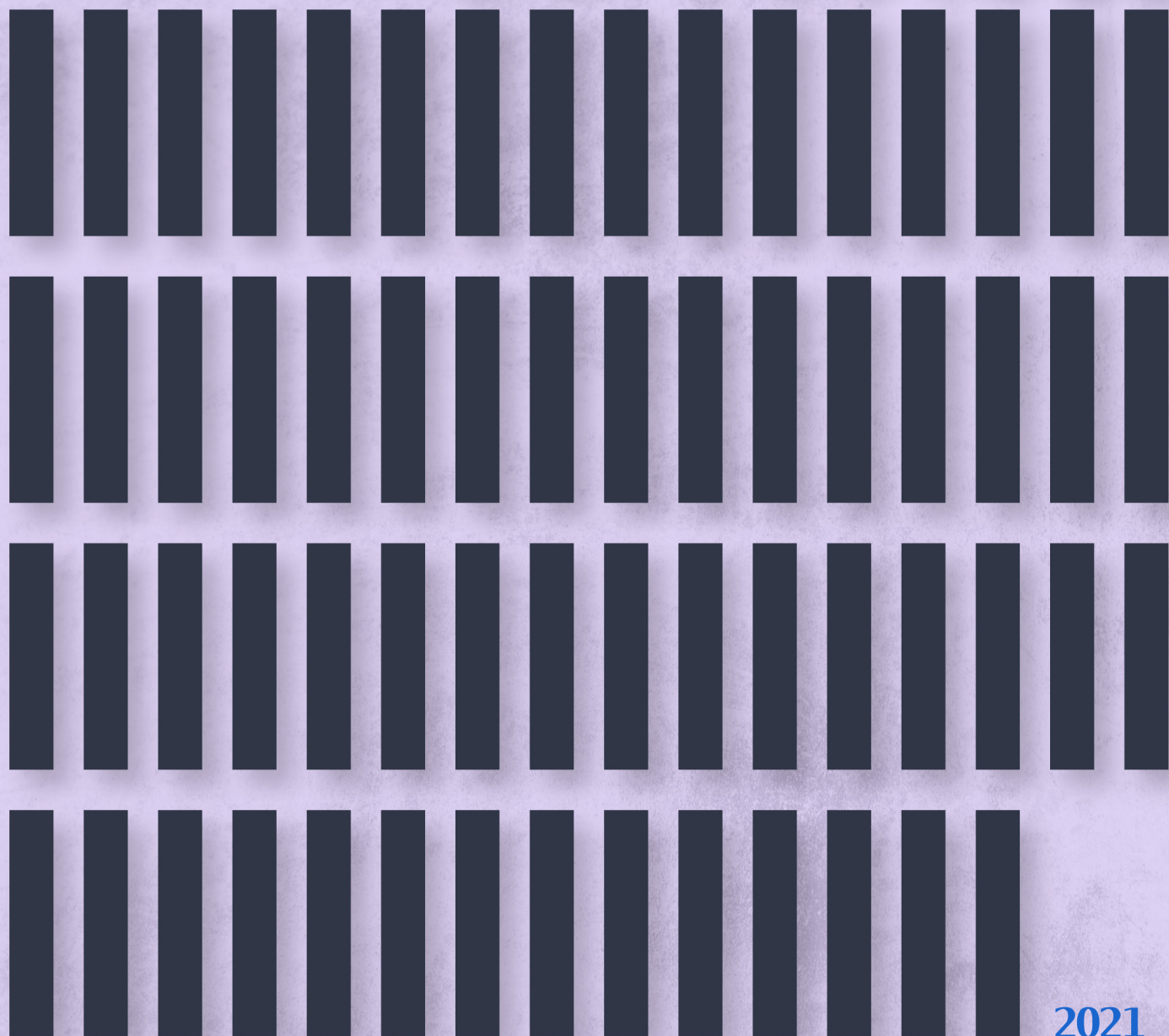


**HUMAN
RIGHTS
IN GEORGIA**



2021

HUMAN RIGHTS IN GEORGIA 2021



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Introduction

This report reviews the situation in terms of human rights protection in 2021 in Georgia. It summarizes the year's main events and incidents in the thematic order, to show the degree to which the Georgian authorities fulfill their duty to protect human rights and uphold the rule of law.

In light of the events described in the report, the situation of human rights in 2021 has deteriorated terribly in Georgia. Namely, the ruling party has grabbed control of almost every state institution, authoritarian tendencies are only getting stronger in the country and elections—the main democratic instrument, supposed to neutralize these tendencies—are powerless. In order to maintain power, the authorities do not shun away from serious human rights violations and deterioration of relations with international partners, further damaging the prospects of democratic progress in the country. As a result, the already depressing levels of Georgia's political, economic, and social problems feed widespread nihilism, while the prospects of formal, or value-based integration into the Euro-Atlantic space are drifting further and further away.

As in previous years, the right to assembly and manifestation was not properly protected in 2021, neither in practice nor at the legislative level. Namely, on July 05, 2021, the authorities did not or could not protect LGBT+ community and allies from hate groups, who violently disrupted the activities and the March of Dignity planned by Tbilisi Pride. Therefore, the state continues to ignore its duties and does not ensure that the LGBT+ community can enjoy its right to assembly in a peaceful environment. While the authorities do not (or cannot) prevent the violation of the right to assembly in case of sexual minorities, the authorities themselves violate this right in case of civil activists and manifestants. Namely, repression against civil activists sped up in 2021, expressed in illegal detentions of various manifestants and imposition of financial fines upon them. To silence the critical voices, both the law-enforcement, and the courts have resorted to excessive reliance on Administrative Offences Code of Georgia (AOCG), which does not meet modern human rights standards. Despite this, instead of amending the Code, the Parliament has introduced even stricter sanctions in its most problematic areas. Making matters worse, the Parliament has adopted "Law on Amnesty," and applied it to those law-enforcement officers, who gravely violated right to assembly of demonstrators on June 19-20, 2019.

The authorities have continued fighting critical voices in 2021. In terms of right to freedom of expression, the National Communications Commission has interfered in the affairs of (critical) media outlets frequently. Namely, under the pretext of obscenity, programs 'harmful to minors' and violation of political ad placement rules, the Commission has declared many broadcasters as offenders, which was an unconstitutional restriction on and interference in the right to freedom of expression. The Commission has imposed sizable fines for airing political ads, aimed at controlling the editorial policy of the media. Apart from activities of the Commission, physical and verbal attacks against journalists are also alarming. The most violent of these happened on July 5, 2021, when hate groups physically assaulted dozens of members of the media and damaged their equipment. The government not only does not prevent, suppress, and properly punish violence against journalists, but also encourages aggression by ramping up aggressive rhetoric against critical media.

And finally, a legislative initiative and a bill introduced in the Georgian Parliament aimed at banning "negative attitudes" and "hate speech" in political advertisements / political campaign materials degrade the quality of freedom of expression. The initiative and the bill constitute an unjustified and content-based restriction of freedom of expression, further violating international and constitutional standards.

In 2021, the State Security Service of Georgia was reported to have orchestrated a large-scale and illegal covert surveillance of individuals in Georgia. The prosecution and the courts did not grant the targets of the surveillance the status of the victim. The authorities did not have any adequate reaction to the cases of violation of privacy and the right to communicate. The government also has shown no will to amend and improve existing legislation that so grossly violates international and constitutional standards and does not actually protect the rights to privacy, family, personal space, and communication from illegal surveillance and similar covert activities.

In 2021, local self-government elections were of enormous importance because, according to the agreement reached by political parties, if 43% of the voters did not support the Georgian Dream in proportional vote, then early parliamentary elections would be called by the end of 2021. Unfortunately, both the pre-election and election period proper were characterized by serious irregularities, which called into question the existence of a fair, free, and equal electoral environment in Georgia and weakened confidence in the final vote tally.

Discrimination against minorities and lack of tolerance by both the state and society remain acutely challenging. Contrary to the principles of equality and inclusion, the establishment of the so called "Scientific-Advisory Council for National Minorities" under the Parliamentary Committee on Diaspora and Caucasian Affairs of the Parliament of Georgia is a sign that the Parliament regards Georgians with ethnic minority background as diaspora and inferior, second-grade citizens. The government's attitude towards sexual minorities is also tricky. There have been several hate-mongering attacks on LGBT+ community members during 2021, most notably the violent crackdown on the March of Dignity by radical groups on July 5. Not only did the government not respond effectively to these attacks, but we witnessed its representatives encourage homophobia with their statements. In addition, the state's approach to religious minorities is also worrying. The purchase of a building (for the purpose of turning it into a shrine) by local Muslim community in the village of Buknari in the Chokhatauri Municipality in January 2021 was followed by a confrontation between the Orthodox Christians and the Muslims, which was similar to the Islamophobic/Turkophobic conflicts observed in recent years in Georgia. In almost none of these incidents was there a proper response from the authorities. The state itself violates the religious minorities' right to equality. For example, the authorities temporarily lifted restrictions on the freedom of movement on January 1 and 7 (Orthodox Christmas) as well as Orthodox Easter, but they did not extend the same exception from the restriction to the non-dominant religious and ethnic groups when they were celebrating similar holidays (albeit on other dates).

Besides the discriminatory curfew, the authorities have applied justice in selective manners while supposedly managing the pandemic. An obvious example of a selective approach is the fact that the Prime Minister Irakli Gharibashvili was present at the large-scale "feast" on August 7, 2021, when the assembly of over 10 people for social events was strictly forbidden. Another manifestation of selective justice was the discriminatory pardoning of some offenders charged with violating anti-pandemic regulations. Only those whose offenses had occurred prior to 23 June 2021 and had not been enforced as of 9 September 2021 were pardoned. These persons, contrary to the right to equality, found themselves in a privileged position, as compared to those who had fully paid their penalties for similar offences from the moment the law had entered force. Pandemic management was also problematic, as pandemic related regulations were, because of their severity, tantamount to a *de facto* state of emergency, in violation of the Constitution of Georgia. They were also imposed

by a government regulation and not by the law, and contradicted the constitutional standard of proportionality.

In 2021, the situation in the justice system has not improved at all. Despite the EU negotiated Mediation Agreement, reached on 19 April, 2021, and the call of Georgia's international partners, the High Council of Justice and the Parliament kept on appointing judges to the Supreme Court, without accompanying major reforms in the judiciary. Electing the members of the Council itself was not stopped either. Because of these processes, persons appointed to these positions are of questionable competence, independence, and impartiality because of their connections to the "Clan," i.e. influential group of judges. Therefore, the justice system is still politicized.

In the absence of an independent and impartial judiciary, the continuation of politically motivated trials in 2021 is not surprising at all. On February 23, 2021, after the court had changed/terminated bail previously applied to Nika Melia, law-enforcement officers broke into the office of the main opposition party, the United National Movement, and arrested the party's leader, Nika Melia, using force. Nika Melia's arrest caused a wave of harsh criticism both domestically and internationally and further aggravated Georgia's political crisis. The case against Davit Kezerashvili, the former Minister of Defense and the founder of Formula TV, was similarly seen as politically motivated. Namely, after the acquittals by the lower courts, the Supreme Court of Georgia still found Kezerashvili guilty. The Ministry of Defense then sued Kezerashvili for damages, which the Georgian civic society deemed as pressure on critical media outlets. Ongoing trials and imprisonment of the country's third president, Mikheil Saakashvili, are politically motivated as well. To protest his detention, Mr. Saakashvili went on a hunger strike. Contrary to advice of medical experts, he was still transferred not to a multidisciplinary clinic, but to a penitentiary institution, where he was subjected to psychological pressure. Moreover, there were no proper conditions for treating the hunger-striking Saakashvili. Therefore, he was subjected to degrading and inhuman treatment. He was also denied the right to a fair trial - on several occasions, he was not allowed to attend his own trial.

In 2021, the human rights situation of children living in the Ninotsminda boarding house under the Patriarchate was a serious problem. Many cases of violation of the rights of minors were registered in the boarding school. The social workers and the ombudsman's monitoring team were denied access to the boarding house several times, to which the authorities did not respond properly. The court ruled on June 5 that each child was to immediately vacate the facility, but as of November 12, there were still 15 children present in the boarding school.

In 2021, the political tensions reached toxic levels. Because of the contested results of the 2020 parliamentary elections, the EU mediated several rounds of negotiations hoping to overcome the crisis between the government and the opposition. Finally, a political agreement was reached between the parties on April 19, 2021. The agreement also provided grounds for judicial reform and early parliamentary elections if the Georgian Dream failed to win 43% of the proportional vote in the 2021 local elections. Despite the agreement, as outlined above, the government continued appointing judges without implementing reforms, and eventually withdrew from the agreement. As a result, the political situation in Georgia became even more tense and the processes of Euro-Atlantic integration and democratic development of the country were further hindered. Moreover, this crisis has removed pandemic mismanagement out of focus; a mismanagement that has gravely endangered the health and economic well-being of Georgia's population.

1. Freedom of Assembly and Manifestation

1.1 Pogrom of the July 5th Dignity March

As in previous years, the LGBTQI + community members and activists sought to exercise their freedom of assembly in 2021 as well. To this end, "Tbilisi Pride" together with other organizations and supporters planned¹ the Pride Week: a documentary film screening, a music festival and a "March of Dignity."² Detailed information about the plan was provided in advance to the Ministry of Internal Affairs³. After the announcement of Pride Week, homophobic threats sped up from the representatives of pro-Russian and violent groups. They threatened in advance to disrupt the rally and not allow activists to march.⁴ They attempted to attack the Pride Week participants on July 1st and 3rd during film screenings and festival⁵.

On July 5, Prime Minister Irakli Gharibashvili called the march inappropriate and said that the LGBTQI+ community march should not take place.⁶ In effect, this encouraged violent groups. Thus, on July 5th, counter-demonstrators stormed the entrance to the Shame Movement's Office,⁷ and beat TV Pirveli cameraman Lekso Lashkarava who died a few days later.⁸ There were only a handful of police officers in the area and they could not or did not stop the violent attacks.⁹ Violent mob members raided the office of Tbilisi Pride as well. They climbed on the balcony of the office, tore down the pride flag, and damaged the office inventory.¹⁰ After this, the members of the Tbilisi Pride and other organizers moved into the UN office, but violent groups soon mobilized around the building and activists were forced to seek shelter in the Human Rights House¹¹. The mob followed the victims to the Human Rights House and started throwing explosives into the office further terrorizing the victims. One LGBTQ+ activist also sustained physical injury there.¹² At least 53 members of the media outlets, who were covering the events on that day, were injured.¹³ "Tbilisi Pride" issued a statement confirming that the "March of Dignity" was cancelled because of the violence that was encouraged and that human lives were put at risk.¹⁴

The events described above show that on July 5, 2021, the authorities did not ensure effective

1 GDI, 05.07.21 March of Dishonor, 2021, p 5. <https://gdi.ge/uploads/other/1/1387.pdf>

2 <https://cutt.ly/FTC5kZl> [Accessed on 07.12.2021].

3 GDI 05.07.21 March of Dishonor, 2021, pp. 5-6. <https://gdi.ge/uploads/other/1/1387.pdf>

4 <https://cutt.ly/tYg8LPJ> [Accessed on 07.12.2021]; GDI, March of Dishonor, 2021, pp. 7-9. <https://gdi.ge/uploads/other/1/1387.pdf>

5 GDI, March Without Honor, 2021, pp. 10-12. <https://gdi.ge/uploads/other/1/1387.pdf>.

6 <https://cutt.ly/ETC5zhW> [Accessed on 07.12.2021]; <https://www.facebook.com/watch/?ref=external&v=560870338408406> [Accessed on 07.12.2021].

7 <https://www.facebook.com/publika.ge/videos/2874940366060197/> [Accessed on 07.12.2021].

8 <https://netgazeti.ge/news/553547/>, <https://georgianjournal.ge/society/37204-cameraman-lekso-lashkarava-assaulted-during-anti-lgbt-violence-in-tbilisi-found-dead.html> [Accessed on 07.12.2021].

9 <https://www.facebook.com/publika.ge/videos/2874940366060197/> [Accessed on 07.12.2021].

10 <https://www.radiotavisupleba.ge/a/31341554.html>.
<https://agenda.ge/en/news/2021/1844> [Accessed on 07.12.2021].

11 GDI, 05.07.21 March of Dishonor, 2021, p 13.

12 <https://netgazeti.ge/news/552305/> [Accessed on 07.12.2021].

13 <https://agenda.ge/en/news/2021/1856> [Accessed on 07.12.2021]; <https://bit.ly/3FpfCpA> [Accessed on 07.12.2021].

14 <https://www.facebook.com/TiflisPride/posts/1157851558052362> [Accessed on 07.12.2021].

protection of LGBTQI + community members, supporters, activists, and media from violent groups. Even more alarming is the fact that the authorities not only failed to take effective defensive and preventive measures, but have themselves encouraged violence and aggression with their openly homophobic and anti-democratic rhetoric, directed against the participants of the March of Dignity. Thus, the state violated its positive obligation regarding the freedom of expression and assembly and prohibition of degrading treatment. According to the official data provided by the Ministry of Internal Affairs, in connection with the events of July 5-6, "31 people have been arrested, of which 27 for assault and violence against journalists, 3 for assaulting the Tbilisi Pride office, and 1 for assaulting a citizen."¹⁵ Also worth noting is the fact that as of December, 2021, police have not arrested a single organizer of the violent pogrom. The GDI is representing the interests of the activists affected on July 5th. We are preparing appeal on behalf of the victims at the European Court of Human Rights. Please consult the GDI [report](#) for more information on the events of July 5-6, 2021.

1.2 Protests in Front of Various Public Institutions

Activists staged several anti-government protests in 2021, most of them notable by the scale of the arrest of civilian activists and the state's repressive policies against them. Accordingly, the following are but a handful highlights of the authorities' violation of freedom of assembly.

On February 19 and 21, 2021, police arrested peaceful civil activists who tried to set up tents in front of Parliament of Georgia, while Georgian law does not prohibit setting up such tents¹⁶ and this is not the first time that police have restricted demonstrators from expressing protest in this manner¹⁷.

On April 14, at a rally outside the Georgian Dream office, police detained five activists who were demanding the lifting of a five-day quarantine imposed on citizens living in the occupied territories of Georgia. The Ministry of Internal Affairs launched legal action against them under Articles 166 (petty hooliganism) and 173 (disobeying a lawful request of the police officer) of the AOCC.¹⁸ According to the MIA statement, operative and investigative actions led to the detention of Giorgi Mumladze on charges of resisting police officers. He is facing 2 to 5 years in prison sentence.¹⁹

Protests also took place on April 12th, near the administrative building of the government of the Autonomous Republic of Abkhazia. There, police used force against the demonstrators. In connection with the protest, the activists appealed to the State Inspector's Office. The Office launched an investigation into the alleged use of excessive force against the protest participants.²⁰

On June 3, 2021, there was a rally in front of the Prosecutor General's Office to protest the developments regarding the Ninotsminda Orphanage. With no warning, police detained activist Giga Makarashvili

15 Response letter of the Ministry of Internal Affairs of Georgia on August 17, 2021.

16 Part 2 of Article 11 of the Law of Georgia on Assembly and Demonstration; <https://gyla.ge/en/post/saia-moutsodebs-shinagan-saqmeta-saministros-pativi-sces-trotuarze-karavis-meshveobit-shekrebis-chatarebis-uflebas> [Accessed on 07.12.2021].

17 <https://gyla.ge/en/post/saia-moutsodebs-shinagan-saqmeta-saministros-pativi-sces-trotuarze-karavis-meshveobit-shekrebis-chatarebis-uflebas> [Accessed on 07.12.2021].

18 <https://www.radiotavisupleba.ge/a/31203173.html> [Accessed on 07.12.2021].

19 <https://police.ge/en/sapatrulo-politsiis-tanamshromlebma-erti-piri-daakaves%C2%A0/14542> [Accessed on 07.12.2021].

20 <https://www.facebook.com/DPAGeorgiaOfficial/posts/2401131820029649> [Accessed on 07.12.2021].

when he was only exercising his constitutional right to assembly. He did not resist arrest,²¹ but police officers still broke his arm during the arrest, inflicting physical injuries upon him²². Despite this, he was refused the status of the victim.²³ On September 10, 2021, Tbilisi City Court Judge Lela Tsagareishvili found Giga Makarashvili an administrative offender for disobeying a police request and fined him GEL 2,000.²⁴

On July 12th, police detained another 12 individuals at a rally held in front of the Georgian Dream Party's HQ. Among them was a journalist of the Public Broadcaster, Irakli Absandze. Although he did not resist his arrest, the police broke his arm, according to his own account.²⁵

Political party Girchi-More Freedom's rally in front of the State Security Service:

On September 16, 2021, political party Girchi-More Freedom held a rally-performance in front of the State Security Service HQ. At the rally, the party members demonstratively damaged their own ŠKODA (Note: this brand is frequently used by Police force in Georgia) vehicle. Under Article 166 (petty hooliganism) and 173 (disobedience of a lawful request of the police officer) of the AOCG, the police detained Girchi members and their majoritarian candidates in the Saburtalo and Didube Districts, Nika Mosiashvili and Boris (Chele) Kurua.²⁶ Court found Boris Kurua guilty and fined him 2000 GEL penalty.²⁷ The court is still reviewing the case against Mr. Mosiashvili.

November 10 Rallies Held by Opposition Parties:

On November 10, 2021, opposition parties organized protest rallies in front of various administrative buildings in Tbilisi. During the rallies, law enforcement officials detained 46 citizens²⁸ on the grounds of petty hooliganism and disobedience of the lawful request of a police officer under the AOCG. The developments of November 10 displayed clear signs of unjustified and disproportionate use of coercive policing. According to eyewitness accounts and media reports, some citizens detained by law enforcement officers were standing away from the epicenter of the events, and there were no signs of any offence or obstruction of work of state agencies committed by these individuals.²⁹

Other Rallies:

- ▶ *On October 30, 2021, the day of the second round of municipal elections, the police arrested 5 people by force in Zugdidi, near the 20th polling station under Articles 166 and 173 of the AOCG. Among the arrested were the observers and activists of the United National Movement - Giorgi*

21 <https://www.facebook.com/watch/?v=232762834921997> [Accessed on 07.12.2021].

22 <https://www.radiotavisupleba.ge/a/31289083.html>.
<https://jam-news.net/why-a-church-orphanage-has-sparked-outrage-in-georgia/> [Accessed on 07.12.2021].

23 <https://cutt.ly/4Yl3x8C> [Accessed on 07.12.2021].

24 <https://cutt.ly/dTC5XpE> . <https://csogeorgia.org/en/newsPost/28282> [Accessed on 07.12.2021].

25 <https://cutt.ly/qTC5BbV>; <https://cutt.ly/HYbOEjG>. <https://frontnews.eu/en/news/details/7961>
[Accessed on 07.12.2021].

26 <https://www.radiotavisupleba.ge/a/31463536.html> [Accessed on 07.12.2021].

27 <https://cutt.ly/9YhQKip>. <https://agenda.ge/en/news/2021/2692> [Accessed on 07.12.2021].

28 <https://police.ge/en/shinagan-saqmeta-saministros-gantskhadeba/15032> Accessed on 07.12.2021].

29 <https://cutt.ly/gYheyRU> [Accessed on 07.12.2021].

*Mumladze and Nika Narsia.*³⁰

- ▶ *On November 1, in Kutaisi, police detained civil activists for disobedience. The activists were planning to draw a “Free Misha” slogan in front of the Kutaisi City Hall.*³¹
- ▶ *In Kutaisi, police arrested Imeda Kldiashvili, a member of the Girchi - More Freedom party and a candidate for the Kutaisi Vice-Mayoral position put forward by the united opposition forces, for disobedience. As part of his civil disobedience act, he stopped a car in front of the entrance, blocking the State Security Service building to protest pressure from the Security Service on a person who, according to Kldiashvili, had information about election fraud committed by this agency.*³²
- ▶ *On November 1st, police detained activists in Tbilisi who were contesting the election results, as well as protesting the restriction of Mikheil Saakashvili's freedom. Police did not allow the protesters to set up tents in front of the Parliament. They arrested 2 activists under administrative procedures.*³³
- ▶ *The Ministry of Internal Affairs allegedly used pepper spray at a rally held to support Mikheil Saakashvili in front of the Tbilisi City Court on November 21st.*³⁴

GDI, together with partner organizations, provides legal help to activists detained during these rallies. At least 16 of the activists arrested in October-November have already been fined, while 10 have been remanded in custody. Only two cases have been declared unlawful by an upper instance court and only 1 case has been thrown out. In other cases, the process is postponed indefinitely or is still ongoing.

Thus, the practice of mass detention applied by law enforcement bodies violates freedom of peaceful assembly and expression. The scale of recent arrests and its legal consequences so far (fines, imprisonment) clearly denotes that the authorities are on a repressive path. They fight critical voices by grossly violating the law. The legality of these detentions on rallies (and not only there) is controversial, as is the consideration of such cases in the courts. There, in most cases, the judges do not adhere to modern human rights standards, violate procedural guarantees of detainees, and unjustifiably impose administrative sanctions on them.

1.3 Tightening of the Sanctions in the AOCG

On April 29, 2021, the Parliament of Georgia in an expedited manner, with third reading³⁵ added Part 2 to the Article 166 of AOCG (petty hooliganism). Part 2 stipulates that repeated committal of the same administrative offense by a person charged with petty hooliganism will cause a fine ranging from

30 <https://formulanews.ge/News/59179> [Accessed on 07.12.2021].

31 <https://formulanews.ge/News/59335> [Accessed on 07.12.2021]

32 <https://mtavari.tv/news/62589-girchi-meti-tavisuplebis-cevri-imedakldiashvili>.
https://idf.ge/en/imedakldiashvilis_arrest_case [Accessed on 07.12.2021].

33 <https://formulanews.ge/News/59358> [Accessed on 07.12.2021].

34 <https://www.radiotavisupleba.ge/a/31584738.html> [Accessed on 07.12.2021].

35 <https://www.radiotavisupleba.ge/a/31229882.html> [Accessed on 07.12.2021].

GEL 1,500 to GEL 2000, or administrative detention ranging from 7 days to 15 days. The sanctions for the violation provided for in Article 173 of the same Code (disobedience or insult of a lawful request of the law enforcement officer) were also tightened. It now includes fines ranging from GEL 3,500 to GEL 4,500 or administrative detention ranging from 7 to 15 days, instead of fine previously ranging from GEL 1,000 to GEL 4,000. It is notable that these norms are the most often used articles by the law enforcement to detain demonstrators during rallies. Therefore, the risk of arbitrary interference in the freedom of assembly and demonstration by using these restrictive norms is now alarmingly critical.³⁶ It is also notable that later in the year, these tougher norms and penalties were repeatedly used against demonstrators at the rallies.

1.4 Amnesty Law

On September 7, 2021, the Parliament adopted the Law on Amnesty under the Charles Michel Agreement.³⁷ According to the government, the aim of the act was to lessen polarization in Georgian politics, to prevent politicization of the attempted invasion into the Parliament of Georgia on June 20, 2019, and of abuse of power by law enforcement officials during the aforementioned event. The law exempts anyone from criminal liability, punishment and probation who committed crimes in connection with the events of June 19-21, 2019 and did not contest to be included in the amnesty. Their records regarding these convictions will be purged and considered not to have been convicted at all.³⁸

Therefore, the amnesty was extended to the unlawfully acting state representatives, who substantially violated the constitutional and conventional rights of the June 19-20, 2019 rally participants. Only such crimes as intentional grievous bodily harm; torture; threats of torture; humiliating, or inhuman treatment are excluded from the scope of the Amnesty Law.³⁹ The act was condemned, especially by the victims of June 20th violence.⁴⁰

2. Freedom of Expression and Media

2.1 Activities of the Georgian National Communications Commission

In 2021, the Georgian National Communications Commission (GNCC) repeatedly tried to interfere with media freedom, as reflected in its decisions to fine broadcasters or declare them offenders.

The GNCC decision on January 28, 2021 to find Mtavari TV channel as an offender for airing a story was alarming. The story, which was found obscene by the GNCC, only contained political satire, but the "Mtavari TV Channel " Ltd., was still declared an offender even when administrative sanctions were lifted later.⁴¹

36 <https://cutt.ly/STC5azX> [Accessed on 07.12.2021].

37 <https://parliament.ge/en/media/news/parlamentma-annistiis-shesakheb-kanonproekti-mesame-mosmenit-miigho> [Accessed on 07.12.2021]

38 The Law of Georgia on Amnesty, part 1 of Article 1
See: <https://www.matsne.gov.ge/ka/document/view/5199308?publication=0> [Accessed on 07.12.2021].

39 The Law of Georgia on Amnesty, Article 2
See: <https://www.matsne.gov.ge/ka/document/view/5199308?publication=0> [Accessed on 07.12.2021].

40 <http://hotnews.ge/index.php/en/north-america/item/24372-makogomur-arnist> [Accessed on 07.12.2021]; <https://gdi.ge/ge/news/statement-05-05-2021.page> [Accessed on 07.12.2021].

41 See <https://comcom.ge/ge/legal-acts/solutions/202.1-1-21-18-22.page>. <https://civil.ge/archives/393888> [Accessed on 06.12.2021].

According to the civil society organizations, the Commission's crusade against 'obscenity' is an unlawful attempt to interfere in the content of broadcasters' programs. The Commission does not have any legislative authority to consider the lawfulness of broadcasting obscene programs.⁴² However, the GNCC still issued three decisions declaring broadcasters as offenders for posting 'obscene programming'.⁴³

Attempts to regulate the content of broadcaster programming also include the authority granted to the GNCC to assess which programs may harm minors. According to the amendments to the Law of Georgia on Broadcasting and the Code of the Rights of the Child, which entered in force on September 1, 2020, the broadcasters are now obliged to protect minors from harmful content and are prohibited from airing such harmful programs.⁴⁴

The GNCC repeatedly used the aforementioned authority throughout 2021. It issued 9 decisions in one year out of which violations were found and broadcasters were sanctioned in 5 cases.⁴⁵

The constitutionality of the aforesaid norms has been challenged before the Constitutional Court of Georgia with GDI's legal help⁴⁶. GDI believes that they unconstitutionally restrict the freedom of expression and media as protected by Article 17 of the Constitution of Georgia, and its vague wording fails legal tests for clarity ("offensive language", "obscene act", etc.).⁴⁷

Attention should also be paid to the activities of the GNCC within the framework of the media monitoring during the pre-election period of the 2021 municipal elections. On October 27, 2021, the GNCC again found 'Mtavari TV' as offender, and drafted administrative offences report for unlawfully airing pre-election political ads.⁴⁸ The Administrative Board of the Tbilisi City Court annulled the GNCC decision on October 29, 2021, and clarified that the videos aired by Mtavari TV Channel (featuring the Third President of Georgia, Saakashvili) were not pre-election political advertisements. Here, the Court fully considered GDI's *amicus curiae* argumentation.⁴⁹ The October 29, 2021 decision of the Tbilisi City Court was appealed by the GNCC. As a result, the Tbilisi Court of Appeals sent the case back to the lower instance court for another hearing. Hence, the City Court may change its initial decision.

On November 25, 2021, the GNCC fined the Mtavari TV Channel for unlawfully broadcasting political ads during the non-pre-election period. The sanctions were exorbitant—at 112,000 GEL.⁵⁰ The decision taken against Mtavari TV goes beyond the Commission's mandate, is based on a subjective interpretation of the legislation by the Commission and is an disproportionate interference in media

42 See <http://mediacoalition.ge/ge/a/ed3ef8d3> [Accessed on 06.12.2021].

43 See <https://bit.ly/3HWC1fd>; <https://bit.ly/3nRTYbN>; <https://bit.ly/3xluVfs> [Accessed on 06.12.2021].

44 Article 66 of the Code on the Rights of the Child; Articles 561 და 562 of the Law of Georgia on Broadcasting

45 See <https://bit.ly/3p48RSX>; <https://bit.ly/3cMdPxj>; <https://bit.ly/3r8Pivj>; <https://bit.ly/3l477lo>; <https://bit.ly/2ZqNZMU> [Accessed on 06.12.2021].

46 Record of The Constitutional Court of Georgia of June 23, 2021, N1/2/1537 of the Constitutional Court of Georgia, is available here: <https://constcourt.ge/en/judicial-acts?legal=11632> [Accessed on 06.12.2021].

47 Georgian Democracy Initiative, Human Rights in Georgia 2020, p.8. See <https://gdi.ge/uploads/other/1/1282.pdf> [Accessed on 06.12.2021].

48 See <https://bit.ly/3cPnW4Z> [Accessed on 06.12.2021].

49 See <https://gdi.ge/ge/news/sasamartlo-megobris-mosazreba-29-10-2021.page> [Accessed on 06.12.2021].

50 See <https://bit.ly/3rby6p6>. <https://civil.ge/archives/457826> [Accessed on 06.12.2021].

freedom . Responding to the GNCC's decision, the Coalition for Media Advocacy explained that several high-level sanctions against the Mtavari TV Channel show that the Commission is trying to punish the broadcaster by leveraging financial sanctions and to influence its editorial policy.⁵¹

2.2 Attacks on Journalists and Media Representatives and Obstruction of Media

The year 2021 saw a noticeable number of attacks on journalists and media representatives. During the reporting period, several physical and verbal assaults were carried out against journalists by the public as a result of the statements encouraging violence and discrediting statements made by the government representatives and their failure to ensure the safety of the media.

The events of July 5-6, 2021, when the media representatives were trying to cover the counter-rally against the "March of Dignity," journalists themselves became the victims of a large-scale attack by violent mobs. According to the GDI's report, "the authorities violated the obligation to defend media representatives from degrading treatment on July 5th - 6th and also could not or would not ensure a safe environment for their professional media activities/work , thus violating the right to freedom of expression."⁵²

Besides the large-scale attacks of July 5-6, 2021, members of the media (especially critical media) were repeated targets of physical and verbal attacks. The attack on February 25, 2021 against Formula TV talk-show host, Vakho Sanaia and his family members is only one example. We believe that the attack against the journalist and his family results from the aggression the ruling party harbors towards the critical media and was caused by the Georgian Dream members' statements about the critical media and inappropriate response of the authorities to the attacks on journalists.⁵³

Although the attack on journalist Vakho Sanaia was followed up by the calls by the Public Defender⁵⁴ and NGOs,⁵⁵ to investigate the attack, the court dealing with the case only imposed a minimal, 6-month imprisonment on the perpetrators.⁵⁶ The court ruling was criticized by the Media Advocacy Coalition, explaining that such a forgiving attitude towards violence against journalists was a recipe for increasing aggression against critical media.⁵⁷

GDI represents the interests of the victim - Vakho Sanaia and it has asked the Prosecutor's Office of Georgia to appeal the Tbilisi City Court verdict. In GDI's opinion, the court's decision is unlawful and unjustified.⁵⁸ The prosecutor's office appealed the verdict, namely its part concerning the sentence, to the Court of Appeals and the Public Defender of Georgia submitted *amicus curiae* as well.

Alarmingly, the employees of the "Formula" TV Channel were attacked once again on April 9, 2021.

51 See <https://bit.ly/3lBYt3Q> [Accessed on 06.12.2021].

52 See <https://bit.ly/32Uz12V> [Accessed on 06.12.2021].

53 See <http://mediacoalition.ge/ge/a/a4347102>. <https://osgf.ge/en/media-advocacy-coalition-responds-to-the-attack-on-journalist-vakho-sanaia-and-his-family-members/> [Accessed on 06.12.2021].

54 See <https://ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-gantskhadeba-zhurnalst-vakho-sanaiaze-tavdaskhmastan-dakavshirebit> [Accessed on 06.12.2021].

55 See <http://mediacoalition.ge/ge/a/a4347102>. <https://ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-gantskhadeba-zhurnalst-vakho-sanaiaze-tavdaskhmastan-dakavshirebit> [Accessed on 06.12.2021].

56 See <https://bit.ly/3DTSntf>. <https://agenda.ge/en/news/2021/2424> [Accessed on 06.12.2021].

57 See <http://mediacoalition.ge/ge/a/c0cf9f3d> [Accessed on 06.12.2021].

58 See <https://gdi.ge/ge/news/vaxo-sanaias-mimart-tavdasxma.page> [Accessed on 06.12.2021].

According to the broadcaster, one of their employees was physically assaulted, and another's property (vehicle) was damaged.⁵⁹ The Public Defender of Georgia once again called on the authorities to timely and effectively investigate the attacks on "Formula" TV employees and to ensure that perpetrators face justice.⁶⁰

The government's hostility towards critical media is also visible in the conflict that took place between the members of the Georgian Dream Party and the film crew of the Mtavari TV Channel on September 15, 2021. According to the Mtavari TV, as their cameraman, Levan Ablotia was preparing a story about Kareli mayoral candidate Zaza Guliashvili, together with journalist Beka Korshia, he was attacked and thrown from the second-floor balcony of the Georgian Dream's Kareli office.⁶¹ According to the journalist, Beka Korshia, members of the Georgian Dream Party, were aggressive from the moment the journalist and his cameraman set foot in the building. The Georgian Dream Party representatives challenge this version of the story. According to them, the cameraman himself fell from the railing of the stairs and not from the balcony. However, they too confirm that the verbal confrontation between the film crew and the staff members took place on that day.⁶² An investigation is underway under Article 124 of the Criminal Code (less severe or severe damage to health because of negligence).⁶³

Critical media representatives have also become the victims of several verbal or physical attacks by clergymen. On May 4, 2021, clergymen verbally and physically assaulted Mtavari TV Channel journalist, Ninutsa Kekelia and her cameraman, Irakli Kvaratskhelia, while they were working on a story in Davit Gareji.⁶⁴ On May 8, 2021, a video was aired that shows Irakli Vachiberidze, another journalist from Mtavari TV, being verbally and then physically assaulted by Vani and Baghdati Metropolitan Anton Bulukhia while the journalist was trying to do his work.⁶⁵ The Georgian Charter of Journalistic Ethics responded to these attacks by the clergy, noting that "law enforcement agencies' inadequately tough response to these attacks against the journalists further promotes such violence and hinders the work of journalists, and is very damaging for the media environment."⁶⁶

Director General of the Public Broadcaster, Tinatin Berdzenishvili, on August 9, 2021 sacked Irakli Absandze, the host of the talk-show "Sunday Interview". We view this as interference in media independence, since Irakli Absandze is known for his critical statements on events unfolding in the country. He even took part in a protest rally in front of the ruling party office on July 12, 2021, where the police detained him and broke his arm.⁶⁷

Although the gross/repeated violation of contractual obligations and/or internal labor regulations

59 See <https://bit.ly/3p0bsNC> [Accessed on 06.12.2021].

60 See <https://ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-gantskhadeba-mediis-tsarmomadgenelta-mimart-gankhortsielebuli-danashaulebrivi-kmedebebis-taobaze> [Accessed on 06.12.2021].

61 See <https://bit.ly/3Gqf8iY> [Accessed on 25.11.2021]

62 See <https://bit.ly/3EHEEzO>. <https://agenda.ge/en/news/2021/2683> [Accessed on 25.11.2021]

63 See <https://www.radiotavisupleba.ge/a/31463105.html> [Accessed on 25.11.2021]

64 See <https://bit.ly/3HVifkb>. <http://frontnews.ge/en/news/details/11899> [Accessed on 06.12.2021].

65 See <https://bit.ly/3xoB9ew> [Accessed on 06.12.2021].

66 See <https://bit.ly/3oVY9hc> [Accessed on 06.12.2021].

67 See <https://bit.ly/3EeqVoA> [Accessed on 06.12.2021].

was given as the official reason for Irakli Absandze's dismissal,⁶⁸ The Coalition for Media Advocacy assessed the dismissal of the TV presenter in the following words: "Irakli Absandze's sacking coincides with critically deteriorating media landscape and the pre-election period in Georgia, which further raises doubts about the editorial independence of the Public Broadcaster. The legal grounds given in the order of the Director General of the Broadcaster are dubious and the decision leaves the impression that the journalist was fired because of his critical views."⁶⁹ It should also be taken into consideration that violent groups had been repeatedly demanding that the host of the show be fired. For example, such demands were voiced by Alt Info, which makes all these developments even more suspicious of why the journalist was fired from his job.⁷⁰

2.3 Order of March 9, 2021 against TV Pirveli

On March 9, 2021, the Tbilisi City Court issued ruling permitting a seizure of the materials transferred by the confidential source to TV Pirveli.⁷¹

The Court's order was issued after an audio recording broadcast by TV Pirveli on March 6, 2021, showed that the persecution and threatening of young people, including minors, was carried out because of criticisms voiced against Bidzina Ivanishvili's son, Bera Ivanishvili, including, via social media. The recording, also disclosed that one perpetrator of these threats may be the current Prime Minister Irakli Garibashvili himself.⁷²

The Public Defender of Georgia condemned the order of March 9, 2021. She argued that the court did not discuss what effect such investigative actions would have on the quality of protection of the journalist's speech and freedom of expression, and stated that the order was legally unreasonable. It is notable that eventually, the order never came to be enforced.⁷³

2.4 Attempts to Ban Political Ads/Agitation Materials With 'Negative Attitudes' and 'Hate Speech'

During the 2021 election period, legislative initiatives were presented to the Parliament of Georgia to prohibit political advertisements/campaign materials that contain 'negative attitudes' and 'hate speech.'

On October 4, 2021, "Alma," an ad agency, addressed the Parliament of Georgia with a legislative proposal and demanded that legislative amendments be adopted that ensure "the prevention of placing ad banners throughout municipalities that contain hate speech, polarize society, cause aggression, are of unethical and offensive nature."⁷⁴ The Legal Affairs Committee supported the

68 See <https://civil.ge/archives/436190> [Accessed on 06.12.2021].

69 See <https://gdi.ge/ge/news/media-koalicia-13-08-21.page> [Accessed on 06.12.2021].

70 See <http://mythdetector.ge/en/myth/strategy-pro-kremlin-violent-groups-burning-western-symbolic-should-be-normalized> [Accessed on 06.12.2021].

71 See <https://bit.ly/3FOyNbP> [Accessed on 06.12.2021].

72 See <https://civil.ge/archives/403782> [Accessed on 06.12.2021].

73 See <https://ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsveli-telekompania-tv-pirvelshi-zhurnalistor-tsqarostan-dakavshirebuli-amoghebis-chatarebas-daushveblad-miichnevs> [Accessed on 06.12.2021].

74 See <https://parliament.ge/legislation/22870> [Accessed on 06.12.2021].

legislative proposal presented by Alma LLC.⁷⁵

On October 13, 2021, the lawmakers of the political party "Georgian Dream - Democratic Georgia" registered a draft law that prohibits publishing/distributing electoral banners and ads that contain negative attitudes towards political competitors during electoral campaigns.⁷⁶ According to the authors of the bill, the amendments shall be made to the Law of Georgia on Broadcasting and the Electoral Code of Georgia, to ban the dissemination of pre-election advertisements or campaign materials that are "intended to create negative attitudes towards an electoral subject/electoral subject candidate."⁷⁷

In the pre-election period (as in previous elections) the so-called "bloody banners" supporting the election campaign of the Georgian Dream featured various opposition party leaders, including former Prime Minister Giorgi Gakharia and had slogans "No to the Nazis!", "No to evil!", "No to betrayal!" written on them.

The GDI believed that the proposed legislative amendments constitute a morally and legally unsubstantiated and content-based regulation of freedom of expression. According to the GDI, these legislative amendments do not address the realization of legitimate objectives worthy of protection and are not a useful tool for achieving their purported goal. Both the legislative proposal and the draft law ignore the practice of the Constitutional Court of Georgia regarding the freedom of expression and the requirements for foreseeability of the law.⁷⁸ With this in mind, the GDI addressed the Parliament of Georgia with comments related to these bills and called on the Parliament to drop the draft law and legislative proposal.⁷⁹

3. Right to Privacy

On September 13, 2021, through various media, information was disseminated⁸⁰ on the eavesdropping of clergymen, politicians, lawyers, journalists, diplomats, activists, and others by the State Security Service of Georgia.⁸¹ According to media outlets, they received an email link to a site, where files depicting thousands of private communications were posted.⁸²

Based on the disseminated information, Prosecutor's Office of Georgia launched an investigation for the violation of private communication (crime punishable under Article 158 (1) and (2) of the Criminal Code of Georgia).⁸³ The journalists and other persons who figured in the aforesaid files confirmed the authenticity of the conversations.⁸⁴ Thus, they suffered immediate damage as their right to private

75 See <https://bit.ly/3DqQ0GR> [Accessed on 06.12.2021].

76 See <https://info.parliament.ge/#law-drafting/22918> [Accessed on 06.12.2021].

77 Ibid.

78 See <https://bit.ly/3p0hQVb> [Accessed on 06.12.2021].

79 Ibid.

80 <https://formulanews.ge/News/56536>. <https://civil.ge/archives/403848> [Accessed on 24.11.2021]

81 <https://mtavari.tv/news/56304-sasuliero-pirebis-seksualuri-orientatsia-carsuli>. <https://mtavari.tv/en/news/56321-sexual-orientation-and-past-clergy-more> [Accessed on 24.11.2021]

82 <https://bit.ly/2Zmm40C>. <https://civil.ge/archives/440008> [Accessed on 24.11.2021]

83 <https://pog.gov.ge/en/news/saqarTvelos-prokuraturashi-mediasashualebebis-mier-farul-chanawerebTan-dakavshirebiT-gavrcelebul-inf> [Accessed on 24.11.2021]

84 <https://gdi.ge/ge/news/xelisufleba-ganagrzdobs-sus-is-totaluri-kontrolis-meqanizmad-gamoyenebas.page> [Accessed on 24.11.2021]

communication was infringed. However, (as of December 2021) the Prosecutor's Office refuses to recognize them as victims, despite the GDI appeal (which represents the interests of the victims). The court also failed to defend the interest of the victims as it did not order the Prosecutor's Office to correct its mistake and reverse its refusal to grant the status of the victim.⁸⁵ The State Inspector's Service confirmed that the secret surveillance/eavesdropping of the individuals represented by GDI did not occur under its supervision. This is an additional confirmation that the covert surveillance was illegal.⁸⁶

Despite disclosure of systematic illegal wiretapping and surveillance, alarmingly, those in charge of these actions are not criminally prosecuted, and the high-ranking officials on whose orders the alleged illegal wiretapping and surveillance took place are still holding their governmental positions

Unfortunately, illegal interception of private conversations likely continues, a fact confirmed by the experiments conducted by civil rights activists and journalists: on November 11, 2021, members of the Shame Movement spoke to each other on a telephone, pretending to plan a picket of the Parliament building and then the office of the "Georgian Dream". The phone conversations were followed by the mobilization of dozens of police officers in these locations on the times heard through the mock conversations. This shows that, most likely, the Service is wiretapping the phone conversations of these activists.⁸⁷ TV Pirveli experiment ended with similar results.⁸⁸

Unfortunately, the current legislation does not adequately protect the rights to privacy and family life and inviolability of communication from illegal surveillance and similar covert activities. The current regulation, for example, does not explicitly distinguish between operative, police preventative, investigative and criminal investigative measures,⁸⁹ allows operative work with no court supervision⁹⁰ and does not establish effective mechanisms to control such covert surveillance.⁹¹ The current legislation was adopted in contravention of the standards set by the Constitutional Court of Georgia.⁹² The problematic legal norms were appealed in 2017, but the Constitutional Court still has made no decision on this appeal submitted by the Public Defender, political parties and over 300 private individuals.⁹³

4. Voting Rights (2021 Local Self-Government Elections)

The results of municipal elections held in Georgia on October 2nd and 31st, 2021, had special importance. According to the agreement reached between the political parties on April 19, 2021, with the help of

85 <https://gdi.ge/ge/news/saxelmwifo-inspeqtori-adasturebs-rom-susi-is-failebshi-arsebuli-6-jurnalistisa-da-parlamentis-wevris-farul-mosmenamiyuradebas-misi-metvalyureobis-farglebshi-adgili-ar-hqonia.page> [Accessed on 24.11.2021]

86 Ibid.

87 <https://mtavari.tv/news/63914-tsuru-piketi-mosmenebi-sirtskhviliam-susi-makheshi> [Accessed on 24.11.2021]

88 <https://tvpirveli.ge/ka/siaxleebi/politika/12565-susi-isev-gvismens-tv-pirvelis-eqsperimenti> [Accessed on 24.11.2021]

89 Social Justice Center (former EMC), Operative Work in Law Enforcement Agencies, 2019, pp. 12-13, See: https://socialjustice.org.ge/uploads/products/pdf/ENG_WEB_1576492266.pdf [Accessed on 04.12.2021].

90 Social Justice Center (former EMC), Operative-Investigation work in Law Enforcement Agencies, 2019, 78.

91 Social Justice Center (former EMC), Operative-Investigation work in Law Enforcement Agencies, 2019, pp. 73-75.

92 https://idfi.ge/ge/monitoring_results_of_constitutional_court_hearing_on_secrete_surveillance [Accessed on 04.12.2021].

93 https://idfi.ge/ge/monitoring_results_of_constitutional_court_hearing_on_secrete_surveillance [Accessed on 04.12.2021]; Why did the Constitutional Court hide the case of "covert surveillance" – 28 months have passed since the review <https://batumelebi.netgazeti.ge/news/358385/> [Accessed on 04.12.2021].

international partners, if the "Georgian Dream" could not win the support of 43% of voters voting proportionally, early parliamentary elections would be called by the end of 2021.⁹⁴ Against the background of the agreement, ensuring fair, free, and equal conditions for municipal elections became even more important. Unfortunately, the pre-election and election period was in stark contrast to these principles. Namely, "the pre-election environment was damaged by the high number of reports of political pressure, threats, as well as forced dismissals or resignations, and the ineffective investigation of such cases by the relevant authorities."⁹⁵ On both election days, local observers and NGOs noted several significant shortcomings, including: voter control, bribery and intimidation, mobilization of criminals and suspicious persons near polling stations for alleged voter intimidation and pressuring. Observers also reported seeing "voter carousels," violation of vote secrecy rules, and physical and verbal abuse and aggression towards media and observers⁹⁶. Another serious problem was the blurring of the lines between the ruling party and the state, the Georgian Dream's advantage in access to administrative resources and the resulting unequal conditions for the competition.⁹⁷ The review of lodged appeals revealed harmful trends, such as the lack of a uniform standard for assessing evidence by district election commissions, and the disregard for proportionality when imposing disciplinary liabilities.⁹⁸ According to local observer organizations and NGOs, "the violations identified [in the process] had a clearly damaging impact on the voters' free will and on the public's trust in the electoral process and in its results. In certain municipalities these disruptions may have skewed the final tallies."⁹⁹ The above violations were also critically evaluated by the international community. The OSCE and its Office for Democratic Institutions and Human Rights (ODIHR) declared that "[the election] an escalation of negative rhetoric, persistent allegations of intimidation and pressure on voters and sharp imbalances in resources, which benefited the ruling party and tilted the playing field."¹⁰⁰ while "persistent practice of representatives of observer organizations acting as party supporters, interfering with the process, and groups of individuals potentially influencing voters outside some polling stations, was a cause for concern."¹⁰¹ According to the US Embassy in Georgia, "Rather than improving the atmosphere by addressing problems identified by election observers in the first round, intimidation, offensive rhetoric, misuse of administrative resources, and reports of blatant vote-buying and other violations continued."¹⁰² These problems were also the

94 See: <https://cutt.ly/PTLWgGu> [Accessed on 24.11.2021].

95 International Society for Fair Elections and Democracy, Transparency International Georgia, Charter of Journalistic Ethics of Georgia: Joint Assessment of the Pre-Election Environment of the 2021 Elections of Georgian Municipality Bodies, 2021, p.1. See <https://www.isfed.ge/en/angarishebi/saqartvelos-munitsipalitets-organota-2021-tslis-archevnebis-tsinasaarchevno-garemos-ertoblivi-shefaseba> [Accessed on 24.11.2021].

96 See: <https://cutt.ly/DTLWFR> [Accessed on 24.11.2021]; See: <https://cutt.ly/UTLW3WW> [Accessed on 24.11.2021]; See: <https://www.gyla.ge/en/post/2021-tslis-adgilobrivi-tvitmartvelobis-archevnebis-meore-turis-kentchisyrisa-da-khmebis-datvlis-procesis-shefaseba> [Accessed on 24.11.2021]; See: <https://cutt.ly/TLLEfIA> [Accessed on 24.11.2021].

97 See: <https://cutt.ly/DTLWFR> [Accessed on 24.11.2021].

98 See: <https://www.isfed.ge/en/2021-adgilobrivi-tvitmartvelobis/ISFED-is-mier-tsardgenili-saarchevno-davebis-statistika-da-analizi-2021-tslis-tvitmartvelobis-archevnebi> [Accessed on 24.11.2021].

99 See: <https://cutt.ly/DTLWFR> [Accessed on 24.11.2021].

100 OSCE/ODIHR International Election Observation Mission to Georgia - Municipal Bodies Elections, October 2, 2021, Report on Preliminary Findings and Conclusions, p. 1. See: https://www.osce.org/files/f/documents/d/9/499477_2.pdf. <https://www.osce.org/odihr/elections/georgia/502704> [Accessed on 24.11.2021].

101 OSCE/ODIHR, International Election Observation Mission to Georgia - Municipal Bodies Elections, October 30, 2021, p.1, see: https://www.osce.org/files/f/documents/f/f/502719_0.pdf [Accessed on 24.11.2021].

102 See: <https://ge.usembassy.gov/u-s-embassy-statement-on-2021-georgian-municipal-elections/> Accessed on 24.11.2021]; see: <https://www.facebook.com/usingeo/posts/10159489677312954> Accessed on 24.11.2021].

focus of attention for the EU Delegation to Georgia.¹⁰³

Finally, both the pre-election and the election environment weakened public trust in the election results. Disclosed grave electoral violations do not conform with the voting right and democratic principles enshrined in the Constitution of Georgia. Equal and fair electoral atmosphere is essential for these constitutional guarantees, because "elections are the mechanism that allows the fulfilment of people's sovereignty."¹⁰⁴ Sadly, this mechanism has not properly functioned in Georgia so far and the 2021 municipal elections are another step backwards on Georgia's democratic pathway.

5. Equality and Freedom of Religion

5.1 Confrontation Between the Christian and Muslim Communities in Buknari

Relations between the Christian and Muslim communities in the village of Buknari in Chokhatauri Municipality turned sour in December 2020, and escalated in January 2021,¹⁰⁵ but the controversy has a previous context. In 2012, the Muslim community applied to the Chokhatauri municipality to build a mosque in Buknari, but the community did not receive any official reply.¹⁰⁶ Back then, the Orthodox locals opposed the construction of the mosque because, in their opinion, it was unacceptable to build a Muslim mosque on "Georgian land".¹⁰⁷ Hence, no mosque was built then, while in 2020 the Muslim community bought a private house in the village to arrange a place of worship there.¹⁰⁸ Towards the end of 2020, after the news spread on the social media about the alleged plan to build a mosque, the Christian community again confronted the local Muslims with the same argument that it is unacceptable to build a mosque on "Georgian land".¹⁰⁹ On several occasions, the confrontation escalated into physical aggression. Several local Muslim community members were injured.¹¹⁰ Eventually, it was reported that, after mediation, the religious tension was resolved in reconciliation and the conflict ended.¹¹¹

It is a positive obligation¹¹² of the state to prevent and eliminate obstruction of enjoyment of the right to worship. The state must also ensure the exercise of the freedom of religion by the Muslim community. Unfortunately, the Buknari conflict is not the first case of confrontation against local Muslim community and of violation of its rights. From 2012 to 2016, 8 such incidents were reported in diverse areas. All of them were of Islamophobic / Turkophobic nature: based on the argument that Islamic places of worship on Georgian soil cannot be erected and tolerated.¹¹³ The state has

103 See: <https://cutt.ly/vTHWAGD> [Accessed on 24.11.2021]; See: <https://cutt.ly/BTHWJqn> [Accessed on 24.11.2021].

104 Decision N1/3/547 of the Constitutional Court of Georgia of May 28, 2015 on the case "Citizens of Georgia - Ucha Nanuashvili and Mikheil Sharashidze v. the Parliament of Georgia", II - 2

105 <https://socialjustice.org.ge/en/products/buknari-kidev-erti-religiuri-konfliktis-adgili> [Accessed on 24.11.2021].

106 <https://socialjustice.org.ge/en/products/buknari-kidev-erti-religiuri-konfliktis-adgili> [Accessed on 24.11.2021].

107 <https://socialjustice.org.ge/en/products/buknari-kidev-erti-religiuri-konfliktis-adgili> [Accessed on 24.11.2021].

108 <https://socialjustice.org.ge/en/products/buknari-kidev-erti-religiuri-konfliktis-adgili> [Accessed on 24.11.2021].

109 <https://socialjustice.org.ge/en/products/buknari-kidev-erti-religiuri-konfliktis-adgili> [Accessed on 24.11.2021]; <https://gdi.ge/en/news/ngos-statement-14-01-2021.page> [Accessed on 24.11.2021].

110 <https://socialjustice.org.ge/en/products/buknari-kidev-erti-religiuri-konfliktis-adgili> [Accessed on 24.11.2021]; <https://gdi.ge/en/news/ngo-statement-14-01-2021.page> [Accessed on 24.11.2021].

111 <https://netgazeti.ge/news/512283/> [Accessed on 24.11.2021].

112 Decision of the European Court of Human Rights of October 7, 2014 no. 28490/02 on the case of Begheluri v. Georgia, §160.

113 <https://socialjustice.org.ge/en/products/buknari-kidev-erti-religiuri-konfliktis-adgili> [Accessed on 24.11.2021]; <https://gdi.ge/ge>

almost always had no effective legal response to any of these conflicts.¹¹⁴ The uselessness of the LEPL State Agency for Religious Affairs comes on full display. "The agency was not active in resolving the conflict in the village of Buknari, and their role in the mediation process was indiscernible."¹¹⁵ The Agency's vaguely planned functions, security-based vision instead of human rights perspective, and regressive, harmful proposals are baffling.¹¹⁶ Therefore, the establishment of the Agency, or any other action the authorities have taken, has not been an appropriate response by the government to the systemic difficulties in terms of freedom of religion. This contributes to the incitement of conflicts in the future.

5.2 Discriminatory Curfew

On March 18, 2021, members and activists of the Azerbaijani community appealed to the Government of Georgia to temporarily lift restrictions on freedom of movement (the so-called curfew) on March 21, so that they could freely celebrate Nowruz holiday.¹¹⁷ The Public Defender and the National Minority Council at the PDO also asked the Government of Georgia to do the same, hoping that "the Government of Georgia will consider and satisfy the request of some Georgian citizens in order to reinforce their feeling that the State recognizes the equality of Georgian citizens in terms of realization of their national and religious freedoms."¹¹⁸ Despite these requests, the authorities rejected the plea and tried to justify this decision by referring to an increased risk of virus spreading.¹¹⁹

The government's appeal to the threat of the spread coronavirus is not convincing, as Government Coordination Council temporarily lifted the aforementioned restrictions for Orthodox Christmas on January 7th.¹²⁰ Restrictions were lifted on the night of December 31st as well. The government's refusal to allow exceptions only on holidays of dominant religious and ethnic groups (January 1st, 7th, etc.) and the denial of similar exception for holidays on December 25th and March 21st, show that the authorities do not consider religious and ethnic minorities as equal citizens of Georgia and ignore their needs.

5.3 Parliament Sees Ethnic Minorities as Diaspora

The Scientific-Advisory Council of the National Minorities was established under the guises of the Diaspora and Caucasus Affairs Committee of the Parliament of Georgia.¹²¹ While the establishment of a consulting mechanism for national minorities in the Parliament is a welcomed step, in this

[news/ngo-statement-14-01-2021.page](#) [Accessed on 24.11.2021].

114 <https://socialjustice.org.ge/ka/products/buknari-kidev-erti-religiuri-konfliktis-adgili> [Accessed on 24.11.2021]; <https://gdi.ge/ge/news/ngo-statement-14-01-2021.page> [Accessed on 24.11.2021].

115 <https://socialjustice.org.ge/ka/products/buknari-kidev-erti-religiuri-konfliktis-adgili> [Accessed on 24.11.2021]; <https://gdi.ge/ge/news/ngo-statement-14-01-2021.page> [Accessed on 24.11.2021].

116 <https://socialjustice.org.ge/ka/products/buknari-kidev-erti-religiuri-konfliktis-adgili> [Accessed on 24.11.2021]; <https://gdi.ge/ge/news/ngo-statement-14-01-2021.page> [Accessed on 24.11.2021].

117 <https://www.ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsvelis-mimartva-sakartvelos-mtavrobas>

118 <https://www.ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsvelis-mimartva-sakartvelos-mtavrobas> [Accessed on 24.11.2021].

119 <https://tabula.ge/ge/news/664062-sakoordinatsio-sabcho-novruz-bairamisas-erti> [Accessed on 24.11.2021].

120 <https://tabula.ge/ge/news/664062-sakoordinatsio-sabcho-novruz-bairamisas-erti> [Accessed on 24.11.2021]; <https://cutt.ly/PTLmx80> [Accessed on 24.11.2021].

121 <https://gdi.ge/ge/news/statement-17-03-2021.page>. <https://civil.ge/archives/406872> [Accessed on 24.11.2021].

case, the establishment of the Council does not correspond with the principles of equality and inclusivity. Its creation specifically under Diaspora and Caucasus Affairs Committee signals that the Parliament sees Georgian citizens, ethnic minorities historically present in Georgia, as diaspora.¹²² Such attitudes contradict democratic values, need for tolerance and equality. It hinders integration, divides Georgian citizens on ethnic grounds and makes minorities feel alienated and excluded. The Council was established with no consultation of minority groups and experts,¹²³ which contradicts best international practices, according to which "the activities of advisory councils should be transparent. Their composition and the procedure for drawing up membership shall be determined democratically, with active involvement and representation of minorities concerned."¹²⁴

5.4 Homophobia

On May 15, 2021, an installation erected on the International Day Against Homophobia and Transphobia by LGBT+ activists were destroyed and the activists were verbally abused by Guram Palavandishvili. He is known for his ultranationalist attitudes.¹²⁵ The police's action was only to remove him from the surrounding area¹²⁶. Prior to that, the Ministry of Internal Affairs had stated concerning on the International Day Against Homophobia and Transphobia that "it will ensure protection of public safety and order, as well as the freedom of expression of every person, as long as it does not exceed the lawful limits. Any other action that endangers the safety and health of citizens will incur an appropriate police reaction."¹²⁷ Contrary to this statement, the May 15 Incident points to the MIA's insufficient efforts to prevent and restrain homophobic offenses / crimes.¹²⁸ The investigation into the May 15 homophobic incident has yet to result in tangible results or in anyone's detention.

Another homophobic attack took place at a rally on First Republic Square on May 24. This time, - Guram Palavandishvili's son, Alexander Palavandishvili, and individuals accompanying him verbally insulted civil activists for wearing a rainbow-colored armband.¹²⁹ The police, however, removed not Palavandishvili and his company, but the activists.¹³⁰ Most importantly, the attacks that took place during the Pride Week in July were the most severe manifestation of homophobia in 2021. The hate groups threw eggs, bottles and, presumably, stones at the visitors of the film screening on July 1st. Next, they tried to disrupt the festival on July 3rd, and finally, they disrupted the "March of Dignity" on July 5th. They attacked LGBT+ community, allies, and journalists. They attacked the "Tbilisi Pride" office and damaged media equipment in the streets of Tbilisi.¹³¹

122 <https://gdi.ge/ge/news/statement-17-03-2021.page>. <https://civil.ge/archives/406872> [Accessed on 24.11.2021].

123 <https://gdi.ge/ge/news/statement-17-03-2021.page> [Accessed on 24.11.2021].

124 Social Justice Center (former EMC), Consulting Mechanisms of Ethnic Minorities - Reality in Georgia and international experience, 2020, pp.9-10, see: HTTPs [Accessed on 24.11.2021].

125 <https://cutt.ly/VTLbeug> [Accessed on 24.11.2021]; <https://tabula.ge/ge/news/667305-tbilisi-pride-palavandishvili-lgbtq-aktivistebs> [Accessed on 24.11.2021].

126 <https://www.interpressnews.ge/en/article/113519-according-to-tbilisi-pride-guram-palavandishvili-damaged-installation-of-lgbtq-activists-in-mother-tongue-park/> [Accessed on 24.11.2021]; <https://gdi.ge/ge/news/dedaenis-bagshi-homofobiur-niadagze-momxdar-tavdasxma.page> [Accessed on 24.11.2021].

127 <https://police.ge/en/shinagan-saqmeta-saministros-gantskhadeba/14626> [Accessed on 24.11.2021].

128 <https://gdi.ge/ge/news/dedaenis-bagshi-homofobiur-niadagze-momxdar-tavdasxma.page> [Accessed on 24.11.2021].

129 <https://gdi.ge/ge/news/statement-24-05-2021.page> [Accessed on 24.11.2021].

130 <https://gdi.ge/ge/news/statement-24-05-2021.page> [Accessed on 24.11.2021].

131 GDI, 05.07.21 March of Dishonor pp. 10-16, see: <https://gdi.ge/en/news/05072021-march-of-dishonor.page> [Accessed on 04.12.21].

These cases of homophobic aggression are a proof that the authorities avoid enacting a strict policy against hate groups and imposing legal sanctions on them. The government not only fails to appropriately deal with homophobia, but itself encourages hatred against the LGBT+ community. High-ranking officials have made many homophobic statements themselves: Tbilisi Mayor, Kakha Kaladze, for example, called the Pride Week inappropriate/inexpedient,¹³² while Irakli Kobakhidze, the chair of the ruling GD party, stated that "considering the full context, these people should probably be denied to organize this event."¹³³ Davit Sergeenko, the Deputy Speaker of the Parliament, was quoted: "As for speaking up louder, I don't know. Probably they need to ask other members of the society as well and avoid confrontation. Nobody hinders them in anything, but I guess it would be better if they curb their enthusiasm."¹³⁴ After the disruption of the "March of Dignity" the Prime Minister stated: "When 95% of our population is against holding a demonstratively propagandistic march or parade, we should all obey this, friends. This is what the absolute majority of our population thinks and we, as a government elected by the people, are mandated to heed this..."¹³⁵ In sum, instead of combating homophobia and transphobia, the authorities themselves enable a hostile environment against the LGBT+ community.

6. Children's Rights

Although institutional care for children is an outdated and ineffective method of care, large children's care homes are still operating in Georgia. There, children's rights are often violated. Of these institutions, Ninotsminda Municipality Orphanage has been receiving particular attention since 2015.¹³⁶ In particular, the PDO has repeatedly alerted the public over the years that "monitoring carried out in St. Nino's Children's Boarding School of Ninotsminda has revealed acute facts of violence against and punishment of children. Minors living there are isolated from the society and meeting their individual needs is a challenge".¹³⁷

Due to the influence of Archbishop Spiridon, the head of the Children's Boarding School, operated by the Patriarchate, state social workers were no longer allowed into the institution since June 2020.¹³⁸ On April 15, 2021, the PDO Monitoring Group was not allowed to perform their official duty - to inspect the institution.¹³⁹ On May 19, the Public Defender's trustees were also denied entry.¹⁴⁰ In the following days, Archbishop Spiridon released a video and tried to discredit the Public Defender.¹⁴¹ On June 4,

132 <https://www.radiotavisupleba.ge/a/31331499.html>. <https://georgiatoday.ge/mayor-kaladze-on-tbilisi-pride-i-dont-consider-it-expedient/> [Accessed on 24.11.2021].

133 <https://cutt.ly/CTLbBN4>. <https://agenda.ge/en/news/2021/1655> [Accessed on 24.11.2021].

134 <https://cutt.ly/RTLQHf0> [Accessed on 24.11.2021].

135 <https://www.radiotavisupleba.ge/a/31354085.html> [Accessed on 24.11.2021].

136 Report of the Public Defender of Georgia: The Rights of Children of Georgia in Boarding Schools Managed by the Orthodox Church and Muslim Confession, 2015, see: <https://www.ombudsman.ge/res/docs/2019040514142996306.pdf> [Accessed on 05.12.2021].

137 <https://www.ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsvels-ninotsmindis-bavshvta-pansionshi-monitoringis-gankhortsielebis-shesadzlebloba-kvlav-ar-mietsa> [Accessed on 05.12.2021].

138 <https://cutt.ly/6Yg5cpa> [Accessed on 05.12.2021].

139 <https://www.radiotavisupleba.ge/a/31211095.html> [Accessed on 05.12.2021]; <https://www.ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsvels-ninotsmindis-bavshvta-pansionshi-monitoringis-gankhortsielebis-shesadzlebloba-kvlav-ar-mietsa> [Accessed on 05.12.2021].

140 <https://www.ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-gantskhadeba-ninotsmindis-bavshvta-pansiontan-dakavshirebit> [Accessed on 05.12.2021].

141 <https://www.youtube.com/watch?v=1YPy-ELrPzo> [Accessed on 05.12.2021].

a Facebook user registered with secular name of Archbishop Spiridon (Gocha Abuladze) published a series of live video recordings on the social network. He was seen asking children if they wanted to leave the institution.¹⁴² The videos show depressed children and one of them is seen crying.¹⁴³

In order to protect the rights of children living in large institutions, Partnership for Human Rights asked the Tbilisi City Court on April 19, 2021 to issue an interim ruling and demanded that the PDO monitors were given an effective opportunity to visit the Ninotsminda Boarding School.¹⁴⁴ On May 7, the UN Children's Rights Committee issued its own interim measure and mandated the Government of Georgia to allow the inspection of the human rights situation of children in Ninotsminda by the relevant bodies.¹⁴⁵ However the Public Defender was still unable to enter the premises until June 28,¹⁴⁶ violation the authorities kept ignoring.¹⁴⁷ On June 2, Nino Lomjaria stated that during past five years, four criminal cases have been launched into alleged violence against minors in the Boarding School, including one case of alleged rape.¹⁴⁸

Archbishop Spiridon locked the door of the school for visiting human rights defenders and media, but welcomed the representatives of a pro-Russian organization into the facility.¹⁴⁹

In their response to the issue, on June 3, The Coalition for Equality member NGOs wrote: "the developments in relation to Ninotsminda Boarding School are alarming and require urgent, tough response from the authorities."¹⁵⁰ Based on a PHR's lawsuit, the court mandated on June 5 that every child housed in the Ninotsminda boarding school must immediately vacate its premises.¹⁵¹ On June 6th, 20 minors, including 7 with disabilities, were removed and transferred away from there.¹⁵² On June 28, Public Defender Nino Lomjaria, together with several employees of the Ombudsman's Office and a children's psychologist, visited the boarding school and met with the newly appointed head of the boarding school, Archbishop Jacob.¹⁵³ After the visit of the Public Defender, the Ninotsminda's Boarding School Management declared that the doors are now open and they will consider all recommendations.¹⁵⁴

142 <https://www.radiotavisupleba.ge/a/31290919.html> [Accessed on 05.12.2021].

143 <https://www.radiotavisupleba.ge/a/31290919.html> [Accessed on 05.12.2021].

144 <https://www.phr.ge/search/245>. <https://civil.ge/archives/425406> [Accessed on 05.12.2021].

145 <https://netgazeti.ge/news/545809/> . <https://civil.ge/archives/463965> [Accessed on 05.12.2021]; <https://cutt.ly/LYg5Dk> [Accessed on 05.12.2021].

146 <https://www.ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsveli-ninotsmindis-bavshvta-pansions-etsvia> [Accessed on 05.12.2021].

147 <https://www.ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-gantskhadeba-ninotsmindis-bavshvta-pansiontan-dakavshirebit> [Accessed on 05.12.2021].

148 <https://netgazeti.ge/news/545809/> [Accessed on 05.12.2021]; <https://www.ombudsman.ge/eng/akhali-ambebi/210602060449sakhalkho-damtsvelis-gantskhadeba-ninotsmindis-bavshvta-pansiontan-dakavshirebit> [Accessed on 05.12.2021].

149 <https://formulanews.ge/News/51316> [Accessed on 05.12.2021].

150 <https://gdi.ge/ge/news/koalicia-03-06-2021.page> [Accessed on 05.12.2021].

151 <https://www.radiotavisupleba.ge/a/31291976.html>. <https://civil.ge/archives/425406> [Accessed on 05.12.2021].

152 <https://www.radiotavisupleba.ge/a/31293193.html> [Accessed on 05.12.2021].

153 <https://cutt.ly/TYgzhf> [Accessed on 05.12.2021].

154 <https://www.radiotavisupleba.ge/a/31330260.html> [Accessed on 05.12.2021].

The Boarding School housed 56 beneficiaries,¹⁵⁵ and as of November 12, 2021, 15 remain there.¹⁵⁶

The developments in Ninotsminda boarding school have shown the depth of challenges in institutions housing children. The rights of children in these types of institutions are systematically violated. The insufficient response shown by the authorities and inadequate consideration of the calls of international organizations demonstrate the immense influence Orthodox Church holds on the (un) fulfillment by the state of its constitutional and international obligations.

7. Pandemic and Human Rights

7.1 Constitutionality of Restrictions

The effectiveness of the measures introduced in 2020 and kept in force in 2021 to prevent the spread of Covid-19, as well as effectiveness of the newly enacted measures and their compatibility with international and constitutional human rights standards have been questionable. Although in 2021 the government did not declare a state of emergency as mandated by the Constitution, the regulations set out in the government ordinance intensively restricted certain rights protected by the constitution and created a *De Facto* "state of emergency" with the following typical characteristics:

- ▶ *The so-called "Curfew": mass-scale and long-term restriction of freedom of movement.*
- ▶ *Periodic, blanket ban on intercity and municipal transport.*
- ▶ *Periodic, blanket ban / intensive restriction on the operation of eateries, hotels, and other facilities of economic importance.*
- ▶ *Upholding the decision to close land border, etc.*¹⁵⁷

The issue of political legitimacy and the requirement to establish accountability by introducing a framework for the governmental action make it necessary to regulate the aforesaid intensive restrictions under the special constitutional regime of the state of emergency. No such "state of emergency" was declared in Georgia during 2021, which renders the expediency and legality of these restrictions even more unsubstantiated.

According to local civil society and NGOs, the aforementioned restrictions did not meet the test of formal and substantive constitutionality.¹⁵⁸ The Constitution of Georgia stipulates that interference with constitutional rights must be carried out by a normative act adopted by the Parliament. However, the restrictions, which restricted freedom of movement, freedom of commerce, rights to property and other rights, were introduced by just an executive act - a government ordinance.¹⁵⁹

The government's position on the expediency of blanket restrictions on commercial enterprises was

155 <https://www.radiotavisupleba.ge/a/31330260.html> [Accessed on 05.12.2021].

156 <https://cutt.ly/VYhwS38> [Accessed on 05.12.2021].

157 <https://factcheck.ge/en/story/38395-chronology-and-preventive-measures-against-the-spread-of-the-coronavirus-in-georgia> [Accessed on 05.12.2021].

158 <https://osgf.ge/en/democracy-and-human-rights-during-pandemic-and-the-state-of-emergency/> [Accessed on 05.12.2021].

159 Ordinance No 322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules.

implausible and vague. The standard set by the Constitutional Court of Georgia stipulates that one component in assessing the legality of interference with a constitutional right is to determine whether the government could achieve its legitimate aim through a less restrictive means¹⁶⁰ It is uncertain why public transport and a commercial entity were completely banned when social distancing and mask-wearing rules were supposed to be diligently followed.

There are legitimate questions from a human rights perspective about balancing conflicting legal interests. The question remains unanswered: did the benefit resulting from the restrictions outweigh the damage resulting from the total ban on municipal and inter-city transportation, and certain commercial entities which led to the loss of economic activity for the lower and middle social class? The final empirical data clarifies that the answer to this question is negative, and that the heavy regulations levied by the authorities were of little efficiency. According to current data, Georgia ranks 8th in the world in terms of COVID-19 mortality (per capita),¹⁶¹ a clear sign that long-term, blanket restrictions have not been an effective means of achieving the legitimate aim of ensuring public health .

7.2 Selective Justice During Pandemic Management

Enforcement of pandemic-management related mass-scale and blanket regulations in 2021 exposed the dishonest exercise of discretion and selective justice by the executive branch.

The Prime Minister of Georgia, Irakli Gharibashvili, gave one of the most visible examples of selective justice. He was seen at a crowded feast on August 7, 2021, when the Georgian government had explicitly banned gatherings of over 10 individuals and large-scale social events.¹⁶² The inaction of law enforcement agencies and the demonstrative violation of the rule of law by the highest ranking official in the country contribute to growing nihilism in the Georgian society.

The problem of selective justice during implementation of pandemic-related regulations is also sharply highlighted by special, privileged treatment given by the government to the Georgian Autocephalous Orthodox Church in comparison to all other religious institutions.

Some Christian churches celebrated Easter on April 4, 2021. The authorities, despite the churchgoers' requests, did not allow any exceptions from the restriction of movement during nighttime whereas it lifted the curfew or the Orthodox Church on May 2, 2021 (Orthodox Easter). According to the government's decision, the restriction on movement would be lifted exceptionally in connection with the Easter liturgy. Similarly, the authorities took a discriminatory approach and allowed the Orthodox citizens to celebrate Christmas on January 7, without curfew, but denied the same exception to allow the members of the ethnic Azerbaijani community to celebrate Nowruz on March 21st (Please See Chapter 5).

7.3 Discriminatory Pardon of Administrative Liabilities

The authorities showed their selective attitudes towards justice in how they issued pardons for

160 Decision of the Constitutional Court of Georgia of June 26, 2012 N3/1/512 on the case "Danish Citizen Hayke Kronkvist vs. the Parliament of Georgia ", II-60.

161 <https://coronavirus.jhu.edu/data/mortality> [Accessed on 05.12.2021].

162 <https://formulanews.ge/News/54862> [Accessed on 05.12.2021].

persons convicted of violating pandemic related regulations. On June 24, 2020, the Prime Minister of Georgia, Irakli Gharibashvili, announced that the government submitted two draft laws to the Parliament. The goal of these drafts was to release a certain group of individuals from administrative fines for violating restrictions imposed during the pandemic.¹⁶³ Civil society criticized the PM's initiative, which, they argued, was nothing but a vote-buying, pre-electoral trickery. NGOs argued that the draft laws violated the right to equality of those administrative offenders who had already paid penalties for violating pandemic-related regulations. According to the civil society's assessment, this approach exposed the inconsistency and inefficiency of the state in managing the pandemic.¹⁶⁴

Despite the constitutional legal and moral shortcomings, the draft Law of Georgia on Exemption from Administrative Sanctions entered into force on September 9, 2021. The law only pardoned violations committed prior to June 23, 2021 and not executed as of September 9, 2021. The right to equal treatment, enshrined in Article 11 of the Constitution of Georgia, stipulates that, individuals in essentially similar conditions should be treated equally and if the state differentiates between them, reasonable legitimate interests must justify the differentiation .

After the law was enacted, the National Enforcement Bureau stopped prosecuting offenders convicted of violating pandemic-related regulations. Hence, these individuals, who violated regulations before June 23rd and had not paid penalties, were privileged in comparison to those who had paid penalties for same offences by the moment the law came into force. The Law on Exemption from Administrative Liability violated the right to equality guaranteed by Article 11 of the Constitution of Georgia, as the differentiation of substantially equal individuals was not legally justified.

In pursuing repressive policies in managing the pandemic, the state has applied the elements of selective justice and, thus, violated the principle of the rule of law. The social effects of these inconsistently applied punitive measure are significant. Releasing individuals from administrative sanctions in this manner has created a fertile ground for the atmosphere of impunity.

8. Right to Justice and Fair Trial

8.1 Candidate Selection for the Supreme Court

On April 1, 2021, substantial amendments were made to the procedure for selecting justices of the Supreme Court in the Law on Common Courts. Parliamentary opposition did not take part.¹⁶⁵ One of the changes introduced an obligation for the members of the High Council of Justice to substantiate their decisions/assessments . Also, a mechanism for appealing the decisions of the High Council of Justice was introduced. During this period, the High Council of Justice had already begun 3 procedures for selecting justices of the Supreme Court and public hearing of candidates within the first procedure was almost completed. Besides this, according to the agreement reached between political parties on 19 April 2021 with the EU's mediation,¹⁶⁶ the procedures to appoint justices to the Highest Instance

163 <https://cutt.ly/2YgMQCC> [Accessed on 05.12.2021].

164 <https://bm.ge/ka/article/pandemiis-dros-jarimebis-chamowera-mizanshewonili-ar-iy---idfi/87421/> [Accessed on 05.12.2021].

165 The Organic Law of Georgia adopted by the Parliament of Georgia on Amendments to the Organic Law of Georgia on Common Courts on 1 April 2021 #447-IVms-Xmp, see: <https://matsne.gov.ge/ka/document/view/5140642?publication=0> [Accessed on 05.12.2021].

166 https://eeas.europa.eu/delegations/georgia/96786/node/96786_en [Accessed on 05.12.2021]; <https://tabula.ge/ge/news/665950-racia-sharl-mishelis-mier-mkhareebistvis> [Accessed on 05.12.2021].

Court were to be suspended. This is what the Venice Commission¹⁶⁷ and other international actors recommended¹⁶⁸ with a view to ensuring equal treatment of candidates and fulfillment of the terms of the April 19th Agreement. However, selection procedures went on in the High Council of Justice and in the Parliament of Georgia, and forced several international organizations and actors to react with strongly worded criticisms.¹⁶⁹

The initial selection

The first step in selecting justices the Supreme Court started on October 7, 2020 and ended in 2021. 9 vacant positions were up for selection.¹⁷⁰ 52 candidates registered. Some withdrew even before the public hearings started, and some after this process. As a result, the High Council of Justice interviewed only 39 candidates, and 33 of them were evaluated based on the criteria set in the Organic Law on Common Courts of Georgia.¹⁷¹ On June 17, 2021, the High Council of Justice selected 9 candidates with the highest scores and presented them to the Parliament of Georgia.¹⁷²

On July 6-10, 2021, public interviews with the candidates nominated by the High Council of Justice were held at the Legal Affairs Committee of the Parliament of Georgia without the participation of most of the parliamentary opposition. On July 12, the Parliament of Georgia held an extraordinary session at the plenary in defiance of the April 19th Agreement and appointed 6 candidates to the Supreme¹⁷³ Court of Georgia.¹⁷⁴ Just like in the past, among the newly appointed justices, there were still those affiliated with an influential group of judges in the judiciary– the “Clan”. This led to heightened feeling of suspicion that a cooperative relationship exists between the ruling political party and the Clan“, who could now strengthen their grip on the Supreme Court.

The US State Department has expressed "grave concern" over the aforementioned appointments.¹⁷⁵ The Department stated that the appointments violated the April 19th Agreement, as it mandated signatory parties to suspend the Supreme Court nomination process until "ambitious judicial reforms" were carried out and an inclusive, multi-party process was achieved.¹⁷⁶ The US Embassy in Georgia wrote the process "is extremely disappointing. Unfortunately, this nomination and appointment process, and failing to undertake inclusive judicial reform, fell short of the commitment of Georgia's leaders," and "the decision not to do so is therefore very concerning and makes up a significant

167 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)007-e) [Accessed on 05.12.2021].

168 <https://cutt.ly/nYhi1zA> [Accessed on 05.12.2021]; <https://cutt.ly/hYhi5yU> [Accessed on 05.12.2021]; <https://tabula.ge/ge/news/669053-degnani-parlamenti-valdebulia-sheacheros> [Accessed on 05.12.2021]; <https://tabula.ge/ge/news/667646-iustitsiis-umaghles-sabchosa-uzenaesshi> [Accessed on 05.12.2021].

169 <https://tabula.ge/ge/news/670260-sakhdepi-uzenaesis-mosamartleta-danishvna> [Accessed on 05.12.2021]; <https://ge.usembassy.gov/u-s-embassy-statement-on-the-appointment-of-judges/> [Accessed on 05.12.2021]; <https://bit.ly/3314row> [Accessed on 05.12.2021]; <https://bit.ly/3ldv8q2> [Accessed on 05.12.2021]; <https://cutt.ly/hYhojLW> [Accessed on 05.12.2021]; <https://netgazeti.ge/news/553462/> [Accessed on 05.12.2021].

170 <http://hcoj.gov.ge/Uploads/2021/2/134.pdf> [Accessed on 05.12.2021].

171 <https://bit.ly/3CU2mag> [Accessed on 05.12.2021].

172 <https://bit.ly/3xqJFcY> [Accessed on 05.12.2021].

173 These candidates are: Gocha Abuseridze, Giorgi Goginashvili, Levan Tevzadze, Revaz Nadaraia, Bidzina Sturua and Lasha Kochiashvili

174 <https://parliament.ge/en/media/news/parlamentma-sakartvelos-uzenaesi-sasamartlos-mosamartleobis-6-kandidats-dauchira-mkhari> [Accessed on 05.12.2021].

175 <https://tabula.ge/ge/news/670260-sakhdepi-uzenaesis-mosamartleta-danishvna> [Accessed on 05.12.2021].

176 <https://tabula.ge/ge/news/670260-sakhdepi-uzenaesis-mosamartleta-danishvna> [Accessed on 05.12.2021].

missed opportunity to strengthen confidence in Georgia's judiciary and advance its democratic development.¹⁷⁷ The spokesperson for the European Commission also issued a statement, saying that the appointments not only ran contrary to the April 19th Agreement, voting on [the Supreme Court candidate appointments was] "a missed opportunity for the Georgian authorities to affirm their commitment to genuine and comprehensive judiciary reform."¹⁷⁸

It is also noteworthy that the High Council of Justice violated the 2 week rule defined by the Organic Law on Common Courts¹⁷⁹ as it selected and presented to the Parliament 3 candidates (out of those registered within the first selection process) to fill the remaining 3 positions only on November 12, 2021, almost 4 months after the selection of 6 judges¹⁸⁰ The public hearings of these candidates were held in the Legal Affairs Committee of the Parliament on November 25-26, 2021.¹⁸¹ On December 1, 2021, the Legislature appointed all three candidates to the Supreme Court.¹⁸²

The second selection

On November 2, 2020, the High Council of Justice started the second procedure for 1 vacant position on Supreme Court bench.¹⁸³ Public hearings were held from June 28 to July 1, 2021.¹⁸⁴ It is noteworthy that during this period, five Parliament appointed non-judge members on the High Council of Justice had their term expired. As a result, fewer critical questions were asked during the public hearings in the Council

Of the 22 candidates registered for this selection procedure,¹⁸⁵ the High Council of Justice interviewed only 6.¹⁸⁶ One of them - Dimitri Gvritshvili—withdrew himself after his public hearing. Out of the 5 remaining, on July 23, 2021, the High Council of Justice selected Gennady Makaridze to be presented to the Parliament of Georgia.¹⁸⁷ Makaridze's public hearing was held at the Legal Affairs Committee on November 25, 2021.¹⁸⁸ On December 1, 2021, the legislators voted 81 to 5 and appointed him to the bench.¹⁸⁹

The third selection

The High Council of Justice began the Third step of selection for appointing Supreme Court justice

177 <https://ge.usembassy.gov/u-s-embassy-statement-on-the-appointment-of-judges/> [Accessed on 05.12.2021].

178 <https://bit.ly/3ldv8q2> [Accessed on 05.12.2021].

179 Part 15 of the Article 341 of the Organic Law of Georgia on Common Courts.

180 These candidates are: Tamar Okropiridze, Nino Sandodze and Tea Dzimstarashvili; <https://bit.ly/3lcBJHj> [Accessed on 05.12.2021].

181 <https://parliament.ge/en/media/news/parlamentshi-uzenaesi-sasamartlos-mosamartleobis-kandidatebtan-gasaubrebis-protseis-dasrulda> [Accessed on 05.12.2021].

182 <https://parliament.ge/en/media/news/parlamentma-uzenaesi-sasamartlos-otkhi-mosamartle-airchia> [Accessed on 05.12.2021].

183 <https://bit.ly/3cT1l7K> [Accessed on 05.12.2021].

184 <https://bit.ly/30WJ6vn> [Accessed on 05.12.2021].

185 <http://hcoj.gov.ge/Uploads/2021/2/214-2020.pdf> [Accessed on 25.11.2021]

186 These candidates are: Levan Kokorashvili, Genadi Makaridze, Nino Kharitonashvili, Tamar Okropiridze, Dimitri Gvritshvili and Tamar Alpaidze. Of the remaining candidates, 4 had already been nominated to the Supreme Court, while the rest allegedly had removed their names from the list.

187 <https://bit.ly/3DXWyOi> [Accessed on 05.12.2021].

188 <https://parliament.ge/en/media/news/parlamentshi-uzenaesi-sasamartlos-mosamartleobis-kandidatebtan-genadi-makaridzestan-da-tamar-okropiridzestan-gasaubrebis-protseis-dasrulda> [Accessed on 05.12.2021].

189 <https://parliament.ge/en/media/news/parlamentma-uzenaesi-sasamartlos-otkhi-mosamartle-airchia> [Accessed on 05.12.2021].

for 1 vacant position on November 20, 2020.¹⁹⁰ At this stage, approximately 17 remain registered as candidates¹⁹¹ The Council began interviewing them on November 11, 2021.¹⁹² Only 5 interviews have been conducted so far.¹⁹³

8.2 Selection of the Members of the High Council of Justice

Judge Members

In 2020-2021, the composition of the judge members of the High Council of Justice was almost completely changed. Six of the eight judges left the Council, four's term¹⁹⁴ expired and two¹⁹⁵ asked the Council of Justice for early termination of their tenure. Therefore, the Conference of Judges of the Common Courts called two conferences to fill vacancies created in 2021: on 26 May and 31 October.¹⁹⁶ The judges elected 4 judges - Gocha Abuseridze, Badri Shonia, Temur Gogokhia and Levan Mikaberidze to the Council at the first conference.¹⁹⁷ The October 31 conference elected two more members - Giorgi Goginashvili and Paata Silagadze.¹⁹⁸ The conferences continued fallacious trend of previous years: none of the candidates vying for the membership of the Council of Justice presented their individual views on the judiciary, the problems and challenges facing the system, and their views on improvement. However, this did not stop the judges from appointing these candidates by an absolute majority of votes. As a result, the High Council of Justice is still composed of members selected by the "Clan" of judges and these members pursue the policies of this influential group, undermining the chances of an independent and impartial judiciary in Georgia.

The Conference of Judges on October 31 was held a day after the second round of local self-government elections, amid a severe political crisis in the country. It left the public with a perception that the "Clan" was in a hurry and was making such important and strategic decisions while the crisis was unfolding in the country. In the absence of reforms, their desire to consolidate power triumphed over everything else. The process was condemned by the US Embassy: "It is disappointing that the Judiciary missed the opportunity to show transparency and failed again to elect its representatives through a competitive and democratic election process."¹⁹⁹ Besides the US Embassy, the EU Ambassador to Georgia also considered the process "hasty", "opaque" and "non-competitive".²⁰⁰ He described the election of two new members in the period of recent 4 months at the Council of Justice by the Conference of Judges as "the fifth step backward for Georgian judiciary and for the rule of law in

190 <http://hcoj.gov.ge/Uploads/2021/2/207-2020.pdf> [Accessed on 05.12.2021].

191 In this case, among the candidates there are five persons already elected as of the Supreme Court justices, and 2 persons nominated to the Parliament of Georgia. However, one candidate removed their name from the list.

192 <https://bit.ly/3nXqAfz> [Accessed on 05.12.2021].

193 These candidates are: Besarion Alavidze, Gia Beraia, Nugzar Salia, Aminran Dzabunidze and Tamar Alania.

194 Irakli Shengelia, Vasil Mshhvenieradze, Irakli Bondarenko and Dimitri Gvritishvili.

195 These judge members were Tamar Oniani and Tea Leonidze. Despite numerous attempts to obtain information, their resignation from the Council of Justice only became known directly at the conference of judges.

196 <https://www.supremecourt.ge/news/id/2133> [Accessed on 05.12.2021]; <https://www.supremecourt.ge/news/id/2156> [Accessed on 05.12.2021].

197 <https://bit.ly/3r7BpO2> [Accessed on 05.12.2021].

198 <https://bit.ly/3CWNqrC> [Accessed on 05.12.2021].

199 <https://ge.usembassy.gov/u-s-embassy-statement-on-conference-of-judges-2/> [Accessed on 05.12.2021].

200 <https://bit.ly/3lnfWGO> [Accessed on 05.12.2021].

Georgia."²⁰¹ In response to this criticism, the Administrative Committee of the Conference of Judges issued a scathing statement,²⁰² accusing Georgia's Western partners of interfering in the internal affairs of the country and of failing to fulfill their obligations under the Vienna Convention. We feel compelled to stress it out that this statement was contested publicly, on social media, by 23 judges from all three instances of the courts.²⁰³ These 23 judges and justices focused on the contribution of the Western partners to strengthen the rule of law and justice in Georgia. They considered these accusations levied against Western partners as unacceptable.

Non-Judge Members

In March and June 2021, terms of five non-judge members of the Council of Justice expired²⁰⁴ but selection of their replacements for these vacancies in the High Council of Justice has not yet begun at the Parliament. Thus, the current composition of the High Council of Justice carries out its functions without having to listen to or consider dissenting opinions of new members who would be elected by Parliament.

9. Politically Motivated Cases

9.1 Case of Mikheil Saakashvili

The third President of Georgia, Mikheil Saakashvili, was found guilty by the June 28, 2018 verdict in a case concerning the attack on former MP Valeri Gelashvili on July 14, 2005.²⁰⁵ And on January 5, 2018, another guilty verdict was handed down against him on November 24, 2008, this time for pardoning the convicts in the high-profile murder case of Sandro Girgvliani.²⁰⁶ Besides these charges, he was also charged in cases regarding embezzlement of public funds between September 2009 and February 2013 (the so-called "Costumes Case")²⁰⁷, mass dispersal of protesters on November 7, 2007 and invading TV Imedi on the same day.²⁰⁸ On October 20, 2021, the Prosecutor General filed an additional charge against the ex-president under Article 344 of the Criminal Code for illegally crossing into the state borders of Georgia.²⁰⁹

On October 1, 2021, within hours of official notice that Mikheil Saakashvili's had been spotted in Georgia, MIA officers apprehended him in Tbilisi based on operative information.²¹⁰ Here, Prime Minister Irakli Garibashvili's public statement made On October 3, should be taken into consideration: [Mikheil Saakashvili] "better behave well, or else we will add articles to his charges and others will

201 <https://bit.ly/3InfWGO> [Accessed on 05.12.2021].

202 <https://bit.ly/3DZzoXH>. <https://www.interpressnews.ge/en/article/114273-judges-call-on-everyone-to-stop-the-anti-state-campaign-against-the-independence-of-the-judiciary> [Accessed on 05.12.2021].

203 <https://bit.ly/3nTzUko> [Accessed on 05.12.2021].

204 <https://bit.ly/3laWu6p> [Accessed on 05.12.2021].

205 <https://civil.ge/archives/267228> [Accessed on 06.12.2021].

206 <https://civil.ge/ka/archives/219224> [Accessed on 06.12.2021].

207 <https://civil.ge/ka/archives/153353> [Accessed on 06.12.2021].

208 <https://civil.ge/ka/archives/153307>[Accessed on 06.12.2021].]

209 <https://pog.gov.ge/en/news/saqarTvelos-prokuraturam-msjavrdebul-mixeil-saakashvilis-mimarT-saqarTvelos-saxelmwifo-sazRvris-ukan> [Accessed on 06.12.2021].

210 <https://www.youtube.com/watch?v=ijpuHiVt4II> [Accessed on 06.12.2021].

join him there."²¹¹ Besides this, he also confessed: "We either had to arrest Saakashvili or he would have to leave politics."²¹²

NGOs responded to the third president's detention with a joint statement. According to them, the Prime Minister's statement blatantly showed that the conviction of the former president was of political nature, was decided by the ruling political party, and had no connection with the enforcement of impartial and independent justice.²¹³ In addition, some foreign politicians issued statements addressed to the Presidents of the European Council, the European Commission, and the European Parliament to advocate for Saakashvili's release. According to them, he should be able to enjoy his freedom until a fair trial can be ensured. They also stressed that "Georgia needs to finally abandon the era of politically motivated justice."²¹⁴

Mikheil Saakashvili declared a hunger strike after his arrest.²¹⁵ On October 13, according to the Justice Minister Rati Bregadze, a multifunctional group of doctors was formed to monitor the former president's health.²¹⁶ He said that Saakashvili would be transferred to the Penitentiary Treatment Establishment N18 if the need arose. However, the conclusion of the doctors group recommended Saakashvili's transfer to a multi-profile civil clinic.²¹⁷ As a result of the inspection of the institution N18 by the PDO, it was established that the prison hospital was not adequately equipped to meet the former president's comprehensive treatment needs.²¹⁸

During the period of hunger strike, the Penitentiary Service kept releasing video surveillance footage of Mikheil Saakashvili's prison stay, including moments when he consumes "food and natural juices."²¹⁹ However, the supplements consumed by the former president were not food in effect, and he received them by doctor's appointment to maintain vital parameters.²²⁰ To stop speculations, Saakashvili stopped taking minerals and vitamins altogether, which further aggravated his health parameters.²²¹ Considering the danger of multisystem organ failure,²²² and that the Gldani Prison Hospital could not provide adequate medical care, the civil sector and the Public Defender repeatedly kept asking the authorities to transfer the ex-president to a multi-profile clinic, but to no avail.²²³

211 <https://tabula.ge/ge/news/673991-premieri-saakashvilze-cesierad-moiktses-torem>

212 <https://cutt.ly/7TjIHyf> [Accessed on 06.12.2021].

213 <https://osgf.ge/en/there-are-signs-of-politically-motivated-justice-against-mikheil-saakashvili/> [Accessed on 06.12.2021].

214 <https://civil.ge/archives/448455> [Accessed on 06.12.2021].

215 <https://formulanews.ge/News/58037> [Accessed on 06.12.2021].

216 <https://www.facebook.com/watch/?v=1304532473298251> [Accessed on 06.12.2021].

217 <https://civil.ge/archives/450218> [Accessed on 06.12.2021].

218 <https://www.ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsvelma-mikheil-saakashvilis-mighebtvis-n18-samkurnalo-datsesebulebis-mzadqofnis-khariskhi-sheamotsma> [Accessed on 06.12.2021].

219 <https://cutt.ly/wTHvURW> [Accessed on 06.12.2021].

220 <https://report.ge/society/30-50-miligrami-danamatis-migheba-khdeboda/> [Accessed on 06.12.2021].

221 <https://www.radiotavisupleba.ge/a/31548935.html> [Accessed on 26.11.2021]

222 According to the Concilium's findings, "the patient is at high risk of multisystem complications. Requires treatment in a multi-profile, high-tech medical institution: cardio-vascular, neurological, treatment, and diagnostic imaging (MRT, CT. Catheterization laboratory), hematology, endocrinology, and nutritional therapy will be provided." <https://www.radiotavisupleba.ge/a/31551550.html> [Accessed on 06.12.2021].

223 <https://rb.gy/im8gtw> [Accessed on 06.12.2021].

On November 8, according to the Penitentiary Service of the Ministry of Justice, Saakashvili was transferred to a medical institution N18 "in order to prevent the deterioration of his health and due to increased dangers,"²²⁴ However, his lawyers and family knew nothing about the transfer until after the fact.

The Penitentiary's official FB page also posted footage of Saakashvili's transfer from the N12 establishment "to respond to the criticism that he was moved against his will."²²⁵ However, the PDO's statement confirmed that the former president had been forcibly and fraudulently removed from his cell and taken to the N18 medical facility. According to Saakashvili he was told that he was being taken to a multifunctional clinic.²²⁶

The manner of transfer of the ex-president to the Gldani prison was also assessed as violation of honor and dignity, as the video released by the Penitentiary Service clearly shows the former president being dragged by force²²⁷ - semi-naked and placed in degrading conditions.²²⁸ Insulting and threatening slurs could be heard from other inmates of the adjacent Gldani N8 penitentiary institution while the former president was being transferred to the N18 facility.²²⁹ Because of this mistreatment, Saakashvili suffered psychological and physical torture during this transfer.²³⁰

We note that on November 10, the European Court of Human Rights issued an interim measure ordering Georgia to ensure Saakashvili's safety and to provide him with adequate medical care for his post-hunger strike rehabilitation.²³¹ Later, the PDO set up a multidisciplinary team of medical experts to monitor the adequacy and timeliness of medical services provided to the third president²³². The European Court of Human Rights used the finding of the team as the basis for its second interim measure and called on Georgia to provide adequate medical help to Saakashvili given that his medical conditions had been recently changed.²³³

After Mikheil Saakashvili lost consciousness because of ill health²³⁴, he was finally transferred him from N18 medical institution to the Gori Military Hospital.²³⁵ It should be emphasized here that only after the announcement of this decision to transfer him to the clinic it become known that the European Court had issued a second interim measure, where it had, once again specified that the state should ensure Saakashvili's treatment in an appropriate facility. Apparently, the Ministry acted

224 <https://www.radiotavisupleba.ge/a/31551411.html> [Accessed on 06.12.2021].

225 <https://www.facebook.com/watch/?v=620434046072480> [Accessed on 06.12.2021].

226 <https://cutt.ly/2THblr0>. <https://civil.ge/archives/455794> [Accessed on 06.12.2021].

227 <https://www.facebook.com/watch/?v=1061505497963689> [Accessed on 06.12.2021].

228 <https://www.ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsveli-mikheil-saakashvilis-n18-datsesebulebashi-shesakhlebis-kadrebis-gavrtselebas-ekhmianeba> [Accessed on 06.12.2021].

229 <https://cutt.ly/HTjIMQf> [Accessed on 06.12.2021].

230 <https://tinyurl.com/5f66v2tf> [Accessed on 06.12.2021].

231 <https://civil.ge/archives/454297> [Accessed on 06.12.2021].

232 A group of experts rated Mikheil Saakashvili's situation as "critical". Additionally, there should be an appropriate equipment and infrastructure in the medical institution, multidisciplinary medical personnel, complex case management experience and 24 hr. and urgent access to medical care. As a result of the situational analysis of the medical institution, it was established that the N18 institution failed to meet the above-listed requirements, see: <https://cutt.ly/ZYlJKgj>.

233 <https://www.radiotavisupleba.ge/a/31573950.html> [Accessed on 06.12.2021].

234 <https://civil.ge/archives/456320>

235 <https://agenda.ge/en/news/2021/3655> [Accessed on 06.12.2021].

only after it was ordered by the ECHR to do so.

In addition, during his placement in the penitentiary establishment, several visitors were not allowed to visit Mikheil Saakashvili, including MEP Anna Fotyga,²³⁶ Public Defender of Ukraine, Lyudmyla Denisova,²³⁷ Saakashvili's Ukrainian defense attorney²³⁸, and Ukrainian journalist, Dmitry Gordon, etc.²³⁹ Saakashvili's personal doctor, Nikoloz Kipshidze also faced obstacles during his visits. Namely, he was denied entry into the Gldani penitentiary institution several times.²⁴⁰ Despite a 2-hour wait on November 14th, members of the Concilium were not allowed to visit the ex-president. The administration cited “no visiting outside of working hours” as the reason for this denial.²⁴¹

Even before Saakashvili's Georgia return, he was tried *in absentia* on several times in 2021. On February 2, 2021, the so called “Costume Case” judge maintained detention as a measure of prevention applied against Saakashvili.²⁴² During the next court session, the court reviewed the defense's motion to remove detention as a measure of prevention, but kept it in place.²⁴³

Since his return to Georgia and arrest, Mikheil Saakashvili was not allowed to attend his own trials.²⁴⁴ According to the Penitentiary Service, transfer of prisoner Saakashvili to the courthouse was not justified on the grounds of safety and health concerns.²⁴⁵ The court did not challenge this reasoning and took it at face value.²⁴⁶ Therefore, the ex-president refused to call in the trial via video link. On November 16 trial,²⁴⁷ the judge demanded the penitentiary service to deliver him in person, or ensure that he was present via internet.²⁴⁸

The U.S. Department of State has firmly called on the authorities to treat the ex-president in a fair and dignified manner and to allow him to take part in his own trial and to enjoy the right to fair trial.²⁴⁹

236 <https://www.interpressnews.ge/en/article/116785-anna-fotyga-i-was-refused-to-visit-mikheil-saakashvili-in-prison-government-is-fully-responsible-for-life-and-health-of-the-former-president/> [Accessed on 06.12.2021].

237 <https://cutt.ly/bTHnrmy>. <https://www.interpressnews.ge/en/article/117586-ombudsman-of-ukraine-such-actions-of-the-georgian-authorities-are-assessed-as-torture-and-violation-of-the-right-to-life-of-ukrainian-citizen-mikheil-saakashvili/> [Accessed on 06.12.2021].

238 <https://www.radiotavisupleba.ge/a/31531776.html> [Accessed on 06.12.2021].

239 <https://civil.ge/archives/450441> [Accessed on 06.12.2021].

240 <https://www.facebook.com/watch/?v=4922038484515523> [Accessed on 06.12.2021].

241 <https://formulanews.ge/News/60162> [Accessed on 06.12.2021].

242 Monitoring report of the Judicial Monitor of the Human Rights Center on criminal proceedings against Mikheil Saakashvili: 02.02.2021; <http://www.hrc.ge/290/eng/> [Accessed on 06.12.2021].

243 *ibid*; Monitoring report of the Judicial Monitor of the Human Rights Center on criminal proceedings against Mikheil Saakashvili: 30.03.2021, see: <http://www.hrc.ge/290/eng/> [Accessed on 07.12.2021].

244 <https://formulanews.ge/News/60263> [Accessed on 06.12.2021].

245 <https://www.radiotavisupleba.ge/a/31554521.html>. <https://agenda.ge/en/news/2021/3520> [Accessed on 06.12.2021]; <https://cutt.ly/UTHRuL2> [Accessed on 06.12.2021].

246 <https://www.radiotavisupleba.ge/a/31555396.html> [Accessed on 06.12.2021].

247 For illegal crossing of the state border of Georgia.

248 <https://cutt.ly/7TV2acg> [Accessed on 06.12.2021].

249 <https://cutt.ly/JTHRR2K> [Accessed on 06.12.2021].

9.2 Case of Nika Melia

On June 25, 2019, the Prosecutor's Office of Georgia filed charges against Nika Melia, the chair of the United National Movement, for organizing and taking part in group violence²⁵⁰ in connection with the events of June 20-21, 2019.²⁵¹ According to the prosecution, MP Nikanor Melia called on the demonstrators to storm the Parliament's building. After the call, the protesters moved toward the Parliament and, with Melia's guidance and direct participation, carried out violent actions, argued prosecution.²⁵²

On June 26, 2019, the Parliament stripped Melia's immunity based on Prosecutor General's motion. Next, the Tbilisi City Court sentenced Melia, set bail, and applied electronic monitoring.²⁵³

On November 1, 2020, Nika Melia publicly discarded his electronic monitoring bracelet at a rally and the court set higher bail as the Prosecutor's Office submitted renewed motion against him at the court.²⁵⁴ Melia did not pay bail, and as a result, on February 12, 2021, the Prosecutor's Office submitted another motion for his detention²⁵⁵ and asked the Parliament to strip him from his immunity to apply detention as a measure of prevention against him. The Parliament agreed.²⁵⁶

Melia's trials have led to sharp criticism from the civil sector. NGOs called on the Prosecutor's Office to stop seeking changes to the preventive measure, and to consider that a severe political crisis was unfolding in Georgia.²⁵⁷

On February 17, 2021, the court granted satisfaction with the motion of the Prosecutor General of Georgia Irakli Shotadze and determined that the preventive measure would be imprisonment for the accused Nika Melia. Thus, Melia's bail was replaced by jail.²⁵⁸ On February 23, 2021, law enforcement agencies stormed the UNM HQ and detained Melia using force.²⁵⁹ In particular, some officers entered the building from the front entrance, but others used firefighter's ladder and vehicles to climb up on the building, break down the doors of the room Melia was in and shot tear gas capsules in the building.²⁶⁰

According to the NGOs, Nika Melia's arrest was a plain example of selective approaches to the law enforcement and of politically motivated investigations.²⁶¹ It should also be considered that 23 representatives of the international community expressed "grave concerns" with the detention of the

250 Crime under parts I and II of Article 225 of the Criminal Code of Georgia;

251 <https://pog.gov.ge/en/news/parlamentis-wevris-nikanor-melias-braldebis-shesaxeb-dadgenileba-prokuraturam-misi-interesebis-damcv> [Accessed on 06.12.2021].

252 Legal Analysis conducted by the Human Rights Center: "Events of June 20-21," p. 221. 5-6. <https://cutt.ly/DTV4d4l> [Accessed on 06.12.2021].

253 <https://pog.gov.ge/en/news/saqarTvelos-generalurma-prokuraturam-braldebul-nikanor-melias-mimarT-gamoyenebuli-aRkveTis-RonisZieb> [Accessed on 06.12.2021].

254 *ibid.*

255 On October 31, 2020 Nika Melia won a proportional MP mandate. He was representing electoral block "UNM – Power is in Unity"

256 <https://civil.ge/archives/397912> [Accessed on 06.12.2021].

257 <https://gdi.ge/ge/news/ngos-statement-17-02-2021.page> [Accessed on 06.12.2021].

258 <https://www.radiotavisupleba.ge/a/31107595.html>, <https://civil.ge/archives/398685> [Accessed on 06.12.2021].

259 <https://civil.ge/archives/400099> [Accessed on 06.12.2021]; <https://www.youtube.com/watch?v=NtIcJQxt-pM> [Accessed on 06.12.2021].

260 <https://www.radiotavisupleba.ge/a/31116776.html> [Accessed on 06.12.2021].

261 <https://gdi.ge/en/news/civil-societys-position-on-crisis-resolution1.page> [Accessed on 06.12.2021].

opposition leader and the ongoing political crisis, which they said damaged " Georgia's international image and reputation as a stable partner in the region."²⁶²

Within the framework of the Michel Agreement,²⁶³ European Endowment for Democracy paid Melia's bail on May 8, 2021, with the goal of ending the crisis.²⁶⁴ The following day, the Prosecutor's Office rescinded motion for restraining measure and replaced it with bail.²⁶⁵ On May 10, 2021, Nika Melia was released.²⁶⁶

9.3 Case of Davit Kezerashvili

On September 7, 2021, the new, lifetime appointed justices of the Supreme Court of Georgia sentenced Davit Kezerashvili, a former Defense Minister and founder of Formula TV, to 10 years in prison,²⁶⁷ for so-called "Training Case", although the first instance court had found him innocent.²⁶⁸ Davit Kezerashvili was charged with embezzlement of public funds.²⁶⁹

It is important to note here that the trial resumed following the statement of Prime Minister Irakli Garibashvili on June 25: "After my departure [from previous PM tenure], you have justified him. Now it seems like he will be taken care of."²⁷⁰

The management of Formula TV linked the relaunching of trial to the critical editorial policy of the broadcaster.²⁷¹ It was also problematic that the Supreme Court's decision on September 7 apparently did not come/ was not delivered with a reasoning section. The Public Defender only learned about this when she reviewed the decision herself. The PDO said: "It is noteworthy and interesting why would the Supreme Court make a decision with such a speed, without having discussed legal reasoning behind it."²⁷²

The international community realized the politicized motive for the proceedings against Kezerashvili when Georgia twice requested the extradition of the former Defense Minister. First, Georgia applied to France, and for the second time to the UK. Courts in both jurisdictions refused to extradite him to Georgia, citing political nature of the case as a motive.²⁷³

On September 30, 2021, according to MoD's media statement, the Ministry served Davit Kezerashvili

262 <https://civil.ge/archives/404182> [Accessed on 06.12.2021]; <https://civil.ge/archives/404432> [Accessed on 06.12.2021].

263 https://eeas.europa.eu/sites/default/files/210418_mediation_way_ahead_for_publication.pdf [Accessed on 06.12.2021].

264 <https://cutt.ly/MTVrDKd> [Accessed on 06.12.2021].

265 <https://cutt.ly/JTVrGL6> [Accessed on 06.12.2021].

266 <https://civil.ge/ka/archives/418808> [Accessed on 06.12.2021].

267 This sentence was halved because of amnesty <https://cutt.ly/GTV2Qfj> [Accessed on 06.12.2021].

268 <https://cutt.ly/GTV2Qfj> [Accessed on 06.12.2021].

269 "According to the investigation, on January 10, 2008, Davit Kezerashvili signed an agreement with Girwood Business Corp, an offshore registered company related to him, and the state lost EUR 5,685,000 because of this transaction. " - see: <http://liberali.ge/news/view/31220/davit-kezerashvili-dgheistvis-arts-ert-saqmeze-ar-aris-msjavrdebuli> [Accessed on 06.12.2021].

270 <https://formulanews.ge/News/56117> [Accessed on 06.12.2021].

271 <https://cutt.ly/BTVrNqm> [Accessed on 06.12.2021].

272 <https://www.radiotavisupleba.ge/a/31485910.html> [Accessed on 06.12.2021].

273 <https://cutt.ly/iTV2h7y> [Accessed on 06.12.2021].

and Alexander Ninua with a lawsuit and²⁷⁴ "demanded compensations for the damages inflicted by their criminal action against the Ministry".²⁷⁵ This led to the critical reaction of the civil sector. According to various statements, a lawsuit filed by the Ministry of Defense against Formula TV owner, Davit Kezerashvili, may have been aimed at curtailing media freedom, targeting this critical voice.²⁷⁶ In its response, the Ministry stated that they could have requested provisional remedy by seizing shares in TV "Formula" under legal process, but they refused to take this path as they respected democratic values and the importance of freedom of speech.²⁷⁷

The Prime Minister also commented on the MoD's lawsuit as well. According to Garibashvili, there are many facts of embezzlement, and "the investigation will take care of them to all."²⁷⁸

10. Influence of Politics on Human Rights

Following the October 31, 2020 elections, eight opposition parties that crossed the required 1% threshold, contested official results, and refused to take seats in the parliament.²⁷⁹ On March 1, 2021, The President of the European Council, Charles Michel, visited Georgia. He started a dialogue between the opposition and the ruling party.²⁸⁰ After Michel's visit, an agreement still was not reached, which is why on March 12, Special Representative - Christian Danielsson was sent by Michel. His goal was to facilitate mediation. Danielsson held a meeting with the parties to come up with a common position, acceptable to all parties.²⁸¹ Because of failure to help parties reach an agreement during the first visit, Danielsson visited Georgia again on March 28-31 and brought a detailed proposal for the parties with him²⁸². According to his proposal, the opposition would enter the parliament, and an amnesty law was to be initiated in return. The Law would include all violations and detentions related to the June 19-21 protests, and political prisoners would also be released as part of the agreement. As for electoral reform, after the self-government elections in 2021, the electoral threshold would be set to 2.5% in Tbilisi and 3% everywhere else. The document also envisioned Central Election Commission reforms.²⁸³ Finally, an ambitious judiciary reform was proposed, but as Danielsson himself confessed, no consensus was found around it in the end and it was dropped.²⁸⁴

On April 18, European Council President, Charles Michel offered political parties another proposal - "The Path to the Future for Georgia",²⁸⁵ which clarified the two unresolved issues in Danielsson's

274 Head of State Procurement Department during Davit Kezerashvili's tenure as the MoD.

275 <https://mod.gov.ge/en/news/read/8435/the-ministry-of-defence-is-filing-a-lawsuit-against-davit-kezerashvili> [Accessed on 06.12.2021].

276 <https://tabula.ge/ge/news/673704-kartia-movucodebt-khelisuplebas-telekompania> [Accessed on 06.12.2021]; <https://tabula.ge/ge/news/673674-mshvenieradze-mgonia-tavdatvis-saministros> [Accessed on 06.12.2021].

277 <https://tabula.ge/ge/news/673707-tavdatvis-saministro-tv-pomulas-cilis> [Accessed on 06.12.2021].

278 <https://cutt.ly/TTV2b7X> [Accessed on 06.12.2021].

279 <https://civil.ge/archives/363949> [Accessed on 05.12.2021].

280 <https://www.radiotavisupleba.ge/a/31128148.html> [Accessed on 05.12.2021].

281 https://eeas.europa.eu/delegations/georgia/94702/node/94702_en [Accessed on 05.12.2021].

282 https://eeas.europa.eu/delegations/georgia/96000/node/96000_en [Accessed on 05.12.2021].

283 <https://cutt.ly/STKLzK1>; <https://euneighbours.eu/en/east/stay-informed/publications/way-ahead-georgia-proposal-president-european-council-charles> [Accessed on 05.12.2021].

284 <https://civil.ge/archives/409492> [Accessed on 05.12.2021].

285 <https://cutt.ly/LTKCasq>; <https://euneighbours.eu/en/east/stay-informed/publications/way-ahead-georgia-proposal-president-european-council-charles>

document - politicized justice and early elections in the event the ruling party received less than 43% of the votes in 2021 local elections. The document was signed on April 19 by the Georgian Dream and some opposition parties. Later, others also signed it. As a result, the President of Georgia pardoned Giorgi Rurua on April 27,²⁸⁶ while Nika Melia left prison on May 10, after EU paid his bail.²⁸⁷ Although Michel's Document stressed the need for judicial reform and the suspension of the appointment of Supreme Court justices, the Parliament defied the agreement and appointed six members to the Supreme Court on July 12th ²⁸⁸and on July 28th, two months prior to local elections, representatives of "Georgian Dream" announced that the party would abandon the Michel agreement effective immediately.²⁸⁹

After the unilateral annulment of the Michel Agreement, the EU repeatedly warned Georgia that it would not grant low-interest EUR 75 million loan to Georgia. The Georgian government responded on August 31. The authorities, citing the lack of need for such a loan, refused it altogether.²⁹⁰ Despite this, on September 21st, the Georgia took a USD 100 million loan from the Asian Development Bank. The new loan carries nearly twice as large the interest rate as the EU loan would have carried.²⁹¹

The aforementioned developments have destabilized atmosphere in the country and left pandemic mismanagement beyond scrutiny, thereby seriously threatening public health and economic well-being of the population. Georgia's acute political crisis also harmed Georgia's European integration aspirations and freedom of expression; and finally, anti-Western statements made by the ruling party representatives and some judges significantly strained relations with international partners.

[european-council-charles](#) [Accessed on 05.12.2021].

286 <https://civil.ge/archives/416324> [Accessed on 05.12.2021].

287 <https://civil.ge/archives/418793> [Accessed on 05.12.2021].

288 <https://parliament.ge/en/media/news/parlamentma-sakartvelos-uzenaesi-sasamartlos-mosamartleobis-6-kandidats-dauchira-mkhari> [Accessed on 05.12.2021].

289 <https://agenda.ge/en/news/2021/2131> [Accessed on 05.12.2021].

290 <https://www.radiotavisupleba.ge/a/31437064.html> [Accessed on 05.12.2021].

291 <https://www.radiotavisupleba.ge/a/31475023.html> [Accessed on 05.12.2021].