



**CASES WITH ALLEGED POLITICAL
MOTIVES OF THE PARDONED CONVICTS
WHOSE HEARINGS ARE PENDING
BEFORE THE COURTS**

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HUMAN RIGHTS CENTER



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Introduction

On June 20, 2019, the so-called Gavrilov’s Night, the dispersal of the protest demonstration with the excessive police power/special means, grave injuries of protesters, detention of over 300 individuals, and commencement of criminal proceedings against the political leaders Nika Melia and Irakli Okruashvili ended up with the political crisis in the country.

To address the political crisis, with the active engagement of the diplomatic corps, the negotiation process started between the Georgian Dream and the opposition political parties which ended with the agreement on March 8, 2020. The agreement referred to two major issues – the election system reform and the cases with alleged political motives.

Although the President of Georgia Salome Zurbashvili was not involved in the negotiations process, she, as she stated, “in the best interests of the country,” pardoned Gigi Ugulava and Irakli Okruashvili.

Later, after the October 31, 2020, Parliamentary Elections of Georgia, when the majority of the opposition political parties cast doubts over the legitimacy of the election results and boycotted the parliament, the political crisis started again.

The ongoing criminal proceedings against the chairman of the United National Movement Nika Melia and at a later stage his detention¹ particularly deepened the crisis.

To mitigate the political polarization in the country, the diplomatic corps launched negotiations. The President of the Council of Europe Charles Michel personally facilitated the dialogue between the government and opposition.² Afterward, the European Union appointed Christian Danielsson, a representative of the European Commission in Sweden, as a mediator in the ongoing political dialogue in Georgia.³

In the end, after months-long negotiations, on April 19, 2021, the Georgian Dream and members of several opposition political parties signed the document, which was proposed by the EU as a result of the negotiations.⁴

The agreement addressed five major issues. Among them, the first issue was to *address the cases of perceived politicized justice*. Namely, “the signatories commit to address, within one week of signing this agreement, the two cases of perceived politicized justice, either by an amnesty and/or by taking such steps as to produce an equivalent outcome.”⁵ More precisely, within one week of signature of the agreement, a party represented in Parliament shall

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¹ Civil Georgia, information about the detention of Nika Melia, February 23, 2021, available at <https://civil.ge/archives/400099> [01.03.2024]

² Civil Georgia, President Michel to Mediate Government, Opposition Talks, March 1, 2021, available at: <https://civil.ge/archives/402294>; [01.03.2024]

³ Civil Georgia, EU Appointed Envoy to Mediate Political Crisis in Georgia, March 9, 2021, available at: <https://civil.ge/archives/404133>; [01.03.2024]

⁴ Civil Georgia, Georgian Dream and part of opposition parties signed the EU compromise proposal, April 19, 2021; available at: <https://civil.ge/archives/414150> [01.03.2024]

⁵ Agreement of April 19, 2020 “A Way Ahead for Georgia” https://www.eeas.europa.eu/sites/default/files/210330_mediation_way_ahead_for_publication.pdf (04.03.2024)

initiate an amnesty law for all violations and convictions stemming from the 19-21 June 2019 protests.

As a follow-up to this agreement, on April 27, 2021, the President of Georgia Salome Zurbishvili pardoned the founder of the TV Company Mtavari Arkhi Giorgi Rurua.⁶ On the same day, the Amnesty Law was initiated⁷, which was adopted at the third hearing on September 7, 2021.

Human Rights Center, in the frame of the trial monitoring of the cases with alleged political motives, monitored the court hearings of the cases of Gigi Ugulava, Irakli Okruashvili, Giorgi Rurua, and Nika Gvaramia. The monitoring revealed that, unlike the cases of Ugulava and Gvaramia, who were pardoned by the President after the domestic legal mechanisms of remedy were exhausted, the President pardoned Irakli Okruashvili and Giorgi Rurua after the first instance court passed judgments and despite all that, they appealed the judgments in the upper instances of the court. *Both cases were precedential in Georgian judicial history.*

This analytic document aims to review the power of pardon, as a mechanism to address politically motivated justice, based on the findings of the HRC trial monitoring. The document reviews the cases with alleged political motives, where despite being pardoned, the defendants continued to “prove their truth” in the upper instances of court. The document also analyzes the correlation between the principle of judicial (procedural) economy and the legal rehabilitation of a person.

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⁶ Radio Liberty, Salome Zurbishvili pardoned Giorgi Rurua, April 27, 2021, <https://bit.ly/3TmAeXB> [04.03.2024].

⁷ Draft Amnesty Law and about Discharging from Administrative Penalty, <https://parliament.ge/legislation/21993> [04.03.2024].

Methodology

HRC carries out monitoring of the cases with alleged political motives based on the monitoring methodology and afterward analyzes alleged political motives and shortcomings in the cases of criminal, civil law, and administrative offenses.

The monitoring of the court proceedings is carried out by two court monitors based on a special questionnaire prepared particularly for the court proceedings with alleged political motives. The legal analyst uses the information obtained from the filled-out questionnaires to prepare analytical documents and public reports.

The monitoring of court proceedings is strictly based *on the principles of objectivity and noninterference in the court proceedings*. Moreover, HRC regularly provides the public, the media, and the parties to the proceedings with essential information about the court hearings and relevant findings.

Based on the tendencies identified in the course of the trial monitoring, those cases with alleged political motives were selected, where despite the pardon acts issued by the President of Georgia, the parties appealed the first instance judgments. To collect substantial information, HRC representatives met the convicted people in the selected cases – Irakli Okruashvili and Giorgi Rurua, and their lawyers.

The Power of Pardon and Practice

The power of pardon is a widespread legal instrument applied by the executive branch of the government.⁸ Its function is to impact the criminal law policy and avoid a political crisis. At the same time, the pardon mechanism may have different goals too⁹ - *to counteract a miscarriage of justice, to re-socialize-rehabilitate the convict, and more*. It is noteworthy that the Georgian normative base does not list the goals of applying the pardon mechanism for what, often, the convicts perceived the pardon as one of the means to restore justice, which may reduce punishment term or free him/her from punishment.¹⁰

Doctrinally, there are five main forms of pardon:¹¹ Simple pardon¹², Commutation,¹³ Remission of Fines and Forfeitures,¹⁴ Conditional Pardon,¹⁵ and Absolute Pardon.¹⁶

The Power of the Pardon of the President of Georgia relies on the principle of humanism and the state interest.¹⁷ The Power of Pardon is an exclusive constitutional power of the President of Georgia.¹⁸ Under an act of pardon, a convicted person may be released from further serving the sentence, or the sentence imposed on him/her may be reduced or substituted by a more lenient sentence. Also, the record of conviction may be removed from a person who has served the sentence.¹⁹

Georgian Model of Pardon Mechanism – Historical Discourse

The history of the law in independent Georgia remembers various practices of applying the pardon mechanism.

⁸ As a rule, the Power of Pardon implies the discretionary power of the president. At the same time, in some countries, other government bodies may also have this power – for example, Monarch (Spain, United Kingdom), Governor General (Canada), and more.

⁹ Human Rights Center, the Power of Pardon – Georgian Model and International Experience, Tbilisi, 9, 2016 available at: <https://www.hrc.ge/files/reports/136Pardon%20Power-eng.pdf> [05.03.2024]

¹⁰ Ibid, p.12

¹¹ Jeffrey P. Crouch, *Presidential Pardon Power: A Constitutional History*, University Press of Kansas, Lawrence, Kan., 2009, 20

¹² The term means to free a person from punishment without quashing his/her criminal record. Additionally: *Office of the secretary of the commonwealth, Pardon Fact Sheet, Virginia*, <https://bit.ly/3T6HOoX>, [07.03.2024].

¹³ To replace punishment term into minor punishment (for example to replace death penalty or life-term imprisonment into an imprisonment with determined term)

¹⁴ James N. Jorgensen, *Federal Executive Clemency Power: The President's Prerogative to Escape Accountability*, 27 U. Rich. L. Rev. (1993), 345, <http://scholarship.richmond.edu/lawreview/vol27/iss2/10>, [07.03.2024].

¹⁵ Conditional pardon means to pardon a person serving his term in the custody, who has a health or immigration issues. Thus, this form of pardon is applied with regard to the convict who has (1) serious health problems [in accordance with the US practice, it is additional requirement that the person shall have less than 3-month life-term left] or (2) who faces risk of being deported to his/her country. Additionally: *Office of the secretary of the commonwealth, Pardon Fact Sheet, Virginia*, <https://bit.ly/3T6HOoX>, [07.03.2024].

¹⁶ In case of absolute pardon a convict is pardoned without all preconditions. When absolute pardon is applied, the convict is freed from all legal consequences (ex. Compensation of harm). Additionally, in accordance with the US practice, there are several pre-conditions to apply the absolute pardon. Among them, (1) the defendant is not guilty into the imposed charge; (2) he/she never admitted guilty during entire litigation process and (3) exhausts all domestic legal remedies to prove his/her innocence. In more details: James N. Jorgensen, *Federal Executive Clemency Power: The President's Prerogative to Escape Accountability*, 27 U. Rich. L. Rev. (1993), 348, <http://scholarship.richmond.edu/lawreview/vol27/iss2/10>, [07.03.2024] ☞ *Office of the secretary of the commonwealth, Pardon Fact Sheet, Virginia*, <https://bit.ly/3T6HOoX>, [07.03.2024].

¹⁷ November 26, 2019 Order No 556 of the President of Georgia on the Approval of Pardon Rules

¹⁸ Article 52 the Constitution of Georgia

¹⁹ Article 78, the Criminal Code of Georgia

The May 13, 1998, Edict No 319 of the President of Georgia about the Pardon Rules for the Convicts²⁰ determined that a pardon may be granted **at the personal request of a convicted person** if **he or she admits his/her guilt** and **repents**. The family member/s also may petition the President with the request of pardon.

Requests and petitions for a pardon were examined by the Pardons Commission before being submitted as a recommendation to the President. The pardon of the convict was approved by the President's order, while the petition was rejected based on the Commission's decision.

It is worth mentioning that other judiciary bodies were also involved in the examination of the pardon case. Namely, before its examination by the Pardons Commission, the request for a pardon was sent with the file documents produced by the penal institution concerned for opinion to the Supreme Court of Georgia, the General Prosecutor's Office, and the Ministry of the Interior.²¹

Later, on July 19, 2004, the old edict was annulled and the President's Edict No277 about the Pardon Rules went into force.²²

The 2004 edition of the Pardon Rules widened the circle of people, who could apply to the President for pardon. Namely, the Edict established that the President may pardon a convict or a person, who already served the imprisonment term and his/her criminal record was not quashed.

The Edict no longer set admitting guilt or repenting as a pre-condition for being pardoned. As for the right to apply for the pardon, the convicts, their family members, the Members of Parliament, individuals, groups of individuals, organizations, and institutions could also petition the President.

The pardon petition was examined by the commission and unlike the previous rules, the Commission had a new discretion *in case of necessity* to forward the recommendation on pardon together with case files for additional opinions to the Office of Prosecutor General, Ministry of Internal Affairs, and State Security Ministry.²³

The initial edition of the 2004 edict of the President did not envisage the authority of the President to pardon convicts without following the rules. With the 2005 amendments in the Edict, the President of Georgia was authorized to decide to pardon a convict without fulfilling the requirements determined by this edict and/or at any stage of the examination of pardon recommendation.²⁴

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²⁰ Article 1, The Decree No319 of May 13, 1998 of the President of Georgia about the Use of Pardon Rules for the Convicts, available at: <https://bit.ly/3TGHkHL> [07.03.2024].

²¹ Article 10, President's Decree no. 319 of 13 May 1998 on the exercise of the right of pardon provide

²² President's Edict No277 about the Pardon Rules, available at: <https://matsne.gov.ge/ka/document/view/35644?publication=0> [20.03.2024].

²³ Article 8, President's Edict No277 of July 18, 2004 about the Pardon Rules

²⁴ Article 2, Ibid [edition after the amendments of 30/05/2005]

In 2014, the President’s Edict about the Approval of the Pardon Rule was again amended and a new President’s Edict No120 of March 27, 2014, was published.²⁵ The innovation of this edict was the individual’s right, who was sentenced to life-long imprisonment, to petition the President for pardon after he/she served 15 years in prison. Under the previous edicts, the President did not examine the petitions of lifetime convicts, unless he/she had not served 25 years in prison.

Some amendments were made in the November 26, 2019, Edict No566 of the President on the Approval of Pardon Rules.²⁶

By the new Pardon Rules, the Commission, which was authorized to examine the pardon petition and submit recommendations to the President to pardon a convict or quash the criminal record of the former convict, was abolished. Instead, the respective service was created within the president’s administration, which is authorized to prepare a pardon case for the examination of the President.²⁷ At the same time, the pardon power is an exclusive constitutional power of the President, which, as a rule, *is applied as an exception*.²⁸

The current edition of the President’s Edict on the Approval of the Padron Rules was preceded by the September 19 decision of President Salome Zurbashvili to announce a moratorium on pardoning the convicts as a follow-up to the criticism of the August 28, 2019 pardon act.²⁹

Pardon as a Mechanism to Counteract a Miscarriage of Justice in Cases with Alleged Political Motives

In democratic societies, the power of pardon serves justice, and humanity and aims to rehabilitate individuals, who committed crimes, to be a plenipotentiary member of society. Substantially, the power of pardon, in some instances, facilitates the discretion power of the executive government to restore justice.

The Power of Pardon, both from the perspectives of history and modern constitutional order, shall be defined in accordance with the political and authoritative paradigms.³⁰ Pardon is not a separate and isolated act, “it is part of the Constitutional scheme”.³¹ Therefore, the Pardon, as a constitutional act, is not just one human act but one of the mechanisms to determine the policy of the head of the State. Its politicized character creates the real context of the Power of Pardon.³²

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²⁵ The President’s Edict No 120 of March 27, 2014 about the Approval of the Pardon Rules available at: <https://matsne.gov.ge/ka/document/view/2299717?publication=0> [20.03.2024].

²⁶ The President’s Edict No 556 of November 26, 2019 about the Approval of the Pardon Rules available at: <https://matsne.gov.ge/ka/document/view/4712933?publication=0> [20.03.2024].

²⁷ Ibid

²⁸ Ibid

²⁹ Radio Liberty, the President of Georgia made a decision and announced moratorium to pardon convicts, <https://bit.ly/3lqEsrX> [06.03.2024].

³⁰ Gerliani T. *Politicized Pardon and Logics of Constitutional Order*, Social Justice Center, 2019. Available: <https://bit.ly/48L46CH>, [06.03.2024].

³¹ Ibid

³² Ibid

The political context of the pardon power becomes particularly urgent when it is applied for the cases, where alleged political motives are identified in the criminal proceedings against the convict. Political prisoners may be any individual, who is arrested for his/her real or perceived participation or support of an anti-government political movement.³³

By the definition of the Political Prisoner in the resolution of the Parliamentary Assembly of the Council of Europe,³⁴ A person deprived of his or her liberty is to be regarded as a 'political prisoner' if:

- a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience, and religion, freedom of expression and information, freedom of assembly and association;
- b. if the detention has been imposed for purely political reasons without connection to any offense;
- c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offense the person has been found guilty of or is suspected of;
- d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,
- e. if the detention is the result of unfair proceedings and this appears to be connected with political motives of the authorities.”

It is worth mentioning that the status of a political prisoner does not *a priori* mean that the person is innocent. Just the opposite, the person may have indeed committed a criminal offense in the past but current prosecution against him/her may be linked with his/her current political activities and in the course of criminal proceedings his/her access to “fair trial in accordance with the international standards” is not ensured.³⁵

Pardoning Gigi Ugulava, Irakli Okruashvili, Giorgi Rurua, and Nika Gvaramia by the President is a good example of the political context of this institute – Salome Zurabishvili used the pardon mechanism, and played a key role to address the political crisis in the country.

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³³ AAPP, Political Prisoner Definition; Definition Of Political Prisoner from the Cambridge Advanced Learner's Dictionary & Thesaurus, Cambridge University Press.

³⁴ Council of Europe, *The definition of political prisoner*, 2001 [Resolution 1900 (2012) Final version]. Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19150&lang=en> [11.03.2024].

³⁵ “Amnesty International” determines two criteria to declare a person to be a political prisoner* - 1) case contains “evident political element”* and 2) the government does not ensure access to the fair trial in accordance with the international standards.” *the criteria, among others, includes political activities of the convict.

Findings of the HRC Trial Monitoring

Human Rights Center carries out monitoring of the cases with alleged political motives. This analytic document selected the criminal proceedings of the cases against Gigi Ugulava, Irakli Okruashvili, Giorgi Rurua, and Nika Gvaramia. In all these cases, the President applied her exclusive power – the Pardon Mechanism. In two cases – Gigi Ugulava and Nika Gvaramia were pardoned after their cases were examined in all three instances of the national courts. In the case of Irakli Okruashvili and Giorgi Rurua, they were pardoned when only the first instance court had finished the examination of their cases.

The monitoring revealed that Irakli Okruashvili and Giorgi Rurua, regardless of being pardoned by the President, appealed the verdicts of the first instance court in the appellate court and created a precedent in Georgian judicial history.

Case of Irakli Okruashvili

After the events of June 20-21 of 2019, the leader of the political party Victorious Georgia Irakli Okruashvili was accused of the leadership of group violence that is 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 under the Article 225 of the Criminal Code of Georgia. With the April 13, 2020 judgment of the Tbilisi City Court, Irakli Okruashvili was sentenced to five years imprisonment for participation in the crimes punishable under Article 225(2) of the CCG. He was also accused of organizing group violence (Article 225(2) of the CCG). Okruashvili was acquitted in the second accusation.

On April 13, Irakli Okruashvili appealed the verdict in the Appellate Court.

Later, the verdict of the Tbilisi Appellate Court was appealed in the Supreme Court of Georgia by both the prosecutor's office and the defense side. The prosecutor requested to find the defendant guilty of the violation of both Parts - 1 and 2 of Article 225 of the CCG, and the defense side requested to acquit Irakli Okruashvili. With the ruling of the Supreme Court of Georgia, the cassation lawsuits were rejected and Irakli Okruashvili continued his dispute with the European Court of Human Rights; the latter has not yet decided with regard to his application.

Political Motives in the Case of Irakli Okruashvili

The criminal prosecution against Irakli Okruashvili, which was related to the events of June 20-21 2019, raised questions over the alleged political motives it.

The charges brought against Irakli Okruashvili also raised questions. In accordance with the case files, 18 individuals were charged for the alleged violations during the June 20-21, 2019 events. Each of them was standing on the frontline of the protest demonstration and had active contact with the police. Except for the small group of the people, whom the prosecutor's office regarded as allies of Irakli Okruashvili, in order to prove his leadership or/and participation in the group violence in the court, hundreds more people were around

Irakli Okruashvili in front of the parliament, who could be identified in the video files.³⁶ However, no criminal proceedings were launched against other individuals.

There are doubts about political motives in the charges brought against Irakli Okriashvili in the penitentiary establishment on November 19, 2019, in relation to the so-called Buta Robakidze's case. It happened a few days before the 15-year term of the remoteness of the criminal case was due to expire. Also, according to the November 20, 2019 indictment on the separation of the criminal case, to ensure prompt and effective justice, the criminal case against Irakli Okruashvili was separated.³⁷ The procrastination in the court proceedings of the cases with alleged political motives is also worth mentioning.

Additionally, the fact that the prosecutor's office continued the dispute in Irakli Okruashvili's case in the Appellate Court regardless of the pardon of the President, as well as lodged a cassation lawsuit in the Supreme Court, raises additional doubts about political motives. These actions, on the one hand, intensify doubts about political motives in the case and on the other hand create a deadlocked situation for the court, which could have been created if the defendant had been found guilty of organizing/leadership of mass group violence.

At the same time, after Irakli Okruashvili was found guilty in the case related to June 20-21 events on April 13, 2020, the international partners and members of the opposition political parties declared him a political prisoner.³⁸

Case of Giorgi Rurua

A founder and shareholder of the TV Company Mtavari Arkhi, one of the organizers and participants of the June 20-21, 2019 protest demonstrations Giorgi Rurua was accused of violation of Article 236 Parts 3 and 4 of the Criminal Code of Georgia (illegal purchase, possession and carriage of firearms). Also, he was accused of the violation of Article 381 Part I of the CCG, envisaging the failure to execute the court decision or the interference with the execution of the court decision (the issue concerns the refusal of Giorgi Rurua in a penitentiary facility to allow investigative actions namely the acquisition of DNM sample and palm prints as ruled by the court).

On November 20, 2019, the Tbilisi City Court granted the motion by the prosecution and remanded Rurua in custody for two months of pretrial imprisonment on the charges of illegal purchase, storage, and carriage of firearms.³⁹

On July 30, 2020, Judge Valerian Bugianishvili of the Criminal Law Chamber at the Tbilisi City Court found Giorgi Rurua guilty under both charges and sentenced him to 4-year imprisonment. The defense side appealed the verdict in the Appellate Court.

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³⁶ *Human Rights Center*, Legal Assessment of the Criminal Cases Launched Against Irakli Orkuashvili, 2020, p 34. Available at: <https://hrc.ge/files/152OKRUASHVILI-eng.pdf> [17.03.2024].

³⁷ *Ibid*, 23 Indictment on the separation of the criminal case, 20.11.2019 Tbilisi Document N0013737417.

³⁸ *Ibid*, p. 34

³⁹ *Human Rights Center*, Legal Analysis – Criminal Case of Giorgi Rurua, 2020, p.5 available at: <https://hrc.ge/files/150RURUA-case-eng.pdf> [18.03.2024].

On April 27, 2021, the President of Georgia pardoned Giorgi Rurua. Nevertheless, the convict continued participation in the court hearings of his case in the Appellate Court.

Political Motive in the Case of Giorgi Rurua

The political motives in the case of Giorgi Rurua were discussed from the very first day of his arrest.

The first issue, which was actively discussed, was related to the firearm removed from Rurua's car. The defendant denied possession of that particular firearm⁴⁰ and noted that the gun, which he had never seen and had never been in his car, "was planted on him".⁴¹

According to the statement of Giorgi Rurua, after the events of June 20- 21, 2019, he was one of the organizers and financial supporters of the peaceful demonstrations against the [Russian] occupation and the Government of Georgia, and actively participated in them. The demonstrations that began in June 2019 were temporarily stopped after the government promised the society that the Parliamentary Elections of 2020 would be held with the proportional system. The demonstrations resumed in November 2020 when a group of MPs allied with the government voted down the initiated constitutional amendments and it came out that the Parliamentary Elections would be held again with the mixed majoritarian and proportional systems. Giorgi Rurua said that in November he continued organizing and financially supporting the protest demonstration; he even physically assisted the participants of the demonstrations in various works. On November 17, 2019, for instance, he organized and personally brought the firewood to the Parliament so the demonstrations could be warmed. He spent the whole night on the site of the demonstration and on November 18, on his way home, he was arrested.⁴²

Moreover, the United National Movement party and the European Georgia party were referring to the release of Giorgi Rurua as a condition to support the draft Constitutional Law amending the system of Parliamentary Elections in Georgia. According to the statement of the named parties, the release of Giorgi Rurua is a part of the agreement reached with the government on March 8 that the representatives of the ruling party did not agree to and categorically denied⁴³.

The procrastination of the examination of Giorgi Rurua's case in the Appellate Court raises doubts over the politically motivated proceedings against him – the verdict of the city court was appealed in 2020 and the first hearing of the case in the Appellate Court was held in January of 2024.

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⁴⁰ *Publika*, Giorgi Rurua's statement with regard to his detention: <https://bit.ly/3IG4RCd> [18.03.2024].

⁴¹ *Formula*, statement of Dimitri Sadzaglishvili, Giorgi Rurua's defense lawyer, available at: <https://formulanews.ge/News/15144> [18.03.2024].

⁴² *Human Rights Center*, Criminal Case of Giorgi Rurua – Legal Analysis, 2020, p. 17. Available at: <https://hrc.ge/files/150RURUA-case-eng.pdf> [18.03.2024]

⁴³ *Ibid* p.18

A Search for Justice vs. Judicial (Procedural) Economy

Irakli Okruashvili and Giorgi Rurua were interviewed in the frame of the research. Their major motive to continue the dispute in the court despite being pardoned was to prove their truth:

Irakli Okruashvili

The motive to appeal the verdict is not purely legal; it is purely personal: when a defendant believes that the court passed an unfair verdict against him/her, s/he continues to fight to prove his/her innocence.

Giorgi Rurua

“I received support from the society, from the nongovernmental sector, international organizations, and politicians but I believe it is very important to achieve a legal verdict too. I will continue to fight in the court to achieve it.”

Dimitri Sadzaglishvili

“Since Giorgi Rurua is innocent, the firearm was planted on him, our goal is to achieve an acquittal verdict in his case. It may be easily achievable with the ongoing case when the litigation has not finished on the domestic level.”

It is not arguable that in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law⁴⁴. Everyone convicted of a criminal offense by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal.⁴⁵ Access to justice is a significant component of a fair trial. On its side, the right to a fair trial is an important guarantee to ensure the rule of law. “The principle of Rule of Law is a fundamental component of the European public order and selfishness demonstrates negligence of this principle.”⁴⁶

Although criminal law determines the punishable action, the presence of this context is not enough to find a person guilty. The goal of the criminal proceeding is to establish the “impartial truth” over the case⁴⁷, to determine the guiltiness of the defendant, to impose fair punishment on the perpetrator, and to protect the innocent person from unjustified

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⁴⁴ Article 6, European Convention on Human Rights

⁴⁵ Article 2, European Convention on Human Rights and Basic Freedoms, Additional Protocol No7

⁴⁶ *Beraia, G; Zedelashvili, G; Taktakishvili Ch; Kopaleishvili M*; Right to Fair Trial, Institutional Guarantees of the Independence and Impartiality of Judges, Tbilisi, 2021, 66 quotation from: *Al-Dulimi and Montana Management Inc. v. Switzerland*.

⁴⁷ *Gogshelidze R (editor)*. Criminal proceeding (some institutes of the general part), Tbilisi 2009, p. 27

accusation.⁴⁸ In this light, when a person believes he/she is innocent and wants to prove it, he/she must not be deprived of the right to prove it. The latter is linked with the right of an individual to get judicial rehabilitation.

The purpose of criminal justice is not only to implement the repressive policy of the state – to punish perpetrators. Therefore, if a person has a desire to have a legal assessment of his/her action, it is inadmissible to leave this requirement without a respective response. The respective response means to finalize the case examination with acquittal or guilty verdict. The Court shall impose punishments on the person by taking into account both aggravating and palliative circumstances and discharge him/her from the punishment only after similar consideration.⁴⁹ It is a functional element of the judiciary system – to promote the prevention of a crime through legal assessment of the actions of citizens.

Besides looking for the truth, as one of the respondents noted, there might be a collision between rendering justice/proving the truth and the principle of judicial economy. Simply saying, shall the court and executive authority waste resources on the examination of the cases, where the defendant was pardoned and he/she is freed from punishment? The miscarriages in the Georgian judiciary system make this question valid; among miscarriages are an insufficient number of judges and procrastinated justice.⁵⁰

The right of a person to prove his/her innocence and achieve judicial rehabilitation is part of the constitutional right to a fair trial and personal freedom and is linked with his/her dignity,⁵¹ whose restriction is inadmissible in the view of the judicial economy. In order to measure the proportionality of the interference in the rights, it is important to take the intensity of interference as well as the importance of those rights or legal interests into account, whose protection is restricted. Judicial economy and prevention of artificial overloading of the court are important pre-conditions to ensure the quality of justice.⁵² At the same time, the protection of the court from being overloaded is not an end in itself. The court, which is free from being overloaded, is a precondition to effective justice.⁵³

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⁴⁸ Ibid

⁴⁹ Bichia Sh, Remoteness in the Criminal Law, the work to obtain PhD in Law, Tbilisi State University, 2010, p. 162

⁵⁰ The Activity Report of the Judicial System in 2017-2019 published by the High Council of Justice reads: “In order to assess the needed number of judges and other court staff, an expert invited by the project of USAID/PROLoG - Jesper Wittrup together with the EU, CoE and local experts prepared a study estimating the needed number of judges in Georgia. According to the findings of the experts, taking into consideration the existing case load, current number of judges is insufficient. In order to solve the problem of overloaded courts, the judiciary needs 410 (or 380-450) judges that means increasing the current number of seats by 100.” Available at: <http://hcoi.gov.ge/files/news/Activity%20Report%20of%20the%20Judicial%20System%20-%202017-2019.pdf> [14.03.2024]. Also, in accordance with the statistical data in the Activity Report of the Judicial System of 2013-2017, in the reporting period, one judge, averagely, examined over 1000 cases while the staff member of the court worked average 18 hours per day. Available at: <https://bit.ly/3TkimfM>, [14.03.2024].

⁵¹ Topuridze N, Right to Fair Trial in the Context of International Criminal Law, Human Rights and Rule of Law (edited by Korkelia, K), 2013, p. 81

⁵² May 23, 2013 Judgment №3/1/574 of the Constitutional Court of Georgia on the case: Giorgi Ugulava vs. the Parliament of Georgia, II-69

⁵³ December 28, 2017 Judgment №2/8/734 of the Constitutional Court of Georgia on the case: LEPL Prema vs. Parliament of Georgia, II-21

Conclusion

The right to a fair trial, like other inviolable rights, relies on the obligatory respect of human dignity. It is composed of many independent components, each of which is a concrete category of human rights.⁵⁴

In the cases, when there are questions about political justice against concrete individuals, restoration of justice is a big challenge.

Procrastinated justice in the cases of Irakli Okruashvili and Giorgi Rurua intensifies discussions around them – in one case the court hearings were held at extremely long intervals while in another case, the court hearings were not scheduled for years. The immanent component of the right to fair trial is effective and prompt justice. Delayed justice is often denied justice.⁵⁵

Procrastination of justice in criminal cases, not only violates the rights guaranteed under the criminal procedural law but also reinforces doubts about applying politically motivated justice against the person.⁵⁶

In a similar process, it is important to ensure purposeful and reasonable action of each branch of the government to secure the democratic and European development of the country. Consequently, we should positively evaluate the decision of President Salome Zurbishvili to pardon those people, over whose cases there were doubts with regard to political motives in them. The President applied her power to address the political crisis.

Regardless of being pardoned, the decision of Irakli Okruashvili and Giorgi Rurua to continue the dispute in the courts over their cases with alleged political motives creates an interesting precedent for the Georgian judiciary.

The right of a person regardless of being discharged of criminal liability (because of the remoteness of offense, being pardoned, or act of amnesty), to continue examination of his/her case in the court on the one hand is related to the function of the court to evaluate the person's action and on the other hand he demonstrates his legal self-consciousness. In the end, a similar precedent creates an opportunity for other people to protect their rights and achieve legal and consequently social rehabilitation.

⁵⁴ *Topuridze N*, Right to Fair Trial in the Context of International Criminal Law, Human Rights and Rule of Law (edited by Korkelia, K), 2013, p. 81

⁵⁵ *Vazagashvili vs. Georgia* 50375/07; 18.10.2019.

⁵⁶ Human Rights Center, LEGAL ASPECTS OF PROCRASTINATION IN PROCEEDINGS REGARDING CASES WITH ALLEGED POLITICAL MOTIVES, 2024, p. 11 <https://hrc.ge/files/265LEGAL%20ASPECTS%20-eng.pdf> [18.03.2024].