

Attachment to The Third Trial Monitoring Report of High-Profile Criminal Cases

Significant facts were reported in cases against Gigi Ugulava following the end of the reporting period. Given the relevance of the issue, we find it expedient to analyze these facts in this report.

On 15 September 2015, the Constitutional Court of Georgia has [advertised](#)¹ the announcement of decision on Gigi Ugulava's case, however, the decision could not be announced at publicized time. [According](#)² to the Court, this was impossible because of judge Merab Turava's failure to appear at the decision signing procedure due to his health condition.

Merab Turava was making vague and unconvincing statements on his non-appearance. Remarkably, pursuant to legislation any judge of the Constitutional Court is obligated to participate in consideration of the case and, irrespective of his/her position, to sign the decision. Yet, the Court should plan the case consideration process in a way to secure due fulfillment of these obligations by a judge.

Following Turava's final refusal to sign the decision on 16 September 2015, the Court has decided to announce the decision rendered without his signature.

We find the judge's explanations on his failure to discharge his duties were unconvincing, and aimed to protract the process.

Gigi Ugulava's claim in part of 9-month pre-trial detention was granted. The Constitutional Court of Georgia ruled that the defendant's detention equally achieves the purposes of a preventive measure in respect of each charge. Accordingly, in calculating the maximum 9-month period of detention for each criminal case, this period should have included time that a person had spent in detention as part of other proceedings against him/her after charges had been brought. Particularly, in calculating the detention period applied against Gigi Ugulava by the 15 March 2015 ruling, the detention period should have included time spent by him in detention following the 28 July 2014 charges (on *November 7th* case). Further, the Court found unconstitutional the normative content of Article 205.2 of the Criminal Procedure Code of Georgia, which allowed the detention of the defendant on a concrete criminal case, if after indicting on this case or identifying sufficient basis for indicting, s/he had spent 9 months altogether in detention as part of any criminal case against him/her. In Gigi Ugulava's case, he had already spent 9 months in pre-trial detention as part of other proceedings.

¹ <http://goo.gl/RMmBCU>, last seen on 24 September 2015.

² <http://goo.gl/HiA8Lx>, last seen on 24 September 2015.

The Constitutional Court's [decision](#)³ should have served as the basis for Gigi Ugulava's release. Yet, formally the common courts should have rendered final decision on Ugulava's release from pre-trial detention. By its decision, the Constitutional Court rules on compliance of legal norms with the Constitution, and does not decide on a particular criminal case. Besides, any decision of the Court does not affect one particular person, even the author of the constitutional claim, but it equally affects any person in identical circumstances.⁴ Hence, the common court should apply the normative content changed by the Constitutional Court in each concrete case in respect of each concrete defendant.

Protracting the proceedings during consideration of the case in common courts is impermissible. Procedures needed for release should be carried out in shortest period possible. To this end, it would have been reasonable for the court to appoint the hearing immediately and not to wait for the defendant's motion. In addition, the defendant's release from pre-trial detention should have been examined by the very first judge considering the case, which in Gigi Ugulava's case has not occurred.

Notably, hearing for examining the defendant's [motion](#)⁵ was appointed after few hours, while at the hearing the prosecution was trying to protract the proceedings. At first they requested to challenge the substitute judge, then requested the ruling on changed date of already appointed trial on the pending case, and finally even requested the recusal of entire Tbilisi City Court. Once none of the motions have been granted, the prosecution requested time for getting familiar with the Constitutional Court's decision, for which the judge gave them only 2 hours. Prosecution alleged this time was unreasonable. Nevertheless, the court still released Gigi Ugulava from pre-trial detention late that night. Actions by the Prosecutor's Office created impression that their sole objective was to leave Ugulava in pre-trial detention. This once again attests to doubts cast in the report over prosecution's objective of leaving the concrete individual in pre-trial detention for the maximum period of time. This has a clear adverse effect on the high-profile cases, and aggravates their political undertones. Such actions further undermine the image and reputation of the prosecution. Overall, concerns are raised over status of the Prosecutor's Office as an independent institution.

The Constitutional Court's decision was followed by protest rallies by the Court's building,⁶ as well as by the houses of some judges. The Constitutional Court has released a [statement](#)⁷ on this, alleging that targeted pressure was exercised on the Constitutional Court and individual judges. The statement also

³ <http://goo.gl/9jNQyU>, last seen on 24 September 2015.

⁴ NGOs have commented on this issue: <http://goo.gl/E0y6xI>, last seen on 24 September 2015.

⁵ <http://goo.gl/0UC7gQ>, last seen on 24 September 2015.

⁶ <http://goo.gl/2U0ggs>, last seen on 24 September 2015.

⁷ <http://goo.gl/jWbGql>, last seen on 24 September 2015.

claimed that threatening statements and direct calls for physical retribution were being made against judges.

The Constitutional Court of Georgia is a judicial authority of constitutional control enjoying vast significance in securing the fulfillment of constitutional requirements, division of state powers and their implementation within constitutional frameworks, protection of human rights and freedoms warranted and recognized by the Constitution, and reinforcement of government stability in the state. It is crucial to secure the judges' safety and protect their dignity without infringing upon freedom of speech and expression.

Unfortunately, following the Constitutional Court's decision on Gigi Ugulava's [claim](#)⁸, which is built on internationally recognized norms and principles, politicians have made numerous [statements aimed](#)⁹ at discrediting the Constitutional Court's decision.

Further, [statements](#)¹⁰ were also made about a potential decision of the judge on Gigi Ugulava's pending case in the common court. We believe such actions by the ruling coalition officials could be perceived as an "instruction" for the judge on the substance of decision acceptable to the majority. Besides, such actions grossly violate the presumption of innocence. Overall, all of this mars the country's image and fully discredits its institutions.

The President of the Venice Commission has [commented](#)¹¹ on reports of pressure on judges, noting that the public is entitled to have critical attitude towards the Constitutional Court's decisions, but that such criticism must be expressed in a dignified and legal manner.

It is crucial that politicians respect democratic institutions in Georgia and refrain from making statements against judges of the Constitutional Court as well as common courts, which may undermine impartial and effective activities of these judges and the whole judicial system. Further, reports of pressure exercised on judges as described in the statement of the Constitutional Court's Chairman should be investigated and individuals involved in such actions should be held liable. It is essential for the independence and reputation of the Constitutional Court that all state institutions comprehend the Court's importance and role in the country's legal stability. In addition, the Court itself and individual judges should ensure the Court functions in environment free from political or any other improper influence.

⁸ <http://goo.gl/hsGWr0>, last seen on 24 September 2015.

⁹ <http://goo.gl/qZoG6Z>, last seen on 24 September 2015.

¹⁰ <http://goo.gl/BS6pcD>, last seen on 24 September 2015.

¹¹ <http://goo.gl/PCTsLs>, last seen on 24 September 2015.



The report was prepared with the financial support of the Swedish International Development Cooperation Agency (Sida).
The views expressed in the report do not necessarily represent the position of the donor; therefore, Sida is not responsible
for the content of the report.