



HUMAN RIGHTS IN GEORGIA

2020

HUMAN RIGHTS IN GEORGIA

Tbilisi

2020

CONTENTS

Introduction.....	4
Freedom of Assembly and Demonstration.....	6
Freedom of Expression and Media.....	8
Freedom of Movement.....	10
Right to Vote (2020 Parliamentary Elections).....	11
Equality and Freedom of Religion	12
Pandemic and the Human Rights	14
The Right to a Fair Trial and Justice.....	15

INTRODUCTION

The purpose of the document prepared by GDI is to provide a brief overview of the problems and challenges associated with the protection of human rights and freedoms in Georgia in 2020. The document discusses issues related to civil and political rights, as well as questions on the concept of rule of law.

Individual cases and events that show the will of the government on the one hand and the ability to fulfill constitutional obligations on the other, are some of the best measures able to show the extent of the protection of constitutional rights and the rule of law. A large part of this document is devoted to the review of these individual cases/events.

Escalation of the political and economic crisis in Georgia in 2020 and the growing wave of protests further highlighted the problems that exist in the country in terms of protection of freedom of assembly and demonstration. If on November 8 authorities did not comply with the requirements of the Law of Georgia on Police and used disproportionate measures during the dispersal of crowds with the water cannon at the CEC building, November 9 protesters were prevented from exercising their freedom of assembly as police has deprived them of firewood. At the November 28 rally, authorities continued to resort to arbitrary administrative detention, and on November 14, a peaceful rally in the village of Zhoneti was violently dispersed, when the better response would have been initiating constructive dialogue with locals.

Protection of freedom of expression and media continued to be a challenge in 2020. GDI has been monitoring developments at Adjara TV and Radio of the Public Broadcaster for more than a year. Number of circumstances in 2020 have raised suspicions that these processes are politically motivated and are aimed at disrupting TV/radio channel's independent editorial policy. In terms of governmental interferences in the field of media some of the following events are particularly noteworthy, namely: investigation over alleged sabotage launched by the state security services on the news story aired by the "Mtavari Channel", possible threats against the father of the founder of the "TV Pirveli" and legislative amendments made to the Code of the Rights of the Child and the Law on Broadcasting, which disproportionately

restricted freedom of expression and are contrary to the Constitution of Georgia.

As for the protection of freedom of movement, it should be noted that GDI plans to appeal to the Constitutional Court against the regulations introduced on September 2, 2020, which unconstitutionally restricts Georgian citizens from leaving Georgia for the purposes of entering the Schengen area.

The most important political event of 2020 was October 31 parliamentary elections, which was held with serious shortcomings. This document briefly reviews irregularities that occurred during the October 31 elections, as well as the problems identified during the review of the complaints at the district election commissions and the court. Unfortunately, due to the nature and the scale of irregularities, these elections have significantly pushed the country backward in terms of its democratic development and created a severe political crisis, which in itself is detrimental to the interests of the country.

Georgia still faces significant challenges in terms of protecting the right to equality and freedom of religion. The transfer of forests by the government to the Georgian Patriarchate under the state of emergency has once again proved that government views it as its priority to obtain political benefits by granting privileges to the Patriarchate. Establishing an exception to the curfew, only on the nights of January 6-7 (Christmas), it became clear that Georgian government does not consider religious minorities to be on par with the majority. As for the right to equality, the processes surrounding the restoration of the Nariman Narimanov monument are also noteworthy. In this case the government has failed to initiate any effective steps aimed at preventing further aggravation. What is especially troubling is that xenophobic statements have increased during the pandemic.

This paper briefly reviews pandemic regulations, the review and analysis of which is presented in detail in a study prepared by the GDI and its partner NGOs. However, a significant portion of the document is devoted to the noticeable decline in the effectiveness of the constitutional control in Georgia in 2020 and challenges to the right to a fair trial.

INTRODUCTION

It is alarming that instead of having the government release the political prisoner Giorgi Rurua, in 2020 we saw new political prisoners - Iveri Melashvili and Natalia Ilychova. In addition, reasonable doubts connected with the political motives for the arrest of Akaki Khuskivadze and Akaki Kobaladze exist in the case of the death of the chairman of the Isani District Election Commission. High-profile cases of 2020 have once again shown that significant problems in the investigative bodies persist with regard to the crime prevention and its thorough and effective investigation.

As a result, we can conclude that in recent years there has been a sharp deterioration in the field of human rights protection. Irregularities identified in 2020 are a sad continuation of this trend, further alienating us from the ideal of a modern democratic state and the possibility of achieving prosperity.

We hope that this document will help understand the problems of human rights protection and the rule of law in Georgia, which in itself is a necessary precondition for resolving them.

FREEDOM OF ASSEMBLY AND DEMONSTRATION

Rally in front of the Central Election Commission

On the night of November 8, 2020, a special task force used a water cannon to disperse a rally that was organized due to the results of the parliamentary elections in front of the Central Election Commission building.¹ Use of the water cannons by the special forces was in violation of the law and has therefore violated the freedom of assembly of demonstrators. In particular, according to the Law of Georgia on Police, the use of water cannons is allowed only to prevent mass violations of the rule of law or to repel an attack on a state and/or public facility², in proportion and only if necessary, with the intensity that ensures meeting an objective.³ In addition, police officers are not allowed to use special means when faced with an unjustified risk, are obligated to warn demonstrators prior to the use of these means⁴ and give them reasonable time to comply with the lawful request.⁵ Police did not fulfill any of the specified obligations. As for the demonstration, it was entirely peaceful and the massive breach of law or the attack on the CEC building did not take place.⁶ Also, before the first use of the water cannon, law enforcers did not resort to the lighter means,⁷ did not warn the protesters in advance and did not give them

a reasonable time to comply.⁸ Consequently, the use of water cannons was illegal and unconstitutional. It is noteworthy that several people, including a journalist, were injured as a result.⁹

9 November rally

On November 9, 2020, a rally against the curfew, was held in front of the Parliament.¹⁰ Authorities did not allow demonstrators to bring firewood they needed to keep themselves warm in front of the Parliament.¹¹ According to the head of the Patrol Police Department, Vazha S iradze, the law enforcers did not allow firewood because it could endanger the health and lives of citizens and police officers.¹² This argument is unacceptable because firewood is not a subject to which the prohibition set forth in Article 11 Paragraph 2 of the Law on Assemblies and Demonstrations may apply. It is true that subparagraph (a) of this norm prohibits the presence of flammable substances during the assembly, but in the context of a bona fide definition it refers to substances that may be used to cause harm, such as gasoline, rather than to the firewood.¹³ Neither can

1 See: <http://rb.gy/imd9ma> [Last seen 28.11.2020].

2 Law of Georgia on Police, Article 33 Paragraph 3, Subparagraph G

3 Ibid, Article 31, Paragraph 1

4 Ibid, Article 31, Paragraph 6

5 Ibid, Article 31 Paragraph 3

6 See: <https://www.gdi.ge/en/news/use-of-force-by-the-law-enforcement-officers-at-the-cec-building-was-illegal-and-unconstitutional.page>
<https://emc.org.ge/en/products/emc-moutsodebs-shss-s-dauqovnebliv-shetsqvitos-sapolitsio-dzalis-gamoqeneba-mshvidobiani-shekrebis-monatsileebis-tsinaaghmdeg>
[Last seen 28.11.2020].

7 See: <https://emc.org.ge/en/products/emc-moutsodebs-shss-s-dauqovnebliv-shetsqvitos-sapolitsio-dzalis-gamoqeneba-mshvidobiani-shekrebis-monatsileebis-tsinaaghmdeg>
[Last seen 28.11.2020].

8 See: <https://www.gdi.ge/en/news/use-of-force-by-the-law-enforcement-officers-at-the-cec-building-was-illegal-and-unconstitutional.page>
<https://emc.org.ge/en/products/emc-moutsodebs-shss-s-dauqovnebliv-shetsqvitos-sapolitsio-dzalis-gamoqeneba-mshvidobiani-shekrebis-monatsileebis-tsinaaghmdeg>
[Last seen 28.11.2020].

9 See: <https://www.gdi.ge/en/news/use-of-force-by-the-law-enforcement-officers-at-the-cec-building-was-illegal-and-unconstitutional.page>
<https://uk.reuters.com/article/uk-georgia-protest-idUKKBN2700MT>
<https://www.interpressnews.ge/en/article/110180-police-used-water-cannon-several-times-against-protesters-gathered-at-the-cec>[Last seen 28.11.2020].

10 See: <https://oc-media.org/anti-government-protesters-defy-curfew-in-tbilisi>
[Last seen 28.11.2020].

11 See: <http://georgiatoday.ge/news/22988/Post-election-Protests%3A-Protesters-Claim-up-to-20-People-Fined-for-Violating-Curfew>
<http://www.democracyresearch.org/eng/458>
<https://rustavi2.ge/en/news/181998> [Last seen 28.11.2020].

12 See: <https://civil.ge/archives/363949> [Last seen 28.11.2020].

13 "Law of Georgia on Assemblies and Demonstrations" Article 11, Paragraph 2, Subparagraph A

subparagraph b of the same norm apply, as according to the Constitutional Court, this norm applies to items that are inherently dangerous and the cases when the the assembly participant creates a reasonable belief that his/her objective is to harm people with this item.¹⁴ Firewood is not in itself a dangerous object, nor did peaceful protesters of November 9 demonstration create a reasonable suspicion of intending to cause damages via firewood. Nevertheless, under Articles 166 and 173 of the Code of Administrative Offenses, police arrested civil activists that tried to deliver firewood, and the court has later fined two detainees. Additionally, one of these three was sentenced to 3 days in administrative detention without the evidence of a violation.¹⁵ Interests of all three detainees were defended by the GDI in court. Besides these, other participants of the November 9 rally were fined in the amount of 2,000 GEL for violating the curfew.¹⁶ It is true that some of the participants that lived nearby the rally were allowed by the police officers to leave the premises, but other officers have still fined them because, they said, they were no longer present within the area of the rally.¹⁷ It is noteworthy that this is not the first time that protesters have been prevented from delivering firewood to the gathering place. In November 2019, protesters on Rustaveli Avenue were also deprived of firewood, which the Public Defender described as an illegal restriction on the right of assembly.¹⁸ Already established practice of confiscating firewood for activists and their arbitrary detention once again demonstrates the government's desire to impede freedom of assembly. It also points to the use of the police and the judiciary as tools used to suppress critical thinking.¹⁹

November 28 rally

A clear example of administrative detention is the arrest of activists on November 28. Demonstrators protested against the meeting between the representatives of Russia and Georgia, specifically the statement made by the Russian side, which called the demonstration of June 20, 2019 an anti-Russian provocation of the Georgian nationalists.²⁰ Activists were detained for resisting police while other demonstrators for leaving protest related statements on an iron wall near parliament.²¹ According to the detainees, they did not take an active part in the noted process and did not commit any illegal acts.²² An arbitrary detention of activists, as mentioned above, raises suspicions that authorities are yet again trying to repress critical opinion and as such are unconstitutionally restricting freedom of assembly.

Rally in the village of Zhoneti

On November 14, 2020, a rally against the construction of the Namakhvani HPP cascade, was held in the village of Zhoneti.²³ Locals were demanding the stop of construction works. According to the protesters, construction was carried out without the company or the state investigating risks of environmental impact. They protested against the risks posed by the hydropower plants and the lack of necessary investigation from the side of the relevant parties. People demanded to meet with the representatives of the government, but instead of holding a dialogue, authorities dispersed the rally using the police force.

14 Decision of the Constitutional Court June 24, 2014 on the case of №1/3/538 "Political unity "Free Georgia" against the Parliament of Georgia" II p. 7, 10, 11

15 See: <http://www.humanrights.ge/index.php?a=main&pid=20279&lang=eng> [Last seen 28.11.2020].

16 See: <https://bit.ly/33O5ENg> [Last seen 28.11.2020].

17 Ibid.

18 See: <https://civil.ge/archives/363949>
<https://civil.ge/archives/363949>
<https://bit.ly/3gj9vXV> [Last seen 06.12.2020].

19 Report "Freedom of Expression in Georgia", GDI, 2020, 33, 35. See: <https://www.gdi.ge/uploads/other/1/1091.pdf> [Last Seen 28.11.2020].

20 See: <https://civil.ge/archives/384835>
<https://mtavari.tv/news/24308-parlamenttan-sagareostan-namgali-uro-dakhates> [Last seen 28.11.2020].

21 Ibid.

22 See: <https://civil.ge/archives/384835>
<https://civil.ge/archives/384900> [Last seen 28.11.2020].

23 See: <https://oc-media.org/activists-paralyse-dam-construction-in-northwest-georgia/> [Last seen 28.11.2020].

²⁴ As a result, several demonstrators were injured.²⁵ Public Defender has stated that government has to take steps towards meeting the needs of demonstrators, especially as the rally was forcefully dispersed by law enforcement officers.²⁶ Violent suppression of peaceful protests unfortunately indicates that authorities are not interested in negotiating with the locals or listening to their needs.

FREEDOM OF EXPRESSION AND MEDIA

Adjara TV and Radio of the Public Broadcaster

In terms of interference with the media freedom in 2020, processes developed in Adjara TV and radio of the Public Broadcaster have been especially worrying. As early as April 2019, suspicions about the disruption of the channel's independent editorial policy have arisen.²⁷ It was then when the Advisory Board announced the impeachment of the General Director of Adjara Television, Natia Kapanadze.²⁸ The impeachment initiative was immediately followed by the negative assessment from NGOs.²⁹

On December 4, 2019, the staff of Adjara TV and Radio of the Public Broadcaster issued a statement requesting that the newly elected director, Giorgi Kokhreidze, should stop making baseless allegations, should stop stalking, blackmailing, assaulting

and discrediting employees.³⁰ During 2020, non-governmental organizations have identified a number of circumstances that indicated towards the political motives of the processes surrounding Adjara Broadcasting. The facts of dismissal of the employees of the Public Broadcaster and their harassment are especially noteworthy.³¹

Involvement of the Public Defender, that has noted a number of violations in this regard, is particularly important.³² It should also be noted that on October 21 of this year, Public Defender of Georgia addressed the Prosecutor General of Georgia with the proposal to launch an investigation into the matters of possible persecution of the employees of the Public Broadcaster of the Adjara TV and Radio.³³

Launch of the investigation on the grounds of the possible sabotage against the Main Channel's news story and the alleged threats towards the father of TV Pirveli Founder

Another notable example of an interference with media freedom in 2020 was the launch of investigation by the State Security Service of Georgia (SSSG) on the grounds of sabotage that was initiated due to the news story that was aired on the "Main Channel".³⁴ Noted was soon followed by the critical assessment from side of the NGOs.³⁵ A statement from the

²⁴ Ibid

²⁵ See: https://gyla.ge/en/post/khelmomtseri-organizaciebi-ekhmaurebian-namakhvani-hesis-msheneblobis-motsinaaghmdegeta-aqciiis-sapolicio-dzalis-gamoyenebit-dashlas?fbclid=IwAR1E-dFvM7UWWMMzaoaDSFgQA-ZCYAM2jKOTEqpmCPoZe2sx7oljig__m4Fw#sthash.e2p19cbr.dpbs
<https://civil.ge/archives/382567> [Last seen 28.11.2020].

²⁶ See: <https://www.ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsveli-namakhvanis-hesebis-kaskadis-proektan-dakavshirebit-sazogadoebashi-arsebul-protests-ekhmianeba> [Last seen 28.11.2020].

²⁷ See: <https://gdi.ge/en/news/media-advocacy-coalition-considers-the-developments-surrounding-tv-pirveli-alarming.page> [Last seen 28.11.2020].

²⁸ See: <https://civil.ge/archives/302899> [Last seen 28.11.2020]

²⁹ See: <https://gdi.ge/ge/news/acharis-televizia.page> [Last seen 28.11.2020]

³⁰ See: <https://transparency.ge/en/blog/timeline-georgian-dreams-efforts-seize-adjara-tv> [Last seen 28.11.2020]

³¹ See: <https://www.qartia.ge/ka/siakhleebi/article/80235-koalicia-media-advokatrebisathvis-atcaris-sazogadoebriv-mautsyebelshiganvitharebul-procesebis-afasebs> [Last seen 28.11.2020]; nb. <https://gdi.ge/ge/news/mediakoalicia-31-07-2020.page> [Last seen 28.11.2020].

³² See: <https://ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsveli-acharis-televiziashi-mimdinare-movlenebs-ekhmaureba> [Last seen 20.12.2020].

³³ See: <https://www.ombudsman.ge/eng/tsinadadebarekomendatsiebi/tsinadadeba-acharis-televiziis-tanamshromlebis-mimart-gankhortsielebul-savaraudo-danashaulebriv-faktze-gamodziebis-datsqebis-shesakheb> [Last seen 20.12.2020].

³⁴ See: <https://oc-media.org/georgian-security-service-investigates-opposition-tv-station-for-sabotage/> [Last seen 28.11.2020].

³⁵ See: <https://gdi.ge/ge/news/statement-03-07-2020.page> [Last seen 28.11.2020].

Media Advocacy Coalition said: “In a situation when the negative attitude of the government towards the “Main Channel” is obvious (e.g. government officials publicly boycotting the channel) and when Georgia has repeatedly come to the world’s attention due to the abundance of misinformation and false anti-Western propaganda, it is especially alarming that SSSG has branded the news story as “a sabotage”. Such gives the impression of the selective use of a “repressive mechanism.”³⁶

On October 21, 2020, Avtandil Tsereteli, the father of Vakhtang Tsereteli, who is the founder of TV Pirveli, said that he met some strangers that threatened him by saying following : “If your television does not stop, beware.”³⁷ Vakhtang Tsereteli assumed the ruling party to be behind it.³⁸ Noted fact is disturbing and at very least indicates that the government is unable to fulfill its positive obligation to protect freedom of expression and the freedom of media.

Amendments to the Georgia’s Code on the Rights of the Child and the Law on Broadcasting

On September 1, 2020, new provisions in the Law of Georgia on Broadcasting and Georgia’s Code on the Rights of the Child, came into force. As a result, the broadcaster was obliged to protect juveniles from the information that endangered the child. It has prohibited transmission of the programs³⁹ or use of a specific material in these programs that could harm juvenile’s socialization and/or physical, psychological, intellectual and spiritual development, mental and physical health.⁴⁰ In addition, the broadcaster was instructed to apply criteria that help define program categories and further determine which program is unsuitable for a particular

age group of minors.⁴¹ Broadcasters were banned from placing such programs during specific hours of the day.⁴² Penalty for violating these obligations was a fine, however in case of repeated violations - suspension of the license.⁴³

Above norms have been appealed to the Constitutional Court of Georgia and the case has been represented by GDI.⁴⁴ These provisions unconstitutionally restrict the rights protected by Article 17 of the Constitution. In particular, the disputed norms regulate the content of the broadcaster and the dissemination/receipt of the information, as it indicates what content of the program/material is inadmissible.⁴⁵ Accordingly, on their basis of these norms, the Georgian National Communications Commission is authorized to determine that a specific program/material is inadmissible. As a result, the content of the broadcaster’s program is determined by the commission, which in turn is against the absolute prohibition of censorship.⁴⁶ In addition, these provisions violate the definition of the law,⁴⁷ in that they contain vague terms (“offensive vocabulary”, “obscene acts”, etc.), the meaning of which can only be determined by the commission. As a result the broadcaster is deprived of the opportunity to determine compliance with the law on its own. In addition, substantive control of the broadcaster’s content by the Commission via broad interpretation of the terms is tantamount to delegating to the Commission the power to regulate the content of freedom of expression for the Commission, which

36 See: <https://gdi.ge/ge/news/koalicia-mediis-advokatirebistvis-gancxadeba.page> [Last seen 28.11.2020].

37 See: <https://jam-news.net/georgia-television-pirveli-threat/> [Last seen 28.11.2020].

38 Ibid

39 The Code on the Rights of the Child Article 66, Paragraph 1; “Law of Georgia on Broadcasting” Article 56¹ Paragraph 1.

40 “Law of Georgia on Broadcasting” Article 56¹ Paragraph 2 and 3.

41 The Code on the Rights of the Child Article 66, Paragraph 1; “Law of Georgia on Broadcasting” Article 56¹ Paragraph 4, Article 56²

42 The Code on the Rights of the Child Article 66, Paragraph 1; “Law of Georgia on Broadcasting” Article 56¹ Paragraph 4, Article 56¹ Paragraph 5 .

43 “Law of Georgia on Broadcasting” Article 71.

44 See Case N 1537 <https://constcourt.ge/ka/judicial-acts?legal=10119> [Last seen 28.11.2020].

45 Judgement of the Constitutional Court of Georgia delivered on August 2, 2019 1/7/1275 the case of “Alexander Mdzinarashvili v. Georgian National Communications Commission”, II p. 36.

46 Constitution of Georgia Article 17 Paragraph 3.

47 Judgement of the Constitutional Court of Georgia delivered on 30 September 2016 in the case of N/4/614,616 of the “Citizens of Georgia - Giga Baratashvili and Karine Shakhparoniani v. Minister of Defense of Georgia”, II p.22.

according to the practice of the Constitutional Court is unconstitutional.⁴⁸ In addition, the restriction is disproportionate as, according to the court, protection of juveniles in this regard is the primary responsibility of the parent and the freedom of expression cannot be restricted solely on the grounds that it encourages irritating or unacceptable behavior.⁴⁹

FREEDOM OF MOVEMENT

Restricting the right of Georgian citizen's to leave the territory of the country

The September 2, 2020 amendment to the “Law on the rules and procedures for Georgian citizens exiting and entering Georgia” stipulates that from January 2021, the Border Police may prohibit Georgian citizens from leaving Georgia to enter the Schengen area if any circumstances specified in the law are applicable e.g. failure to present a travel insurance.⁵⁰

The above-mentioned legislative change is an unconstitutional restriction on freedom of movement (right to leave Georgia), as it does not serve a legitimate purpose, is disproportionate and contrary to the “quality of law” requirements. In particular, the Constitution states that freedom of movement can be restricted on the grounds of the administration of justice, the protection of state or public safety and health. Among the mentioned goals, for the purposes of the legislative amendment, one can not consider reduction of the amount of citizens to the EU / Schengen area that abuse the visa-free regime.

⁵¹ It is noteworthy that the European Court of Justice did not consider the prevention of visa/immigration policy violations to be sufficient grounds in order to restrict freedom of movement.⁵² In addition, the restriction is disproportionate because it does not take into account the individual cases and as such violates human dignity. In particular, the legislation allows taking advantage of the citizens of Georgia as whole, as in order to avoid violation of the Schengen rules in specific cases it “punishes” all citizens by imposing general preventive restrictions, while such objectification is unconstitutional.⁵³ In addition, the restriction of freedom of movement “in accordance with the law”⁵⁴ means that the law itself must establish a clear scope for the authorities to define limits of their powers.⁵⁵ This standard is also upheld by the UN Human Rights Committee, according to which the law should not give discretion rights to the state bodies that are responsible for enforcing the restriction.⁵⁶ Contrary to this requirement, the legislative amendment allows the Minister of the Interior the power to determine the rules for crossing the state border in such a way that it does not specify the criteria and scope for exercising this power at all.⁵⁷ Given all this, it clear that these amendments are unconstitutional. GDI intends to appeal these changes in the Constitutional Court.

48 Judgement of the Constitutional Court of Georgia delivered on August 2, 2019 in the case of 1/7/1275 “Alexander Mdzinarashvili v. Georgian National Communications Commission”, II p. 38, 39.

49 Judgement of the Constitutional Court of Georgia in the case N1/3/421,422 delivered on the November 10, 2009 case of “Citizens of Georgia - Giorgi Kipiani and Avtandil Ungiadze v. Parliament of Georgia” II p. 7.

50 2nd of September Amendment on the law of exiting and entering the country by the citizens of Georgia 7069-I Article 1, See:<https://matsne.gov.ge/ka/document/view/4978736?publication=0>[Last seen 28.11.2020].

51 See: <https://info.parliament.ge/file/1/BillReviewContent/188825> [Last seen 28.11.2020].

52 Judgment of the European Court of Human Rights of 27 November 2012 in the case of Stamoese v. Bulgaria “, § 36, 37.

53 Judgement of the Constitutional Court of Georgia delivered on October 24, 2015 on the case “Citizen of Georgia Beka Tsikarishvili v. Parliament of Georgia” N1/4/592 of, II p. 11, 52.

54 Constitution of Georgia Article 14, Paragraph 2.

55 Judgment of the Constitutional Court of Georgia delivered on 30 September 2016 in the case of “Citizens of Georgia - Giga Baratashvili and Karine Shakhparoniani v. Minister of Defense of Georgia”, N1/4/614,616 II p.22.

56 CCPR General Comment No. 27: Article 12 (Freedom of Movement) adopted at the Sixty-seventh session of the Human Rights Committee on 2 November 1999, CCPR/C/21/Rev.1/Add.9, § 12, 13.

57 2nd of September Amendment on the law of exiting and entering the country by the citizens of Georgia 7069-I Article 1, See:<https://matsne.gov.ge/ka/document/view/4978736?publication=0> [Last seen 28.11.2020].

RIGHT TO VOTE (2020 Parliamentary Elections)

As a result of the constitutional amendments in 2020, the country's electoral system approached the proportional representation. The hope and an opportunity that a more diverse and representative legislative branch would have been achieved was awaited. Unfortunately, the parliamentary elections did not live up to these expectations. Elections were marred by serious shortcomings identified by various observer organizations.⁵⁸ *Most noteworthy, were the cases of disbalance noted in the summary protocols in terms of the discrepancy between the total amount of ballot papers to the number of signatures of the voters in the voter lists.*⁵⁹ *Such an imbalance was observed in 8% of polling stations, which is the highest rate in recent years.*⁶⁰ Apart from this following shortcomings are noteworthy:⁶¹

- › *Obstruction of election observation, e.g. in the form of an aggression and physical abuse towards observers;*
- › *Violation of voting rules, including the right to secrecy and the rule on inking of voters;*
- › *Control of the expression of the will of voters, e.g. by intimidating them;*
- › *Alleged voter bribery;*

58 See: <https://gyla.ge/en/post/arasamtavrobo-organizaciebi-2020-is-tslis-saparlamento-archevnebs-afaseben#sthash.h1mNtoEg.dpbs>
<https://transparency.ge/en/post/summary-monitoring-31-october-2020-parliamentary-elections>
<https://civil.ge/archives/363949>
<https://osgf.ge/en/open-society-foundation-on-the-post-election-developments/> [Last seen 28.11.2020].

59 See: <https://isfed.ge/eng/presrelizebi/201101022808khmebis-paraleluridatvliis-PVT-shedegebi> [Last seen 28.11.2020]

60 See: <https://osgf.ge/en/ngos-assessment-of-the-2020-parliamentary-elections/>

61 See: <https://transparency.ge/en/post/summary-monitoring-31-october-2020-parliamentary-elections>
<https://gyla.ge/en/post/2020-tslis-31-oqtombris-saparlamento-archevnebis-shefaseba#sthash.tD0kbJmC.dpbs>
<https://osgf.ge/en/open-society-foundation-on-the-post-election-developments/> [Last seen 28.11.2020].

- › *Delay in publishing preliminary results by the CEC.*

In order to correct these violations, various observer organizations appealed to the district election commissions with the request to annul the summary protocols and recount the results.⁶² Most of the complaints were not satisfied,⁶³ and the process of reviewing them was flawed. District election commissions have refused to hear complaints for formal reasons, such as the lack of power of attorney by the observers.⁶⁴ Also, in some cases despite the submission of a power of attorney complaints remained unresolved.⁶⁵ Decisions to dismiss complaints were groundless, District Elections commissions have blindly relied on the explanations submitted by precinct election commission members, did not open the sealed documents, and/or investigate the facts.⁶⁶ Consequently, the response of election commissions, as the consideration of lawsuits related to election commissions and summary protocols by common courts, was ineffective. Most of the lawsuits were not satisfied,⁶⁷ and during the review process, negative tendencies, such as the bias of the courts in favor of the commissions, blanket decisions and unsubstantiation

62 See: <https://gyla.ge/en/post/saia-saolqo-saarchevno-komisiebshisachivrebis-gankhilvis-process-ajamebs#sthash.8watkIQF.dpbs>
<https://transparency.ge/en/post/we-are-requesting-annulation-and-recount-votes-cast-42-electoral-precincts>
<http://www.isfed.ge/eng/gantskhadebebi/ISFED-is-mier-saarchevno-ubnebis-gadatvliis-motkhovnit-tsardgenili-sachivrebi>
[Last seen 08.12.2020]

63 Ibid.

64 See: <http://www.isfed.ge/eng/gantskhadebebi/ISFED-is-mier-saarchevno-ubnebis-gadatvliis-motkhovnit-tsardgenili-sachivrebi>
[Last seen 06.12.2020].

65 See: <https://transparency.ge/en/post/summary-monitoring-31-october-2020-parliamentary-elections> [Last seen 06.12.2020].

66 See: <http://www.isfed.ge/eng/gantskhadebebi/ISFED-is-mier-saarchevno-ubnebis-gadatvliis-motkhovnit-tsardgenili-sachivrebi>
<https://gyla.ge/en/post/saia-saolqo-saarchevno-komisiebshisachivrebis-gankhilvis-process-ajamebs#sthash.fmPUgOmQ.dpbs>
[Last seen 06.12.2020].

67 See: <https://gyla.ge/en/post/saia-s-saarchevno-davebis-shedegebisasamartloshi-gasachivrebul-ubnebeze#sthash.2TJrQWZu.dpbs>
<http://www.isfed.ge/eng/gantskhadebebi/ISFED-is-mier-sasamartloshitsardgenili-sarchelebis-gankhilvis-shedegebi>
[Last seen 06.12.2020].

of court decisions, were observed.⁶⁸

In sum, the parliamentary elections were marred by serious irregularities, that have in turn raised suspicions of fraud and further protests in the public. Elections, as well as the hearings held at the district election commissions and the courts, did not comply with the principle of a democratic state and the right to vote as enshrined in the Constitution of Georgia. An electoral system is fundamental to the practical realization of the principle of a democratic state and the people's right to sovereignty; Following entails the process according to which elections are held. Elections entail peoples participation in the exercise of state power which in turn provides the government with the legitimacy.⁶⁹ Contrary to these constitutional requirements, this year's elections are a clear step backwards for Georgia's democratic development.

EQUALITY AND FREEDOM OF RELIGION

Transfer of forests to the Patriarchate of Georgia

On May 22, 2020, the Parliament of Georgia, based on the initiative of the Government of Georgia, amended various normative acts, including the Law of Georgia on State Property,⁷⁰ and adopted the new Forest Code of Georgia, which should enter into force on January 1, 2021 (except for a few articles).⁷¹ According to these changes, from January 1, it will be possible for the Georgian Apostolic Autocephalous Orthodox Church to receive the ownership of the forest areas adjacent to the Orthodox churches and monasteries (existing before the enactment of this law). Application for the noted can be submitted by the Patriarchate itself and referred to by the Ministry of Environment Protection and Agriculture of Georgia. In each circumstances no more than 20 hectares and relevant/alloted territories

(following refers to the portions of the forest that belong to the state, however, are managed by the Georgian Patriarchate)⁷² can be awarded to the church. Other religious associations are not be able to take advantage of this opportunity.

Having granted noted privilege to the Georgian Apostolic Orthodox Church, the state, has once again, grossly violated the right to equality and the principle of secularism enshrined in the Constitution of Georgia. The fact that the above-mentioned changes in the Georgian legislation were made several months before the October 31, 2020 parliamentary elections and during the state of emergency, further indicates that the Georgian government attempts to reap the political benefits via granting privileges to the Patriarchate. Following course of action has been referred to many times in the past. It should be noted that the Parliament of Georgia adopted these changes when the country was already facing the challenges created by COVID-19. This was the time when the proper involvement of the parliament in the process of introducing constitutionally sound measures restricting human rights, was important.

These changes were assessed as unconstitutional by a number of non-governmental organizations and readiness to appeal to the Constitutional Court was expressed.⁷³ It should be noted that the Constitutional Court has once again recognized the unconstitutional provision of the Law of Georgia on State Property, that provided for the possibility of transfer of state property free of charge only to the Georgian Apostolic Orthodox Church.⁷⁴

68 Ibid.

69 Judgement of the Constitutional Court of Georgia of 28 May 2015 on the case of "Citizens of Georgia - Ucha Nanuashvili and Mikheil Sharashidze v. Parliament of Georgia", N1/3/547 of II p. 2, 3, 4.

70 See. <https://info.parliament.ge/file/1/BillReviewContent/249653?> [Last seen 28.11.2020].

71 See. <https://info.parliament.ge/file/1/BillReviewContent/249639?> [Last seen 28.11.2020].

72 The Forest Code of Georgia (22/06/1999) Article 17 Paragrapg 1.

73 See. <https://emc.org.ge/en/products/emc-tqis-kodeksit-mkholod-eklesiistvis-tqis-resursebis-gadatsema-arakonstitutsiuri-ikneba> [Last seen 28.11.2020].

74 Judgment of the Constitutional Court of Georgia delivered on July 3, 2018 in the case number 31/1/811 "LEPL Georgian Evangelical-Baptist Church", LEPL "Georgian Evangelical Lutheran Church", LEPL Supreme Religious Administration of Georgia's All Muslims", "LEPL Saviors Chritisian Church In Georgia and LEPL "Church of the Gospel Faith of Georgia" against the Parliament of Georgia".

Setting an exception on Christmas Eve

According to the decision of the Interagency Coordinating Council, a curfew (from 21:00 to 05:00) will be set across the country from 28 November 2020, with the exception of 31 December (New Year) and 6-7 January (Christmas).⁷⁵ Vice Prime Minister Maia Tskitishvili has made a comment in regards to it saying that, ‘... an exception was made as most of our population is Orthodox and celebrates Christmas on the night of January 6-7. (An exception) It was set on this day because it affected most of the population of Georgia, because it affected virtually everyone.’⁷⁶

Setting an exception from the imposed curfew only on the night of January 6 constitutes discrimination on the grounds of religion. The statement of the Deputy Prime Minister is another proof that the government makes decisions only from the perspective of the majority and does not perceive religious minorities as equal citizens. In this regard, the civic platform “No-Phobia!” has issued a statement urging the Georgian government to adhere to the constitutional principles of secularism, equality and the rule of law and to apply the law equally to all religious associations, as well as to consult with a wide range of religious organizations before making any relevant decisions.⁷⁷

Restoration of the monument belonging to Nariman Narimanov

A few months ago, riots broke out in the town of Marneuli after a monument to Bolshevik writer and revolutionary Nariman Narimanov, was restored by the local government.⁷⁸ The bishops of Marneuli and Hujab and ultra-conservative groups have been running a chauvinist campaign for months. On July 16, a rally demanding the removal of the monument with

the participation of the above-mentioned individuals/groups was held in Marneuli.⁷⁹

The government has not taken any effective steps to resolve the situation neither before nor after the aggravation of the situation. On July 17, the GDI and other non-governmental organizations appealed to the government with the request to resolve the dissatisfaction with the Narimanov monument peacefully and called upon the set up of a work group.⁸⁰

Hate speech / xenophobia during pandemic

Unfortunately, as the spread of the coronavirus in Georgia increased so did the use of hate speech. In particular, after the declaration of the quarantine zone in Marneuli and Bolnisi, inciting statements of discrimination against the ethnic Azerbaijani population were made by the members of the society. These comments were especially apparent on social media.⁸¹ It should be noted that in some of the cases authors of xenophobic statements were public figures. In particular, comments made on Facebook by the profile of Zaal Abashidze, the director of the LEPL National Center for Manuscripts, included calls for the closure and extermination of Marneuli and Bolnisi residents, swearing and calling them potential carriers of the virus and murderers.⁸² The statement of Amiran Gamkrelidze, the director of the National Center for Disease Control, stating that the conflict between the population of the village of Mushevni and the doctors was related to

75 See: http://gov.ge/index.php?lang_id=ENG&sec_id=547&info_id=77899 [Last seen 28.11.2020].

76 See: <https://formulanews.ge/News/41065?fbclid=IwAR3NTA5D-sFYDhg9cndkoAdoc4BdnrOd4qhRizbC6BvfsJ-WfATD1pDTpc> [Last seen 28.11.2020].

77 See: <https://gdi.ge/en/news/no-to-phobias-statement-on-the-exception-of-christmas-eve.page> [Last seen 28.11.2020].

78 See: <https://civil.ge/archives/354407> [Last seen 28.11.2020].

79 See: <https://emc.org.ge/en/products/sazogadoebrivi-organizatsiebi-mtavrobas-narimanovis-dzeglTan-dakavshirebit-politikuri-protsisis-shekmnisen-moutsodeben> [Last seen 28.11.2020].

80 See: <https://gdi.ge/en/news/civil-society-organizations-urge-the-government-to-pursue-a-political-process-related-to-narimanov-statue.page> [Last seen 28.11.2020].

81 See: <https://www.gdi.ge/en/news/civil-platform-no-to-phobia-statement-on-increase-in-xenophobia-against-ethnic-azeri-citizens.page> [Last seen 28.11.2020].

82 See: <https://www.gdi.ge/en/news/civil-platform-no-to-phobia-responds-to-the-statement-made-against-the-residents-of-kvemo-kartli.page> <http://www.tabula.ge/ge/story/170562-xelnatserta-centris-direktori-marneulze-unda-chaketo-sofelshi-da-amoxicon-k-ebjonnoj> <https://grass.org.ge/en/treiningebi/civil-platform-no-to-phobia-responds-to-the-statement-made-against-the-residents-of-kvemo-kartli> [Last seen 28.11.2020].

Muslim clerics, was also xenophobic. In addition, in the context of the coronavirus, the journalist of the “Main Channel” made an Armenophobic statement in his/her program saying that the Armenian gene is stronger than the Georgian one and destroys the virus⁸³.

GDI condemns xenophobic statements. Hate speech promotes discriminatory attitudes and prevents the formation of a tolerant society. It has a particularly negative impact on the equal treatment of minorities. Given the systemic problems faced by minorities, xenophobia revealed within the context of the virus, further hinders the integration of minorities and the unification of society against the crisis caused by the virus. Therefore, it is important that the Georgian government, public figures, the media and society as a whole do not use hate speech and act in support of equality.

Pandemic and the Human Rights

GDI, along with partner organizations, analyzed government regulations related to the spread of COVID-19 and found that measures taken before the state of emergency largely met the principle of proportionality and the restrictions were adequate, although they had a formal constitutionality problem. In particular, the Georgian government did not have the authority to enact by-laws restricting constitutional rights (for example, freedom of movement). However, despite their normative content, the Government of Georgia has issued some acts in the form of decrees (individual acts).⁸⁴

More severe problems were identified in terms of the declaration of the state of emergency, as well as with the measures adopted during the state of emergency, most of which had issues related to constitutionality.⁸⁵ Of particular importance is the issue of broad discretion for the executive (as well as the problem

of sub-delegation), which on the one hand impeded foreseeability and threatened the principle of legal certainty, and on the other hand increased the risks of arbitrariness and abuse of power. At the same time, such an approach violated the principle of separation of powers.⁸⁶ The analysis of each right is presented in detail in a document published on October 23rd, which will be reflected in even more detail in the final version of the study.⁸⁷

Since the end of the state of emergency, the number and scale of restrictions have been significantly reduced during the summer, which is commendable, however, since autumn the government has tightened regulations again. Despite the difficult epidemiological situation, which is primarily due to the healthcare system being unprepared, the Georgian government’s policy on restrictions is still inconsistent, discriminatory and ineffective.⁸⁸

83 See: <https://www.gdi.ge/en/news/armenophobic-statement-aired-by-mtavari-arkhi-tv.page> [Last seen 28.11.2020].

84 See: <https://www.gdi.ge/en/news/statement-by-gdi-isfed-hrc-and-ti-regarding-an-introduction-of-the-curfew-order.page> [Last seen 28.11.2020].

85 Ibid

86 Ibid

87 For several months now, three non-governmental organizations - the Georgian Democratic Initiative (GDI), the International Society for Fair Elections and Democracy (ISFED) and the Human Rights Center (HRC) - have been implementing the project "Democracy and Human Rights in a State of Emergency". This project, among others, includes an analysis of the measures taken by the Government of Georgia in relation to the new coronavirus (COVID-19). On October 23, the non-governmental organizations working on the study published an interim document, the second part of which deals with the constitutionality of the restrictions imposed by the Georgian government to combat the pandemic. An interim research paper is available: <https://gdi.ge/uploads/other/1/1251.pdf>

88 See: <https://www.gdi.ge/en/news/statement-by-gdi-isfed-hrc-and-ti-regarding-an-introduction-of-the-curfew-order.page> [Last seen 28.11.2020].

THE RIGHT TO A FAIR TRIAL AND JUSTICE

Ineffectiveness of constitutional control

The right to a fair trial is an instrumental guarantee which provides a mechanism for the protection and realization of other rights and legal interests⁸⁹. The independence and impartiality of the judiciary are essential for the exercise of the right to a fair trial and, consequently, for other rights, since the court is the constitutional body that resolves legal disputes and conducts legal proceedings. The court acquired even greater significance in the face of the pandemic, as a number of fundamental rights were restricted during and after the declaration of the state of emergency to combat the virus.

The most active role in this regard was to be played by the Constitutional Court of Georgia. Their timely response was critical to setting the standard for preventing and restricting rights violations, especially given that anti-covid norms are frequently altered or annulled, which is grounds for termination of constitutional proceedings and makes it impossible to assess the disputed norm and restore the violated right.⁹⁰ In contrast, the statistics of cases brought before the court in the last year indicate that the court has not properly fulfilled its constitutional obligations. In particular, it should be noted that the response rate to the constitutional claims was 90% from April 15 to June 15,⁹¹ however, the Constitutional Court has not responded to the six lawsuits filed after June 15,⁹² and no decision had been issued for any of the claims that were to be substantively reviewed before June 15th.⁹³

It should be noted that the decline in the rate of response to constitutional claims coincides with the election of 2 new members and a new chairman of the Constitutional Court. In particular, on April 3rd, 2020, Khvicha Kikilashvili was appointed a judge of the Constitutional Court by the decision of the Plenum of the Supreme Court of Georgia⁹⁴. The plenum did not heed the call of the NGOs that the Constitutional Court judge should not be elected during a state of emergency when the public would not be able to observe and control the process.⁹⁵ It should also be noted that the position of a judge in the Constitutional Court became vacant on December 5th, 2019, but the Supreme Court did not appoint a new judge within the timeframe set by law.⁹⁶ This fact raises the suspicion that the election of Khvicha Kikilashvili during the state of emergency served not to ensure the smooth operation of the Constitutional Court, but to avoid public scrutiny.⁹⁷ In addition, on May 29th, the Plenum of the Supreme Court appointed another new judge of the Constitutional Court, Vasil Roinishvili.⁹⁸ In this case, too, the selection process was opaque, in particular, before the election of the judge, the public was unaware of their candidacy⁹⁹ and in fact there was no discussion on this issue¹⁰⁰. In addition, in June, Merab Turava was appointed chairman of the Constitutional Court, and Vasil Roinishvili, who had been elected a week prior, was appointed as deputy chairman and chairman of the first board¹⁰¹. It should be noted that the Chairman of the Board / Plenum of the Constitutional Court makes the decision on setting the date of the

89 Decision of the Constitutional Court of Georgia of February 14, 2017, N1 / 3/638 , the case of "Citizen of Georgia Levan Alapishvili v. Parliament of Georgia", II p.2.

90 Institute for Development of Freedom of Information (IDFI), "Covid-19 and Constitutional Review: Assessment of the Effectiveness of the Constitutional Court of Georgia", pp. 5, 6, See: https://idfi.ge/en/covid_19_and_constitutional_review [Last seen 06.12.2020].

91 Ibid, pp. 8.

92 Ibid, pp. 8, 9, 17.

93 Ibid, pp. 8, 9, 17.

94 See: <http://www.supremecourt.ge/news/id/2062> [Last seen 28.11.2020].

95 <https://www.gdi.ge/ge/news/gancxadeba-03-04-2020.page> [Last seen 28.11.2020].

96 Ibid

97 Ibid

98 See: <https://civil.ge/archives/354277> [Last seen 28.11.2020].

99 Ibid

100 Ibid

101 Institute for Development of Freedom of Information (IDFI), "Covid-19 and Constitutional Review: Assessment of the Effectiveness of the Constitutional Court of Georgia", pp 11, See: https://idfi.ge/en/covid_19_and_constitutional_review [Last seen 06.12.2020].

session of the Board / Plenum¹⁰². Additionally, the main lawsuits filed in connection with the state of emergency will be heard by the Plenum, and the lawsuits on the current restrictions will be distributed to the First Board¹⁰³. Given these circumstances, the Chairmen of the Plenum and the First Board can have a significant impact on the hearings about claims regarding pandemic-related constraints. It is noteworthy that it was after these personnel changes that the court response to coronavirus-related lawsuits decreased. In particular, the court had recorded only one session in June¹⁰⁴ and only three in November¹⁰⁵, although none of these cases have been decided yet¹⁰⁶. Therefore, there are suspicions that (opaque) personnel changes deliberately hinder the timely exercise of constitutional control or the court has lost the ability to respond effectively¹⁰⁷. Delaying the constitutional court hearings makes appealing to the court seem in vain, hinders the realization of the right to a fair trial and, consequently, the protection of other fundamental rights.

Hearings of election disputes in common courts

The hearings of constitutional claims were not the only problem of the judiciary in 2020, the lawsuits filed in the common courts regarding the summary protocols of the parliamentary elections were also problematic.

In particular, various non-governmental organizations have filed lawsuits in the common courts, requesting that they check the legality of the summary protocols and recalculate the voting results¹⁰⁸. It should be noted that most of the lawsuits were dismissed¹⁰⁹, and negative trends were observed in the process of their hearings. There was, for example, bias on the part of the courts in favor of election commissions, where judges generally favored the positions of the commissions despite their unsubstantiated nature¹¹⁰. The court decisions themselves were insufficiently justified, and their delivery was delayed, which prevented them from being appealed to a higher court¹¹¹. These shortcomings negatively affect the exercise of the right to a fair trial, the independence of the judiciary and public confidence in it.

Politically motivated cases and the right to a fair trial

a) the “Cartographers’ Case”

Former members of the Delimitation-Demarcation Commission, Iveri Melashvili, Head of the Border Relations Department of the Ministry of Foreign Affairs of Georgia, and Natalia Ilichava, Chief Inspector of the Border Police of the Ministry of Internal Affairs of Georgia, were arrested on October 7, 2020 on the alleged attempt at transferring a part of the territory of Georgia to Azerbaijan¹¹². The investigation was launched by the Prosecutor General’s Office on August 17 of the same year¹¹³ based on an appeal by the Minister of Defense, Irakli Gharibashvili. GDI has

102 Ibid, pp 14; Paragraph 3 of Article 17 of the Rules of Procedure of the Constitutional Court of Georgia.

103 Institute for Development of Freedom of Information (IDFI), “Covid-19 and Constitutional Review: Assessment of the Effectiveness of the Constitutional Court of Georgia”, pp. 13. See: https://idfi.ge/en/covid_19_and_constitutional_review [Last seen 06.12.2020].

104 Minutes of the Constitutional Court of Georgia N1 / 9/1505 of June 5, 2020 on the case “Paata Diasamidze v. Parliament of Georgia and Government of Georgia”.

105 Minutes of the Constitutional Court of Georgia N1 / 13/1516, N1 / 12/1515, N1 / 14/1529 of November 12, 2020 on the cases “Lika Sajaia and Eduard Marikashvili v. Parliament and Government of Georgia”, “Eduard Marikashvili and Giorgi Chitidze v. Parliament of Georgia” And against the Government of Georgia ”. “ Paata Diasamidze v. Parliament of Georgia and Government of Georgia ”.

106 Institute for Development of Freedom of Information (IDFI), “Covid-19 and Constitutional Review: Assessment of the Effectiveness of the Constitutional Court of Georgia”, pp. 14, 17. See: https://idfi.ge/en/covid_19_and_constitutional_review [Last seen 06.12.2020].

107 Ibid pp. 15, 18.

108 See: <https://gyla.ge/ge/post/saia-s-saarchevno-davebis-shedegebi-sasamartloshi-gasachivrebul-ubnebze#sthash.Mz0hg2af.dpbs>, <http://www.isfed.ge/eng/gantskhadebebi/ISFED-is-mier-sasamartloshi-tsardgenili-sarchelebis-gankhilvis-shedegebi> [Last seen 06.12.2020].

109 Ibid

110 See: <http://www.isfed.ge/eng/gantskhadebebi/ISFED-is-mier-sasamartloshi-tsardgenili-sarchelebis-gankhilvis-shedegebi> [Last seen 06.12.2020].

111 Ibid

112 See: <https://www.interpressnews.ge/en/article/109595-pre-trial-detention-ordered-for-iveri-melashvili-and-natalia-ilychova/> [Last seen 28.11.2020].

113 Ibid

been involved in this case since the very first days and continues to provide legal assistance to Iveri Melashvili.

Iveri Melashvili and Natalia Ilychova are accused of committing an act against Georgia, aimed at separating part of its territory (crime under the first part of Article 308 of the Criminal Code). According to the prosecution, Iveri Melashvili and Natalia Ilychova, in the process of demilitarizing and demarcating the borders between Georgia and Azerbaijan (1996-2007) and creating maps depicting Georgia's position on a 1:50 000 scale, they were guided by maps that went against the interests of the Georgian side and were also inconsistent with relevant materials in their possession. As a result, the map albums prepared by them against the interests of Georgia were exchanged between the two states, and according to the agreement reached in 2007, part of the territory within the territorial space of Georgia (total 34.8 sq. Km) was agreed with the Azerbaijani side to the detriment of Georgia.

The prosecutor's office, both in the draft indictment and in the issuance of public statements, tries to manipulate the public opinion by providing information on both used and unused maps, as well as recognized and unrecognized border sections. None of the episodes in the indictment cover the period after 2007.

In fact, at the working meeting of the commissions representing the interests of the states, the Georgian side presented itself in the most advantageous position (regarding the maps to be used). And, the information that Natalia Ilychova deliberately hid the maps drawn in 1932-33 and printed in 1937-38 with a scale of 1: 200 000 is fundamentally wrong. The assertion that according to the above-mentioned flawed and inaccurate map with a scale of 1: 200 000 would include the Davit Gareji complex within the territory of Georgia, is also manipulative and misleading.

The shortcomings identified during the investigation stage intensify the suspicion of biased prosecution. This suspicion is supported both by the pre-investigation period itself and the statements made about the demarcation of the border with the neighboring state, including by politicians, as well as - in general, the position lacking legal arguments of the prosecution.

The court sentenced Iveri Melashvili and Natalia Ilychova to pre-trial detention¹¹⁴. In addition to the fact that the whole process was carried out in an expedited manner and the court hearing on the imposition of the of detention was held within an unreasonably short time after the transfer of the materials to the defense, both the prosecution's argument concerning the measure of restraint applicable and the judgment rendered by the court were devoid of legal argumentation and substantiation.

On November 30th, the Tbilisi City Court remanded Natalia Ilychova and Iveri Melashvili in custody¹¹⁵. The defense requested the release of the accused on personal bail¹¹⁶. It should be noted that approximately 200 people, including politicians were willing to post bail for Natalia Ilychova and Iveri Melashvili¹¹⁷. The court ruling was still unsubstantiated. They did not take into account the new expert report submitted by the defense, which confirms that the maps of which Iveri Melashvili and Natalia Ilychova are accused of not using, were invalid.¹¹⁸

Unfortunately, it should be noted that there is an information attack on the accused and their human rights defenders, which, among other things, is accompanied by a violation of the presumption of innocence by the authorities. It should also be noted that some of the participants in the case have links with the Russian special services.

b) The case of Giorgi Rurua

Giorgi Rurua, a shareholder of the "Mtavari Channel", who was arrested on charges of illegal purchase, possession and carrying of a firearm (later charged with

114 See: <https://agenda.ge/en/news/2020/3122> [Last seen 28.11.2020].

115 See: <https://report.ge/en/law/iveri-melashvili-and-natalia-ilichova-remain-in-custody/> [Last seen 28.11.2020].

116 Ibid

117 See: <https://agenda.ge/en/news/2020/3764> [Last seen 28.11.2020].

118 See: <https://agenda.ge/en/news/2020/3219> [Last seen 28.11.2020].

non-compliance with a court order and obstruction of its execution) on November 18, 2019, a few hours before the rally¹¹⁹. On July 30th, 2020, the Tbilisi City Court found Giorgi Rurua guilty of both charges and sentenced him to 4 years in prison¹²⁰. It should be noted that Giorgi Rurua financially supported the movement “Shame”¹²¹. The movement was actively involved in the November protest rallies and had to organize them after the draft of the constitutional amendments on the non-fulfillment of the public promise issued by the Georgian Dream, the transition to the proportional electoral system.

“Transparency International Georgia” addressed the Tbilisi City Court regarding the case of Giorgi Rurua with an Amicus Curiae, stating that the issuance of Giorgi Rurua’s personal search order and sealing of firearm had substantially disregarded the requirements of the Criminal Procedure Code. The search of the car was also conducted with significant breaches, as well as - at various stages of the investigation, Giorgi Rurua’s right to legal protection was violated and his sentence was unreasonably extended¹²². On July 31, NGOs issued a statement stating that the violations identified during the proceedings and the current context raise reasonable doubts that the conviction against Giorgi Rurua was politically motivated¹²³. The statement, among other things, referred to the results of the Human Rights Center’s monitoring of Rurua’s trial, which revealed that Giorgi Rurua’s rights guaranteed by the Constitution of Georgia and international human rights acts had been unlawfully restricted during the personal search and various investigative / procedural actions under the Constitution of Georgia and relevant

international human rights treaties¹²⁴.

It should be noted that the release of Giorgi Rurua was part of the March 8 agreement. His detention has been criticized not only by the local opposition and NGOs, but also by international partners, including US senators and MEPs,. Despite all this, Giorgi Rurua remains in custody¹²⁵.

c) The case of the death of the Isani District Election Commission chairman

The Ministry of Internal Affairs has detained two people in connection with the death of Tedore Gobejishvili, the chairman of the Isani District Election Commission - Akaki Khuskivadze, a former CEC training specialist, and Akaki Kobaladze, one of the observers of the 2020 elections¹²⁶. The detainees are accused of bribery, threats and coercion against the deceased Tedore Gobejishvili¹²⁷. According to the Ministry of Internal Affairs, they offered Tedore Gobejishvili to make a statement on behalf of one of the political parties about rigging the elections in exchange for money, but after his refusal, they threatened him with retaliation and attempted to force him to accept the offer¹²⁸. Both Akaki Khuskivadze and Akaki Kobaladze were sentenced to imprisonment¹²⁹.

It should be noted that both perpetrators spoke about the election fraud scheme on the “Mtavari Channel” the

119 See: <https://civil.ge/archives/360829>; [Last seen 28.11.2020]
<https://transparency.ge/en/post/amicus-curiae-brief-connection-giorgi-ruruas-case>

120 See: <https://civil.ge/archives/360829> [Last seen 28.11.2020].

121 Ibid

122 See: <https://transparency.ge/en/post/amicus-curiae-brief-connection-giorgi-ruruas-case> [Last seen 20.12.2020].

123 See: <https://gdi.ge/en/news/statement-of-non-governmental-organizations-on-the-criminal-case-of-giorgi-rurua.page> [Last seen 28.11.2020].

124 Ibid

„Human Rights Center’s” analysis of the Criminal Case of Giorgi Rurua, see.
<http://hridc.org/admin/editor/uploads/files/pdf/report2020/RURUA-case-eng-c.pdf> [Last seen 28.11.2020].

125 See: <https://www.interpressnews.ge/en/article/108145-giorgi-rurua-remains-in-custody/> [Last seen 28.11.2020].

126 See: <https://www.interpressnews.ge/en/article/110155-according-to-the-lawyer-akaki-kobaladze-and-akaki-khuskivadze-were-arrested-in-connection-with-the-death-of-the-chairman-of-the-isani-district-election-commission/> [Last seen 28.11.2020].

127 See: <https://police.ge/en/politsiam-tbilisshi-qrtamis-mitsemis-djgufurad-chadenili-idzulebisa-da-muqaris-braldebit-ori-piri-daakava/14112> [Last seen 28.11.2020].

128 Ibid

129 See: <https://agenda.ge/en/news/2020/3553> [Last seen 28.11.2020].

day before their arrest. Also, their arrest was preceded by a briefing in the Georgian Dream office on the same day, where one of the Georgian Dream party members attributed the death of the chairman of the Isani district commission to the the “United National Movement party” and he called on the law enforcers to initiate a criminal proceeding, which raises suspicions about the political motives of the case. It is noteworthy that, according to the lawyer, both of them had a friendly relationship with the late Theodore Gobejishvili¹³⁰.

Shortcomings of the investigation

The high-profile cases of 2020, such as the case of Giorgi Shakarashvili and the case of Tamar Bachalishvili, have once again demonstrated that there are still significant problems within the law enforcement and investigative bodies, whose task is to conduct thorough and effective investigation of possible crimes committed. The multitude of shortcomings and many unanswered questions, in itself raises doubts about the independent and impartial management of the case. It is important that the investigative and judicial bodies show due competence, and do not cause questions which directly or indirectly give a fair sense that there is an interference of external forces in the cases.

The cases of increased robbery, hostage-taking or terrorist acts, which are primarily caused by the ineffective work of the investigative bodies, are especially alarming. In this regard, the events in Zugdidi on October 21st should be noted, when an armed man broke into a bank, took hostages and received a large amount of money in exchange for their release, after which he fled¹³¹, and his arrest has not yet been made..

130 Ibid

131 See: <https://apnews.com/article/georgia-europe-crime-3b1552c5e3006ebf19e2b0c3e57137f3> [last seen 20.12.2020].