DNM samples from the accused by using force, but he "was pushing them back and he was resisting them and they were afraid not to damage him, not to break his arm for instance as they were taking prints from the palm and samples of saliva"[93].

At the national level, in accordance with the Constitution of Georgia, "no one shall be obliged to testify against him/herself or against the related persons as enlisted by the law."[94] The right to refuse to testify against oneself and to remain silent is enshrined in the Criminal Procedure Code of Georgia, and these provisions apply to all stages of criminal proceedings.[95].

The privilege against self-incrimination is an element of the right to a fair trial as determined by the significance of the right. The purpose of the legislator is to place the right to be protected against self-incrimination under a special field of norm protection. The threat of infringement of the right is equally possible by testifying against oneself, and by revealing other evidence against oneself.

The right to refuse to testify against oneself or to confess to a crime significantly protects the principle of the presumption of innocence as these are closely connected to each other. The principle shall be assumed in the meaning of the requirements of a fair trial as endorsed by the European Court of Human Rights[96] and explicitly laid down in the International Covenant on Civil and Political Rights[97] envisaging that the accused "may "not to be compelled to testify against himself or to confess guilt." In accordance with the international standards,

[93] The assessment by the witness (the formulations of the witness are maintained).
[94]see: Constitution of Georgia, article 31(11), https://bit.ly/2VcSHrH ; See:
[95]see: the Criminal Procedure Code of Georgia, articles 15 and 38(4). https://bit.ly/3gob6vC.
[96]see: ECHR, article 6; See also John Murray v. United Kingdom, ECtHR, 8 February 1996, para. 45.
[97]see: see.: International Covenant on Civil and Political Rights, article 14 (3)(g). https://bit.ly/3gyFhAo.

the right to refuse to testify against oneself is based on the principle that in a criminal case, the prosecution should seek to prove its version against the accused on the basis of evidence which has not been obtained by coercion, deceit or oppression in defiance of the will of the accused[98]. The principle prohibits any form of coercion, direct or indirect, physical or psychological[99]. The right to refuse to testify against oneself and to remain silent applies to both the investigative and judicial bodies.[100].

Stemming from the above standards, Giorgi Rurua had a right to refuse providing the samples because he as an accused was protected with a privilege against coercive self-incrimination[101]. Therefore, according to the assessment by HRC, the refusal to provide samples as the refusal against the investigative action or a passive resistance against the action should not result in criminal liability of the person. However, at the same time, the investigator was authorized to take the samples envisaged in the court ruling through the use of proportional force and thus the investigative actions would not have been hindered. In such cases, one has to take into account number of facts and the implementation of the investigative action should be derived from an urgent necessity and for that reason, the high standard of substantiation must exist in each individual case.

THE RIGHT TO TRIAL WITHIN A REASONABLE TIME

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

[98] Saunders v. The United Kingdom, ECtHR, 17 December 1996 para. 68; Further see: F.G. and J.H. v. The United Kingdom, ECtHR, 25 September 2001 para. 80.
[99] A Handbook of Fair Trials, 2nd Edition, (London: Amnesty International Publications, 2014) p. 129.
[100] See Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Comment.4, Para. 23.1(vii).
[101] see: the Judgment of the European Court of Human Rights on the case: John Murray v. The United Kingdom §44.

and that of the relevant administrative and judicial authorities[102]. However, there is no established rule what is considered a reasonable time. The ECtHR holds that the cases of exceeding the reasonable time are those where the duration of the proceedings before the court of first instance exceeded three years, before the courts of two instances exceeded five years and before the courts of all three instances exceeded six years[103].

The Criminal Procedure Code of Georgia provides for the right of the accused to rapid justice, however the right may be waived in order to have the defence properly prepared[104]. The Criminal Procedure Code further obliges the court to give priority to the cases where defendants are in custody[105].

In the reporting period the problems related to trial within a reasonable time were identified. Some of the cases were suspended with an unreasonably long time. On some of the suspended cases, there were accused persons in custody. 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 defence and in exceptional cases, following the initiative of the court referring to various reasons.

On 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 defence. On 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 appeal[106]. The cases described above have a potential effect on the right to rapid justice, because the consecutive interruptions and suspensions of the proceedings contribute to the delay in justice.

[102]see: Pretto and others v Italy, ECtHR, December 8, 1983, para 31-37, Pedersen and Baadsgaard v Denmark, ECtHR, December 17, 2004, para 45 and see General Comment No.32, citing from the paper Comment. 113, para. 35
[103]see: Trial Monitoring Report, OSCE, Bureau of Democratic Institutions and Human Rights, Warsaw, 2014; Available: https://goo.gl/13yLBz.
[104]see: article 8(2) of the Criminal Procedure Code of Georgia. https://bit.ly/37q4M2e.
[105]see: article 8(3) of the Criminal Procedure Code of Georgia. https://bit.ly/37q4M2e.
[106]see: *Criminal Case of Giorgi Rurua: Legal Analysis*. Human Rights Center. 2020. pp. 14. https://bit.ly/2CkSOfd.

RIGHT TO JUSTIFIED JUDGMENT

In order to be protected from arbitrary actions in litigations, the courts are required to indicate the adequate grounds for their decisions, however this should not be construed as implying that the courts are responsible to respond in detail on every argument brought by them[107].

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[108]. A court judgment meets the criteria for a "reasoned judgment" where the judgment is based on a body of conclusive evidence examined at the hearing[109]. A court judgment shall be deemed to be fair where the punishment imposed "corresponds to the personality of the convicted person and to the gravity of the crime committed by the person"[110]. The judgment may not be based on "assumptions"[111].

During the monitoring, three main problems were identified in relation to the cases examined: 1) insufficient an inadequate assessment of the evidence, 2) lack of legal analysis and 3) lack of assessment of the facts used for imposing the sanctions[112]. 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

[107]see: Souminen v. Finland, ECtHR, July 24, 2003 para. 34. Ruiz Torija v. Spain, ECtHR, 9 December 1994 para. 29; Van De Hurk v. The Netherlands, ECtHR, 19 April 1994, para. 61; Hiro Balani v. Spain, ECtHR, 9 December 1994 para. 27; Grădinar v. Moldova, ECtHR, July 8, 2008, Para. 107; Karakasis v Greece, ECtHR, January 17, 2001, Para. 27.

[108]see: Ibid: Criminal Procedure Code of Georgia, article 259 (1) regarding the substation requirement to be provided in the reasoning part of the judgment of conviction or judgment of acquittal, see articles 273 and 275 of the Criminal Procedure Code of Georgia. https://bit.ly/37q4M2e.

[109]See further the Criminal Procedure Code of Georgia, article 259 (3) regarding the substation requirement to be provided in the reasoning part of the judgment of conviction or judgment of acquittal, see articles 273 and 275 of the Criminal Procedure Code of Georgia. https://bit.ly/37q4M2e.

[110]see: Article 259(4) of the Criminal Procedure Code of Georgia. https://bit.ly/37q4M2e.

[111]see: Article 269(2) of the Criminal Procedure Code of Georgia. https://bit.ly/37q4M2e.

[112]See for example: *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/2XUIHFn. 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. Legal Assessment of ongoing Criminal Case against Nika Gvaramia: Human Rights Center, 2020: https://bit.ly/33NghAb.

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)[113].

In number of cases, the court did not hear the individual charges with regard the individual accused persons. Moreover, the court only in some cases stated the reasons why the testimony of witnesses was considered credible, relevant and having evidential value. Therefore, such practice of the court 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 evidence[114].

Proper reasoning of a court judgment is significant as it is the only way to dispel the impression of arbitrariness towards the court proceedings. As we have discussed above, the monitoring found that, in many court judgments, the evaluation of the evidence presented and the adequate legal analysis were neglected which could explain what is the relatedness of the established facts to the criminal offense leading to the imposition of a particular punishment. Such practice caused the violation of the right of the accused to a reasoned judgment.

SELECTIVE JUSTICE

In accordance with the European Convention, equality means the prohibition of all forms of discrimination[115]. Further, the Universal Declaration of Human Rights clarifies that everyone shall enjoy equal protection against discrimination[116]. The Constitution, laws, court practice of Georgia share the practice of the ECtHR and set the standards in terms of safeguarding the rights under article 14 of the Constitution[117]. The list provided for in article 14 of the Constitution of Georgia implies the norm of equality not only in terms of the items listed there, but also in terms of any other grounds where persons may find

[113] For example, Criminal cases of Irakli Okruashvili, Nikanor Melia and of the persons related to the events of June 20-21.

[114]see:[114] see.: article 273 of the Criminal Procedure Code of Georgia. https://bit.ly/37q4M2e.

[115]see: the European Convention on the Protection of Human Rights and Fundamental Freedoms, Rome, November 4, 1950. https://bit.ly/3gsbDN5.

[116]see: Universal Declaration of Human Rights (10 December 1948). https://bit.ly/33U0FuG

[117]see: Article 14 of the Constitution of Georgia. https://bit.ly/38KDcNF.

themselves in a substantially equal position. However, following the interpretation by the Constitutional Court of Georgia, the principle of equality before the law implies only legal and not actual equality, and the State must be guided in the process of both lawmaking and law-application exactly by this principle[118].

The principle of equality before the law requires that the state have adequate reaction to all violations and start respective investigation and procedural actions in the offenses irrespective whether they are committed by protesters or police officers but 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 high standard of proof and maximal information of the public.

The legally deficient practice of criminal prosecution of the high rank officials of the former government, and the problems identified after the examination of the cases related to the events of June 20-21, 2019 and of the cases of the persons detained at the protests demonstration of November 2020, 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[119].

Moreover, the selective justice can also be identified with striking quantitative differences between the statistics of the affected and prosecuted civilians and that of the affected and prosecuted law enforcement officers. For example, in the frames of the investigation conducted by MIA, against 17 protesters from June 20-21, 2019 demonstration charges were brought, and all of them were remanded in custody as a measure of restraint, while against only 3 (three) police officers criminal proceedings were instituted by the Prosecutor's Office, and the court

[118]see: Young Lawyers
N(N)LP v the Parliament of Georgia; August 22, 2018. https://bit.ly/3nf6YRg.
[119]see: Situation with Human Rights in Georgia. 2019. pp. 48 Human Rights Center: https://bit.ly/33THjXo.

applied custody only against 1 (one) law enforcement officer later changing the measure with remand on bail[120].

Further, as we have already mentioned, only 8 individual were recognized by the Prosecutor's Office as victims. While of the same event from the same day, 68 officers of MIA were granted the status of victims. Consequently, the other victims, not having been granted the official status up to the date, lack the rights to access the case files[121].

Tbilisi City Court has not yet rendered judgments on the criminal cases against the law enforcement officers.

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 number of civil rights were restricted[122]. Furthermore, the Decree provided for the possibility of holding the court sessions remotely including the hearings under the criminal procedural law. Respective amendments were made to the Criminal Procedure Code of Georgia[123]. Further, the High Council of Justice adopted the package of recommendations[124] aiming at safe implementation of justice in times of pandemic.

After the expiration of the temporary rules under the Presidential Decree (i.e. from April 21, 2020), there was no legislative basis in the criminal procedural law for holding the proceedings remotely in whole. Exactly with this purpose, on May 22, 2020, the legislative amendments were made and the general courts of Georgia were granted the right until July 15, 2020 to hold the proceedings remotely via

[120]see: Special Report of the Public Defender: Report on Investigation of the Events of 20-21 June, Interim Report; p. 27; 2020: https://bit.ly/2UF7Sdi.
[121]see: article 56 of the Criminal Procedure Code of Georgia. https://bit.ly/37q4M2e.
[122]see: Decree N1 of the President of Georgia from March 21, 2020, article 7. https://bit.ly/39mZ0BA.
[123]see: The Code of Criminal Procedures: https://bit.ly/3l9QnfG.
[124]see: Recommendation N1 of the High Council of Justice from March 13, 2020: https://bit.ly/2E0tlI9.

electronic means of communication[125]. After the above-mentioned amendments, the court proceedings are held both remotely and immediately in the courtrooms within the premises of the courts.

Moreover, on September 15, 2020[126] and later on December 1, 2020[127], the High Council of Justice of Georgia has once again approved recommendations to the general courts to prevent the spread of COVID19. The recommendations stipulated remote participation of the parties to the proceedings through the technical means in accordance with the rules provided for by the procedural legislation. This recommendation is valid until it is repealed.

The right to a fair trial *(Publicity of court hearings)*

UDHR, ICCPR and ECHR, further the national legislation provide for the right to public hearing[128]. 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 large[129].

The Constitution of Georgia does not provide for the restriction of the right to a fair trial by a presidential decree during a state of emergency. Accordingly, it is formally unjustified to impose the above measure by the decree. That is why, unlike other constitutional rights, the right of a fair trial was not restricted by the Decree of the President of Georgia. However, as mentioned above, article 7 of the Decree stipulates that court hearings under the criminal procedure law of Georgia could be held remotely using electronic means of communication[130].

With these legislative changes and recommendations, the publicity of the hearings was significantly hampered and the right to a fair trial of the parties was put at risk. Further problems stemmed from the fact that the attendance to the court

[125]see: Law of Georgia N5973 from May 22, 2020: https://bit.ly/33kK9Ua.
[126]See The Recommendations by the High Council of Justice from September 15, 2020: https://bit.ly/3mgsfJH.
[127]see: Recommendation N1 of the High Council of Justice from December 1, 2020: https://bit.ly/3qDpK6O.
[128]See UDHR, article 10 and 11(1); ICCPR, article 14 (1); ECHR, article 6 (1).
[129]See 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.
[130]see: Decree N1 of the President of Georgia from March 21, 2020, article 7. https://bit.ly/39mZ0BA.

sessions was possible only after the court monitor applied with written formal request to the judge hearing the case and asked him/her the permission to attend the session[131].

During the reporting period, some judges unjustifiably refused to allow the court monitors of HRC to attend the court proceedings, immediately in the courtroom or remotely, hearing the criminal cases with alleged political motives or the cases of administrative offenses against the persons arrested at protest demonstrations[132].

About the fact, HRC[133] and later the Coalition for Independent and Transparent Justice disseminated statements regarding the closure of court sessions under 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 fair trial - the principle of publicity and not to allow that the publicity of the proceedings be restricted in full[134].

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. Meanwhile, on some of the cases, the monitors following the consent of the court attended the

[131]See Monitoring Reports on criminal cases of Irakli Okruashvili and Zurab Adeishvili prepared by the HRC court monitor; **Hearing on the merits:** 19.05.2020; Further, Monitoring Report on Lasha Chkhartishvili case of administrative offense; **Hearing on the merits:** 10.06.2020 and also the Monitoring Report on the criminal case of Giorgi Rurua; **Hearing on the merits:** 25.06.2020

[132]For example: 1) **March 23, 2020** - the court proceedings of the ongoing criminal case against Besik Tamliani; 2) **April 2, 2020** - the court proceedings of the criminal case initiated against Irakli Okruashvili; 3) **September 16, 2016** - the court proceedings of the criminal case against Irakli Okruashvili (so called Amiran (Buta) Robakidze case). Further see: *Problems Related to Remote Proceedings under the Coronavirus Pandemic and State of Emergency, Human Rights Center, 2020. https://bit.ly/33UG75s.*

[133]See the Statement: HRC objects the closure of court proceedings on the cases with alleged political motives. https://bit.ly/36bzDjS.

[134]See the Statement by the coalition regarding closure of the proceedings in general courts under the condition of the emergency situation and regarding other kinds of deficiencies: https://bit.ly/2KDEH8m.

proceedings remotely. This indicates to the fact that the High Council of Justice had not acquired in full the information about the problem and the needs[135].

PROBLEM OF CONFIDENTIAL COMMUNICATION WITH DEFENSE COUNSELS

The Constitution of Georgia recognizes the right to defence[136]. In according to the Code of Criminal Procedure, "the accused has the right to choose and have a lawyer, as well as to change the lawyer of his choice at any time[137]. In the context of criminal proceedings, the right to a lawyer includes the right to be represented by a defence counsel chosen by the person concerned and the guarantee to receive information about the right to a lawyer, as well as the right to assign some rights to and to receive information from a lawyer confidentially and to enjoy the right to free legal aid[138].

Moreover, the European Court of Human Rights has repeatedly affirmed that the right to confidential and privileged communication with a lawyer is an important component of the right to a fair trial[139]. Where the right to a fair trial is to be "practical and effective", then the conditions for confidential and privileged communication with a lawyer must really be ensured, without which the assistance of a defence lawyer would be meaningless[140].

During the monitoring, some interruptions were noticeable in confidential and privileged communication between the defence counsel and the client. The fact that the accused and the defence counsels were separated from each other was negatively affecting the confidential and privileged communication among them. There was a case when in the remote session the defence counsel requested to

[135]See Response N323/1072-03 of the High Council of Justice from April 22, 2020 to the formal written request of HRC from April 16, 2020.
[136]see: Paragraph 3 of article 31 of the Constitution of Georgia: https://bit.ly/36YsfsC.
[137]See paragraph 5 of article 38 of the Criminal Procedure Code of Georgia. https://bit.ly/3n2221V.
[138]See Legal Digest of International Fair Trial Rights, 7, pp. 138. https://bit.ly/2HPXgp2.
[139]See The case-law of ECtHR in this regard: 1) S. v. Switzerland , ECtHR, November 28, 1991, Para. 48, https://bit.ly/2KNIm3G; 2) Campbell v. the United Kingdom , ECtHR, March 25, 1992, Para. 46. https://bit.ly/2KEcJcC.
[140]See 1) Ocalan v. Turkey, ECtHR, May 12, 2005, Para. 133, https://bit.ly/39lsDmx; 2) Khodorkovsky and Lebedev v. Russia, ECtHR, October 25, 2013, Para. 627, https://bit.ly/33rgfOi; 3) Sakhnovsky v. Russia , ECtHR, November 2, 2010, Para. 97,https://bit.ly/3mfbui7.

suspend the session because he was not provided with a confidential communication with the client[141]. In most cases, the accused lacked the possibilities to adjust the positions during the hearing with the defence counsels that could be considered as a violation of the right to a fair trial.

PROBLEM OF QUESTIONING THE WITNESSES

CCPR and ECHR ensure that every person accused in 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 him[142]. This 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. The Constitution of Georgia provides for the right of the accused to call witnesses: "The accused in criminal offense has a right to call and examine his witnesses under the same conditions as the witnesses of the prosecution."[143] Moreover, the definition of a fair trial implies that applicants should have an opportunity to challenge any aspect of the witness account during a confrontation or an examination[144].

During the monitoring of the remote court sessions, the problem was to establish that the witnesses were alone and were testified freely without any influence. The Public Defender also emphasized the problem[145]. When questioning the witnesses remotely as a rule no items could be seen before them (laying on the table for instance).

During the monitoring, it was problematic to establish the identity of the witness. Usually the identity of the witness joined remotely is confirmed by the party in the courtroom. Moreover, a witness who is not questioned yet may listen

[141]The reports prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Last seen: 04.05.2020

[142]See International Covenant on Civil and Political Rights, 14 (3) (e). https://bit.ly/3oFZneV; ECHR, article 6 (3) (d). https://bit.ly/39UltpS.

[143]see: The Constitution of Georgia, article 31(4), https://bit.ly/2VcSHrH; See: also article 14(2) of the Criminal Procedure Code. https://bit.ly/3laNZ8F.

[144]see: case of Bricmont v Belgium (ECtHR, 7 July 1989, para. 81. https://bit.ly/3lc1EMx.

[145]See Special Report of the Public Defender: *Report of Monitoring of the Court Sessions of the Criminal Cases held Remotely*. 2020: https://bit.ly/2V86wYD.

to another witness[146]. Further, there is no possibility to state or exclude that other persons are present with a witness and dictate to the witness the information.

MAIN PROBLEMS RELATED TO REMOTE LEGAL PROCEEDINGS

During the monitoring, the remote nature of the hearings held via electronic means of communication created repeated problems of technical nature. The court and penitentiary system were not ready for such a challenge.

Because of the technical problems the proceedings sometimes started in delay by hours[147], that substantially hindered the conduct of the court proceedings and in some cases served for suspensions of the proceedings. Suspension of or delay in the court hearings is caused by visual and audio problems that arise during the hearing, which may appear throughout the entire hearings[148].

The gaps in remote communication between the parties through Webex software appeared to be a significant problem during the monitoring of some trials. Where more than two or more persons were speaking simultaneously the voice could be heard and the participants of the process, including the judges had to repeat the questions they put delaying and making impossible to continue the sessions. Several times, the cases were reported when the voice of the participants are doubled and/or is heard unclearly. This problem remains unresolved to this day[149].

On the similar problems refers the Report of the Public Defender according to which the remote court sessions become a challenge in terms of the right to a fair trial[150].

[146]This problem is also emphasized by the organisation *Rights Georgia* in the Report *Efficiency and Accessibility of the Electronic Justice*: https://bit.ly/2Vbc98w.
[147] For example, the Monitoring Report on the hearings of the criminal case against Giorgi Esiashvili: 16.11.2020.
[148]See also the Special Report of Georgian Young Lawyers Association: *Justice in Times of Pandemics.* 2020: https://bit.ly/2DLrsQ0.
[149] For example, the report on the hearing reviewing the measures of restraint against Iveri Melashvili and Natalia Ilychova, 30.11.2020;
[150]See Special Report of the Public Defender: *Report of Monitoring of the Court Sessions of the Criminal Cases held Remotely*. 2020: https://bit.ly/3lfD4ur.

CONCLUSION

The Report on the results of the court monitoring of 25 cases by HRC includes the problematic issues of a fair trial as identified by the monitors and the legal analyst having a systemic nature during the monitoring.

Despite the limitations in the volume of the Report, the Report includes almost every aspect of the practice of criminal and administrative proceedings of Georgia as assessed against the international standards and best practice.

Overall, the legal framework of Georgia ensures the right to be tried by an independent court established under the law. The Constitution and legal acts of Georgia in general do comply with the international standards and the courts are established on legal grounds. However, numerous cases raise questions regarding to what extent the requirements of independent courts as enshrined in the law were met.

The monitoring revealed a number of shortcomings in various areas, such as: The right to a trial by an independent court established by law, public confidence in the criminal justice system, the right to a public hearing, the presumption of innocence, the right to testify and remain silent, the right to liberty, equality of arms, the right to a fair trial, the right to call and question witnesses, the rights to a reasoned court judgment, the right to a lawyer at the stage of detention and witness protection, selective justice and political motives. The discussion of the above-mentioned rights included in a fair trial in the relevant chapters is limited to the specific aspects of the right to a fair trial that were identified as problematic.

During the monitoring, cases were identified where government officials were talking about the guilt of the accused before the court rendered the judgment, thus violating the presumption of innocence contributing to the appearance of the accused as offenders in the public eye. Moreover, such statements have a negative impact on shaping the public opinion on the impartiality and political neutrality of the Prosecutor's Office.

Doubts existing in the public regarding selective justice and alleged political motives have intensified since the appointment of the Chief Prosecutor, Shalva Tadumadze as a judge of the Supreme Court of Georgia significantly undermining the public confidence in the system of criminal justice and the judiciary in general and failing to provide the guarantee of neutrality.

The court practice as identified by the monitoring with regard to the application of measures of restraint, plea agreements and pretrial detentions in most cases did not comply with the requirements of both national laws and international standards. In many cases, judges have rejected, without justification, the motions by the defence filed at the moment of hearing the matters of application of measures of restrain, remanding accused in custody or extending the custody, which overall created the impression of arbitrariness and bias.

The judgments rendered by the general courts as assessed in the Report were insufficiently substantiated incompatible with the right to a reasoned judgment. The right to a reasoned decision is a general principle enshrined in the Convention that protects the individual from arbitrariness. The judgment by national courts must respond to the main aspects of the arguments presented by the party in terms of substantive and procedural law[151]. Unreasonable decisions contribute to public distrust towards a fair and impartial judiciary.

Beside the above mentioned issues, 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 the accurate information about the dates, time and location of the court proceedings that had a regular character and impeded the possibility for monitors as well as for the public to attend the proceedings.

The sessions held remotely because of the coronavirus pandemic became a significant challenge in terms of the right to a fair trial. For the majority of the accused there was no confidential communication possible with the defence counsels. When questioning the witnesses the court could not verify the truthfulness of the witness. Because of technical defects the problems remain with

[151]see: the Judgment of the European Court of Human Rights on the case: Ruiz Torija v. Spain, §§29-30. 1994, December 9, 1994. https://bit.ly/3qTU8Kf.

visual clarity of the witness and understanding what they were saying. In most of the cases the court sessions began late, or they were suspended.

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

RECOMMENDATIONS

To the Judiciary:

- ✓ *Judges should ensure a fair trial and increase the trust of the public towards the justice system by justifying the decisions by high standard of proof, adhering to the Bangalore Principles of Judicial Conduct;*
- ✓ *In order to provide the public with accurate information about court hearings, the courts should constantly update the website, through which all persons concerned will be able to obtain information about the date, time and place of court hearings;*
- ✓ *In order to exercise public control over the judiciary, the courts should ensure that the principle of publicity of the hearing is observed - any interested person is allowed to attend the hearing when there are no grounds for closing the hearing as provided for by law;*
- ✓ *In cases of high public interest, courts are to ensure that hearings are held in large courtrooms;*
- ✓ *In the event of a change in the date and time of the hearing, the changes shall be posted on the website of the court within a reasonable time;*
- ✓ *With each extension and review of the detention period, the courts shall determine whether there are grounds to justify the extension of the*

detention term and take into account that the burden of proof the necessity of the measure of restraint rests with the prosecution;

- ✓ *To Equip the courtrooms in such a way that it is possible to understand the speech of the participants to the hearing;*
- ✓ *The judges to ensure an order at the court hearings. To allow persons leaving the courtroom, especially court monitors, to return with the consent of the court bailiffs.*
- ✓ *The courts must consider each charge against each defendant, with reference to the evidence. The courts to explain in the judgment why the evidence was shared or denied;*
- ✓ *In the cases of reaching a plea agreement, judges should not be passive; They must take all appropriate measures so that there is no doubt as to the proportionality of the punishment and the offense;*
- ✓ *The courts should not allow a bill of indictment as an evidence.*
- ✓ *Courts must ensure the smooth access of monitors and stakeholders to remote proceedings;*
- ✓ *The confidentiality of lawyer-client communication during the remote court proceedings must be ensured;*
- ✓ *In remote proceedings, the hearings should be technically held, so that the participants will be able to understand the conversation during the hearing and all interested parties will have the opportunity to attend the hearing remotely so the public attendance is not limited.*

To the Prosecutor's Office:

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

To the High Council of Justice

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

To defense counsels:

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