"Georgian Democracy Initiative" (GDI)

Report on Human Rights and Freedoms

2013, Second Half-Year

Table of Contents

1. Introduction

"Georgian Democracy Initiative" (henceforth "GDI"), a non-governmental organisation, continues studying and evaluating the state of human rights protection in Georgia. This report presents the information collected by this organisation and its analysis.

The report aims at identifying and evaluating those major tendencies, which necessitate, both on the part of the authorities and general public, adequate evaluation and taking effective measure in order to ensure that the existing challenges are adequately addressed and the problems are solved. Keeping in line with these goals, the report does not discuss the achievements attained and the positive steps made towards improving the human rights situation during the reporting period. To the contrary, the attention is drawn either to human rights violations or threats the effective realisation of human rights face.

The report aims at identifying and evaluating the major tendencies, which necessitate, both on the part of the authorities and general public, adequate evaluation and effective measures in order to ensure that the existing challenges are duly addressed and the problems are solved. Keeping in line with these goals, the report does not discuss the achievements attained and the positive steps made towards improving human rights protection during the reporting period. To the contrary, the attention is drawn to either human rights violations or threats the effective realisation of human rights face.

GDI considers that, in 2013, the authorities carried out certain positive measures in terms of improving the state of human rights protection. The elaboration of Action Plan in the field of human rights is noteworthy among these measures. Initiatives such as enforcing labour rights, elaboration of the draft law on non-discrimination, improving access to health care in the penitentiary system, etc., are some of the other notable measures aimed at preventing human rights violations.

Despite the positive steps taken, grave violations of human rights and worsening respect for human rights were noticed during the reporting period. These trends included systemic problems in ensuring equality and widespread practices of discrimination against religious, ethnic and sexual minorities. The unhindered realisation of political adversaries' rights remained problematic. The illegalities revealed in handling certain criminal cases gave rise to considerable misgivings as to the political bias underlying the actions of government bodies. Unfortunately, the important issue of respect for

private life, which the public has been facing, is still unresolved. It is of great concern that the authorities' response to the allegations of serious violations committed by law-enforcement officials has been inadequate. Moreover, the authorities have been overtly avoiding their obligation to effectively investigate such allegations.

On numerous occasions, GDI, independently and jointly with other NGOs, made public statements and addressed the authorities regarding the issues raised in the present report. These statements, unfortunately, failed to elicit enough attention or effective measures from the authorities.

We believe that the attention of the authorities and the public should be drawn to these issues once again through the present report. It is necessary to be well aware of the trends in the field of human rights and the scale and seriousness of human rights violations for the timely identification and effective resolution of these problems. Otherwise, it would be impossible to make any progress in terms of democratic development of the state, which is one of the major tasks considering the challenges faced by the modern reality and the fulfilment of Georgia's aspirations towards European integration.

2. Rule of Law

Amendments to the Criminal Procedure Legislation

On 4 July 2013, a draft law on the amendments to the Criminal Procedure Code (henceforth the "CPC") was initiated by the Government of Georgia in the Parliament of Georgia. Under the draft law, the enforcement of the new provisions regarding witness interrogation was delayed until 1 December 2013. On 20 December 2013, another draft law was initiated by the Government and subsequently adopted by the Parliament, which delayed the enforcement of the new proceedings involving interrogation of a witness for yet another two years.[1]

Under the effective wording of the CPC, the prosecution has the right to question witnesses during the stage of investigation, which implies the obligation of the summoned witness to appear before an investigative body and give it a statement. Under the legislation in force, the failure to comply with the aforementioned obligation gives rise to the right of an investigative body to ensure the appearance of the witness by force. In case a witness refuses to give a statement, he or she will be subjected to criminal responsibility.

[1] http://parliament.ge/files/Draft_Bills/23.12.13/07-2.128.pdf.

Unlike the mandatory rule of giving a statement to the prosecution, there is no provision obliging a person to give a statement (an explanation) to the defence. At the same time, the law does not enable the defence to attend and participate in the interrogation carried out by the prosecution before the examination of the case by a court.

The new provisions governing witness interrogation, the enforcement of which has been delayed for two years, only allow questioning witnesses before a court, where both the prosecution and the defence enjoy equal procedural rights. The enforcement of the new provisions on witness interrogation will be a significant safeguard to equality of arms and adversarial proceedings.

It is noteworthy that the enforcement of the aforementioned provisions has been delayed several times since the adoption of the new CPC. Under the jurisprudence of the Constitutional Court of Georgia, it is inadmissible to systematically delay the enforcement of legislative provisions, which the Court finds in violation of the rule of law: "…While the legislature may suspend the application of a legislative provision due to various circumstances, this should not assume an interminably permanent character and should not become a practice how law is enforced. Such an attitude towards the application of a law adversely affects the authority of legislation and contributes to the erosion of trust among the citizens. Such an approach questions not only the realisation of a right but its existence as well… Interminable and groundless suspension and delay of the application of a law tarnishes rule of law and strengthens misgivings on arbitrariness."[2]

Unlike the CPC in force before 2010, which provided for inquisitorial criminal proceedings, Article 85.3 of the Constitution of Georgia, which safeguards the exercise of the right to a fair trial, provides for equality of arms and adversarial proceedings. The new Code is aimed at strengthening equality of arms and adversarial proceedings. The delay of the enforcement of the said provisions for another two years is bound to adversely affect the state of human rights protection in Georgia, endanger the effective realisation of equality of arms and adversarial proceedings and enables pressurising witnesses summoned before investigative bodies.

Presumption of Innocence

The principle of presumption of innocence is guaranteed by Article 40 of the Constitution of Georgia, under which "an individual shall be presumed innocent until the commission of an offence by

[2]http://www.constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=220&action=show.

him/her is proved in accordance with the procedure prescribed by law and under a final judgment of conviction. "

Violations of presumption of innocence have unfortunately become rather frequent occurrences. Such facts, moreover, took a systemic character. Particular instances of the violation of this right were also described in our report covering the first half-year 2013.[3]

Unfortunately, the authorities have not so far made any effective steps towards the solution of the aforementioned problem. To date, the Ministry of Internal Affairs and the Financial Police make statements where alleged crimes are frequently reported as already proved and the accused are referred to as guilty.

These statements refer to individuals as members of groups of robbers[4], facilitators of bribes[5], etc., even though a court has yet to pronounce itself on the guilt of these persons.

While the Constitution of Georgia and the CPC lay down provisions on presumption of innocence, the legislation does not yet provide for any instruments of preventing human rights violations and effective safeguards against infringement of the right to a fair trial.

The lacuna existing in the legislation prevents an individual from effectively redressing any infringement of his/her right to be presumed innocence as guaranteed by the Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth the "ECHR"). GDI once again calls upon the Parliament of Georgia to make appropriate changes to the relevant legislation to enable the citizens to effectively exercise their procedural rights and to prevent violation of presumption of innocence.

Obstruction of the Ombudsman

For strengthening the rule of law and enforcing protection of human rights it is necessary for the government to ensure that there are effective legal remedies in place. In this regard, the Ombudsman's Office is an important institution. It acts, *inter alia,* as National Prevention Mechanism (henceforth the "NPM") for the purposes of Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

[3]http://gdi.ge/wp-content/uploads/2013/07/GDI-report-full-version.pdf.
[4]http://police.ge/ge/shss-m-kachaghuri-dadjgufeba-daakava/5652.
[5]http://police.ge/ge/shss-s-antikoruftsiulma-saagentom-qrtamis-aghebis-faqtze-ori-piri-daakava/5629.

Under Article 27 of the Law of Georgia on Ombudsman of Georgia, the staff members of the Ombudsman's Office carry out the statutory functions through the special authority of the Ombudsman of Georgia. The representatives of the Ombudsman of Georgia are entitled, within their statutory authority, to unhindered access to any state or local self-government bodies, the places of arrest, remand, detention and other places of deprivation of liberty.

Furthermore, under Article 18.b) of the Law of Georgia on Ombudsman, the representatives are entitled to request all respective bodies and officials to provide any data, documents, or other materials, or explanations about any issue under examination.

According to the information imparted by Kakheti Information Centre on 17 October 2013, the members of the Special Prevention Group of the Ombudsman were physically forced to leave the Duty Unit of Sagarejo Department of the Ministry of Internal Affairs, without their documentation being checked. The representatives had duly introduced themselves to Deputy Head of the Duty Unit, Giorgi Revazishvili, and presented their official credentials.[6] The circulated video makes it clear that it was a case of obstructing the Ombudsman's representatives by the government.

The statement made by the Press Centre of the Ministry of Internal Affairs with regard to the incident completely differs from the facts shown in the circulated video. According to the official statement, the staff members of the Ombudsman's Office entered the Duty Unit of the Sagarejo District Department without having presented their credentials or introducing themselves. [7]

The government is obliged to ensure effective enforcement of law. The Ombudsman is one of the key legal remedies of human rights protection and it is worrisome that this institution is obstructed from following its mandate defined by law. We believe that every single incident of obstructing the Ombudsman warrants an objective approach and an appropriate respond in order to discourage officials from breaching the law in the future. Connivance of authorities towards the above fact endangers the rule of law and undermines effective protection of human rights and freedoms in the country. In our opinion, the reported incident should be timely and effectively investigated.

So-Called "Prison Watches"

In the aftermath of September 2012, when video-recordings of prisoners being subjected to torture, inhuman and degrading treatment were broadcasted, the conditions within the penitentiary system still remain in the centre of attention of the public.

---

[6] http://www.youtube.com/watch?v=FoYC0RYCd4A.
[7] http://www.youtube.com/watch?v=s1XwNqoLyJM.

After the replacement of the Minister of Corrections and Legal Assistance and the Head of the Penitentiary Department, which followed the video broadcasts, there has been no confirmed information of prison administrations still ill-treating prisoners. The penitentiary system is now, however, facing new problems. It has become a new challenge for the government to fight against the attempts of the criminal underworld to enforce their privileges and establish their influence in prisons. It was reported on numerous accounts about the leaders of criminal underworld extending their power to penitentiaries and breaching the law.

One of the most alarming incidents related to a crime committed within the penitentiary system is the death of Levan Kortava. It was reported that on 13 May 2013, a 24-year old prisoner Levan Kortava was cruelly beaten in Geguti Penitentiary; as a result of the beating he died on 23 May 2013. According to the statement of the Chief Prosecutor's Office made on 2 August 2013, while being transported to Geguti Penitentiary, Levan Kortava had an altercation with Ilia Shanshashvili, Inspector of Security Department, regarding the distribution of narcotics. Ilia Shanshashvili ordered convict Shota Sinauridze to sort out the conflict with Levan Kortava, after which several inmates beat Kortava with extreme cruelty. Levan Kortava died as the result of the injuries he sustained.[8] Apart from Shanshashvili, criminal proceedings have been initiated against the Director of Geguti Penitentiary – Malkhaz Sinauridze, Deputy Director – Iver Gogiberidze, Head of Security Department, Inspector of Prison Regime Department and a social worker.[9]

The information about officials of the penitentiary system using the influence of the leaders of criminal underworld is particularly alarming. If the government fails to adequately respond to such incidents, illegal relations between prisoners and prison officials and affording privileges to certain prisoners may acquire a systemic nature. It is important to reveal the involvement of prison officials in the commission of such actions and determine how effectively the prison administration fights the criminal underworld rule in every single case.

There have been numerous statements made by the Ministry of Corrections regarding the so-called "prison watches".[10] The acknowledgement of the existence of the problem in prisons by the government is welcomed; however effective measures need to be taken in order to solve this problem.

It is necessary to strengthen the internal monitoring system which will contribute to timely and effective prevention of prisoners' informal rule in penitentiaries.

---

[8]http://netgazeti.ge/GE/105/News/22313/.
[9]http://www.tabula.ge/ge/story/77982-levan-kortavas-saqmeze-brali-kriminalur-avtoritetebs-tsaukenes.
[10]http://ghn.ge/news-96793.html.

Effective Investigation

The case of *Mamuka Miqautadze*: During the reporting period, the attention of the public was drawn to the illegal arrest of citizen Mamuka Miqautadze, his subsequent interrogation as a witness and policemen allegedly subjecting him to undue pressure during the interrogation for the purpose of obtaining a statement from him. On the next day of giving his statement, according to an official version, Mamuka Miqautadze hanged himself.

According to the information obtained by us, Mamuka Miqautadze was arrested at his workplace on 5 July 2013, in the morning hours. According to the eyewitnesses, Miqautadze was kept there for a few hours and later was taken by the police.

Mamuka Miqautadze was transported to the Department of the Ministry of Foreign Affairs, where, according to the official version, he was questioned as a witness. It is noteworthy that Miqautadze's lawyer could neither meet him nor attend the questioning. He was not admitted into the police building under the pretext of failure to contact the investigator. Another arrested person, Gela Manjavidze, was also unable to meet his lawyer.

After Mamuka Miqautadze left the police building, he told his friends about the pressure he was subjected to and said that he had to sign a testimony incriminating Gela Manjavidze while lying on the floor with his head pressed down by a policeman's foot. According to Miqautadze, he was summoned to go back to the police the next morning.

Mamuka Miqautadze told his wife too about the pressure he had undergone. The Next day he told his friends that he did not want to live after what had happened. Later, Mamuka Miqautadze was found hanging on the territory adjacent to Tbilisi Reservoir.

With the initiative of an investigative agency, Mamuka Miqautadze's body underwent forensic examination and later, with the consent of the family, also underwent an alternative forensic examination.[11] The latter revealed several injuries the time of which corresponded to the time he was in the police building. According to an expert's report, Miqautadze sustained bodily injury with "some firm, blunt object" in the close period before his death.[12]

The allegations of driving Mamuka Miqautadze to suicide were investigated by Inspectorate General

[11] http://www.radiotavisupleba.ge/content/mikautadzis-sakmis-shesakheb/25049161.html.
[12] http://civil.ge/geo/article.php?id=27144.

of the Ministry of Internal Affairs. It was established by this investigation that the officers of Criminal Police did not subject Mamuka Miqautadze to any physical or moral pressure.[13]

We believe that the above case should have been investigated not by the Agency within which the crime was allegedly committed, that is by the Inspectorate General of the Ministry of Internal Affairs, but by the Chief Prosecutor's Office. The preliminary comments made by the Inspectorate General of the Ministry of Internal Affairs during the stage of investigation[14] fan suspicions about the independence, effectiveness and credibility of the conducted investigation.

In accordance with para. 2 of Order #34 issued by the Minister of Justice (concerning determination of territorial and investigative jurisdiction of criminal cases) on 7 July 2013, in case of allegations of commission a crime by police, the case falls under the jurisdiction of an investigator of the Prosecutor's Office.

In the case of *Enukidze and Girgvliani v. Georgia*, the European Court of Human Rights held:

"For an investigation to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice. This means not only a lack of hierarchical or institutional connection with those implicated in the events but also a practical independence. The effective investigation required under Article 2 serves to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility."[15]

It is clear from the examination of information mentioned above that the investigation against Miqautadze was conducted in grave breach of Georgian Law and the standards of the European Court of Human Rights.

The case of Roman Iakobadze: During the reporting period, the case of Roman Iakobadze also caught our attention. According to the family members of Roman Iakobadze, the latter was under pressure of Adigeni police officers to plant a weapon at his relative's place. Iakobadze was allegedly forced to testify against himself too. The family of the victim notified these facts both to the Prosecutor's Office

[13] http://police.ge/ge/shinagan-saqmeta-saministros-gantskhadeba/5191.
[14] http://police.ge/files/pdf/%E1%83%A8%E1%83%A1%E1%83%A1%E1%83%A1%20%E1%83%AA%E1%83%9C%E1%83%9D%E1%83%91%E1%83%90%20%E2%80%93%20%E1%83%9B%E1%83%90%E1%83%9B%E1%83%A3%E1%83%99%E1%83%90%20%E1%83%9B%E1%83%98%E1%83%A5%E1%83%90%E1%83%A3%E1%83%A2%E1%83%90%E1%83%AB%E1%83%94.pdf.
[15] http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"itemid":["001-104636"]}.

of Ajara and NGOs.[16] It should be stressed that after his arrest, Iakobadze was not allowed by Adigeni police department to contact his lawyer. Police object to the statements made by the family of Iakobadze. There is no information available, however, about conducting through prosecutorial investigation of these allegations or its outcomes.

Statement of former Prime Minister Vano Merabishvili : On 17 December 2013, former Prime Minister Vano Merabishvili, being in remand detention at the material time, made a statement during the examination of criminal charges against him by Kutaisi Regional Court about the pressure to which he was subjected. In his statement, Merabishvili incriminated Chief Prosecutor Otar Partskhaladze and Head of the Penitentiary Department Dimitri Darbaiseli.[17]

According to Merabishvili's statement, on 13 December, Friday, late in the night, at 2:30 a.m., he, with his head covered with his cloak, was taken from the penitentiary, forced into a car and driven to the office of the Penitentiary Department. Merabishvili alleges that he was met by the Chief Prosecutor himself who threatened him with worsening prison conditions if Merabishvili did not comply with his demands.[18]

The incidents reported in the news were clearly criminal in nature and alarming. Any accusation involving such facts should be seriously dealt with by the government and prompt, objective and thorough investigation should be conducted. This is all the more necessary in the light of the allegations that a former Prime Minister was subjected to pressure and also the questions the public has concerning the criminal proceedings against Merabishvili.

The preliminary statement of the Prosecutor's Office, according to which this case would not be investigated, is alarming. The statement of MP Tinatin Khidasheli is also worrying. She repeatedly observed that if the accusation by Merabishvili is not confirmed, he needs to bear criminal responsibility for false incrimination. Such attitudes are alarming and run counter to the legislative regulations of Georgia.

The obligation of investigative bodies to inquire is not yet fulfilled to date. The only official inquiry was held by the Inspectorate General of the Ministry of Corrections.[19] This internal enquiry, however, does not fulfil the statutory obligation mentioned above. As a result of the inquiry, it was

---

[16] http://www.netgazeti.ge/GE/105/News/21616.
[17] http://24saati.ge/index.php/category/news/2013-12-18/42140.html.
http://for.ge/view.php?for_id=29126&cat=13.
[18] http://www.youtube.com/watch?v=KiodYtVnM0E.
[19] http://208.75.225.188/ge/story/79054-sasjelaghsrulebis-saministro-merabishvilis-kadrebi-avtomaturad-tsaishala.

revealed that by the time Merabishvili's statement was issued, the CCTV recording had ceased to exist as the CCTV camera systems set up in the penitentiaries and Penitentiary Department automatically delete old recordings after 24 hours.[20] It is also noteworthy that, prior to the conclusion of the Inspectorate General, the Minister of Corrections and Legal Assistance maintained that the video recordings are kept for ten days. This statement was later retracted.[21]

Article 101 of the Criminal Code of Georgia provides in express terms for the obligation of an investigator and a prosecutor to institute investigation based on the information imparted through media. It was necessary to conduct timely and effective investigation to ascertain whether the statement made by the former Prime Minister was accurate. This would have answered the questions raised in the public. Moreover, considering that the accusations were directed at the Chief Prosecutor, the authorities were under obligation to conduct particularly objective investigation into the matter without politicising the issue.

Police Raids

Article 22 of the Constitution of Georgia guarantees the right to free movement. Under this provision, "everyone legally on the territory of Georgia shall, throughout the territory of the country, have the right to free movement." The restriction of free movement or forbidding it would amount to serious interference with a person's right to liberty guaranteed by Article 18 of the Constitution.

"Liberty means physical liberty of a person, his/her right to freely move according to his/her will, to be or not to be at some particular place. A person's liberty is, in a narrower sense, his/her freedom to move."[22]

In August 2013, mass stop and checks of citizens were conducted for several days in Tbilisi.[23] During these measures, both pedestrians and vehicles were stopped and searched and personal documents were checked.[24] According to the information telecast, policemen sometimes wrote down information about citizens and took their photos using mobile phones. The police raids were

[20] http://208.75.225.188/ge/story/79054-sasjelaghsrulebis-saministro-merabishvilis-kadrebi-avtomaturad-tsaishala.
[21] http://www.tabula.ge/ge/story/78953-subari-merabishvilis-saqmeze-30-mde-videokameris-monacemi-amovighet.
[22] Judgment of the Constitutional Court of Georgia no. 2/1/415, adopted on 6 April 2009, II. para. 2.
[23] http://www.youtube.com/watch?v=KUB0XEw4m2U.
[24] http://www.youtube.com/watch?v=KUB0XEw4m2U.

described as preventive by the Minister of Internal Affairs. This measure continued for a week and, according to the Ministry, was aimed at preventing serious crimes.[25]

In accordance with the Law of Georgia on Police, raids can be conducted on the basis of the Criminal Procedure Code and the legislation on administrative violations. The CPC defines the circumstances that permit searches and seizures. Accordingly, for searches and seizures to be legal, a policeman must follow CPC according to which a search or seizure can be conducted in case of a reasonable doubt for the purpose of finding objects, documents, substances or any other material containing information that are important for a criminal case. Search and seizure can also be conducted in order to find a fugitive or a body. Reasonable doubt which is the ground for search and seizure is defined by the CPC in the following way:

The combination of facts or information which taken jointly with the circumstances of a particular criminal case would satisfy an objective observer that an individual could have committed a crime. This is the standard of proof necessary for conducting an investigative action defined by the CPC and/or standard of proof necessary for the application of a preventive measure. It is illogical to assume that mass searches of randomly selected individuals by police were based on a reasonable doubt. Mass stopping and checking citizens fan suspicions that the police selected individuals randomly and searched them rather than conducted search for some person charged with the commission of a particular crime or for the purpose of making an arrest.

The statement made by the Ministry of Internal Affairs also confirms the failure of the above actions to comply with law. According to the Ministry the raids were preventive in nature.[26] Such preventive measures are against the law.

Moreover, in accordance with para. 3 of Article 9^1 of the Law of Georgia on Police, "a police officer shall be obliged to introduce him/herself to a stopped individual, present his/her credentials and explain the right to challenge the legality and reasonableness of stopping."

According to our information, in some instances, the law-enforcers failed to follow the above requirement of the law.

Therefore, we believe that the police raids were illegal and in breach of citizens' constitutional rights and freedoms.

---

[25] http://www.interpressnews.ge/ge/samartali/251847-irakli-gharibashvili-prevenciuli-ghonisdziebebi%20dasrulebulia.html?ar=A.

[26] http://www.interpressnews.ge/ge/samartali/251847-irakli-gharibashvili-prevenciuli-ghonisdziebebidasrulebulia.html?ar=A.

The information on some of the policemen chasing a journalist of the TV Company Tabula is particularly worrying. The journalist recording the on-going stop and checks was searched and the recorded material was forcefully deleted.[27] Under the Georgian law, hindering a journalist's professional activity is a crime and necessitates appropriate investigation and prosecution. Tabula applied to the Ministry of Internal Affairs and requested the investigation of the above incident. However, according to the Ministry's statement, no particular offence was identified and accordingly no adequate follow-up actions were pursued.[28]

Audio Surveillance

On 2 October 2013, the information centre of Kakheti circulated a video recording in which former Minister of Internal Affairs, Bachana Akhalaia, currently in remand detention, is shown meeting his visitors in a penitentiary.[29] The video recordings also include audio-playback and the contents of the conversations of those in the cell can be clearly heard.

Article 9.3 of the Code of Imprisonment authorises a prison administration to conduct visual and electronic surveillance. Under the same Code administrations are obliged to warn inmates about the use of technical means of control and monitoring.[30] According to Bachana Akhalaia's lawyers, their client was only informed about video and not audio surveillance.[31]

It is revealed from the official comments made regarding this incident by the representatives of the Ministry of Corrections and Legal Assistance that the Ministry does not regard operation of audio-enabled surveillance cameras in a cell as a breach of law as it is for ensuring the safety of inmates.[32] The information imparted by the Ministry regarding the legal grounds of surveillance is not convincing since the Ministry has not presented to the public (neither to the accused and his lawyers) the proof of informing Bachana Akhalaia. Moreover, the explanation given by the Ministry gives rise to a reasonable doubt that every conversation Bachana Akhalaia had in his cell was intercepted.

Consequently, it can be assumed that this incident amounts to an invasion of privacy.

---

[27] http://www.tabula.ge/ge/story/73966-shss-tabulas-zhurnalistis-mimart-kanondarghvevas-uarkofs.
[28] *Idem.*
[29] http://www.youtube.com/watch?v=BhCjpu8Hfgk.
[30] The Law of Georgia on the Code of Imprisonment, Article 54.2.
[31] http://www.ick.ge/rubrics/society/16007-i.html.
[32] http://www.ick.ge/rubrics/society/16012-2013-10-04-13-00-22.html.

This fact is particularly troubling considering that Bachana Akhalaia has been visited in his cell by those representatives of the Ombudsman's Office that are the members of National Preventive Mechanism.

Article 19 of the Organic Law of Georgia on Ombudsman and the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibit the breach of confidentiality of conversations of the members of NPM during their official duties with persons deprived of liberty. The statement of the Ministry of Corrections about continuous operation of audio and video surveillance[33] consolidates the doubt that the same measures could have applied to those members of NPM that monitor penitentiaries. This would violate the protected principle of confidentiality of conversations and be in breach of the legal provision mentioned above.

3. Criminal Proceedings against Former Officials

Article 42 of the Constitution of Georgia safeguards the right of every person to apply to a court for the protection of his/her rights. This right is of fundamental importance and it cannot be restricted for the sake of expediency.

The Constitutional Court has held in its judgment that: "since it is the primary function of the rule of law to ensure the full realisation of human rights and freedoms and their adequate protection, the right to a fair trial, as an indicator of the degree of respect for rule of law implies the possibility to defend all those interests in a court which in their substance are rights."[34]

Under Article 6 of the ECHR, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

After the change of the authorities as the result of parliamentary elections of 2012, investigations were instituted in a range of cases against former high-ranking officials. As the result, the former Prime Minister, former Minister of Internal Affairs and other former high-ranking officials have been prosecuted.

The criminal proceedings were accompanied by the well-founded claims regarding disrespect for constitutional rights and legal regulations. Parts of these facts were described in the GDI report of the first half-year 2013.

---

[33] http://www.ick.ge/articles/16000-i.html.

[34] Judgment of the Constitutional Court of Georgia no. 1/466, adopted on 28 June 2010, II. para. 14.

The case of Bachana Akhalaia: During the reporting period, our attention was drawn to the claims about delaying the court examination of criminal charges against Bachana Akhalaia. The prosecution's actions in this case validly raise doubts concerning artificial delay of the examination of the case. On 19 September 2013, the official reason for the prosecutor's failure to appear before court was the deteriorated state of health[35]. Prosecutor Ia Darjania joined the case and motioned for the postponement of the case initially for thirty days in order to study the case-files. The judge adjourned the case for ten days to allow the prosecutor to study the files. On 30 September, the judge gave additional seven days to the prosecutor due to her failure to prepare for the case. On 7 October, the judge upheld the motion of the prosecutor for withdrawal,[36] after which new prosecutor, Levan Adeishvili was afforded ten days to study the case-files.[37]

Under Article 62.5 of the CPC, self-recusal must be reasoned. In the given case, the withdrawals raise certain doubts. Another prosecutor Revaz Nadoi had not presented any verified documentation concerning his exit from the case due to health reasons. Prosecutor Ia Darjania knew in advance who represented Bachana Akhalaia's interests and she could withdraw from the proceedings right in the beginning due to friendly relations with the lawyers. Likewise, given the process was twice adjourned following her motions, the statement of the prosecutor that she was undergoing psychological pressure is unconvincing.

The video address made by Manuchar Daraselia who was questioned as a witness on the case against Bachana Akhalaia is also noteworthy. In the video address, Manuchar Daraselia alleges that he was subjected to pressure, intimidation and threats from investigative bodies.[38] According to the witness, he was forced to give a testimony against Akhalaia. There is no information about any investigation or its outcomes concerning the aforementioned statement.

The Cases of Vano Merabishvili and Zurab Tchiaberashvili: Violation of a number of procedural rights was noticed in the criminal proceedings against former Prime Minister, Vano Merabishvili and former Minister of Labour, Health and Social Care.

The prosecution charged the former high-ranking officials with abuse of authority on the account of employing more than 100 persons based on party affiliation. In an unprecedented move, the

[35] http://www.tabula.ge/ge/story/74767-axalaias-saqmeze-prokurori-revaz-nadoi-ia-darjaniam-chaanacvla.
[36] http://www.tabula.ge/ge/story/75457-bacho-axalaias-saqmeze-prokurori-meored-sheicvala.
[37] http://www.tabula.ge/ge/story/75458-axali-prokurori-bacho-axalaias-saqmes-bolomde-mivikvan.
[38] http://www.netgazeti.ge/GE/105/News/14536/.

prosecution summoned up to 4000 witnesses for questioning in this case.[39] It created an impression that the prosecution was keen on delaying proceedings.

It is noteworthy that there are certain complaints regarding the application of detention as a preventive measure with respect to the former Prime Minister by a judge who allegedly did not have the required legal authority. According to the defence's information, Justice Malkhaz Guruli, who extended Vano Merabishvili's detention, is not a member of the Investigative Chamber, which means that he was not competent to authorise the detention.[40]

The case of Gigi Ugulava: In the reporting period, particular attention of the public was drawn to the application of preventive measures against Tbilisi's Mayor, Gigi Ugulava. According to our information, the prosecution motioned for the application of detention as a preventive measure.[41] The court hearing was scheduled for 18:00, 21 December 2013. Before the start of the hearing, the prosecution filed one more motion and requested the court to dismiss Ugulava from the Mayor's position as an additional preventive measure. The judge held an oral hearing on the motion of application of detention, with the prosecution and defence being present, and rejected it. The Bail amount was set at 50 000 Gel. After the ruling was read out, the judge examined the motion on dismissal, without the parties being present, and upheld it.

In accordance with the CPC, a court may examine a motion on dismissal in the absence of the parties. However, considering that there was a high public interest towards the case and the mayor is elected through direct elections, and given the fact that just a few hours before the same judge heard the prosecution's motion with the parties present, it would have been better that the defence had the opportunity to attend the hearing and present its arguments in this proceedings too.

On 21 December 2013, Mayor of Tbilisi, Gigi Ugulava, before the beginning of a court hearing of his case, stated that the trial judge was under pressure from certain persons, including the former and current staff members of Inspectorate General of the Ministry of Internal Affairs. Gigi Ugulava named particular individuals, who according to him participated in exerting pressure on the judge concerned.[42]

---

[39] http://civil.ge/geo/article.php?id=27373.
[40] http://www.interpressnews.ge/ge/samartali/252544-vano-merabishvilis-advokatebis-shuamdgomloba-ar-dakmayofilda.html?ar=A.
[41] http://www.netgazeti.ge/GE/105/News/26530/.
[42] http://netgazeti.ge/GE/105/News/26528/.

We believe that in this case the President of Tbilisi City Court was obliged to exercise the authority vested in him by law and investigate the allegations of undue communication with the judge.[43] We consider the statement of the President of the Supreme Court of Georgia to be inappropriate. According to him, the fact would only be addressed after it went through the enquiry of competent bodies. Such an approach diminishes the authority of the judiciary and gives rise to lack of confidence of the public towards the courts. It is alarming that the High Council of Justice (henceforth the "HCJ") has not been interested in this issue to date, whereas it is the statutory obligation of the Council to ensure the independence of courts.

Moreover, it is important that the HCJ, as the guarantor of the independence of a judge, ensures that the President of the Court promptly and adequately fulfils the statutory obligation. Based on the existing information, the President of the Court and HCJ should promptly study the case-files. In case the elements of a crime penalised by the Criminal Code of Georgia are identified, they are under obligation to refer the case-files to competent investigative bodies.[44]

The right to a fair trial implies that the case must be examined by an independent and impartial tribunal based on the principles of equality of arms and adversarial proceedings; each party must have the possibility to defend his/her position. Subjecting a judge to pressure is particularly dangerous in legal proceedings, which amounts to undermining the independence of the judiciary. The thorough investigation of the above case is of paramount importance for maintaining the quality of administration of justice and the stability of the system.

The circumstances revealed during the examination of the charges against former officials raise questions among the public. It is therefore necessary that every such case should be investigated and tried before a court in strict accordance with the law under the conditions of maximum transparency and impartiality. Otherwise the prosecution of these persons could be doubted as politically motivated.

4. Freedom of Assembly and Manifestation

Certain problems related to the realisation of the right to assembly and manifestation were identified during the reporting period. In particular, several political assemblies and manifestations were disrupted. On 20 and 21 July 2013, during the internal meetings planned to reveal presidential

[43] Article 10 of the Law of Georgia on the Rules of Communication with the Judges of the Courts of General Jurisdiction.
[44] *Idem.* para. 7.

candidates from the United National Movement, some groups of citizens gathered in the vicinity of a party assembly in Zugdidi and Batumi, pelted the members and delegates of the National Movement with stones and bottles.[45] Those groups also attempted to go through police lines and enter Zugdidi theatre in order to disrupt the meeting. During the confrontation, a journalist was hit by a full water bottle and seriously injured.

It is to be noted that the policemen arranged special cordons through which the participants and delegates managed to enter the building.[46] The policemen, however, failed to prevent physical assault on the attendees and also failed to take appropriate measures against those persons who tried to forcefully disrupt a peaceful political event.

Following the disruption of the meetings, law-enforcement officials arrested 12 persons and the Ministry of Internal Affairs made a statement that the participants in the incident would bear full responsibility. However, proceedings against the accused were instituted under Article 166 of the Code of Administrative Violations[47], and the court imposed fines amounting to 100 GEL in each case. In accordance with international standards and national legislation, the government is under a positive obligation to ensure the realisation of the right to assembly. Effective realisation of political pluralism is one of the characteristics of the democratic society. In this light, the government should not spare any necessary measure to ensure the safe functioning of political parties. While manifestation of protest and holding counter-demonstrations are also protected by the right to assembly, the exercise of this right should be within the confines of legal regulations and an assembly should not become violent.

Hence, the government is obliged to ensure that political events are safely conducted, violent acts are objectively and fairly investigated and offenders face adequate responsibility.

Unfortunately, in recent times, Police, Prosecutor's Office and courts tend to fail to adequately respond to various politically motivated violent acts; violence is not prevented and offenders are handed lenient sanctions. Such an approach will never result in preventing breach of law and remain contributing to the practice of violence.

[45] http://www.youtube.com/watch?v=jAinqhSh-OU.
[46] http://www.kvirispalitra.ge/kviridan-kviramde/17996-incidenti-zugdidshi.html?add=1.
[47] http://www.tabula.ge/ge/story/73110-shss-zugdidis-incidentshi-monatsile-12-piri-dakavebulia.

5. Freedom of religion

One of the key principles of a democratic society is the freedom of religion and belief, which is guaranteed by Article 19 of the Constitution of Georgia.

"...Freedom of belief being the foundation of personal development and autonomy, is at the same time a basis of societal architecture and an indicator of its degree of being democratic..."[48]

Freedom of religion implies the manifestation of religion or belief in private or in public, in worship, teaching and practice or observance.

The European Court of Human Rights reiterated on many occasions that Article 9 of the ECHR protects worship and praying. Under the jurisprudence of the European Court, restrictions on the construction of religious buildings may raise questions regarding the violation of the right to worship and religious practice. When deciding whether the interference was "necessary in a democratic society", the Court examines if the law at stake and its application in a particular situation can be considered proportional.

The reporting period is punctuated with rather negative policies in terms of the protection of the human rights of religious minorities. The government failed to respond in an effective manner to threats, creation of obstacles to holding religious rites and free movement as well as persecution that took place against Muslims. These issues were addressed in the report of the first half-year 2013 prepared by GDI. The report pointed out the events that had taken place in Samtatskaro, Tsintskaro and Nigvziani[49]

In August, 2013, a serious breach of freedom of religion took place in village Tchela, Adigeni Municipality, which became the most notorious event in the field of human rights in 2013.

On 26 August 2013, the Customs Department of the Revenue Service of the Ministry of Finance dismantled a minaret of a mosque in the village of Tchela. The Revenue Service cited the standard post-clearance audit of goods as the formal basis for dismantling the minaret. According to the statement made by the Revenue Service, the weight and code of the minaret presumably did not comply with the declaration made at the border, which necessitated the decision to re-examine the goods.[50]

---

[48]Judgment of the Constitutional Court of Georgia no. 1/1/477, adopted on 22 December 2011, II. para. 7.
[49]http://gdi.ge/wp-content/uploads/2013/07/GDI-report-full-version.pdf.
[50]http://www.rs.ge/Default.aspx?sec_id=4845&lang=1&newsid=2669.

According to our information, during the dismantling, all the roads leading to the village were blocked and the special operation took unprecedented scale. It involved two helicopters, up to 40 off-road vehicles, and up to 200 law-enforcement officers (including Special Forces). Some of the villagers who attempted to approach the building during the dismantling were beaten by the police and were charged with resisting police.[51] The mobile recordings made by some citizens, show that the police also fired warning shots in order to scare off villagers. It is reported that the police arrested 21 individuals, some of whom were freed right in the night of 26 August.

On 27 August, the District Court of Akhaltsikhe imposed fines on six arrested persons for administrative violations and set the bail amount, as a preventive measure, at 2 000 GEL with respect to each of three arrested persons for the alleged commission of crimes defined under Article 353 of the Criminal Code. In November 2013, following the Revenue Service's decision, the minaret was taken back and erected in Tchela.[52]

The events that unfolded in Tchela and Akhaltsikhe were observed by the representatives of various NGOs, including GDI, following which a joint legal evaluation of the above incidents was drafted.[53]

The action carried out by the Customs Department of the Revenue Service was illegal, lacked reasoning and infringed upon the right to property of the minaret's owner and the right to freedom of religion of the Muslim population of the village.[54]

Jambul Abuladze brought the parts of the minaret made in Turkey (a construction to be assembled) into Georgia on 14 July 2013. While filling in the customs declaration, he indicated that the goods represented a mobile house, classified under number 9406 00 110 00 in the Foreign Economic Activity Commodity Nomenclature (a system of commodity classification codes).

In accordance with the Georgian tax law, when declaring goods, the declaring person is obliged (excluding the exceptions defined by law) to pay VAT and import duties.

Considering the fact that the goods were made in Turkey and Georgia had concluded an agreement on free trade with Turkey in 2007, the goods made in Turkey are exempted from import duties.

Accordingly, the only tax that was due to be paid by the declarant was the VAT.

---

[51] http://www.youtube.com/watch?v=u6AQAezT82w.
[52] http://www.youtube.com/watch?v=toLfpqGz6WA.
[53] http://gdi.ge/?p=403.
[54] http://gdi.ge/?p=403.

Under Article 169.1 of the Tax Code of Georgia, the VAT rate is 18% of the customs value. Under Article 213 of the same Code, determination of customs value of goods implies its evaluation on the day the product was declared at the customs.

Under Article 213.2, the customs value of goods is determined by the declarant. The Revenue Service controls the accuracy of the customs value of goods and in case of disagreement, the value is determined by the Service.

Article 213.3 of the Code determines the following methods to establish customs value:

a) according to the transaction value (first method);

b) according to the value of the transaction concluded regarding identical goods (second method);

c) according to the value of a transaction concluded regarding similar goods (third method);

d) according to the unit price of goods (fourth method);

e) according to the computed value (fifth method);

f) the reserve method (sixth method).

Under Article 213.4 of the Tax Code each following method referred to in para. 3 must be used in case the preceding method cannot be justifiably applied.

In the light of the legislation in force, Jambul Abuladze had to pay 18% of the customs value of the declared item. According to the available information, the customs value established through the first method was 9000 USD (the price indicated in an invoice).

The declarant paid tax in accordance with the law and cleared the goods, after which it was handed over to third persons for ownership.

According to the statement made by the Revenue Service, "having analysed the documents, we had a reasonable doubt that inaccurate classification of goods in the customs declaration and annexed papers may result in reduced import duties. The determination of this amount is impossible without closer physical examination and relevant forensic report." This was exactly the official reason stated for dismantling the minaret.

As it was already mentioned, the goods made in Turkey are exempted from import duties. Therefore, despite the weight and classification of the goods, the declarant did not have to pay import duties.

As regards VAT, it is always set at 18% of customs value and the latter was already determined and paid through the application of the first method referred to in Article 213.3.a) of the Tax Code of Georgia.

Even in the case the customs authorities doubted the accuracy of the customs value as determined through the first method, they were obliged to resort to the second method, then to the third method, and so on. At the same time, the authorities would have had to provide justification for why the previous method failed in determining the customs value.

According to Order #39828 of 20 August 2013 issued by acting Head of Customs Department of the Revenue Service of the Ministry of Finance - Vladimer Khundadze, the goods were examined through post-clearance audit. The order does not provide for any justification for the failure of the previous method in determining the customs value.

Moreover, even if the declarant inaccurately classified the goods (mobile house instead of a metal construction), it would not affect the tax amount as it would still have been calculated at the rate of 18% of the customs value.

In the light of the information above, it is clear that the declarant did not hide taxes from the customs authorities and he fully complied with the tax obligations imposed on him by the Georgian tax law; the statement of the Ministry of Finance aimed only at misleading the society.

Article 214.2 of the Tax Code of Georgia provides for post-clearance audit of goods as a form of customs control.

The further regulations about this form of audit are determined by Chapter XXV of Instructions on Movement and Clearance of Goods in the Customs Territory of Georgia.

Article 112.1 of the above Instructions exhaustively lists the grounds for post-clearance audit of goods. The Order issued by the acting Deputy Director does not mention any ground referred to in Article 112.1, which justifies post-clearance audit of the goods. This omission strengthens the doubt that the measure taken by the Customs Department lacked the appropriate legal ground.

Article 115.1 of the above Instructions obliges tax authorities to notify a declarant or another person of interest in advance of ten working days prior to subsequent examination. As it is confirmed by the documentation on our hands, such a notification was handed to the spouse of Jambul Abuladze on 21 August 2013, whereas the dismantling took place on 26 August. The law was breached under this head as well.

Article 115.5 of the Order exhaustively determines the list of those powers vested in the competent authority in case of post-clearance audit. These are the following powers:

a) requesting a declarant or another person of interest to present the documentation related to import and/or export of declared goods, inventory accounting information, and/or other information;

b) receiving written and verbal explanations from a declarant or another person of interest or their representatives (provided they have the necessary documentation and/or information) about the issues raised during subsequent examination;

c) to monitor the activities of a declarant or a person of interest, audit goods, take tests and/or other samples.

The action of the Customs Department was clearly beyond its statutory mandate. The already assembled minaret no more represented goods but was already a part of another building. Moreover, the post-clearance audit resulted in interference with a third person's (David Chogadze) right to property. The law-enforcement officials certainly lacked the authority to do so.

Along with the above events, the statements made by government officials were particularly worrying. The position taken by the Minister of Justice regarding the events that took place in the village of Tchela is alarming. She observed that Muslims may as well pray without minarets. By the following statement – "Georgia will have to decide whether it wants to have minarets in the country or not", the Minister of Justice basically questioned the possibility of building minarets by religious minorities. The statements of the Minister of Reintegration raise concern as well. He shifted the emphasis to the political confrontation of the parties and did not consider it necessary to give the issue a "religious context".[55] The approach of high-ranking officials to such sensitive issues seriously endangers religious tolerance and realisation of the right to freedom of religion in the country.

Unfortunately, the government's discriminatory approach towards the human rights violations of religious minorities and the failure to adequately address the issue, inappropriate statements and actions resulted in the oppression of Muslims on religious grounds and the breaches of the right to freedom of religion acquire systemic nature.

Violence against Jehovah's witnesses: In the reporting period, there were incidents of violation of the right to freedom of religion of Jehovah's witnesses. It is reported that on 26 October, 2013, in Batumi,

[55] http://www.interpressnews.ge/ge/politika/250912-paata-zaqareishvili-satciro-ar-aris-minarethis-demontazhis-sakithkhs-religiuri-sheferiloba-mieces.html?ar=A.

three individuals were beaten-up.[56] Also, in an assault that took place in Ozurgeti, the Jehovah's witnesses were prevented from observing their religious rites and the windshield of their car was smashed.[57] Problems were created for Jehovah's witnesses also in the village of Kehltubani, Gori Municipality. Orthodox Christian villagers did not allow the Jehovah's Witnesses to build a house.[58] According to the lawyer of the Jehovah's witnesses, the reason for the altercation was religion. This incident involved verbal assault on the Jehovah's witnesses.[59]

The government is under positive obligations, which imply carrying out effective actions by the authorities to avert the threat to human rights violation. It is, accordingly, necessary for the government to adequately and promptly respond to all the above incidents and hold the offenders responsible.

The case of Piruz Tsulukidze and Temur Bakhuntaridze: On 13 September 2013, in Batumi, Piruz Tsulukidze and his coach Temur Bakhuntaridze were charged and arrested for resisting the police. The accused allege that the arrest was religiously motivated. Before their arrest, it was circulated that on 10 August 2013, 20-year old Piruz Tsulukidze, European champion in wrestling, was barred from the World Championship on religious basis. Tsulukidze reports that a few days before the departure, a policeman forbade him from leaving Georgia without giving any explanation. The next day he was explained by the Federation of Wrestling that "due to interacting with the persons unacceptable for Georgia" he could not leave the country.[60]

According to the statement made by Piruz Tsulukidze, police beat them mercilessly during their arrest. He alleges that he was beaten approximately for an hour; the policemen pinned him to the floor and stepped on his back, hit him with a blunt object and hit his head on the ground. It is maintained that the policemen were especially cruel towards Temur Bakhuntaridze, as the result of which he lost consciousness.[61] The physical assault was accompanied with verbal abuse, mentioning their religious conviction, in particular the fact that they were Muslims.[62] A representative of the

[56] http://www.presa.ge/new/?m=society&AID=22804.
[57] http://newposts.ge/wap.php?l=G&ID=27421-%E1%83%9D%E1%83%96%E1%83%A3%E1%83%A0%E1%83%92%E1%83%94%E1%83%97%E1%83%98,%20%E1%83%98%E1%83%94%E1%83%B0%E1%83%9D%E1%83%95%E1%83%90,%20%E1%83%97%E1%83%90%E1%83%95%E1%83%93%E1%83%90%E1%83%A1%E1%83%AE%E1%83%9B%E1%83%90
[58] http://www.tabula.ge/ge/story/77497-iehovas-motsmeebs-goris-raionshi-saxlis-msheneblobas-ushlian.
[59] http://www.liberali.ge/ge/liberali/news/117027/.
[60] http://www.youtube.com/watch?v=JLVqNT-7u2s.
[61] http://ick.ge/jinvestigation/16389-i.html.
[62] http://ick.ge/jinvestigation/16389-i.html.

Ombudsman also confirmed the existence of numerous injuries on the bodies of the arrested persons.[63]

Furthermore, the arrested persons argued that they had been subjected to pressure on religious ground. In particular Temur Bakhuntaridze was prohibited by policemen to hold prayers in the hall set up on the ground floor of his own residence.[64]

The above information clearly gives rise to a reasonable doubt that law-enforcement officials ill-treated citizens and persecuted them on the basis of their religious beliefs, which amounts to an action punishable by the Criminal Code.

The information on the alleged religious persecution by the law-enforcement officials was given in the report prepared in the first half-year 2013 by GDI as well.[65] We believe that the authorities are obliged to take strict measures to effectively investigate the above facts and hold the offenders responsible in order to prevent these tendencies from becoming established and stop law-enforcement bodies from turning into the sources of violation of the freedom of religion.

6. Freedom of information

Article 24 of the Constitution of Georgia provides for the right to receive and impart information. The article forbids both the government and individuals from monopolising mass media or means of mass communication. The constitutional provision protects that particular aspect of freedom of expression, i.e., independence of media, which is a means of freely imparting opinions and information.

The Constitutional Court of Georgia has numerously reiterated that "the freedom of information and opinions is closely linked with the principle of democracy, since under the conditions of informational isolation and infringement of the right to hold ideas, the existence of democratic society and vitality of constitutional order is unimaginable".[66]

Article 10 of the European Convention on Human Rights safeguards everyone's right to freedom to hold opinions and to receive and impart information and ideas without interference by public authority.

---

[63] http://ick.ge/jinvestigation/16389-i.html.
[64] http://ick.ge/jinvestigation/16389-i.html.
[65] http://gdi.ge/wp-content/uploads/2013/07/GDI-report-full-version.pdf.
[66] *Citizen of Georgia Maia Natadze and others v. the Parliament of Georgia and the President of Georgia*, judgment of the Constitutional Court of Georgia no. 2/2-389, adopted on 26 October 2007, II. para. 4.

Under the jurisprudence of the European Court of Human Rights, "freedom of the press and other news media affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders".[67]

In the reporting period, particular attention of the public was drawn to the two television political programmes, "Emphasis" presented by Eka Kvesitadze and "Dialogue" presented by David Paitchadze, which were abruptly cancelled.

It is noteworthy that the cancellation of the programmes was preceded by a vote of no-confidence procedure initiated by the Board of Trustees of Public Broadcaster against its Director General - Giorgi Baratashvili. The Council argued that Baratashvili failed to inform them promptly and thoroughly about the programmes and their budget. Here, it should be noted that the Board of Trustees had already declared the vote of no-confidence to Baratashvili six months prior this incident. The latter, however, managed to recover his position through court proceedings.

According to the statements of the acting Director General – Tamaz Tkemaladze, the decision to cancel the television shows by Eka Kvesitadze and David Paitchadze was related to the bias and sympathies reflected towards the opposition political party by these presenters. This statement certainly deepens the misgivings about the manipulation of mass media for political motives.

The decision of the Public Broadcaster's management to cancel the abovementioned television programmes was not reasoned by any solid and impartial arguments, which gives rise to questions regarding the political impartiality of the Public Broadcaster itself.

Such precedents adversely affect the professional reputation of the Public Broadcaster, which should be independent of direct or indirect influence from any political group. Journalists should be able to freely carry out their professional activities. The cancellation of the television programmes and the premature termination of contracts concluded with the journalists need serious reasoning which is especially significant when it comes to the Public Broadcaster.

In the reporting period, Giorgi Surmanidze, founder and director of "TV Channel 25", and Jemal Verdzadze, owner of the channel, alleged that they were pressured by high-ranking officials and investigators of the Chief Prosecutor's Office of Georgia to give statements against the representatives of the former government, which they regard as a measure against independent media.

According to the statements of Giorgi Surmanidze and Jemal Verdzadze, they were summoned to the Chief Prosecutor's Office on 17 December 2013. When they reached the Prosecutor's Office in the

[67] http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57523#{"itemid":["001-57523"]}.

evening, they had to stay there until next day 5 a.m., without any formal documentation. They were subjected to intense pressure by up to ten high-ranking officials and investigators. They were threatened to end up in jail forever unless they incriminated particular individuals as conspirators of crimes. Surmanidze and Verdzadze refused to give such statements. According to them, after their refusal to collaborate, they were forbidden to leave the country, despite the fact that the Prosecutor's Office was informed about Surmanidze's plans to continue medical treatment abroad; On 23 December, their property and bank accounts were seized.

It remains unknown to the general public whether there was any follow-up action by law-enforcement bodies regarding the statements, which are very serious in nature, made by Surmanidze and Verdzadze. It is, therefore, necessary that thorough, timely and impartial investigation should be conducted and in case the veracity of the allegations is confirmed, the respective individuals should be prosecuted.

7. Right to property

In accordance with the law in force in Georgia until 2012, foreigners were not entitled either to purchase or inherit agricultural land. On 26 June 2012, the Constitutional Court of Georgia declared these provisions as unconstitutional and hence invalid.

On 28 June 2013, the Parliament of Georgia amended the Law of Georgia on Title to Agricultural Land. The amendments became effective on 17 July 2013. Under the amendments - a foreigner, a legal entity registered abroad, a legal entity registered in Georgia, in accordance with Georgian law, by a foreigner - will be unable to either purchase or inherit agricultural land until 31 December 2014.[68] For the purposes of the amendments, the government is obliged to ensure legal basis for organised economy based on rational use of land, improvement of agricultural sector, avoiding fragmentation and improper use of land plots , elaboration of a unified public policy on agricultural land titles as well as to secure a unified system of land cadastre and land structure.

The amended wording of Article 22.3 of the Law of Georgia on Title to Agricultural Land, which was passed by the Parliament, is challenged before the Constitutional Court by Mathias Huter. The author

[68] https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1961212.

of the constitutional complaint requests the declaration of the impugned provision as incompatible with Articles 21 and 14 of the Constitution of Georgia.[69]

It should be pointed out that the above amendment is not compatible with the Constitution of Georgia. A similar provision was already declared unconstitutional by the Constitutional Court of Georgia on 26 June 2012 in its judgment no. 3/1/512. The impugned restriction of foreigners' right to purchase land and obligation to sell inherited land was found to be unconstitutional by the Constitutional Court "since reasonable balance could not be struck between private and public interests".[70]

Article 21 of the Constitution guarantees the right to property and the right to inheritance. These rights can be limited in the instances determined by law in accordance with statutory procedure and involving pressing public interest. The Constitutional Court has held on numerous occasions that "...private property, as an institution, is the centre of market economy. It is, therefore, a precondition not only for economic competition between property and business owners, but also for democratic state and society." Furthermore, the Constitutional Court has interpreted the component of "acquiring property", as implying to apply to those situations where the right to property has not arisen yet.[71] The Court observed that "the legislation must ensure that property can be acquired and enjoyed. Otherwise, non-existence of legal ways for purchasing property would result in vacating the civil concept of property being composed of the elements of owning, using and disposing".[72] In its judgment, the Constitutional Court also pronounced itself in express terms on the subjects pertaining to the rights protected by Article 21 of the Constitution: "The right safeguarded by Article 21 of the Constitution belongs to everyone and the constitutional provision does not define the exclusive scope of the subjects of this right, including on the ground of nationality."[73]

Under Article 25.4 of the Organic Law of Georgia on the Constitutional Court of Georgia, it shall be impermissible to adopt a legal act containing the provisions similar to those already declared unconstitutional. The amendment made by the Parliament to the Law of Georgia on Title to the Agricultural Land therefore fails to comply with both the jurisprudence of the Constitutional Court and Organic Law of Georgia on the Constitutional Court of Georgia.

---

[69] http://constcourt.ge/index.php?lang_id=GEO&sec_id=6&info_id=1164.
[70] http://constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=692&action=show.
[71] Judgment of the Constituional Court of Georgia no. 3/1/512, adopted on 26 June 2012, II. para. 35.
[72] *Ibid.* II. para. 39.
[73] *Ibid.* II. para. 44.

Even the temporary adoption of a new legislative provision which is similar to the one already repealed by the Constitutional Court is bound to endanger the basic rights and legal stability. The Parliament, as an independent branch of power, should respect the judgements of the Constitutional Court, the latter being the legal remedy for human rights violations in the state. The introduction of the above practice is worrying as it runs counter to the principle of separation of powers and allows the Parliament to ignore the judgments of the Constitutional Court. Such tendencies undermine the authority of the Constitutional Court on the one hand, and give rise to the public's distrust in the Parliament, on the other hand.