



**MONITORING THE COURT
PROCEEDINGS OF THE CASES WITH
ALLEGED POLITICAL MOTIVES**

Interim Report

2021

Monitoring the Court Proceedings of the Cases with Alleged Political Motives

Interim Report



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THE REPORT WAS PREPARED BY HUMAN RIGHTS CENTER (HRC)

NGO HRC was established on December 10, 1996, in Tbilisi. The objectives of HRC are to strengthen the respect for human rights, fundamental freedoms and to promote peace processes in Georgia.

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

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INTRODUCTION

The current Interim Report reflects the outcomes of the monitoring of the court proceedings of the criminal and administrative cases with alleged political motives for the period between February 1, 2020, and August 15, 2020. The report also presents the results of the monitoring of the ongoing court hearings on the fact of assault on a media representative allegedly for political reasons.

Human Rights Center monitors the criminal cases that are allegedly politically motivated in the general courts of Georgia within the frames of the project *Legal Aid and Human Rights Monitoring*. The Project of monitoring the court proceedings and protests was started on February 1, 2021,¹ and will end on December 31².

From February 1, 2021, until the interim reporting period of August 1, the court monitors of HRC have monitored 9 administrative and 23 criminal law cases in the courts. In total, legal monitors observed 91 court hearings in 32 cases.

METHODOLOGY

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

The monitoring of the court proceedings is carried out by three legal monitors who received special training on the court monitoring. In order to conduct monitoring in the right manner, a special questionnaire for court monitoring was developed at the initial stage. After each court hearing, the legal monitors process the information received from the court hearing later analyzed and applied by the legal analyst for the relevant reports.

¹Note: In 2020, during the Project, Human Rights Center prepared 5 analytical documents, 1 interim and 1 summary report: 1) Report - Legal Assessment of the Criminal Cases Ongoing against Giorgi Ugulava. <https://bit.ly/33SqhZx>. 2) Legal Analysis of the Cases connected with the Events of June 20-21, 2019, <https://bit.ly/2XUIHF7>. 3) Legal assessment of ongoing criminal cases against Irakli Okruashvili. <https://bit.ly/31NEpka>. 4) Criminal Case of Giorgi Rurua: legal analysis <https://bit.ly/2CkSOfd>. 5) Legal Assessment of ongoing Criminal Case against Nika Gvaramia: <https://bit.ly/33NghAb>. 6) Monitoring the Court Proceedings of the Cases with alleged Political Motives: Interim Report: <https://bit.ly/2JZ0eZl>. 7) Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report: <https://bit.ly/2X54qNc>.

² Note: As part of the project, Human Rights Center court monitors have monitored a total of 160 court hearings since February 2020.

The court monitoring is based on the strict principles of objectivity and non-interference in the court proceedings.

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

THE CASES WITH ALLEGED POLITICAL MOTIVES

A total of **32 cases** have been monitored by HRC since February 2020, hearing of some of which are currently completed in the courts.

1. **The Case of Mamuka Khazaradze, Badri Japaridze and Avtandil Tsereteli.** The former Chair of the Supervisory Council of *TBC Bank*, Mamuka Khazaradze, and his deputy, Badri Japaridze (at the time being the leaders of the political organization *Lelo for Georgia and members of the Georgian Parliament*) are charged under article 194(2)(a) and (3)(c) of the Criminal Code envisaging the legalization of illicit income in large amounts carried out by an organized group. While the charges brought against the father of the owner of TV company *TV Piroveli*, Avtandil Tsereteli, imply the assistance in the legalization of illicit income (article 25 and article 194(2)(a)(3)(c) of the Criminal Code). The criminal case is on the stage of hearing on the merits in Tbilisi City Court. The presiding judge is Giorgi Ebanoidze within the same court. At this stage of the hearing, some pieces of evidence are being examined.

Outcomes of the court monitoring:

During the reporting period, 1 court hearing was held on the case. On July 9, 2021, the hearing of the criminal case began following the motion by the defense. The defense lawyer submitted a 99-page-long document, stating that the prosecution had applied to the Kingdom of the Netherlands for legal assistance, and after receiving a reply from there opted not to give the opinion in evidence as of the case file. The defense wanted to enter the opinion into the case file as evidence along with some important documents as attached.

The prosecution disagreed with the defense and stated that the prosecution would agree to the inclusion of the opinion in the criminal case file as evidence only where the documents attached to the opinion were presented in full amounting to 203 pages as submitting them “in portions” to the court would change the entire context. Otherwise, the prosecution was ready to file a motion requesting that the rest of the documents from the opinion and the CD be considered as evidence.

The defense disagreed with the prosecution. Further, the defense disagreed with the motion of the prosecution to include the rest of the documents as evidence. The defense noted that at the previous hearing the prosecution had refused to submit the opinion of the Dutch Government as evidence. The judge mentioned the same reminding the prosecution that they had refused at the previous hearing to place the opinion and the relevant documents in the case file.

Eventually, the parties agreed that the CD mentioned by the prosecution would be handed over to the defense, and where a sheet enlisting the opinion and attached documents were also provided, the defense would agree that both the disc and the documents attached to the opinion be placed in full in the case file as evidence.

At the hearing, prosecution witness Zaur Beruashvili (an auditor) was also questioned. In 2007-2008, he was the director of a distribution company and Samgori 95. According to the witness, he was the director of Samgori 95 at the request of Avtandil Tsereteli, one of the accused. The witness also mentioned Samgori M and Samgori Trade. He noted that he had professional relations with these companies since 2011 where he was conducting some financial risk assessments.

According to the witness, these companies were owned by Avtandil Tsereteli and his son, but were legally registered on the names of other persons and other persons were serving as directors. As the witness explained, the above 2 companies had received a loan from TBC Bank (approximately USD 17 million) to solve a financial problem. The sum was later lent to individuals: Avtandil Tsereteli and Mamuka Khazaradze. According to the witness, there were no tax risks in this part. However, there were some financial risks.

According to the witness, as it turned out later, both parties found it difficult to fulfill the obligations stemming from the loans. The loan taken by the individuals were not secured. According to him, when the risks arose, he met with Mamuka Khazaradze and Badri Japaridze. Told that there were two solutions: Either the loan should have been repaid by the parties or these companies should have been replaced by other persons.

When asked by the defense whether there was money laundering at hand when issuing loans and proving guarantees on them, the witness denied the fact of money laundering (*Note: Witness is an expert on the issues of money laundering and servers as an advisor to the prosecution authorities; further, he is a trainer on the issues of money laundering inter alia providing training for the prosecutor's office*).

To all the questions of the defense, the witness gave the answers in favor of the defense; when questioned by Mamuka Khazaradze of why he was a witness for the prosecution, the witness responded that he (i.e. the witness) could also be a witness for the defense.

After this question, Khazaradze explained that as soon as this criminal case was initiated, the witness approached him and offered his support, but Khazaradze thanked him for the offer saying he was innocent and had done nothing illegal, so no help was needed³.

The hearings of the case are going on. At the current stage, the witnesses of the prosecution are being examined.

- 2. The case of an attack on journalist Vakhtang Sanaia.** On February 25, 2021, journalist Vakhtang Sanaia was attacked by three drunk persons. The journalist was with his family members, including an infant child, and was trying to mount a rise in a road with his vehicle assisted by the representatives of the rescue guard in the efforts. According to Sanaia, the defendants physically assaulted him, threatened him, and attacked his family members. On the same day, the Ministry of Interior arrested three people on charges of group violence. According to the information by the Ministry of Interior, the accused persons being drunk used physical violence against Vakhtang Sanaia preliminary exchanging with him some verbal remarks. The three detainees were charged under Article 156(2)(a), Article 151(1), and Article 126(1)(b)(c) of the Criminal Code of Georgia. The case was heard on the merits by the City Court, the presiding judge is Giorgi Keratishvili.

Outcomes of the court monitoring:

During the reporting period, 5 court hearings were held on the case.

On June 3, 2021, an expert was questioned at the court hearing, who presented the results of the expert examination of Vakhtang Sanaia and his wife from February 25 against. According to the expert, during the personal examination Vakhtang Sanaia had hemorrhages and bruises in different areas of the body. The injury was caused by a blunt object which could not be specified. Also, the mechanism of injury could not be specified, as it was not the subject matter of the expert examination. The injuries do not contradict the date of drawing up the decree on the fact of violence.

As for Vakho Sanaia's wife, she was hurt in the chest but the injury was not specified. External examination of the trousers did not reveal any damage, however, she did not wish to be examined without the trousers. The expert also reported to the court about the medical opinion prepared by a neuropathologist after examining Vakhtang Sanaia at Aversi Clinic. According to the medical report, the patient was adequate, focused on time and space but had a feeling of imbalance and instability while moving. He also felt nausea and headaches.

³ HRC Court Monitor Report on the Criminal Case of Mamuka Khazaradze, Badri Japaridze, Avtandil Tsereteli: July 09, 2021.

Two police officers were also questioned at the court hearing. Both gave identical testimonies and noted that upon their arrival the accused were expressing themselves in an aggressive manner towards Vakhtang Sanaia. Further, video footage was reviewed at the hearing. The footage showed the aggressive action on the part of the accused in pushing their way in a frantic manner towards a car of Vakhtang Sanaia or directly towards Vakhtang Sanaia and the persons accompanying him. However, the scene of the violence and the actions of the other party could not be seen directly. According to the footage, the reason why the conflict began is not clear⁴.

On June 7, 2021, at the court hearing, the prosecution examined 3 witnesses: the members of the rescuer guard who were assisting Vakhtang Sanaia to move the car on an icy road in Vake. The witnesses stated that on their arrival at the scene due to a scream by a woman, both sides were verbally abusing each other and pushing their way towards each other to fight. They confirmed the testimony given to the investigation that the accused were articulating with hands, swearing, pushing their way towards Vakhtang Sanaia, and trying to get rid of some women who were trying to stop them. Further, one of the witnesses stated that he supported Vakhtang Sanaia and one of the accused to get on their feet after having been fallen on the ground. The witness was not aware of the cause of the conflict⁵.

The defendants were questioned at a court hearing on June 25, 2021. One of the defendants, Vazha Gigauri, stated that the aggressive attitude towards Vakhtang Sanaia was not related to his professional activities. Gigauri stated that Vakhtang Sanaia must have been irritated because of the talking about his wife, who, according to the accused, had been his neighbor for a long time. Defendant said that because he was talking about his wife Vakhtang Sanaia touched him and turned towards him. He attempted to strike Sanaia with a hand but the strike missed Sanaia and the accused fell to the ground. Vakhtang Sanaia fell on the ground too and both of them were kicking each other and swearing at each other while laying on the ground. This kicked up a fuss further irritating Vazha Gigauri who as he mentioned wanted to assist Sanaia and instead got into a conflict. The incident was described in the same way by other witnesses. They said that because their friend was upset they also got furious, aggressive, and physically assaulted Vakhtang Sanaia, but not because of their professional activities⁶.

In closing arguments of July 8, 2021, the prosecution stated that as became clear from the court hearing other witnesses also confirm that Vakhtang Sanaia was persecuted for his journalistic activities (*with the expressions by Vazha Gigauri like: "you are doing wrong, fake journalism, you are on the wrong side, you are a provocative journalist"*) and also the fact of violence against him by all three accused, as well as the fact of threatening by Vazha Gigauri. The driver states similarly as Vakhtang Sanaia does that

⁴ HRC Court Monitor Report on Vakhtang Sanaia Case: June 03, 2021.

⁵ HRC Court Monitor Report on Vakhtang Sanaia Case: June 07, 2021.

⁶ HRC Court Monitor Report on Vakhtang Sanaia Case: June 25, 2021.

Vazha Gigauri stroke his hand at Sanaia and both of them fell down, and following the noise, Sakhelashvili and Sakevarashvili also arrived at the scene and got involved in the fight.

At the same hearing, prosecutors reviewed the testimonies of rescuers and law enforcement officers, as well as the testimony of the accused and the findings of the expert examination. According to the assessment of the prosecutors, the version of the defense that the conflict started out of simple jealousy is a fabrication and contradicts other evidence.

In his closing argument, the prosecutor clarified that under Article 156 of the Criminal Code it is not necessary for the persecution to be continuous and even a single case may be construed as an act of persecution. He brought the case-law of the courts to substantiate this approach.

The prosecution requested the judge to issue a judgment of conviction and to take into account Article 53¹ of the Criminal Code envisaging “other signs of discrimination with the reason of intolerance, the offense committed with a sign of professional activity”⁷.

On August 25, 2021, Tbilisi City rendered judgment on the case of the attack on Vakhtang Sanaia: The court sentenced the accused Suliko Sakevarishvili to 6 months of imprisonment and community service for exerting physical violence against Vakhtang Sanaia on discriminatory grounds, further, the judge found Giorgi Sakhelashvili and Vazha Gigauri guilty under Articles 126 and 156 of the Criminal Code and sentenced them to 6 months of imprisonment. In addition, Vazha Gigauri was fined with GEL 2,500.

Finally, it can be said that the court sentenced all three defendants to a minimum sentence of 6 months imprisonment, which expired on August 25 i.e. on the day of rendering the judgment. As a result, they left prison the same day. Moreover, the judge, with an oral reference to the covid regulations, did not allow the lawyer of the aggrieved journalist, Vakhtang Sanaia, to enter the courtroom, thus restricting the lawyer from attending the hearing, which constitutes unjustified interference in the professional activities of the lawyer.

The court judgment caused reactions on the part of the Coalition of Human Rights NGOs for Media Advocacy. According to the coalition, justice was not properly administered in the case of Vakhtang Sanaia. The lenient attitude of the judiciary towards the attack on the journalist and his family members poses another threat of increasing aggression towards critical media. Further, according to the Coalition, since July 5, 2021, after a large-scale attack on journalists and cameramen in Tbilisi, the lives and health of media representatives have been at special risk. This factor further increases the responsibility of the judiciary to properly examine every attempt

⁷ HRC Court Monitor Report on Vakhtang Sanaia Case: July 08, 2021.

of intimidation against journalists and render judgments beyond any political motives. Unfortunately, the court failed to properly assess the risks in the case of Vakho Sanaia⁸.

- 3. The case of Iveri Melashvili and Natalia Ilychova (the case of cartographers).** HRC monitors are observing the criminal cases ongoing against Iveri Melashvili, the former director of the Bordering Relations Service of the Department for Neighboring Countries within the Ministry of Foreign Affairs, and against, Natalia Ilychova, former chief inspector of the Land Border Defense Department of the Border Police under the Ministry of Interior. They are charged under Article 308.1 of the Criminal Code envisaging the action against Georgia aimed at transferring the entire territory or part of Georgia to a foreign country and/or separating part of the territory from the territory of Georgia. On January 28, 2021, following the petition by the prosecution, presiding judge Lela Kalichenko changed the measure of restraint applied against the defendants with remand on bail of GEL20 000 each. Further, the court granted the motion of the prosecution to dismiss Iveri Melashvili from his job. The case was assigned to judge Dali Metreveli for hearing on the merits. At the current stage of the hearings, the evidence of the prosecution is being examined.

Iveri Melashvili and Natalia Ilychova were arrested on October 7, 2020, one month before the parliamentary elections. On January 28, 2021, in parallel with the hearing, representatives of the opposition and the civil sector gathered in the yard of Tbilisi City Court in support of Melashvili and Ilichova and reiterated that they had been detained illegally.

At the same time, in order to collect the amount of the bail, the civil movement Shame spread information on the social network, and as a result within a couple of hours the citizens of the campaign to assist the release of the accused managed to collect the full amount of the bail GEL 40,000⁹.

- 4. Giorgi Mumladze Case:** Giorgi Mumladze, a civil activist, is accused of committing an illegal act under Article 353(1) of the Criminal Code of Georgia implying a resistance towards a police officer, a special penitentiary officer, or other government officials with an aim to interfere in his/her activities of maintaining public order, to cease or alter his/her activities, further to coerce an officer to a manifestly unlawful act committed with violence or threat of violence. The case is still pending with Tbilisi City Court.

Outcomes of the court monitoring:

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

⁸ See the Statement by the Coalition for Media Advocacy: <https://bit.ly/3hyaWUn>

⁹ See Statement of the civil movement Shame: <https://bit.ly/3BUl8OI>

At the court hearing on April 16, 2021, the prosecution submitted that the activists were trying to inscribe and draw some symbols on the pavement with paints against which the police warned them not to do. The activists did not obey the lawful request of the police causing an administrative arrest. According to the prosecution, Mumladze being upset about the arrest inflicted bodily injuries on the two patrol officers during the arrest, namely hitting one in the face and biting the other on the hand. The prosecution did not elaborate on the issue of whether Mumladze was among those who tried to make draw symbols on the pavement resulting in the administrative arrest.

The defense referred to the fact that Giorgi Mumladze had not committed any offense. The defense further explained that they had presented the uninterrupted video footage as evidence which failed to show that Mumladze was drawing the symbols or the paints were found with him during the search. According to the defense, the administrative detention of Mumladze was an unlawful act, all the more because disproportionate force was used against Mumladze: one of the police officers punched Mumladze in the head in an act of retaliation; the minutes of the interview with the police officers do not provide that that Mumladze was aggressive. Even the “aggrieved” police officer has never mentioned that Mumladze hit him with a hand. At the hearing, the decision to prosecute did not match the testimony of the witnesses.

The defense also stated that the State Inspector had launched an investigation into the fact of using disproportionate force against and inflicting intentional bodily injuries on Mumladze by the police officers.

At the court hearing, the defendant also stated that he was not making any inscriptions on the pavement. He noted that his legs were captured when being arrested. One police officer was holding him on the waist while another police officer was holding him by the throat in a way that Mumladze could not breathe. Mumladze submitted that arresting him in such a manner was equal to torture. He further noted that during the previous arrest his rib was broken. The defendant also mentioned the persecution exerted against his family. In particular, his brother worked for the Border Police, and due to the activism of Mumladze, he was unlawfully fired and eventually won the case in court.

After hearing the parties, the judge announced a 10-minute break and then announced the decision without providing substantiation to it. In particular, remand on bail of GEL 3,000 was used against the accused Mumladze as a measure of restraint, which had to be paid within 20 days, and Mumladze would remain in custody until 50% of this amount was paid¹⁰.

On June 1, 2021, the 1st court hearing of the criminal case was held. The prosecution submitted that the evidence presented to the court proved with a high degree of

¹⁰ HRC Court Monitor Report on Giorgi Mumladze Case: April 16, 2021.

probability that the accused had committed a crime. According to the prosecution, there were neither formal nor factual grounds for dismissing the criminal case and requested to refer the case to the Panel of Criminal Cases for hearing the case on the merits.

According to the decision to prosecute, Mumladze and others intended to draw the pavement and walls with spray paints. The police warned them not to take the action but they ignored the warning inducing the authorities to assess the act as disobedience to the police. The administrative detention turned into criminal detention.

The prosecution failed to present any document at the court hearing proving the fact of the offense. The defense, therefore, argued that the police could not act lawfully in a situation where there was no offense. Consequently, the arrest was also unlawful. Only the police officers in the status of witnesses confirmed the fact of the offense at the court hearing.

The defense disagreed with the prosecution. The defense noted that the presented evidence did not confirm the fact that Mumladze had committed a crime and made a motion to dismiss the criminal case.

The court rejected the motion of the defense to dismiss the criminal case. According to the court, there is some consistent evidence in the case and a judgment of conviction could be rendered. The court also clarified that the defense's assessment of the fact goes beyond the assessment admissible at the pre-trial hearing and the circumstances should be assessed by examining the evidence at the stage of hearing the case on the merits. According to the judge, the decision to prosecute reads that instead of obeying the police officers, Giorgi Mumladze inflicted bodily injuries on them. Accordingly, in order to seek out the truth in the case, it would be necessary to examine the evidence presented by the parties¹¹.

On June 14, 2021, the first hearing on the merits of the criminal case against Giorgi Mumladze was held. The parties submitted evidence and were engaged in oral pleadings.

At the trial, the accused stated that the police were instructed beforehand to arrest him. The defendant said he was the object of political persecution by the police on the grounds of holding a political opinion different from that of the government. He also noted that there are investigations ongoing into 6 criminal cases of violence against him on the part of police officers. However, the police officers are still holding the offices up to date.

¹¹ HRC Court Monitor Report on Giorgi Mumladze Case: June 01, 2021.

The main issue at the hearing was the assessment of the legality of the administrative detention, and subsequently the criminal detention¹².

According to the assessment by HRC, a criminal act shall be deemed committed and reacted on where a law enforcement officer acts on a legal basis, within the constitutional framework. In this case, the police did not act on legal grounds. Even where the action (defacement of the image of the city) was an administrative offense, the police still did not have the right to arrest him. Such a report of the administrative offense shall be drawn up by the Supervision Service of the City Hall. This is actually the practice: in the case of such offense, the police shall establish it as a fact, and based on this the City Hall Supervision Service shall draw up a relevant report. Detention shall follow the actual offense and not the prevention of the offense. However, there is no evidence on the case file proving that Mumladze was committing an offense. The police acted in a prevention measure not reacting to the fact of the offense. Moreover, the search record proves that he neither had spray paint in his bag nor personally with him. As disproportionate force was used during the arrest the action of Mumladze to release himself was fully legitimate.

5. **The case of Malkhaz Machalikashvili:** On July 6, 2021, Malkhaz Machalikashvili was arrested by the police during a rally on Rustaveli Avenue. According to the defense counsel, Machalikashvili was present at the protest rally For Freedom and was expressing his protest. Violent groups active on the other side recognized Malkhaz Machalikashvili, verbally abused him, and physically assaulted him as the group was trying to cross the fence and create threats for Machalikashvili. Malkhaz Machalikashvili was taken away from the scene by the police and as it turned out he was consequently arrested for disobeying the order of the police and for violating the public order, the offense –under Articles 166 and 173 of the Code of Administrative Offenses. On July 7, the defense filed a motion with the court to suspend the hearing of the case on the merits, so the defense could study the case files and obtain additional evidence. On the same day, Machalikashvili was released from the courtroom. The case is being heard by Koba Chagunava, a judge of the Administrative Cases Panel of Tbilisi City Court.

Outcomes of the court monitoring:

During the reporting period, 2 court hearings were held on the case. The case is over in the first instance court.

At the first hearing, on July 23, 2021, all the witnesses for the prosecution were police officers. The witness police officers were describing the factual circumstances rather in a convincing manner, their testimonies were inconsistent and varied in each case. There was a case when the same witness police officer on one occasion claimed that Malkhaz

¹² HRC Court Monitor Report on Giorgi Mumladze Case: June 14, 2021.

Machalikashvili resisted the police arresting him, and on another occasion stated that Machalikashvili had not resisted the police at all.

No neutral/objective evidence was submitted by the prosecution. Only the testimonies of police officers being most likely subjectively interested were presented at the hearing¹³.

As for the fact of carrying a knife, Machalikashvili said that he has been living in a camp for 4 years and need a knife for living purposes to cut some things. He submitted that he had a small knife, which he also had in his pocket on July 6, at the time of his arrest; the knife mechanically unfolded in his pocket the day before (July 5) in the result of being pushed while the camp was invaded by violent groups; he took the knife out of his pocket to fold it again.

Despite the evidence presented by the defense proofing the innocence of Machalikashvili, on July 30, 2021, Tbilisi City Court announced the decision mentioning only the operative part of the verdict. In particular, the case was dismissed in connection with Article 173 of the Code of Administrative Offenses, while Machalikashvili was found guilty under Article 166(1) and Article 174(4) of the same Code and was fined with GEL 500¹⁴.

6. **The case of Beka Papashvili, Zurab Berdzenishvili, Paata Kharatishvili, and Tite Gedenidze:** HRC is monitoring the court proceedings against four civil activists: Beka Papashvili, Zurab Berdzenishvili, Paata Kharatishvili, and Tite Gedenidze, arrested on June 3, 2021, in front of the premises of the General Prosecutor's Office where a protest rally was taking place in connection with the events in Ninotsminda Children's Boarding School. The activists were detained under Article 173 of the Code of Administrative Offenses of Georgia envisaging disobedience to a lawful order of the law enforcement officer. The case is being heard by Tbilisi City Court, the presiding judge is Lela Tsagareishvili. No court hearings were held during the reporting period.
7. **The Case of Akaki Khuskivadze and Akaki Kobaladze.** HRC is monitoring the court hearings of the criminal case ongoing against Akaki Khuskivadze and Akaki Kobaladze¹⁵. The accused are charged with committing the criminal acts under Article 339.1, Article 150.2(b), and Article 151.2(a) of the Criminal Code of Georgia envisaging the following offense: directly offering to official money for his/her benefit, so that he/she take certain action during the exercise of his/her official rights and 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.

¹³ HRC Court Monitor Report on Malkhaz Machalikashvili Case: July 23, 2021.

¹⁴ HRC Court Monitor Report on Malkhaz Machalikashvili Case: July 30, 2021.

¹⁵ See Statement by Human Rights Center: <https://bit.ly/3ix8shuU>

coercing him/her mind to perform an action abstaining from the performance of which is his/her right, the act committed by a group of persons. Moreover, Akaki Kobaladze is accused of illegal purchase and storage of ammunition, the offense provided for by article 236(3) of the Criminal Code of Georgia. On December 10, 2020, Tbilisi City Court remanded the detainees on bail. They had to pay GEL 10,000 in bail. Judge Giorgi Keratishvili within Tbilisi City Court is hearing the case on the merits.

Outcomes of the court monitoring:

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

At the hearing of May 31, 2021, the prosecution made a motion requesting to enter the opinion of the biological examination into the case files and to include the expert in the list of persons to be examined. According to the prosecutor, on December 3, 2020, the case was referred for hearings on the merits and the hearing was scheduled for December 10, 2020, but before that, the prosecution had scheduled a biological examination. The opinion of the expert examination was received on May 24. Therefore, it was impossible to furnish the opinion until this time. The defense requested the adjournment of the hearing to prepare a position and introductory speech concerning the above motion. The judge granted the motion of the party and called on both parties to be ready for the next hearing to present an introductory speech¹⁶.

At the hearing of June 9, 2021, the judge granted the prosecution's motions to enter the opinion of the biological expert examination into the case file and to include the expert in the list of persons to be examined. At the same hearing, the parties made their introductory speeches.

In their introductory speech, the defense emphasized the absurdity of the charges brought and the formalistic relation of the charges to criminal law. In particular, according to the defense counsel, the charges are brought of offering a bribe without any official record and there is no testimony of the person who was allegedly offered the bribe. Moreover, the case is of circumstantial evidence. Criminal procedural and investigative actions have been carried out with some violations. The amount allegedly offered by the defendants to the late Theodore Gobejishvili in the amount of USD 50,000 was never withdrawn from the places of residence of any of the defendants, nor was the sum recorded in their bank accounts. The defense counsel underlined the political background of the case and the interest of Georgian Dream as the ruling party in the administration of justice in this case¹⁷.

On June 28, 2021, the trial continued with the examination of the prosecution's evidence. An investigator and a senior investigator of Vake-Saburtalo Main Division of the

¹⁶ HRC Court Monitor Report on the Case of Akaki Kobaladze and Akaki Khuskivadze: May 31, 2021.

¹⁷ HRC Court Monitor Report on the Case of Akaki Kobaladze and Akaki Khuskivadze: June 09, 2021.

Ministry of Internal Affairs were examined as witnesses before the court. The investigators elaborated about their investigative actions, in particular, the search of the apartment based on the report and other urgent investigative actions.

The defense asked one of the witnesses whether the activities of Akaki Khuskivadze were the basis for the search. In particular, his involvement in the election events and his activity in deciphering the election fraud schemes of the authorities. To this question, the investigator replied that the basis of the search was a report¹⁸.

On July 1, 2021, the court resumed the examination of the prosecution's evidence. Investigators of the Vake-Saburtalo Division of the Ministry of Internal Affairs were questioned as witnesses before the court. They mentioned the investigative actions carried out¹⁹.

8. **The Case of Civil Activists:** HRC monitored the trial of 7 activists (Irakli Pavlenishvili, Givi Tsintsadze, Parnavaz Grigolia, Vano Magalashvili, Nikoloz Kvitatiani, Nikoloz Narsia, and Davit Digmelashvili) arrested during the protest rally of January 16, 2021. The activists were detained under Articles 166 and 173 of the Code of Administrative Offenses of Georgia envisaging petty hooliganism and disobedience to a lawful order of a law enforcement officer. The court terminated the administrative proceedings in the part of Article 166 while holding the activists as offenders in the part of Article 173 and imposed on each of them a fine of GEL 1,200. The case was heard by Judge Natia Merabishvili.
9. **The case of Bezhan Lortkipanidze:** Bezhan Lortkipanidze, an employee of the public organization Nakresi, was charged under Article 225(2) of the Criminal Code envisaging the management, organization, and participation in group violence. Bezhan Lortkipanidze does not plead guilty. The charges are related to the events of June 20-21, 2019. Field biologist and wildlife researcher Bezhan Lortkipanidze was arrested on June 20, 2019. He was remanded in custody for 2 months. At the time being, the accused has been remanded on bail of GEL 5,000 as a measure of restraint. Judge Davit Mgeliashvili within Tbilisi City Court is hearing the case on the merits.
10. **The Case of Besik Tamliani, Zurab Budaghashvili, Tsotne Soselia, and Kakhaber Kupreishvili.** Besik Tamliani, Zurab Budaghashvili, Tsotne Soselia, and Kakhaber Kupreishvili were charged under Article 225(2) of the Criminal Code of Georgia envisaging the participation in group violence accompanied by violence, raid, damage or destruction of another person's property, use of arms, armed resistance to or assault on representatives of public authorities. In the given case a plea agreement was concluded between the Prosecutor's Office and the accused

¹⁸ HRC Court Monitor Report on the Case of Akaki Kobaladze and Akaki Khuskivadze: June 28, 2021.

¹⁹ HRC Court Monitor Report on the Case of Akaki Kobaladze and Akaki Khuskivadze: July 01, 2021.

persons: Zurab Budaghashvili, Tsothe 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. In the 2020 parliamentary elections, Besik Tamliani was a candidate for MP of the Parliament of Georgia from the electoral list of the opposition bloc UNM - Strength in Unity. The criminal case against Besik Tamliani is still pending in Tbilisi City Court. The criminal case is being heard by judge Aleksandre Iashvili.

- 11. The Case of Nikanor Melia:** Former MP Nikanor Melia has been charged under Article 225(1)(2) of the Criminal Code of Georgia envisaging the organization of and participation in group violence. The current case pending with Tbilisi City Court is connected with the events of June 20-21, 2019. On February 17, 2021, the court granted in full the motion of the Prosecutor General of Georgia, Irakli Shotadze, to replace the measure of restraint used against the accused with remand on bail. On May 10, 2021, the court also granted the motion of the prosecution to change the measure of restraint applied against the accused to a lighter one. In particular, remand in custody as a measure of restraint applied against Nikanor Melia was changed to remand on bail of GEL 40,000. The bail was allocated by the European Endowment for Democracy (EED) under an agreement between the opposition and the government. The hearing on the merits of the criminal case is going on in Tbilisi City Court, the presiding judge is Nino Chakhnashvili.

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*²⁰.

Outcomes of the court monitoring:

An HRC court monitor is observing all court hearings of the criminal case against Nikanor Melia. During the reporting period, 13 court hearings were held on the case²¹.

During the reporting period, some political statements were expressed by the defense in almost all of the court hearings. The defense also focused on the political motives of the case.

On April 13, 2021, the defense made a motion to enter new evidence into the case files. In particular, the defense requested to admit in evidence the interview of Irakli Kobakhidze spread on TV media. In the interview, Irakli Kobakhidze, the chairman of the Georgian Dream, talks about the discussion among the officials held on 17, 2021, at

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

²¹ HRC Court Monitor Report on Nikanor Melia Criminal Case: 17-Feb-21; 08-Apr-21; 13-Apr-21; 29-Apr-21; 10-May-21; 13-May-21; 21-May-21; 25-May-21; 27-May-21; 03-Jun-21; 10-Jun-21; 15-Jun-21; 24-Jun-21.

17:00 regarding the use of various means to enforce custody as a measure of restraint against Nikanor Melia.

During the trial of April 14, 2021, there were frequent verbal confrontations between the accused and the judge, as well as between the judge and the defense counsels. The judge tried to restrict the speech of the defendant and his defense counsels on the occasions when they conveyed political messages. However, the judge oftentimes failed to talk over the defense due to the loud remarks made by the defense and so she on many occasions was unable to stay in charge of the proceedings. Further, the judge failed to ensure the maintenance of order in the courtroom for which she had specific levers as provided by the law. In particular, the procedures described in Article 85 of the Criminal Procedure Code.

As in previous trials, referring to the high public interest, the defense has repeatedly made a motion for live coverage of the court proceedings which the court usually rejected. In this regard, the defense stated that there was some impression that the judge did not wish the current events happening at the court proceedings to be made known to the public, and further suspected that the judge had already made a decision as instructed by some high-ranking officials to change the measure of restraint against Nikanor Melia from remand on bail to remand in custody.

The defense also requested to enter into the case files the minutes of the interview with the former officer of the Ministry of Internal Affairs, Ivane Gulashvili. In the interview, Gulashvili mentions that following the order of the Deputy Minister of Internal Affairs, the video recordings from the cameras located in front of the Parliament of Georgia and that of the side facade were destroyed. The defense was denied access to the video recordings. Neither the prosecution could obtain the recordings as the recordings were destroyed before the prosecution arrived at the scene of the crime, which is also confirmed by the Report of the Public Defender on the events of June 20-21, 2019. *The defense argues that the evidence intended for the case files has been deliberately destructed as there are signs of involvement in and interest of high-ranking officials and law enforcement agencies with the case.*

According to the defense counsel, since all the above factual circumstances became known on March 21, 2021, the defense could not ensure the submission of the evidence before the hearing of the case on the merits. Therefore, the defense counsels made a motion under Articles 93 and 233 of the Criminal Procedure Code to enter the interviews of Irakli Kobakhidze and Ivane Gulashvili into the case files as new evidence and to include the mentioned persons in the list of persons to be examined. The motion was rejected by the court.

Stemming from the outcomes of the court monitoring, we may conclude that the testimonies of the prosecution witnesses questioned in the case related to the events of June 20-21, 2019 fail to prove clearly the culpability of Nikanor Melia.

The principle of equality of arms and adversarial proceedings shall be observed in the court proceedings. The parties shall have the opportunity to freely make motions and express their opinion on the motions of the opposing party. However, some problems stem from the issue of assessing and granting the motions made by the defense, as in some cases the grounds for rejecting the motions are abstract and unsubstantiated.

12. **The case of Nikanor Melia and Zurab Adeishvili.** The proceedings are pending with 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 court of the first instance in the charges under Article 205¹ of the Criminal Code envisaging the concealment of property by means of fraudulent or sham transactions. Judge Vepkhia Lomidze is reviewing the case within the Court of Appeals.
13. **The Case of Mikheil Saakashvili and Teimuraz Janashia:** Former President of Georgia, Mikheil Saakashvili and former Head of Special State Protection Service, Defense Teimuraz Janashia have been charged under Article 182(b) of the Criminal Code envisaging misappropriation of budgetary funds in large amounts (GEL 8,837,461). According to the Prosecutor's Office, in accordance with the existing agreement between Mikheil Saakashvili and Teimuraz Janashia and the instructions issued by the President, from September 2009 to February 2013, the state funds in the amount of GEL 8,837,461 were embezzled in secret for various services rendered to the President of Georgia and to other individuals in Georgia and abroad. The case is being heard at Tbilisi City Court, the presiding judge is Badri Kochlamazashvili.

During the monitoring, HRC released an analytical document: the assessment of the right to be tried within a reasonable time in the criminal cases ongoing against Mikheil Saakashvili²².

Outcomes of the court monitoring:

During the reporting period, only two court hearings were held in the ongoing criminal case against former President Mikheil Saakashvili.

On February 2, 2021, the case was due to continue with the examination of the evidence of the prosecution (volume 7 of the written evidence), however, because of a technical defect, no voice could be heard serving for the reasons for the adjournment of the

²² See Assessment of the right to a trial within a reasonable time in the ongoing criminal cases against Mikheil Saakashvili, Human Rights Center, 2021:<https://bit.ly/3lO4qeA>

hearing following the motion by the defense. At the hearing, only the issue of the measures of restraint was assessed.

The defense submitted that the case was politically motivated. According to the defense, it was evident that remand in custody applied against Saakashvili failed to comply with the grounds for using custody as a measure of restraint, so the defense requested the decision of remand in custody to be reversed. The prosecution also expressed an opinion; however, what was the statement of the prosecution in particular at the remote hearing could not be heard by the HRC court monitor.

The judge, without providing any adequate legal reasoning with a 'one size fits all approach' upheld the ruling of remand in custody as a measure of restraint. The judge only clarified that there were no new circumstances, no formal and factual grounds on which the court could assess the issue of changing or revoking the measure of restraint in the form of remand in custody²³.

On March 30, 2021, there was held another hearing of the criminal case. Due to the Covid pandemic, the defense counsels were attending the hearing remotely through Webex software, while the prosecutors were physically present in the courtroom. For the most part of the proceedings, the voices of the prosecutors and the judge could hardly be heard due to technical reasons.

The hearing of the case resumed with the examination of the written evidence of the prosecution. They read only the titles/nominations of the evidence while leaving the substantial part of the evidence unread. Neither the defense asked any question and had any comments on the evidence or the content of the evidence.

At the same court hearing, the issue of the measure of restraint used against Saakashvili in the form of remand in custody was reviewed following the motion by the defense. However, the judge again upheld the applied measure of restraint in the form of remand in custody on the grounds that there was extensive evidence to be examined, numerous witnesses to be questioned and so the defendants could exert an influence on the witnesses²⁴.

According to the assessment by HRC, the argument brought by the judge does not provide the grounds for using the custody as a measure of restraint and does not serve a legitimate purpose as despite the measure of restraint used against the accused persons they are still at large, so logically the risks named by the judge do exist anyway at this stage.

14. The Case of Mikheil Todua (Mikhailo): On December 25, 2013, under the judgment rendered by Tbilisi City Court, Mikheil Todua was sentenced to 9 years of imprisonment. He was convicted of a drug offense, namely purchasing, storing,

²³ HRC Court Monitor Report on the Criminal Case of Mikheil Saakashvili: February 02, 2021.

²⁴ HRC Court Monitor Report on the Criminal Case of Mikheil Saakashvili: March 30, 2021.

and consuming 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 the Tbilisi Probation Bureau to lift the house arrest imposed against Mikheil Todua and to apply imprisonment against 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 delivered 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 at the hearing, which was granted by the judge, and Mikheil Todua was ordered to stay home from 19:00 to 08:00, instead of 21:00-08:00.

15. **Case of Nodar Rukhadze.** HRC observed the court hearing of the administrative case of Nodar Rukhadze, an activist of the movement Shame arrested on February 23. The law enforcement officers detained him under Article 173 of the Code of Administrative Offenses of Georgia. The judge held Nodar Rukhadze as an offender and imposed on him a fine of GEL 2,000. The case was not appealed to a higher court.

Outcomes of the court monitoring:

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

At the court hearing of February 23, 2021, the prosecution elaborated on the offense committed by Nodar Rukhadze. The statements by the prosecution were of a superficial and general character. The party could not substantiate specifically in what the offense was expressed, why the arrest was a necessary means for preventing the offense, and whether proportional force was used against the detainee (7 police officers were involved in the arrest of Rukhadze).

The representatives of the Ministry of Interior were repeating themselves that Nodar Rukhadze was standing at the side gate of the Parliament through which vehicles were constantly coming in and out due to "some event" taking place in the Parliament that day.

At the court hearing, the representatives of the Ministry stated that Nodar Rukhadze was addressing them with the term 'slaves' which was insulting to them. However, when asked by the judge, the officers failed to clarify the substance of the offense constituted by the fact of naming them 'slaves' in connection with Article 173 of the Code of Administrative Offenses. The video footage clearly shows that Nodar Rukhadze did not call the police "slaves". Afterward, the police submitted that Rukhadze was calling them 'slaves' while driven away in the police car, however failing to provide evidence of this fact at the hearing. Further, the witnesses could not explain

why it was a problem for Nodar Rukhadze to bring some green stuff with him to the scene. One of the officers explained that he had simply mentioned the fact. However, by mentioning the fact the officer began his answer to the question of what kind of offense Nodar Rukhadze had committed. The police also mentioned that they had twice warned Nodar Rukhadze to leave the place, but he did not obey i.e. he did not fulfill the lawful request by the police.

When asked by the defense counsels what time was given to the alleged offender to fulfill the request, the officers answered that maybe even 5 minutes. However, the officers submitted to the judge exactly in the sense that they could not wait for Nodar Rukhadze to leave the scene and allowing the vehicles to leave the territory through the gate of the Parliament.

During the statements by the police officers and arguments, it was revealed that they clearly knew who Nodar Rukhadze was, noticed his activity, and had prejudiced attitudes towards him. One of the officers repeated several times that Nodar Rukhadze is generally an aggressive person and acted aggressively even at the moment of breaking the law.

According to the assessment by HRC, even where the expectations of the police were true that Nodar Rukhadze would not leave the area when vehicles were entering or exiting the gates of the Parliament, the need to arrest him could not be substantiated. Failure to comply with a lawful request of the police (meaning to leave the territory and move further) does not in the first place create a need to arrest a person.

The police officers could not bring the substantiation of the threats to eradicate which the arrest was necessary and why it was not enough to simply push Nodar Rukhadze to the side for a moment when vehicles were to enter or leave the gates of the Parliament. Why could not the seven police officers regulate the issue by halting the vehicle for a while and removing Nodar Rukhadze two meters away from the gate if the health of Rukhadze or those in the vehicle were endangered? Alternatively, if there was another kind of danger creating the necessity to remove and arrest him, what was that danger? Further, the issue of why the "maintenance of order at the event" constituted the greater public interest than the exercise of freedom of expression by one person could not be substantiated.

As for the fact why 7 officers were arresting him, the officers referred that Rukhadze was resisting the arrest. Further, despite the resistance by Nodar Rukhadze, substantiation was needed for the risks that would exist in the case of not using force by the police. Moreover, what kind of public good would be at the risk, and why was the eradicating of the risk prevailing the other public good²⁵.

²⁵ HRC Court Monitor Report on the administrative detention case of Nodar Rukhadze: February 23, 2021.

16. The Case of Giorgi Ugulava (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*. About a year later, on June 3, 2021, Tbilisi City Court with presiding judge Badri Kochlamazashvili began a hearing on the merits of the case.

Outcomes of the court monitoring:

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

On June 3, 2021, began the hearings on the merits of the ongoing criminal case against Giorgi Ugulava. At the hearing, the court found out that the parties were not engaged in negotiations over a plea agreement. The prosecution stated that the Article in question (Article 126 of the Criminal Code) was under the scope of amnesty law if there would be consent on the part of the victim entered into the case files. Giorgi Ugulava clarified that he refuses the amnesty and will fight to the end to prove the truth through the court because the attack on him at the airport was organized by the State Security Service on behalf of Bidzina Ivanishvili. The prosecution reiterated the position that it is important to listen to the position of the victim and to refer the case for amnesty regardless the fact of whether the accused agrees to the amnesty. The judge clarified that the amnesty could not be applied to the case and the prosecution could not be terminated unless there was the consent of both parties in the case files.

At the same hearing, the parties made their introductory speeches. The prosecution stated that there would be examined the victim himself, witnesses and experts all testifying that Giorgi Ugulava committed the offense.

According to the defense, the case is a clear example of how the authorities persecute a person. According to Giorgi Ugulava, he has watched the footage taken through video cameras and has also taken part in the examination process. It is clear from the footage how Gavashelishvili and Parkadze lie in wait for Ugulava. In particular, Parkadze approached the table of Ugulava and began swearing at him. Ugulava tried to stop him from the verbal abuse through a verbal appeal as a woman was sitting at the table too. At that time Gavashelishvili arrived at the scene, grabbed Ugulava, and attacked him by beating him. The camera footage shows how a person is taking the scene on a phone being prepared in advance for the event whereas no one knew what was going to happen there. As soon as the violence ceased, the person shut off the phone and entered the security room. From the room appeared the police officers to whom the person gave instructions. At that moment, Gavashelishvili tells the officers that he was beaten by Ugulava and suffered pain. Ugulava stated at the court hearing that there is cynical

justice in Georgia, like in Russia and Belarus, and therefore he shall bring the case to an end²⁶.

On June 29, 2021, the hearings of the case resumed. The victim Badri Gavashelishvili remotely participated in the hearing and was to be questioned by the prosecution. The defense objected that the victim Badri Gavashelishvili was not in the courtroom. After the remote contact, it became known that he was at a funeral in Kakheti. The judge asked additional questions, whether he had any health problems, for example. Gavashelishvili noted that he "felt very bad" and also mentioned the post-Covid situation. The responses of the victim were not consistent and convincing.

Giorgi Ugulava often spoke at the court hearing, including interrupting the judge and addressing the prosecutors with remarks. He also mentioned the independence of the court and its reputation, which would have been further damaged if the court had not taken into account the context of the case and allowed the prosecutors to examine the victim remotely²⁷.

At the hearing of July 3, 2021, the senior expert of the narcology service, the chief expert of the forensic examination division of the Ministry of Interior, and a medical expert were examined.

According to the senior expert of the narcology service, s/he conducted a narcological expert examination of Davit Parkadze and Badri Gavashelishvili, according to which they were not under the influence of drugs.

According to the chief expert of the forensic division of the Ministry of Interior, the item of the expert examination was the clothes of the victim, Badri Gavashelishvili: long and short-sleeved T-shirts. The witness read the concluding part of the opinion of the expert examination, which mentioned the parts of the T-shirt that wear torn as a result of physical strength and not because of normal wear and tear. He noted that it was impossible to determine the time of the damage due to the lack of appropriate methodology. The expert examination was conducted based on the decision of the prosecutor/investigator. The item to be examined was sealed and signed.

According to the medical expert, on December 11, 2019, a medical examination was appointed in connection with the injuries of citizens Davit Parkadze and Badri Gavashelishvili. The examination revealed that they had hemorrhages and bruises. The time of the injuries does not contradict the dates of the decision. The injuries are mild posing no threats to health²⁸.

²⁶ HRC Court Monitor Report on the Criminal Case of Giorgi Ugulava: June 03, 2021.

²⁷ HRC Court Monitor Report on the Criminal Case of Giorgi Ugulava: June 03, 2021.

²⁸ HRC Court Monitor Report on the Criminal Case of Giorgi Ugulava: July 02, 2021.

17. **The Case of Giorgi Ugulava (Tbilisi Development Fund Case).** The Supreme Court of Georgia found Giorgi Ugulava the former Mayor of Tbilisi and one of the leaders of the Party *European Georgia* guilty of committing the offense provided for by articles 182(2)(d) and (3)(a)(b) of the Criminal Code of Georgia envisaging the unlawful appropriation or embezzlement of another person's property or property rights by using official position. By the Judgment of the Supreme Court from February 10, 2020, Giorgi Ugulava was sentenced to imprisonment with a term of 3 years, 2 months, and 8 days. *He was released from prison based on the Act of Pardon of the President of Georgia from May 15, 2020.* The case of Giorgi Ugulava was heard in the Supreme Court under the chairmanship of former Prosecutor General, Shalva Tadumadze.
18. **The Case 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 *City Park* and with the organization of group action and with coercion on the episode of Marneuli. The case will be heard by judge Valerian Bugianashvili of Tbilisi City Court.

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

During the monitoring, Human Rights Center published a document: Legal Analysis of the Criminal Cases ongoing against Giorgi Ugulava²⁹.

19. **The Case of Irakli Okruashvili and Zurab Adeishvili** i.e. the 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 Amiran (Buta) Robakidze in the left armpit 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 at the scene that they had "to save the reputation of the patrol police" and to give the incident the appearance of an armed assault on the police officers.

²⁹ See *Legal Assessment of the Criminal Cases ongoing against Giorgi Ugulava*, Human Rights Center. 2020: <https://bit.ly/33SqhZx>

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.

The case hearings were resumed on June 9, 2021, by judge Lasha Chkhikvadze after the case was suspended for several months. The hearings were resumed with examinations of the evidence submitted by the prosecution.

Outcomes of the court monitoring:

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

The hearing of June 9, 2021, was of a technical character. After being opened it was closed shortly after clarifying a few details. First of all, it should be noted that at the request of the parties, the proceedings were conducted partly online as only the judge, the secretary of the hearing, and the attending public were gathered in the courtroom. For the next meeting, it was agreed that the parties would also be present in the courtroom³⁰.

On July 6, 2021, the examination of the prosecution witness continued. A patrol police officer of Didube-Chugureti who was on duty in 2004 was examined. The witness was the person who, together with the partner stopped a car of BMW brand for the first time on Tsereteli Avenue in Tbilisi. They received a message that a car had hit a citizen, and when they arrived at the scene, the citizens told them that they had beaten someone and then fled in that car. They continued the operation as the car was "in the list to be seized".

Around 1:00 am, the car was spotted and stopped by him and his partner. Once the car was stopped, the driver got out and the police officer talked to him about the above fact. The driver said that no beating had taken place. Meanwhile, the other persons, 4-5 of them also got out. The situation became tense due to the conversation.

The conversation among them was loud. Because of this, the police officer called for help by walkie-talkie. Soon the front right door of the BMW opened and the witness heard a suspicious sound, like a clang. The witness said he felt some danger and because of this, he made the driver lying on the ground using proportional force. The police officer had his gun in the ready position. Exactly at this moment, he heard the sound of a shot, though his focus was on the driver and he could not see anything. When he asked the partner what was going on, he replied: "I guess it was Bashala". The witness meant Grigol Bashaleishvili, the patrol inspector to whom belonged the firearm from which Buta Robakidze was shot and killed.

³⁰ HRC Court Monitor Report on the Criminal Case of Irakli Okruashvili and Zurab Adeishvili. June 09, 2021.

The help arrived in about 1 minute, first this was Grigol Bashaleishvili and Levan Lobzhanidze, and then others: about 7-8 vehicles. According to the witness, he and his partner were confused because they saw a fallen boy with blood on his face. She tried to help the boy but could not feel his pulse. The witness said that if he remembers right he called the ambulance himself. When questioned by the prosecutor, the witness replied that no one from the wanted car had a gun and there was no weapon found in the car as they have inspected the car.

According to the witness, he got in the car in 5-10 minutes, where he sat for about 20-30 minutes. Soon afterward a man with white hair and an expensive suit, about 60-65 years of age, and also Maizer Liparteliani, the platoon commander, came to the car. The person in the suit told him we have to report this as needed. In particular, as if Bashaleishvili shot in reaction: "you are a police officer think twice not to be involved in trouble as you have a family" and words like this. Maizer also confirmed that this was the way to handle the issue and that everyone was aware of the case including Zura Mikadze. He confirmed that all was clear. He says that he felt the danger in reality. After getting out of the car, he went to the scene again and saw that some weapons (Nagan) and a grenade were placed on the trunk of the BMW.

The officers from the criminal police also arrived at the scene. Other persons from the car were handcuffed lying on the pavement. Irakli Pirtskhalava, Bakradze, Mikadze and Guram Donadze who was in charge of the press center were on the spot. They were giving instructions. The witness and his partner were instructed to take the boys for a narcological examination. They took one or two of them. After the drug test, they were taken to the police station.

He wrote a report as instructed by Meizer Liparteliani that the boys had guns, shot at police officers and Bashaleishvili fired back. He gave the same testimony afterward at the prosecutor's office. Later, after 4-5 months, being instructed by Bashaleishvili he submitted in writing that Bashaleishvili had shot accidentally. Bashaleishvili assured him that everyone was aware of the case and now it was necessary to record in this way.

At the court hearing, the witness repeated several times that the camera crew came with the help, and in general, all happened in the above way. The prosecutor noticed that according to the well-known video footage, Chanturia the partner to the witness takes the weapon from the BMW, while the witness himself says in the video footage that the weapon is found on the scene. In this regard, the witness clarified that the video footage is not real and has been edited. Later, the witness was asked by the defense what was meant by 'edited', however, the witness could not convincingly explain the issue.

Having been asked many clarifying questions, the witness submitted that the scene as seen in the video is not staged but the video footage does not correspond to reality. The witness replied to the defense that he had not received any threats from anyone other than the person dressed in a suit. However, the witness added that he did not change

his testimony before the new investigation because the situation around him was the same: neither the officials nor the government had changed.

When asked by the defense counsel, the witness responded that he had not seen Irakli Okruashvili at the scene, nor had he heard anyone speaking with Irakli Okruashvili on a phone. Although the testimony of the witness is important for the incident in general and the case of the death of Buta Robakidze, his testimony did not mention the accused persons, especially in the context of pressure and witness intimidation³¹.

20. The Case of Irakli Okruashvili. The Leader of the party *Victorious Georgia*, Irakli Okruashvili was accused under article 225 of the Criminal Code related to the events of June 20-21, 2019 envisaging the organization of group violence 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 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, and the hearings of the case have not begun yet. In the Court of Appeals, judge Vepkhvia Lomidze will hear the case.

During the monitoring, HRC published an analytical document: Legal Assessments of the Criminal Cases ongoing against Irakli Okruashvili³².

21. The Case of citizens detained near the premises of Isani District Election Commission. HRC observed the administrative legal proceedings of 7 persons detained on November 4, 2020, 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.

Outcomes of the court monitoring:

During the reporting period, 4 court hearings were held on the case³³.

³¹ HRC Court Monitor Report on the Criminal Case of Irakli Okruashvili and Zurab Adeishvili. July 06, 2021.

³² See Legal Assessment of the Criminal Cases Ongoing against Irakli Okruashvili, Human Rights Center. 2020. <https://bit.ly/31NEpka>

³³ Reports of HRC Court Monitor on the case of the citizens detained near the premises of Isani District Election Commission: 11-Mar-2021; 19-Mar-21; 02-Apr-21; 29-Jun-21.

At court hearings, patrol police officers testified that civil activists were swearing both at the police officers and the representatives of the authorities. The protesters also tried to block the road to which they were not allowed. They were therefore arrested for disobeying the lawful request of the police. During the examination of the video footage which was 55 minutes long, the court monitor could enter the use of obscene words (swearing) twice. The judge also examined other video evidence showing the facts of alleged assaults. However, it was impossible to identify the person who uttered the insulting words in the examined video. Consequently, the video submitted by the police did not prove that the civil activists were swearing in their direction. Further, the video did not record the arrest of several activists to which the representatives of the Ministry of Interior also agreed. It could be seen that several people were being arrested and placed in a patrol car. The treatment of civil activists and the force used by the police against them was disproportionate: the number of police officers exceeded the number of persons to be detained.

22. **The Case of Lasha Chkhartishvili:** On June 20, 2020, Tbilisi City Court found one of the leaders of the 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 judgment in three court sessions. Chkhartishvili appealed the judgment to Tbilisi Court of Appeals, but the admission of the appeal was rejected.
23. **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, organization of group violence, and participation in 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 afterward.
24. **The Case of Koba Koshadze:** The member of the guard of Irakli Okruashvil, of the leader of the party *Victorious Georgia*, was charged with an offense under Article 236 of the Criminal Code envisaging illegal purchase, storage, and carriage of firearms and ammunition. After the Prosecutor's Office approached the court with a motion to change the measure of restraint, the court canceled the measure of restraint in the form of custody and remanded the accused on bail of GEL 5,000. Koba Koshadze was released from the courtroom. No more hearings on the merits of the case have been scheduled for more than a year.

HRC reviewed the criminal case ongoing against Koba Koshadze in the document **Legal Assessments of the Criminal Cases ongoing against Irakli Okruashvili**³⁴.

25. The court of first instance is hearing **the criminal case launched against Mikheil Saakashvili, Ivane Merabishvili, Zurab Adeishvili, Davit Kezerashvili, and Gigi Ugulava** with written evidence of the prosecution being examined. The case concerns the dispersal of the protesters en masse on November 7, 2007, invading TV company Imedi and “seizing” the TV company. Besides 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 with presiding judge Nino Eleishvili.
26. **The Case of 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 the 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. Following a pardon act by the President of Georgia, on April 27, 2021, the convict was released from the penitentiary facility³⁵. The President made the decision after the Agreement of April 19, 2021 (Charles Michel Document) was signed by the opposition parties, according to which a legal mechanism of release should have been applied to Giorgi Rurua. Prior to the Agreement, on March 31, 2021, the President of Georgia, Salome Zurabishvili, stated that she would not pardon Giorgi Rurua, citing the fact that "the public knew better than herself why she would not make the decision."³⁶

Further, the judgment rendered by the first instance of the court has been appealed by the defense with Tbilisi Court of Appeals.

During the monitoring, Human Rights Center published an analytical document: The Criminal Case of Giorgi Rurua: Legal Analysis³⁷.

27. **The Case of Nika Gvaramia** - The founder of a TV Company *Mtavari Arkhi* and the Director-General of the same TV company, Nika Gvaramia is charged under article 220 of the Criminal Code envisaging the abuse of managerial, representative, or other special powers in an enterprise or other organization against the lawful

³⁴See Legal Assessment of the Criminal Cases Ongoing against Irakli Okruashvili, Human Rights Center. 2020: <https://bit.ly/31NEpka>

³⁵ See more information: <https://bit.ly/2VHvnGE>

³⁶ See more information: <https://bit.ly/3lmCaxY>

³⁷ See The Criminal Case of Giorgi Rurua: Legal Analysis, Human Rights Center, 2020: <https://bit.ly/2CkSOfd>

interests of this organization for acquiring benefits or advantage for oneself or another person, which has resulted in considerable damage. The case is being heard at Tbilisi City Court with evidence of prosecution being examined.

During the monitoring, HRC published an analytical document: Legal Assessments of the Criminal Case ongoing against Nika Gvaramia³⁸.

Outcomes of the court monitoring:

Tbilisi City Court continues the hearings of the ongoing criminal case against Nika Gvaramia, the General Director of TV company Mtavari Arkhi. In 2021, the HRC monitor observed 18 court hearings.

At a hearing of February 2, 2021, it became known that one of the two prosecutors in this criminal case had been replaced and the other had been promoted. The judge inquired whether the prosecutor in the case who had been promoted and was still a prosecutor at the trial was eligible to be the prosecutor. In response, the prosecutor submitted "a written assignment" issued by the First Deputy Chief Prosecutor confirming the prosecutor's right to participate in the same case again.

At the trial, the defense made a motion to enter some new evidence into the case files. The motion was requesting the HRC analyst to be examined as a witness and the analytical document of HRC³⁹ to be entered into the case files as evidence, on which the prosecution noted that the motion was large and the prosecution needed time to present its position on the motion and would state the position regarding the motion at the next hearing. The judge accepted the argument by the prosecution argument and adjourned the assessment of the motion until the next hearing.

At the hearing of February 11, 2021, the prosecution clarified that the HRC analytical document did not meet the standard of evidence, the written opinion and the testimony of its author could not provide a piece of evidence and so the motion of the defense should have been rejected. Nevertheless, the judge granted the motion of the defense in both parts: 1. The analytical document was placed in the case files as evidence and 2. The author of the document was examined as a witness at the trial. The judge further explained that in the classical sense, the document presented is no evidence, i.e. it neither confirms nor denies the criminal offense. The analytical document has an informative meaning and helps the court to make assessments along with other evidence taking into account the elements underlined in the document.

At the next hearing, it was decided that the court proceedings on the case of Nika Gvaramia would be held once a week, which was followed by questions from the

³⁸ See Legal Assessment of the ongoing Criminal Case against Nika Gvaramia: Human Rights Center, 2020: <https://bit.ly/33NghAb>

³⁹ See Legal Assessment of the ongoing Criminal Case against Nika Gvaramia: Human Rights Center, 2020: <https://bit.ly/33NghAb>

accused, as, according to him, the intensive court hearings would hinder his professional activities. Further, Gvaramia stated that the trial had been adjourned for almost a year and now the intensive scheduling of court hearings is likely to be linked to a political context. According to the judge, the court hearings were adjourned due to the difficult situation created by the Covid-19 pandemic. Regarding the political context, the judge said that the parties themselves are trying to add political elements in the court hearings of the case. At the same time, the judge clarified that the term of the case hearing is strictly defined by the criminal law as 2 years, 1 year has already passed, and scheduling hearings for once a week would not affect much the professional activities⁴⁰.

On February 17, 2021, the trial was to continue with the examination of the prosecution's evidence i.e. with the testimony of witnesses. The hearing was adjourned because another hearing was scheduled in connection with the measure of restraint in the case of Nikanor Melia, the leader of United National Movement. As the judge explained, the hearing of the case of Nikanor Melia was held in the same courtroom as the case of Nika Gvaramia and so it was necessary to surrender the courtroom⁴¹.

On February 24, 2021, the hearing resumed with the assessment of the motion of the defense. The defense stated in the motion that on February 22, 2021, the candidate for the prime minister, Irakli Gharibashvili, publicly stated the following: "Nika Gvaramia is the culprit and the principal culprit." While, on February 23, Irakli Kobakhidze, the chairman of Georgian Dream, also publicly stated that "Gvaramia is a criminal and the main creator of polarization." Regarding the statements, the defense, with the help of a journalist, drew up a report, retrieved the recordings, and transferred them to a disk. The defense made a motion that these statements, recorded on the disk, be entered into the case files as evidence and that the journalist who retrieved the statements from the archive and transferred them to the disk be examined as a defense witness. According to the defense counsel, the recording proves the fact as said before: Gvaramia has been persecuted on political grounds and the criminal case against him is politically motivated. The prosecution disagreed with the motion, stating that it was not a piece of evidence and also that the procedure for obtaining evidence was violated.

The judge rejected the motion and clarified that any statement, circulated in public, could be presented as evidence, however, no such statement taken separately could be a piece of evidence. According to the judge, the motion failed to meet the standards for evidence.

The trial continued with the examination of a prosecution witness. The witness is one of the representatives of the advertising agency, who explained that they served large clients: companies, for example, Tegeta Motors, and placed advertisements in the TV

⁴⁰ HRC Court Monitor Report on the Criminal Case of Nika Gvaramia: February 02, 2021.

⁴¹ HRC Court Monitor Report on the Criminal Case of Nika Gvaramia: February 17, 2021.

space. The witness said that Tegeta Motors announced a tender in 2018, which was awarded to his agency, but failed to win the tender announced in 2019, which, he said, is completely natural as possibly another company offered better terms to the customer. Further, the witness elaborated that barter is an accepted form of agreement in the advertising market. No other information useful for the case was provided to the court by the witness⁴².

Defendant did not attend the hearing on March 10, 2021, due to the deteriorating health condition. He agreed the hearing to be continued without his participation. The hearing was to continue with the examination of the prosecution's evidence, namely the questioning of two witnesses. As it became known at the hearing from the prosecution, one of the witnesses could not be contacted while the other witness underwent surgery and had no opportunity to appear in court. The parties agreed to examine only some accounting documents, service contracts, extracts from the Entrepreneurial and Public Registry, as no in-depth study was required for the mentioned pieces of evidence and it would be easier to examine the evidence in such a manner. They examined only the above evidence from 5 different volumes of the case files, with reading only the titles. The defense had no questions regarding this evidence⁴³.

The defendant did not attend the hearing of March 10, 2021, either due to the deterioration of the health condition. However, he agreed the hearing to be continued without his participation. At the hearing, the judge mentioned that the statement of Transparency International Georgia was submitted to the court through the clerk's office as the opinion of a friend of the court (*amicus curiae*). The judge noted that the imperative requirement of the law for submitting the *amicus curiae* opinion to the court had been violated. According to the judge, the opinion does not meet the structural standard either, as the opinion of a friend of the court exceeds 30 pages.

Article 55 of the Code of Criminal Procedure provides for the requirements that must be met by a written opinion of a friend of the court. The *amicus curiae* opinion may be submitted no later than 5 days before the hearing on the merits of the case, the volume of which should not exceed 30 pages. In this case, according to the legislation, the court's statement that the deadline for its submission was violated, as well as the volume was too large, is correct.

On April 4, 2021, the hearings resumed with the examination of the evidence of the prosecution again. One of the prosecution witnesses was examined: a close friend to Nika Gvaramia, the producer of the political news of Mtavari Arkhi. Moreover, the witness is the owner of 30% of the shares of the trading house Inter Media Plus. The witness was asked how and when the dividends were distributed in Inter Media Plus. The prosecutor showed to the witness a tripartite purchase agreement to which the

⁴² HRC Court Monitor Report on the Criminal Case of Nika Gvaramia: February 24, 2021.

⁴³ HRC Court Monitor Report on the Criminal Case of Nika Gvaramia: March 10, 2021.

witness submitted that the document was unknown to him and that he had not participated in drafting the text of the agreement and in the process of concluding the agreement.

On April 14, 2021, another prosecution witness was examined: an expert from the National Forensic Bureau. The witness was questioned about the computer equipment and mobile phones seized from Inter Media and Inter Media Plus. The expert elaborated on the procedural issues as questioned by the prosecution. However, the expert did not provide to the court the specific results of the expert examination⁴⁴.

On April 22, 2021, three prosecution witnesses who were the investigators of the Office of the Prosecutor General were examined. One of the witnesses explained that s/he together with the investigative team took part in the investigative actions based on the ruling by the judge. In particular, s/he seized some financial documents, agreements, bills of exchange, founding documents from Inter Media Plus. In addition to the seizure, the witness participated in the examination of the documents seized from Inter Media Plus. At the initial stage of testimony, it was unclear whether the seizure and examination related to the same documents. After the defense asked the question, the witness clarified that he had conducted an investigative measure to examine the seized document. The witness noted that the seized documents were large and they were seized by binders and were sealed according to the nomination of the binders, and afterward the sheet was drawn up enlisting each document placed in the binders which were consequently sealed too. A representative of Inter Media Plus also attended the investigative actions.

On May 27, 2021, the main witness in the case was questioned at the court hearing who is currently the director of Formula, the founder, and the director of Inter Media and Inter Media Plus. The prosecution asked the main witness whether an employee of Rustavi 2 was a shareholder in the trading house. In this regard, the witness noted that the accused Nika Gvaramia advised the inclusion of a person who at the same time was a shareholder of the trading house. Furthermore, according to the witness, s/he also knew from Gvaramia that the current government began putting pressure on him and some financial guarantees were needed for the financial stability of Rustavi 2. Moreover, the shareholder of the trading house Inter Media Plus needed to be a person trusted by Gvaramia, and Gvaramia himself would not appear in the deals, for there might be pressure on potential customers. Further, where Rustavi 2 sells advertising time without the trading house, as was previously the case, this would also pose a risk of putting pressure on customers⁴⁵.

At the court hearing of June 23, 2021, the director of Formula was questioned for the third time, this time by the defense. The questions concerned the possibility of reaching

⁴⁴ HRC Court Monitor Report on the Criminal Case of Nika Gvaramia: April 14, 2021.

⁴⁵ HRC Court Monitor Report on the Criminal Case of Nika Gvaramia: May 27, 2021.

an agreement with the client in a foreign currency after the 'larization' process, to which the witness responded that this was possible. Further, the question was asked whether there is a normative act obliging trading houses and advertising agencies to offer the same terms and conditions to different customers, to which the witness replied that there is no such a normative act; when asked whether they have received the debt from GDG in cash, the answer was negative, and witness submitted to this regard that instead, they had to replace the debt liability with some immovable assets from Kera+. According to the witness, it was convenient for GDG, offsetting with assets was better than the debt liability and everlasting lawsuits in the court. The witness also clarified the details of the Teleport software according to which one of the parties accessing the Teleport is also a TV company, however, without access to pricing values as checked in the software. The software allows the trading house and the customer i.e. the advertising agencies to operate.

The witness also mentioned the specific terms and conditions of the contract with Rustavi 2, according to which, in case of termination of the contract with Rustavi 2, the trading house would have to pay in penalty three times the amount of the contract in favor of the TV company. According to the witness, the amount is much more than the amount they would have received as income during this period⁴⁶.

On June 30, 2021, the hearings resumed with the examination of the evidence of the prosecution: Giorgi Kavlashvili, the acting lawyer who is the defense counsel to Nino Nizharadze was examined. Nino Nizharadze received a 9% stake in Rustavi 2 after the death of her husband, Gega Gegeshidze. According to the witness, his principal (Nino Nizharadze) did not receive any dividend or income from Rustavi 2. No attention was paid to Nino Nizharadze. According to the witness, Nino Nizharadze requested the alienation of her share but she was not allowed to do so. The partners used their rights ultra vires abusing hers in the manner that Nino Nizharadze suffered damages. The witness stated that this was the first reason why Nino Nizharadze applied to the Prosecutor's Office against Nika Gvaramia with a request to initiate criminal proceedings.

After the witness testified, he was questioned by the defense regarding the above issues. The witness either did not have the answers to most of the questions or did not have the information about the issues. The witness had no answers regarding the specific corporate law issues and neither about the agreements on the management rules of the company, the understanding of which could have influenced the decision made by his principal to apply to the prosecutor's office to initiate criminal proceedings against the accused. When asked by the defense what was the reason for approaching the Office of the Chief Prosecutor, the witness said he believed there were some elements of crime in the case as his principal suffered some damages and the director of the company was obliged to make all decisions in favor of the limited liability company and not to the

⁴⁶ HRC Court Monitor Report on the Criminal Case of Nika Gvaramia: June 23, 2021.

detriment thereof. According to the witness, the management acted to the detriment of the interests of the company⁴⁷.

On July 7, 2021, a witness (currently an employee of Imedi TV), who worked as the sales manager of Rustavi 2 during 2009-2017, and also was the founder and 15% shareholder of Inter Media was examined at the court hearing. This company was actively operating during 2012 – 2014. The witness was asked about the trends in the advertising market. When asked by the parties, he submitted that said all the offers to the clients are individual and depend on the amount of the deal (how much the client pays) as well as on the prospects of long-term cooperation. When asked by the defense whether he had any information that Rustavi 2 was being prosecuted and that the lawsuit filed with the court posed some risks to the inflow of funds and could intimidate clients (meaning in the part of placing the advertisement), the witness stated that he had such information, however, due to his friendly and professional relations with the clients he managed to maintain the clients.

When asked by the defense whether in light of the risks it would be better for Inter Media Plus to pay a stable monthly payment to Rustavi 2 under the relevant agreement, the witness stated that from his point of view this would not be better⁴⁸.

On July 28, 2021, the court resumed the examination of the prosecution's evidence. A prosecution witness who is the director of a subsidiary company of Tegeta was questioned. According to the witness, in February 2019, the company informed him that in exchange for the vehicles some advertisements should be placed on Rustavi 2 in barter. They met with Zurab Gumbaridze (currently the director of Formula TV) to talk about the issue. After talking to him, the relevant officers within the company discussed the details of the barter. In early March, Tegeta announced a tender for advertising, in which 4 companies participated. Proexco Georgia was awarded as they had offered the best terms and conditions, namely the lowest price. The witness clarified that he did not know the details of concluding the contract because he left the job in the company on March 23, 2019. At the end of the hearing, the defense addressed the prosecution with an informal remark that the prosecution “never had such a knowing by heart witness”⁴⁹.

28. The administrative case of Aleksi Machavariani, Nodar Rukhadze, and Giorgi Mzhavanadze: Aleksi Machavariani was detained by the police for an offense under Article 173(1) of the Code of Administrative Offenses, envisaging disobedience to a lawful order or request of a law enforcement officer, or committing any other wrongful action against the officer.

Nodar Rukhadze and Giorgi Mzhavanadze were detained by the police for the offense under Article 166(1) of the Code of Administrative Offenses (petty hooliganism:

⁴⁷ HRC Court Monitor Report on the Criminal Case of Nika Gvaramia: June 30, 2021.

⁴⁸ HRC Court Monitor Report on the Criminal Case of Nika Gvaramia: July 07, 2021.

⁴⁹ HRC Court Monitor Report on the Criminal Case of Nika Gvaramia: July 28, 2021.

cursing in public places, chasing on citizens in an assaulting manner, and other such acts that violate public order) and also for the offense under Article 173(1) of the Code of Administrative Offenses, envisaging disobedience to a lawful order or request of an officer of a law enforcement body, or committing other wrongful actions against the officer.

Both cases were joined into one case during the hearing of the case in the court of first instance, where all three detainees were found guilty of committing an offense under the relevant articles of the Code of Administrative Offenses of Georgia. Aleks Machavariani was fined GEL 1,000, Nodar Rukhadze with GEL 1,500, and Giorgi Mzhavanadze was sanctioned with 3 days of administrative detention. The judgment was appealed in appellate proceedings.

29-30-31. The case of Levan Imerlishvili, Giorgi Esiashvili, and Mindia Ambardnishvili (the case of former officers of riot police): the accused are charged under article 333(3)(b) of the Criminal Code of Georgia envisaging “the acts in excess of the official powers by an official or a person equal thereto resulting in the substantial violation of the rights of natural or legal persons, or of the lawful interests of the public or the State.” Tbilisi City Court has by now finalized the hearings on the merits of the case of former officers of riot police.

Former riot police officers - Levan Imerlishvili, Giorgi Esiashvili, and Mindia Ambardnishvili were arrested in summer 2019. For some time the accused were remanded in custody. At the moment, they are remanded on bail of GEL 10,000 (ten thousand). The reason for changing the measure of restraint for Levan Imerlishvili was the deterioration of the health condition of the accused; the Court agreed with the opinion and granted the motion by the defense counsel.

During the HRC monitoring, no court hearings were held in the ongoing cases against Levan Imerlishvili and Mindia Ambardnishvili. The hearing of Levan Imerlishvili's case was scheduled several times, however, it was postponed on every occasion. As to Giorgi Esiashvili, during the monitoring, 4 court hearings were held. On March 18, 2021, following the petition from the defense the statement concerning the reconciliation of the victims with the accused (there are two victims in the present case) and the document of full compensation of the damage by the accused was included in the criminal case files under consideration. According to the statement, the victims admit that they have no claim in this case and welcome reaching a plea agreement with the accused.

On April 22, 2021, Tbilisi City Court granted the motion of the defense on the revocation of the additional measures applied against the accused Giorgi Esiashvili. As the additional measure, the following was used: an obligation to inform the investigating authority, and without the consent of the latter not to leave the residence, and to appear to the investigating authority once a week.

Giorgi Esiashvili fully agrees with the allegations put against him. According to the media, Levan Imerlishvili also pleads guilty, while Mindia Ambardnishvili's lawyer reports that his client has not acted ultra vires and needs no amnesty, as he will be acquitted in this case.

The outcomes of the observations of the court hearings of the case of Giorgi Esiashvili:

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

On March 18, 2021, following the petition from the defense the statement concerning the reconciliation of the victims with the accused (there are two victims in the present case) and the document of full compensation of the damage by the accused was included in the criminal case files under consideration. According to the statement, the victims admit that they have no claim in this case and welcome reaching a plea agreement with the accused. Giorgi Esiashvili fully agrees with the allegations put against him.

On April 22, 2021, Tbilisi City Court granted the motion of the defense on the revocation of the additional measures applied against the accused Giorgi Esiashvili. As the additional measure, the following was used: an obligation to inform the investigating authority, and without the consent of the latter not to leave the residence, and to appear to the investigating authority once a week.

Prosecution witnesses have been examined in the case, including the experts from Levan Samkharauli National Forensics Bureau. The judgment on the case has not been announced yet⁵⁰.

32. The Case of Zaza Chaava, Zaza Mchedlidze, and Murad Beglarishvili: all three defendants are charged with the crimes committed against the public, persecution of journalists, and interfering with journalistic activities. The accused were arrested by the police on July 5, 2021, at the counter-demonstration against the March of Dignity announced by Tbilisi Pride. The prosecution stated that the defendants committed the crime as a group. They were aware that they were persecuting journalists, their actions were intentional, the accused deliberately injured the journalists and damaged their equipment. The journalists were attacked because they were covering the rally and the accused believed the journalists were promoting the LGBT community. At the hearing held on July 8, 2021, in deciding on the issue of the measure of restraint to be applied against the accused persons, the court rejected the motion of the defense to change remand in custody to remand on bail and remanded all three accused in custody again. The pre-trial hearing of the case is scheduled for September 2, 2021.

⁵⁰ HRC Court Monitor Report on the Criminal Case of Giorgi Esiashvili: 02-Feb-21; 18-Mar-21; 22-Apr-21; 17-Jun-21.

HRC is monitoring the trial of three former riot police officers, as well as that of Zaza Chaava, Zaza Mchedlidze, and Murad Beglarishvili, in order to highlight the approach of the prosecutor's office and the judiciary in dealing with the cases. Further, to compare the cases with alleged political motives and the current cases in terms of the impartiality observed and the right to a fair trial exercised; moreover, to provide legal analyzes of the judgments/decision made by the court in the cases.

DELAYED LEGAL PROCEEDINGS

Rapid and effective justice is one of the components of a fair trial guaranteed both by the national law and international standards, the International Covenant for Civil and Political Rights, and the ECHR⁵¹.

In accordance with Article 31 of the Constitution of Georgia, every person may apply to the court to protect his/her rights. A fair and timely hearing shall be ensured. The right to a fair trial includes the right to be heard within a reasonable time affecting, in turn, the accessibility of the court and feasibly rapid justice.

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 defense properly prepared⁵². The Criminal Procedure Code further obliges the court to give priority to the cases where defendants are in custody⁵³.

The failure by the court to hear the case within a reasonable time would cause in turn the violation of the right to a fair trial. As the European Court of Human Rights (the ECtHR) held in the case *Zimmermann and Steiner v. Switzerland*, the State has a duty to organize the legal system so as to allow the national courts to comply with the requirements of Article 6(1) of the Convention including that of trial within a 'reasonable time'⁵⁴.

In accordance with 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, and that of the relevant

⁵¹ See Article 9(3) of the ICCPR and Article 5(3) of the ECHR ensure the right of each accused under custody "to be tried in reasonable time or to be released." Article 14(3) of the ICCPR ensures the right "to be tried without undue delay" for all the persons against whom charges are brought and further Article 6(1) of the ECHR ensures that "everyone is entitled to a fair and public hearing within a reasonable time."

⁵² See Article 8(2) of the Criminal Procedure Code of Georgia. <https://bit.ly/37q4M2e>

⁵³ See Article 8(3) of the Criminal Procedure Code of Georgia. <https://bit.ly/37q4M2e>.

⁵⁴ See Case *Zimmermann and Steiner v. Switzerland*, ECHR. July 13, 1983. <https://bit.ly/3uL0hcU>

administrative and judicial authorities⁵⁵. However, there is no established rule for what is considered a reasonable time. The ECtHR holds that the cases 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 years⁵⁶.

However, we have to admit that according to the ECtHR, the issue of whether the time of the hearing was reasonable must be assessed per individual case with taking into account the particular facts of the case⁵⁷ and in the result of taking into consideration all the procedural actions⁵⁸.

In the reporting period, the problems related to trial within a reasonable time were identified. Some of the cases are going on or suspended for an unreasonably long time⁵⁹. At the same time, the intensification of court hearings on such cases in the pre-election period is a particularly negative trend.

THE PRACTICE OF ADMINISTRATIVE ARRESTS AND ADMINISTRATIVE DETENTIONS

As in previous years, during the reporting period, law enforcement agencies are continuing to actively use the mechanisms provided by the Code of Administrative Offenses against protesters prejudicing the right to assembly and demonstration. As the monitoring revealed, the detention of the participants of the peaceful assembly was mainly conducted under Article 166 (*Petty hooliganism*) of the Code of Administrative Offenses and Article 173 (*Disobedience to a lawful request of the enforcement officer*), and also under Article 150 (*Defacement of the image of the self-governing unit*).

According to Article 166 of the Code of Administrative Offenses of Georgia, petty hooliganism shall be considered the acts of cursing in public places, abusive chasing on citizens, and other such actions that violate public order and peaceful life of the public.

⁵⁵ See *Preto 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.

⁵⁶ See Trial Monitoring Report, OSCE, Bureau of Democratic Institutions and Human Rights, Warsaw, 2014; Available: <https://goo.gl/13yLBz>

⁵⁷ See *Case Frydlender v. France*, §43, ECHR. 27 June, 2000.

⁵⁸ See *Case Konig v. Germany*, §98, ECHR. 28 June, 1978.

⁵⁹ **For example:** *The case of Bezhan Lortkipanidze; The case of Besik Tamliani; The case of Nikanor Melia and Zurab Adeishvili; The case of Mamuka Khazaradze, Badri Japaridze and Avtandil Tsereteli; The case of Iveri Melashvili and Natalia Ilychova (the case of cartographers); The case of Giorgi Mumladze; The case of Mikheil Saakashvili and Teimuraz Janashia; The case of Irakli Okruashvili; The case of Koba Koshadze (the hearings on the merits of the latter case has not been scheduled for more than a year); The case of Giorgi Rurua (second instance); The case of Levan Imerlishvili, Giorgi Esiashvili and Mindia Ambardnishvili (the case of former riot police officers); The case of Giorgi Ugulava.*

According to Article 173 of the Code of Administrative Offenses of Georgia, as an administrative offense shall be considered the disobedience to a lawful order or request of a law enforcement officer, that of an officer of the military service, of the Special State Protection Service, or enforcement police when they are performing official duties.

The Code of Administrative Offenses of Georgia (by Article 150) considers as defacement of the image of the self-governing unit the arbitrary execution of various inscriptions, drawings, symbols on the facades of buildings, shop windows, fences, columns, trees, plantations, posters, banners, as well as placing the banners in the places not designated for such purposes.

In the above cases, the Code of Administrative Offenses of Georgia provides for administrative arrest and administrative detention. Administrative arrest shall serve as a provisional measure, while administrative detention is the most severe sanction for an administrative misdemeanor. Both the administrative arrest and administrative detention under the existing Code of Administrative Offenses which do not meet modern human rights standards, pose threats for the protection of liberty and security of a person and the right to a fair trial.

This is evidenced by the fact that during the reporting period officers of the Ministry of Interior used the arrests/detentions against many protesters or civil activists during the protests or other political rallies on the grounds that they were disturbing public order and disobeying the orders of law enforcement officers.

The cases identified during the monitoring of the court hearings prove that the court establishes the fact of the offense without verifying the lawfulness of the acts by the police and in the cases where the court does verify that, the verification bears merely a formal character. In such cases, the court limits itself with determining whether the police have the right to take any particular actions in general, and fails to assess the justification and rightfulness of the exercise of the powers granted by the law to the police in the cases brought before the court. By following such a practice, the police are allowed to restrict the right of the protesters to choose the place and manner of the protest rally without any justification, further to deprive the protesters of their liberty and to carry out harsh measures against the protesters in an unlawful manner.

In most of the cases, the court fails to examine the reports of the offenses under the appropriate standards. At the court hearings, the defense counsels usually argue that such reports are largely limited to general formulations failing to describe in detail the factual circumstances of the case and the substance of the offense. The reports only mentioned that the arrested person violated the public order, disobeyed the lawful request of police officers calling on him/her to cease the illegal actions, and so on. In some of the cases, the reports bear general reference to the fact according to which the arrest took place due to petty hooliganism and disobedience to the lawful request of the police and so on.

Another serious issue identified during the monitoring is the fact that in several cases, the officers actually conducting the arrest were other than those who drew up the reports. As a rule, the persons having drawn up the reports stated that in fact, they have arrested the persons held legally liable, however, the persons arrested spoke to the contrary. In some of the cases, such a trend was proved also by the evidence. During the reporting period, there was only one case where the authors of the report admitted that they had not actually arrested the persons held liable. Such practice has affected the outcomes of the court proceedings.

REMOTE LEGAL PROCEEDINGS

During the reporting period, several court hearings were held remotely. The hearings held remotely because of the coronavirus pandemic became in general a significant challenge in terms of the right to a fair trial. For most of the defendants, this was an impediment to their ability to communicate confidentially with defense counsels. Moreover, as in the previous year⁶⁰, because of some technical defects, the problems remain with the visual clarity of the witness and understanding what they were saying. 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 it impossible to continue the sessions. There were cases reported when the voice of the participants was doubled and/or heard unclearly. This problem remains unresolved to this day. Moreover, in most of the cases, the court hearings began late or they were adjourned.

As what the possibility of the court monitors to attend the hearings concern, the problems stem also from the fact that the remote or physical attendance to the court session was possible only after the court monitor applied with a written formal request to the judge hearing the case and asked him/her the permission to attend the hearing.

CONCLUSIONS

The Interim Report on the results of the court monitoring of the above 32 cases by HRC includes the problematic issues of a fair trial as identified by the monitors and the legal analyst to have a systemic nature during the monitoring.

As in the previous year, there were some cases identified during the reporting period where the government officials mentioned the culpability of the accused persons 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 public opinion on the impartiality and political neutrality of the prosecutor's office.

⁶⁰ See Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report: <https://bit.ly/3lnH7XI>

In general, the principles of equality of arms and adversarial proceedings were adhered to in the court proceedings. The defense and the prosecution had an equal opportunity to express their positions. They could freely exercise the rights guaranteed by the procedural law.

Problematic is the decision of Tbilisi City Court restricting the powers of MP and applying the measure of restraint (remand in custody particularly) without taking into account the national and international standards; as a result, the powers of MP Nikanor Melia were disproportionately restricted and remand in custody was unjustifiably used against him as a measure of restraint. In the case of Nikanor Melia, despite the great public interest, the prosecution objected against the videotaping of the hearing and thus against the publicity of the proceedings.

During the reporting period, during the monitoring of court hearings, the court applied disciplinary action only on one (1) occasion. In several cases, the witnesses of the prosecution later changed their testimonies.

In almost all criminal cases, some representatives of the defense have made extensive political statements about the trial including during the court hearings. During the trials, members of the public and political groups rallied in support of the accused.

At the request of the parties and/or with reference to the Covid pandemic, the court hearings were often adjourned. The hearings of some of the criminal cases were particularly intensified. For example, this was with the Case of Nika Gvaramia.

In the cases of administrative offenses and administrative arrests, the claims of the authorities to hold the person as an offender were oftentimes unsubstantiated and drawn up in a 'one size fits all' manner; Almost 100% of the evidence presented by them was the testimony of witness police officers.

The claims for applying the administrative detention in the cases of administrative offenses and administrative arrests were based solely on abstract reasoning and inconsistent, unconvincing, and, in many cases, illogical suspicious assumptions on the part of the police. There has been a trend identified that when hearing the cases of alleged administrative offenses against civil activists and members of opposition parties, the court relied solely on the indictments and the testimony of witness police officers.

In many cases, the issue of granting the motions of the defense is problematic; The grounds for rejecting the motions are unsubstantiated and/or insufficient.