



ACTS OF PARDON AND AMNESTY APPLIED TO THE CASES WITH ALLEGED POLITICAL MOTIVES:

Legal analysis

Human Rights Center



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INTRODUCTION

The current document endeavors to assess the decisions rendered in terms of pardons and amnesties applicable to the cases with alleged political motives. Further, the document aims at identifying the trends indicating the signs of alleged political motives and selective justice with regard to the assessed cases.

In the recent years the interest of observer organisations has increased towards the criminal cases ongoing against high-ranking officials within the previous government¹, where the Office of the Prosecutor General resumed the investigation into the suspended or interrupted criminal cases and submitted some of the cases to the court for hearings. Moreover, the investigation was launched against the activists, political leaders and representatives of media organisations participating in the protest demonstrations of June 20-21 and November 2019.

HRC has been underlying for many years that criminal prosecutions against political leaders, civil activists and media outlets in certain cases create quite reasonable doubts among the Georgian public and political groups and among international partners about the existence of political motives. In the cases where the political motives do exist, the probability of unfair legal proceedings is much higher that may brutally violate the Constitution of Georgia as well as the rights and freedoms guaranteed by the European Convention of Human Rights².

After monitoring the court proceedings and studying the case files of the relevant criminal cases, we have identified that in certain cases the right to a fair trial was not adequately respected. Further, although the deficiencies identified during the court hearings do not expressly violate the right to a fair trial *per se*, however, the combination of the following aspects: some of the individual cases, particular defects in the legislation, unsubstantiated judgments by the courts and overall the existing problems in the judicial practice, further the existence of selective justice and alleged political motives in the proceedings against particular individuals - undermines the standards for a fair trial as envisaged by international and national laws.

Concerning the large-scale amnesty, HRC stated that applying the amnesty to the offenses against the right to be protected from inhuman and degrading treatment committed by the state representatives during the dispersal of June 20-21 rally³.

Pursuant to the case law of the European Court of Human Rights, the application of amnesty to the persons who have committed the crimes of inhuman or degrading treatment (regardless of whether the investigation is being conducted at the national level under a correct subsumption) is contrary to Article 3 of the European Convention. Such practice makes illusory the safeguards created by the prohibition of ill-treatment. Consequently, the application of amnesty to the persons who were responsible on the part of the State for the offenses against the prohibition of inhuman and degrading treatment is a violation of international law⁴.

¹Representatives of Fidh will monitor the court proceedings against Irakli Okruashvili: <https://bit.ly/3W6AmuR>

²Legal Assessment of the Criminal Cases Ongoing against Giorgi Ugulava. Human Rights Center. 2020: <https://bit.ly/33SghZx>

³ See: Analytical Document by HRC: Cases Connected with the Events of June 20-21, 2019: A Political Justice and Disputed Amnesty, 6/19/2021. [Http://www.hrc.ge/220/geo/](http://www.hrc.ge/220/geo/) [Seen at 2/6/2023].

⁴ See: Statement by Young Lawyers Association, "It must be unacceptable to apply amnesty to the offenses committed by law enforcement officers on June 20-21, 2019. 21.04.2021. <http://bit.ly/3JL1xYs>, [seen - 06.02.2023].

METHODS

The monitoring over the cases with alleged political motives is being carried out by the methodology of monitoring the court proceedings designed by HRC aiming at the legal assessment of the court proceedings under the monitoring and of the national legislation against the international standards of a fair trial, further aiming at identifying and analyzing the possible deficiencies in the proceedings of criminal and administrative offenses, further identifying and analyzing the alleged political motives on the part of the authorities.

The monitoring of the court proceedings is carried out by 2 lawyers who have been trained particularly in monitoring the court trials. In order to conduct monitoring in a right manner, at the initial stage, a special questionnaire for court monitoring was developed. After every court hearing, the legal monitors process the information received from the court hearing later to be analyzed and applied by the legal analyst for the relevant reports.

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

Along the principles of non-interference, impartiality and objectivity, with a purpose to respect the independence of the judiciary, HRC releases the information regarding the court hearings and conclusions to the parties of the proceedings, media and public.

MECHANISM FOR THE PARDON

The possibility of pardoning in criminal cases is envisaged in the absolute majority of legal systems of the world⁵. In essence, pardon is a humane act⁶ and is usually used in cases where the application of rigid and inflexible laws against particular persons generates feeling of injustice⁷. Pardon is a prerogative of the executive powers, thus it is a mechanism utilized by the executive⁸. Pardoning power is exercised by the executive (the sovereign, monarch, president) in the sole authority or through a collegial body under the executive power. Further, pardons may be granted to particular persons and in exercising the pardoning power, a particular individual and action (offense) do matter⁹. The modern concept of pardoning power includes an act and/or action that envisage:

- *Release from criminal responsibility;*
- *Adjournment or suspension of the punishment;*
- *Replacing the punishment with more lenient one;*
- *Lifting the conviction record and respective restrictions in full.”¹⁰.*

In Georgia, pardoning power is an exclusive constitutional prerogative of the President acting as the Head of the State. Article 52(1)(f) the Constitution of Georgia provides that “the

⁵ The pardon: politics or mercy?, International Bar Association - the global voice of the legal profession. <https://bit.ly/3Dwe7aa>

⁶ Pardons and Reprieves, Justia US Law. <https://bit.ly/3TRog6Q>

⁷ Pardoning Power, Georgian Model and International Experience. Human Rights Center, Tbilisi, 2016, p. 6. <https://bit.ly/3DvWqaN>

⁸ Presidential Pardons: Overview and Selected Legal Issues, Michael A. Foster Legislative Attorney January 14, 2020, p.1. <https://bit.ly/3gKcblP>

⁹ Pardoning Power, Georgian Model and International Experience. Human Rights Center, 2016, p. 6. <https://bit.ly/3DvWqaN>

¹⁰ Pardoning Power, Georgian Model, Human Rights Center, Tbilisi, 2016, p. 6 <https://bit.ly/3DvWqaN>

President of Georgia may grant pardons to convicted persons”¹¹.

The pardoning power of the President of Georgia is derived from the constitutional and legal status of the Institute of the President. In particular, article 49 of the Constitution of Georgia provides that "the President of Georgia is the Head of the State of Georgia, the guarantor of the unity and national independence of the country"¹². The institution of pardon also serves the purposes of implementation of criminal policy. In accordance with article 78 of the Criminal Code of Georgia, "[p]ardon shall be granted by the President of Georgia individually to a particular person"¹³. Under an act of pardon, convicted persons may be released from further serving the sentence, alternatively their sentences may be reduced or replaced with a more lenient punishment¹⁴. Furthermore, under an act of pardon a record of conviction may be expunged to the person¹⁵.

According to article 11 of the Law of Georgia on Normative Acts¹⁶, the President of Georgia shall issue an edict within his/her competence based on the authority granted by the Constitution of Georgia. In accordance with the Constitution of Georgia and based on his/her exclusive pardoning power, the President of Georgia shall determine the procedure and conditions for pardoning the convicted persons, the composition of the Pardoning Commission. The Act of Pardon executed by the President is based on the principles of humanism which is the important part of state policy.

On November 26, 2019, the President of Georgia issued Edict N556 ¹⁷ approving the new procedure for pardoning. The new procedure significantly differs from the old one. The Edict provides regulations for pardoning the convicted persons and those who already served the sentence with no conviction record having been expunged. Further, the Edict lays down the main conditions and rules through which the exercise of the constitutional powers of the President of Georgia shall be carried put in practice. The same Edict envisages the criteria the person requesting the pardon shall meet and the procedure through which the issue of pardon shall be resolved.

According to the Edict, the pardoning power shall be the exclusive authority granted to the President of Georgia pursuant to article 52(1)(f) of the Constitution of Georgia to be used by the President in an exceptional manner. The application of pardoning power shall be based on the principle of humanism and must derive from the interests of the State¹⁸. In accordance with the new procedure, instead of the Pardoning Commission, the respective Office within the President's Administration shall hear the case of pardoning the convicted persons. The mentioned Office shall submit to the President the following files and items:

- *The case of the convicted person serving a life or determinate sentence;*
- *The case of the convicted person serving a determinate sentence where the portion of the sentence has been suspended;*
- *Information about the cases excluded for the submission to the President by the Office.*

Noteworthy, the Office may not submit to the President requests for expunging the

¹¹Article 52(1)(f) of the Constitution of Georgia. <https://bit.ly/3U00Yff>

¹²Constitution of Georgia, Article 49 (1).

¹³The Criminal Code of Georgia, Article 78(1).

¹⁴The Criminal Code of Georgia, Article 78(2).

¹⁵The Criminal Code of Georgia, Article 78(3).

¹⁶Organic Law of Georgia on Normative Acts, Article 11 (1).

¹⁷Edict of the President of Georgia №556 approving the Procedure for Pardon, November 26, 2019, Tbilisi. <https://bit.ly/3TBXcsB>

¹⁸Edict of the President of Georgia №556 approving the Procedure for Pardon, November 26, 2019, Tbilisi. <https://bit.ly/3TBXcsB>

conviction records to the persons having served the sentence, however, such power to expunge the conviction records still rests with the President. The President may still make a decision to pardon the person whose case is being heard by the Office or notwithstanding the above requirements make the decision on pardoning the person. Under the procedure, the following cases may not be submitted to the President:

- *Where the persons is convicted of more than one offense and has not yet served at least half of the term;*
- *Who is sentenced for the crime committed during the suspended sentence with having served less than 2/3 of the sentence;*
- *Who has committed a crime while on parole with no conviction record having been yet expunged and has served less than 2/3 of the term.*
- *The case has not yet been finalized at all three instances of courts or the timeframe for lodging an appeal to the superior court has not yet expired;*
- *Who does not request to be pardoned.*

The amendments to the procedure also provide as follows:

- *Where the minimum actual term to be served by the convicted person was increased from 15 up to 20 years.*
- *Actual term of the sentence to be served by the convicted person has increased from 1/2 to 2/3 meaning those convicted persons who are convicted of serious or particularly serious crimes or who were convicted in the past and have committed the crime before their record of conviction had been expunged;*
- *The term to be served by the convicted person with sentence not more than 5 years has been reduced by 1/3 or 1/4 of the ordered term of the sentence.*

Moreover, the new changes also provide that even the cases where a bad character letter issued by the penitentiary facility may not serve as a ground to reject the hearing of the pardoning case¹⁹.

According to the new regulations, before reaching the final decision to pardon a person, the President may consult the relevant state agencies and / or experts of the field. In making a decision on pardon, the President shall take into account some classical circumstances like the purpose of crime, motive of crime, outcomes of crime, etc.), but the President shall also consider the following aspects: committed ill-treatment, domestic offense, domestic violence, a crime against a person with disabilities, against a child or other persons representing a vulnerable group; a crime against a police officer, investigator, prosecutor, judge of participant of the proceedings that is connected with performance of their official duties; a crime committed by a law enforcement official who is serving the sentence for violations of the rights enshrined in articles 2 and 3 of the European Convention of Human Rights.

Furthermore, according to the new regulations, the failure by the President to issue a respective pardoning act (decree) shall be considered as a refusal to grant pardon to the person concerned²⁰. The above information shall be communicated to the penitentiary service who shall inform the convict about the decision²¹. A repeat submission of the case for pardoning to

¹⁹ Decree №556 of the President of Georgia approving the Procedure for Pardoning, Article 2 (4). <https://bit.ly/3TBXcsB>

²⁰ Decree №556 of the President of Georgia approving the Procedure for Pardoning, Article 6 (5). <https://bit.ly/3TBXcsB>

²¹ Decree №556 of the President of Georgia approving the Procedure for Pardoning, Article 8 (2). <https://bit.ly/3TBXcsB>

the President shall be allowed after 6 months from reaching the first decision²².

Admittedly, under the Charles Michel's Agreement, the President of Georgia granted pardons to Giorgi Rurua and Irakli Okruashvili whose cases were considered to be the instances of politicized justice. Moreover, the mentioned persons never requested to be pardoned by the President, while under the regulations approved by Edict 556, the President of Georgia had no authority to reach the decision to pardon them without formal written request by the persons concerned.

THE CRIMINAL CASES THAT ARE BEING MONITORED AND HAVING BEEN SUBJECT TO PARDONING ACTS

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

During the monitoring, HRC published a document: Legal Analysis of the Criminal Cases ongoing against Giorgi Ugulava²³.

2) Case of Irakli Okruashvili. The Leader of the party *Victorious Georgia*, Irakli Okruashvili was accused under article 225 of the Criminal Code related to the events of June 20-21, 2019, envisaging the organisation of group violence and participation in the violence. Following the judgment from April 13, 2000, Okruashvili was sentenced to 5 years of imprisonment as he was charged with the participation in the offense. Based on the Act or Pardon of the President, like Giorgi Ugulava Okruashvili also left the penitentiary facility on May 15, 2020.

Despite the pardon, Okruashvili appealed the judgment to Tbilisi Court of Appeals. Judge within the Appellate Court, Vepkhvia Lomidze, upheld the judgment of the court of first instance.

On April 18, 2022, Irakli Okruashvili released information on his Facebook page²⁴ that 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. According to the defense, the Court of Appeals fully agreed to and reiterated the reasoning developed in the judgment of conviction by Tbilisi City Court on April 13, 2020, right as well the doubtful 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.

HRC provided a comprehensive legal assessment of the case in an analytical document: Legal

²² Decree №556 of the President of Georgia approving the Procedure for Pardoning, Article 7. <https://bit.ly/3TBXcsB>

²³ Legal Assessment of the Criminal Cases ongoing against Giorgi Ugulava, Human Rights Center. 2020: <https://bit.ly/33SghZx>.

²⁴ More information: <https://bit.ly/3zskTre>

Assessment of Criminal Cases Ongoing against Irakli Okruashvili²⁵.

According to the assessments by HRC, a number of 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 neutral evidence, the video recordings requested from TV companies and the opinion of the forensic portrait examination were presented at the trial which are problematic in legal terms. The court avoided the issue of specifics of the norm and without identifying and assessing the individual elements of the criminal act subsumed the act under violence whereas for the purposes of article 225 of the Criminal Code "violence" shall be defined as more intense physical impact than under normal circumstances.

Moreover, the law enforcers selected as an accused and consequently detained particularly Irakli Okruashvili out of plenty individuals with whom Okruashvili participated in the "group violence". Therefore, the criminal proceedings were instituted only against him, although it was 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 personal driver and related person to the family, Koba Koshadze was arrested with alleged political motives.

3) 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, was 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 implying the failure to execute a court decision or interference with the execution of a court decision. On July 30, 2020, the judge of criminal panel of Tbilisi City Court, Valerian Bugianishvili rendered a judgment of conviction against Giorgi Rurua sentencing him to 4 years of imprisonment. The court found Giorgi Rurua guilty of both charges.

Following a pardon act by the President of Georgia, on April 27, 2021, the convict was released from the penitentiary facility²⁶. The President made the decision after the Agreement of April 19, 2021 (Charles Michel's 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 Zurbishvili, 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."²⁷

Despite the Pardoning Act issued by the President of Georgia, the defense appealed the judgment in the superior court. According to the data from February 2023, the defense noted that it has been more than a year since they lodged the appeal with Tbilisi Court of Appeals with no hearing have yet been scheduled. Moreover, the defense has sent several letters requesting the commencement of hearings of the case at the Court of Appeals.

During the monitoring, HRC published an analytical document: Criminal Case of Giorgi Rurua: Legal Analysis²⁸. Numerous substantive and procedural law violations have been identified in this case.

As already mentioned, under article 78 of the Criminal Code of Georgia, the President of Georgia may grant pardons to some persons that to be determined individually. Under the

²⁵Legal Assessment of the Criminal Cases Ongoing against Irakli Okruashvili, Human Rights Center. 2021. <https://bit.ly/31NEpka>

²⁶More information: <https://bit.ly/2VHvnGE>

²⁷More information: <https://bit.ly/3ImCaxY>

²⁸The Criminal Case of Giorgi Rurua: Legal Analysis, Human Rights Center, 2020: <https://bit.ly/2CkSOfd>

Act of Pardon, convicted persons may be released from further serving the sentence, alternatively their sentences may be reduced or replaced with a more lenient punishment²⁹. 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. Under Article 277 of the Criminal Procedure Code of Georgia regulating the procedure for announcing the judgments, the presiding judge shall explain to the parties the procedure and time limits for appealing the judgment. The convicted person must also be informed about the right to file a petition for pardoning³⁰.

In the cases with alleged political motives where the felon plead not guilty and does not request pardon from the President, there is an evident trend of pardoned felons still using the right to appeal and carrying on criminal defense in superior courts. Moreover, after exhausting all the remedies at the national level, the client may wish to apply to the ECtHR requesting the restoration in his/her right to a fair trial.

Further, despite the act of pardon being issued, the Prosecutor's Office also continuous criminal litigations in the superior courts serving the means to defame the persons in the public eye.

AMNESTY

Taking into consideration the international practice, amnesty and pardon are the most common means to exempt persons from criminal liability. Legislations in many countries provide for such kind of regulations and irrespective the name variations all of them have the same meaning.

Generally, amnesty is a non-individualized act covering all individuals or groups, while pardon is granted to identified individuals. In practice, pardon refers to the reduction of the sentence being a post-conviction measure, while amnesty may be granted at any stage of criminal proceedings³¹. In various countries, the laws differentiate between amnesty and pardon according to the persons they are issued by³².

Amnesty is largely regarded as a special legislation with a meaning to be further specified by the norms regulating the issue in a narrow and detailed manner to the extent possible³³. The main reason for amnesty is the sensitive political need in the post-conflict period meaning to prioritize the reconciliation in the society before the issue of justice³⁴. Accordingly, the meaning of amnesty goes beyond the scope of legal categories³⁵ having more political rather than legal nature³⁶.

Article 77 of the Criminal Code of Georgia provides for the definition of amnesty leaving its

²⁹ Article 78 of the Criminal Code of Georgia <https://bit.ly/3zbd51K>

³⁰ Article 277 of the Criminal Procedure Code of Georgia. <https://bit.ly/3xevg52>

³¹ Giorgi Burjanadze, Pardoning Powers and Human Rights, in Human Rights and Rule of Law, edited by Konstantine Korkelia, (Tbilisi: Tbilisi University Press, 2013), 10.

³² J. C. Baumgartner, M. H. Morris, Presidential Power Unbound: A Comparative Look at Presidential Pardon Power, Politics and Policy, V 29, №2, 2001, 212-14.

³³ Giorgi Burjanadze, Pardoning Powers and Human Rights, in Human Rights and Rule of Law, edited by Konstantine Korkelia, (Tbilisi: Tbilisi University Press, 2013), 11.

³⁴ Lisa J. Laplante, "Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes." Virginia Journal of International Law, Vol. 49, (2009); Marquette Law School Legal Studies Paper No. 08-26: 916.

³⁵ Louise Mallinder, Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide (Studies in International Law). 1st ed. (London: Hart Publishing, 2008), 3.

³⁶ Louise Mallinder, Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide (Studies in International Law). 1st ed. (London: Hart Publishing, 2008), 3.

application within the competence of the Parliament. In contrast, the pardoning powers under article 78 of the Criminal Code stem from article 73 of the Georgian Constitution. Amnesty may be granted by the Parliament of Georgia to individually undefined and unidentified persons³⁷. In contrast, pardon is an act following the nomination and is granted to certain individuals. Under the act of amnesty, culpable persons may be released from criminal liability, while felons may be released from punishment or their sentence may be reduced or replaced with a more lenient punishment³⁸. Under the act of pardon, convicted persons may be released from further serving the sentence, alternatively their sentences may be reduced or replaced with a more lenient punishment. Both acts provide possibilities to expunge the conviction records to felons³⁹.

As noted, the Amnesty Law is an emergency tool in post-conflict periods causing some disagreements among the public⁴⁰. This is a Peace against Justice debate where the following issues are being assessed and exercised by the law, tribunals and commissions created in post-conflict situations: Policy, law and ethics⁴¹. Thus, in the context of application of amnesty, different opinions confront about the expediency of its application⁴².

When discussing the issue of expediency, some political, moral and legal aspects arise⁴³. However, the tool must be considered as an effective means of solving problems in post-conflict periods. The main purpose of amnesty is to achieve a wider public consensus to eliminate political and legal crises.

In the recent history of Georgia, amnesty of the largest scale was carried out after the 2012 parliamentary elections⁴⁴. As a result, thousands of individual including those convicted of serious and particularly serious offenses were released from prison facilities⁴⁵. The above Law was preceded by the Resolution of the Parliament of Georgia from December 5, 2012 concerning the individuals who were arrested and persecuted on political grounds and granting 190 individuals the status of political prisoners, while recognizing 25 individuals to have been persecuted on political grounds⁴⁶.

By all means, both instruments operate beyond the scope of pure legal framework bearing the political elements which stem from assessments laid down in the international reports released by number of reputable international NGOs in 2004-2012 in relation to the human rights violations en masse including on political grounds.

Above the principles of humanism, both acts refer to Resolution N1900 from 2012 by the Parliamentary Assembly of the Council of Europe and to the criteria established by the Council of Europe with regard of the persons imprisoned on political grounds. Nevertheless, the above acts resulted in tough debates among the domestic political forces and international

³⁷Criminal Code of Georgia, Article 77(1).

³⁸Criminal Code of Georgia, Article 77(2).

³⁹Criminal Code of Georgia, Article 77(3).

⁴⁰ Louise Mallinder, "Global Comparison of Amnesty Laws." (August 1, 2009). The Pursuit of International Criminal Justice: A World Study on Conflicts, Victimisation, and Post-Conflict Justice, M. Cherif Bassiouni, ed., Intersentia, Antwerp 2010: 1.

⁴¹ Louise Mallinder, "Global Comparison of Amnesty Laws." (August 1, 2009). The Pursuit of International Criminal Justice: A World Study on Conflicts, Victimisation, and Post-Conflict Justice, M. Cherif Bassiouni, ed., Intersentia, Antwerp 2010: 1.

⁴² Louise Mallinder, *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide* (Studies in International Law). 1st ed. (London: Hart Publishing, 2008), 3.

⁴³ Louise Mallinder, *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide* (Studies in International Law). 1st ed. (London: Hart Publishing, 2008), 3.

⁴⁴ Law of Georgia on Amnesty from December 28, 2012 (Official Gazette of Georgia: N202-რს, website 12/01/2013)<https://bit.ly/3zf6G6N>

⁴⁵ Giguashvili A., *Amnesty as a Mechanism for Justice and Public Consent*, <http://bit.ly/3Y6WRjQ>, [06.02.2023].

⁴⁶ Resolution №76 of the Parliament of Georgia of December 5, 2012 regarding the Persons Detained and Persecuted on Political Grounds. <https://bit.ly/3zhxCRz>

organisations due to the fact that the process was conducted in an expedient manner particularly in the part of the decisions made with regard to the persons persecuted or detained on political grounds⁴⁷. At the same time, the reason for criticism and dissatisfaction was that some persons having committed serious or particularly serious crimes were released from prisons or their terms of sentence have been reduced⁴⁸.

Consequently, being driven by the principles of humanism, taking into consideration the socio-political aspects, the State may from time to time adopt the decisions (including through legislative amendments) aimed at improving the legal status of felons and at creating additional legal mechanisms for them to be released from punishment.

THE LAW ON AMNESTY RELATING TO THE EVENTS OF JUNE 19-21 AND THE CASES WITH ALLEGED POLITICAL MOTIVES

On September 7, 2021, the Parliament of Georgia adopted a draft Law on Amnesty prepared by the ruling party Georgian Dream relating to the events of June 19-20, 2019. According to the above Law on Amnesty⁴⁹, all persons who have committed crimes in relation to the events of June 19-21, 2019 shall be released from criminal liability, punishment and suspended sentence. The persons against whom the amnesty is applied shall be considered of having no conviction record.

The adoption of the Law of Georgia on Amnesty was envisaged by the April 19, 2021 Agreement - A Way Ahead For Georgia having as one of the points the need to react to the cases of perceived politicized justice. According to the relevant paragraph, "[i]n the interest of Georgia's political stability and in order to implement this agreement, the signatories commit to address, within one week of signing this agreement, the two cases of perceived politicized justice, either by an amnesty and/or by taking such steps as to produce an equivalent outcome. In particular, within one week of signing the agreement, a party represented in Parliament shall initiate an amnesty law for all violations and convictions stemming from the 19-21 June 2019 protests.⁵⁰"

On April 27, 2021, it turned out that the ruling party Georgian Dream had a fundamentally different approach to the amnesty law than the part of the opposition who took up their seats in the Parliament. In particular, according to the opposition, the law on amnesty must have provided specific articles of the Criminal Code to which the act of amnesty would be applicable, while Georgian Dream was arguing that the amnesty should cover all articles except for the offenses under Articles 117, 144¹-144³ of the Criminal Code of Georgia envisaging intentional grievous bodily harm, torture and degrading or inhuman treatment.

Disproportional forces and methods used by the police during the dispersal of the peaceful demonstration on June 20-21, 2019, caused a mass violation of the rights of the protesters and left the impression of punishing the protesters. Because of using disproportional forces for dispersing the demonstration, the facts of ill treatment on the part of law enforcement officers when arresting the protesters and in the following periods, illegal interference with the

⁴⁷ Venice Commission's Opinion N728 on draft Law on the Temporary State Commission on Miscarriages of Justice of Georgia. June 27, 2013. Chapter 2. <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29013-e;>

⁴⁸ Giguashvili A., Amnesty as a Mechanism for Justice and Public Consent, <http://bit.ly/3Y6WRjQ>, [06.02.2023];

⁴⁹ Law of Georgia on Amnesty. <https://bit.ly/3SGWxVo>

⁵⁰ A way ahead for Georgia. Proposal by President of the European Council Charles Michel to the representatives of Georgian polit: <https://bit.ly/3yntUEd>

journalistic activities and inefficient investigation of the cases we may deal with the violation of the right of prohibition of torture under Article 3 of the European Convention both in terms of substantive and procedural rights. However, no investigations were launched under the above articles in relation to the events of June 19-21.

HRC has prepared a legal analysis: The Cases Related to the Events of June 20-21, 2019, Political Justice and Controversial Amnesty.⁵¹ Accordingly, HRC emphasized that it was unacceptable to apply the act of amnesty/pardon in relation to the offenses committed by state representatives against the right to be protected from inhuman and degrading treatment or punishment which occurred during the dispersal of the June 20-21 rally.

According to Article 3 of the European Convention on Human Rights and Fundamental Freedoms, torture, inhuman or degrading treatment shall be prohibited. The practice of the ECtHR specifies number of issues that determine the positive and negative duties of states. One of such prohibitions rules out the application of amnesty against the persons convicted of the offenses under article 3 of the Convention. The above was explicitly noted by the ECtHR⁵². The same approach is evident in the acts of the UN Committee Against Torture⁵³.

A similar approach is maintained by the InterAmerican Court⁵⁴ and other international tribunals, which do not consider amnesty to be an obstacle on the way of justice⁵⁵. International law asserts that amnesty should not preclude punishments for serious human rights violations as in some cases this might result in even more problems and contribute to the feeling of impunity⁵⁶. At the same time, this would encourage the possibility of "self-amnestying" when specific regimes abolish legal liabilities for the actions committed by the regime.

As noted above, under the established practice of the ECtHR, application of amnesty against the persons who have committed crimes of inhuman or degrading treatment (regardless of whether the investigation is being conducted at the national level with a correct subsumption) is contrary to Article 3 of the European Convention. Such practice makes illusory the safeguards created by the prohibition of ill-treatment. Consequently, the application of amnesty to the persons who were responsible on the part of the State for the offenses against the prohibition of inhuman and degrading treatment is a violation of international law.

The very fact under what subsumption the investigation is conducted at the national level is not relevant for the purposes of Article 3 of the Convention. Therefore, irrespective of the fact that the investigation against the enforcement officers arrested following the dispersal of June 20-21, 2019 demonstration was not carried out under the proper subsumption, namely under article 144(3) of the Criminal Code of Georgia, the acts committed by some of the officers have to be assessed as inhuman and degrading acts eliminating the possibility of using amnesty against them according to the binding standards established by the European Court. Furthermore, the European Court of Human Rights interprets the principles and legal terms provided for in the European Convention and its Additional Protocols in their autonomous meaning. The interpretation of the ECtHR may not coincide with the meaning given to these terms and principles by the national laws of the states.

⁵¹ Cases relating to the Events of June 20-21, 2019: Political Justice and Disputed Amnesty, 2021. <https://bit.ly/3f3GT8M>

⁵² Decision by the European Court of Human Rights from November 2, 2004 in the case Yaman v. Turkey, paragraph 55.

⁵³ General Comment №2 by the UN Anti-Torture Committee, CAT/C/GC/2, paragraph 5.

⁵⁴ The judgments by the Inter-American Court of Human Rights on case Barrios Altos v. Peru, paragraph 41; the judgment by the Inter-American Court of Human Rights on case of Bulacio v. Argentina), paragraph 116.

⁵⁵ 2 Inter alia, the judgment by the Special Court for Sierra Leone from March 13, 2004, on the case SCSL-2004-15-PT, SCSL-2004-16-PT; judgment 002/19-09-2007 by the Extraordinary Chamber of Cambodian Courts from November 3, 2011.

⁵⁶ D. L. Mallinder, Amnesty, Human Rights and Political Transitions (Hart Publishing, 2008), 3.

The Law of Georgia on Amnesty has already concerned a wider group of persons. An employee of the public organization Nekresi, Bezhan Lortkipanidze was charged under article 225(2) of the Criminal Code envisaging the leadership, organization of and participation in the group violence. At the initial stage, Bezhan Lortkipanidze did not admit the crime as his fault could not be identified during the proceedings⁵⁷. Nevertheless, he opted to plead guilty, as appearing before the court where the procrastinated proceedings take much of the precious time and fulfilling other obligations prescribed by law for accused persons would create much discomfort even for innocent individuals. Therefore, it was much easier to accept the terms proposed by the prosecution and enjoy the privileges offered by the amnesty.

As for the special police officers charged for the events of June 20-21, 2019, all of them agreed to use the right to amnesty. Noteworthy, Levan Imerlishvili, Giorgi Esiashvili and Mindia Ambardnishvili 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. Giorgi Esiashvili fully agreed 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 needed no amnesty, as he would be acquitted in this case⁵⁸. Despite, such statements, at the end, Ambardnishvili also chose to plead guilty and accept amnesty.

Besik Tamliani, a member of the National Movement, refuses the law of amnesty to be applied against him as the Prosecutor's Office of Georgia charges him for committing the offense under article 225(2) of the Criminal Code. Along with Besik Tamliani, the Ministry of Interior detained other three persons: Kakhaber Kupreishvili, Tsotne Soselia and Zurab Budagashvili with the Prosecutor's Office reaching later plea agreements with the latter persons. For this reason, the case of Besik Tamliani was split into separate proceedings and up to the date the case is being heard in Tbilisi City Court.

At the court session on August 11, 2022, the judge heard the arguments of the defendant regarding the termination of the proceedings. Besik Tamliani told the court that he was the last person to be punished by the State for fighting against Russian occupation on the night of Gavrilov and now he was asked to plead guilty in a state coup. The defendant noted once again that he was pleading not guilty thus refusing to sign a plea agreement; to this, judge Zviad Sharadze remarked that he did not need to plead guilty and also the final judgment to be rendered against him would not read that Besik Tamliani pleaded guilty. In this manner the proceedings would be terminated without the defendant to admit the crime. In his turn, defendant Tamliani stated that by refusing to plead guilty he was seeking not to ease the case for the authorities to justify the offenses committed against the peaceful protesters. As a proof for this, Tamliani brought the following statement by chair of Georgian Dream Irakli Kobakhidze: "Amnesty means that a group violence was carried out against law enforcement officers on June 20, 2019 aiming at intruding into the Parliament."⁵⁹ The judge advised the defendant not to pay much attention to the statements of the politicians and assured him that no such wording would be entered in the judgment by the court⁶⁰.

In September 2022, only one court hearing was held on the case. At this stage, re-

⁵⁷Cases Connected with the Events of June 20-21, 2019: Political Justice and Disputed Amnesty: Legal Analysis, Human Rights Center, 2021. P.10 <https://bit.ly/3HJuBgi>2/8/2023;

⁵⁸Ibid, p. 12.

⁵⁹Report of the Court Monitoring by Human Rights Center. August 11, 2022.

⁶⁰Report of the Court Monitoring of Human Rights Center. August 11, 2022.

examination of the witnesses of the prosecution is being conducted. The expert having conducted the forensic portrait examination in the criminal case appeared before the court. The defendant representing himself in the criminal trial without a lawyer put only one question. He inquired about the source of the video footage presented in the court, to which the expert responded that he was unaware of the source. A sealed hard disc was given to the expert, while the expert had no information from what source the video material was obtained. To this, the prosecutor remarked to the defendant that the question was to be addressed to the investigator of the case who also was in the list of prosecution witnesses. No other questions were put to the witness by the parties⁶¹.

The defendant asked the court that in scheduling the next hearing to take into account that the defendant had hired a lawyer who was in need to read the case files so he would require additional time. The court hearings continue.

CONCLUSIONS

As we have seen, pardoning initiatives have been implemented many times by rulers of different countries. However, in the case of Georgia, the scale of pardoning (3 criminal cases in 2020-2021) for the cases with alleged political motives has to be taken into account, as they are linked to political prosecution and selective justice already widely recognized to be taking place in the country. This situation becomes a subject of criticism also at the international level.

Further, even the pardoned felons continue to plead the case before the superior courts to restore their rights. In particular, in order to prove their innocence, Irakli Okruashvili and Giorgi Rurua - having been pardoned by President Salome Zurbashvili following the Charles Michelle's Document - appeal the judgements rendered against them before the superior courts. The above persons may also apply to the European Court of Human Rights provided also the Supreme Court upholds the judgments of conviction rendered by the first instance courts. Moreover, it is interesting to note that despite the pardon acts, the Office of the Prosecutor General of Georgia continues to plead the cases with alleged political motives before the superior courts.

As for the scope of amnesty covering the offenses (irrespective the subsumptions applied) committed by law enforcement officers on June 20-21, 2019, through such unlawful decisions, the authorities has undermined individual criminal liabilities of the culpable persons, but also the trust in and respect of the legal system among the public, further this undermined the possibility to fulfill the obligations by the State to combat impunity the culpable persons might enjoy due to their official positions. As a result, among other goods, the right to exercise the freedom of assembly and expression is also significantly prejudiced.

⁶¹Report of the Court Monitoring by Human Rights Center. September 12, 2022.