TRANSPARENCY INTERNATIONAL GEORGIA

THE THIRD TRIAL MONITORING REPORT OF HIGH-PROFILE CRIMINAL CASES

Monitoring Period: May 2014 - June 2015

SWEDEN

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Since the change of government in 2012, former public officials have become the subjects of criminal prosecution, causing doubts, both inside and outside of the country, regarding the politicization of trials. Transparency International Georgia has been monitoring the hearings of high-profile criminal cases since February 2013. Two reports have been published in this time. The first report covers the period from February 2013 to July 2013, while the second report relates to observations made between July 2013 and April 2014. The organization's observers have attended court hearings and documented trials for the purposes of further assessment. The purpose of this report is to make information related to the proceedings and positions of the parties accessible to the wider public, in order to reveal procedural violations as well as certain tendencies related to high-profile cases.

The present report covers the period from April 2014 to June 2015. Observations were made on 11 criminal cases, where the accused were former officials of the previous ruling party: Mikheil Saakashvili, Gigi Ugulava, Vano Merabishvili, Bachana Akhalaia and others.

Transparency International-Georgia intends to continue trial monitoring of high-profile criminal cases in the future.

As a result of this monitoring work, the following main tendencies and facts have been noted:

Issues related to pre-trial measures:

- On many occasions the prosecution requested detention as a preventive measure; in some of these instances, the request for detention gave the impression of being politically motivated. It should be noted that on some occasions the court did not satisfy the prosecution's motion for using detention as a preventive measure.

- The existing practice of using detention as a preventive measure raises many questions. Particularly troublesome is the issue of usage of detention on several occasions against Gigi Ugulava. Requests for detention as a preventive measure occasionally dubiously coincided with expiration of another preventive measure for the same accused. The impression produced was that the prosecution's main purpose at that moment was to have the accused detained.

- The current rules for using preventive measures allow for the possibility of their abuse. This flaw has repeatedly caused problems in practice. For example, this was the case against Gigi Ugulava, who was detained for more than one year without a guilty verdict rendered against him. The chronology of measures enacted against him and the abuse of the aforementioned legislative discrepancy related to preventive measures were indicative of the process being directed by political motives.

- Further problems were revealed by the use of asset freezes as a procedural measure of compulsion against Mikheil Saakashvili. The impression was left that there was an insufficient factual) basis for the freezing of assets of the persons related to the accused.

Issues related to witnesses:

- The issue of separation of witnesses is a significant problem. As a rule, proper prevention of communication between witnesses during the hearings was not ensured. The witnesses called for the case would wait for the start of the hearing together in the hallway outside the courtroom, during which time they had the opportunity to communicate with one another.

- In the course of the proceedings, questions were raised with respect to trustworthiness of both the prosecution's and the defense's witnesses.

- A number of accused have made statements with respect to violations of the law against them. Information revealed by them clearly contained signs of criminal offenses. It is vital that such facts are addressed appropriately.

Publicity of the trials:

- The media faced no problems in making audio or video recordings of the trials; they freely exercised the right granted to them by law.

- On several occasions not all interested parties were able to attend the hearings. The reason in some cases was the limited size of the courtroom, or a large number of attendees.

- Another problem was the advertising of the accused's initial appearance in court, as this information was not always published in the official schedule of the courthouse. The monitoring team sought to obtain information about these sessions by means of mass media.

Right to be tried within a reasonable time frame:

- The law did not prescribe a maximum period for investigation of the case and for the trial; it only set the standard of a reasonable period. This standard was not duly adhered to in the cases observed, which, as a rule, impinged upon the interests of the accused. For example, the accused Gigi Ugulava was first charged on February 22, 2013; criminal prosecution has been pending against him for over two years now and no verdict has been reached on any of the cases. This problem has been solved to some extent by amendments to the Criminal Procedure Code dated July 8, 2015, according to which the Court of First Instance has to issue a verdict within 24 months of the completion of the pre-trial hearing.

- In certain cases there was observed a protraction of the proceedings by both the prosecution and the defense. Attempts at protracting the proceedings by representatives of the prosecution are particularly unacceptable, as this clearly violates the accused's right to swift justice. Postponing hearings on false precepts harms the reputation of the Prosecutor as an institution, and is indicative of political motives in its activities.

- In Gigi Ugulava's case the defense was given the opportunity to raise a motion regarding the restoration of Gigi Ugulava's Mayoral authority. Since Gigi Ugulava's term as Mayor was soon to expire, the prosecution tried to delay the process without good reason. As a result, the hearing had to be postponed several times due to failure of the prosecution to appear at the proceedings.

Order-related issues:

- On several occasions the judge was not able to maintain order in the court. But it should be noted that this was not a systemic problem. In certain cases the judge penalized the violators and even expelled them from the courtroom.

- Confrontations often occurred in the courtroom and the courthouse as well as in the vicinity of the court. Insulting statements towards witnesses were made in the courtroom. Witnesses were in most cases insulted by relatives of the accused. This can be considered pressure on witnesses, and the court must limit such actions to the extent possible.

- At several trials spectators verbally abused the judge and prosecutors. Aggressive, insulting and obscene expressions were also noted.

Other important matters:

- On several occasions the defense brought up the problem of case assignment. This issue has been the subject of frequent criticism by civil society. Transparency International Georgia is firmly convinced that the current system of case assignment is faulty. It is predictable and leaves room for manipulation; this does not hold water. It actually allows for the possibility of determining in advance which judge will try which case. The problem of case assignment was also noted in a report on trial monitoring by the OSCE Office for Democratic Institutions and Human Rights.

- The negative public perception of the independence and political neutrality of Prosecutor's Office has resulted from statements made by a number of officials, which do not only damage the reputation of the Prosecutor's Office but bluntly violate the presumption of innocence. Comments by public officials with respect to high-profile trials and the accused may negatively affect the trial.

Gigi (Giorgi) Ugulava, Vano (Ivane) Merabishvili, Zurab Adeishvili, Davit Kezerashvili

I. Invasion and confiscation of Imedi Television Company
II. Confiscation of Mtatsminda Park
III. Confiscation of Rustavi Metallurgical Plant
IV. Raid on November 7, 2007 protest

1. The accused and the charges brought:

Gigi (Giorgi) Ugulava (former Mayor of Tbilisi) – abuse of authority, assistance in conspiracy to embezzle in large volumes *(embezzlement of the property of Mtatsimnda Park)* and assistance in legalization of illicit income, with the abuse of public office to derive additional income *(episode involving Imedi Television Company)*.

Ivane Merabishvili (former Minister of Internal Affairs) – abuse of authority including violence or the use of arms, and the offense of the personal dignity of the victim (*episodes involving Imedi Television Company, raid on the November 7, 2007 protest, and invasion of Mtatsminda Park*).

Davit Kezerashvili (former Minister of Defense) – abuse of authority (*raid on November 7, 2007 protest, confiscation of Imedi Television Company and Rustavi Metallurgical Plant*), legalization of illicit income, with the abuse of public office to derive additional income (*episode involving Imedi Television Company*).

Zurab Adeishvili (former Prosecutor General, thereafter Minister of Justice) – abuse of authority including violence or the use of arms, and the offense of personal dignity of the victim *(confiscation of Imedi Television Company and raid on the November 7, 2007 protest)*.

Mikheil Saakashvili (former President of Georgia) – abuse of office by a state-political official in such a way as to substantially prejudiced the legitimate interests of a natural or legal person, society or the State, by violence or use of arms, and with the offense of the personal dignity of the victim (*raid on the November 7, 2007 protest, invasion of Imedi Television Company, and illegal seizure of the property of Arkadi Patarkatsishvili*).

2. Description of offenses:

Episodes related to the confiscation of Imedi Television Company, Mtatsminda Park and Rustavi Metallurgical Plant

According to the prosecution, from 2006-2007 the television company Imedi often broadcast programs criticizing the government, which negatively affected the perceptions of the ruling party; for this reason, representatives of the ruling party, under the leadership of President Mikheil Saakashvili, orchestrated the seizure of Imedi Television Company. Arkadi Patarkatsishvili and his family became subject to persecution and oppression under the guidance of Mikheil Saakashvili. Finally, by means of pressure and intimidation, Imedi Television Company was confiscated from the Patarkatsishvili family.

The authorities also confiscated Mtatsminda Park from the Patarkatsishvili family. Specifically, on November 7, 2007, in concert with the dismissal of protesters on Rustaveli Avenue, and under the instructions of the Minister of Internal Affairs, the special armed forces of the MIF broke into Mtatsminda Park without any legal warrant and unlawfully drove out the employees of Mtatsminda Park. On the same day, Tbilisi City Hall held a press conference, alleging that Links Ltd[1] had not been paying the rent on Mtatsminda Park, due to which the Government of Tbilisi unlawfully terminated the contract with Links Ltd, whereas in actual fact the Patarkatsishvili-owned company had been performing all its obligations in good faith and there was no ground for termination of the contract at that time.

The prosecution also argued that the accused had illegally seized Rustavi Metallurgical Plant from Patarkatsishvili family. According to the charge, following pressure and intimidation, a fictitious contract was concluded, as a result of which the property of Rustavi Metallurgical Plant had been transferred to the offshore company of Davit Kezerashvili. The documents were drawn up in such a way to make it seem as if Rustavi Metallurgical Plant had been indebted to the offshore company owned by Davit Kezerashvili. Subsequently, with the involvement of National Bureau of Execution and the court, under the pela of offset of the debt, the property of the Plant was transferred into the ownership of Davit Kezerashvili's offshore company.

[1] The company to which Mtatsminda Park belonged, owned by Badri Patarkatsishvili.

Raid on November 7, 2007 protest

According to the prosecution, on November 4, 2007, under the instruction of Mikheil Saakashvili, an extraordinary meeting was held at the office of Ivane Merabishvili in the Ministry of Internal Affairs, chaired by Ivane Merabishvili himself. The deliberation was attended by then-Prosecutor General Zurab Adeishvili, Minister of the defense Davit Kezerashvili, Head of the Constitutional Security Department Data Akhalaia, Mayor of Tbilisi Gigi Ugulava, and the governors.

The group, headed by Ivane Merabishvili, decided to compile a list of people participating in the protests, who were to become the subject of intimidation, physical and psychological pressure, and assault. Using various means, including the slipping of drugs, participants in the protest were to be arrested as well. According to the prosecution, it was also resolved at the deliberation that the businessmen supporting the opposition should be "taken care of" by the head of the financial police and by then-Minister of Defense Davit Kezerashvili.

According to the prosecution, the order issued by Ivane Merabishvili at the deliberation – to intimidate, assault and arrest people – was executed on November 7, 2007. On the basis of a criminal order to raid the protest, issued by ex-President of Georgia Mikheil Saakashvili, law enforcement officers raided the protest on Rustaveli Avenue and the adjacent area of Rike.

Invasion of Imedi Television Company

According to the prosecution, on the same day (November 7, 2007), in line with the pre-determined plan, a special-purpose detachment from the Ministry of Internal Affairs broke into Imedi TV Company without any legal warrant, and unlawfully damaged equipment, shut off the broadcast of Imedi TV and expelled the employees from the building by physically assaulting them.

As a result of this raid on Imedi TV, the television company incurred losses from the physical damage and loss of equipment, in addition to lost profits totaling 3,158,307 Lari .

3. Significant circumstances/facts:

Based on the complexity of the case – the fact that charges were brought against the highest officials of the state, as well as the fact that the case was high-profile and large in volume – the trial judge decided that the case should be tried by a board of three judges. At the next hearing it was revealed that the brother of one of the judges had conducted investigative work for this case, and for this reason the judge withdrew voluntarily.[2]

The charges against ex-president Mikheil Saakasvhili and ex-Minister of Internal Affairs Vano Merabishvili on this case were defined more precisely, while the charges against Davit Kezerashvili, Zurab Adeishvili and Gigi Ugulava were aggravated. Aggravation of the charges against Giorgi Ugulava gave the prosecution the possibility of requesting his detention as a pre-trial measure. At this time, Gigi Ugulava had already been detained for the case of legalization of illicit income.

It is noteworthy that at the request of the prosecution, the case of Mikheil Saakashvili was separated from this case. Later, however, again at the request of the prosecution, these cases were joined. The defense argued that this was a deliberate act to ensure that the case was tried by a judge acceptable to the prosecution.

It should also be noted that the judge decided on the issue of detention as a pre-trial measure against Gigi Ugulava on a Sunday. The defense argued that consideration of the issue on a Sunday was driven by the desire to make sure the judge was favorable to the prosecution.

In the course of the trial the defense requested that the pre-trial measure be altered. The consideration of the defense's motion has been postponed several times.

Following the motion to alter the pre-trial measure, at one of the hearings, the prosecutor requested adjournment of the hearing for ten days, alleging that s/he was not involved at the investigation stage and was not familiar with the case.

At one of the hearings, while Ivane Merabishvili was making a political statement, the judge switched off his microphone; this was followed by offensive expressions from the audience

[2] This decision was made after the reporting period.

towards the judge. To maintain order the judge terminated the hearing. The hearing was reopened later.

The judge called upon Gigi Ugulava's attorneys to abstain from political evaluations and to stay within the boundaries of the case, which was followed by a minor dispute between the judge and the defense attorneys.

4. Pre-trial measures:

Tbilisi City Court has ex parte ordered imprisonment as a preventive measure against former president of Georgia Mikheil Saakashvili, former Minister of Justice Zurab Adeishvili and former Minister of the defense Davit Kezerashvili.

Initially, the prosecution had not requested a preventive measure against Gigi Ugulava and Vano Merabishvili since the ex-Mayor was already in detention and Vano Merabishvili was already convicted and imprisoned on another case. The prosecution requested the court to issue the preventive measure later, when the charge against Gigi Ugulava was aggravated.

> *Note: The Secretariat General of Interpol refused to put President Mikheil Saakashvili on an international wanted list. The reason for this refusal was the danger of politically motivated prosecution.*[3]

Request for preventive measure after aggravation of the charge:

After the charges against Gigi (Giorgi) Ugulava were aggravated, the prosecution requested the court order detention as a preventive measure.[4]

As a ground for the exercise of this preventive measure, the prosecution noted that there was reason to believe that the accused would hide, not appear in the courthouse, destroy important case-related information or commit a new crime. The prosecution argued that if released, Gigi Ugulava could use his influence, wide circle of acquaintances and political/financial resources to influence witnesses, which would obstruct the course of justice. In making this argument the

[3] Added pursuant to the remarks of Mikheil Saakashvili's advocates.
[4] http://pog.gov.ge/geo/news?info_id=654

prosecution referred to specific facts. The prosecution also referred to an occasion when, despite being called to the investigation bureau as a witness, Giorgi Ugulava officially refused to appear. According to the prosecution, the fact that people close to Giorgi Ugulava who were charged on the same case, were avoiding the administration of justice in Georgia and had left abroad, provided additional opportunities for Giorgi Ugulava to leave the borders of Georgia.

Defense attorneys stated that Giorgi Ugulava was innocent in all charges brought against him and opposed the motion to impose detention as a preventive measure. The argument brought up by the defense was that according to Constitution of Georgia and the Criminal Procedure Code, the overall term of pre-trial detention should not exceed nine months, and that ordering detention anew was in violation of the Constitution of Georgia.

After assessing the materials presented and the validity of the motion, the court declared that the prosecution's motion should be granted. The court noted that the materials presented left no doubt that there was a high risk that Giorgi Ugulava, if released, might influence witnesses who carried the weight of evidence in the case, as a result of which critical case-related information might be suppressed. The court did not agree with the prosecution's argument about the possibility of Giorgi Ugulava committing a new crime. It noted that there was no final decision of the court on any criminal case against him, and just the fact that he was charged was not indicative of whether he could commit a new crime. The court fully shared prosecution's arguments related to the risk of hiding of the accused and noted that such risk was real in view of the personality and actions of the accused; the fact that Gigi Ugulava tried to leave Georgia after being served with the notice to appear to the investigation authorities, was considered an attempt by the accused to escape investigation. The court also noted that the financial standing and international connections of Giorgi Ugulava and his family created a real risk that, in the event of his release, he would to go into hiding or not appear in the courthouse.

In light of the aforementioned circumstances, the court ordered detention as a preventive measure against the accused.

5. The trial proceedings

5.1. Important motions

A. Motions of the defense:

1. The defense raised a motion to alter the preventive measure. The defense stated that no new charges had appeared in the case; in the initial and later in the aggravated charge the same factual circumstances were referenced. In addition, according to the defense, the prosecution had not presented any new material or evidence in the case. Therefore, repeated detention for a case which was already known to the prosecution was not permissible.

The defense explained that the preventive measure was granted after the accused's first appearance in court, which was unacceptable. According to the defense, when considering the reasonability of a preventive measure or a motion to alter it, the burden of proof fell entirely on them, which was likewise not permissible. The defense further clarified that the nine-month period of detention had expired for the accused in a different case and that by leaving him detained in this case, the Constitution of Georgia was being infringed upon.

Position of the prosecution: The prosecution stated that this issue had been addressed by courts of two instances – City Court when it granted detention as a preventive measure in this case, and Court of Appeals, when it dismissed the defense's complaint as being unfounded.[5] Besides, the defense failed to present any new circumstance which would indicate the basis for alternation or repeal of the detention. Consequently, the accused had to remain detained.

In opposition to the arguments of the defense, the prosecution stated that the law did not prohibit granting of preventive measure after the initial court appearance. Prosecutors noted the existence of case law agreeing with their position on this matter. In support of their arguments, the prosecution quoted the interpretation of the Court of Appeals, which stated that if a preventive measure is not imposed on the accused during the initial appearance, it is possible for the preventive measure to be requested and ordered afterwards. The prosecution explained that the court was authorized not only to alter the existing preventive measure, but also to grant a preventive measure after the accused's initial appearance in court.

[5] http://www.tbappeal.court.ge/?news=216&mc=

Ruling: The court did not grant the motion of the defense and noted that all factual and formal grounds established by the court of first instance for granting detention as a preventive measure has been deemed valid by the Court of Appeals. The risk of the accused damaging evidence and going into hiding remained, and no new circumstances had been revealed. The argument that detention of an accused on one case prevented his detention on another case was considered by the court as lacking merit. Besides, the expiration of a term of detention on another case could not be considered a new circumstance in this case. The court also noted that the issue of preventive measures could have been addressed at the pre-trial stage as well.

2. The defense requested not to include journalists in the list of witnesses to be interrogated, as they have a right under the law not to give testimony on matters related to their professional activity.

Position of the prosecution: On this matter, the position of the prosecution was that journalists possess factual information which could help the court to establish the truth.

Ruling: The court satisfied the defense's request. According to the court's explanation, journalists are representatives of a specific profession to whom the law gives the right not to testify on matters related to said profession. Consequently, the judge decided not to include journalists in the list of people to be interrogated.

3. The defense raised motions challenging the judge on several grounds, in particular:

- The charged Giorgi Ugulava is a political prisoner and is unlawfully detained. Since he is detained, priority should be given to Ugulava's case, while the judge started by hearing another case (that of Mikheil Saakashvili). In addition, the judge postponed on several occasions the consideration of the motion related to the conversion of the preventive measure. The defense stated that this was indicative of judge's position on this motion. Consequently, the judge could not have been objective on this matter;
- The defense alleged that when trying the case of Erekle Kodua (former head of the Special Operative Department), the judge admitted evidence which was inadmissible. The defense stated that the judge had made an unlawful decision in Erekle Kodua's case and that consequently, he could not remain objective in this case either (see the case of Erekle Kodua). According to the defense, there was a real risk that the judge would do the same in the present case.

- The defense also noted that the initial separation of Mikheil Saakashvili's case from this case, and the later joinder of these two cases had resulted in a change in the judge trying the case. Consequently, the case had artificially ended up under the consideration of this judge. The defense alleged that this redistribution was indicative of the prosecution's influence over the judge and that said judge was the most acceptable candidate for the prosecution. In addition, the defense stated that some attorneys of the accused had not participated in deliberations related to joinder of the cases and that the court should have listened to their positions as well.

Position of the prosecution: The prosecution's position on the defense's motion was that the judge could not possibly have had any position on the case since the case had not yet been discussed. As regards the joinder of the cases, representatives of the prosecution noted that initially, separation of the cases was in the interests of investigation, while later it was necessary to join them in order not to delay the hearing. The prosecution also indicated that the defense initially supported separation of the cases and therefore their current position was unclear.

Ruling: The judge did not grant the motion and explained that there are no grounds for challenging a judge under the law. The judge clarified that apart from specific grounds prescribed by law (which the motion of the defense did not satisfy), there is one more ground – "any other circumstance", which implies that the judge has made a final decision and thereby expressed an opinion on the case. According to the judge, the motion of the defense to challenge him did not meet this requirement.

The judge also noted that the allegation that he is biased in this case lacks merit since the case has not yet been discussed. With respect to joinder of the cases, the judge noted that not all advocates present at the hearing were allowed to take part in the deliberations regarding the joinder, since the issue arose during consideration of another case which existed prior to the separation. The judge indicated that at that time he had offered the attorney (Oto Kakhidze) time for coordination on the issue of joinder with other attorneys, but that his offer was rejected.

4. The defense made a motion with the panel of judges regarding the abolition of detention. The defense stated that the nine-month period had expired and that Gigi Ugulava was thus being held unlawfully. According to the defense's attorneys, imprisonment should be used as a last resort preventive measure. In the given case, they alleged, Gigi Ugulava's detention was the

government's end in itself, while in reality no ground for his detention existed. In particular, there was no danger of him committing a new crime, tampering with evidence, or influencing witnesses. Besides, no witness had complained about pressure to law enforcement officers. Furthermore, Gigi Ugulava has left the country on many occasions and has always come back. Consequently, there was no danger that he would escape. According to the explanations of Gigi Ugulava's defenders, counting the nine-month period for each charge separately is an unconstitutional practice. Such a practice leaves pre-trial detention totally dependent upon the prosecution, not the court.

According to the defense, the fact that their constitutional claim related to the issue of the nine-month term of detention was considered admissible[6] by the Constitutional Court, was indicative of a reasonable expectation that the case law related to pre-trial detention is unconstitutional. The Constitutional Court also found admissible the claim that the burden of proof for preventive measures or their prolongation should fall on the prosecution. In addition, Parliament was deliberating on a bill related to amending the regulations on the issue of pre-trial detention.[7] In view of these circumstances the defense argued that Gigi Ugulava's pre-trial detention contradicted the Constitution of Georgia.

Yet another argument of the defense related to the stage at which the pre-trial detention had been granted. They argued that ordering pre-trial detention after the initial court appearance and before the pre-trial hearing was unacceptable. Based on these arguments, the defense requested repeal of the pre-trial detention and offered bail as an alternative.

Position of the prosecution: In response, the prosecution stated that they had heard motions of this type several times before and therefore that nothing said by the defense was extraordinary. According to the prosecution, Gigi Ugulava had twice tried to avoid appearing at the investigation bureau, while he had the intention of leaving the country when he was called the third time. This was the basis for the court's ruling on his pre-trial detention. The prosecution also referred to Gigi Ugulava's financial means and his international contacts. The prosecutors considered that the accused had to remain in detention. They also noted that while Gigi Ugulava was under bail in another case he committed another crime (the charge related to Marneuli episode), the bail had not ensured his proper conduct.

[6] Gigi Ugulava's defense attorneys referred to Constitutional Court, the claim is with respect to the nine months term of pre-trial detention http://www.interpressnews.ge/ge/samartali/336600-sakonstitucio-sasamarthlom-gigi-ugulavas-sarcheli-arsebithad-gansakhilvelad-miigho.html?ar=A

[7] Amendments to the Criminal Procedure Code dated July 8, 2015 related specifically to these issues.

According to prosecutors, it is established in case law that the counting of the nine-month period starts anew with each separate case, therefore, just the fact that Gigi Ugulava was a high-ranking official, provided no basis for selective application of the law to him. As regards the stage at which the detention was imposed, it has been noted that the law only contains prescriptions for the form of motions raised on preventive measures, not the stage at which they are raised or a deadline for their raising. For this reason, they were authorized to raise a motion regarding his detention after his initial court appearance and before the pre-trial hearing. They also noted, that this issue has been addressed by courts of two instances – Tbilisi City Court, when it granted detention as a preventive measure in this case, and the Court of Appeals, when it dismissed defense's complaint as being ungrounded.[8]

Ruling: The court did not grant the motion of the defense. According to the motivation of the court, both the City Court and the Court of Appeals had considered this issue and found the grounds for ordering the preventive measure to be lawful. The defense had not presented any evidence of new circumstances, nor did the court consider the judgement of the claim as admissible by the Constitutional Court, to be a new circumstance of essential importance.

B. Motions of the prosecution:

1. The prosecution requested to include in the list of witnesses subject to interrogation those prosecutors[9] and international criminal law experts who had been invited to investigate the facts of possible crimes committed by the former high-ranking officials. The prosecution also requested that their report be attached to the case file.[10]

Position of the defense: The defense disagreed with the motion. The defense questioned the objectivity of the international experts invited by the Prosecutor's Office to assist in the investigation of these cases. The defense stated that the international experts represented privies.Consequently, they could not present useful case information to the court.

[8] http://www.tbappeal.court.ge/?news=216&mc=

[9] Has been corrected as per prosecution's remarks.

[10] http://pog.gov.ge/res/docs/NEW/braldebismrcheveltasaertashorisojgufisdaskvna.pdf

Ruling: The court granted the prosecution's request, allowing the report by the international experts to be admitted as evidence, and included these experts in the list of people subject to interrogation.

> *Note: The report relates to the use of violence against protesters on November 7, 2007 and the case of seizure of Arkadi Patarkatsishvili's assets, including Imedi TV Company.bThe letter by the international group of advisors has been publicly shared, and the addressee is Prosecutor General Giorgi Badashvili. The group of experts assert that there is sufficient evidence to support the charge and to justify continuation of the prosecution against Mikheil Saakashvili, Davit Kezerashvili, Ivane Merabishvili, Zurab Adeishvili and Giorgi Ugulava. It should be noted that the report itself has not been made public.*

The trial is pending. A verdict has not yet been delivered.

6. Our assessment:

In the case of Imedi, Gigi Ugulava faces three separate charges. It is noteworthy that in the 2014 and 2015 resolutions, factual circumstances and evidence are to a large extent repeated, and partially also cover the same facts noted in the February 22, 2013 resolution. It is true that the prosecution is fully authorized to ascertain new factual circumstances and/or change the qualification of the offense, however the circumstances of the case are indicative of artificial protraction of investigation and raise well-founded suspicions that the prosecution artificially divided what was one case in substance into three separate stages, so that it could have a basis to apply to the court with a request for Ugulava's detention at a convenient time.

The Constitution of Georgia states that the total term of a person's pre-trial detention may not exceed nine months. This limitation refers to imprisonment related to one specific case and does not mean that the term of imprisonment for different offenses committed at different times should be no more than nine months in total; however, the existing practice of using pre-trial detention against one person is alarming. Where several charges against the same person exist, fixing the term of pre-trial detention separately for each of them is being used to artificially extend the prescribed nine-month period of pre-trial detention. Application of the law in this way leaves room for practically unlimited and arbitrary extension of pre-trial detention, which in itself creates real danger that the accused may remain in detention forever, without a guilty

verdict against him. This was exactly the case with respect to Gigi Ugulava. Such practices represent abuse of gaps in the legislation.

Gigi Ugulava's charge of abuse of office, presented on July 28, 2014 (November seven episode), was aggravated. Specifically, the existing charge was complemented by assistance in embezzlement (the episode relating to the embezzlement of the property of Mtatsminda Park) and the legalization of illicit income (the episode relating to Imedi TV Company). During this time Gigi Ugulava was already in pre-trial detention for a different case (relating to money laundering and the Marneuli affair), the term of which expired on April 2, 2015. It is suspicious that the aggravation of the charge and the new motion of the Prosecutor's Office of Georgia on granting a second term of pre-trial detention for Gigi Ugulava coincided with the approach of April 2, 2015. **The chronology of actions carried out by the prosecution creates the impression that Gigi Ugulava's pre-trial detention was an end in itself for the prosecution.**

> ***Note:*** *The same problem appeared in a different case, when the case was tried by jury. The jury that was called in initially was not able to deliver a verdict while the nine-month term of pre-trial detention of the accused was about to expire; the prosecution presented a new charge against the accused; and the new charge became the subject of criticism from non-governmental organizations and Public Defender's office. Apart from questions related to the substance of the charge itself, the problem is that the state prosecution is using the presentation of charges as a means to extend pre-trial detention. This is formally allowed by the law; however, this constitutes abuse of law and establishes wrongful practice which raises substantiated doubts with respect to prosecution's impartiality and independence.*

The listed problems and establishment of a practice contradictory to human rights is indicative of politically motivated actions by the prosecution, the main goal of which is to keep a specific individual in pre-trial detention for a long period of time. A similar problem was noted in Transparency International Georgia's Second Trial Monitoring Report of High-Profile Criminal Cases with respect to the accused Bachana Akhalaia. Such practice is clearly at odds with the purposes of Article 18 of the Constitution of Georgia and Article 5 of the European Convention on Human Rights. This prejudices not only the fundamental rights of a specific person facing charges, but creates a dangerous precedent that could lead to a wrongful practice being established.

Our observations also revealed yet another significant problem, which relates to the burden of proof when alteration of the preventive measure is at issue. Pursuant to Section 8 of Article 206 of Criminal Procedure Code of Georgia, **the motion (on alteration of a preventive measure) must note what new circumstances have been revealed, which were not known at the time of consideration of the preventive measure, and must be accompanied by corresponding evidence (materials) related to this new circumstance**. In other words, the law obliges the accused/defense to prove that there is no longer any ground for applying the preventive measure. This norm and the deriving practice contradict Section 2 of Article 40 of the Constitution of Georgia (presumption of innocence) since they oblige the accused to prove his/her innocence. It also contradicts European Convention on Human Rights (Section 3 of Article 5 and Section 2 of Article 6), the corresponding precedents, and International Covenant on Civil and Political Rights (Article 9). The aforementioned sources, on the one hand exclude obligation of the accused to assert his/her innocence, and on the other hand emphasize the role of the state prosecution and of the judiciary in the process of imposing detention as a preventive measure.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) also referred to the burden of proof and absence of mechanisms for periodic review of preventive measures. In their Report[11] the OSCE recommended that the prosecution be required to present **a higher standard of proof** when requesting detention as a preventive measure. The OSCE called upon the Georgian Parliament to put in legislation a mechanism for the periodic review of pre-trial detention, whereby the burden of proof for prolongation of pre-trial detention as a preventive measure would fall on the prosecution. This way, the practice of extending pre-trial detention automatically up to the ninth month would cease, as it violates the presumption of innocence.

It should be noted that on July 8, 2015 amendments were made to the Criminal Procedure Code of Georgia.[12] Among other points, the amendments related to the two problems referred to in the OSCE report. Specifically, according to the amendment, if pre-trial detention of the accused is used as a preventive measure, the judge, until the verdict is reached, will at his/her own initiative periodically - at least once every two months - reconsider the necessity of maintaining pre-trial detention as a preventive measure. In addition, the burden of proof when requesting imposition, alteration or abolition of preventive measures will at all times fall on the prosecution. The amendment must unequivocally be assessed positively since it contributes to eradication of wrongful practices and strengthens procedural rights of the accused.

[11] http://www.osce.org/ka/odihr/130686?download=true

[12] https://matsne.gov.ge/ka/document/view/2912924#DOCUMENT:1;

The observation of trials revealed that the standard of evidence presented by the prosecution to justify the necessity of pre-trial detention was very low. Normally, the prosecution would present meagre evidence to prove why usage of the last resort preventive measure – imprisonment – was necessary.

The problem of pre-trial detention and its unreasonable usage was also the subject of a discussion by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). A trial monitoring report[13] on the cases of former high officials emphasized that no one should be deprived of freedom **arbitrarily or without proper substantiation**. In addition, the organization noted that **the least restrictive measures** should be used against the accused and, in case of pre-trial detention, that **the shortest possible term was to be used**.

Frequent and improper usage of pre-trial detention was also noted by Parliamentary Assembly of Council of Europe[14] (PACE), which expressed concerns with respect to the duration of pre-trial detention and the frequency with which it was used. It stated that imprisonment should be used when there is obvious risk of escape, obstruction to the investigation and case, or if there is a danger that the accused will commit an offense or violate public order. PACE noted that usage of pre-trial detention for political reasons is unacceptable. The assembly called upon those in power to adopt clear guidelines for the prosecution and the courts on the use of pre-trial detention, in order to ensure compliance of their practices with the requirements of Article five of European Convention and with the recommendations of the Committee of Ministers (2006) with respect to pre-trial detentions.

In the case of Gigi Ugulava and of other high-ranking officials the defense had several times brought up the problem of case assignment, which has been subject to frequent criticism from civil society. It is vital that the system of case allocation in courts not be predictable and be strictly based on the principle of random selection. Where an unpredictable system does not exist, any doubt with respect to the fairness and objectivity of case distribution must be deemed legitimate. The report of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) also referred to the problem of case distribution.[15] The OSCE called upon the legislative body to review the legislation which authorized the chairman of the court to deviate from the rule of automatic distribution of cases at his/her own discretion.

[13] http://www.osce.org/ka/odihr/130686?download=true
[14] http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21275&lang=en
[15] http://www.osce.org/ka/odihr/130686?download=true

Following the motion of the defense on to alter the preventive measure, the prosecution actively tried to postpone the hearing and delay the proceedings. Such conduct directly affects the image of the prosecution and gives rise to justified doubt about possible political motivations.

The problem of protraction of cases was indicated in the trial monitoring report by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), which noted that in a number of cases the monitoring also revealed flaws with respect to the **right to the trial within a reasonable time frame**, with cases often being postponed for long periods of time; this issue is particularly acute when the accused is subject to pre-trial detention and has to remain imprisoned for a long period of time without a final verdict. Such attitudes (artificial protraction of cases) blatantly violate fundamental human rights - in particular the presumption of innocence - and thereby produce an impression of political persecution.

It is worth noting that the July 8, 2015 amendments the Criminal Procedure Code of Georgia take into account the OSCE's recommendation regarding consideration of the case within a reasonable time frame. In particular, the court of first instance must now render a verdict no later than 24 months after the decision of a pre-trial judge to refer the case for evaluation of its merits, though this term does not apply when the accused avoids appearing in court and/or the accused is on a wanted list.

In the course of the proceedings spectators several times assaulted the judge. Transparency International Georgia deems that such actions and disrespect towards the court are impermissible. It is important that the audience attending the hearings should acknowledge basic standards of conduct and the importance of keeping order.

Gigi (Giorgi) Ugulava and Davit Kezerashvili

I. So-called Rike episode
II. Employment of United National Movement activists to work at Tbilservice Ltd.

1. The accused and the charges brought

Gigi (Giorgi) Ugulava (former Mayor of Tbilisi) – illegal embezzlement of the property of others in large amounts through abuse of office, when such property was at the legitimate disposal of the embezzler (so-called Rike and Tbilservice episodes).[16]

Davit Kezerashvili (former Minister of the defense) – encouragement of illegal embezzlement of the property of others in large amounts through abuse of office, when such property was at the legitimate disposal of the embezzler. Legalization of illicit income, i.e. giving legal form to illegal property with the purpose of concealing its illegal source, as well as concealing its true nature, and in the process gaining income in large amounts (so-called Rike episode).

2. Description of the offense:

According to the prosecution, at the end of 2008 former Minister of the defense Davit Kezerashvili had certain financial obligations towards businessman Joseph Kay and intended to repay this sum by using funds from state budget. For this purpose, he contacted then-Mayor of Tbilisi Gigi Ugulava and proposed that he set aside sums from the city budget, the source of which he would conceal and give a legal form; he would thereby fulfill his obligation to Joseph Kay. Giorgi Ugulava agreed to this proposal, as a result of which a 43,350-square-meter plot of land on the territory of Rike, which had been sold to Akhali Rike Ltd. for USD 7,000,000, was purchased for a price significantly higher than the market value: USD 17,000,000, of which USD 10,000,000 was the amount owed by Davit Kezerashvili to Joseph Kay. The accused therefore embezzled USD 10,000,000 of government's money which should have been allocated for the promotion of investments on the territory of Old Tbilisi, its development, restoration and reconstruction.

According to the prosecution, Davit Kezerashvili, for the purposes of concealing and disguising this illegal source of the money, contacted Joseph Kay and made an agreement that he would

[16] Has been corrected pursuant to the remarks of the Prosecutor's Office.

cover the outstanding financial obligations from the funds available on the account of Akhali Rike Ltd. With this intention, in January 2009, under the instruction of Davit Kezerashvili, a fictitious contract was formed on management and operation services, dated April 5, 2008, between Lakebrow Ltd., a company registered in Great Britain and owned by Joseph Kay, and Akhali Rike Ltd. The contract, which in effect was a legal mechanism to give a lawful appearance to the USD 10,000,000 embezzled by Giorgi Ugulava, contained an artificial clause pursuant to which Akhali Rike Ltd. had to pay 10,000,000 USD as a penalty for non-performance of its obligations. Later on, as though for breach of contract, under the instruction of Davit Kezerashvili Akhali Rike transferred 8,811,189 USD - what was left of 10,000,000 USD after payment of taxes - to the account of Joseph Kay's company; this covered outstanding obligations towards him.[17]

The second episode related by the prosecution has to do with the employment of 764 activists, so-called coordinators of the United National Movement party, to work at Tbilservice Group. According to the investigations office, they were paid salaries totaling 4,130,728 Lari out of the budget of the Capital. Specifically, on December 31, 2009, under the instruction of Gigi Ugulava, with the purpose of distributing money to activists of United National Movement, a department for public relations was specially created at Tbilservice Group Ltd. where 712 activists, so-called coordinators of the party, were subsequently hired. According to the prosecution, the majority of them did not work a single day and were instead conducting party activities, even though they received salaries totaling 4,130,728 Lari from the budget allocated to the Capital.

3. Significant circumstances/facts:

In the course of the trials several cases have been recorded where spectators verbally assaulted witnesses. It is worth noting that the troublemakers were penalized for such misconduct or expelled from the courtroom by the judge. Tensions outside the courtroom were also frequent.

During observation of the trials several cases were noted where witnesses were allowed to stand together in the hallway outside the courtroom, waiting to be called in. In this time span they had full opportunity to communicate with one another. Respective services of the court took no measures to separate the witnesses.

[17] Has been defined pursuant to the remarks of the Prosecutor's Office.

At one of the hearings, the accused Gigi Ugulava asked the judge to have the court security officer let him communicate with his attorneys without hindrance – he was passing questions on to them in a written form on paper. The judge called on the court security officer not to hinder the right of the accused to have confidential communication with his attorneys.

The defense and the accused often made political statements. The judge several times called upon them to abstain from such statements.

The judge considered some of the conduct of the defense as a dilatory tactic and called on them to obey the procedural regulations. The judge's feedback was triggered by the fact that the defense interrogated one witness for a long period of time.

The defense noted that the examination of the prosecution's evidence took almost two years, therefore the defense should not be requested to interrogate witnesses with great haste and should not be accused of delaying the proceedings.[18]

On February 27, 2014. Aix-en-Provence Court of Appeals in France refused to extradite Davit Kezerashvili to Georgia. The refusal was caused by the existing threat of political persecution against Davit Kezerashvili.[19]

Various television companies recorded the proceedings. Only on one occasion were the media not allowed to record, which was when they did not have advance permission from the judge. According to an order of the Chairman of Tbilisi City Court, media must address the court with the corresponding motion one hour before start of the hearing.[20] The motion was presented after the trial had already started, so the judge did not grant it.

[18] Has been added pursuant to the remarks of Gigi Ugulava's attorney.
[19] Has been added pursuant to the remarks of Davit Kezerashvili's attorney.
[20] https://gyla.ge/uploads/publications/foto-video-audio.pdf

4. Pre-trial measures:

1. The Prosecutor's Office raised a motion to assign to Gigi (Giorgi) Ugulava a bail of 1,000,000 Lari as a preventive measure.

Position of the defense: The defense did not agree with the motion and stated that there was no necessity for a preventive measure since the accused, Gigi (Giorgi) Ugulava, had left the country several times during this period, but has always come back to Georgia; besides, he was also cooperating with the investigation.

2. The prosecution raised a motion to prohibit the Mayor of Tbilisi from leaving Georgia. They also requested that Gigi (Giorgi) Ugulava be obliged to appear in the investigation agency on a weekly basis.

Ruling: The motions were denied. None of the preventive measures were exercised against Gigi (Giorgi) Ugulava.

3. The prosecution motioned to have Gigi (Giorgi) Ugulava removed from his office.

Ruling: As per the court's ruling, the motion of the prosecution was not granted. Gigi (Giorgi) Ugulava was not dismissed from the office since the grounds for dismissal of the Mayor from the office as indicated in the prosecution's motion, were too general and unfounded.

4. The prosecution requested pre-trial detention of Davit Kezerashvili as a preventive measure. Since the accused did not attend the hearing, there was a suspicion that he was hiding from the court.

Position of the defense: The defense requested that Davit Kezerashvili be granted bail. They argued that it was unnecessary to impose pre-trial detention.

Ruling: The prosecution's motion on the pre-trial detention of Davit Kezerashvili was granted

5. The trial proceedings

5.1. Important motions

A. Motions of the defense:

1. The defense raised a motion to attach an EC Assembly Resolution as evidence to the case file. The resolution contained a reference to politically motivated criminal prosecution of Ugulava and Davit Kezerashvili.

Position of the prosecution: The prosecution considered the motion unfounded, since it did not concern this specific criminal case and its factual circumstances.

Ruling: The judge explained that although the motion did not relate to factual circumstances, it might indirectly characterize the accused; for this reason the motion was granted.

2. The defense made use of their prerogative right and raised a motion to attach to the case file expert's report (the auditor's assessment) as well as letters which formed the basis for this report.

Position of the prosecution: The prosecution did not object to the defense using their prerogative right, however this right entitled them to the opportunity to present one piece of evidence; the defense presented letters as well as the report, i.e. several pieces of evidence. The position of the defense on this was that the letters formed an integral part of the report, without which the report would not have come into existence, and so for this reason they should be considered one piece of evidence.

Ruling: The judge noted that these were not several pieces of evidence, but rather weight of evidence, which does not contradict the law. Therefore, the motion was granted.

3. The defense raised a motion to attach to the case file the record of proceedings of a trial on a different case, where the testimony of a witness contradicted to the testimony of the same witness in the present criminal case.

Position of the prosecution: The prosecution stated that the matter concerns two different cases and factual circumstances, for this reason the motion should not be granted.

Ruling: The court noted that the testimonies were given in two separate cases and they were completely independent from one-another. The court considered that the content of a testimony given at a different trial was not relevant to the current criminal case. For this reason the judge did not grant the motion of the defense.

4. The defense requested that a statement by the Mayor of Tbilisi, Davit Narmania, be enclosed in the case file, where Davit Narmania noted that he knew quite a few people who helped him during the pre-election campaign and that he had hired them to work at City Hall. According to the defense's statement, this was exactly the prosecution's case against Gigi Ugulava, that he employed people based on their party affiliation; for this reason presence of this evidence on a case file was of strategic importance to the defense. The defense indicated that they had already addressed the investigation office with a request to start an investigation.

Position of the prosecution: The prosecution stated that the evidence was not related to this case. Besides, Gigi Ugulava registered people formally, while Davit Narmania employed them officially; the difference between the two was drastic.

Ruling: The court did not grant the motion and noted that existence of this evidence in a case file would not have any effect; and in case of the commencement of an investigation, the information would in any event be given to the party concerned.

5. The defense presented for inclusion into the case file evidence that would corroborate the claim that the witness of the prosecution, T.Sh., was bribed by the state. A sales contract concluded between the Municipality of Tbilisi and Entko Ltd. was tendered, in which the seller was Entko Ltd., whose director was T.Sh. The contract was related to the Youth Olympics, in particular to reconstruction of roads around the territory of the stadium. The selling price was up to one million Lari.

Position of the prosecution: The prosecution stated that the materials had no relation to the case, besides credibility of the witnesses could be assessed during the interrogation; thus, the motion should not be satisfied. The prosecution stated that if the court would grant this motion, they would present information on how the property of witnesses for the defense had been increasing in tandem with them giving testimony in this court.

Ruling: The court noted that the statement of the defense was a supposition, and the court was not in the positon to rely on a supposition. The motion was denied.

6. The defense raised a motion on the re-interrogation of Mamuka Akhvlediani (first deputy of Chairman of the City Assembly). This witness was called on by the prosecution as well as the defense. The prosecution presented Mamuka Akhvlediani only with respect to the episodes of the distribution of shares of Imedi TV and the redemption of the property in Rike, while the defense did so with respect to the Tbilservice episode as well. Initially, these episodes represented two different cases. The defense argued that if the prosecution would not enjoin these two episodes in one case, the witness should be interrogated twice. The defense deemed that, irrespective of the consolidation of these episodes into one case, the court should still have allowed interrogation of Mamuka Akhvlediani anew. In addition, they stated that when Mamuka Akhvlediani was being interrogated as a witness of the prosecution, the interrogation concerned Rike and Imedi TV episodes, i.e. the prosecution's evidence was being examined, with the result that the defense was not in a position to ask questions about the Tbilservice episode, since according to first sentence of part two of Article 242 of Criminal Code of Georgia the prosecution's evidence is to be examined first, followed by that of the defense.

Position of the prosecution: The prosecution addressed the defense with a question, namely whether they had forgotten to ask a question related to Tbilservice when interrogating Mamuka Akhvlediani; however, the defense rejected the claim. The prosecution stated that the motion should not be granted since it contradicted criminal procedural legislation. The Prosecutor's Office stated that the defense could also ask the desired questions to Mamuka Akhvlediani at the stage of investigation of evidence by the prosecution; however, re-interrogation was not permissible.

Ruling: The judge noted that a party has the right to investigate all possible evidence in accordance with the rules set by the Criminal Procedure Code. At the same time, the Code does not forbid to call a person to the court twice; however, just because something was not prohibited, does not mean that it needs to be done. The judge explained that the defense could ask any questions it liked at the stage of examination of the prosecution's evidence, as well, because at no stage is the defense limited by the content of the questions asked by the prosecution, and the witness would be obliged to answer the questions. The court considered that the issue concerned evidence which had already been examined and by granting the motion it would allow re-examination of the same evidence. For this reason the motion was denied.

B. Motions of the prosecution:

1. The prosecution requested that a document be attached to the case file which certified that the public relations department at Tbilservice Group was created for the purposes of financing activists of United National Movement and that the people employed were not in reality working at the department.

Position of the defense: The defense stated that the reasons for not presenting the evidence should be analyzed, since it could have been possible to present it earlier. Consequently, the defense requested that the court find the evidence inadmissible.

Ruling: The judge stated that admitting the evidence at this stage would result in a violation of the principle of the adversariality and equality of the parties. In the end, the judge did not grant the motion as s/he considered that the prosecution could have raised the motion at an earlier stage of the proceedings.

5.2. Witness testimonies

A. Witnesses of the prosecution:

Imedi episode

The prosecution's witness, Joseph Kay, was interrogated at a distance, by means of Skype. The witness stated that in December 2008 Davit Kezerashvili asked him to meet. At the meeting he stated that Imedi had to be given to them and that this was Mikheil Saakashvili's decision. Later, a telephone conversation took place with Mikheil Saakashvili, who reiterated that he had to let them have Imedi and do whatever Davit Kezerashvili would tell him to do. According to the witness, Davit Kezerashvili threatened him, imposed ultimatums and told that his life would be in danger. Joseph Kay stated that in the process of exchanging documents he communicated with Gigi Ugulava, who told him that they would prepare all documents and Joseph Kay would only need to sign those documents. According to Joseph Kay, they made him cede Imedi by force, in exchange for which at a later point they transferred about nine million Lari and let him maintain 10% of the company's shares, which he later yielded to Badri Patarkatsishvili's wife, Inga Gudavadze. Joseph Kay stated that he was supposed to receive significantly a higher amount

of money in return for Imedi; as per his calculations, the money he spent on Imedi amounted to 11 million. The witness did not commence litigation on this issue since he was afraid that his life would be threatened.

Employment of activists from the United National Movement

The interrogated employee from the company Tbilservice stated that 100% of the company belonged to City Hall, to whom the financial accounts were sent at the end of each year. According to the witness, Giorgi Khuchua (former head of the Tbilservice Group) noted in a conversation with him that under the instruction of Tariel Khizaneishvili (former deputy to the Mayor of Tbilisi) a new department should be formed; and that this order came from Gigi Ugulava, Mayor of Tbilisi. According to the witness, maintenance of the new department cost approximately five million Lari, to be paid to Tbilservice Group Ltd. The witness stated that he did not in person meet with Gigi Ugulava, but that he knew from Tariel Khizaneishvili and Giorgi Khuchua that the order for the creation of the department came from the Mayor.

One more employee from Tbilservice Group Ltd. was interrogated. The witness stated that his real duty was the transportation of the employees from work to home; however, formally he was registered as a specialist within the department of public relations.

Interrogation of the witnesses revealed that the coordinators of the United National Movement were employed and paid by Tbilservice Group; however, they themselves were not aware of this fact and majority of them never visited the Tbilservice Group office. Despite this, they did confirm the existence of their signatures on the contracts. As they explained, the contracts were signed at the office of United National Movement. There were witnesses who, apart from formal employment, were actually working there and went to work.

Witness Giorgi Khuchua (former head of Tbilservice Group) was also interrogated. He stated that he learnt from Tariel Khizaneishvili (former deputy to the Mayor of Tbilisi) that, as per Gigi Ugulava's instructions, a new public relations department was to be created; he was also given a list as to who was to be employed there. The witness stated that up to three million Lari was spent on salaries.

One of the employees of Tbilservice Group recalled that since the coordinators of the United National Movement were not being paid for their activities, at one meeting, attended by Gigi

Ugulava, it was decided that they be paid for their work. The witness noted that Gigi Ugulava mentioned at the meeting that they would be financed, but no source was stated. Later the witness learnt that their salaries were being paid by Tbilservice Group.

One of the employees of Tbilservice Group stated during interrogation that he learnt from Tariel Khizaneishvili (former deputy to Mayor of Tbilisi), that he himself and others employed there would only have to do party-related work, whereas the department was being created under the instruction of Gigi Ugulava. He also recalled that during the pre-election period Gigi Ugulava himself attended a number of meetings and even issued some directions.

Tariel Khizaneishvili was also interrogated (former deputy to Tbilisi Mayor)**,** who stated that the department was created under the instruction of Gigi Ugulava and mostly party activists were employed for work there. According to the witness, both creation and dissolution of the department were performed at Gigi Ugulava's behest. According to the testimony of Tariel Khizaneishvili, the people employed had to do nothing other than party-related work. He was given a list of 400 people to be employed at work.

Five testimonies of N.B., director of Akhali Rike, were made public at the trial. Certain facts were not consistent in the testimonies. For example, in the first testimony the witness states that the works on the territory of Rike were to be carried out by an offshore company while in the second testimony he notes that he is not sure whether the company was offshore. Likewise, in the first testimony he stated that he was ordered to transfer money to the offshore company, while in the second testimony he stated that he did not transfer the money. The witness confirmed in his testimonies that Mamuka Akhvlediani (former Chairman of Tbilisi Assembly) offered him 17 million dollars as a sales price, to which he agreed. The witness stated that in the name of Davit Kezerashvili he was presented with a contract, where ten million dollars was noted as a penalty and the remaining 7 million was to be distributed between founders of the company.

B. Witnesses of the defense:

Rike territory episode

An employee of the Old City Rehabilitation Development Fund was interrogated (this very company purchased the territory from Akhali Rike Ltd. for 17 million Lari). He stated that the decisions within the Fund were taken by the Chairman of the Board of the Fund; in 2008, the Chairman was Mamuka Akhvlediani. The witness had no information as to whether Ugulava or Kezerashvili had personal interests with respect to the Rike territory. He stated that the contract between Akhali Rike Ltd. and the Fund had not been drafted by him. According to the witness's statement, following the transfer of the Rike territory, various works were conducted, including the reconstruction of the tunnel and development of the park.

An employee of the City Hall was interrogated, who stated that as per his/her knowledge, the purpose of purchasing the land in Rike was to develop a park there. He had not heard of the interests of Gigi Ugulava, Davit Kezerashvili or Joseph Kay. According to his statement, Gigi Ugulava never expressed interest in procurement and never requested any information regarding it.

Episode of employment of UNM activists

Witnesses for the defense were questioned who were employed at Tbilservice Group. The witnesses denied doing any party-related work during their employment at Tbilservice Group. They did declare that they were activists of the United National Movement, and that they used to distribute booklets and vouchers, but denied doing propaganda in the course of such distribution.

According to the witnesses, their duties during their employment at Tbilservice Group included supervision of condition of bins and waste disposal in designated areas. The defense witnesses stated that they were employed in the City Hall by filling out a special application form and all of them denied signing the contract at the offices of United National Movement. Witnesses noted that if there was any problem with respect to waste disposal in the designated area, they would call Tbilservice on that matter, but they had never had personal interaction with Gigi Ugulava.

According to the statement of one of the witnesses for the defense, s/he was told at the investigation office that both him/her and Gigi Ugulava would be imprisoned if she/he did not tell the truth. The witness stated that s/he was subject of pressure, which was expressed by the loud tone of voice of the investigator. S/he also stated that s/he had not been given water to drink for three hours.

The trial is pending. A verdict has not yet been delivered.

6. Our observations:

The judge managed to maintain order in the courtroom; to this end, s/he had to penalize spectators and expel them from the courtroom on several occasions. The accused often made political statements. The judge had to call on him several times to abstain from such statements, but no real restriction took place.

In several hearings, the judge called upon the defense to finalize the examination of evidence promptly. The judge deemed that the principle of swift trial was being impeded. The accused has a right to a swift trial within the time frame stipulated under the present Code, however s/he may refuse this right if this is necessary for proper preparation of the defense.[21] It should also be noted that this right is not unlimited. It is necessary to keep in mind the resources of the court and avoid overusing them. In systems based on the principle of adversariality, the court must create equal opportunities for the parties to protect their rights and legitimate interests so that none of them is given an advantage.[22]

It is true that according to the Criminal Procedure Code, a judge has a right to give reasonable amount of time to a party for asking questions and receiving responses from witnesses, but this relates to the interrogation of each specific witness. The Code does not directly regulate whether a judge is authorized to call upon a party to speed up the examination of evidence and impose time limits on the party. In each particular case, the issue needs to be decided in the general spirit of the Criminal Procedure Code so that effective justice, as well as the right of a party to present evidence supporting its position within the amount and sequence determined by him/her, is not hindered. In each case, the issue needs to be assessed in terms of the extent to which the party has been prevented from thoroughly establishing facts in support or against

[21] Part two of Article eight of Criminal Procedure Code of Georgia.
[22] Part one of Article 25 of Criminal Procedure Code of Georgia.

him/her, and whether the refusal to examine the evidence has directly and proportionally swayed the ruling in favor of the other party. It is important to assess the content of the evidence subject to examination and the direct effect on the outcome being sought by those presenting it.

Communication in-between the witnesses could not have been avoided during the trial. The witnesses called were waiting for commencement of the hearing together in the hallway and had full opportunity to communicate with one another.

There were no obstacles preventing the media from recording the proceedings.

Gigi (Giorgi) Ugulava, Alexandre Gogokhia

I. Legalization of illicit income
II. CityPark episode
III. Marneuli episode

1. The accused and the charges brought

Gigi (Giorgi) Ugulava (former Mayor of Tbilisi) - compulsion, organizing group activity which violates public order (*Marneuli episode*), legalization of illicit income in particularly large quantities and usage of fake official document (*legalization of illicit income*), abuse of public office (*CityPark episode*).[23]

Aleksandre Gogokhia (director of offshore company EXIMUS HOLDING) – legalization of illicit income in large quantities.

Giorgi Goniashvili (brother-in-law of Gigi Ugulava) – conspiracy to legalize illicit income in particularly large quantities, use of fake official documents, trading in influence.

Davit Chedia (former head of LEPL Property Management Agency by the Mayor of Tbilisi) – abuse of public office.

> ***Note:*** *The accused Giorgi Goniashvili asked for his case to be tried by jury; consequently, his case was separated that of Gigi Ugulava and the others. Criminal prosecution against the accused Davit Chedia has been ceased.*

2. Description of the offense

I. Legalization of illicit income

According to the prosecution, Giorgi Ugulava, together with other people engaged in this criminal act - including Giorgi Goniashvili, his brother-in-law, and Aleksandre Gogokhia, the former director of Georgian Lottery Company and business-partner of Davit Kezerashvili – had

[23] Has been corrected pursuant to the remarks of the prosecution.

been illegally bringing in "dirty money" in particularly large quantities from one of the offshore companies. These sums were intended for use in the financing of the pre-election campaign of the political party United National Movement. Specifically, the money was being transferred on the basis of a fictitious contract from an offshore BVI-registered company related to Davit Kezerashvili (Eximus Holding); from there to a company called Bruktrade, likewise registered offshore; and then from the latter to a Georgian company within the disposal of Giorgi Gviniashvili and Gigi Ugulava, for the purposes of financing the pre-election campaign of the United National Movement.

In total, on the basis of a fictitious contract and for the purposes of money laundering it was planned that USD 1,500,000 was to be transferred from the offshore company into Georgia; but as a result of the operative-investigative action, they only managed to transfer USD 760,000. Giorgi Ugulava used this sum for political-party purposes.

II. Marneuli episode

Gigi Ugulava is charged with compulsion and organization of group activities against the chairman of Marneuli district election committee on June 5, 2014, aiming at obstructing the normal operation of the district election committee. Gigi Ugulava and members of his party broke into the building of Marneuli district elections commission and demanded that its chair explain why he had annulled the registration of Akmamed Imamkhuliev, a candidate of the United National Movement.

III. CityPark episode

With respect to the CityPark episode, Gigi Ugulava is charged with abuse of authority to give privilege to a company. In particular, on the basis of legislative amendments that were passed and a contract that was concluded by him, the income received from ticketing by a private company (CityPark) was not distributed to state and local self-government budgets, but rather was accumulated by CityPark; this loss was then incurred by the budget. The company received additional funds of 1,086,718 Lari.

3. Significant circumstances/facts:

In this case, the accused Gigi Ugulava was arrested at the airport, whereas several days before, in yet another case, the court had not granted a motion by the prosecution requesting his pre-trial detention, and released the Mayor of Tbilisi in exchange of a deposit.

The accused Gigi Ugulava stated at the hearing where the preventive measure was discussed, that he had been deprived of his right of an attorney because his attorneys were not permitted to see him for three hours after his arrest. His attorneys also stated at the hearing that nobody explained to the accused what offense was he being arrested for.

In addition, the defense stated that the principle of adversariality was also breached since they had limited access to the case materials. In response, the prosecution stated that the attorneys' orders did not have the required signatures; besides, the case number was incorrectly noted and it was for those reasons that the attorneys were not given a chance to see the accused. According to the prosecution, they had complied with the reasonable time requirement and had transferred the case files to the attorneys within 10 hours, though the defense did not appear to receive the delivery of the case files. According to the prosecution, there even was a record on the above.

One of the accused, Davit Chedia, stated that the prosecution offered him diversion on this case. Later on, on the basis of the defense's motion, criminal prosecution against him was ceased.

The attorney for Giorgi Goniashvili stated that the evidence was given to him within the time frame envisaged by the law; however, the accused himself had no chance to acquaint himself with the materials obtained as a result of operative-detective measures. He noted that they sent a letter to the Prosecutor's Office and the Prosecutor's Office referred them to the corrections institution to give Giorgi Goniashvili the technical possibility of becoming familiar with the materials. The same problem occurred with respect to Giorgi Ugulava, but as per the defense's statement, it was resolved with the prosecution's assistance.

At one of the hearings the prosecution accused the defense of delaying the case proceedings. According to them, the defense were aware that showing discs in the prison was technically impossible; despite that, they brought information on hard drives to Giorgi Gviniashvili, in order to delay the process. The prosecution asserted that the defense's plan was later to accuse the

prosecution of delaying the process. At the next hearing it turned out that the problem had been resolved and the accused had seen all the materials.

Gigi Ugulava refused to attend the trial. After this declaration he never attended the trial.

4. Pre-trial measures:

The prosecution requested pre-trial detention as a preventive measure. According to the prosecution, the case concerned a category of a serious crime and besides, there was a suspicion that the accused would hide, not appear in the courthouse, destroy important case-related evidence or commit a new crime. The prosecution also asked that in the process of decision-making, the connections of the accused with Davit Kezerashvili, who was being sought after, be taken into account. The prosecution stated that they were in possession of operative information indicating that Gigi Ugulava would escape after crossing of the border. In addition, they claimed that the accused was exerting pressure on witnesses.

According to the defense's explanations, the witness on whom pressure was allegedly being exerted, was giving ambiguous testimonies which cast doubts upon his trustworthiness. As regards the pressure on another witness, which the prosecution had substantiated with a recording of a telephone conversation, the defense claimed that the recording was obtained without the court's order, i.e. that the evidence was unlawfully obtained. Consequently, it could not have been the basis for the court's order on pre-trial detention. The defense denied the danger that the accused might escape, given that Gigi Ugulava had never breached the terms of his bail, while in a number of cases no preventive measure had been exercised against him at all. Besides, the accused had officially stated before his departure that he was leaving for a two day official visit to Ukraine (Gigi Ugulava was arrested at Tbilisi airport), and his departure could not have been considered an attempt to escape. The defense requested to leave the accused Gigi Ugulava without a preventive measure or to use a personal warranty.

The court granted the prosecution's motion on the spot and ordered Giorgi Ugulava into pre-trial detention.

By this time Giorgi Goniashvili was already in pre-trial detention and Aleksandre Gogokhia was declared to be wanted by the law.

5. The trial proceedings

5.1. Important motions

A. Motions of the defense:

1. The defense requested the alteration of the preventive measure on Gigi Ugulava. The defense claimed that there were no grounds for granting detention. In particular, there was no danger of the accused escaping, since the accused had been granted bail in other cases and had never breached the terms. The accused had left Georgia on multiple occasions and had always returned. The attorney also stated that the accused had twice postponed international visits due after being called to the investigation bureau. The defense noted that several days before the arrest of Gigi Ugulava at Tbilisi International Airport, the accused had posted his airplane tickets on social media and informed the investigation entities in advance (by means of a short text message) that he intended to leave the country temporarily; this, according to the defense, was indicative that the accused was not attempting to escape. The defense also denied the prosecution's allegation about possible pressure on witnesses, according to which two witnesses had received short text messages saying that they should appear at the hearing and should not give testimony. The defense claimed that this fact could not serve as a basis for detention, since no investigation had commenced on one of these episodes, and in the case of the other, although the prosecution did begin an investigation, it failed to determine anything. On the basis of these circumstances the defense requested that the detention be changed to 20,000 in bail.

Position of the prosecution: The prosecution stated that following the imposition of the preventive measure, no new circumstances had been discovered which could serve as a basis for the re-consideration of this type of the measure. There was still a danger that the accused could escape, since the accused had acquaintances abroad. The arrest of Gigi Ugulava at the airport was also indicative of the fact that he was trying to escape. The prosecution noted that the defense's claim that Gigi Ugulava had sent a short text message to the investigator about his departure could not be proved, since there was no evidence in the case file supporting this proposition. The prosecution also invoked, as a justification for keeping Gigi Ugulava in detention, his connection with Aleksandre Gogokhia (who had been accused in the same case), who was abroad and represented a criminal group. According to representatives of the prosecution, Gigi Ugulava tried to exert psychological pressure on witnesses. Moreover, the witnesses were his subordinates at work and therefore the accused had the means of influencing them. As per the

prosecution's explanations, the assertion of the defense that all the evidence has already been obtained, and that for this reason no pressure on witnesses could have taken place, did not hold. The prosecution said they could not share the defense's assertion that, because all the evidence had already been obtained, there had been no pressure on witnesses, since witness testimony becomes evidence only when witnesses appear before the court. The prosecution also noted that the accused had committed the offense for which he is currently being tried when he was on bail for another case (bail ordered prior to the commencement of the present case), which was indicative of the fact that a light preventive measure, bail, had no restraining effect on him. Consequently, he must be detained in the present case.

> *Note: The defense replied that a new charge brought while the accused is on bail is cannot serve as evidence that the new offense was committed.*

Ruling: The defense's motion was not granted and Gigi Ugulava remained in detention. The court clarified that the court's reasons for ordering detention were still valid and no circumstance for altering the preventive measure had been revealed.

2. The defense raised a motion challenging the judge, on the ground that the same judge considered the issue of a preventive measure for Giorgi Goniashvili (brother-in-law of Gigi Ugulava). When considering Giorgi Goniashvili's case the same circumstances were presented as a ground for ordering detention (leaving Georgia for abroad) and the judge granted the motion. Since the defense considers judge's ruling towards Giorgi Goniashvili as unlawful, in their opinion the same judge could not have been objective towards Gigi Ugulava.

Position of the prosecution: The prosecution did not agree with the motion and noted that there were no grounds for challenge of the judge. They stated that the defense knew that this judge would be considering the issue of preventive measure several hours before the hearing and could have presented their motion in written form.

Ruling: The court did not grant the defense's motion and noted that they had known the identity of the judge deciding on this motion one hour in advance and could have presented the motion in written form. Besides, trying cases against several people could not justify challenging a judge.

3. The defense a motion to attach following documents to the case file: A report by Human Rights Watch, which refers to criminal prosecutions directed by political motives in Georgia and to arrest of Giorgi Ugulava during a moratorium; and an EC Resolution, which notes the political persecution of Giorgi Ugulava. The defense stated that examination of these documents would help the defense to exercise their rights, and that for objective reasons they were not in a position to present those documents earlier.

Position of the prosecution: The prosecution stated that the motion should not be granted and that the documents requested by the defense should not be admitted as evidence. According to the prosecution, the defense failed to prove the authenticity and relevance of these documents, since the interrogation of the authors of the documents was not possible. The prosecution argued that the requested documents did not relate to any of the episodes for which the charge is brought against Gigi Ugulava in the present case. Besides, nowhere did the documents state that Gigi Ugulava was unlawfully charged, unlawfully arrested or that he was politically prosecuted. According to prosecution's statement, Human Rights Watch does not conclude that there was political prosecution; the document refers to a term "by opposition's explanation". The prosecution also stated that the documents did not verify factual circumstances.

Ruling: The court granted the motion and noted that the relationship of the documents with the accused was well-founded.

4. The defense raised a motion on adjournment of the hearing, arguing that the attorney had only recently begun work on the case and wanted to raise a motion on alteration of the preventive measure. The same attorney had brought a claim with respect to the preventive measure to the European Court of Human Rights in Strasbourg and wanted the motion to be raised specifically by him. One week's time was requested for preparation.

Position of the defense: The prosecution denied the motion. The prosecutor stated that the attorney was well aware of case files since the claim sent to Strasbourg concerned this very case. The prosecution assessed the defense's motion as a dilatory tactic.

Ruling: The court explained to the defense that the hiring of every new attorney does not constitute a ground for adjournment of the hearing. The judge denied the motion.

5. The defense raised a motion on terminating proceedings against the accused Davit Chedia. According to the defense, none of the witness' testimony referred to him committing the offense and the existing evidence did not prove that had committed the offense. A motion on termination of criminal prosecution against Gigi Ugulava was also raised. The defense stated that there was no proof of the accused committing the offense.

Position of the prosecution: The prosecution denied both motions and stated that the existing evidence did support the charges against the accused.

Ruling: The court stated that the evidence presented by the prosecution was sufficient for showing with a high degree of probability that Ugulava had committed the noted offenses. Consequently the motion on termination of prosecution against him was not granted. With respect to Davit Chedia, the court found that the evidence presented was not sufficient to meet the required degree of probability; for this reason, the motion on termination of criminal prosecution against him was granted.

6. The defense raised a motion to terminate the preventive measure against Gigi Ugulava.

Position of the prosecution: The prosecution agreed with the defense. Since the accused had already been detained on another case, by which the purposes of the preventive measure were achieved, the prosecution did not request another preventive measure.

Ruling: The court granted the motion. Detention towards Gigi Ugulava on the pending case was terminated, though he remained in detention under the order granted in another case.

B. Motions of the prosecution:

1. The prosecution presented new evidence - in particular, a response from a BVI agency to the letter of Prosecutor's Office. The prosecution stated that the response had just arrived and for this reason it was impossible to present it earlier; therefore, there was a good justification for presentation of the evidence at that stage.

Position of the defense: The defense requested additional time to acquaint themselves with the evidence.

At the next hearing representatives of the defense stated that substantially they agreed with the inclusion of the evidence in the case file; however, they stated that the prosecution had been in possession of the report earlier and that they had given it to the defense late. The prosecution responded that due to internal procedures, they themselves had received the letter late and presented it to the court within two days of becoming familiar with it.

Ruling: The judge granted the prosecution's motion and noted that the prosecution indeed had indeed got hold of the evidence two days prior to the hearing, and consequently could not have presented it earlier.

2. The prosecution raised a motion to convert the preventive measure against Giorgi Goniashvili and instead of detention to assign him a bail of 10,000 Lari.

Position of the defense: The defense did not agree with the motion and stated that there was no ground for using any preventive measure. Besides, the accused would not be able to provide 10,000 Lari in bail. The defense requested that the motion of the prosecution not be granted and Goniashvili stay without any preventive measure.

Ruling: The court did not grant the prosecution's motion on ordering bail; the court took into account the defense's arguments and left the accused without any preventive measure. Consequently, he was released.

5.2 Testimonies of witnesses

A. Witnesses of the prosecution:

A witness who was examined stated that s/he was introduced to Giorgi Goniashvili (the accused) by G.K. G.K had several times offered him to meet with respect to fake invoices; after several rejections though the witness addressed financial police and arranged for cameras to be installed at the meeting place. The witness was requested that his company receive money transferred from an offshore company, after which the money would be cashed. G.K. promised that he would take care of the business himself. While the witness was unable to recollect a specific topic, the witness remembered that with regard to certain issues, it had been said that Gigi Ugulava would take care of them.

The trial is pending. A verdict has not yet been delivered.

6. Our observations:

Gigi Ugulava was arrested in 2014, several days before the second round of local self-government elections, which constituted a breach of the so-called moratorium declared by Prime Minister Irakli Garibashvili, since Gigi Ugulava was leading the United National Movement's election campaign. It is interesting to note that several days earlier the court rejected the motion of the prosecution to order detention as a preventive measure. Certainly, he was arrested for a charge on another case, which is permissible under the law. However, the sequence of how events developed raises serious questions.

No significant violation which would hinder the adversariality of the parties was revealed during the proceedings. Therefore, it can fairly be said that the parties had equal opportunity to present arguments and evidence, take procedural actions and defend their interests.

Gigi (Giorgi) Ugulava, Aleksi Tabuashvili and others (Tbilisi Development Fund case)

1. The accused and the charges brought

Gigi (Giorgi) Ugulava (*former Mayor of Tbilisi*) – conspiracy to embezzle state funds in large quantities using public office,

Aleksi Tabuashvili (*former head of City of Tbilisi's municipal procurement city service*) – conspiracy to misappropriate or embezzle of large amounts of the property of others.

Davit Avaliani (former Gamgebeli of Old Tbilisi) – misappropriation or embezzlement of the property of others.

Dimitry Chkheidze (former deputy of Gamgebeli of Old Tbilisi) – participation in misappropriation or embezzlement of the property of others.

Davit Alavidze (former deputy Mayor) – misappropriation or embezzlement of the property of others.

Giorgi Sabanadze (former head of Tbilisi Development Fund) - misappropriation or embezzlement of the property of others

2. Description of the offense:

The prosecution argued that Gigi Ugulava, together with the others accused, created a criminal scheme, whereby he embezzled funds of up to 48,180,460 Lari from the Tbilisi Development Fund, allocated for the rehabilitation of Tbilisi. This was done for the purposes of financing the United National Movement's pre-electoral campaign.

According to the prosecution, activists from the United National Movement received on their "plastic cards" salaries totaling 13,852,497 Lari. According to the second part of the charge, in order for the funds not to be taxed, the accused withdrew the funds and then distributed them to the activists. The Fund's losses for this purpose amounted to 34,328,463 Lari.

3. Significant circumstances/facts:

Following ruling of the Constitutional Court, the defense was in a position to request reinstatement of Gigi Ugulava into his position of Mayoral authority. However the defense was not able to raise the motion due to the actions of the prosecution. Representatives of the prosecution requested time to determine their position in one case, and in two other cases did not appear at the hearing due to business travel. They requested adjournment of the hearings. In one case the court considered the prosecution's request for ten day adjournment to be unreasonable and postponed the hearing for five days, and in another case postponed the hearing for ten days. Later, the defense withdrew their motion.

Gigi Ugulava several times made political statements and in certain cases the court asked him to abstain from making such statements.

Upon examination of prosecution witness Besik Kvitsiani by the defense, it became known that he was handcuffed and taken to financial police in that condition. He was also not given the minutes of detention. Later he was told that he was being examined as a witness. The witness confirmed these facts. He also stated that his complaint on these matters was never acted upon.

The accused Giorgi Sabanadze is fugitive. During consideration of the case at court he was arrested in Florence; however, the court of Florence did not satisfy the application for his extradition. At the moment Giorgi Sabanadze is registered as a refugee in Hungary.

Dimitri Chkheidze (the accused) made a statement that there were differences between the footage broadcast on television and that which was shown to him upon his arrest. He alleged that the footage had been edited.

Accused Gigi Ugulava refused to attend the hearings in this case since he distrusted the court and the judge.

Broadcasting companies were able to regularly and freely record the proceedings. Only in one case did the judge issue a notice to an attendee about taking pictures with his/her phone.

4. Pre-trial measures:

The prosecution requested detention of Gigi Ugulava as a preventive measure. The prosecution put forward the following arguments: in the course of the investigation certain pieces of evidence could not be found and there was a suspicion that these pieces of evidence had been hidden or destroyed by the accused; Gigi Ugulava could influence the witnesses since they had been subordinate to him during his time in office; the prosecution also discussed the risk of escape by Gigi Ugulava and as confirmation of the risk they noted an incident[24] which took place near the National Library of Georgia, with respect to which Ugulava was several times called for questioning at prosecutor's office, but intentionally did not come. For these reasons, the prosecution requested detention as a preventive measure.

In response to prosecutor's arguments the defense stated that Ugulava had at least ten times crossed Georgian border since commencement of criminal prosecution against him and each time he came back. Besides, Gigi Ugulava to always appeared at hearings, cooperated with investigation and never tried to hide away. The defense requested a **personal guarantee** as a preventive measure and proposed **Davit Bakradze, Davit Sakvarelidze** and **Giorgi Vashadze** as personal guarantors.

The court did not grant the prosecution's motion for detention. nor did the court grant the defense's motion for a personal guarantee. Instead, Gigi Ugulava was ordered 50,000 bail as a preventive measure.

Later, the prosecution requested suspension of Gigi Ugulava's Mayoral authority. The court considered the motion without all parties being present and suspended the public authority of Ugulava.

On the basis of the defense's claim the Constitutional Court of Georgia found unconstitutional the normative meaning of Article 159 of Criminal Procedure Code, which envisages the dismissal of officials of local self-government elected through universal, equal and direct suffrage, as well as Paragraph 2 of Part 1 of Article 160 of the same code, which allows rulings on such decisions without the requirement of an oral hearing. The Constitutional Court noted that suspension or dismissal of a authority of an official elected by the people, amounted to

[24] http://www.radiotavisupleba.ge/media/video/24896953.html

suspension or dismissal of the mandate of the people and constitutes one of the rudest intrusions into the autonomy of self-governance. The Constitutional Court also established that consideration of dismissal of a person from office (work) without oral hearing constitutes a disproportionate limitation of constitutional rights to fair trial and defense.

5. The trial proceedings

5.1. Important motions

A. Motions of the defense:

1. Following the decision of the Constitutional Court whereby the norm allowing a court to consider the issue of Mayor's dismissal without the party's attendance was found unconstitutional, the defense raised a motion to annul the ruling of the court by which Gigi Ugulava's authority was suspended and request his reinstatement in the office. The defense argued that since Ugulava's term had not been ceased, he was unlawfully prevented from being in office and had to be reinstated.

> *Note: In response to this, prosecution requested adjournment of the hearing in order to have a chance to determine its position. After this motion, the prosecution twice failed to appear at the hearing, allegedly for reasons of business travel. The prosecution requested that the court adjourn the session for ten days; the court adjourned the hearing for five days in the first case and ten days in the second case.*

Position of the prosecution: After their appearance at the hearing, the prosecution stated that the motion should not be granted since the court of first instance could not integrate the function of the court of appeals and annul the decision of the same instance. In addition, according to the prosecution, the decision of the Constitutional Court on the unconstitutionality of the norm did not mean that prior court decisions and rulings rendered on the basis of that norm could be annulled,[25] i.e. decision of the Constitutional Court according to which consideration of suspension of Mayor's authority without parties' attendance was found unconstitutional, could not serve as a basis for Gigi Ugulava's reinstatement. The defense interpreted the norm differently and stated that it was allowed by the law.

[25] Organic Law of Georgia on Constitutional Court. Article 20.

Note: Following the prosecution's statement, the decision on the motion was postponed, while at the next hearing it appeared that the defense had withdrawn the application the day before. Consequently, the judge did not issue a ruling.

2. At one of the hearings the accused Gigi Ugulava requested the judge to instruct the court security officerto let him communicate with his attorneys without hindrance and to let them pass case materials to each other. The judge granted the motion.

B. Motions of the prosecution:

1. The prosecution presented a motion to register adjournment of the hearing, since the prosecutors were commissioned to travel on business for ten days to participate in a seminar in Batumi.

Note: this motion was raised at the time when Gigi Ugulava's reinstatement into the office was being considered.[26]

Position of the defense: The defense stated that the prosecution failed to present a justifiable reason for non-attendance of the hearing and requested the court order the prosecution on the same day or the next day to be represented by a new prosecutor, and that the date of the hearing be fixed within the next few days. Otherwise it would have been violation of their right to fair trial. The accused Gigi Ugulava called the prosecution's actions politically motivated.

Ruling: The court stated that it was not in a position to determine validity of the prosecution's reasons for non-appearance since the prosecution noted that they would present evidence to that effect; consequently, the court would deliberate on that issue after the evidence had been presented. The court considered adjournment for ten days to be unreasonable as it violated the principle of swift justice. The hearing was postponed for five days.

At the next hearing prosecution's representatives again did not appear by reason of business travel. This time the court adjourned the hearing for ten days.

[26] Ibid

2. The prosecution raised a motion challenging several defense attorneys. According to the prosecution, the attorneys had been representing witnesses and had been providing them legal advice at the investigation stage. Consequently, there was conflict of interest.

> *Note: this motion was raised at the time when Gigi Ugulava's reinstatement into the office of Mayor was being considered.[27] The defense accused the prosecution of delaying the proceedings and requested that the judge give them the possibility of raising a motion on reinstatement of Mayor's office; the judge did not allow this and stated that procedural law required consideration of motion to challenge first and foremost.*

Position of the defense: The defense accused the prosecutors of trying to delay the proceedings, since a similar motion was also raised at a previous hearing and was not granted, and no new circumstances had been revealed since then. Besides, the defense stated that these witnesses were witnesses of the defense as well, and also that knowing that one of the subjects of the challenge was not present at the hearing, the prosecution had intentionally challenged him/her in order to delay the proceedings (later the attorney whose challenge was requested did appear at the hearing).

Ruling: The court did not grant the motion. It clarified that a witness was not a party to the trial, therefore there could be no conflict of interest.

3. The prosecution requested that the bail be replaced by detention of Gigi Ugulava. According to the prosecution, since the accused had been charged with a new offense on July 4, 2014, he had committed a new offense while on bail. According to the Criminal Procedural Code, when the accused violates the terms of the bail or commits a new offense, the prosecutor may request that the bail be replaced by a more strict preventive measure.

Position of the defense: The defense stated that the prosecution's motion should not be granted since they had not been given evidence related to the motion. Besides, being charged did not mean that the person had committed the offense. Consequently, the defense claimed that the prosecution's position was contrary to the presumption of innocence. The defense also appealed to the fact that accused Gigi Ugulava had already been ordered detention in another case and that detaining him second time was not permissible.

[27] Ibid

Note: The prosecution stated that the defense itself refused to accept the evidence.

Ruling: The court did not grant the prosecution's motion. It noted that the accused was already detained in another case, and that the purposes of the preventive measure were thereby achieved.

4. The prosecution motioned that in order to ensure swift trial the hearings be fixed every day or at least three times a week.

Position of the defense: The defense did not agree with the motion. They stated that they had already planned the case according to a schedule. Besides, Sabanadze was defended by one attorney only and he could not devote all his time to this case.

Ruling: The court did not grant the motion. It stated that it had many cases on file and hearings scheduled. Besides, the defense did not agree to work on the weekends and the judge could not oblige them to do so.

5. The prosecution raised a motion that the representative of the Mayor's office who was considered to be the victim, be substituted by another person, since the person who represented Mayor did not work there anymore.

Position of the defense: The defense did not agree with the motion and noted that at that stage, the representative of the victim was Levan Apkhazava, his testimony had been admitted as evidence, and substitution of a new witness was not envisioned by the criminal procedural rules. Besides, there was no ground for this challenge. The prosecution's response was that the new representative of the Mayor was also questioned and his substitution by a new person would not constitute a new evidence.

Ruling: The court granted the motion since it considered that this would contribute to implementation of the purposes of criminal proceedings.

5.2. Witness testimonies

A. Witnesses of the prosecution:

Witnesses who worked in election districts from 2011-2012 were questioned. Their duties included carrying out party activities, distribution of flyers and booklets during election period. Witnesses stated that they received their salaries on "plastic cards", and later in cash. They had no relationship with Tbilisi Development Fund, and had no information regarding the positions they occupied there. Nor did they know who was dispensing the funds that came in their name; they took no advantage of those funds (apart from their salaries, much more money was being transferred to their accounts).

A district coordinator was questioned, who stated that he received cash from the Mayor's office, from Aleksi Tabuashvili (the accused), and then distributed the funds to heads of districts, who conducted agitation and propaganda for the United National Movement, distributing flyers and booklets. The first time he received 200,000 Lari, and the second time up to 500,000 Lari.

A witness was examined who at that time was majoritarian MP from Krtsanisi; he described the scheme of districts and coordinators, and stated that he had received instructions from chairman of Tbilisi City Organization, Girgorgi Meladze. The witness stated the following: that staff meetings were held once a week, but occasionally as often as several times a week. Most of the time they were led by Giorgi Meladze, and on special occasions by Gigi Ugulava. Aleksi Tabuashvili (the accused) also attended the meetings. A witness stated that the main decisions in the party were taken by Gigi Ugulava. He also recollected a meeting led by Gigi Ugulava, where it was decided that the coordinators would receive a salary for their work. The agitators received the funds on "plastic cards", and the "plastic cards" were given to the witness by Aleksi Tabuashvili (the accused). According his testimony, the witness received cash from Aleksi Tabuashvili as well. After the elections, when no money was transferred to coordinators, Aleksi Tabuashvili passed on to the witness Gigi Ugulava's statement that Ugulava was not intending to give out salaries for lost elections.

Another witness examined was a lawyer at Tbilisi Development Fund; he prepared contracts and managed issues related to immovable property. He stated that Tbilisi Development Fund was founded in 2010, the chair initially was Giorgi Saanadze, later - Davit Avaliani. The sessions of the Fund were not held in its building, according to him the sessions were held in Mayor's office. To his information the employees were receiving salaries in Bank of Georgia. The witness

was presented with a list of people employed at a Fund as research specialists, though he could not recall existence of such positions at the Fund.

The witness who was head of Isai Government Municipality in 2011-2012 stated that he was distributing the funds and was giving cash to coordinators; he was acting so by the decision of the Chairman. The witness was receiving money for distribution mainly from Aleksi Tabuashvili (the accused).

Witness B.K. was the United National Movement's executive secretary for Isai region. As per the decision of the party chair and under the instructions of Khvicha Sanaia (former majoritarian MP of Navtlugi), he was tasked with distributing cash to the coordinators. He received funds mainly from Aleksi Tabuashvili. The witness stated that as far as the origin of the funds was concerned, he knew only that they were party funds. He learned of their real origin only after his detention. According to his statement, he was initially not told the reason for his arrest; he was brought to financial police in handcuffs and only there he was told that he had been arrested in order to be questioned as a witness.

Upon examination, former deputy Gamgebeli of Old Tbilisi stated that the cards were given to him by Davit Avaliani (the accused), and that he took the cash out with the card and gave it back to Davit Avaliani.

Employees of Liberty Bank were questioned, who confirmed that Giorgi Sabanadze, Davit Alavidze (the accused) and several more people wanted to withdraw from the bank several million Lari in cash.

An accountant from one of the companies was questioned. The company's sphere of activity was the organization of buffets and presentations; they rendered services to Tbilisi Development Fund for a total amount of 414,000 Lari. The service included holding meetings with the population, and the provision of food and buffets to them. The witness stated that he learnt from the media that representatives of the United National Movement were meeting with the public at these meetings. Another employee of the organization was questioned, who also confirmed the provision of services. S/he recalled that members of the United National Movement, including Gigi Ugulava, gave presentations at those meetings. The director of the company was also questioned, who recollected that he met with Davit Alavidze (the accused), who introduced Giorgi Sabanadze (the accused) to him. The meeting concerned the holding and organization of

events. At a meeting organized by the company, the leaders of United National Movement were to meet with the population. With respect to financial calculations, related to the rendered services the witness's testimony concurred with that of Giorgi Sabanadze (the accused).

Several experts were questioned, whose task was to compare the list of people fictitiously registered at Tbilisi Rehabilitation fund with the real list of its employees; this resulted in a considerable overlap.

One of the witnesses for the prosecution, with respect to a card registered in his name at Liberty Bank, stated that he presented the card on which he had received 300 Lari as a chair of the partnership to financial police, and that it did not coincide with the card mentioned by the investigators.

The trial is pending. A verdict has not yet been rendered.

6. Our observations:

Following the May 24, 2014 decision of the Constitutional Court, the defense was in a position to request the reinstatement of Gigi Ugulava into the Mayor's office; however, the actions of the prosecution prevented them from doing this in a timely manner. The actions of the prosecution were unambiguously aimed at delaying the proceedings. First, they requested time to determine their position and later twice failed to appear at the hearing, and requested adjournment of the hearing for ten days; in both cases the reason given was business travel. The court postponed the hearing for five days in one case and for ten days in another case. This was followed by the prosecution raising a motion challenging the defense attorneys at the hearing where the defense's motion on reinstatement of Ugulava's Mayoral authority was to be considered. This may also be considered a dilatory tactic. In the end, the defense withdrew its motion, an action which they justified by their distrust of the court.

The facts revealed during questioning of the prosecution's witness Besik Kvitsiani, related to the actions of law enforcement officers towards him, contained signs of offenses committed. According to the witness, he brought a complaint against the law enforcement agency, but received no response. It is vital that law enforcement agencies should respond to such claims.

The accused often made political statements at the proceedings, and the judge had to call upon them several times to abstain from such statements, but in general allowed them to make them.

The media were not prevented from recording the proceedings. The courtroom for the hearing was changed several times. The session was not held at the courtroom noted in the schedule, which prevented interested parties from attending the hearing.

Bacho Akhalaia, Megis Kardava and others (Navtlugi episode)

1. The accused and the charges brought

Bachana (Bacho) Akhalaia (former Minister of Defense) – torture, abuse of public office, abuse of authority.

Levan Kardava (former head of Constitutional Security Department "KUD") and Giorgi Mazmishvili (high-ranking official of Constitutional Security Department) – conspiracy to abuse authority, assisted by violence and the use of arms, and resulting in grave violation of the rights of a physical person or of the legal interests of society and the state; intentional manslaughter of two or more people.

Megis Kardava (former head of Military Police Department of Ministry of the defense of Georgia) – torture against two or more persons committed by an official, whereby the offender knew that the victim's freedom was restricted

2. Description of the offense

Levan Kardava and Giorgi Mazmishvili are charged with the manslaughter of three young men – Murad Gorgadze, Roman Surmanidze and Marad Artmeladze – by a shot on the night of the so-called Navtlugi special operation. Bacho Akhalaia and Megis Kardava are charged in one of the episodes relating to the Navtlugi special operation, with physical assault on prisoners in the Rustavi Penitentiary Facility No. 1. According to the charge, the events developed as follows: prisoner Gia Gorgadze informed the director of the facility that he had received an offer from one of the prisoners to escape from the prison; Gia Gorgadze expressed readiness to cooperate with the prison administration. Bachana Akhalaia personally met him in prison on this issue.

A special operation was carried out in Tbilisi, on the territory adjacent to Navtlugi auto-station, in the course of which Gia Giorgadze's brother, Shota (Murad) Giorgadze, as well as Roman Surmanize and Marad Artmeladze were executed; they were allegedly planning armed attack on Rustavi General Penitentiary Facility No.1 in order to facilitate the mass escape of prisoners. Later, Bachana Akhalaia and Megis Kardava, accompanied by other employees of special forces, visited Penitentiary Department Facility No.1 where, by order of Bachana Akhalaia, the prisoners – Gia Gorgadze, Davit Lekvtadze, Valerian Papava, Mikheil Mandaria, Mamuka Bechvaia and Berdia Meskhi were severely beaten and tortured in order to recover the tools for

preparation of the prison escape. Afterwards, the assailed men were transferred from Facility No.1 to the relatively strict Facility No. 7, where Bachana Akhalaia and Megis Kardava continued to beat and torture them, requesting their confession. The torture of these prisoners continued for several hours, after which, despite all the physical injuries, all the prisoners were put into cells without having received any medical assistance.

In addition, Bachana Akhalaia was found guilty of providing privileged and special terms to those convicted for the murder of Sandro Girgvliani.

3. Significant circumstances/facts:

A prosecution witness, Teimuraz Tabagua, had left the territory of Georgia and since the connection to him could not be established, his testimony given at the stage of investigation was made public. According to the defense, the prosecution compelled the witness to leave Georgia so that he could not give testimony undesired by them. In a video disseminated in the media, Teimuraz Tabagua discusses pressure from the side of representatives of law enforcement agencies to make a statement against Bacho Akhalaia. Out of the four statements published, he noted in the last one that no pressure was exercised upon him; in that case, he had been too tired and perceived the questions asked by the investigator as a pressure. He confirmed that the video was produced on his own initiative, though it was made public without his permission.

In his last testimony, Tabagua also refers to the minutes of the examination conducted by the defense. According to him, he was not in reality present at the examination; he was contacted by phone, and as he felt sorry for Bacho Akhalaia's wife, he told her that he would sign any documents to make their situation easier.

According to the disseminated information, the prosecution witness Gia Gorgadze was planning to hold a press conference. As per the explanation of Bachana Akhalaia's wife, Gia Gorgadze intended to say that he was forced to give the testimony and that Bachana Akhalaia was innocent. Several minutes prior to the press-conference Gia Gorgadze was taken away by law-enforcement officers. There is video footage proving this. Later, the prosecution stated that Gia Gorgadze's family had contacted the Prosecutor General's Office and informed them that they did not know where Gia Gorgadze was, and that his phone was turned off. The family expressed suspicion that Gogradze was kidnapped for the testimony incriminating Bachana Akhalaia and Megis Kardava and they asked for help. On the basis of this application the Prosecutor General's

office immediately commenced investigation on the fact of the unlawful deprivation of freedom of Gia Gorgadze. Corresponding measures were taken on this case, the location of Gia Gorgadze was established, and he was subsequently brought to investigators for questioning and corresponding investigative action. After leaving the prosecutor's office, the witness denied that he intended to speak about the facts of the alleged pressure on him.[28]

One of the main prosecution witnesses in the case had passed away. According to the defense's evaluation, the prosecution had several times kidnapped Tatukhashvili and forced him to give testimony against Akhalaia in the Navtlugi case; as a result of this physical and psychological pressure, Tatukhashvili suffered heavy emotional stress which brought about his death.

The prosecution responded to the death of the witness by noting that the accusation of the defense was groundless and that judicial-medical expertise was pending which was supposed to establish what injuries Tatukhashvili had, and what the cause of his death might have been. Later, the prosecution published a report by experts,[29] which indicated that the cause of Shalva Tatukhashvili's death was acute shortage of breath developed as a result of alcoholic intoxication and the effects of psychotropic substances.

In this case, Bacho Akhalaia was released from detention since the trial did not finish within the time-frames set by law. However, just a few days before the expiration of nine month-period, a new charge was brought against Bacho Akhalaia, in the so-called Tetradze case, which served as a ground for prolongation of his detention. The defense's previous motion on changing the detention to a less severe preventive measure was denied.[30]

There was an argument between Akhalaia and the prosecutor at one of the hearings. It was caused by Shalva Tatukhashvili's inclusion in the list of witnesses, which irritated the accused. According to Akhalaia, the reason why Tatukhashvili's testimony should not have been included in the list of evidence, was that the witness had passed away, meaning that his testimony could not be verified in court.

The defense requested to take advantage of their right to have an additional person examined as a witness. The prosecution refused to question that person. According to the prosecution, said

[28] https://www.youtube.com/watch?v=ubBjqiAjGxw
[29] http://pog.gov.ge/geo/news?info_id=465
[30] Was added as per the remarks of Bacho Akhalaia's attorney.

person regularly attended court hearings. The defense stated that the hearings were attended not by said person, but rather by his twin. To clarify the matter, the court decided to explore recordings of court sessions. Upon examination of video recordings, it was revealed that the hearings were indeed attended by the very person whose examination was requested by the defense.

One of the witnesses (L.M.) stated during examination that s/he was approached by approximately 15 people who said that they had information that the witness was in possession of weapons and drugs. Nothing was found upon search, after which the witness was taken to the management office and made to sign certain documents.

Levan Kardava made a statement at one of the hearings that the investigators and policemen were infringing his rights. He stated that he was put under psychological pressure of various shapes and forms. He noted that he was taken out of his cell several times and that there had been attempts to make him consent to their desired testimony. He also stated that despite the court-granted right to make telephone calls, he was not in a position to exercise that right due to the prison's administration. Due to this Levan Kardava temporarily went on a starvation diet, as a result of which his right to telephone calls was restored.

Giorgi Mazmishvili (the accused) spoke about inhumane treatment by the policemen and investigators. According to him, he was not given the chance to have defense for a long time after his detention. He was also forced to give false testimony.

The judge called upon the prosecution to begin an investigation of the facts mentioned by Giorgi Mazmishvili and Levan Kardava.

At one of the hearings, the accused Bachana Akhalaia stated that his relatives were being threatened. The judge asked by whom and towards whom the threat was expressed, and called on the prosecutors to duly react to that statement and undertake an investigation. At the next hearing, the prosecutor noted that as per Bachana Akhalaia's statement (with respect to the threat) the respective information had been sent in writing to the 2nd Department and that the department had prepared a report on the matter accordingly. The prosecutor presented the aforementioned document to the judge.

Witness Levan Kardava stated that he was detained by armed men, who did not reveal their identities, took away his phone, and told him that he had to follow them to prosecutor's office and sign all documents that they would present to him, unless he wanted to "destroy his life".

Defense witness J.I. stated upon examination at a hearing that the prosecutor promised him that, in exchange for his testimony against the accused, no charges would be brought against him. He was also promised employment. The witness noted that he had also been threatened.

Defense witness G.M. stated during examination that prosecutors offered him to name specific persons, and after his refusal brought a charge against him.

The hearing was postponed several times at the defense's request. The judge closed one of the hearings due to breaches of order by the attendees.

4. Preventive measures:

The defense requested that no preventive measure be used against Davit Akhalaia, Levan Kardava and Giorgi Mazmishvili, but as an alternative proposed bail.

On the basis of the prosecutor's motion Bacho Akhalaia was ordered pre-trial detention as a preventive measure.

5. The trial proceedings

5.1. Important motions

A. Motions of the defense:

1. The defense raised a motion at pre-trial hearing to cease criminal prosecution against the accused. The defense referred to a lack of sufficient evidence.

Position of the prosecution: According to the prosecution, the motion lacked merit, since there were witnesses of the murder who had seen the armed accused. There were also testimonies that the deceased were unarmed. All of this was proof that the accused committed the offense.

Ruling: The court considered that the evidence presented by the prosecution with a high degree of probability created the basis for the assumption that the offense was committed by that person, and transferred the case to the court for examination on its merits.

2. The defense motioned that the detention of the accused, Bacho Akhalaia and Giorgi Mazmishvili, be converted to a bail of 30,000 Lari. The defense argued that, since the investigation was over, there was no longer any risk of them influencing witnesses. With respect to Levan Kardava, the defense requested he be freed without any preventive measure.

Position of the prosecution: The prosecution did not agree with the motion and noted that the witnesses were supposed to give statements in the court and pressure on them was still possible. It also emphasized the accused's connections abroad and the risk of their escape.

Ruling: The judge did not grant the defense's motion and left all three of the accused detained.

3. The defense raised a motion to examine the telephone record of prosecution witness J.J., in order to ascertain whether this person was in reality present on the night of the incident (June 12) at a place noted by him (Samgori subway station).

Position of the prosecution: The prosecution stated that the said motion had already been considered once and the judge did not grant it. Consequently, there was no need to raise the same motion anew.

Ruling: The court did not grant the motion and explained that the defense did not appeal against court's ruling, besides the defense was well aware of the telephone number of J.J. and could have freely obtained a list of incoming and outgoing calls, including by means of addressing the court, which it did not do. Hence, since the time for obtaining of the evidence had been passed the motion was denied.

4. The accused Bacho Akhalaia raised a challenge towards the judge. According to Akhalaia while he had been ordered detention as a preventive measure on three occasions, the present judge had ordered him detention yet on the fourth time, which, in Akhalaia's opinion, did not align with human's logic. It is on this ground that the accused requested challenge of the judge, and the other accused supported him.

Position of the prosecution: According to the prosecution, there was no single ground envisioned by the law for the challenge, and accordingly did not agree with the motion

Ruling: The judge considered that motion lacking merit and did not grant it.

5. The defense requested that the EC Resolution[31] referring to unreasonable use of detention used as a preventive measure against Bacho Akhalaia, be attached to the case file.

Position of the defense: The prosecution stated that the document had an advisory character. Besides, it did not contain any factual information, for this reason the motion should not be granted and the evidence should not have been added to the case file.

Ruling: The court did not grant the motion and stated that the EC is a political entity, and that the court did not see the ground for adding the Resolution to the case file.

6. The defense raised a motion stating that the telephone of the prosecution's witness J.J. should be examined, in order to ascertain whether this person was in fact present on the night of the incident on June 12 at the place of the occurrence - Samgori subway station.[32]

Position of the prosecution: The prosecution stated that the same motion had already been considered by the court and had been denied, and that there was no new circumstance apparent;, consequently, it did not agree and considered that it should not have been granted.

Ruling: The court did not grant the motion. It clarified that the defense was well aware of the telephone number of J.J. and could have freely obtained a list of incoming and outgoing calls, including by addressing the court. The judge noted that the court could not return to the stage of collecting evidence and that the defense had missed the deadline for obtaining of evidence prior to the pre-trial stage.

[31] http://www.assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=21275&lang=EN

[32] Has been added pursuant to remarks of Bacho Akhalaia's attorney.

B. Motions of the prosecution:

1. The prosecution raised the motion to make public the testimonies of Shalva Tatukhashvili and Teimuraz Tabagua, since Shalva Tatukhashvili was deceased and Teimuraz Tabagua had left the territory of Georgia and connection with him was impossible.

Positon of the defense: The defense stated that Teimuraz Tabagua was to give testimony in favor of the defense, and it is for this reason that the prosecution made him leave borders of Georgia. With respect to Shalva Tatukhashvili, according to defense, his death was related to his torture for the purposes of obtainment of the desired testimony.

Ruling: The court granted the prosecution's motion with respect to making public the testimonies of these two witnesses.

2. The prosecution raised a motion challenging Giorgi Oniani, as the defense's witness, since he was representing Bacho Akhalaia in another case and could not be objective.

Ruling: The court did not grant this motion since it was not raised at the pre-trial hearing, while the fact that Oniani was to be a witness was known to the prosecution at that stage.

5.2. Witness testimonies

A. Witnesses of the prosecution:

So-called Navtlugi special operation

The victim Gia Gorgadze was questioned. He stated that he collaborated with the prison administration in order to lighten his sentence. One of the prisoners, D.L., told him that his brother and friend would "remove" the security from outside so that they could escape. He was seeking Gia Gorgadze's assistance in obtaining weapons. Gia Gorgadze promised to help, but provided this information to prison administration. Gia Gorgadze also had a telephone conversation with Bacho Akhalaia; As per an agreement with Bacho, he contacted his brother, who would together with his two friends – hereinafter the three people who died during the special operation – meet the persons referred to by prisoner D.L., who would give them the weapons, and they would give these weapons to the brother of prisoner D.L. According to the witness, as he learned from Bacho, the dissembled weapons would be in a bag.

An employee of Constitutional Security Department, i.e. Data Akhalaia's department, was examined. On January 12, 2012, as per the instructions of his supervisor, he met the three people with a small car in Tbilisi, and later took them to Navtlugi. The witness recollects that those people did not have arms, though they had a "case" and he did not know what was in the case. When he left the place he heard gunshots; upon return he saw special forces and found dead the three people whom he brought there. The witness confirmed that Data Akhalaia, Shalva Tavtukhashvili, Levan Kardava and Giorgi Mazmishvili were seen at that location. He recalled that Data Akhalaia and Shalva Tavtukhashvili were armed. For his own and his family's safety, the witness initially gave a different testimony in the investigation.

Shalva Tatukhashvili's testimony was made public, according to which, on January 12, Data Akhalaia ordered him to gather the Special Forces. After some time he heard voices: "Don't shoot!" "Help!" Data Akhalaia, Giorgi Dgebuadze and Giorgi Mazmishvlii were shooting. The witness said that he himself took 5 or 6 shots. After the shooting, the three men fell down. Data Akhalaia stopped by one of the boys and took a test shot; afterwards he took off his mask. Dgebuadze walked to the second and took a test shot. The witness stated that they put the guns next to the deceased; later criminal experts came. In the testimony the witness noted that the instructions came from Data Akhalaia. According to the witness the deceased were unarmed. Upon Data Akhalaia's instructions they took additional shots for PR purposes, which were already taped on camera. In his **second testimony**, Shalva Tatukhashvili affirmed the information given in his first testimony.

Witness J.J. was examined. Said witness was the inspector of the criminal search division of the Isani-Samgori unit and his area of activity was Navtlugi auto station. On January 12, 2012 he witnessed 2 or 3 cars stopping, out of which armed people emerged. As a result of the shooting one person fell down; one of the people in masks came up to him and took a shot. When this person removed his mask, it became clear that this was Data Akhalaia. Giorgi Mazmishvili walked up to the second body and also took a shot; he could not identify the third person since he was standing with his back facing towards the witness. The witness stated there was no exchange of fire. He also saw them put the guns next to the deceased. At the auto station he saw the car with plate numbers which, as other witnesses confirm, belonged to Data Akhalaia.

Employees of the Special Force from the Constitutional Security Department were questioned, who stated that by order of Shalva Tatukhashvili 8-10 people went to Navtlugi auto station with a micro van taxi; as per orders they did not come out of the car. They heard shots fired, after

which they came out of the car, walked up to the scene of the crime and saw three bodies. According to the witnesses, Data Akhalaia, Megis Kardava and Giorgi Mazmishvili, together with other people, were there. The witnesses were interrogated on this matter in 2006 as well, though at that time they signed the minutes of the interrogation without understanding what s/he was signing. Only with the new repeated investigation did they learn that the text they signed contained content that made it seem as if the Special Forces had carried out the killing. The witnesses noted that this was not true and they did not in reality execute the three individuals.

One of the employees of the Constitutional Security Department who was interrogated recalled that on January 12, 2006 he was taken to the scene of the crime, where they were supposed to help with a special operation, though they could not enter into the territory. They heard shots fired, following which, as per instructions, they got out of the cars and ran to the place where the shooting had taken place, though they did not execute the three individuals. The accused were there. Salva Tatukhashvili was also there.

Another employee of the Constitutional Security Department who was interrogated stated that he was standing far away from the scene of the crime, heard shootings, and, once he came to the place, he saw the accused. Later, at the instruction of his supervisor, the witness selected two people who would say that they witnessed the special operation, and say that the three persons had died in an exchange of fire.

Yet another employee of the Constitutional Security Department recalled that he had heard about a special operation at work, and that afterwards when Giorgi Mazmishvili came to work, he said , “I have baptized my weapon today”.

A night guard in the nearby automobile market was interrogated. On the night of the event he saw three unarmed civilian boys running and shouting, pursued by other people. He also heard gunshots. The said witnessed did not reveal these facts during his interrogation in 2006; he stated that at that time he was afraid to tell the truth.

The wife of an employee working at a gas station near Navtlugi auto station was interrogated. She recalled the story her husband had told her on January 12, 2006. According to her, her husband witnessed how three young boys who were asking for help and trying to run away were shot to death.

A person who had a telephone conversation with Tristan Tsitelashvili was interrogated. He said that Tristan Tsitelashvili told him that there was bad news, namely that three innocent boys had been shot to death.

Torture of prisoners

According to Gia Gorgadze, employees of Special Forces came to the prison, including Megis Kardava and Bacho Akhalaia, and severely beat and tortured six prisoners. Then they took the prisoners to another facility. The witness also recalled that he was periodically taken away by Megis Kardava, who beat him severely and demanded a confession. He learnt of the death of his brother only four months later from a newspaper.

With respect to holding a briefing, the witness stated that in light of his family's security he wanted to talk with Bacho Akhalaia; it is for this purpose that he met with Bacho's wife and Giorgi Oniani to whom he promised, in exchange for pecuniary aid, to give a statement which they desired. Later at a press conference he was planning to declare that Bacho was not present during the torture; however, before the press-conference, at the entrance, he was met and taken to Prosecutor's Office. After that the witness again met with Giorgi Oniani, who recorded him saying that Bacho Akhalaia did not participate in his assault and torture.

The injured Berdia Meskhi was questioned. The witness recalled an act of physical assault in which Bacho Akhalaia and Megis Kardava, among other employees of the Special Forces, took part. The victims were undressed, beaten severely, and tortured. After being taken into cells, they were individually led into Megis Kardava's office and again severely assaulted. Victim Mamuka Bechvaia was also interrogated. He likewise recalled that he and other victims were summoned and taken out into the yard. Bacho Akhalaia and Megis Kardava were also there. He also recalled the presence of a white-haired man, who did not take part in the assault. Valerian Papava was also interrogated, who recalled the same events. He was tortured in Megis Kardava's office with electrical shocks; they wanted to obtain a confession of his alleged plans to escape from the prison. The witness remembered that Bacho Akhalaia and Megis Kardava were there together with other employees of the Special Forces. The witnesses who were interrogated recalled similar scenes.

Employees of the colony who had witnessed the assault on the prisoners in the yard were also interrogated. They remembered that Bacho Akhalaia, Megis Kardava and one grey hair man had been present.

> *Note: The defense asked the witness a question related to his condemnation and liability, to which the witness replied that after he was freed, no charge was brought against him. The defense raised a motion to request information whether Mamuka Bechvaia was prosecuted after he was freed from prison; as the defense stated, this information was given to them after examination of evidence.* [33]

The deputy director of the facility where the beaten prisoners were taken was also interrogated. The witness recalled acts of violence committed by Megis Kardava and Bacho Akhalaia against the prisoners. Acts of physical assault have also been confirmed by other witnesses of the prosecution.

According to witnesses, the prisoners did not undergo a proper medical examination.

Episode of providing favorable penitentiary conditions to those convicted for the murder of Sandro Gigvliani.

Those convicted in the Girgvliani case recalled a conversation with Data Akhalaia, who said that they had to go to jail but that he would take care of them. He said that they would have to be in prison for one year. They knew in advance when they would be arrested. They confirmed that they enjoyed privileged conditions in prison, had free rein, few restrictions, and had at their disposal telephones, an air conditioner, a refrigerator, and even a computer for entertainment. They were receiving parcels without limitation, as well as alcohol. During interrogation they claimed that Bacho Akhalaia used to visit them. The witnesses stated that Bacho even took one of the prisoners out to see his spouse, and then again during the August war (2008). A prison employee confirmed that he had taken a prisoner outside the prison.

Avtandil Aptsiauri, who had been convicted in Girgvliani case, recalled that Data Akhalaia met him and told that he had to go to jail for Girgvliani case. When he asked what he was guilty of, Data answered that his being in Okrokana was sufficient. He promised that he would spend only one year in prison and during this time he would be provides with everything, and that all his

[33] Has been added pursuant to the remarks of Bacho Akhalaia's attorney.

problems would be taken care of. Data Akhalaia covered his debt with the bank. The witness stated that when Public Defender visited, they would take him to a different cell. The witness confirmed that he had also met Bacho Akahalaia in prison, and that he was taken out of prison in August 2008 and then put back. Data Akhalaia promised a pardon for them, but then at one of the meetings told them that he was having difficulties obtaining it, and that they would have to stay in prison for several more months.

The director of the prison also spoke of the favorable conditions of those convicted in Girgvliani case. He said that they had a free schedule and that Bacho Akhalaia was aware of all this, and that they were visited by both Bacho and Data Akhalaia. Employees of the prison confirmed that they had kitchen appliances, tables, a refrigerator, a television, beds, chairs, and armchairs. They moved about freely, consumed alcohol and often had fistfights. One of the witnesses, an employee of the prison, recalled an order given by the director of the prison that high-officials of the Constitutional Security Department were to settle in and that they had to have special arrangements.

Witnesses confirmed that the convicted individuals were not subject to inspections or searches, and that they were in different rooms and were allowed unlimited visits.

Several testimonies of Temur Tabagua were made public:

According to his first testimony, the witness worked Detention Facility No. 10, and when those convicted for the murder of Gigvliani were transferred there, the cells were renovated for them. The prisoners were given privileged conditions. They had household appliances, a refrigerator, an air conditioner, wooden beds, and Internet access. The regular prison routine did not apply to them. They often had feasts and received guests, including Megis Kardava. He said that Geronti Alania would call them to let them into the prison. The witness stated that Bacho Akhalaia was aware that the prisoners had been taken out of prison.

In his second testimony, he confirmed that the prisoners had been taken out of prison. He recalled that the prisoners were promised that they would be freed soon.

In his third testimony, the witness noted that Data Akhalaia had not visited the convicted in prison. He was there only once, to open a church together with the Patriarch. The witness could

not recall whether there was a written order from the director to let Geronti Alania out of prison; according to his statement, it took place on the basis of a verbal order.

In his fourth testimony, Tabagua discussed the explanation given to attorney Malkhas Velijanashvili (of the defense) and noted that he did not in reality attend the questioning. The witness recalls that during the telephone call, he felt sorry for Bacho Akhalaia's family and told them to write whatever would ease Bacho's condition and he would sign it.

With respect to the video[34] spread by mass media, where he spoke about the pressure exerted on him by representatives of law enforcement agencies for the purposes of obtaining the testimony they desired, Tabagua stated that due to exhaustion he perceived the questions asked by the investigator as pressure and noted that although the video was taped with his initiative, it was made public without his permission. In the end, he denied having been under pressure.

Other important testimonies

Experts who examined the body of Shalva Tatukhashvili were interrogated. The experts established that the hematomas and injuries were inflicted when the person was alive and were not the cause of his death. The injuries were caused by a blunt object. According to the experts' report, the cause of his death was alcoholic intoxication. Alcohol and psychotropic substances were discovered in the body.

Experts who identified the individuals in a video recording of the special operation (i.e. a video where it is seen that the Special Forces operative killed the deceased in an exchange of fire) were interrogated. It was established that the video had been filmed with different cameras. One of the deceased was shot from a very close distance, almost at point blank range. In the case of another of the deceased, it was impossible to tell at which distance he had been shot. One of the deceased was shot in the back. In none of the bodies were traces of alcohol or drugs discovered.

B. Witnesses of the defense:

A witness for the defense, who was an employee of the facility, stated that the victims were so-called 'observers' of the prison and members of a consortium of thieves. The witness denied any violence from Bacho Akhalaia towards them.

[34] https://www.youtube.com/watch?v=XVdAZfDwXMw

A witness for the defense denied that those convicted in Girgvliani case had enjoyed privileged conditions in prison. One of the witnesses for the defense stated that the six prisoners were simply called and normally checked, and that no violence took place against them. The witness also denied that Bacho Akhalaia was armed. This witness saw the prisoners after they were transferred to Facility No. 7, yet he stated there were no visible signs that they had suffered violence.

The witness for the defense stated that on the day of the alleged torture of the witnesses he was with Bacho Akhalaia, and that their reason for visiting of the facility was to inform those there that the prisoners were planning an escape. Once there, they checked up on the prisoners. The witness denied any kind of violence.

One of the witnesses recalled meeting with Gia Gorgadze on a matter related to the press-conference. At the meeting with Gia Gorgadze, the witness was accompanied by Bacho's wife (Ani Nadareishvili) and attorney (Giorgi Oniani). According to the witness, Gia Gorgadze confessed during this conversation that he had been forced to write a testimony against Bacho. In reality, he had not seen Bacho in Rustavi Facility No. 1, though they forced him to write in his testimony that Bacho was there.

The witness also talked about Temur Tabagua. According to him, Temur Tabagua confessed to him that he could not withstand the pressure in the course of 10-12 hours when he was in the Prosecutor's office, and only for this reason did give a statement against Bacho Akhalaia.

One of the witnesses for the defense noted that during the interrogation, a witness for the prosecution confessed in a personal conversation with him that he was forced to give testimony against Bacho Akhalaia and Megis Kardava, or else face arrest.

Several witnesses who were interrogated spoke about the pressure exerted on them in other cases against Bacho Akhalaia in order to obtain the desired testimony. In exchange for this testimony, law enforcement officers promised to lift charges against them.

Defense witness D.Ch., who was convicted in the so-called concealment case and was arrested in Austria, stated that upon extradition he was approached and offered the chance to give a statement against Bacho. When the witness told the officers that he did not know Bacho

Akhalaia, they informed him that he was being extradited together with Oleg Melnikov, who mentioned in a conversation with him that the deceased in the Navtlugi special operation had been shot by Data Akhalaia and Megis Kardava.

Bacho Akhalaia's attorney, Giorgi Oniani, was interrogated as a witness. He worked at the Ministry of Corrections and Legal Assistance in 2006. He did not witness the developments on the day of Navtlugi special operation since he arrived late on the scene. The witness denied that Bacho Akhalaia had assaulted and tortured the prisoners. According to his testimony, there was only argument and on the background of all the noise withdrawal of the prisoners.

The accused Levan Kardava, deputy head of the 3rd Division in the Constitutional Security Department, was interrogated. He had been informed that an attack on prisons was being planned and he had been working on gathering information on this matter. When he arrived at Navtlugi territory, he parked his car 10-15 meters away and heard the shooting; the sounds were coming from near the auto station. According to his testimony, when he came to the actual scene he saw a person on the ground who with a weapon beside him. The witness recalled that Tsotne Tatukhashvili was standing with Data and was explaining what had happened. According to him, only 2 or 3 Special Force officers were wearing masks. Shalva Tatukhashvili issued an order to make a circle, and the witness did not see anything else. He went back to work afterwards, since he was told that there was still a danger of an attack on the prison.

Levan Kardava recalled his own arrest. Upon arrest he was given no explanation as to who the people were and why was he being arrested. He was only told that he was being taken to Prosecutor's office. His telephone was taken away, and upon arrival to the Prosecutor's office he was told that he would be given a testimony which he had to sign, unless he wanted 'to destroy his life'. The written testimony was related to the Navtlugi special operation. Various people tried to obtain the desired testimony from Levan Kardava, and in case of refusal threatened with bringing charges and starting prosecution against him. Finally, Levan Kardava was allowed to make a call to his attorney. Upon his transfer to Gldani prison, according to Levan Kardava, attempts to force him to sign the desired testimony continued. The witness also noted that he was never given a chance to exercise his right to make phone calls. An officer told him that he was acting on orders from the Prosecutor's office. The witness was allowed to exercise his right to make calls only after he went on a starvation diet in prison.

During his interrogation, Giorgi Mazmishvili stated that Data Akhalaia and Geronti Alania were indeed present at the Navtlugi shooting, but that he (Giorgi) did not himself shoot since the Social Forces had already executed the three persons. The witness agreed with Shalva Tatukhashvili's story that, despite being called to put down their weapons, they opened fire at the Special Forces, after which point they were executed. Giorgi Mazmishvili stated that Levan Kardava was neither in uniform and nor armed.

Upon interrogation, Giorgi Mazmishvili stated that his wife was kidnapped, while he was told that if he gave testimony against the Akhalaias, he and his wife would be well. The witness refused the proposal.

The accused Bachana Akhalaia was interrogated. Under questioning he recalled that he had been informed of the escape of the prisoners, but did not remember the source of this information. With respect to the night of January 12, 2006, Bacho Akhalaia stated that there was no pressure, threat or violence used against the prisoners. The prisoners only caused a commotion during their transfer.

Bachana Akhalaia also denied providing special conditions to any of those convicted for Sandro Gigvliani's murder. He also did not possess information about why they released before their sentence was up.

Witness R.Ch., who was interrogated by means of Skype, recalled receiving information about the escape of the prisoners. It is for this reason that the prisoners were transferred from the prison. The transfer was accompanied by a commotion, though he denies the fact of physical assault on the prisoners.

One of the witnesses stated during interrogation that he was approached by approximately 15 people who said that they possessed information that he was hiding weapons and drugs. When they found nothing they told him that he had to go to the office with them and sign a document. Said witness of the defense was with the accused when they transferred the prisoners to another facility. The witness stated that none of the accused had laid hands on the prisoners, and that no violence took place against them.

A cousin of Shalva Tatukhashvili was interrogated, who recalled with respect to the interrogation of Shalva Tatukhashvili that he was contacted by Shalva's father, who asked him to

send an attorney to Shalva because he had been summoned to the Prosecutor's office. The witness said that for a certain amount of time, he did not know where Shalva Tatukhashvili was. Shalva told him that he would sign anything and that he was feeling very bad. In a conversation with the witness Shalva said that he either had to be in prison forever or had to accuse Akhalaia, Kardava and Mazmishvili; there was a threat towards his family as well; he was also tortured. According to the witness, as far as Tatukhashvili knew, pressure upon him was exercised by Gurgen Gilauri and Davit Dznelashvili.

As the witness noted during interrogation, Shalva also mentioned in a conversation with him that he had conducted the Navtlugi special operation personally, and the accused were not guilty. According to the witness, Shalva told him that when they were recording a video where he said that the prosecution put no pressure on him, in reality they had weapon directed towards him and were recording the video that way. [35]

According to another witness for the defense, Temur Tabagua confessed in a conversation with him that they made him lie in his testimony against Bacho Akhalaia. Said witness also denied the existence of any privileged conditions for those convicted in the Girgvliani case.

6. Verdict:

Bacho Akhalaia was found not guilty of the charge of abuse of authority resulting in substantial violation of a right of a physical person or of legal interests of society and the state.

Bacho Akhalaia and Megis Kardava were found guilty of use of torture against two or more persons committed, by an official, in a situation where the offender knew that the victim was limited in freedom. Bachana Akhalaia was also found guilty of abuse of public authority in contradiction with the public interest, for the purposes of obtaining benefit or privilege for oneself and for others, and resulting in substantial violation of the legal interests of society and of the state. In the end, based on the Law of Georgia "on Amnesty" and the principle of absorption, Bachana Akhalaia and Megis Kardava were sentenced to prison for seven years and six months. They were also deprived of the right to hold elected office the central government or local self-government organs: Akhalaia for three years, and Megis Kardava for two years and three months.

[35] https://www.youtube.com/watch?v=fpxSH8syv2s&feature=youtu.be

The accused Giorgi Mazmishvili and Levan Kardava were acquitted of the charge of abuse of public office, committed by violence and use of arms, resulting in multiple counts of substantial violation of the rights of a physical person or of legal interests of society and the state. They were found guilty of the manslaughter of two or more persons. In the end, based on the Law of Georgia "on Amnesty" and the principle of absorption, Giorgi Mazmishvili and Levan Kardava were each ordered to 11 years and three months of imprisonment.

7. Our observations:

The testimony of the prosecutor's witness, the clergyman Temur Tabagua, raises questions and puts the witnesses' trustworthiness under suspicion. In the published video[36] he states that representatives of law enforcement agencies put pressure on him; later, however, in his testimony given during the investigation, he stated that the facts noted in the video were not truthful. In the end, the witness left the territory of Georgia and his statement given during the investigation stage became public. Not only have the facts noted in the video of the witness raised doubts, but also the chronology of his actions.

There are question marks with respect to the prosecution witness Gia Gorgadze, as well. According to information disseminated in the case, Gia Gorgadze was planning to hold a press-conference. According to the explanation of the wife of the accused Bachana Akhalaia, Gia Gorgadze had intended to say that he was forced to give a testimony and that Bachana Akhalaia was innocent. Several minutes prior to the press-conference Gia Gorgadze was taken away by the law enforcement officers,[37] and a video attesting the same was also spread on social media. Later, the prosecution published a statement[38] in which they confirmed that they indeed took the witness away, though stated that the reason for this was a petition by the Gorgadze family, who informed the law enforcement agency that they did not know where Gorgadze was, that his phone was off and that they suspected that he was kidnapped because of the statements he had made against Bachana Akhalaia and Megis Kardava. The family members asked for help. On the basis of this application, the Prosecutor General's office immediately commenced an investigation into the unlawful deprivation of freedom of Gia Gorgadze. As a result of the

[36] https://www.youtube.com/watch?v=XVdAZfDwXMw
[37] https://www.youtube.com/watch?v=ubBjqiAjGxw
[38] http://pog.gov.ge/geo/news?info_id=418

actions they undertook, they established his whereabouts and took him to the investigative agencies to be questioned, and in order that they might carry out the relevant investigative actions. Bacho Akhalaia's wife has also spread a video in which Gia Gorgadze states that he was not tortured by Bacho Akhalaia.[39]

The contradictory statements by Gia Gorgadze himself give reason for doubt, as does the fact that law enforcement officers took him by force just several minutes prior to the press conference. The explanations given by the prosecution are also unconvincing.

Just as in other high-profile cases, a new charge was brought against the accused upon expiration of the nine-month period of his pre-trial detention. This is an indication that the purpose of the prosecution is to have the accused remain imprisoned, since the court could not conclude the trial in time and would thus have to release him upon expiration of nine-month period. It should be noted that the use of preventive measures against Bacho Akhalaia was also mentioned in the EC Resolution, where the EC stated its concerns about the length of his detention, and called upon the government to use all legal mechanisms to convert his detention into a non-detention-based preventive measure.

The accused made clear statements about breaches of the law against them. The facts that they invoked contain evidence of offenses. Therefore, it is necessary that law enforcement agencies should duly react to these facts. It is noteworthy that following Bachana Akhalaia's statement, the judge called upon the prosecution to start an investigation; at a subsequent hearing, the prosecutor stated that the information had been sent to the relevant agencies for further action. The results of the investigation are unknown to us, but it is essential that such facts be reacted upon, particularly when, as is the case with Vano Merabishvili's alleged withdrawal from prison, a full-fledged investigation has not yet been conducted. Our organization emphasized this point in a previous report as well. It should also be noted that no facts were presented supporting the accused's statements related to pressure exerted upon them.

At several points during the deliberations, not all interested parties were able to enter the courtroom.

[39] http://news.ge/ge/news/story/88471-nadareishvili-chanatsers-aqveynebs-sadats-gia-gorgadze-saubrobs-rom-is-akhalaias-ar-utsamebia

Ivane Merabishvili, Data Akhalaia and others

I. S. Girgvliani episode
II. Abulashvili and Dabrundashvili episodes

1. The accused and the charges brought

Ivane Merabishvili (former Minister of Internal Affairs) – abuse of public office by a state political official and falsification of evidence while in office (*Sandro Girgvliani episode*).

Oleg Melnikov (former high-ranking official of Ministry of Internal Affairs) – unlawful deprivation of freedom and abuse of public office (*Sandro Girgvliani, Vamekh Abulashvili and Kakha Dabrundashvili episodes*).

Geronti Alania (former head of 1st management office of Constitutional Security Department) and **Valerian Metreveli** (former head of 5th division of Constitutional Security Department) – unlawful deprivation of freedom, abuse of public office and humiliating and inhuman treatment of victims (*Vamekh Abulashvili and Kakha Dabrundashvili episodes*).

Data Akhalaia (former head of Constitutional Security Department) – unlawful deprivation of freedom by life-threatening violence, abuse of public office and falsification of evidence while in office (*Sandro Girgvliani episode*). Unlawful deprivation of freedom, humiliating and inhuman treatment of victims (*Vamekh Abulashvili and Kakha Dabrundashvili episodes*).

> *Note: Data Akhalaia's case has been separated from this case. A plea bargain was agreed with Oleg Melnikov.*

2. Description of the offense

Girgvliani episode

According to the prosecution, in January 2006, Sandro Girgvliani was taken captive in Shardeni Café and was brought to Okrokana cemetery near Tbilisi. MIA employees severely beat Sandro Girgvliani causing a significant number of injuries which lead to his death.

In order to avoid political/official liability as well as for personal reasons, Ivane Merabishvili, together with the former head of the Constitutional Security Department (Davit Akhalaia) and other officials, made premeditated and intentional attempts to hide and tamper with the evidence related to the crime committed against the life and liberty of Sandro Girgvliani, as a result of which those who ordered and executed the crime managed to avoid due criminal liability for their actions. Merabishvili and other officials agreed to stage an investigation of the crimes against Sandro Gigvliani. The purpose of this was on the one hand, to hide and cover up the participation of high-ranking officials and their relatives – among them the wife of the former Minister of Internal Affairs and possibly the Minister himself – and on the other hand, to convict G. Alania, A. Aptsiauri, Al. Gachava and M. Bibiluri for lighter sentences than they deserved following their prosecution (the term and conditions of their imprisonment were agreed with these individuals in advance).

Vamekh Abulashvili episode

According to the prosecution, Data Akhalaia used to call Vamekh Abulashvili's girlfriend regularly, which led to rivalry between Data Akhalaia and Vamekh Abulashvili. Valerian Metreveli called Vamekh Abulashvili for a meeting in the so-called Moduli building, and, after he failed to appear, he called him again to meet on Tabidze Street, where Vamekh Abulashvili came together with his friend Kakha Dabrundashvili. Abulashvili and Dabrundashvili were taken captive by high-ranking officials of the Constitutional Security Department and brought to Okrokana where they were met by Data Akhalaia, Geronti Alania, Valerian Metreveli and others. Motivated by revenge, Vamekh Abulashvili was severely beaten; shooting also took place. On the next day, Vamekh Abulashvili was taken to Gudushauri hospital. Oleg Melnikov systematically threatened him and his family, so that he would not say anything about what had happened.

3. Significant circumstances/facts:

Oleg Melnikov, who was on the wanted list of Interpol, was arrested by Ukrainian enforcement officers in December 2012. He was extradited to Georgia. After his extradition from Ukraine Oleg Melnikov was put in Facility No.9 of the Corrections Department of Georgia. However, the Prosecutor's Office failed to address the court to request a preventive measure within 48 hours after the extradition, as envisioned by Article 206 of the Criminal Procedure Code of Georgia. Consequently, Melnikov's attorney claimed that his ward was illegally detained.

The trial was postponed several times at the request of the defense. On one occasion the court penalized the defense attorneys for non-appearance without a good reason. If the same were to happen again, the court stated that a public attorney would be appointed to represent the accused.

The attorney for the accused, Valerian Metreveli, stated that the rights of his ward were violated, since he had been in pre-trial detention for nine months while the court did not separate his case for the purposes of swift justice. Geronti Alania's attorney stated the same.

There was an argument between the attorneys of Data Akhalaia and Irakli Kakabadze.[40] According to information disseminated on the incident, one of the the advocate was verbally assaulted. Court security officer managed to defuse the situation and said person was escorted out of the court building.

The accused Oleg Melnikov pleaded guilty of all charges brought against him. A plea bargain was reached with him. The accused denounced other persons accused in this case. According to the defense, this was done to obtain a guilty verdict Data Akhalaia.

On one occasion, the session was closed for the examination of a prosecution witness. According to the prosecution, the witness was Geronti Alania's "girlfriend", and the questions were related to private life of the witness herself as well as that of the accused Alania.

At one of the hearings defense noted that Vamekh Abulashvili (the victim) at that stage held a high office within Ministry of Internal Affairs, and for this very reason was giving testimony in favor of the prosecution.

The judge asked the court security officer to ensure that the witnesses in the hallway did not have opportunity to freely communicate one another.

[40] http://www.netgazeti.ge/GE/105/News/30479/

4. Pre-trial measures:

The prosecution requested Ivane Merabishvili's detention as a preventive measure.

The defense stated that Ivane Merabishvili had been ordered detention on two other cases; thus, there was no ground for using this preventive measure once again.

The court shared defense's position and did not impose any preventive measure against the accused. The court denied the prosecution's motion.

Oleg Melnikov and Geronti Alania were then fugitive. In December 2012, Oleg Menlikov was arrested and was extradited to Georgia. Geronti Alania is still fugitive at present.

The prosecution requested the detention of Data Akhalaia, while the defense claimed he should not have been ordered any preventive measure.

The court ordered the detention of Data Akhalaia without his presence. He has been declared to be a fugitive from the law.

5. The trial proceedings

5.1. Important motions

A. Motions of the defense:

1. The defense requested that Geronti Alania and Valerian Metreveli be tried separately since these persons were being tried on a different case, and the Girgvliani episode would delay consideration of their case.

Position of the prosecution: The prosecution considered that the motion should not be granted, since a similar motion had already been considered by the court. Besides, consideration of Metreveli's case would be completed within the detention period, and therefore the law would not be violated.

Ruling: The court did not grant the motion and explained that a motion to that effect had already been considered and not granted. Consequently, the court would not consider it a second time.

2. The defense, in particular Valerian Metreveli's attorney, raised a motion on the adjournment of hearing since he had been assigned to the case on that day, and had not yet managed to acquaint himself with the facts of the case.

Position of the prosecution: The prosecution did not agree with the motion.

Ruling: The court penalized the attorney with 200 Lari and explained to the defense that such a motion should have been raised at the opening of the proceedings rather than after that since there was no justifiable reason for raising it later.

> *Note: Said attorney was indeed newly engaged in the case; before, the accused was defended by a different attorney who discharged himself. As a result, the accused was assigned a public attorney. As it turned out at the hearing, however, Valerian Metreveli's family had already hired an attorney. Consequently, the public attorney was discharged and the hired attorney was appointed, who later in the proceedings raised the above motion.*

3. **The defense requested adjournment of the hearing** until the issue of the extradition of Data Akhalaia could be decided. They stated that consideration of the case without the accused was only possible if he was avoiding appearance, which was not the case with Data Akhalaia. According to the defense, the accused was awaiting the decision of the Greek court and he wished to attend the hearing.

Position of the prosecution: The prosecution did not agree with the motion and stated that all of this served delay of the proceedings. Also, the right to fair trial was violated since the proceedings had been adjourned several times for the same reason and for almost 1.5 months the prosecution had not even had the chance to deliver their opening speech.

Ruling: The court did not consider it reasonable to adjourn the hearing for this reason yet again and noted that the proceedings had been adjourned several times in anticipation of Akhalaia's response, and that there was no ground to postpone the proceedings once more. Besides, and

despite visits to Data Akhalaia in Greece, attorneys had failed to find out whether he really wished to attend the trial.

4. The defense raised a motion and asked the court to assist in obtaining certain evidence, in particular to obtain data on passes issued to the so-called Moduli building on October 5, 2005. The defense stated that at the investigation stage, their request to this effect was not satisfied since it was perceived as pertaining to personal data. For this reason they needed the court's assistance in obtaining this evidence.

Position of the prosecution: The prosecution stated that the motion should not be granted since it was unfounded. The defense could have approached the prosecution or the court at the investigative stage, which they failed to do. At the stage of the trial on merits, the court was no longer authorized to deliberate on such issues.

Ruling: The judge stated that the investigation was over, and at the trial on the merits of the case no such issues could be considered. Consequently, the motion was not granted.

5. The defense raised a motion at the end of their speech to attach to the case as evidence the list of people who entered Moduli building with the passes issued by Geronti Alania (the accused). They stated that until now this information had not been accessible to them.

Position of the prosecution: The prosecution stated that the procedure did not allow for new evidence to be introduced at that stage, and for this reason the motion should be denied.

Ruling: The judge did not grant the defense's motion and did not attach the requested item to the body of the defense's evidence.

6. The defense raised a motion to find inadmissible the testimonies of the victim Vamekh Abulashvili, one of which was given on December 7, 2013 at the investigation agency and the other on June 6, 2014 in court, since these two testimonies were essentially contradictory.

Position of the prosecution: The prosecution stated that they had already passed the stage of determining the admissibility of evidence and that this issue should not have been considered at a trial on the merits of the case; they could have made a comment about this in their final plea.

Besides, only information given in court can be considered as witness testimony, and a statement given at the stage of the investigation could not be considered testimony.

Ruling: The judge said that it was possible to consider such a motion at a trial on the merits of the case; however, it nevertheless denied the motion, restricting the definition of testimony to information given in court only.

B. Motions of the prosecution:

1. The prosecution requested the separation of Oleg Melnikov's case for the reason that they had reached a plea bargain on all terms. The defense agreed with the motion.

Ruling: The judge granted the motion and separated out the case of the accused Oleg Melnikov.

> *Note: The accused Oleg Melnikov pleaded guilty on all charges brought against him. A plea bargain was reached with him. The accused denounced other persons charged in this case.*

2. The prosecution raised a motion to have the accused Davit Akhalaia tried separately. This would ensure that the proceedings would be conducted within due time frames and that the hearings would not be postponed due to non-appearance of the accused.

Position of the defense: The defense stated that the motion on separation of the case should not be granted since the accused's position should have also been requested on this matter, which was impossible given that the accused was not in Georgia. The attorneys also stated that trying the cases together would have saved the court's resources, since otherwise the same witnesses would have to be examined twice.

Ruling: Motivated by the consideration of the case within a reasonable time, the judge granted the prosecution's motion and ruled that Davit Akhalaia's case be tried separately.

5.2. Witness testimonies

A. Witnesses of the prosecution:

Girgvliani episode

Sandro Girgvliani's legal heir, Guram Girgvliani (father of Sandro Girgvliani), was questioned. The witness recalled the day of the event, when his son did not come home and they started to search for him. Later that night law enforcement officers brought him to the mutilated body of Sandro Girgvliani. The witness also recalled the investigation of the case as well as the court proceedings, stating that they had been paid visits frequently, and on occasion were either threatened or offered money in return for silence.

Victim Levan Bukhaidze was interrogated. He recalled the development of events at Shardeni bar on January 27, 2011. The witness stated that he could see Sandro Girgvliani and T.M. arguing, but that he could not hear what they were saying due to the volume of the music. An unknown lady came over from a neighboring table, the table from which T.M. initially came, and asked T.M. whether she had any problems (this unknown lady was Tako Salakaia, Vano Merabishvili's spouse). Once they left the bar they were met by people in a car who said that they were 'personnel' (meaning employees of law enforcement agencies) and put them in the car. Geronti Alania was sitting in the front and ordered them to take out their personal belongings. They were taken to Okrokana, a cemetery. The witness stated that he was personally beaten by Geronti Alania, but that he did not remember who beat Sandro. He recalled that Ghachava who was there. The victims were undressed and left beaten in the forest. The witness managed to walk as far as the auto-station and call the police. Together with the police they went up to find Sandro Girgvliani, but were not able to find him. Information provided by the witness was not considered reliable by investigators, and they arrested him and brought a charge for concealing a crime; they had to free him within 48 hours due to a lack of evidence. The victim recalled that a prosecutor in Tbilisi told him whom he was supposed to identify and whom not. He remembered that he identified Alania, Ghachava and Aptsiauri. He was called to identify Melnikov but was instructed not to identify him, or else be threatened with prosecution for false testimony. The victim followed the instructions.

Another witness who had been present at Shardeni bar recalled that Sandro came to the table where T. was sitting together with Guram Donadze, Melnikov and Tako Salakaia. Later T. went

over to Sandro's table. The witness could not hear their conversation, though from the gestures they were making he could guess that they were quarreling.

T.M. was interrogated. She was in the bar together with Data Akhalaia, Oleg Melnikov, Guram Donadze and Tako Salakaia. She recalled that Sandro Girgvliani called her, asked where she was and came to that bar. The witness denies she ever told Tako Salakaia that Sandro was bothering her. According to her statement, T.M. learned of Sandro's death the following day.

An employee of the Constitutional Security Department was interrogated. He recalled that he took Alania, Ghachava and Bibiluridze to Shardeni, where they went upon Data Akhalaia's request. Afterwards, they got into the car with two other people and went to Okrokana. The witness recalls that there was a dispute between Alania and Bukhaidze, and that Alania hit Bukhaidze, who fell down. According to the witness, Girgvliani was taken in another direction. From the car he heard a gunshot. Later he learned of the death of Sandro Girgvliani. According to the witness, **Alania told him that the Minister (meaning Vano Merabishvili) and Data Akhalaia knew everything and nothing would happen.**

The accused, Oleg Melnikov, was interrogated. At the time of the occurrence he had held the position of deputy head of the division at the Constitutional Security Department. He stated that T.M. told Tako Salakaia that a man was bothering her, and Salakaia asked Data Akhalaia for help. Afterwards, Data Akhalaia contacted Alania and Metreveli. Later, he showed two people to the witness (those were Bukhaidze and Sandro Girgvliani) and ordered that he arrest them. When he went out he saw Alania, but he did not witness their arrest since he returned back to the bar. He found out several days later about what happened in Okrokana. The witness recalled that Data Akhalaia called him to his place and from there together with Alania they went to the Prosecutor's Office to see Zurab Adeishvili. After the meeting Data told Alania that he had to go to jail. Then they went to the President's administration. They waited in the car, Data went out. Once back he told Alania that he would be pardoned by the President later.

Oleg Melnikov stated that he witnessed a conversation between Data Akhalaia and Vano Merabishvili. Data was calming Vano that nothing would be revealed. He also recalled that he was questioned jointly with Tako Salakaia (Vano Merabishvili's spouse), Data Akhalaia and others. According to Oleg Melnikov he was personally given written a testimony by Data Akhalaia. The witness said that he did everything under Data Akhalaia's instructions.

A witness (Mikheil Bibiluridze) recalls that Geronti Alania (the accused in the case) visited him and that they together went to Okrokana, where they physically assaulted Levan Bukhaidze and Sandro Gigvliani, left them both in the forest and returned home. The witness learnt the next day that Sandro Girgvliani had died. However, Geronti Alania told him that Data Akhalaia was in the loop and everything would turn out fine, and that the case would be "put on the shelf". Later Data Akhalaia told the witness that he would have to go to jail, though he would be well looked after there. According to Data Akhalaia's plan, Geronti Alania, Avtandil Aptsiauri and Aleksandre Chaghava would also have to go to jail. The witness remembers that everything went according to the plan. In prison the detainee met with Vano Merabishvili, Vasil Sanodze and Data Akhalaia. **According to the witness, Merabishvili reassured them and told that they had nothing to worry about. He then told Vasil Sanodze and Data Akhalaia that they were the ones who were meant to be in jail instead of those detained; this made them laugh.** Mikheil Bibiluridze remembered during interrogation that Data Akhalaia paid him a visit, while Geronti Alania left him money and said that this was from 'the chief' (he meant Vano Merabishvili).

Later, on the basis of the Amnesty Act, the sentences of Bibiluridze and all the others convicted in Girgvliani case were reduced by half. Subsequently, after three years and nine months, the prisoners were released.

Under questioning, an employee of criminal police stated that the camera footage obtained during investigation revealed the time when the car arrived and departed, the identity of the people who were in Shardeni bar, and the owners of the car. However, he did not know how things had proceeded after the case was transferred to Prosecutor's Office. Later on, said witness and his supervisor were forced to resign. The same was contended by another witness, who stated that the investigation established that the car with which the victims were taken captive, belonged to Geronti Alania. Alania's calls also appeared in telephone records.

Police employees recalled during interrogation that on January 28, 2006, they received information that a body had been found in Okrokana. The policeman said he spoke personally with Levan Bukhaidze. Bukhaidze asserted that this act was committed by his father-in-law, who was consistently threatening him; he apparently mistook Levan for Sandro, and had him murdered mistakenly. Upon revision it appeared that his father-in-law was not even in Georgia, so this version was excluded. Following this, their presence at Shardeni Bar was established; Bukhaidze, however, denied any conflict or opposition with those present there. Their telephone numbers had been extracted based on cell towers on the way to Okrokana, and had

been ascertained as belonging to employees of Constitutional Security Department. Likewise, with help from information extracted from hidden cameras installed along the road, the car was confirmed as belonging to Alania, at the time an employee of Constitutional Security Department. On the basis of this information, the case was transferred to the Prosecutor's Office.

One of the witnesses for the prosecution confirmed that Tako Salakaia, Vasil Sanodze, Guram Donadze, Data Akhalaia, Oleg Melnikov and Tatia Sanikidze were interrogated simultaneously in the same room, while Tako Salakaia corrected every witness's response.

A member of the committee responsible for pardoning prisoners was interrogated, who stated that under the instruction of Davit Chkhatarashvili (deputy head of the Constitutional Security Department), the prosecution one night compiled a list of 300 prisoners to be forgiven and the committee signed it. The witness noted that this was not done according to the rules but instead that everything was carried out at the orders of Adeishvili.

Nino Burjanadze was also questioned. She stated that after the death of Girgvliani, she met with then-President Saakashvili and demanded prosecution of those guilty – not the executors, but the clients. She also met with Vano Merabishvili and requested that he step down.

Witness Davit Chkhatarashvili was interrogated, who at that time was deputy head of Constitutional Security Department. The witness stated that after the death of Sandro Girgvliani, Data Akhalaia called him into his office and gave him a letter/statement written on paper, asked him to revise it with attention to legal terms and issues, and then to send it to Merabishvili and Adeishvili without any formal approval process.

> *Note: The letter stated that as a result of Davit Akhalaia's efforts, the names of employees of the Constitutional Security Department who had participated in the crime against Sandro Girgvliani had been revealed: Geronti Alania, Mikheil Bibiluridze, Avtandil Aptsiauri and Aleksandre Ghachava.*

An expert was interrogated who had conducted an autopsy on the body of Sandro Girgvliani found in the forest. The expert stated that the body had suffered multiple injuries, though if he had received urgent medical attention, his life could have been saved. A second expert affirmed that all the injuries had been caused when he was alive.

Witness testimonies also referred to the issue of the privileged conditions that those convicted of Girgvliani's murder enjoyed in jail. Witnesses stated that this was the order of the supervisors. According to the witnesses, the convicted prisoners were often visited by Merabishvili, Khizanishvili Donadze, Melnikov, and Data Akhalaia. One of the witnesses stated that upon Data Akhalaia's instructions, she/he brought food and alcohol to the prisoners.

The person in the facility responsible for the corrective regimen of the prisoners testified that Bachana Akhalaia held a meeting of all senior employees, in which he said that employees of the Constitutional Security Department were going to be transferred to their prison and ordered them to renovate the four cells where those people would be accommodated. After the cells had been repaired, new beds, armchairs, a refrigerator, television, and heating and air conditioning units were brought in, and the rooms were equipped with other conveniences. According to the witnesses, the general routine of the prison did not apply to the privileged prisoners. They had unlimited freedom to move around. Besides, the building where those convicted for the Girgvliani murder were serving the sentence was isolated from the main building of the prison and they thus had no contact with the other prisoners.

A person was interrogated, who was convicted at that time and responsible for serving the prisoners, including those convicted of the Girgvliani murder. The witness affirmed the privileged condition of those accused in Girgvliani murder and stated that he had witnessed how Geronti Alania would talk with Vano Merabishvili and Zurab Adeishvili.

One of the witnesses for the prosecution, I.Ts., stated that the accused were serving the sentence in the same conditions as the other prisoners.

Vamekh Abulashvili and Kakhaber Dabrundashvili episodes:

The accused Oleg Melnikov (with whom a plea bargain was later reached) stated that Data summoned him to go to Okrokana. As the witness found out from Data's telephone conversations, they were going there to beat someone. There were approximately 10-12 people, among them Data Akhalaia, Valerian Metreveli, and Geronti Alania.

> *Note: At this time the judge asked the attorney for Valerian Metreveli whether he had a motion on self-withdrawal since he was also defending Oleg Melnikov, while Melnikov*

was in effect giving testimony against his ward. The attorney declared self-discharge and the judge granted the motion.

A police officer was interrogated. He recalled that, on the basis of information which came in from the hospital, he met with the victim who told him that Data Akhalaia was involved in his assault, though he could not disclose this information because he was afraid. The next day he told him that he had fallen from the stairs. A case was opened in relation to this matter but was then dropped for lack of merit. The witness stated that he was not authorized to exert pressure on the witness, given that he did not want to officially announce what he had been told about Data Akhalaia's involvement.

Victim Kakhaber Dabrundashvili was interrogated as a witness. He recalled that Vamekh Abulashvili was summoned to the so-called Moduli building, where he did not appear. Later they met him on Freedom Square. Vamekh Abulashvili, together with the witness, was put into the car by armed men, and was taken to Okrokana, where they were met by Data Akhalaia, Oleg Melnikov, and Alania. The witness recalled that Alania beat Vamekh; he could hear the sounds of beating for approximately 40 minutes. Then he was brought to the assaulted man. Data Akhalaia took a shot in their direction, though he intentionally missed. They were threatened not to go to the police or the hospital. The witness stated that Geronti Alania himself did not assault him either verbally or physically. The victims were told that, in order to keep their families safe, they were to say that they got into a car accident. They only spoke truth in 2012,, having previously never approached the police on the matter.

Victim Vamekh Abulashvili was also interrogated and told the same story, affirming the facts of the physical assault and torture. He stated that he met with Valerian Metreveli (the accused), who took him to Okrokana.

One of the witnesses stated that they physically assaulted Vamekh Abulashvili and then left him in the forest. As far as he knew, Data Akhalaia wanted to beat him because of a certain girl. The witness confirmed that Data Akhalaia had fired a gun.

B. Witnesses of the defense:

At the very start of the interrogation of two witnesses for the defense, it became clear that both of them attended the hearings of other witnesses's interrogation. Consequently, the prosecution raised a motion to dismiss them. The court granted the motion.

An expert was interrogated; the person conducted an experiment on whether it was possible to traverse a certain distance in a certain period of time, and concluded that it was not possible.

6. Verdict:

Tbilisi City Court found Ivane Merabishvili guilty of the charges brought against him, and based on the Law of Georgia on Amnesty and the principle of absorption, sentenced him to three years in prison. They were also deprived of the right to hold elected office in the central government or local self-government organs for two (two) years and three (three) months.

The accused Valerian Metreveli and Geronti Alania were found guilty of illegal deprivation of freedom and inhuman treatment. Based on the Law of Georgia on Amnesty and the principle of absorption they were sentenced to four years and six months of imprisonment. In addition they were ordered to pay a penalty of 2000 Lari to the state and were also deprived of the right to hold elected office in the central government or local self-government organs for two years and three months. They were acquitted of the charge of abuse of authority by violence and assault on the personal dignity of the victim in such a way as has breached the right of a physical person or severely violated legal interests of society and the state.

On the basis of his plea bargain, Oleg Melnikov was sentenced to three years and nine months in prison.

7. Our observations:

The media were able to record the proceedings and they were not hindered in their activities.

37 hearings were held on the given criminal case. 73 witnesses for the prosecution and one for the defense were questioned.

Upon extradition to Georgia, the accused Oleg Melnikov did not appear in front of the court within 48 hours to request a preventive measure. According to Article 206 of the Criminal Procedure Code, "in case that the accused is arrested as a fugitive abroad, within 48 hours upon his arrival to Georgia he must be presented to a court." The judge hears arguments of the parties to the case, after which he/she takes a decision as to whether the preventive measure should be stay in place, or be amended or abolished. This requirement has to be fulfilled unconditionally since the Criminal Procedure Code of Georgia allows no exceptions. However, the prosecution gave a different interpretation and stated that Article 206 should not have been applied in this case since the investigation stage was over, the pre-hearing session had been held and the case was already being tried in court. A similar reasoning was used by the court as well.

We believe that the fact that by the time the accused Oleg Melnikov was extradited to Georgia criminal investigation was over and the pre-trial hearing was pending does not mean that the prosecution should not have addressed the court, since according to Article 206, the wanted person must in any case be presented against the court. Besides, the fact that Oleg Melnikov was already ordered a preventive measure in the form of detention does not change anything. Irrespective of the existence of a court-ordered preventive measure issued without the accused's presence, he must be presented before the court within 48 hours. Thereby, the accused Oleg Melnikov was subject to arbitrary deprivation of freedom.

Court proceedings were several times adjourned due to various reasons invoked by the defense. In some cases, there was a sense that this was being done to delay the proceedings.

No serious violation of judicial procedures was revealed during the proceedings.

As it has been indicated with respect to other cases, the court was not able to ensure separation of witnesses in such a way that witnesses called for the same case would not have be able to interact before the interrogation was over. In the present case, however, the court called upon the court security officer to ensure that this was the case, which should be positively assessed.

Mikheil Saakashvili (case of physical assault of Valeri Gelashvili)

1. The accused and the charges brought

Mikheil Saakashvili – abuse of authority by state political official, by violence and use of arms, which has caused infringement of a right of a physical person or severe violation of the legal interests of the state. Organization of intentional damage to the health, in a group.

2. Description of the offense

According to the investigation, on June 29, 2005, following publication of an article in Rezonansi, which was offensive towards Mikheil Saakashvili and members of his family, Mikheil Saakashvili decided to take revenge and make an example of the author of the article, Valeri Gelashvili. For this purpose, he instructed then Minister of the defense Irakli Okruashvili to physically floor Valeri Gelashvili; he refused to do so. After this, Mikheil Saakashvili charged then-Minister of Internal Affairs with the task of physical assault of Valeri Gelashvili, who executed the task with the help of the special operations department subordinate to him. The car which Valeri Gelashvili was driving was blocked. Within the framework of the received order ,the driver and passengers were neutralized and documents were removed from the car. According to a report by experts, Gelashvili received less severe injuries, with signs of long-lasting disruption of his health.

3. Preventive Measures:

Prosecution did not refer to the court with a request to issue a preventive measure.

> *Note: The accused Mikheil Saakashvili has been ordered detention on the so-called November 7th case and he is a fugitive abroad.*

Within the reporting period consideration on the merits of the case was not commenced.

Within the reporting period consideration of the merits of the case has not been commenced. At the same time, the organization was not able to fully attend the hearings since case files contained confidential information which was the basis for holding closed hearings.

Mikheil Saakashvili (case of embezzlement of state property)

1. The accused and the charges brought

Mikheil Saakashvili (former President of Georgia), Teimuraz Janashia (former head of the Special State Protection Service of Georgia) – embezzlement of government funds in large volumes.

2. Description of the offense

According to the prosecution, following an incident when the accused spent state funds for his personal purposes, namely on a service of a masseur, and this fact became public, in April 2009 the accused decided to work out a secret form for spending money for his private purposes in order to prevent the leakage of such information in the future. Mikheil Saakashvili would transfer the necessary funds to the account of Special State Protection Service of Georgia, which was under his direct supervision. That way Mikheil Saakashvili could secretly use government's funds to cover his own personal expenses.

Execution of the criminal plan was entrusted to the head of the Special State Protection Service, Teimuraz Janashia. Through Teimuraz Janashia, Mikheil Saakashvili's private expenses were disguised as secret expenses, which is contrary to the Law of Georgia on State Secrecy. In addition, as per an order from Mikheil Saakashvili classified as "secret", Special State Protection Service of Georgia was unlawfully instructed to finance expenses incurred in Georgia by the President, his family members, and his guests, as well as their travel and living expenses and the costs of cosmetic procedures, accommodation, education, gifts and souvenirs, household and other expenses. In total, 8,83,461 Lari was embezzled from state budget.

3. Significant circumstances/facts

On September 3, 2014 the Court of Appeal altered the decision of the Court of First Instance dated August 29, without holding an oral hearing. By order of the court lien was put on the property of the accused Mikheil Saakashvili and of persons related to him. The accused's personal bank account was frozen.

Putting a lien on the property is a procedural measure of compulsion, the purpose of which is to secure property for possible confiscation. It can be used if there is evidence that the property shall be a) hidden and/or b) spent and/or c) the property has been obtained by unlawful means. By putting a lien on a person's property impinges that person's fundamental rights. For this reason, the motion of the prosecution must be substantiated, while the court has to assess whether the motion meets certain formal and factual requirements, and make a decision accordingly.

The prosecution requested to put a lien on the property of the accused as well as of those related to him, and to freeze his bank account. The Court of First Instance did not grant the motion with respect to freezing the bank account and noted that the prosecution failed to present any kind of documentation which would show whether the accused had any sums of money or valuables on those accounts. Consequently, the court could not freeze the bank accounts. Despite this, the Court of Appeals did not share this argument and ordered the freezing of the accused's bank accounts.

The Court of First Instance found that the prosecution's argumentation with respect to putting a lien on the property of persons related to the accused was unfounded, and rejected it. The court noted that "just the existence of persons related to the accused and of their property is not a sufficient basis for putting a lien on the said property." Specific evidence had to be presented. The judge of First Instance also noted that the prosecution's assertion that the property in possession of the accused's family did not match, and significantly exceeded, their lawful income, was not corroborated, since no evidence with respect to the origin of the property had been presented. Likewise no information related to the amount of lawful income of those persons and on their status has been presented, which might allow the court to conclude that the property was possibly obtained by illegal means.

In the end, Tbilisi City Court put a lien only on the property of the accused and refused to freeze his bank account or to put a lien on the property of people related to him. Tbilisi Court of Appeals, on the other hand, ordered the bank account of the accused to be frozen and putting a lien to be put on the property of his spouse, children, mother, father and grandmother (though the Court of Appeals did not grant the prosecution's motion in full). Neither of the courts granted a motion with respect to putting a lien on the property received in succession or property obtained prior to 2009, since the prosecution in this case was disputing the accused's deeds committed in the period from between September 2009 and 25 February 2013.

4. Preventive measures:

The prosecution did not request the court to order any preventive measure.

During the reporting period consideration of the merits of the case was not commenced.

5. Our observations:

When putting a lien on the property, courts of both instances referred to following circumstances:

1. The accused was avoiding investigation
2. Mikheil Saakashvili during his term had established financial and economic ties both internally and abroad, which would help him to avoid property liability, and he would use this to distribute or otherwise conceal his property.

Any procedural action must be substantiated and proportionate to the goals it seeks to achieve. In this case, Transparency International Georgia shares the position of the Court of First Instance with respect to some issues, and notes that there was no sufficient factual basis (evidence) for putting a lien on the property of persons related to the accused. In the observer's eyes, there was a lack of arguments to support the contention that the accused or persons related to him would conceal/spend the money or that the property had been obtained by unlawful means. Just the fact that persons related to the accused owned the property was not sufficient evidence to justify putting a lien on that property.

Mikheil Saakashvili (case of Girgvliani)

1. The accused and the charges brought:

Mikheil Saakashvili – abuse of authority by a state political official.

2. Description of the offense:

According to the prosecution, as a result of a criminal plan coordinated and agreed with President Mikheil Saakashvili, the crime committed against Sandro Girgvliani was concealed, and the investigation was faked to enable high-ranking officials to avoid liability.

On January 27, 2006, at Shardeni Bar, Aleksandre Girgvliani happened to be in argument with T.M., who was in the bar together with the wife of the Minister of Internal Affairs Ivane Merabishvili (Salakaia) and head of the Constitutional Security Department Davit Akhalaia. On account of this employees of the Constitutional Security Department, acting under the instructions of Davit Akhalaia, who sent for them, put Aleksandre Girgvliani and his friend in a car, unlawfully deprived them of their freedom and took them as captive out of the city to Okrokana cemetery. In the intense cold of the night, the kidnappers undressed Aleksandre Girgvliani and his friend and severely beat them. The body of the tortured Aleksandre Girgvliani was found on the territory adjacent to Okrokana cemetery.

3. Preventive Measures:

The prosecution did not address the court with a request on preventive measure in this case.

During the reporting period consideration of the merits of the case was not commenced.

Giorgi Oniani

1. The accused and the charges brought

Giorgi Oniani (former deputy head of Gldani-Nadzaladevi Main Division) – falsifying evidence of a grave or particularly grave crime, persecution of an individual through abuse of office, abuse of authority, intentional unlawful detention (*Davit Shatirishvili episode*). Intentional unlawful detention or arrest, persecution of a person through abuse of public office, abuse of authority and falsification of evidence on a grave or particularly grave crime (*Mdinaradze episode*).

2. Description of the offense

According to prosecution's assertion Giorgi Oniani unlawfully, without factual evidence, detained Levan Mdinaradze, supporter of political party Georgian Dream (DJ Rembo). In order to artificially create a criminal offense and to falsify the evidence, Giorgi Oniani presented to the case investigator marihuana and instructed him to indicate in case records that the narcotic substance was taken off Levan Mdinaradze, which in reality did not happen. Levan Mdinaradze was prosecuted under part one of Article 260 of Criminal Code of Georgia for unlawful purchase and storage of narcotic substances. Under the same pretext, Giorgi Oniani unlawfully detained manager of Dao-Print Ltd., Davit Shatirishvili, for printing T-shirts with the logo of political party Georgian Dream.

3. Significant circumstances/facts

On the day when Giorgi Oniani was arrested, the search of him and his property was conducted without a warrant. Since no pressing necessity was established, both procedural actions were found unlawful by the Court of First Instance as well as the Court of Appeal.

The prosecution several times accused defense of delaying the proceedings.

The hearing was adjourned several times. On one occasion the reason for adjournment was a motion raised by the prosecution, due to which the defense requested adjournment of the proceedings to prepare their position.

At a different hearing, the defense requested adjournment because one of the attorneys would not be in Georgia (was leaving on vacation in Turkey). They requested that the hearing not be held without him/her. The court did not consider the reason to be justifiable since the accused had other attorneys who could defend his interests.

Giorgi Oniani's sickness was also given as a reason for adjournment.

In one of the hearings, Giorgi Oniani noted that he was representing Bacho Akhalaia, was overwhelmed and wished to adjourn the hearing for one month, or 1 1/2 months. The defense argued that the court take this fact into account and adjourn the hearing since swift justice was a right of the accused. The prosecution blamed the accused for delaying the proceedings.

Giorgi Oniani is charged for actions committed towards Levan Mdinaradze and Davit Shatirishvili, as a result of which criminal prosecution commenced against them. It is interesting to note that the prosecution of Levan Mdinaradze has ceased on the basis of the Law of Georgia on Amnesty and he was released from criminal liability. As regards the other victim, Davit Shatirishvili, his case is being tried in parallel with Giorgi Oniani's case. As a result, it appears that Davit Shatirishvili is at the same time a victim in the case against Giorgi Oniani, and a defendant in the case where he was charged as a result of Giorgi Oniani's actions, the allegedly criminal nature of which is being considered in the present case.

According to the defense's information, those officers who appeared in the case together with Giorgi Oniani, continue to work for the police and prosecution against them was terminated in exchange for testimony denouncing Giorgi Oniani. In this respect, the judge asked the prosecutor to provide information as to whether those persons still worked for the police. At the next hearing, the prosecutors confirmed that these individuals were still working for the police in the same positions.

The defense presented video material where one of the main witnesses for the prosecution, Giorgi Sharipashvili, says that at the Prosecutor's Office he was offered Giorgi Oniani's position in exchange for accusing him on television. This evidence was not attached to the case file.

On one occasion, a witness was verbally assaulted by the attendees of the hearing, which caused a commotion in the courtroom. The judge warned the audience that if the same happened again, s/he would close the hearing.

Initially the accused in the case were also G.Sh., L.G., L.K. and G.K.; however, prosecution against them was terminated and their case was diverted. [41]

4. Preventive Measures:

The prosecution requested detention as a preventive measure since there was a danger of the accused influencing the witnesses.

The defense requested that none of the preventive measures be used, but as an alternative proposed bail. In addition, the accused Giorgi Oniani had a personal guarantee from 26 MPs.

The court took into account the fact that the accused had a permanent place of residence, a family, and that he did not avoid appearance in the court or in the investigation agency, and therefore denied prosecution's motion on pre-trial detention of Giorgi Oniani. He has been assigned a bail of 20,000 Lari.

5. The trial proceedings

5.1. Important motions

A. Motions of the defense

1. The defense raised a motion for adjournment of the hearing since the accused Giorgi Oniani had a heart attack. They also presented a document confirming the calling of the ambulance.

Position of the prosecution: The prosecution stated that this served as a means of delaying the proceedings; the defense had not informed the prosecution of the illness. For this reason, the hearing should not be postponed.

Ruling: The court stated that the prosecution's position was groundless and granted the defense's motion.

[41] Has been added pursuant to the remarks of Giorgi Oniani's attorneys.

2. The defense raised a motion to find inadmissible the testimony of the victim Davit Shatirishvili, since his testimony was given after investigation was over and when the case was already being tried in court. The defense also considered that his testimony was inadmissible because Davit Shatirishvili both a defendant in another case and a prosecution witness in the present case, which the defense said was inconceivable.

Position of the prosecution: The prosecution found defense's motion unfounded and lacking merit and noted that the law obliges investigation organs to commence investigation after being notified of the crime. Mdinaradze and Shatirishvili contacted the Prosecutor's Office and notified them of this offense. The Prosecutor's Office was entitled to commence an investigation at any stage. Consequently, the fact that prosecution was commenced against Giorgi Oniani on the basis of their application and that at the same time consideration of Shatirishvili's case is still pending, does not change anything since these two cases are not related to one another.

Ruling: The court did not grant the defense's motion based on the argument that Prosecutor's Office had to commence investigation upon receipt of information on the offense, irrespective of the stage of consideration of Shatirishvili's case.

3. The defense raised a motion challenging the prosecutor. The reason was stated to be verbal argument with the prosecutor at the previous hearing. Giorgi Oniani stated that controversy among them was indicative of the prosecutor's personal conflict with the accused. For this reason he could not be objective.

Position of the prosecution: The prosecution denied the above and stated that it was acting in strict compliance with the law, and had no personal interest.

Ruling: The motion of the defense was not granted since no evidence of controversy was presented.

4. At one of the hearings the defense stated that the date of the hearing was scheduled unlawfully. For this reason it asked that it be postponed. Giorgi Oniani's case was initially tried together with another defendant's case; later, upon the prosecution's request, the two cases had been separated. According to the defense, when they addressed the court with a request of adjournment, the request concerned the case along with which Giorgi Oniani's case was tried

and not the separated case. Consequently, they deemed that the date of the hearing was unlawfully scheduled.

The judge asked him whether upon addressing the court with a request on prolongation of time, they provided information that Oniani's criminal case had been separated out. The defense responded that they did not provide the court with the order of separation of cases since they considered that the order was not clear that Oniani's case was separated out.

Position of the prosecution: The prosecutor stated that there were no two cases, rather Giorgi Oniani's case had been separated out, which should have been known to the defense since they had exchanged case files. The prosecution accused Giorgi Oniani of delaying the proceedings and stated that they (the defense) were deliberately not presenting to the court the order by which the cases had been separated, with the intention of misleading it.

Ruling: The hearing was adjourned.

At the next hearing, the prosecution presented an accurate order court, which attested that adjournment was granted on Giorgi Oniani's case. The prosecution also stated that Giorgi Oniani had appealed the issue of unlawful scheduling of the hearing to the Courts of Appeal; however, since it was not satisfied, the defense did not bring this information to court's attention. For this reason, the prosecution requested that the appeal of the defense and the ruling of the Court of Appeal be attached to the case.

The defense agreed with the first motion, but with respect to the Court of Appeal's ruling stated that it should not be granted since it should have been presented before the pre-trial hearing.

The court noted that the prosecution could not have obtained this evidence before the pretrial hearing; consequently, there was a justifiable reason for non-presentation. For this reason prosecution's motion was granted.

> *Note: The defense also stated that case files had been presented to the court prior to separation; according to the defense that meant that on the current separated case of Giorgi Oniani there were no evidence presented and for this reason criminal prosecution should have been terminated.*[42]

[42] Has been added pursuant to the remarks of Giorgi Oniani's attorneys.

5. The defense requested following documents to be enclosed as evidence in the case:

- Report of the NGO Democratic Choice of Georgia: *Politically Biased Justice in Georgia*;
- Recommendation of the Public Defender;
- Recording of the telecast Different Accents, where a segment was devoted to Giorgi Oniani's case;
- Video recording of a conversation between Giogi Oniani and Giorgi Sharipashvili. According to the defense, the recording was made by journalists at Giorgi Oniani's office. In it, Giorgi Sharipashvili (witness for the prosecution) stated that in exchange for his job he was offered to make public statements on television against Giorgi Oniani.

Position of the prosecution: The prosecution's position with respect to each piece of evidence was following:

- The report of NGO Democratic Choice of Georgia devotes only four pages to Giorgi Oniani's case. In addition, the report is an evaluative document and is not relevant to the case.
- With respect to the recommendation of the Public Defender, which notes how the investigator managed to interrogate two witnesses simultaneously, the prosecution stated that it may be that the investigator made a technical mistake; however, the defense never challenged minutes of the interrogation at the pre-trial hearing. Besides, according to the prosecution, the recommendation of the Public Defender is also just an opinion, and for the listed reasons it should not be attached to the case file.
- In relation to the Rustavi-2 telecast, prosecutor stated that the individuals speaking note their own viewpoints. They had no knowledge of the factual circumstances of the case. Consequently, this material was also of an evaluative nature and should not be attached to the case.
- As regards the recording of the conversation of Giorgi Oniani and Giorgi Sharipashvili, the prosecution noted that the recording was made by an unidentified journalist who had no prior consent to record a private conversation. This act thus constituted eavesdropping on a private conversation. This piece of evidence was thus obtained illegally and in flagrant violation of the law, and should not be attached to the case file.

Ruling: The defense's motion was denied in part. The court attached only Public Defender's recommendation to the case file.

With respect to the report of NGO Democratic Choice of Georgia, the court noted that it represented the opinion of an organization: the court was unaware to what extent the organization had studied the case, and whether the issue of political prosecution was something to be assessed by the court.

The recording of the telecast was also not attached to the case file.

As regards the record of conversation between Giorgi Sharifashvili and Giorgi Oniani, the court noted that authenticity of the recording was not verified, and also the evidence presented by the defense did not prove corroborate whether the voices in the recording belonged to Giorgi Oniani or Giorgi Sharipashvili. The court also remarked that the defense failed to name the journalist who made the recording. Consequently, the origin of the document could not be affirmed. The court therefore denied this part of the motion as well.

B. The prosecution:

1. The prosecution raised a motion on the elimination of certain witnesses from the list of those who had to be questioned, since they had a limited ability to characterize the personality of the accused and could not give new information on the circumstances of the case.

Position of the defense/ Ruling: The defense did not agree with the motion, however the court eliminated from the list of people that were to be questioned those witnesses who did not possess information related to specific circumstances of the case and would only provide characterization of the accused.

2. The prosecution raised a motion to eliminate from the list of witnesses to be questioned those people who only expressed assumptions and spoke about their relationship with the accused. The prosecution argued that their questioning would not help the court find the truth.

Position of the defense: The defense stated that the witnesses possessed information related to particular circumstances and that they would prove that the accused did not issue unlawful instructions.

Ruling: The court did not grant the prosecution's motion and left the witnesses in the list of people to be questioned.

3. The prosecution also raised a motion to find inadmissible minutes of investigatory actions since they were conducted by unauthorized individuals, the order in favor of attorney Irina Janelidze having been issued only after these actions were conducted.

Position of the defense: The defense noted that attorney Irina Janelidze's order was in the case file and it was transmitted to the prosecution in the course of exchange of evidence. Besides, according to them, they were not obliged to notify prosecution of those actions.

Ruling: The court did not satisfy the prosecution's motion and the investigative actions carried out by attorney Irina Janelidze were given the force of evidence.

4. The prosecution motioned to take those witnesses whose minutes of interrogation they had not been given, out of the list of people to be questioned.

Position of the defense: The defense did not agree with the motion and noted that this witness possessed important information since he was the investigator on the very case which Giorgi Oniani is alleged to have directed illegally. According to the defense, said witness still worked with law enforcement agencies and when he was asked to be interviewed, he requested time in order to agree the issue with his supervisor; later he refused to be interviewed, though he told the defense that if he was called as a witness in court he would tell the truth.

Ruling: The court included the said witness into the list of people to be interrogated.

5.2. Testimonies of witnesses

A. Prosecution witnesses:

The victim Davit Shatirishvili was questioned as a witness. In October 2011 he worked in an advertising company where he made booklets, brochures and T-shirts. One of the customers was the Georgian Dream studio for which they prepared a large number of black Georgian Dream T-shirts. One day the witness was approached in a street by two armed men, one of whom was Giorgi Oniani. They said that they suspected him of having narcotics. The witness recalled that he took all of his belonging out of his pockets, though nothing was discovered. He was then put into a car and taken to a division, where they asked him whether he was making the T-shirts. Following his positive response, they told him that his actions put the state into danger and that he had to be liable for that. They stated that he had narcotics; the witness denied this. They

warned him that if he did not do what they said they would discover heroin from his house or the workplace of his spouse. They offered him the chance to cooperate and to supply them with information. After he refused, they beat him. Initially, Davit Shatirishvili was ordered detention as a preventive measure, though later he was released under bail. Giorgi Oniani kept in touch with him after that as well, requesting him to cooperate, though the victim again refused. The case against Davit Shatirishvili for illegal purchase and storage of narcotic substances is not finished and has entered its third year now.

The second victim in the case, Levan Mdinaradze, was also questioned as a witness. In October 2011, he was working as an event manager and knew Bera Ivanishvili (son of Bidzina Ivanishvili). The witness was contacted by Bera's studio manager and asked to help organize a concert for Bera. During interrogation, the witness recalled how he was detained. He was forced into a car with Giorgi Oniani, who was not wearing a uniform. He was told that he was detained for high treason. He was taken to the division where the investigator presented him with the testimony for signature, which noted that he had narcotics in his pocket. He underwent testing and no narcotic substances were discovered in his body. Charges were nonetheless brought against him, and as a preventive measure he was assigned bail.

Witness Giorgi Sharipashvili was also questioned (his case had been diverted). At the time of the alleged offense he had been working in the office of Giorgi Oniani as an inspector/investigator at for Gldani-Nadzaladevi division, where Giorgi Oniani was the deputy head. The witness recalled the start of the investigation against Davit Shatirishvili, stated that Giorgi Oniani called him and said that he would dictate a report according to which he had to commence investigation. So he did. Investigation commenced on the pretense that Giorgi Shatirishvili had narcotic substances in his pocket. According to a witness statement, Giorgi Oniani came to the division later, together with Giorgi Shatirishvili. Giorgi Oniani put a narcotic substance on the table and told him that it had been found in Shatirishvili's pocket. The witness stated that, although he had not been present at the time of the search, Giorgi Oniani instructed him to write the statement as if he had conducted the search.

The same witness spoke about the commencement of the investigation against Levan Mdinaradze and stated that he was called and asked to come to the department, where he saw Levan Mdinaradze in detention. The witness said that Girogi Oniani ordered him to draw up minutes to make it seem as if narcotics had been found during the search of Mdinaradze. Said

witness left the workplace of his own volition. The witness denied that he was promised a position in exchange for a testimony against Giorgi Oniani.

The trial is pending. A verdict has not yet been delivered.

7. Our observations:

The hearing was adjourned several times at the request of the defense. The defense considered that a swift trial was a right of the accused. Although a person may refuse the right to a swift trial if this is necessary for proper preparation of the defense, this right cannot be unlimited. The court's resources should also be taken into account and should be used appropriately.

The defense presented video material where witness Giorgi Sharipashvili, who had been working at the time of the alleged offense as an inspector-investigator at Gldani-Nadzaladevi division, said that, in exchange for his position, he was offered to go appear on television and deliver a statement against Giorgi Oniani. This evidence was not attached to the case file since its authenticity could not be established. Yet this circumstance brings the trustworthiness of the witness into question. This suspicion is also supported by the fact that the witness was initially charged together with Giorgi Oniani, though his case was later diverted.

It is interesting that in parallel with the case against Giorgi Oniani, where the victim is Davit Shatirishvili, a trial against Davit Shatirishvili himself is pending in the court. It is noteworthy that Giorgi Oniani is charged for the offense committed against Davit Shatirishvili, that and it was these actions that formed the basis for a charge against Davit Shatirishvili. Davit Shatirishvili is at the same time a prosecution witness in this case and a defendant in another case.

Nikanor Melia, Zurab Adeishvili and others (case of bankruptcy of Kartu Bank)

1. The accused and the charges brought

Nikanor Melia, former chair of the National Bureau of Enforcement – conspiracy to assist a person having representative, management and other executive powers in a company or other organization, in concealing a property by false transaction, committed in avoidance of an anticipated economic obligation, in large amounts,; abuse of public authority.

Zurab Adeishvili, former Minister of Justice – conspiracy to assist a person having representative, management and other executive powers in a company or other organization, in concealing a property by false transaction, committed by avoidance of an anticipated and current economic obligation; abuse of public authority. [43]

Tsezar Chocheli, former state governor of Mtskheta-Mtianeti – conspiracy to conceal property through false transactions, committed in relation to an anticipated economic liability, in large amounts; conspiracy to falsify a confirmation document.

Others accused: Jambul Ebanoidze, Davit Giorgadze, Grigol Morchiladze, Gocha Tkhenosanidze, Nugzar Sajaia, Davit Kodua, Vasil Chigogidze, Levan Sakvarelidze, Ilia Antadze, Laura Ghachava, Nika Kubaneishvili, Irakli Taktakishvili.

2. Description of the offense

According to the prosecution, at the end of 2011 and beginning of 2012 the accused conducted various unlawful actions against Kartu Bank. In particular, they had been contacting managers of those organizations which had loan agreements with Kartu and forcing them to insert false data in their old declarations, so as to create the appearance of significant liabilities to the government. After the insertion of false data into the declarations, the management of these organizations was forced to acknowledge the significant liabilities owed to government before a court, after which the property of these organizations was put under liquidation. Fictitious internet auctions were held where an entity set up by the criminal group would win the bid. After the auction the winner would refuse to pay the price; therefore the property was

[43] Has been corrected pursuant to the remarks of the prosecution.

transferred onto the government's balance sheet. This property was then sold by the State to a pre-determined legal entity at a fictitious price, significantly lower than its market value. At the same time the indebted organizations would default on their loan to Kartu, while the Bank was no longer able to liquidate the properties which were used to secure the loans, as those properties were now registered in the ownership of totally different legal entities without any legal deficiency. The scheme consisted of several stages. The end purpose was bankruptcy of Bidzina Ivanishvili-owned Kartu Bank.

According to the legislation of the period in question, in instances where tax liabilities were discovered, the government was able to put the organization's real estate up for auction, whether or not the real estate was being used as collateral for a loan. According to the prosecution's allegations, former high-level officials made Parliament change the law especially for this purpose.

3. Significant circumstances/facts

Non-appearance of the accused or of their attorneys at the hearing took place frequently.

On one occasion, the accused Nugzar Sajaia and Davit Todua did not appear at the hearing; as it became clear at the next hearing, one of them had health issues, while the other had had a car accident. The judge found their non-appearance justified.

The accused Tsezar Chocheli did not attend the hearing on several occasions. The reason was said to be his health condition, due to which he had to go to Germany for treatment. The judge called upon the accused to return to Georgia prior to the next hearing since his actions put at risk the preventive measure against him.

The judge also called upon the accused Nikanor Melia with respect to the danger of reconsideration of his preventive measure, as he was likewise absent from hearings on several occasions. At one point the judge warned the accused that if he would not present evidence justifying his non-appearance, he would be penalized. When the accused appeared at the hearing he stated that the reason for non-appearance on one occasion was his health problems, and on another occasion that he had to leave the country, whereas he did not know when the hearing would be scheduled.

At one of the sessions a certificate related to the state of the accused Davit Kodua's health was presented, which was the reason for his non-appearance at the hearing. However, the court questioned the justification, noting that he was socially quite active and that it was not clear why he did not manage to attend the hearing.

On yet another occasion, the attorney for the accused did not appear at the hearing; he had a different hearing in Telavi Court. The court noted that the attorney knew the date of the hearing and did not address the court in writing to postpone the session, though at a next hearing the attorney presented evidence testifying his presence at another hearing and the court considered his non-appearance justified.

The judge noted during consideration of the case that due to defense's fault the hearings were being adjourned systematically, which was an indication that they did not want to take advantage of the right to a speedy trial and many resources were spent unreasonably.

4. Preventive measures:

The prosecution raised a motion on the pre-trial detention of Zurab Adeishvili as a preventive measure. With respect to Jambul Ebanoidze, Roman Chkhenkeli, Mamuka Lashkia, Otar Agladze, and Nikanor Melia, bail was requested.

As per the court's ruling, Jambul Ebanoidze's bail was set at 30,000 Lari, Roman Chkenkeli's at 15,000 Lari, Mamuka Lashkhia and Otar Agladze's at 8,000 Lari each, and Nikanor Melia's at 25,000 Lari; Detention was applied to Zurab Adeishvili.

5. The trial proceedings

5.1. Important motions

A. Motions of the defense:

1. The accused Nikanor Melia raised a motion not to have a hearing held before the Tbilisi Mayoral elections were held, so that he could fully participate in election campaign. The court granted the accused's motion.

2. The defense motioned to adjourn the hearing for two months. The reason was stated to be the accused's health condition.

Position of the prosecution: The prosecution agreed with the motion.

Ruling: The judge granted the motion.

3. The defense requested Davit Kodua and Laura Gachava to be tried separately in order to avoid delay of trial of the other accused. The defense noted that Davit Kodua required treatment abroad and he had to be accompanied by Laura Gachava (Davit Kodua's mother). Besides, the defense argued that joint consideration of Davit Kodua's and Laura Gachava's cases was justified since their cases had witnesses in common.

The judge stated that existence of common witnesses was a much stronger argument than the statement that Laura Gachava had to accompany her son abroad for health treatment.

Position of the prosecution: The prosecution agreed with the motion.

Ruling: The judge granted the motion and separated the cases of Laura Gachava and Davit Kodua.

4. The defense raised a motion to attach to the case file information spread by mass media on May 18, 2014, according to which Georgian government was intending to privatize state-owned factories for a symbolic price. According to the defense's statement, the fact that the prosecution's questions towards witnesses were related to privatization of state-owned property for a price lower than market value indicates that the prosecution was intending to build an argument on this fact. With the evidence requested to be attached, the defense tried to rebut a potential argument of the prosecution related to this offense and prove that the state may carry out privatization of the property it owns not only for a price lower than market value, but for a symbolic price as well. Consequently, there were no signs of a criminal offense in the actions of the accused.

Position of the prosecution: In the prosecution's view, the motion should not be granted since the issue at stake is that the sale was at a pre-determined price, and not whether a state-owned property was sold at a price lower than its market value. According to the prosecution, this

motion of the defense is aimed at delaying the proceedings since there is a law regulating the price at which the state may privatize property, and the defense could request for the law to be attached as evidence to the case.

Ruling: The judge shared the defense's arguments and satisfied the motion.

5. Since the proceedings were often adjourned due to the health condition of Tsezar Chocheli, the defense requested he be tried separately to avoid delaying the consideration of the case.

Position of the prosecution: The prosecution agreed with the motion.

Ruling: The judge granted the motion on trying Tsezar Chocheli's case separately.

B. The prosecution:

1. The prosecution raised a motion to have Ilia Antadze and Grigol Morchiladze tried separately, since there were deliberations to have their cases diverted.

Position of the defense: The defense agreed with the motion.

Ruling: The judge granted the motion. The case was referred back to the prosecutor for the purpose of registering the diversion.

5.2 Witness Testimonies

A. Witnesses of the prosecution:

A partner of the accused Grigol Morchiladze was interrogated. Their company had a loan with Kartu Bank. The witness stated that Giorgi Morchiladze was called by the financial police and was told that they had to act according to a particular scheme. In particular, the company had to acknowledge a debt to the state, as a result of which the state would take away its assets and the company would default on its bank loan. Thereafter, the property will have been brought out by the same people from the Ministry of the Economy, but under a different company's name, at a low price. The witness stated that there was no point in disagreeing. The witness confirmed that everything happened according to the scheme. According to him, the accused Grigol Morchiladze took charge of execution of the procedures.

Another witness for the prosecution, a friend of Grigol Morchiladze, stated during his interrogation that a sales agreement with the Ministry of the Economy was concluded by a Limited Liability Company registered in his name, though he never got the money. The witness noted that these issues were managed by Ilia Antadze. Several witnesses for the prosecution recall similar circumstances, though none of them took the money: all the funds that arrived were given to Grigol Morchiladze.

Another partner of Grigol Morchiladze was interrogated. Said individual was contacted by a person called Mamuka Lashkhia from the Revenue Service, who told him that the company had to default on a bank loan in order to bankrupt Kartu Bank. For this purpose the company had to acknowledge its debt to the state, after which the shares would be sold at auction, resulting in non-payment of the bank loan. As promised, the property would be returned to the partners in full via a sales agreement with the Ministry of the Economy. The witness stated that he spoke with Grigol Morchiladze on this issue. He also noted that he was being threatened. The witness himself visited the Revenue Service, and that the figures in the declarations of the company were altered there so that the company might appear to be in debt to the government. After the company failed to pay the government's debt, its shares were sold on auction. The purchaser was the Ministry of the Economy, which later gave the shares back to the initial owners on the basis of the sales agreement.

Accountant Ilia Antadze, accused in an identical case, was interrogated. He stated that in October 2011 the tax portal was blocked. After it was reopened, the company appeared to owe the government up to four million Lari. According to the witness, in reality the company had no liability towards the government.

A shareholder of the accused Nugzar Sajaia's company was interrogated and recalled an almost identical scheme. The company had financial problems, loans in the bank; by engaging in the criminal scheme their problems would be resolved to some extent, since they would not have to repay the bank loan. All went smoothly according to the scheme; the company came to have a debt of up to five million. According to the witness, the amount of debt was artificially increased. The debt appeared with the consent and participation of Sajaia. The witness stated that according to the agreement, the property was to be returned to them after the sale. He also noted his opposition to Sajaia's involvement in the scheme, though in vain.

A partner of the company was also interrogated. According to him, he was approached by Ilia Antadze (the accused) and passed on to him the statement of M.L. (employee of the Revenue Service), that the company had to acknowledge its debt to the government, following which the property would be transferred to the ownership of the Ministry of the Economy. As a result, the loan to Kartu Bank would not be repaid, which would damage the bank.

M.L. (an employee of the Revenue Service) told the witness that in case of resistance they would have to have a conversation in the next building (meaning Prosecutor's Office). The shareholders agreed to participate in the scheme though in reality there was no debt. The declarations were altered by Mamuka Lashkhia himself.

Shareholders of other companies were also interrogated as prosecution witnesses; they spoke of similar circumstances. Their plan of action was identical to that in the other cases.

Friends of the accused Vasil Chigogidze were questioned, who registered the companies at the request of Chigogidze. On the basis of sales agreement concluded with the Ministry of the Economy these companies purchased out the property which, according to the scheme, Vasil Chigogidze transferred to the government on the basis of acknowledgement of the debt.

The trial is pending. A verdict has not yet been delivered.

6. Our observations:

The trial was adjourned several times due to defense's fault. The accused or their attorneys often did not appear at the hearings. The judge called upon the accused Tsezar Chocheli and Nikanor Melia to appear at the trial, since by non-appearance they were bringing into question the effectiveness of the preventive measures used against them and making a case for the application of stricter measures. The defense with its actions was in effect rejecting its right to a swift trial.

It is true that a person may refuse his/her right to a swift trial if this is necessary for proper preparation of the defense; however, it is important to consider the resources of the court and not to allow their unreasonable usage.

No significant violation which would hinder the parties' adversariality was revealed. Therefore, it can be said that the parties had equal opportunity to present their arguments and evidence, to carry out procedural actions and to defend their interests.