



MONITORING THE COURT PROCEEDINGS OF THE CASES WITH ALLEGED POLITICAL MOTIVES

Summary Report - (April-June)

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INTRODUCTION

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The current report reflects the outcomes of the monitoring of the court proceedings of the criminal and administrative cases with alleged political motives for April 1, 2022, and June 30, 2022. The Report also covers the results of monitoring the ongoing court hearings of the cases of attacks on media professionals on the grounds of their professional activities.

As a result of monitoring the court proceedings, HRC has accumulated significant and voluminous information. Based on this information, it was possible to assess the trends revealed in the proceedings of criminal and administrative offenses during the monitoring, and further, identify and analyze the violations in the proceedings of allegedly politically motivated high-profile criminal cases. The report highlights the issues leading to the need to initiate monitoring over court proceedings, as well as the visible problems identified in the process of monitoring in the proceedings over criminal and administrative offenses.

Like in 2020, the problems in terms of observing the principles of fair trial, guaranteed both by the national and international standards, are still relevant. Further, since 2021, we are witnessing a rising trend of court hearings over both administrative and criminal cases with alleged political motives against the representatives of political parties and civil society.

HRC monitors the criminal proceedings over the cases with alleged political motives 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 initiated in 2020. It continued functioning since April 1, 2022¹ and ends on June 30.

From February 1, 2020, to June 30, 2022, the court monitors of HRC observed 34 court proceedings in total over 20 cases of criminal and administrative offenses.

As of 2022, HRC monitors 20 proceedings in the general courts over the cases with

¹ **Note:** In 2020-2021, HRC prepared 12 analytical documents, 2 interim and 2 final reports: 1) Report - Legal Assessment of the Criminal Cases Ongoing against Giorgi Ugulava. <https://bit.ly/33SghZx>. 2) Legal Analysis of the Cases connected with the Events of June 20-21, 2019, <https://bit.ly/2XUIHFu>. 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/2CkSOjd>. 5) Legal Assessment of ongoing Criminal Case against Nika Gvaramia: <https://bit.ly/33NghAb>. 6) Monitoring the Court Proceedings of the Cases with alleged Political Motives: Interim Report: <https://bit.ly/2JZ0eZh>. 7) Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report: <https://bit.ly/2X54qNc>; 8) Monitoring Court Proceedings of the Cases with Alleged Political Motives: Interim Report, 2021. <http://www.hrc.ge/290/geol/>; 9) Cases related to the Events of June 20-21, 2019: Political Justice and Disputed Amnesty, 2021. <http://www.hrc.ge/files/10220-21%20june.pdf>; 10) Monitoring Court Proceedings of the Cases with Alleged Political Motives: Final Report. 2021. <https://bit.ly/3FAP59h>.



alleged political motives. Of these 20 cases, some are going on in the first instance court, while some others are under appellate proceedings at the Tbilisi Court of Appeals.

Eventually, as in the previous year, also in 2022, the disproportionate prosecution of politicians and activists, including the violations of substantive and procedural rights, raises reasonable doubts at national and international levels about the political motives existing in the criminal and administrative proceedings as discussed in the current Report.

METHODOLOGY

The monitoring over the cases with alleged political motives was carried out by the methodology of monitoring the court proceedings designed by HRC experts. The aim of the methodology was to assess the court proceedings and national legislation in the light of international standards of a fair trial, to identify and analyze the possible deficiencies on the cases of criminal and administrative offenses, as well as the alleged political motives of the authorities.

In 2021, the monitoring of the court proceedings was carried out by three court monitors who received special training on court monitoring. The methodology developed by HRC included working with special questionnaires prepared particularly for the court proceedings which were allegedly politically motivated. Legal monitors prepared reports after each hearing and described the details of the hearings. After reading and analyzing reports provided by the legal monitors, the legal analyst used the processed information to prepare analytical documents and public reports. Each published document provides analysis as to what extent the legal proceedings, in general, comply with international standards, recognized practice, and international obligations.

The current report is also informed by the various documents published about the cases under the monitoring and the findings obtained in the research. Moreover, during the research, we have included for examination the indictment decrees, the motions of the defense and that of the prosecution, the rulings, the interim decisions, and the judgments or rulings made by the courts as available in the case files.

Furthermore, the court monitoring is based on the strict principles of objectivity and non-interference in the court proceedings. Moreover, in parallel with the monitoring, due to the great public interest in high-profile proceedings with alleged political



motives, HRC permanently made available important information about the court hearings and the conclusions made in this regard to the public, the media, and the parties to the proceedings

THE CASES WITH ALLEGED POLITICAL MOTIVES

From April 1, 2022, to June 30, 2022, HRC managed to monitor 20 instances of legal proceedings over criminal and administrative offenses. During 3 months, the HRC monitors observed 34 court hearings.

At this stage of monitoring, HRC continues court monitoring on 20 cases:

1. *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 Service of Border Relations of Department of Neighboring Countries of the Ministry of Foreign Affairs, and 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 GEL 20,000 each. Further, the court granted the motion of the prosecution to dismiss Iveri Melashvili from his job. The case is being heard by Tbilisi City Court. The judge is Nino Nachkebia. Iveri Melashvili and Natalia Ilychova were arrested on October 7, 2020, one month before the parliamentary elections.

Outcomes of the court monitoring:

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 Ilychova, stating once again that they had been detained illegally. At the same time, 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,



many good citizens joined the campaign to assist in the release of the accused persons collecting the full amount of the bail – GEL 40,000².

In December 2021, the court proceedings resumed in Tbilisi City Court with the examination of the prosecution witnesses. As of 2022, during the monitoring period, no court hearings were held over the criminal case. The court hearings will be resumed on June 13, 2022.

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2. *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 toward 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, as well as to coerce an officer to a manifestly unlawful act committed with violence or threat of violence. The case is being heard at Tbilisi City Court.

In the monitoring period, 2 court hearings scheduled on this criminal case were postponed following the motion by the defense³.

3. *The Case of Akaki Khuskivadze and Akaki Kobaladze.* HRC is monitoring the court proceedings of the criminal case ongoing against Akaki Khuskivadze and Akaki Kobaladze. 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 or another person; also - a threat of damaging health by a group of persons, when the person threatened began to have a reasonable fear that the threat will be materialized; also – unlawful restriction of freedom of action – coercing someone psychologically to perform an action, abstaining from which is his/her right, 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

² See Statement of the civil movement Shame: <https://bit.ly/3BUl8OI>

³ To see the results and legal assessments of the case please refer to: *Monitoring of Court Proceedings of Cases with Alleged Political Motives (Final Report)*, 2021, pp. 10-11. <https://bit.ly/3FAP59h>.



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:

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During the monitoring period, only one court hearing was held on the given criminal case. Initially, the hearing was scheduled for 15 April 2022, but because of the defense, (*in particular, the lawyer had to attend the first appearance session of the defendant in another criminal case the next day and failed to appear in this case due to this reason*) it was adjourned and the hearing was held on 29 April 2022. The hearing of the case was not listed neither among the initially scheduled hearings nor among the postponed hearings in the list of "current cases" on the Court's website, so the hearing was not publicly announced. The number of the courtroom became known half an hour before the hearing. Beka Basilaia, one of the defense counsels was absent as he was in Ukraine.

The evidence of the prosecution was examined at the hearing. The following persons were examined before the court: Mariam Natadze (the spouse) and a legal successor of the victim and Levan Tananashvili, deputy chairperson of Krtsanisi District Election Commission N4. The legal successor of the victim told the court about the health condition of her husband on the day of his death. Levan Tananashvili also gave the court information about the health status of the deceased.

The hearings of the case are pending in Tbilisi City Court.

4. ***The case of Besik Tamliani.*** Besik Tamliani is charged with the offense 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 reached between the Prosecutor's Office and some other accused persons: Zurab Budaghashvili, Tsotne Soselia, and Kakhaber Kupreishvili. On March 23, 2020, the measure of restraint used against Besik Tamliani was changed with remand on bail of GEL 4,000. He left the prison. 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 *United National Movement: Strength in Unity*. The criminal case against Besik Tamliani is still pending with Tbilisi City Court. He does not accept the application of



the Law on Amnesty adopted on September 7, 2021, by the Parliament of Georgia concerning the events of June 20-21 and continues to defend his rights. The criminal case is being heard on the merits by Judge Zviad Sharadze.

5. *The case of Besik Tamliani, Emzar Siukaev, Kakhaber Keshikashvili, Stephane Gikoshvili, and Lasha Samkharadze.* The defendants were detained on November 29, 2021, for the actions taken at the protest at the premises of Tbilisi City Court in support of Mikheil Saakashvili. *Besik Tamliani, Lasha Samkharadze, and Emzar Siukaev* have been charged with an offense under Article 353(1) of the Criminal Code, while *Kakhaber Keshikashvili and Stephane Gikoshvili* under Article 353¹(1). Remand on bail was used against Lasha Samkharadze as a measure of restraint, while remand in custody was applied against the rest of the defendants. Finally, the court examined the evidence presented by the prosecution. Judge Lasha Chkhikvadze hears the case on the merits.

Outcomes of the court monitoring:

In the above-mentioned criminal case, 4 court hearings were held during the monitoring period (April 19, May 5 and 18, and June 1).

On April 19, 2022, 2 witnesses of the prosecution were examined. These were Lasha Kapanadze, the investigator who arrested the accused Stephane Gikoshvili, and Ivane Birtveladze, the officer of the Operations and Investigations Service, who arrested the accused Besik Tamliani. Meanwhile, the investigative and procedural actions conducted by the remaining 2 witnesses - the representatives of the law enforcement bodies - were considered undisputed evidence by the agreement of the parties. When questioned at the hearing, particularly, when asked by the defense and by the accused himself, the witness provided two different answers in relation to the source of information regarding the conviction record of Besik Tamliani, indicated in the arrest protocol. In the first case, the witness answered quite vaguely, which could be caused by the fact that he did not remember the factual circumstances of the case, and in the second case, he was slowly recalling the details and gave a different answer.

The two court hearings scheduled for May 5 and 18, 2022, were opened with a delay. The judge failed to provide the reasons for the delay in either case. It



should be noted here as well that the persons being under custody due to the measure of restraint (except for Lasha Samkharadze who was remanded on bail) have been brought to the court by the officers of the Special Penitentiary Service late than it was scheduled.

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On May 5, the media was present in the courtroom. At the session, by the initiative of the judge (under Article 230 of the Criminal Procedure Code), it was examined whether or not there was a necessity to maintain the detention, as a measure of restraint, against the accused persons. Consequently, the judge upheld the remand in custody, as a measure of restraint. At the same hearing, the prosecutor requested the court to allow additional evidence to be entered into the case files; these were forensic medical examination opinions prepared on April 26 which according to the prosecutor could not be submitted before this day. The defense was not aware of the forensic examination. However, the defense disputed the validity of the forensic opinions. Nevertheless, the judge granted the motion by the prosecution and allowed the forensic opinion to be entered into the case files as additional evidence and the expert to be included in the list of persons to be interviewed. At the same hearing, another witness of the prosecution was also examined, while the investigative action of suspect identification, conducted by the second witness against Emzar Siukayev and Stephane Gikoshvili, was considered indisputable, so no more witness was examined in the courtroom. When determining the date of the next hearing, the judge failed to take into account that two defense counsels of Kakhaber Keshikashvili had another hearing scheduled on the day the judge was intending to schedule his session. Reacting to the request of the defense counsels, the judge stated that they were two counsels and at least one of them could attend the hearing as scheduled.

At the hearing on May 18, the two defense counsels of Kakhaber Keshikashvili were absent. Instead, another defense counsel appeared at the court hearing and no motion for his removal was raised before the court. The defense counsel presented a health certificate of Kakhaber Keshikashvili. The judge allowed the certificate to be entered into the case files as evidentiary information for the defense.



At the hearing held on May 18, 2 witnesses were examined: one was the expert questioned about the forensic examination conducted by him and another was a police officer.

The hearings of the case are pending in Tbilisi City Court.

6. *The Case of Nikanor Melia.* The former MP, Nikanor Melia is charged with an offense under Article 225(1) and (2) of the Criminal Code of Georgia envisaging the organization of acts of group violence and participation in the acts of 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 in custody. 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, with trial judge Nino Chakhnashvili.

During the monitoring period, two hearings were held on the above criminal matter, on April 21 and June 2, 2022. The accused Nikanor Melia was not attending the hearing. Two witnesses (experts) of the prosecution were questioned at the hearing about the outcomes of the habidoscopic, as well as phonoscopic examination. The defense put no questions to the witnesses. The voices of the participants could not be heard easily at the hearing.

7. *The case of Nikanor Melia and Zurab Adeishvili.* The court proceedings are on at the 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. It should be noted that Nikanor Melia was found innocent at the court of 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.



According to the information obtained by HRC, the Tbilisi Court of Appeals upheld the judgment by the court of first instance from February 24, 2022, in particular, Nikanor Melia was acquitted of the charges under Article 205¹ of the Criminal Code, while was found guilty of the offense under Article 332. As for Zurab Adeishvili, the Court of Appeals upheld the judgment rendered by the court of first instance. The judgment rendered by the Court of Appeals was appealed to the Supreme Court of Georgia by both the defense and the prosecution.

8. *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). The prosecution argues that following 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 other individuals in Georgia and abroad. The case is being heard at Tbilisi City Court, with trial judge Badri Kochlamazashvili.

HRC has dedicated following analytical document to this case: **Assessment of the Right to be tried within a Reasonable Time in the Cases ongoing against Mikheil Saakashvili⁴.**

In 2022, during the monitoring period, no court hearing was held on this criminal case.

9. *The case of Mikheil Saakashvili.* On charges of illegal crossing of the border, the third President of Georgia Mikheil Saakashvili has been accused by the prosecution because of the fact of illegal crossing of the state border of Georgia under Article 344(1) of the Criminal Code. The trial of Mikheil Saakashvili is pending with Tbilisi City Court.

Outcomes of the court monitoring:

⁴ 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>



There were altogether 6 court hearings held on the criminal case during the monitoring period. The court hearings, as usual, began with some political statements by the accused Mikheil Saakashvili lasting for some 15 to 20 minutes as allowed by the court. After such statements, he normally asked to be excused and was removed from the courtroom. Thus, he did not attend the questioning of witnesses and examination of evidence mostly due to health reasons.

Concerning the political statements, the prosecution remarked to the court that the defendant should have talked only about the factual circumstances of the case instead of making the political statements lacking the connection to the case in question. The request of the prosecution was rejected by the court and he allowed the political statements to be made by the defendant without obstacles, due to the high public interest.

During several court hearings, the defense was requesting the court to make an order to the penitentiary facility to allow a visit of a group of independent experts to Saakashvili in prison. The second motion by the defense concerned the provision of adequate medical services to Saakashvili. The court referred to the protocol submitted by the Special Penitentiary Service, according to which Saakashvili refused to appear before the court. The protocol was dated by the day of the hearing. The defense provided a formal written statement signed by Saakashvili, asking to examine the motions submitted by the defense in his absence. The statement was dated 2 days earlier. The mismatch of the dates proved to be a reason for the defense to request the adjournment of the hearing as the information stemming from the documents was contradictory. The defense argued in this regard that the Penitentiary Service always has the resources to issue the protocol and submit it to the court at a later stage than the defense. The judge postponed the hearing for the above-mentioned reason.

At the next hearing, the penitentiary facility submitted a report, according to which Saakashvili was refusing to appear in the court, but was consenting to the hearing to be carried on without his participation. Consequently, the court proceedings were resumed. The written evidence of the prosecution were examined. The prosecution completed the examination of evidence fully. At the same hearing, the prosecution made a motion to the court to consider all the evidence of the prosecution as undisputed evidence, which was



granted by the court, despite the objection by the defense. The court rejected only part of the motion by the prosecution that was requesting to interview Saakashvili. The court ordered to have Saakashvili interviewed if he gives consent. .

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The defense made another motion on the same hearing to allow a group of independent experts to the penitentiary facility and filed relevant attachments to the above motion; further, Mariam Jishkariani, a member of the group of experts was interviewed who mainly focused on the procedural issues, as questioned by the judge. **She noted that this was the first time that she was not allowed to see a prisoner and she could not recall any such case in her long record of expert examinations.**

At the court hearing, the judge was going through the attachments filed by the defense. Afterwards, the judge posed some questions, namely: 1) "How many experts should be allowed?" 2) "Why there is no list of experts?" and so on. After the judge heard the statements by Mariam Jishkariani, the judge addressed the defense and said that there were no formal written requests made by the Forensic Bureau to the Special Penitentiary Service and Prison Facility N12. The defense was required to file this document for the next hearing and based on it, the decision about the motion would be made by the court. **The judge announced the adjournment of the hearing without hearing the positions of the parties in this regard.**

The defense tried in a different manner to explain that the requested letter was on the desk before the judge. However, the judge was repeating that she does not have any. Afterwards, one of the defense counsels approached the judge and retrieved the document from the submitted set, and put it in front of the judge. This was followed by a 10-minute break to make a decision that lasted 1 hour and 7 minutes. After the hearing was resumed, the judge held that she would address the Special Penitential Service to hear their position why the experts were not allowed. **Some other problems stem from the fact that the judge always announces the operative part of the judgment, without providing any explanations for the judgment. Neither does the judge refer to any articles of the guiding laws when rendering the judgments.**

During the monitoring, we have observed a case when a judge violated criminal procedural law in hearing the motion by the parties. In particular, in



one instance, the defense filed a motion along with all the evidence, in a manner that met all the standards under the law for a judge to decide the issue concerning permission for a group of experts to see Mikheil Saakashvili in prison within 48 hours. The judge violated the timeline. She decided that she should hear the position of the Penitentiary Service as to why the group of experts were not allowed to enter the prison, although 2 requests were already made in this regard. As mentioned, the penitentiary institution is not a party in the proceedings, so the law does not prescribe to address this body with the question and receive a response.

The accused was still not present at the next hearing. According to the report drawn up by the Penitentiary Service, Mikheil Saakashvili was not able to appear before the court due to health conditions and he refused the hearing to be held without his participation, except for the hearing of the motions made by the defense. After announcing her decision on the motion of the defense, the hearing was adjourned. The motion concerned the issue of allowing a group of experts to visit Saakashvili in jail. **Finally, the judge granted the motion of the defense, instructing the penitentiary facility to allow a group of experts from NGO Empathy to carry out an expert examination of Saakashvili either in the penitentiary facility or elsewhere in the clinic Vivamed.**

The hearings of the case are pending in Tbilisi City Court.

10. The case of Mikheil Saakashvili, Ivane Merabishvili, Zurab Adeishvili, Davit Kezerashvili, and Gigi Ugulava: The case concerns the mass dispersal of the protesters on November 7, 2007, and invading and “seizing” TV Company Imedi. On November 10, 2021, the measure of restraint applied against Mikheil Saakashvili for the November 7 case was revoked. The court considered at this stage that there was no need for remand in custody. However, since Mikheil Saakashvili is also convicted of two other criminal cases from all three instance courts and is sentenced to 6 years of imprisonment, lifting the measure of restraint against him in the November 7 case does not change the factual situation, as Mikheil Saakashvili will continue to serve the penitentiary sentence in the relevant prison facility. The defense did not attend the hearing for lifting the measure of restraint; in addition to Mikheil Saakashvili, some other high-ranking officials of that time have been prosecuted in this case: Ivane Merabishvili, Zurab Adeishvili, Davit



Kezerashvili, and Giorgi Ugulava. Due to the complexity of the matter, the case is heard by a panel of judges in Tbilisi City Court with presiding judge Nino Eleishvili.

Outcomes of the court monitoring:

During the monitoring period, two court hearings were held on the mentioned criminal case.

At the court hearing on May 5, 2022, the court read out the report submitted to the court by the director of the penitentiary facility, according to which the accused Saakashvili refused to appear in court as he was feeling bad. The report provided no information about the consent or refusal of Saakashvili to continue the hearing without his participation. Further, it is not clear from the report whether Saakashvili was explained his rights. The defense was seeking to have the court hear the motion, which the court failed to hear, adjourning the hearing because the court was not aware of the position of Saakashvili about the continuation of the hearing without his participation. The defense asserted that the health status of Saakashvili was grave and although he wishes to appear before the court, he is not able to do this as he is feeling really bad. He wished the hearings to be held without his participation. He wished he could take some food, but he cannot. According to the defense counsels, they learned about the grave health condition of Saakashvili from the Consilium organized by the Public Defender. As doctors say, a long-term intervention and treatment are needed. The defense believes that torture and inhuman treatment take place against the accused.

Another report was provided at the court hearing on May 20, 2022, stating that Saakashvili was offered to appear before the court or to participate remotely (through Internet-enabled video conferencing), but he refused to participate in the hearing and also refused the hearing to be resumed without his participation. The hearing was adjourned, but before that, the issue of the measure of restraint was heard. In this regard, the prosecution maintained its position that other defendants, namely Zurab Adeishvili and Davit Kezerashvili, should be remanded in custody. The defense did not agree with this position, noting that the issue of extradition was considered by the courts of European countries and Zurab Adeishvili was removed from the list of persons to be extradited after holding that the case against him was political persecution and the request to remand him in custody was unfounded.



The court upheld the remand in custody used as a measure of restraint. The court asserted that the factual and formal grounds used when ordering remand in custody against the accused have not been changed. There are no new circumstances that would have affected the measure of restraint already used in this case. Further, the court reiterated that there are other judgments on other cases still to be enforced against the accused (meaning the 4 judgments already rendered on behalf of Georgia).

The hearings on the case are pending in Tbilisi City Court.

11. The Case of Giorgi Ugulava and Aleksandre Gogokhia. The criminal case launched against Giorgi Ugulava, the former Mayor of Tbilisi is on the stage of hearing on the merits in Tbilisi City Court. The prosecution charges the defendants with the commission of the offenses under Article 194 and Article 362 of the Criminal Code, meaning the legalization of illicit income (money laundering) and making or using a forged document, seal, stamp, or letterhead and inducing others to accept them as genuine. Moreover, in the same case, the state prosecution charged Ugulava for the abuse of official power on the episode of *City Park*. As for the episode of Marneuli, he is charged for the organization of group action and coercion. The case is being heard by judge Valerian Bugianashvili of Tbilisi City Court.

Outcomes of the court monitoring:

On June 6, 2022, the trial of Giorgi Ugulava and Alexandre Gogokhia was held in Tbilisi City Court. At the hearing, the defense made a motion to allow the joinder of the mentioned criminal case with the ongoing criminal case of Giorgi Ghonghadze which was heard in the same court and to hear them under single court proceedings. In particular, the defense explained at the hearing that the prosecution was charging Giorgi Ghonghadze with the same offenses under Article 194 and Article 362 of the Criminal Code, for the same episode. Thus, in order to save the time and resources of the court and, most importantly, to administer effective justice in the case, it would be appropriate to allow the joinder of the proceedings. Moreover, as it turned out, the criminal proceedings over both cases were initially conducted in a single proceeding, however, the accused Giorgi Ghonghadze requested the court to have his proceedings heard by a separate jury court. Later, he refused the jury trial due to some personal reasons.



At the trial, the defense submitted formal written consents by the accused Giorgi Ugulava, Alexandre Gogokhia, and Giorgi Ghonghadze to allow the joinder of their proceedings. The prosecution agreed to the motion, after which the judge granted the motion. The judge held that the joinder of the proceedings would facilitate the establishment of the objective truth in the case.

12. *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 stopping and personal examination of the persons, one of the patrol officers, Grigol Basheleishvili accidentally triggered the weapon and shot the left armpit of Amiran (Buta) Robakidze, the passenger who had come out of the car, gravely wounding him and causing his death at the scene. According to the decree of indictment, the information was reported to the Minister of Internal Affairs, Irakli Okruashvili on the same night, 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. Further, according to the decree of indictment, following the instructions of the then Prosecutor General Zurab Adeishvili, the investigation was carried out in the wrong direction, manifested in the affirmation of falsified evidence in procedural terms and reaffirming the versions of the high-ranking officials of the Ministry of Interior. Judge Lasha Chkhikvadze within Tbilisi City Court hears the case.

Outcomes of the court monitoring:

In June 2022, a hearing was held over the criminal case. The defendants were not present at the trial. A witness of the prosecution was examined at the hearing; this person was with Buta Robakidze in the car the day Buta was killed. The witness elaborated regarding the details of the case.



HRC made a comprehensive legal assessment of the case in an analytical document: **Legal assessment of ongoing criminal cases against Irakli Okruashvili**⁵.

The hearings of the case are pending in Tbilisi City Court.

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13. The Case of Irakli Okruashvili. The Leader of the party *Victorious Georgia*, Irakli Okruashvili was charged 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 rendered on April 13, 2020, Okruashvili was sentenced to 5 years of imprisonment as he was charged with the participation in the offense. Based on the Act or Pardon of the President, Giorgi Ugulava and Irakli Okruashvili left the penitentiary institution on May 15, 2020. Despite the pardon, Okruashvili appealed to the Tbilisi Court of Appeals, where Judge Vepkhvia Lomidze upheld the judgment of the court of the first instance. The latter judgment was appealed by Irakli Okruashvili to the Supreme Court.

Under Article 78 of the Criminal Code of Georgia, the President of Georgia may individually pardon convicts; under the Act of pardon, the convict may be released from further serving the sentence, and/or the sentence imposed on him/her may be reduced or replaced by a lighter sentence⁶. However, the act of pardon does not restrict a convicted person in his/her rights to apply to the court of higher instance to prove he/she is innocent. The Article 277 of the Criminal Procedure Code of Georgia which regulates the procedure for announcing the judgment, the presiding judge shall explain to the parties the procedure and time limits for appealing the judgment. The convict must also be informed about the right to file a petition for pardoning⁷.

On April 18, 2022, Irakli Okruashvili released information on his Facebook page⁸ that the Tbilisi Court of Appeals upheld the judgment of conviction rendered by Tbilisi City Court on April 13, 2020, and sentenced him to 5 years in prison. He did not attend the trial because at that time he fought against Russian military aggression in Ukraine.

⁵ Legal Assessment of the Criminal Cases Ongoing against Irakli Okruashvili, Human Rights Center. 2021. <https://bit.ly/31NEpka>

⁶ Article 78 of the Criminal Code of Georgia. <https://bit.ly/3zbd51K>

⁷ Article 277 of the Criminal Procedure Code of Georgia. <https://bit.ly/3xevg52>

⁸ More information: <https://bit.ly/3zsKTre>



According to the defense, the Court of Appeal fully agreed to and reiterated the reasoning developed in the judgment of conviction by Tbilisi City Court on April 13, 2020, as well as the illegal grounds of delivering the judgment. The defense disagrees with the judgments rendered by the first and second instance courts and intends to appeal the judgment of conviction on this criminal case to the Supreme Court of Georgia.

During the monitoring, HRC published an analytical document: **Legal Assessments of the Criminal Cases ongoing against Irakli Okruashvili**⁹.

According to the assessments by HRC, several legal problems have been identified in the case related to the events of June 20-21, 2019. The judgment of conviction was based on the testimony of only 4 police officers as witnesses. As a piece of neutral evidence, the video recordings requested from TV companies and the results of habidoscopic examination were presented at the trial which is problematic in legal terms. The court avoided the issue of specifics of the norm and without identifying and assessing the individual elements of the criminal act, qualified the act as violence, without giving assessment, whereas for the purposes of article 225 of the Criminal Code “violence” shall be defined as a more intense physical impact than under normal circumstances.

Moreover, out of plenty of individuals with whom Okruashvili participated in the “group violence”, the law enforcers chose Irakli Okruashvili as defendant and consequently detained him. Therefore, the criminal proceedings were instituted only against him, although it was possible to identify other protesters around him. Prosecuting Irakli Okruashvili in such a manner may be assessed as discrimination on political grounds. Several days before arresting Irakli Okruashvili, his driver and the person related to the family, Koba Koshadze was arrested with alleged political motives.

14. The Case of Koba Koshadze. In the Case of Koba Koshadze, a member of the guard of Irakli Okruashvili, 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 revoked the existing measure of restraint - the

⁹ Legal Assessment of the Criminal Cases Ongoing against Irakli Okruashvili, Human Rights Center. 2020. <https://bit.ly/3suFZpw>



detention, and remanded the accused on bail of GEL 5,000. Koba Koshadze was released from the courtroom. The case is heard in Tbilisi City Court.

HRC observed the criminal proceedings against Koba Koshadze in the document: Legal Assessments of the Criminal Cases ongoing against Irakli Okruashvili¹⁰. Several legal problems have been identified in this case.

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15. 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 interests of this organization for acquiring benefits or advantage for oneself or another person, which has resulted in considerable damage. The case is heard by Tbilisi City Court.

On May 16, 2022, Tbilisi City Court rendered a judgment of conviction against Nika Gvaramia and some persons connected with him. Judge Lasha Chkhikvadze found Nika Gvaramia guilty of the offense under Article 220 of the Criminal Code of Georgia - an abuse of power and sentenced Gvaramia to 3 years and 6 months of imprisonment.

In 2021, HRC prepared an analytical document - [Legal Assessment of the Ongoing Criminal Case against Nika Gvaramia](#). The document aims to evaluate the sufficiency of the arguments employed by the prosecution to impose criminal liability on Nika Gvaramia being accused of *unlawful misappropriation of property rights committed under aggravating circumstances*. The document aims to evaluate whether the charge imposed against Nika Gvaramia – unlawful misappropriation of property rights committed under aggravating circumstances – includes sufficient arguments for imposing criminal liability on Nika Gvaramia.

The document analyzes whether the decisions taken by Nika Gvaramia as the former director of TV Company Rustavi 2 contained the elements of the offense as provided by the Criminal Code. Further, whether the qualification of the crime corresponds to the national and international standards and experience and whether there are alleged political motives and signs of selective justice in this case.

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



The study rests on various documents available in the case files, reports of the court proceedings prepared by the court monitor of HRC, and identified problematic issues of the substantive criminal law and the procedural criminal law. The study presents a comparative legal analysis by comparing national laws and judicial decisions with the judgments of US and German courts, various international standards stemming from the corporate law disputes, as well as relevant judgments of the ECtHR, revealing in more clear terms various legal problems in the case. *In particular:*

- *The case does not follow the principles of legal certainty and safeguards against arbitrariness which are considered to be a common threat to the Convention and the rule of law;*
- *In deciding to consider the impugned acts of Nika Gvaramia as criminal, it is still unknown whether the Office of the Prosecutor General of Georgia has given reasonable consideration to the decisive facts in the criminal case initiated against the accused. The above aspects could serve as a turning point in determining the impugned actions not to be a criminal offense and declaring the innocence of the accused;*
- *The scope of abuse of power in the criminal case is completely unclear, being arbitrarily interpreted by the prosecution authorities to the detriment of the defendant;*
- *The case files do not show whether the prosecution has considered the use of alternative legal means of prosecution;*
- *Further, the prosecution did not pay attention to the fact that the decisions of the director were agreed upon and approved by the partners, and shareholders, and the director reasonably believed that following the analysis of short or long-term risks, the decisions served the best interests of the corporation as agreed with partners and shareholders.*

According to the assessments by HRC, the initiation of the criminal prosecution and the judgment of conviction by Tbilisi City Court against Nika Gvaramia, the Director-General of the critical media outlet, is politically motivated and serves as a means of retaliation.

Finally, Tbilisi City Court rendered the following judgments against the defendants in this criminal matter:



1. **Zurab Iashvili - acquitted in full.** The charges concerned the offenses under Article 362(1)(b) and Article 221(1) of the Criminal Code of Georgia;

2. **Kakhaber Damenia** - was charged with an offense under Article 182 of the Criminal Code, later changed to an offense under Article 220 of the Criminal Code for which he was found guilty and **was sentenced to pay a fine** of GEL 50,000 as the primary punishment.

3. **Nika Gvaramia** - **was acquitted** of the charges for the offenses under Article 362(2)(d), Article 221(3), and Article 194(3)(c) of the Criminal Code of Georgia.

The charges for the offenses under Articles 182(2)(a)(d) and 182(3)(d) were subsumed into offenses under Article 220 of the Criminal Code and Gvaramia was found guilty for the offenses under Article 220 of the Criminal Code in 2 episodes. For the episode from 2015, a fine of GEL 50,000 was imposed as a primary punishment. For the so-called Porsche episode, the prison sentence of 3 years and 6 months was imposed as a primary punishment. Under the applicable criminal law, the more severe sentence shall absorb the less lenient sentence. Thus, Gvaramia was sentenced to 3 years and 6 months in prison.

According to the assessment by HRC, in delivering the judgment, the court must have taken into account the substance of the allegations, the time and space of making the allegations, and the actions taken by various authorities (including arbitrary interpretation of the criminal law), and other facts which unequivocally indicate the possible application of selective justice against persons with different political views. During the court hearing, the judge failed to pay attention to the above issues. Unfortunately, Tbilisi City Court did not attach due importance to the decisive facts for the criminal proceedings against the defendant. These aspects could have marked a turning point in determining the innocence of the accused¹¹.

Further problems stem from the fact that the trial judge Lasha Chkhikvadze is a childhood friend of Zaza Gvelesiani, director of the holding company owning Rustavi 2. Gvelesiani was one of the witnesses in the case, but the

¹¹ Statement of Human Rights Center regarding the Judgement of Conviction delivered against Nika Gvaramia: <https://bit.ly/3yODNNh>



judge removed him from the list of witnesses. Gvaramia argued that Gvelesiani was also holding an office in the holding company currently owning Rustavi 2, and therefore he was considered a victim in the case. For this reason, Gvaramia petitioned for the recusal of the judge already at the end of 2021, however, judge Chkhikvadze rejected the motion and did not recuse himself. Further, it is noteworthy that Judge Lasha Chkhikvadze is a trial judge of several high-profile criminal cases against high-ranking officials of the former government¹².

Several international organizations reacted to the judgment of conviction delivered by the Tbilisi City Court over the criminal case. Reporters without Borders (RSF) calls for a review of opposition TV channel director Nika Gvaramia's unprecedented and probably politically motivated conviction for "abusing his position". According to the statement, "the severity of the verdict and sentence in a case with such a dubious basis suggests that it was politically motivated with the aim of weakening an opposition media outlet. RSF urges the courts to conduct an immediate independent review of Nika Gvaramia's conviction and the authorities to uphold their international obligations to ensure a safe environment for all media in Georgia." Furthermore, according to the statement, RSF is concerned about the growing threats to independent and opposition media in Georgia¹³.

According to Marie Struthers, Amnesty International's Director for Eastern Europe and Central Asia, "the sentencing of Nika Gvaramia is a blatant act of politically motivated prosecution in retaliation of his dissenting views and criticism of the authorities. He now faces years behind bars as the government ramps up efforts to silence dissenting voices. Nika Gvaramia must be immediately released."

According to Amnesty International, Nika Gvaramia's conviction highlights mounting concerns over declining media freedom in Georgia and exposes the government's growing influence over the courts in a number of cases aimed at muzzling their critics and opponents¹⁴.

¹² "Who is the trial judge of Nika Gvaramia case and does the Judge have a conflict of interest?" netgazeti.ge, May 17, 2022. <https://bit.ly/3PTkWH9>

¹³ Georgia: RSF seeks review of opposition TV chief's conviction, jail sentence: <https://bit.ly/3taQZbP>

¹⁴ Georgia: Sentencing of pro-opposition media owner Nika Gvaramia a political motivated silencing of dissenting voice: <https://bit.ly/3M7OfT2>



16. The case of Zurab and Shalva Tsotsorias, Elguja Tsomaia, Giorgi Narimanidze. The above persons were arrested on charges of covering the crime after the ex-president Mikheil Saakashvili arrived in Georgia. They have been charged under Article 375(2) of the Criminal Code i.e. for concealing a serious crime without prior promise, punishable by one to four years of imprisonment. On October 4, 2021, Judge Jemal Kopaliani of Tbilisi City Court granted the motion of the prosecution to remand Elguja Tsomaia in custody. On October 1, law enforcement officers detained Elguja Tsomaia for having provided his flat to wanted person Saakashvili. According to the investigation, Elguja Tsomaia knew that Ukrainian citizen Mikheil Saakashvili was wanted for a serious crime by the Ministry of Interior of Georgia. Nevertheless, on September 30, 2021, he proactively let Saakashvili temporarily use the flat in Tbilisi for hiding. Further, the investigation argues that on September 29, 2021, after the illegal crossing of the border by Mikheil Saakashvili, Zurab and Shalva Tsotsorias rendered a car service to take Saakashvili to a village in Samegrelo. On October 5, 2021, following the motion filed by the prosecution, Judge Giorgi Gelashvili of Tbilisi City Court remanded both Tsotsorias, the father and the son, in custody as a measure of restraint. Giorgi Narimanidze, the driver of the truck who is the fourth person detained in the case of the third President, does not plead guilty. According to the investigation, Giorgi Narimanidze was in the truck by which Mikheil Saakashvili arrived from Abasha to Tbilisi, thus being aware of the route of the Ex-President entering the country, Narimanidze concealed the fact. The investigation is carried out under Article 375(2) of the Criminal Code of Georgia meaning the concealment of a serious crime without prior promise. The case is being heard at Tbilisi City Court.

17. The case of Mamuka Khazaradze, Badri Japaridze and Avtandil Tsereteli. Former Chairman of the Supervisory Council of *TBC Bank*, Mamuka Khazaradze, and his deputy, Badri Japaridze (at the time being the leaders of the political organization *Lelo for Georgia*) are charged under Article 194(2)(a) and (3)(c) of the Criminal Code envisaging the legalization of illicit income in large amounts carried out by an organized group. The charges brought against the father of the owner of TV company *TV Pirveli*, 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 hearing of the criminal case is over at Tbilisi City Court.



On January 12, 2022, Tbilisi City Court rendered the judgment on the case of Mamuka Khazaradze, Badri Japaridze, and Avtandil Tsereteli. In particular, the court changed the qualification of the charge from the legalization of illicit income (money laundering) to the Article of fraud. The qualification of charges against Avtandil Tsereteli were changed from participation in the money laundering to participation in a fraud. However, under the judgment announced on January 12, judge Giorgi Arevadze found Mamuka Khazaradze and Badri Japaridze guilty of the offenses under Article 180(2)(a) (fraud committed by more than one person with a preliminary agreement) and 180(3)(b) (fraud committed in large quantities) of the Criminal Code, sentencing them to 7 years of imprisonment each. Further, according to the judgment, Khazaradze and Japaridze were released from their prison sentences as the statute of limitation for the criminal prosecution had expired.

The judgment by Tbilisi City Court was appealed by both the defense and the prosecution. The prosecution believes that the elements of money laundering are evident in the case, but the judge misinterpreted the relevant article, neglecting the factual circumstances of the disputed case and the evidence presented to the court. According to the prosecution, the judge should have rendered a judgment of conviction. According to the defense, there were neither the elements of money laundering nor fraud, and the judge should have rendered a judgment of acquittal. The defense seeks the judgment of conviction to be overturned and a judgment of acquittal to be rendered against all the defendants.

At this stage, the case is being heard at the Tbilisi Court of Appeals.

18. *The case of people detained on the counter-protest of July 5, 2021.* According to the Ministry of Interior of Georgia, on July 5 and 6, during the homophobic rally against the March of Dignity planned by various organizations in Tbilisi, several participants of the counter-protest were detained for violence against journalists and illegal interference with professional activities of journalists. HRC monitors the court hearings of the case in Tbilisi City Court against Mukhran Dadvani, Irakli Tsignadze, Nikoloz Guledani, Bakar Maisuradze, Tornike Gabliani, Vano Burduli, and David Kochiashvili. The cases of the above persons are combined, being heard by Judge Besik Bugianishvili of Tbilisi City Court. The prosecution charges the accused persons with the



offenses under Article 225(2), Article 156(2)(a) and (b), and Article 154(2) of the Criminal Code.

HRC monitors the court hearings over the cases of the participant of homophobic counter-protest to identify the approach of the prosecution as well as that of the judiciary towards the sensitive cases; further, to compare the extent of observing the right to a fair trial between the cases with alleged political motives and above-underlined cases, and finally - to provide legal analysis of the judgments rendered by the court in the cases where the victims are journalists and human rights activists.

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19. The case of Levan Khabeishvili. The Prosecutor's Office of Georgia brought allegations against the Member of Parliament of Georgia, Levan Khabeishvili (Electoral Bloc: United National Movement — United Opposition "Strength in Unity") for the offense under Article –126(1)–(Committing violence) of the Criminal Code. As induced from the case files, on January 24, 2020, Levan Khabeishvili physically assaulted Irakli Zarkua, the then Deputy Chairperson of Tbilisi City Council in the corridor of the premises. The Prosecutor's Office of Georgia filed a motion with Tbilisi City Court to remand Levan Khabeishvili on bail of GEL 3,000. However, the motion was granted in part and the accused was remanded on bail for GEL 2,000 GEL. At this stage, the case is heard on the merits at Tbilisi City Court. Speaking of the case details, Levan Khabeishvili, and his defense counsel claim that Levan Khabeishvili was instigated before the confrontation took place in the corridor, which was recorded in the video footage, and broadcast on various TV channels. Further, the defense claimed the case is politically motivated and aims at keeping Khabeishvili away from the parliamentary activities (*as in case of proving the allegation, his powers as a PM would be terminated early*).

Outcomes of the court monitoring:

On April 17, 2022, a hearing was held over the criminal case. In monitoring the hearing, the prosecutor on the case was not duly prepared for the hearing that was indicated indirectly even by the trial judge. The prosecution summoned and questioned 6 witnesses at the trial, who submitted information not substantially related to establishing the truth about the current case. None of the witnesses were questioned by the defense. All six witnesses worked in Old Tbilisi and Mtatsminda Police Division in 2020, as inspectors and investigators. According to the witnesses, the prosecutor



instructed them to investigate the case based on the footage broadcast on the television on January 24, 2020, showing the violence exercised against the accused, Levan Khabeishvili, and another victim in the case Irakli Zarkua. The prosecutor asked the witnesses what kind of investigative actions had been taken in connection with the case. According to the witnesses, they have interviewed several witnesses. Further, specific details about the investigative actions are already present in the case files in the form of investigative protocols which were considered by both parties as undisputed evidence during the pre-trial hearing.

The witnesses further informed the court about the footage which was already known to the general public through various media outlets. When the witness (witness investigator Eka Tevzadze) was questioned by the prosecutor about the information contained in the video recordings, the defense counsel objected as these recordings were going to be examined by the court in a separate session. According to the prosecution, creating a preconception on the issue would hinder further objective considerations. The judge sustained the objection and dismissed the question posed by the prosecution.

The hearings of the case are pending in Tbilisi City Court.

20. Case of Giorgi Rurua. Giorgi Rurua, one of the founders and shareholders of TV company *Mtavari Arkhi*, and one of the organizers of the protest demonstrations of June 20-21, 2019, is charged under article 236(3)(4) of the Criminal Code (illegal purchase, storage, and carriage of firearms); he was also charged under article 381(1) of the Criminal Code, envisaging the failure to execute a court decision or interference with the execution of a court decision. On July 30, 2020, the judge of 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 facility¹⁵. The President made the decision after the Agreement of April 19, 2021 (mediated by Charles Michel, the President of European Council) was signed by the opposition parties, according to which a legal mechanism of release should have been applied to Giorgi Rurua. Before the Agreement, on

¹⁵ More information: <https://bit.ly/2VHvnGE>



March 31, 2021, the President of Georgia, Salome Zourabichvili, 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."¹⁶

According to the defense, it has been more than a year since this criminal case was appealed to the Tbilisi Court of Appeals, but the hearings have not been scheduled yet. Further, according to the defense, they have sent several letters requesting the commencement of the hearing at the Court of Appeals.

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During the monitoring, Human Rights Center published an analytical document: The Criminal Case of Giorgi Rurua: Legal Analysis¹⁷. Numerous substantive and procedural law violations have been identified in this case.

Moreover, the rights and freedoms of Giorgi Rurua as guaranteed by the Constitution of Georgia and international instruments were violated during the personal search of Giorgi Rurua and during the various investigative and procedural actions. In particular, the detainee was deprived of the right to contact his lawyer and family members¹⁸; no rights and duties were explained to the detainee¹⁹ which is an immediate requirement under the criminal procedural law²⁰; personal search of Giorgi Rurua and the search of his car²¹ were carried out in violation of the criminal²² procedural laws²³; when drawing up the protocol of personal search and sealing the firearm, the requirements of the Criminal Procedure Code were violated; the procedural violations existing on the case together with the results of various forensic examinations cast doubts about the relatedness of Giorgi Rurua to the firearm and the authenticity of the evidence; several facts indicate to the suspicious origin of the silencer of the firearm; the investigator carried out several

¹⁶ Full information: <https://bit.ly/3lmCaxY>

¹⁷ See The Criminal Case of Giorgi Rurua: Legal Analysis, Human Rights Center, 2020: <https://bit.ly/2CkSOfd>

¹⁸ See: Paragraph 4 of Article 13 of the Constitution of Georgia: <https://bit.ly/38KDcNF>. Further see the Judgment of the European Court of Human Rights from February 21, 1990 on the case *van der Leer v NLD*, application 11509/85, paragraph 27. See also: Grabenwarter / Pabel, 2012, p. 205.

¹⁹ The reports prepared by the court monitor of the Human Rights Center on the monitoring of the case of Giorgi Rurua. Hearings on the merits: 10.02.2020

²⁰ See Article 38 of the Criminal Procedure Code of Georgia: <https://bit.ly/2InKluz>

²¹ Articles 119 and 120 (6) of the Criminal Procedure Code of Georgia. <https://bit.ly/2InKluz>; Also, Report on the Monitoring of the Case of Giorgi Rurua prepared by the Judicial Monitor of Human Rights Center. Hearings on the merits: 10/03/2020.

²² See Article 121 of the Criminal Procedure Code of Georgia. <https://bit.ly/2InKluz>

²³ See Guide on Article of the European Convention on Human Rights (Right to respect for private and family life, home and correspondence), European Court of Human Rights, 2019, Article 8. pp. 88. Can be accessed at: <https://bit.ly/2YRHdwk>



investigative actions without the participation of the defense counsel²⁴; the aggravation of charge was lacking the constitutional basis, etc. Furthermore, the case files of Giorgi Rurua were lacking the footage of video surveillance cameras of the police station depicting the moment when Rurua was brought to the station. According to the police, they did not have such footage. The availability of this video footage was important as Giorgi Rurua was claiming that when he was taken to the police station, he had a folded mat in his pocket, which could be seen well in the video footage. Thus, it would not be possible for him to have a firearm in the same pocket, which was allegedly found during a search after he was brought to the police station. Giorgi Rurua claimed that he carried no firearm with him.

THE PRACTICE OF EARLY TERMINATION OF POWERS OF MEMBERS OF PARLIAMENT

By the Judgement of December 2, 2019, in the so-called case of Cartu Bank²⁵, the MP **Nikanor Melia** was found guilty under Article 332 of the Criminal Code of Georgia, by the Tbilisi City Court²⁶. He was sentenced to pay a fine of GEL 25,000 as a primary punishment. Further, under Article 43(2) of the Criminal Code of Georgia²⁷, as an additional punishment, Nikanor Melia has been deprived of the right to hold office for another 3 years. Under Article 16 of the Law of Georgia on Amnesty, from December 28, 2012²⁸, the additional punishment issued against Nikanor Melia depriving him of the right to hold office was reduced by a quarter. Eventually, he was fined by GEL 25,000 and deprived of the right to hold office for 2 years and 3 months.

On December 9, 2019, the operative part of the judgment of Tbilisi City Court was sent to the Committee on Procedures and Regulations of the Parliament of Georgia²⁹. According to Resolution N5544 by the Parliament, from December 12, 2019, under the Constitution of Georgia³⁰ and the Rules of Procedure of the Parliament³¹, the MP

²⁴ See The Judgment of the Constitutional Court of Georgia from April 11, 2013 N1/2/503,513 on the case *Georgian citizens - Levan Izoria and Davit-Mikheil Shubladze v. the Parliament of Georgia*, II-55. <https://bit.ly/3hhsQIS>; see also The Judgment of the Constitutional Court of Georgia from January 29, 2003 N2/3/182,185,191 on the case *Georgian Citizens - Piruz Beriashvili, Revaz Jimshelashvili and the Public Defender of Georgia v. the Parliament of Georgia*, paragraph 2.

²⁵ Full information: <https://bit.ly/3cKB34V>

²⁶ Article 332 of the Criminal Code of Georgia. <https://bit.ly/2Uyh9UK>

²⁷ Paragraph 2 of article 43 of the Criminal Code of Georgia. <https://bit.ly/2Uyh9UK>

²⁸ Article 2 of the Law of Georgia on Amnesty: <https://bit.ly/2Yom23w>

²⁹ Full information: <https://bit.ly/2UwXJiO>

³⁰ Paragraph 5(d) of Article 39 of the Constitution of Georgia: <https://bit.ly/2AIDfmn>



powers of Nikanor Melia were terminated early³². On December 23, 2019, the decision of the Parliament was appealed before the Constitutional Court of Georgia³³. The constitutional claim was seeking to find the resolution of the Parliament terminating the powers of Melia unconstitutional³⁴.

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On September 25, 2020, the Plenum of the Constitutional Court of Georgia rejected constitutional claim №1473 (Nikanor Melia v. the Parliament of Georgia). The Constitutional Court held that "the Constitution of Georgia requires that the legislature be staffed only by the persons whose conduct would not be inconsistent with the status of an MP, so as not to cause irreparable damage to the operations of the Parliament of Georgia, and not to undermine the credibility of the legislative, representative and surveillance functions." "The public must have a perception that the activities of legislature and the lawmaking process are free from internal and external interference, narrow personal interests, and illegal influence, while this goal would be impossible to attain where the person found guilty by the court of first instance continues to work in the legislature³⁵."

On the hearing of February 7, 2022, the Committee on Procedures and Regulations of the Parliament of Georgia heard the issue of early termination of MP powers to **Badri Japaridze** as the court judgment which found him guilty had entered into force. As we are aware, under Article 6(9), the Committee on Procedures and Regulations requested a copy of the relevant judgment from the court. The letter N1-946 / 22 of January 28, 2022, sent by the Tbilisi City Court to the Parliament of Georgia, confirms that Badri Japaridze, MP of Georgia, has been convicted (Case N1 / 4607-19) and found guilty of the offense under Article 180 (2) (a) and (3) (b) of the Criminal Code of Georgia. Further, the judgment enters into force upon announcement.

In view of the above, the Committee on Procedures and Regulations of the Parliament of Georgia believed that under Article 39(5)(d) of the Constitution of Georgia and Article 6(2)(d) of the Rules of Procedure of the Parliament of Georgia, the powers of MP Badri Japaridze should have terminated early.

³¹ Paragraph 1 and paragraph 2(d) of Article 6 of the Rules of Procedure of the Parliament of Georgia: <https://bit.ly/3hhZ0V0>

³² More information: <https://bit.ly/2UwXjiO>

³³ More information: <https://bit.ly/2zpHmNW>

³⁴ Case of Nikanor Melia v. Parliament of Georgia, Constitutional Court of Georgia. January 27, 2020: <https://bit.ly/3dRdWar>

³⁵ Judgment №3/2/1473 of the Plenum of the Constitutional Court of Georgia from September 25, 2020 regarding the case Nikanor Melia v. Parliament of Georgia: <https://bit.ly/3M8uLxW>



On February 15, 2022, at the plenary session, the issue of early termination of the term of office of MP Badri Japaridze was heard and granted which was supported by 77 MPs of the ruling party - Georgian Dream.

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According to assessments by HRC, such actions by the authorities could be explained by narrow political motives. In particular, as is clear from the political developments, it is not in the interests of the authorities to work with the parliamentary opposition in a constructive political process. Therefore, on the basis of politically motivated criminal convictions, the parliamentary majority weakens the parliamentary opposition by terminating the term of office of certain opposition MPs.

Taking into account the previous experiences, Levan Khabeishvili could easily face the risk of termination of his mandate based on a judgment of conviction which would continue the trend of harassing opposition MPs and dismissing them from the Parliament.

THE HEALTH CONDITION OF MIKHEIL SAAKASHVILI IN THE PENITENTIARY FACILITY

According to the report released on April 27, 2022, by the multi-profile group of experts created by the Public Defender of Georgia to monitor the medical services rendered to the former President Mikheil Saakashvili in custody, the health condition of the Ex-President has "significantly deteriorated" compared to the visit in January 11, 2022. According to the experts, Mikheil Saakashvili is in a negative catabolic state, meaning that his body consumes the proteins released through the breakdown of its organs leading to weight loss at the expense of muscle mass. Further, there are persistent symptoms of post-traumatic stress disorder – depression and anorexia; Reduction of food intake; Selective rejection of protein products due to intolerance, and a significant reduction in quality and efficiency of living functions. Considering the health condition of Mikheil Saakashvili, the group of experts emphasizes the need for "timely and complex neuro-psychological and physical rehabilitation." Otherwise, the experts talk about the significant loss of muscle and organic weight, the high risk of infections, and the risk of disruption of the functioning of internal organ systems³⁶.

³⁶ Opinion N 6 on the results of monitoring the medical condition of Mikheil Saakashvili by the group of specialists / experts created by the Public Defender <https://bit.ly/3x73Cpo>



The group of experts visited Mikheil Saakashvili 6 times altogether. In particular, the visits were made on November 16-18, 2021, to medical facility N18 of the Special Penitentiary Service, on November 23 and December 12, 2021, to the Giorgi Abramishvili Military Hospital under the Ministry of Defense, and on January 11 and April 22, 2022, to penitentiary facility N12.

In April 2022, during the hearing of the case of illegal border crossing by Mikheil Saakashvili in Tbilisi City Court, Saakashvili requested to be removed from the courtroom and asked for medical help. After returning to the courtroom, when speaking about his health, Saakashvili mentioned that his "alleged medical treatment was a complete bluff" at the Gori Military Hospital because after a 50-day hunger strike, his so-called refeeding program "completely failed"³⁷. At the same hearing, Judge Nino Chakhnashvili of Tbilisi City Court partially granted the motion of the defense counsel of Mikheil Saakashvili and instructed the director of the Special Penitentiary Service to "provide proper and adequate medical care" to the detained Saakashvili. However, the judge rejected the motion in the part where the defense counsel was asking the Court to instruct the director of the Special Penitentiary Service to allow the members of Consilium of the Empathy center to see Saakashvili. **Under Article 191¹(2) of the Criminal Procedure Code, where the life or health of a person in a penitentiary facility is endangered, and/or where the judge has reasonable doubts that the accused / convict has been subjected to torture, humiliation, or/and inhuman treatment, the judge is empowered to order by ruling the Director-General of the Special Penitentiary Service to take special measures necessary for the safety of the inmate.**

On May 10, 2022, the Ministry of Justice of Georgia offered Mikheil Saakashvili to be transferred to the Vivamedi Clinic³⁸. On the same day, the defense counsels of the Ex-President stated that Saakashvili agreed to this but with a condition that his family members, personal doctors, and alternative experts from the Empathy Center would be allowed to see him on a regular basis. Further, the defense counsel and MPs must be allowed to see Saakashvili during working hours. Among the conditions was the request that the participation in all examinations, diagnostics, prescribing, and determining the next stages of treatment or recovery for Mikheil Saakashvili shall take place on a parity basis, with the inclusion of Empathy and in case the inmate gives consent, the members of the Council created by the Public

³⁷More information: <https://bit.ly/3aolbK9>

³⁸More information: <https://bit.ly/3zd70lm>



Defender³⁹. On May 12, 2022, Mikheil Saakashvili was transferred from Rustavi penitentiary facility N12 to Vivamedi Clinic in Tbilisi⁴⁰.

The right to access health care for persons deprived of their liberty is regulated by international standards⁴¹, as well as under national law. Regardless of social and legal status, everyone is entitled to the right to healthcare, which is a fundamental human right creating significant momentum for the development of adequate health care standards⁴². The right covers not only the provision of medical services, but also includes: providing adequate sanitary and hygienic conditions, safe water, and safe and adequate food. The right to healthcare includes protection of the individual from the medical treatment without his/her consent, participation in medical experiments and studies, torture, and other cruel, inhuman, or degrading treatment or punishment.

Within the realm of the right to healthcare, a person shall enjoy the following rights: the right to disease prevention, treatment, and control; equal and timely access to basic medicines and basic health care services; the right to be informed about personal health and health issues⁴³.

Taking into account the practice of the European Convention on Human Rights and that of the European Court of Human Rights, as well as following the standards developed in the work undertaken by the European Committee for the Prevention of Torture (CPT), the Council of Europe approved the European version of the United Nations Standard Minimum Rules of Treatment of Prisoners - new edition of European Prison Rules⁴⁴.

The third part of EPR defines the issues of providing and organizing health care in the penitentiary system (paragraphs 39-40, 46-48) and the duties of medical staff (paragraphs 41-44).

³⁹More information: <https://bit.ly/3zgqCFg>

⁴⁰More information: <https://bit.ly/3m8gIQz>

⁴¹ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) Rules 65 and 66. <https://bit.ly/3awhphD>

⁴² UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 31, The Right to Health, June 2008, No. 31, a. <https://bit.ly/3PT4iaN>

⁴³ UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175. <https://bit.ly/3awhphD>

⁴⁴ Council of Europe: Committee of Ministers, Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, 11 January 2006, Rec(2006). <https://bit.ly/3x6h6BL>



EPR underlines the obligation of the prison administration to ensure the health of all prisoners (paragraph 39) and access to prison medical care. Medical services in prison shall be organized in close relation with the general health administration of the community or nation. Health policy in prisons shall be integrated into, and compatible with the national health policy. The prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation (paragraph 40). Every prison shall have the services of at least one qualified general medical practitioner and shall have personnel suitably trained in health care (paragraph 41). The medical services shall be available to every prisoner. Sick prisoners who require special treatment shall be transferred to specialized institutions or civil hospitals, when such treatment is not available in prison (paragraph 46).

Although numerous international human rights treaties and standards define the right to healthcare, the national legislative and normative documents are crucial for the implementation of this right.

The regulations of health care in the penitentiary system in Georgia are based on international human rights norms and standards. The rights of persons placed in the penitentiary system are defined in the following national health documents: Law of Georgia on Health Care⁴⁵, Law of Georgian on Patient Rights⁴⁶, Law of Georgia on Medical Practice⁴⁷, Also the Imprisonment Code of Georgia⁴⁸ , and other normative acts.

The case-law of the European Court of Human Rights considers detainees to be in a vulnerable position and obliges governments to protect the health and well-being of persons deprived of their liberty⁴⁹. The protection of the lives of persons in prison also includes the obligation of the state to provide the necessary medical care for the protection of the lives of this category of persons. In addition, the obligation to treat persons deprived of their liberty rests with the State⁵⁰. A sharp deterioration in a

⁴⁵ Georgian Law on Health Care. 10-Dec-97.

⁴⁶ Georgian Law on Patient Rights. 05-May-00.

⁴⁷ The Law of Georgia on Medical Practice 08-Jun-01.

⁴⁸ Law of Georgia the Imprisonment Code, 2010; 09-Mar-10.

⁴⁹ Naumenko v. Ukraine, no. 42023/98, § 112, 10 February 2004; and Dzieciak v. Poland, no. 77766/01, § 91, 9 December 2008.

⁵⁰ Taïs v. France, no. 39922/03, § 98, 1 June 2006; and Huyly v. Turkey, no. 52955/99, § 58, 16 November 2006).



person's health in places of detention creates serious grounds to suspect whether this was due to inadequate medical treatment in the facility⁵¹.

The positive obligations under Article 2 of the Convention call for the development of state regulations. These regulations oblige national and prison hospitals to take appropriate measures to protect the lives of patients in accordance with the above requirements⁵².

Therefore, the Georgian authorities must ensure the protection of the health, mental well-being, and life of prisoner Mikheil Saakashvili.

CONCLUSIONS

As in previous years, the monitoring of the court hearings in 2022 revealed a number of shortcomings in various areas, such as the right to a trial by an independent court established by law, public confidence in the criminal justice system, the right to a public hearing, the presumption of innocence, the right to respect honor and dignity, the right of the convict/accused to health care, the right to liberty, equality of arms, the right to a fair trial, the right to call and question witnesses, the rights to a reasoned court judgment, the right to a lawyer at the stage of detention and witness protection, selective justice and political motives. Further problems stem from the actions on the part of the State manifested in the grave violation of the rights of the detained Mikheil Saakashvili which may be assessed as inhuman and degrading treatment of the prisoner.

Like previous years, during this year the government officials mentioned the culpability of the accused persons before the court rendered the judgment, which is an acute problem, violating the presumption of innocence and contributing to the appearance of the accused as offenders in the public eye. Moreover, such statements impede shaping the public opinion on the impartiality and political neutrality of the Prosecutor's Office.

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

Further, the cases of early termination of powers for some of the MPs should be mentioned. These decisions are based on convictions in criminal cases in which, with

⁵¹ Farbtuhs v. Latvia, no. 4672/02, § 57, 2 December 2004; and Khudobin v. Russia, no. 59696/00, § 84, ECHR 2006-XII.

⁵² Tarariyeva v. Russia, no. 4353/03, § 74, 85 and 87, ECHR 2006-XV.



high probability, there are signs of political and selective justice. The authorities are likely to deliberately try to weaken the parliamentary opposition with such means.

The judgment of conviction rendered against Nika Gvaramia by Tbilisi City Court raised concerns at both the national and international levels about the independence and impartiality of the prosecution authorities and the judiciary as a whole.

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Finally, on 9 June 2022, the European Parliament adopted a resolution (2022/2702 (RSP)) - *"on violations of media freedom and the safety of journalists in Georgia"*⁵³. The resolution refers to the sentence of Nika Gvaramia, the founder of the opposition TV channel Mtavari Arkhi and the cases against the owners of TV Pirveli and Formula. The resolution also refers to the court judgment rendered against the founders of the Lelo party, the legality of which is questioned.

In the same resolution, the European Parliament expressed "concern over the destructive role played by the sole oligarch, Bidzina Ivanishvili, in Georgia's politics and economy, and the level of control he exerts over the government and its decisions, including those on the politically motivated persecution of journalists and political opponents." The European Parliament asserted that it is deeply worried by Ivanishvili's exposed personal and business links to the Kremlin, "which determine the position of the current Government of Georgia towards sanctions on Russia." The European Parliament "calls on the Council and democratic partners to consider imposing personal sanctions on Ivanishvili for his role in the deterioration of the political process in Georgia."⁵⁴

⁵³ European Parliament resolution of 9 June 2022 on violations of media freedom and the safety of journalists in Georgia (2022/2702(RSP)): <https://bit.ly/3zoLv18>

⁵⁴ European Parliament resolution of 9 June 2022 on violations of media freedom and the safety of journalists in Georgia (2022/2702(RSP)), Paragraph 16, - *"Expresses its concern over the destructive role played by the sole oligarch, Bidzina Ivanishvili, in Georgia's politics and economy, and the level of control he exerts over the government and its decisions, including those on the politically motivated prosecution of journalists and political opponents; is deeply worried by Ivanishvili's exposed personal and business links to the Kremlin, which determine the position of the current Government of Georgia towards sanctions on Russia; calls on the Council and democratic partners to consider imposing personal sanctions on Ivanishvili for his role in the deterioration of the political process in Georgia"*. Can be accessed at: <https://bit.ly/3zoLv18>



RECOMMENDATIONS:

To the Judiciary:

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- *The judges must ensure fair court proceedings with the rulings and judgments meeting the high standard of substantiation;*
- *To adhere to the Bangalore Principles of Judicial Conduct, increase public confidence in the justice system;*
- *In order to exercise public control over the judiciary, the courts should ensure that the principle of publicity of the hearing is observed - any interested person is allowed to attend the hearing when there are no grounds for closing the hearing as provided for by law;*
- *Judges must ensure a full, thorough, and objective examination of administrative offense cases; further, to ensure that the cases of administrative offenses are heard in observation of the principle of equality of arms and the impartiality of the court;*
- *The judges must ensure the proper distribution of the burden of proof in the hearings of the cases of administrative offenses, without prioritizing the value of the evidence presented by any party and examining the evidence thoroughly and in a fair manner;*
- *To assess the evidence presented at the court hearings and assess the issue of the legality of obtaining the evidence.*
- *The courts must examine each charge against each defendant, referring to the relevant evidence. The courts must explain in the judgment why the evidence was accepted or excluded;*
- *The courts should not accept the an indictment decree as a piece of evidence;*
- *The courts must ensure the obligatory presence of the accused at the court hearings and not to hinder the exercise of the said right;*

To the Prosecutor's Office:

- *When interviewing witnesses and victims, the prosecution must ensure that the fundamental human rights, respect for human dignity, and human treatment are observed;*
- *To promote the restoration of public confidence in the independence and impartiality*



of the prosecution.

To the High Council of Justice

- *To promote the restoration of public confidence in the independence and impartiality of the judiciary;*
- *To monitor the proper implementation of the recommendations approved by the Council in the general courts.*

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Recommendation to the Ministry of Justice and the Special Penitentiary Service:

- *To be guided by the opinion of the multi-profile group of physicians and to be committed to providing an environment conducive to human dignity, and to select an alternative medical facility for the prisoner when there is an urgent need for it.*

To defense counsels:

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