

HRIDC - TRIAL MONITORING IN GEORGIA

**HUMAN RIGHTS INFORMATION AND  
DOCUMENTATION CENTRE (HRIDC)**

**REPORT**

**TRIAL MONITORING IN GEORGIA**

**Human Rights Information and Documentation Center would like to express  
its gratitude to the Organization for Security and Cooperation in Europe  
(OSCE), Mission to Georgia**

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# HRIDC - TRIAL MONITORING IN GEORGIA

## Introduction

### *Executive Summary and Aims of Monitoring*

Because of the heavy conditions in the Georgian Judicial System the Organization for Security and Cooperation in Europe (OSCE) Mission to Georgia initiated a pilot project with representatives of the HRIDC. There have been monitored not only cases of interest to the public but also randomly selected cases. HRIDC has not seen a marked change in how courts operate. The Georgian court not only has procedural problems but has also lost its independence from the executive branch, which is increasingly pressuring judges.

Human Rights Information Documentation Center (HRIDC) monitored 60 cases at the trial and appellate stages in all of Georgia. Half of the these cases took place in the Criminal Division of the Tbilisi Municipal Court and the Appellate and Supreme Courts. HRIDC monitored not only cases of interest to the public but also randomly selected cases. HRIDC has not seen a marked change in how courts operate.

The overall goal of the Trial Monitoring Program is to enhance respect for the right to a fair trial. In this regard, the main objectives of the program are:

- To support the ongoing process of legal reform in Georgia.
- To encourage compliance with national and international fair trial standards and to increase the transparency and public confidence in the legal system.

Therefore, to achieve these goals listed above, the Organization for Security and Cooperation in Europe (OSCE) Mission to Georgia initiated a pilot project with representatives of the HRIDC.

The aims of monitoring are following:

- Monitoring demonstrates the problems in the judiciary system.
- Monitoring helps to eliminate the causes of the current problems.
- Monitoring describes the objective reality and observes what occurs at trials, and how the parties carry out their responsibilities.
- Information, identified during monitoring, can assist parties at the trial to correct any problems.
- Faults in procedural laws discovered during monitoring can result in further legislative changes.

When talking about human rights violations by courts, attention must be drawn to two problems: violations of human rights before trial and violations during trial.

The main thing that is meant by a violation of human rights is that the courts have distractions, which breaks the fundamental principle of understandable hearings. When hearings are disrupted, it is impossible to know what the parties are saying, and this is against the public hearing principle. Distractions are normal in the Tbilisi City Criminal Court and throughout the regions of Georgia.



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It is almost impossible to know in advance when hearing will be held. The timetables in the courts do not comply with the real dates of the hearings. The trials often begin several hours late. The same happened in 80% of the cases monitored.

The ineffectiveness of the court's work is caused by many reasons, mostly stemming from the lack of amenities, such as microphones, chairs, lights, etc. In addition, many of the courts have been under construction for half a year already. Courtrooms are too small and the conditions are intolerable. People often fight to get into the courtroom, which makes it difficult to know what is happening, especially in criminal cases for relatives of the defendant. As a result, we have many interested people standing outside the courtroom.

This is a problem that monitors have faced themselves often. Several times when the courtroom was busy and another trial was taking place there, the judge went to find a free room. In the Criminal Division of the Tbilisi City Court and other courts in the regions, because there was no space, some trials took place in the judge's chamber. A judge's chambers are mainly used for bond hearings, which even the defendant's relatives are not allowed to attend.

As was mentioned previously, attending the trial is difficult and sometimes impossible. Because of this, HRIDC has informed the heads of the various courts about these problems. However, the situation has still not improved significantly in some courts.

### Part I

#### *Summaries of Breaches Witnessed at Various Trials and Activities Done*

##### **Alania, Aptsiauri, Bibiluridze and Gachava<sup>1</sup>**

One of the examples of barring free access to court hearings was in the case of *Alania, Aptsiauri, Bibiluridze and Gachava*. The hearing took place over five days during the end of June and beginning of July of 2006. There was great deal public interest in this particular case. It must be emphasized that the evidence consisted of five volumes, and each volume was approximately several hundred pages. However, the court only spent five days understanding the facts of the case. How the court was able to completely digest all the information in five working days is unknown. It was impossible for the judge to listen to both parties' arguments and witnesses in such a short period and make a fair decision on the facts of the case. In other cases of comparable complexity, the normal trial period can last several years.

The room was so small that no more than 40 people were able to sit at the trial, so court officials did not let all interested people in the room. It was impossible to get close to the court proceedings. The victim's relatives could not enter the courtroom also. That was a breach of the main principle of the public and open hearing. The court's written decision must be handed down to the parties within 5 working days of the case's completion or, if the case is complicated, within 14 working days. The victim received the written decision nearly two months after the

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<sup>1</sup> charge according to the Criminal Code of Georgia Articles 119, 143 (II), 187 (I), Alania additionally is accused according to the article 333 (I). (Tbilisi)



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completion of the case. People attending the trial could not hear anything. The courtroom was not conducive to a fair trial setting. During the case's appeal, the case was postponed several times.

### **Bashaleishvili, Grigol<sup>2</sup>**

In November 2004 Bashaleishvili, a police officer, fired at Robakidze when he was getting out of his vehicle and Robakidze subsequently died at the scene. After that, the friends of the murdered Robakidze were imprisoned for a year and a half until investigators realized Bashaleishvili was the shooter.

The trial took place in Summer 2006.

It was impossible for people to understand anything at Bashaleishvili's initial trial because there was much noise from outside the building and officers in the room were talking loudly. And this happened not only once. This offended the principle of the open and public hearing according to the defendant's side. However, the judge did not entertain this argument and replied instead, "the parties are able to hear everything so what more can I do." Bashaleishvili was ultimately sentenced to four years imprisonment at the trial stage. The case is now in appeal.

### **Orakhelashvili, Levani<sup>3</sup>**

Orakhelashvili was accused of murdering Giorgi Shavgulidze with a gun in Bakuriani region after eight years on the lam. The gun was never found. There were no material witness to prove the guilt of the accused. Despite the weak evidence assembled during the preliminary and trial investigations, the prosecution insisted on ten years imprisonment. The weak evidence on the prosecutor's side failed to prove Orakhelashvili's guilt.

In the case there were not competent facts which could prove the accused a murderer. The judge found him not guilty, and in August 2006, set him free. In November 2006, the appellate court came to the same decision and found Orakhelashvili not guilty.

Because of the poor preliminary investigation, Shavgulidze's murderer is still at large.

### **Apkhaidze, Papiashvili and Gamkrelidze<sup>4</sup>**

The accused have been detained for possession of illegal drugs discovered on them during a legal search in Fall 2004. However, the facts are in question because two witnesses at the search were on the payroll of the police. One of those witnesses, Gelashvili, admitted this fact at the trial, and the other, Gugushvili, on television. The accused claimed they were beaten at the arrest, and this was confirmed by a taxi driver. Witnesses of the search and those who personally conducted all claim not to recall the facts of the search, except for the names of the detainees and the reason for their arrest. However, it is doubtful that officers could remember the name of suspects they arrested and the drugs found on them without also recalling what happened at the arrest. This casts suspicion on the officers and supports the conclusion that their statements are biased or untruthful. Moreover, the defense insists that the detainees are not guilty and that the drugs were planted on them.

The head of the Human Rights and Civil Integration Committee, Elene Tevdoradze, sent a letter to the General Prosecutor asking him to take the case under consideration, because Elene Tevdoradze had doubts that the search was conducted legally.

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<sup>2</sup> charge according to the Criminal Code of Georgia Article 116 (I). (Tbilisi)

<sup>3</sup> charge according to the Criminal Code of Georgia Article 109 (k), 236 (I, II, III), 239 (I, II-b, III). (Tbilisi)

<sup>4</sup> charge according to the Criminal Code of Georgia Article 260 (III). (Tbilisi)



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The accused refused to sign a plea agreement because they considered themselves not guilty. Trials were held until the end of November 2006. Finally, at the trial, the accused signed a statement neither denying or admitting their guilt and were sentenced to four years in prison.

### **Naneishvili and others<sup>5</sup>**

Four expert psychiatric committees were called to testify on a former police officer's mental condition. The third expert committee came to a different conclusion, so the previous two expert committee's results became questionable. After this, to vindicate the two previous expert committee's results, a fourth committee was asked to weigh in on the previous three committee's findings. This committee came to the same conclusion as the first two ones. Thus, only the third committee came to a different conclusion.

The trial began in Spring 2006.

All the witnesses at the court stated that the third expert committee's findings were suspicious, but experts from that committee of the Ministry of Justice disagreed. It must be noted that experts of the Ministry of Justice only have several years experience in the field of psychiatry while other experts have worked for years in this field, in particular experts on the final committee. The accused did not concede their guilty at the trial. They affirmed the results of the second expert committee.

At the trial, letters from three individuals, including the World Psychiatric Association's Khuan Mezzich, the East Europe and Balkans Psychiatric Association's George Christodul, and the Russian Psychiatric Association's Krasnov were submitted, in which they asked the relevant factfinder to pay attention to the case because, in their views, innocent people were under suspicion. In fact, they are all charged unreasonably, because no expert committee came to the same conclusion. The case is still at trial.

### **Kobakhidze, Sofio<sup>6</sup>**

Sofio is accused for breacking into the house. She is imprisoned since August 2004. In this case Article 75 of the Georgian Criminal Code was breached. According to the article, the carrying out of the decision should be suspended until the defendant's child reaches the age of five. The court was not aware of the Georgian Criminal Code articles and contrary to these articles sentenced the woman to 3 months preliminary detention and 6 years imprisonment. The appeal court neither paid attention to this breach nor examined the child's condition. Now the child, Luka Kobakhidze, lives in prison with his mother. The appellate court reduced the sentence to four years imprisonment.

Now the case is in cassation, that is, being heard by the Supreme Court, Georgia's court of last instance. The Supreme Court may decide the case in the absence of the parties.

### **Adamia, Vazha<sup>7</sup>**

In this case the trial took place during summer 2006. The proceedings took place in the judge's chambers. There were no places to sit there. Some of the attending people, including the

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<sup>5</sup> charge according to the Criminal Code of Georgia Article 370 (II). (Tbilisi)

<sup>6</sup> charge according to the Criminal Code of Georgia Article 177 (II- (a), (g)). (Tbilisi)

<sup>7</sup> charge according to the Criminal Code of Georgia Article 239 (III). (Tbilisi)



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defendant himself, were standing during the whole trial because there were not enough places to be seated.

When the trial dispute began, the prosecutor was to listen to the words of the accused before responding. However, in this case, the prosecutor had already written his arguments detailing the charges against the defendant without having listened to the defendant's final argument. The defendant's final argument might have contained important information that could have influenced the decision. Finally, the trial judge sentenced Adamia to six-and-a-half years detention.

### **Gvichiani, Chemia, Kherkiladze**<sup>8</sup>

The public interest in this case was significant. Both the preliminary and court investigations could give no information concerning what kind of crime the accused had committed and what the victim new about this crime. The preliminary investigation in short said that accused were engaged in a fraud but it failed to explain what was meant by those words.

In Summer 2006 at the trial court, the prosecution changed its initial charges and failed to explain the reasons why the defendant should confess to the alleged crime. There was nothing about the accusation that Gvichiani obstructed justice according to Article 109, Subarticle "t" of the Criminal Code. These facts together mean that the defendant's guilt was not proved. Moreover, there was no circumstantial evidence linking the defendant to the crime or suggestion of the defendant's motive for committing the crime.

The accusation the prosecutor brought on the basis of Article 446 of the Georgian Criminal Procedural Code only permitted the alleviating of blame, but instead the prosecutor aggravated blame, and this accusation should have been rejected by the trial court but was not.

The defendant did not admit his guilt and stated there were no other facts but the false testimony of the witness Nodar Gvichiani's (last name coincidental) false testimony. After the defendant's detention, he was visited by an investigator from the Special Operations Department who told him of a known investigation into the killing of N. Lominadze, suggesting that they would attempt to charge the defendant with the murder. At the same time, the investigator suggested that the defendant sign a plea bargain admitting that he had served as an accomplice in a murder-for-hire scheme involving Lominadze. Also, the investigator said that the three people who has supposedly killed Lominadze had admitted to killing him and were reportedly set free. In reality, the government had no one under investigation for the killing of Lominadze.

Another suspect, D. Mchedlidze, was released after an inquiry into his possible participation in the murder-for-hire scheme, but no one was held responsible for his six months of unlawful detention during the investigation. A third suspect, Avtandil Kherkiladze, signed a plea agreement and was sentenced to 8 years imprisonment in exchange for his cooperation with investigators. However, Gvichiani and Chemia, who did not cooperate, were given life sentences. The case is at the appeal stage, now.

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<sup>8</sup> charge according to the Criminal Code of Georgia Article 108, 109, 236 (I), (II), (Tbilisi)



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### **Malania, Irakli<sup>9</sup>**

According to the case materials, the search of Malania's person was not necessary. The June 24, 2005 report mentions that Malania had hidden on him a Makarovi weapon and was going between Vake and Vera districts. Either the prosecutor or the investigator, according to Article 317 of the Georgian Criminal Procedural Code, should have applied to the court before searching Malania. However, in this case, that was not done. Therefore, the search of Malania was unlawful. Malania was also not given a report of the search as required by Article 327 of the Georgian Criminal Procedural Code. Because of these violations of Malania's procedural rights, the Court should have set Malania free according to Article 145 of the Georgian Criminal Procedural Code.

There were too many breaches of Malania's procedural rights to permit the process to continue. In June, 2005, Malania was charged, but the charge expired after thirty days. In January, 2006, after seven months had passed from the original charge, Malania was charged again. This was unlawful.

The defense attorney also had problems when she sent medical experts to examine Malania's condition. The investigator did not allow the experts to see Malania, so they were forced to write their conclusions based on case materials without having seen Malania personally.

At the trial, both victim Sulava and witness Tabatadze changed their testimony. After three and half years, the witnesses now say that the perpetrator had blond hair instead of black. The court subsequently cast doubt on their testimony.

Police officers Matitaishvili and Beselia both recall that all the search of Malania was unlawful, because the officers who searched Malania and found the gun lacked the proper court order, but these officers do not recall the reason for these unlawful actions.

The prosecutor did not even try to prove why the Court should admit this evidence. He ended his argument in a few minutes, and all he did was ask for a punishment of 18 years. No explanation was given why Malania was found guilty under Article 19-109 of the Georgia Criminal Code. The court did not provide any facts.

Malania denied all charges. At the trial, Malania was sentenced to 15 years imprisonment. The case is now in appeal.

### **Molashvili, Sulkhani<sup>10</sup>**

The accused was arrested in April 2004 when he went to the procurer on the demand of a trial summons. He was accused of embezzlement and abuse of power. He was moved to the Ministry of Internal Affairs where an officer bound his eyes with the tape. He was tortured and then ordered not to tell anyone about what had happened. An independent medical examination verified that the accused had been tortured.

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<sup>9</sup> charge according to the Criminal Code of Georgia Article 19-109 subarticle a, 109 (g,v,z,t,i,l), (Tbilisi)

<sup>10</sup> charge according to the Criminal Code of Georgia Articles 182, 332, 333. (Tbilisi)



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In addition, Chief Justice of the Georgian Supreme Court and the Georgian President breached the accused's right to a presumption of innocence by calling him guilty before the fact on television.

His imprisonment term was breached.

In September 2005, the trial court sentenced the accused to nine years in prison. In March 2006, the appellate court rejected some of the findings of the trial court and reduced his sentence to eight years. The Supreme Court came to the same decision as the Appellate Court in June 2006. Only one of the justices dissented and demanded that Molashvili be discharged because there was not sufficient evidence to convict him under Article 182 of the Georgian Criminal Code, which prohibits embezzlement. The European Court of Human Rights will soon review this case.

### **Martsvaladze, Levani**<sup>11</sup>

Because Martsvaladze evaded apprehension, he was charged in absentia and sentenced to a one-month detention. In order to evade arrest, Martsvaladze made a false ID. The ID was discovered during a search of his person when he was discovered in Rustavi.

In April 2006, the Tbilisi City Court found Martsvaladze guilty of attempted murder and falsification of identification. The trial court threw out the charge of murder. He was subsequently sentenced to seven years in prison.

On appeal, the appellate court reinstated the charge of murder and found him guilty on that charge, even though there was no evidence that could prove that the defendant had actually caused the murder of the victim.

There is no knife or expertize's conclusions, nor even witnesses who would say that Martsvaladze stabbed Javakhia.

According to Article 40 of the Georgian Constitution and Article 10 of the Georgian Criminal Code, "A person can only be proved guilty if evidence is incontrovertible. Any suspicion or allegation not proved must be decided in the defendant's favor." The appellate court then increased defendant's sentence to nine years in prison. The case has been submitted to the Supreme Court for review.

### **Sarqisiani, Romeo**<sup>12</sup>

During a preliminary investigation for possession of illegal narcotics in Spring 2005, Romeo Sarkisiani exercised his right to remain silent. In a private conversation with his lawyers, he stated that officers had planted the drugs on him. At trial, Sarkisiani denied his guilt and agreed to testify on his behalf. In July 2006, the court found Sarkisiani guilty of possession of illegal narcotics and sentenced him to seven years in prison. Seven years was the lowest available punishment. He declined to appeal the verdict because he already had a previous five convictions.

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<sup>11</sup> charge according to the Criminal Code of Georgia Article 19-108, 362 (I) (Tbilisi)

<sup>12</sup> charge according to the Criminal Code of Georgia Article 260, part 2, sub article "d" and "e". (Tbilisi)



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### **Tskhakaia, Kakha**<sup>13</sup>

Kakha Tskhakaia was found guilty in Tbilisi City Court and sentenced to three months in prison. Trial was postponed many times. In addition, Tskhakaia's lawyer was not provided investigation materials within 15 days of the close of the investigation. The lawyer applied to the court on December 12, 2005 with the mediation and stated that the rights of defendant were breached according to the Article 401 of the Criminal Code of Georgia. It states that "investigator must inform the defendant in a written way that pretrial investigation has been finished. The notification should be sent within fifteen days what is estimated under the law". During the trial investigation, he was detained in prison before he was finally interrogated in November 2006. The trial was postponed many times without having solid grounds. When Tskhakaia's lawyer complained to the court, no action was taken. The court compounded these investigative problems by repeatedly delaying hearings. At the trial Tskhakaia was ultimately sentenced to six years in prison.

### **Bagdadashvili, Shota**<sup>14</sup>

Bagdadashvili was found guilty of robbery and sentenced to six years in prison in the Tbilisi City Court. On appeal, the guilty finding was reaffirmed based upon the testimony of only the victim herself. However, the victim's testimony was contradictory, and she had expressed doubts about her identification of the defendant. In addition, the identification was unlawful because officers brought the suspect and victim together in the same car to the police department. The appellate court disregarded these facts as well as Bagdadashvili's alibi that he was not in Tbilisi at the time of the robbery, as confirmed by numerous witnesses, including Bagdadashvili's relatives, classmates, and teacher. The victim's sister also assisted the defense in impeaching the victim's testimony. Nonetheless, the appellate court still found that the trial court had properly found Bagdadashvili guilty of the robbery.

### **Jalabadze, Giorgi**<sup>15</sup>

Giorgi Jalabadze was initially charged with felony murder while in the act of committing a robbery. However, he was found not guilty of the charge. The procuracy then charged Jalabadze with possession of 67 grams of opium after a search of his person, which took place five days following his release from detention. During the search, he was removed from the view of a video camera in a police cruiser for approximately 17 minutes. In addition, the Procuracy charged Jalabadze under Article 260, Section 3, of the Georgian Criminal Code. In practice, the Georgian Procuracy rarely charges someone under this section, except for instances in which the amount of drugs involved is exceptionally large. The Procuracy also rarely seeks plea agreements under this section, which they did in the case of Jalabadze. The defendant ultimately agreed to sign the plea agreement in exchange for one year in prison and a fine of 15,000 Lari. The minimum sentence under Article 260, Section 3 is eight years. Two weeks before Jalabadze's release from prison, he was discovered with a pin-like weapon in his prison cell. The Procuracy decided to charge Jalabadze for this offense, and he is now awaiting trial again.

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<sup>13</sup> crime according to the Criminal Code of Georgia Article 177 (II -a,g), (III-g) (Tbilisi)

<sup>14</sup> crime according to the Criminal Code of Georgia Article 178, (II)and article 179(II). (Tbilisi)

<sup>15</sup> charge according to the Criminal Code of Georgia Article 260 (III) (Tbilisi)



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### **Nishnianidze, Onise**<sup>16</sup>

Onise Nishnianidze was arrested at a hospital where he was then taken to the police station to be searched. He was neither armed nor a flight risk, and there were two necessary witnesses at the hospital. Therefore, under Georgian law, police could have searched Nishnianidze at the hospital. However, they did not and, instead, took him to the police station. Nishnianidze claims, that in the process of taking him to the station, police planted drugs on him. At the trial, none of the arresting officers could remember why they brought Nishnianidze to the station, though they remembered that they found defendant with drugs. Defendant was eventually sentenced to seven years in prison and has declined to appeal.

### **Batiashvili, Irakli**<sup>17</sup>

Irakli Batiashvili of the opposition Forward Georgia party, who was Georgia's security chief in early 90s, was arrested and charged with having links to a coup attempt staged by rebel warlord Emzar Kvitsiani, the deputy chief prosecutor said on July 29. "Irakli Batiashvili was giving recommendations and instructions to Emzar Kvitsiani to plot a coup against the Georgian government. Moreover, Batiashvili is also accused of not informing the relevant bodies of the Georgian authorities about the fact that Deputy Defense Minister of breakaway Abkhazia Gari Kupalba was offering help to Emzar Kvitsiani with arms," Deputy General Prosecutor Kakha Koberidze told reporters on July 29. Batiashvili denies the charges, while activists from Forward Georgia say that Batiashvili's arrest is politically-motivated. The Interior Ministry released a recording of a phone conversation between Emzar Kvitsiani and Irakli Batiashvili on July 26. In the taped conversation, Kvitsiani tells Batiashvili that Abkhazia Deputy Defense Minister Gari Kupalba offered the help of Abkhaz fighters to repel Georgian government troops. Later, Batiashvili told Rustavi 2 that the taped conversation was edited and missing the portion where Kvitsiani declines Kupalba's offer. In the tapped conversation Batiashvili encouraged Kvitsiani and told him: "stand firm." The case is still in trial after being postponed twice.

### **Manukiyani, Topchiyan, Nebieridze, GogiaShvili**<sup>18</sup>

Manukiyani and three others were charged with kidnapping based only on the testimony of the two kidnapped victims who claimed to have seen the faces of the four briefly when they removed their ski masks. The victims identified the defendants more than a year after the kidnapping had occurred because the police had not initiated the investigation until then. Manukiyani tried to rebut the witness' testimony with an alibi that the court ultimately believed to be untrue. All four defendants were found guilty at trial. The case is now in appeal.

### **Tavdgiridze, Giorgi**<sup>19</sup>

Giorgi Tavdgiridze was accused of abuse of power while rector of the Georgian Ministry of Defense's National Academy. He approved the offering of additional courses at the Academy

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<sup>16</sup> charge according to the Criminal Code of Georgia Article 260 (II). (Tbilisi)

<sup>17</sup> charge according to the Criminal Code of Georgia Article 25-315, 376 (Tbilisi)

<sup>18</sup> charge according to the Criminal Code of Georgia Article 143, 144, 188 (II) b, d and 236 (Tbilisi)

<sup>19</sup> charge according to the Criminal Code of Georgia Articles 332 (II), (III), 333 (I), (III) da 383 (I), (II) b. (Tbilisi)



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that required overtime by his staff and additional funds from the Ministry of Defense. The headquarters of the Ministry of Defense initially approved the use of the funds but then changed his mind. However, his subordinates failed to inform Tavdgiridze of this change in policy. Therefore, Tavdgiridze did not have the necessary guilty mind to be found guilty of abuse of power. Upon appeal, the appellate court returned the case to the trial court, and the case is still in trial.

### **Glurjidze, Gugushvili, Khmaladze<sup>20</sup>**

Defendants were minors under the age of 18. They were accused of robbing a man of his film camera. The victim initially could not identify the defendants at the lineup but, afterwards, recalled which suspects had robbed him. However, at trial, the victim expressed doubt about his identification, again. The three defendants were convicted on the basis of the victim's testimony alone. The case is currently in appeal.

### **Mindadze, David and Nemsitsveridze, Mikhail and V<sup>21</sup>**

During an investigation of Mikhail and V. Nemsitveridze and Davit Mindadze for abuse of power and attempted murder, investigators first beat and then bribed Mindadze to persuade him to give evidence against the Nemsitveridzes. The giving of the bribe was secretly recorded with the help of Rustavi 2's "60 Minutes" by Mindadze's wife who accepted the bribe on his behalf. The case has dragged on for more than two years and is currently in appeal.

### **Zurabiani, Jojua , Kopaladze<sup>22</sup>**

On the basis of the victim's testimony alone, three defendants were found guilty of robbery. However, the victim said at the trial that he could not recognize any of the robbers. The victim said that at the time of the robbery, it was dark, and all the robbers wore masks and stood at a distance. The trial was postponed many times without reason. The case is currently in appeal.

### **Miqiashvili Giorgi<sup>23</sup>**

Miqiashvili was charged with assault of an officer. After being arrested, officers beat defendant at the police station so severely he had to be hospitalized. Subsequently, defendant spent eight months in a psychiatric hospital. Although defendant stood trial for his offense of assaulting an officer, the prosecution failed to bring additional charges against the officers for having assaulted the defendant at the police station. Defendant is currently in prison while the case is still in appeal. The case has already been postponed three times.

### **Khunashvili Zaza and Mamuka<sup>24</sup>**

Brothers Khunashvili are accused in hooliganism.

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<sup>20</sup> charge according to the Criminal Code of Georgia articles 178 (II), 179 (II) (Tbilisi)

<sup>21</sup> charge according to the Criminal Code of Georgia articles 19 – 109, 362, 220, 182, 236. (Tbilisi)

<sup>22</sup> charge according to the Criminal Code of Georgia Articles 178, 179, 236 (I), (II), (III) kopaladze is not charged according to the article 179-e (Tbilisi)

<sup>23</sup> charge according to the Criminal Code of Georgia Article 353 (I). (Tbilisi)

<sup>24</sup> charge according to the Criminal Code of Georgia Article 239 (II). (Tbilisi)



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On December 28, 2005, the appeal instance sentenced Zaza Khunashvili and Mamuka Khunashvili to 2- years imprisonment, which was changed with suspended sentence by the Criminal Code of Georgia, Article 63.

The opposite litigant sued the chamber of Supreme Court on criminal law cases with a cassation and required to abolish the verdict of Tbilisi district court.

The Supreme Court did not abolished the verdict of the appeal court.

The supreme court in additionally decided Khunashvili to pay for moral damages 1600 GEL.

The verdict of the supreme court is the final at the National level.

### **Saginadze, Batalbi and Biblaia, Vakhtang<sup>25</sup>**

Defendants are government agents charged with abuse of power, assault, and witness coercion. Vladimir Muraviov was a prisoner under the control of Saginadze and Biblaia. According to Muraviov, Saginadze threatened Muraviov and Biblaia beat him so that he would give testimony in their favor. Biblaia ultimately agreed to sign a plea agreement admitting to all charges, but Saginadze has plead not guilty. The case is currently in trial.

### **Muhamed Mahaev**

On December 30, 2005, an ethnic Chechen, Muhamed Mahaev, was arrested. In 2003, Mahaev had founded an organization, Imedi, to provide assistance to Chechen Refugees in Pankisi Gorge. Imedi received most of its funds from various humanitarian organizations. The Georgian government opened an investigation into the source of these funds. The government tried to link Imedi with organizations that had possible connections to the Taliban and Al-Qaida. Investigators initially believed that two of Imedi's sponsoring organizations, Muslim Helfen E.V. and Muslim Hands, were connected with money-laundering organizations that were responsible for financing terrorist activities. Investigators never bothered to contact representatives of any of these third-party donors, which they were required to do under Georgian law. Neither beneficiary nor the people who were aided by them were interrogated during the investigation.<sup>26</sup> During the investigation, all financial records and computer equipment were removed from Imedi's office, which made it impossible for the organization to continue operating during the investigation.

Upon the completion of its investigation, the Prosecutor's Office charged Mahaev with the lesser crimes of forging documents and embezzling 137,325 GEL in collaboration with Imedi's accountant. During Mahaev's trial, he was neither provided court documents in Chechen, nor was his final verdict read in Chechen.

Section 3 of Article 17 of Georgia's Criminal Law requires that all investigative and trial documents be translated into the defendant's native language. In addition, the final verdict must be read in the defendant's native language. Because Mahaev was a refugee entitled to the "same

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<sup>25</sup> charge according to the Criminal Code of Georgia articles 333 (III) a, b, c, 335 (II), 236 (I), 363 (I) 126 (II) t) – Batalbi Sagindze. charge according to the Georgia Criminal Code articles 126 (II) t), 335 (II) – Biblaia Vaktang. (Tbilisi)

<sup>26</sup>Criminal Proceeding Code: articles 18, 58, 131



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treatment as a national in matters pertaining to access to the courts,” Georgia breached the Convention by ignoring Mahaev’s procedural right to translations during his trial.

HRIDC asks the Georgian Judiciary to respect both its own laws and the Convention relating to the Status of Refugees by barring evidence when investigators restrict a detainee’s access to an attorney illegally. In addition, the Judiciary must do a better job of improving non-Georgian speakers’ access to courts by providing translations of all documents and final verdicts in either Russian or the speaker’s native language.

### **Administrative dispute**

The timely handling of a case is another problem. An example of this occurred in Batumi’s Administrative Division of its City Court. The dispute was about compensation for internally displaced persons. Batumi City Court heard the case and announced a verdict on May 15, 2006. The demands of the IDPs were not satisfied. The judge informed them that they could appeal to the Kutaisi Appellate Court within 14 days following the delivery of the written decision. However, the judge did not deliver the written decision until May 30, even though he was required to deliver the written decision to parties the same day as the oral one. The IDPs appealed the verdict the following day, but even then, the case was delayed by another judge for 14 days. Appellants demanded that the case be sent to the appellate court immediately, but the lower court was busy and ignored this demand. Therefore, Article 371 of the Georgian Civil Procedural Code, which requires that a lower court send all materials to an appellate court upon appeal, was breached.

### **Ananidze, Manuchar<sup>27</sup>**

He was working as the Head of Batumi Public Register Office, The National agency Public register office of Ministry of Justice. There are debates that M. Ananidze illegally registered several thousands square kilometers plot of ground. He is blamed for abusing official duties.

The investigation was charging him according to article 333, part 1 (abusing official duties). Prosecutor requested to charge Manuchar Ananidze for 6 year and 6 months imprisonment. The representative from City Municipality gave consent to the testimony of evidence presented by the prosecutor. The defenders of the interests of defendant were giving instructions that theoretically such crime is committed purposely. There is established neither the purpose nor the damage. The representative from City Municipality of Batumi couldn’t explain the cause of the damage.

According to the article 333, part 1. Manuchar Ananidze was charged and was sentenced to 10 months imprisonment. There were talks about procedural agreement from prosecutor, but Manuchar Ananidze refused because he was sure in his innocence and was expecting that court would pass the verdict of not guilty.

### **Turmanidze, Merab<sup>28</sup>**

On the 7<sup>th</sup> of August, 2004 the search was conducted by the policemen of the Ministry of Internal Affairs and Central Administration of Adjara in the apartment located in Batumi, Melikishvili Street #4/39 on the bases of operative information and was founded drug substances “Heroin”. The search was conducted with presence of two witnesses without any abrogation of procedural

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<sup>27</sup> charge according to the Georgia Criminal Code Articles 333, Part I ( Batumi Court)

<sup>28</sup> charge according to the Georgia Criminal Code Articles 332, Part I and Article 341



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rules. Two months later, during the preliminary investigation, one of the witness- Beridze addressed the investigation and changed the evidence.

During the case discussion, Beridze declared that the signature on the search report was signed by him. But during the trial he declares that he was forced to change the evidence. For the verification and examination of the evidence formed by the witness, there was arranged repeated Graphic Expertise under the rule of Commission. According to the expertise the signature on the search report was made by the witness that confirmed the innocence of inspector Turmanidze.

There is no doubt, that the non-existence of the action provided by the criminal law was manifested during the trial and according to the Criminal Code of Georgia article 28, sub item 4, the court had to finish discussion of case and had to pass the verdict of not guilty. The prosecutor returned the case for the additional investigation and stopped it with resolution.

According to the Criminal Code of Georgia article 28, item 4, the court had to finish discussion of case and had to pass the verdict of not guilty because of the manifestation of non-existed actions, but here is important to mention, that the verdict of not guilty on the Criminal law cases has been pending.

### **Chitaberidze Manuchar, Devadze Zaur, Gelashvili Zaza**<sup>29</sup>

There was raised the legal proceeding on the fact connected to robbery that was conducted in summer, 2006 by the participation of three persons: Manuchar Chiatberidze, Zaur Devadze, Zaza gelashvili. The defendants pulled out the pension 26 GEL money due to victim who was drunk. According to the victim, this was the serious injure because he was retired and despite the pension he had not any income. The defendants were accused according to the Criminal Code of law, article 178, items "a" and "c" (robbery by the group of preliminary consent that caused considerable harm.

Actually, prosecutor changed the charge and requested to change the article connected with robbery to thieving. Manuchar Chiatberidze and Zaur Devadze were recognizing themselves as a guilty and were collaborated with investigation and they were declared in the law enforcement organ next day with the recognition. Despite this they were sentenced two months of preliminary imprisonment for thieving 26 GEL. Advocates noticed about the mitigating circumstances and mentioned that defendants were recognizing themselves as a guilty, also they were collaborated with investigation and on the next day they declared at the Police. Their being in the prison will badly reflect on theirs future.

### **Abuseridze, Levan**<sup>30</sup>

The crime according to the Criminal Code of Georgia article 260, part 2, items "a" and "b" that states preparing, producing, purchasing, preserving, sending, transporting or selling the big amount of drug substances or analogous precursors illegally by the group of preliminary consent.

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<sup>29</sup> charge according to the Georgia Criminal Code Articles 178 sub item "a" and "g" ( Batumi Court)

<sup>30</sup> charge according to the Georgia Criminal Code Articles 260, Part II sub item "a" and "g" ( Batumi Court)



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On the bases of operative information, the group - suspected for the realization of drugs were arrested near the territory of the House of Culture in Batumi. The policemen of Governmental Operative Department couldn't conduct investigation activities in the place because of the turmoil and masses of the people and actually it was impossible to conduct any measures. That's why arrested people were transferred in the police department, where was conducted search and was taken out drug substances. There was founded package wrapped up in the handkerchief. He was moved in the narcological dispensary and accordingly, there was concluded that this person was under the drug influence.

### **Kurbanadze, Koba<sup>31</sup>**

defendant Koba Kurbanadze was participating in the judgment without advocate. Prosecutor requested 9 years imprisonment. In the final word, defendant requested to send him immediately in Geguti Prison. He was complaining health conditions (pneumonia). There was not tribune for questioning of witness in the same courtroom. The chairs were broken for the litigants and for the persons who were attending the trial. During the private talking, defendant declared that he had tuberculosis; he did not want to have an advocate and refused service of public advocate. After the going of judge to the deliberative room, prosecutor was doing another business. The Judge sentenced Koba Khurbanadze to 7 years imprisonment. It is necessary to mention that Prosecutor Bulbuli Mjavanadze was not attending during the declaration of verdict.

### **Tsanava, Otar<sup>32</sup>**

The case of criminal law against defendant Otar Tsanava using the pledge as a form of imprisonment. The trial was conducted in the cabinet of the Judge; the Judge apologized for it because there were not free court rooms. In the cabinet of Judge the defendant Otar Tsanava and his Advocates were standing, because there were no sits. The Prosecutor raised petition to charge the pledge - 20 000 (twenty thousand) GEL. Despite the requests from advocates who were making there attention on the Criminal Procedural Code of Georgia, article 151, part III, where Prosecutor is obliged to prove the expedience of the imprisonment and there wasn't foreseen the using of relatively mitigating imprisonment. Advocates were requesting not to use imprisonment, or at list use the private warranty. (Here is necessary to mention that the using of this regulation is not used in the court experience). The judge mentioned that during the charging the litigants are agreed on the same position, and judge was thinking that it would be repeated. Accordingly, we can assume that the court trial was formal.

Finally, Batumi City Court charged Otar Tsanava to 20 000GEL as a pledge.

### **Shakarivili, Irakli<sup>33</sup>**

The defendant didn't attend the trial, because after the giving evidence he has the right not to attend trial according the Procedural Legislation (The Criminal Procedural Code of Georgia, article 447). There is a huge experience of this.

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<sup>31</sup> charge according to the Georgia Criminal Code Articles 177, part 2, items "b", "c" and part 3, sub items "c" and "d". ( Batumi Court)

<sup>32</sup> charge according to the Georgia Criminal Code Article 192 (previous version) (Batumi Court)

<sup>33</sup> charge according to the Georgia Criminal Code Articles 273, article 187 item – 2, sub item "c" and article 180, item 2, sub item "b" (Batumi Court)



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Irakli Shakarishvili was charged according to the Criminal Code of Georgia article, 273, article 187 item 2, sub item “c” and article 180, item 2, sub item “b”. Prosecutor requested 5 year imprisonment. Advocates notices that there are no any evidences in this case and prosecutor demands unfounded 5 years imprisonment.

During the passing verdict the voice of judge was not clear in the court room, also the trial was disturbed by the noise from outdoor. Finally, Irakli Shakarashvili was sentenced to 3 year and 6 months imprisonment.

### **Zakaradze Izabela, Kobaladze Larisa, Surmanidze Emil<sup>34</sup>**

there was discussing the case that was not studied by the judge. During the trial, he requested the case that was given to him by prosecutor. The advocate was appointed by the rule of public advocacy who engaged in the process before the several hours. The defendants - Izabela Zakaridze 58 years old - retired, daughter - Larisa Kobaladze. Defendant - Emil Surmanidze was not attending the trial. Proposition in view that the defendants were not speaking on the State language (they were speaking in Russian), the court appointed for them interpreter who was working as an intern in the Prosecute Office and attends the trials in the courts. The court was obliged to determine the right of the defendants. Concretely the participant who didn't know the State language or the language of Criminal procedure, has the right to make announcement, to give testimony, declare petition, to deliver the claim in his own language or another language. The judge didn't give such explanation for the defendant. There was not passed the order about the payment of pledge in his language that is guaranteed by the Criminal Procedural Code of Georgia, article 17, item 3. This article also guarantees translation of documents that must be passed to the defendant in his/her own language.

The investigator made petition and charged according to the Criminal Code of Georgia, article 339 parts 2 sub item “a”, article 118 and article 187 part 1. The investigator requested pledge - each of them 5000 GEL. The prosecutor supported petition to pay pledge – 5 000 GEL for Emil Surmanidze, and before providing he must be in prison.

Izabela Zakaridze did not support the petition and explained that she receives only 33 GEL pension and she could not pay the pledge. The advocate requested to minimize pledge to 3 000 GEL.

The judge satisfied partially the request of prosecutor and sentenced imprisonment by the form of pledge 2500 GEL for mother and daughter and the judge sentenced Surmanidze 2500 GEL by the form of pledge and providing the payment, they were sent imprisonment. Defendant claimed that she could not pay this amount of money because she is retired. So, she was explained that she can provide this one by the really state. It is important to mention, that the Prosecutor left the court room before the passing the verdict, he passed his duties to the investigator and left the trial. The prosecutor exchanged his opinion to investigator: - “You have to write the note imagining that defendant is hidden and does not answers for the declaration of the court and you have to order for the arresting and placing her in the insulator #3, you must do it immediately, today.”

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<sup>34</sup> charge according to the Georgia Criminal Code Articles 339, part 2, sub item “a”, article 118 and article 187, part 1. (Batumi Court)



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### **Dumbadze, Paata**<sup>35</sup>

On the 11<sup>th</sup> of November, the trial appointed at 11.00 am began at 7.00. Pm. Defendant did not receive the food during this time.

During the trial there were talks by mobile that is of course disturbing circumstance. The defendant was in prison for 1 year and 6 months. The terms of imprisonment was continued by the judge unfairly, there wasn't objective estimation from the State Prosecutor, and also by the form of evidence the court used the report of identification, according that, defendant wasn't identified. There were not discussed any circumstances for the terms of charge, that is extremely important. Finally, he was sentenced to 10 year imprisonment.

### **Abuseridze, Bondo**<sup>36</sup>

The trial was started later, on the 13<sup>th</sup> of November. There was noise during the trial, Mandates have to control the silence in the court but they could not maintain their duties.

During the trial occurred that prosecutor made him sign the evidence without introducing the document. The victim in the favor of the defendant refused the evidence given during the preliminary investigation, by the result of this victim declared the pressure from policemen. When the victim was making the evidence the prosecutor made obvious pressure over him. The judge ignored this fact.

The next trial conducted on the 20<sup>th</sup> of November, where victim changed its evidence, given during the previous trial and for that reason he declared again, the pressure from prosecutor.

### **Verulidze, Jemal**<sup>37</sup>

The trial was conducted on November 14. During the trial, when the judge asked defendant for what he was charged, he didn't now, because prosecutor didn't handed him the resolution of accusation, that is the duty of prosecutor and that is why the trial was postponed.

Accordingly, Mandates were not attended the trial that is theirs duty.

### **Beridze, Giorgi**<sup>38</sup>

On the mentioned case Achiko Romanidze was called as a witness, who was asked to leave the room after the giving the evidence. The witness requested to attend the trial but the judge didn't give him this right.

The judge was violating the principle of competitiveness, despite of asking the questions to the prosecutor he was asking to the witness. Eye-witnesses who were presented by the advocate of defendant were refused to give evidence.

The judge has no right to estimate preliminary evidences and to impose the supposition regarding the case by the procedural rules, but he was making estimations on the evidences made by the witness.

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<sup>35</sup> charge according to the Georgia Criminal Code Articles 109, article 353, part 2 (Batumi Court)

<sup>36</sup> charge according to the Georgia Criminal Code Articles 276 (Batumi Court)

<sup>37</sup> the crime according to the Criminal Code of Georgia , Article 179, part 2, sub items "a" and "c", article 181, part 2, sub items "a", "b", "c". (Batumi Court)

<sup>38</sup> the crime according to the Criminal Code of Georgia , Article 223<sup>1</sup> (Batumi Court)



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On this trial the mandates could not control the order during the trial that disturbed the conducting of trial. By the ordering of the judge the mandates closed the door of the room. By the result of this, there was abrogated the principle of publicity.

Prosecutor repeatedly questioned Achiko Romanidze as a status of witness and asked him the same questions. The advocate of defendant protested, but the judge had no reaction.

The judge left the room when prosecutor was questioning the defendant. That is obvious violation of procedural rules and principles. The video cassette as the evidence was presented by the Prosecutor, by which it should be confirmed the crime of Giorgi, but the mentioned cassette was not full version, some sections were cut out. But the judge and the prosecutor simultaneously pointed out about the improvement of the evidence. The discussion of the second evidence was presented in the cabinet of judge that masts have been public. By the form of evidences in the court there was presented video records and arms that should have been procedurally attached during the preliminary investigation by the resolution of prosecutor or investigator. According to the case materials there wasn't procedural attachment and the judge didn't respond correspondingly and he attached mentioned evidences as a basis of verdict.

Giorgi was sentenced to 6 years imprisonment for the absence of evidences.

### **Grigarashvili, Giorgi<sup>39</sup>**

The judge obviously helped to the witness to answer the questions that infringe the principle of competitiveness.

The mention trials started later like other trials.

### **Kamadadze, Nugzar<sup>40</sup>**

This administrative dispute was connected to the restoration in service.

He was fired from the position of the Chief of road department.

The infringement was – The Mandate didn't attend the trial, which was responsible to control the order and also the judge didn't give the right to the advocate of Kamadadze to raise petition on the trial that is the rude infringement of the Administrative as well as Civil Procedural Rules.

### **Abashidze, Aslan<sup>41</sup>**

On the mentioned trial only one infringement appeared, concretely when advocate of the defendant was questioning the witness, the answer was given by the State Prosecutor. But, the judge didn't consider this as an infringement.

### **Gvianidze, Beglari<sup>42</sup>**

During the trial appeared that the evidence given by the defendant was taken into the questioning report by the investigator during the preliminary investigation, concretely, defendant

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<sup>39</sup> The crime according to the Criminal Code of Georgia, Article 260, part 3, article 262, part 2. (Batumi Court)

<sup>40</sup> The administrative case (Batumi Court)

<sup>41</sup> the crime according to the Criminal Code of Georgia , Article 182, part 2, sub items "a" "b", "c", "d" and article 332 (Batumi Court)

<sup>42</sup> the crime according to the Criminal Code of Georgia , Article 260, part 3 (Batumi Court)



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noticed that he had the wife and the child, that is one of the mitigate circumstances during the setting of the punishment. Later, this circumstance was not taken into consideration by the judge.

### **Shanidze, Teimuraz<sup>43</sup>**

The defendant had no mean to use the service of advocate, and by his request was not taken into consideration to appoint advocate by public rule.

During the trial the door of the court room was closed that's why nobody attended the trial.

By the verdict Teimuraz Shanidze was sentenced to 3 years imprisonment.

### **Dzamistarishvili, Aleksei<sup>44</sup>**

The trial was conducted on the 24<sup>th</sup> of November, the case was considered by the judge Murman Khamashuridze. The feebleness of the mandates was appeared on this trial, even more they were not in the court room.

### **Goradze, Gia<sup>45</sup>**

On the 30<sup>th</sup> of November, 2006, the sister of Mindia Goradze was asked to come in the court as a witness. The judge didn't explain her rights that are guaranteed by the Procedural law.

The trial of Goradze was postponed the 7<sup>th</sup> of January 2006, in the cabinet of judge that had to be conducted in the court room. It is unknown for society the reason of postponing.

### **Kusrashvili, Leila<sup>46</sup>**

In spring of 2006 L. Kusrashvili was arrested during the realization of spurious money. The defendant used the right of silence during the preliminary and court investigation and he didn't recognized himself as the accused.

During this period there was the spreading the information, that the defendant was under the protection of Finance Police and they will rescue him from the court. If she had not been rescued she would name the participant of the crime.

Leila Kusrashvili infringed the right of silence, when her advocate Nato Chikhradze declared trial that she was refused on the procedural agreement from prosecutor. Only after this, Leila Kusrashvili requested the right from the judge - to give the evidence.

Despite of given evidence, the judge considered, she was trying to justify herself and despite of the request of her advocate the court didn't consider to question mentioned persons.

The court passed the verdict against Leila Kasrashvili according to the Criminal Code of Georgia article 212 part 1, with the version valid before the 31<sup>st</sup> of May, 2006. There was also foreseen rest term of the penalty for the crime committed in the past according to the Article 60 and

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<sup>43</sup> the crime according to the Criminal Code of Georgia , Article 178, part 2, sub items "b" and "c"(Batumi Court)

<sup>44</sup> the crime according to the Criminal Code of Georgia , Article 341(Batumi Court)

<sup>45</sup> the crime according to the Criminal Code of Georgia , Article 223<sup>1</sup> (Batumi Court)

<sup>46</sup> the crime according to the Criminal Code of Georgia , Article 212, part 1 (Lagodekhi Regional Court)



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finally she was sentenced to 5 years and 6 months imprisonment. And she was charged to pay 100 GEL for the benefit of victim Leri Mgebrishvili.

### **Ramazashvili, Luka<sup>47</sup>**

The witnesses invited on the trial, loudly declared that the evidences given during the preliminary investigation was the result of different pressure imposed over them.

Because of all this the court is depended on the Public Prosecutor Office and after it, the principle of independence of justice is infringed.

The prosecutor was lean upon false evidence, put in the case by the prosecutor and investigator during the preliminary investigation. The witnesses didn't agree these evidences and declared that evidences were not given by them, some witnesses argued that investigator made them to sign on the empty paper; others argued that investigator made them to sign on the evidence that was already written. The persons, invited in the court with the initiative of defender litigants are giving evidences for the benefit of defendant or they do not remember the facts.

The evidences by the specialist are given for the benefit of the defendant, because their facts and circumstances are with accordance of the facts and circumstances stated by the litigants and defendant. It is possible to say the same on the result of the place's examinations – the facts on the place confirmed the evidence of the defendants and not the facts fixed in the accusatory resolution.

The litigant of defenders requested the verdict of not guilty.

The witnesses who dared and retracted their evidences, given during the preliminary investigation - are placed now in prison. It is clear that after it would be difficult for other witnesses, to say truth for the court. Actually, the existence of the mention article in the Criminal Code of Georgia comes against the equality among the litigants and the principles of competitiveness, because the litigant of accusation has the wide levers to impose pressure over the witnesses during the preliminary investigation for their benefit. In such situations, there is annihilation of the chances from defender litigant during the preliminary investigation to elucidate truth from the witnesses, who were already pressured, and who were already made to write false evidences.

The Court of Gurjaani partially satisfied the innocence of the L. Ramazashvili. The defendant L. Ramazashvili was sentenced to 8 years imprisonment.

### **Tamazashvili, David<sup>48</sup>**

One of the witnesses declared on the trial that he saw David Tamazashvili, in the place of incident. The witness Nana Ironashvili confirms the evidence given during the preliminary investigation. According to the defendant, he refuses to defend himself, for this reason the advocate does not participate in the trial. He refused to give evidence, because he considered that evidence would have made no sense. But during the preliminary investigation he gave evidence where he partially considered himself as a guilty.

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<sup>47</sup> the crime according to the Criminal Code of Georgia , Article 143, part 2, sub items “a” and “h”, article 179, part 2 – sub items “a” and “d”, article 177, part 2 – sub items “b” and “c”, part 3 – sub item “b”, article 187, part 1, article 181 part 2 – sub items “a” and “c”, articles 151 and 150.( Telavi Regional Court)

<sup>48</sup> the crime according to the Criminal Code of Georgia , Article 19 – 108 (Gurjaani Regional Court)



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Prosecutor declares: there are no mitigate circumstances in the case, the crime that charges defendant foresees 9 years imprisonment.

The speaking of prosecutor was performed in a low voice. Only the half of the speech made by him was possible to understand.

During the performing the last word, defendant mentioned that requested penalty by prosecutor was more severe and he asked the court to mitigate the penalty.

The Judge Tamar Chuniashvili took into consideration the request from the defendant and according to the verdict she was sentenced to 7 years and 6 months imprisonment.

### **Machavariani, Tamaz**<sup>49</sup>

This trial was distinguished from others by its short-terms. Defendant is so weakened that he could hardly walk. The advocate is not participating. There were only short answers from plaintiff and from defendant. The defendant is blamed for penetration into the flat for the stealing the sofa, which is evaluated in 500 GEL. The plaintiff claims that damage is paid. The prosecutor is mentioning to the judge that relief circumstance is that Tamaz Machavariani recognizes himself as a guilty, he is not convicted in the past and is characterized as a positive person. There is no any onerous circumstance in this case. Prosecutor requested 5 years imprisonment for the defendant. The defendant requests to relief the penalty. By the resolution of the judge he was sentenced to for 5 years imprisonment, and one year from this was determined as a suspended sentence.

### **Mepurishvili, Badri**<sup>50</sup>

The process is starting by the petition of investigator to change suppression measure. Because on the 9<sup>th</sup> of August, defendant Badri Mepurishvili was charged to pay 3000 GEL as a pledge and the term for paying was determined – 1 month, for this period he was staying in a preliminary prison. He could not pay this sum for this period not by money and by unmovable property. So investigator requested sending him in a preliminary prison. This petition was supported by the prosecutor, also because he was convicted in the past. The prosecutor Digmelashvili abolished presumption of innocence, because during the trial defendant was named as a convicted.

### **Nanobashvili, I.**<sup>51</sup>

In winter of 2006 in Signagi, the demonstration of protest was conducting against Nugzar Abulashvili, MP for the support of Local self-governance. During the demonstration were sacked journalists, for this time defendants: I. Nanobashvili, Vasil Munjishvili, Jemal Demetrashvili and other accompanying persons. All persons were arrested except of Jemal Demetrashvili. The preliminary imprisonment was conformed for Nanobashvili and Munjishvili, and Jemal Demetrashvili must pay 5 000 GEL as a mortgaging. The advocate, Lia Khuroshvili reported that

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<sup>49</sup> the crime according to the Criminal Code of Georgia, article 177, part 2 – item “a” and part 3 – item “c” (Gurjaani Regional Court)

<sup>50</sup> the crime according to the Criminal Code of Georgia, article 260, part -1 (Gurjaani Regional Court)

<sup>51</sup> the crime according to the Criminal Code of Georgia, article 239, part 2, item –“a”, article 187, and toward V. Munjishvili and J. Demetrashvili crime is forseen by the Criminal Code of Georgia, article 139, part 2 (Signagi Regional Court)



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she knows nothing about this case because R. Kevkhashvili, injured person applied to her one day ago. So she requested to postpone the trial, but request was not satisfied and trial was continued. Also defendant's advocates requested to change punishment by the pledge, for Munjishvili 3 000 GEL and for Nanobashvili 2000 GEL. The injured litigant claims that they were under the pressure by phone calls ordered by Nanobashvili. Defendants were answering the same answers on questions that were asked from injured litigant: "Do not remember". It is obvious that after this is getting a question, in what they recognize themselves guilty and which crime they recognize; when none of them remember any actions committed by them. Injured litigant is displeased by the public prosecutor and by the judge because there were not satisfied any petitions. But both petitions by defendants were satisfied in spite of resistance from injured litigant they were imposed to pay pledge – 3 000 GEL. After this the trial was postponed.

### **Macharashvili, Makvala**<sup>52</sup>

Lia Khuroshvili, the advocate proclaims that there was abolished demand of The Civil Procedural Code of Georgia, article 59, and the third item of this article guarantees discussion of civil cases by the judges in 2 months after the day of receiving the case, and follow the labor relationships the discussions must be discussed in a month. The noticed case was discussing from the 26<sup>th</sup> of April 2006 up to the third of October 2006, by the result of this were abolished the rights of M. Macharashvili.

### **Mekerishvili, Ilia**<sup>53</sup>

Ilia Mekerishvili is blamed for the stealing of damaged railway rails in the village Chumlaki, in the summer of 2006. Despite of this – there was stolen the cistern of Gela Zakalashvili, Director of joint-stock company of the wine factory. The defendant is denying this fact and demands to explain what arguments do the public prosecutor has against him. Injured, Gela Zakalashvili reported to the judge that the stolen cistern was sent back by the other persons saying that cistern was stolen by Ilia Mekerishvili. Policemen who arrested I. Mekerishvili must be questioned on the trial but it was impossible during the official duties. During the trial, prosecutor received 4 phone calls by the result of what he could not hear whole story that was told by the defendant. Despite of this, he whispered with judge four times during the trial and after this without any explanations and apologizes he left the trial. Prosecutor and judge were easily speaking with each other during the trial. After some time prosecutor came back and trial as continued. Defendant was looking much unprotected, was not served from advocate because he had not money for this and public advocate was not offered him, by the result of this was abolished the Criminal Code of Georgia, article 11, part 1 that reports that "Judge and official, that are conducting a criminal case are obligated to ensure by the protection of theirs right, explain rights, give the opportunity to protect theirs rights, to ensure protection of theirs rights and freedom". Prosecutor has not got any assertions against I. Mekerishvili confirming the blame of Mekerishvili in stealing of cistern. However the blame of Mekerishvili is affirmed only on the basis of evidences that were given from injured litigant. By the result of this, is abolished the Criminal Code of Georgia, article 15, part 1 that demands the competitiveness and equality of litigants, also was abolished article 18, part 1 that demands objective and detailed research of case. It notices that: "Investigator, prosecutor and judge are obligated to establish somebody's blame, which did it, and search all the things that are connected with assertions of case.

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<sup>52</sup> Administrative case (Gurjaani Regional Court)

<sup>53</sup> the crime according to the Criminal Code of Georgia, article 177, part 3 (Gurjaani Regional Court)



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Prosecutor requested to sentence him to 4 years imprisonment. The judge sentenced to him 4 years imprisonment.

### **Jokhadze, Dimitri**<sup>54</sup>

The preliminary investigation was started in the end of May 2006. Dimitri Jokhadze used the violence for many times, demanded the giving of others property or things. For this he was using the treat forms towards the relatives of the person that abolishes their rights. On the 30<sup>th</sup> of May 2006, at 00.15 am, the workers of Gurjaani Administration conducted a search of D. Jokhadze – the residence of the village Chandara, Gurjaani. During the search it was took out the arm and 6 cartridges. The noticed crime is confirmed: by the evidences of injures Gela Zakalashvili and Giorgi Zakalashvili, witnesses – Gaioz Djafaridze, Kakhaber Natsvlshvili, Vazha Bedenashvili, Zaur Dzuliashvili, also by the record of proceedings, by the conclusion of ballistic expertise and other documents that are included in the case. At the beginning of the trial, defendant was asked by the judge, was he handed the copy of accusatory resolution. The defendant answered – no. He was offered to look through this one but he refused. By the result of this was abolished the Criminal Code of Georgia, article 462, that claims: “The judge asks the defendant about the handing the copy of accusatory resolution or the complaint of the injured person. If no – the trial must be postponed for three days.” The judge read the list of the persons that must be questioned but there were not persons who were giving the evidences to the advantage of defendant during the preliminary investigation. L. Shalamberidze raised petition to invite these persons for questioning. The prosecutor debated and claimed that he will not agree for this despite of being of written petition. The advocate revolted and noticed the Criminal Code of Georgia, article 410 – part 1, according to this: “1. there must be the list of persons who must be questioned. This document must be added to the accusatory resolution. The noticed list must be consisted in two parts – the lists of persons confirming the blame of the defendant and the list of persons that was adopted by the prosecutor and advocate.”

Break time – 5 minutes.

After the waiting for an hour the trial was continued and the advocate raised a written petition, where was noticed the list of persons that that advocate wanted to question. The prosecutor did not support this petition, that there were the persons of the defendant’s family in this list and it was unadvisable. The judge satisfied the petition of the defendant’s advocate. The trial was postponed by the request of defendant’s litigant.

Two under age girls were attending the trial, by the result of that was abolished the Criminal Code of Georgia, article 16 – part 9.

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<sup>54</sup> At present prisoner of Tbilisi 5<sup>th</sup> Prison five times convicted in the past. He is charged according the Criminal Code of Georgia, article 181 – part 2, sub item “b” and article 236 - part 1 (Gurjaani Regional Court)



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### Part II

#### *Conclusions and Recommendations*

**a) Personal integrity of the accused, defense of the accused's dignity<sup>55</sup>,**

cases where these rights are breached:

Aphkhaidze, Papiashvili, Gamkrelidze

Nishnianidze Onise

Miqiashvili Giorgi

Saginadze Batalbi, Biblaia Vakhtang

Turmanidze Merab

Kurbanadze Koba

Tsanava Otar

Zakaradze Izabela, Kobaladze Larisa, Surmanidze Emil

**b) Use of force during arrest and detention<sup>56</sup>**

cases where these rights are breached:

Aphkhaidze, Papiashvili, Gamkrelidze

Malania Irakli

Nishnianidze Onise

Miqiashvili Giorgi

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<sup>55</sup> According to the Criminal Code of Georgia, article 6, "The bases of Criminal Procedure are legality, person's immunity, the principles of respect for person's dignity, humanism, democracy, justice, equality". During the measure of investigation or judge that is connected to person's immunity is possible to use violence at the time when it is possible according to the law. (The Criminal Procedural Code of Georgia, article 12.)

<sup>56</sup> Suppress the freedom or the limitation of private freedom by the other means without the resolution of court (The Constitution of Georgia, article 18)

The policeman is obligated to inform the person beforehand he/she uses the physical compulsion, special means and firearms, to give him enough time in order to perform the orders that policeman is ordering,, but if there is a risk of citizen's death this rule is invalid. (The Law on the Police of Georgia, article 10).

It is forbidden to torment or use the methods of violence, torture, by the result of what it is possible to abase the person.(The Constitution of Georgia, article 17)

During the investigation, it is prohibited to use violence, threat, blackmail, deception or other illegal forms. Also it is prohibited to use the methods by the result of what it could be injuring the persons who are participated in this process (The Criminal Procedural Code of Georgia, article 286).

The forms, methods and means of police act are determined by the legislation of Georgia. The used methods and forms must not damage the human's life health, must not abase the manure and dignity, must not damage the environment (The Law on the Police of Georgia, article 9).

Policeman has the right to physical constrain, among them are: special methods of fight to ensure the security of citizens and himself, suppression the crime or administrative law infringement. (The Law on the Police of Georgia, article 11)

Policeman has not right to use the special methods and physical constrain that rises mutilation of person, or is connected with injustied risk or is prohibited by the International Conventions and International Acts (The Law on the Police of Georgia, article 12)

The Investigative or Court activity that is connected with the immunity of person, it is possible to be conducted only when it is charged by the Law. (The Criminal Procedural Code of Georgia, article 12)



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### c) **Right of people in custody to information**<sup>57</sup>

cases where these rights are breached:

Nishnianidze Onise

Nemsitsveridze brothers and Mindadze

Turmanidze Merab

Zakaradze Izabela, Kobaladze Larisa, Surmanidze Emil

Jokhadze Dimitri

### d) **Right to legal counsel before trial**<sup>58</sup>

cases where these rights are breached:

Zakaradze Izabela, Kobaladze Larisa, Surmanidze Emil

Machavariani Tamaz

Nemsitsveridze brothers and Mindadze

### e) **Right to notify others of arrest and detention**<sup>59</sup>

cases where these rights are breached:

Nemsitsveridze Brothers and Mindadze

Malania Irakli

### f) **Timely handling of verdict**<sup>60</sup>

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<sup>57</sup> The prisoner has the right to be explained about its rights and the base of its arrest. Prisoner has the right to demand the advocate that must be satisfied. It is prohibited to arrest a person without a resolution of court. (The Constitution of Georgia, article 18)

According to the Criminal Procedural Code of Georgia, article 12 – “It is prohibited the limitation of freedom without legal basis and rules. Arrested must be informed by the reason of its arrest immediately.

At the moment of arresting, person must be informed on the language that he/she understands, why h/she is arrested (The Criminal Procedural Code of Georgia, article 73)

<sup>58</sup> Prisoner has the right to use the free service of translator during the questioning if arrested does not know the language and the Criminal Code language (The Criminal Procedural Code of Georgia, article 73).

Arrested has the right to request the medical service at the moment of arrest or when prisoner is suspected, also arrested has the right to demand written conclusion, also to set the medical expertise for checking up arrested person’s health that must be satisfied immediately (The Criminal Procedural Code of Georgia, article 73).

Refusal can be appealed at once according to crime’s place at City Court; appeal must be discussed in 24 hours after its receipt (The Criminal Procedural Code of Georgia, article 73). If suspected person does not use his/her rights must not be realized as a confirming argument (The Criminal Procedural Code of Georgia, article 73)

<sup>59</sup> According to The Criminal Procedural Code of Georgia, article 138 – “After the Prosecutor and Investigator will use measures of arrest, also will accomplish the order of the Court – to place the person in prison or in the hospital, they are obligated to inform the relatives and friends of this person in 5 hours for the adults, and in 3 hours for under age persons. If there are no any relatives this information must be send to the institutions where he/she works or studies. There must be added the copy of report and other documents to the case.

<sup>60</sup> The arrest of person is possible in the following occasions by the plenipotentiary person. The arrest person must be presented to the court in 48 hours. If the court will not deliver a judgment to arrest or to set him/her free, person must be released immediately. (The Constitution of Georgia, article 18)

It is not possible to arrest a person more then 48 hours, to arrest or expertise a person is possible by the order or resolution of judge. (The Criminal Procedural Code of Georgia, article 12)

Defendant, by the written order of prosecutor or investigator, is bringing to the court by the arrest place administration. Administration will be assigned the copy of the case. (The Criminal Procedural Code of Georgia, article 160)



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cases where these rights are breached:  
Alania, Bibiluridze, Aptsiauri, Gachava  
Gvichiani, Chemia, Kherkiladze  
Molashvili Sulkhani  
Tskhakaia Kakha  
Jalabadze Giorgi  
Batiashvili Irakli  
Miqiashvili Giorgi  
Administrative dispute  
Turmanidze Merab

### **g) Right to adequate time and facilities to prepare a defence**<sup>61</sup>

cases where these rights are breached:  
Zakaradze Izabela, Kobaladze Larisa, Surmanidze Emil  
Nemsitsveridze Brothers and Mindadze

### **h) Torture and ill-treatment and the right not to be compelled to confess guilt**<sup>62</sup>

cases where these rights are breached:

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The term of arrest, from the arrest moment up to producing the blame must not exceed 48 hours. If a judge will not deliver a judgment about arresting or setting free in 24 hours, person must be released immediately (The Criminal Procedural Code of Georgia, article 145)

The judge discusses petition about person's arrest, or suppression him by another form, or foreseen measures charged by the Criminal Code in 24 hours after the delivering the case in the court (The Criminal Procedural Code of Georgia, article 140)

Suspected person's arrest term must not exceed 72 hours, and defendant's preliminary imprisonment term – 9 months (The Constitution of Georgia, article 18)

According the Criminal Procedural Code of Georgia, article 371 explains – “after the delivering the petition, the First Instance Court must send a whole case to Court of Appeal, also all the documents that are added to this case.”

<sup>61</sup> Arrested or prisoner must be informed about his/her rights, explain why he/she was arrested. he/she has the right to demand the advocacy help that must be satisfied immediately (The Constitution of Georgia, article 18) Suspected person must be informed that there is the right of silence, not to recognize himself as a guilty, to demand the advocacy, to contact the relatives, also all the rights that are guaranteed by the article of this Code. (The Criminal Procedural Code of Georgia, article 72)

Request about advocacy must be satisfied immediately, at the moment of arrest, before giving him/her explanations or if it is impossible to ensure this procedure in a intelligible time. . (The Criminal Procedural Code of Georgia, article 72)

<sup>62</sup> It is prohibited to use the methods by the result of what it can be abased the manure and dignity of participating parsons in trial. (The Criminal Procedural Code of Georgia, article 12)

Suspected person must be explained his/her rights about silence and the right not to recognize himself as a guilty (The Criminal Procedural Code of Georgia, article 73)

During the Investigation or judgment process it is prohibited to use violence, menace, blackmail, torture, physical or psychical violence methods. It is prohibited to conduct Medical Expertise for arrested or prisoner, prohibition of food, put him/her in the situation where is very high risk for damaging his/her health, abases the dignity. (The Criminal Procedural Code of Georgia, article 12)

The Court (judge) discussing the recognition the blame from arrested person, is obligated be ensured that prisoner's litigants are participating in the trial. Judge must be sure that recognition is voluntary and there was not any methods of menace, intimidate or any kinds of pressure. (The Criminal Procedural Code of Georgia, article 473)



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Molashvili Sulkhani  
Miqiashvili Giorgi  
Nishnianidze Onise

**i) Right to trial by an independent and impartial tribunal**<sup>63</sup>

cases where these rights are breached:

Molashvili Sulkhani  
Malania Irakli  
Nishnianidze Onise

**j) Right to a public and reasoned judgment**<sup>64</sup>

cases where these rights are breached:

Alania, Bibiluridze, Aptsiauri, Gachava  
Adamia Vazha  
Bashaleishvili Grigol  
Saginadze Batalbi, Biblaia Vakhtang  
Shaqarishvili Irakli  
Tamazashvili Davit  
Shanidze Revaz  
Mekerishvili Ilia  
Malania Irakli  
Molashvili Sulkhani  
Gvichiani, Chemia, Kherkiladze

**k) The prohibition against the use violence and torture during the gathering of evidence**<sup>65</sup>

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<sup>63</sup> The judge ensures conditions for researching and presentation of evidences, is impartial, and do not take the initiative not to write evidences. (The Criminal Procedural Code of Georgia, article 439)

All litigants are guaranteed to be served by independent and impartial court. According to the Constitution of Georgia, article 40, and The Criminal Procedural Code of Georgia, article 10 – the resolution about sentencing of defendant, verdict of guilty and other procedural documents must be established on the authentic notices.

<sup>64</sup> According to the Criminal Procedural Code of Georgia, article 496 – “The verdict must be well-founded and just”. The verdict is well-founded if its conclusions are based on the notices that were discussed on the trial and these notices are enough for just verdict. All the notices and resolutions that were formed in the verdict must be well-founded. . (The Criminal Procedural Code of Georgia, article 496)

According to the Criminal Procedural Code of Georgia, article 496 – “The sentence is just if penalty is in accordance with guilty person and to the blame that he/she committed”.

According to the Criminal Procedural Code of Georgia, article 45 – “The Court is the main body of Government, that is plenipotentiary to realize the judgment, discuss the case, to pass the legally, well-founded sentence.

<sup>65</sup> It is impossible the torture, non-human, using the strict or abase treat, using the abase punishment methods. (The Constitution of Georgia, article 17)

During the investigation it is impossible to use violence, menace, blackmail, deception and other illegal methods. Also it is prohibited to expose to danger those who are participating in this process. (The Criminal Procedural Code of Georgia, article 286)

Policeman has not right to use the special methods and physical constrain that rises mutilation of person, or is connected with injustied risk or is prohibited by the International Conventions and International Acts (The Law on the Police of Georgia, article 12)



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cases where these rights are breached:  
Aphkhaidze, Papiashvili, Gamkrelidze  
Molashvili Sulkhani  
Jalabadze Giorgi

### **1) State Responsibility to Pursue Allegations of Torture or Ill-Treatment<sup>66</sup>**

cases where these rights are breached:  
Miqiashvili Giorgi  
Molashvili Sulkhani  
Jalabadze Giorgi

## **Summary**

We informed the courts in writing about our plan to monitor trials. Initially, we had to deal with many problems in trying to enter courts. We discussed our plan again with the Court Board to monitor trials. We primarily wanted the bailiffs not to prevent us from entering courtrooms. At present we attend trials without any problems. All Tbilisi-based courts permitted us to conduct monitoring. Monitors also put up announcements about their monitoring activities in the Batumi Court. They asked judges to allow them to attend trials. HRIDC gathered and analyzed evidence on trial proceedings. That will help improving of the future situation as the breaches will be Interviews with the accused and their lawyers gave an accurate picture of current problems in trials.

A criminal investigation should begin when there is well-founded doubt or suspicion. According to Article 140, Section II, of the Georgian Criminal Procedural Code, a court cannot direct how a preliminary investigation is conducted but it may decide whether an investigation was conducted lawfully under Article 242.

The court does not have a right to find a defendant guilty on the basis of a suspicion alone (see Article 496 of the Georgian Criminal Procedural Code). Article 503, Section 2, also says: “A guilty verdict may not be based on a suspicion alone. It must be established from sufficient evidence presented during a trial.” Then, a court must decide, based upon the sufficient

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The Investigative or Court activity that is connected with the immunity of person, it is possible to be conducted only when it is charged by the Law. (The Criminal Procedural Code of Georgia, article 12)

<sup>66</sup> During the investigation it is impossible to use violence, menace, blackmail, deception and other illegal methods.

It is prohibited to conduct Medical Expertise for arrested or prisoner, prohibition of food, put him/her in the situation where is very high risk for damaging his/her health, abases the dignity. (The Criminal Procedural Code of Georgia, article 12)

The Court (judge) discussing the recognition the blame from arrested person, is obligated be ensured that prisoner’s litigants are participating in the trial. Judge must be sure that recognition is voluntary and there was not any methods of menace, intimidate or any kinds of pressure. (The Criminal Procedural Code of Georgia, article 473)

Investigation or Court activity that is connected with person’s inviolability can be conducted when it is foreseen by the law. (The Criminal Procedural Code of Georgia, article 12)



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evidence, whether this evidence proves a defendant guilty or not. If there is not sufficient evidence, the court must find the defendant not guilty.

### *Outcomes achieved*

- Educated court personnel about Georgian Constitution, Article 85 and Georgian Criminal Code, Article 16, which requires transparency of criminal cases. When criminal cases are transparent, participants, spectators, and journalists can attend trials and record events.
- Ensured that bailiffs attended trials. Their essential function is to maintain order in and around the courtroom.
- Ensured that a daily schedule of cases with the names of judges was posted in court buildings. This information helps interested parties attend trials.

### **Problems observed throughout Georgia**

- A procedural violation that frequently occurs in the courts is conducting a trial in the judge's chambers. Some of the hearings, particularly preliminary hearings on detention, are regularly held in the chambers. This breeds suspicion that trials are biased. This problem pertains to all courts in Georgia.
- Lawyers are not often present at trials throughout Georgia. This causes concern. According to the Georgian Criminal Procedural Code, Article 78, Section 6, the accused can discharge his public defender and hire a private lawyer. The accused may also continue his/her defense without a lawyer. In certain exceptions, Article 81 of the Criminal Code requires that a lawyer be present. Although the defendants of the trials we monitored sometimes refused the help of the public defender, this did not mean that they did not need this help. Instead, they did not believe that the public defender would actually defend them. Thus, the public defenders, for the most part, have lost their purpose at present. Public defenders are compensated at a below market rate, even though their work is taxing. In addition, public defenders have to pay some expenses during the course of a defense. The principal reason why defendants refuse a private lawyer's assistance is because they cannot afford the lawyer. However, in the case of a public defender, even though the defendant does not pay for his/her services, defendants do not think the defense will be worth any money to begin with. Even if they retain a public defender, the defendant's rights would be violated under the criminal procedural code because the defendant would not have the chance to choose the lawyer himself/herself.
- The state government does not pay much attention to the regional court buildings, which are in terrible conditions.
- The judges in the Georgian courts have a heavy workload. They have to hold more than ten trials a day. Besides that, the transportation of the detainees is not timely, therefore many trials start late. Very often it is impossible to start the hearing until 3:00 PM, because of the delay in transporting prisoners who must be driven back to the detention center before 6:00PM. Some detainees are often transported together and the judge has to



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hold several trials in a short time. The situation is harder in the regions. Nearly ten detainees are transported to the court, and judges have only four hours to discuss all their cases.

### **Problems observed in Batumi Courts:**

- The Batumi Municipal Court initially did not have rostrums. The chairs for spectators were not enough. The chairs for the prosecution and the defender were broken.
- However, Judges from the Batumi Municipal Court are now able to conduct trials in a new building that was opened on October 23, 2006. The new building meets European standards. There are computers in the courtrooms, so that secretaries can record the hearing. There are microphones for the judge, attorneys, and witnesses. Court officials have comfortable quarters. The schedule board is now located on a wall next to the entrance. However, the schedule does not give complete information on all cases being heard.
- In the Batumi Municipal Court, a judge mediated a dispute between the prosecution and defense. The prosecution demanded bail for the accused, but the defense objected. The judge asked both sides to inform him when they had reach an agreement. In effect, the judge transferred his duty to decide bail to the parties. According to Georgian law, the judge must behave independently of the parties. What the judge did in this case was to make his decision dependent on the negotiations of the parties themselves.
- The schedule of cases was not initially posted in the area of the Batumi Municipal Court where it should have been. However, after monitors complained, the problem was resolved. This information helps parties to identify and locate cases of interest.

### **Problems observed in Kakheti Courts**

- The situation in the Kakheti regional courts causes serious concern. Concerning HRIDC's monitoring, representatives of the district courts are hostile toward us. They do not even send us information about scheduled cases with the only exception of the Dedoplistskaro District Court. The chief judge who sits at this court, Tamar Chuniashvili, regularly sends us information about the time and place of scheduled cases. The judge of the Gurjaani District Court, Shalva Mchedlishvili, also was sending us information until August 30. He stopped cooperating with us in September for unknown reasons. In all the courts of Kakheti region, there were no schedule boards for cases. Thus, the monitors do not know when cases are to take place.
- We should point out that our monitoring had some results and on November 7, the Supreme Council of the Ministry of Justice replied to our letter demanding schedule boards of cases in each court. The Supreme Council replied, "On the basis of the information received by the Akhmeta, Telavi, Gurjaani, Kvareli, Dedoflistskaro, Lagodekhi, Signaghi and Sagarejo District Courts, schedule boards were put up in every court according to the law."



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### **Conclusions and Recommendations:**

- The fact that there are those who regularly observe criminal court trials motivates the court to follow the legal norms mandated under Criminal Procedure Code. The court, which is responsible for upholding justice, must open itself to observation and take necessary diligence to refrain from violating material or procedural norms. Courtroom conditions are monitored (physical condition of court rooms, quarters, material-technical base, etc), which are essential to the procedural outcomes of justice.

*Adequate facilities at courthouses and in court rooms are necessary so that the public can properly observe trials, particularly in the cases where a high level of public interest can be expected.*

- There have been instances when judges were forced to stand in queues while waiting to enter courtrooms to conduct trial proceeding. In addition, there is a lack of adequate technical equipment in the courtrooms. More importantly, there are no platforms or chairs for people and involved parties to effectively voice their statements and responses at the trial. The statements made by judges are often not heard or recorded correctly, which creates additional confusion and takes away from the legal court proceedings. Detainees are placed in cages like animals. The number of attendants is restricted because of not enough chairs or inadequate floor space in the courtrooms. The list of similar problems goes on and on. All the above-mentioned facts prove that the rights of the participants of the process are being infringed, and this contradicts procedural human rights guaranteed by the Georgian Constitution. Many other laws are blatantly violated as well.

*Human Rights Center recommends repairing court buildings throughout the country. In addition, equal access to the court hearing should be given to all members of the public. No one should be excluded from the court hearing unless there are proper and sufficient grounds to believe that the presence of such person would interfere with the administration of justice. The society should receive more simple and detailed information about the date and place of court hearings. Posting the information at the court or on a court webpage should make information about the time and venue of hearings easily available.*

- During the day, judges are expected to conduct at least ten trials. Judges have to hold proceedings in their cabinets because courtrooms are often occupied by other trials that are still in process and due to late arrival of detainees. Judges often find themselves fulfilling the jobs of what would normally be assigned to court administrators by having to line up courtrooms to conduct trials. In addition, judges often have difficulties in rendering judgments in a timely manner. Judges often work late in the evening hours in order to meet their legal deadlines and preparing their legal opinions and court judgments.

*The monitoring results demonstrate that there needs to be an increase in the number of judges that will facilitate the timely discussion of the case, which appear to be drastically increasing in number. An increase in the number of judges will improve the quality of court discussions. With*



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*fewer cases, judges will be able to spend more time focusing on the details and more discrete legal nuances during the court proceedings.*

It should be mentioned that direct or indirect pressure on judges are standard practices in Georgia and is felt during trials, which can be observed when judges take the opinions of prosecutors into consideration. In many cases, prosecutors prepare judgments sometimes even in written form prior to the trial, which does not take into consideration statements of defendants that would otherwise clear them of the charges. However, such testimony is completely ignored. Based on monitoring data, judges most often satisfy the prosecutor's mediation, which is one more sign of the influence of prosecution over the judiciary.

HRIDC recommends that the general attitude be changed and to give a greater opportunity to judges to make decisions that will be more objective and close to the reality of the case. This will demonstrate the judge's attitude towards the case as envisaged by the Constitution of Georgia. In addition, we recommend that pre-trial detention in the form of imprisonment be used far often.

- The situation is worse regarding serving court notifications on time. Carriers fail to deliver notifications in a timely manner, which forces attorneys to take up this task on their own. Judgments are often handed down to defendants late.

*Courts should ensure that judgments are read out fully in court and that the defendants receive a copy of the judgment on time.*

- There is a serious problem moving from one case to the next, which often causes confusion, delays and violates the rights and interests of people. The mentioned examples were observed during the monitoring.

HRIDC recommends establishing a special caseload network that will specifically designed to serve the court system and will help to eradicate this problem.

- Many lawyers and human rights advocates continue to be concerned with amendments made to the Georgian Criminal Code. Based on the amendments adopted in July 2005, a person that obstructs justice by distorting his own testimony can be fined or sentenced to five years in prison.

Such kinds of amendments may prevent witnesses and victims from presenting their testimonies and evidence and even in some cases to not participate in ongoing investigations and court discussions.

- Article 18 of the Georgian Constitution permits the government to detain an accused person for up to nine months while an investigation is conducted. However, the Georgian Criminal Procedural Code allows a court to detain the accused until the appeal process has run its course, which can last longer than the nine-month limit guaranteed in the Georgian Constitution. HRIDC believes that detention should be limited to the nine months stipulated the Georgian Constitution.



## HRIDC - TRIAL MONITORING IN GEORGIA

*HRIDC recommends defending the terms envisaged by the constitution.*

- Most defendants don't have the opportunity to hire an attorney and the qualities of state defense attorneys are lower and are not even qualified.

*HRIDC recommends that a lawyer should be guaranteed access to all detained persons immediately after their arrest or detention and during all investigative measures in accordance with the Criminal Procedure Code.*

*Those detainees who cannot afford a lawyer should be ensured access to one and be able to consult with a duty lawyer at the State's expense in accordance with the Criminal Procedure Code.*

*Special attention should be paid to the practice of the institute of lawyers at the State's expense.*

- When the defense has easy access to all documentation regarding the cases and has full access to all court files and receives copies of all documents contained therein.

*The authorities should ensure that defendants and their defense counsel have access to all information, documents and evidence that might help prepare the case, exonerate them or, if necessary, mitigate a penalty.*

*Steps should be taken to ensure that defense counsel always have full access to the court file and receive copies of all documents contained therein.*

Monitoring not only assists in increasing chances of individual court cases to be conducted in a fair and legal manner, and further contributes to the ultimate success of the ongoing process of legal reform in Georgia. However, monitoring cannot by itself ensure that all procedural rights of defendants are protected. It can, however, be a useful tool in identifying specific areas within the trial process that still need to be improved.