

Monitoring Trials of Former Government Officials

(January 15 – December 15, 2013)



Report is prepared by
Human Rights Center(HRIDC)

Report is financed by



**National Endowment
for Democracy**

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Tbilisi, 2013

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Following report was prepared by financial support of National Endowment for Democracy (NED). Opinions expressed in the report are solely those of Human Rights Center and do not necessarily reflect views of NED.

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Introduction

Following report represents results of trial monitoring of cases of former government officials. Monitoring covers period from January 15 to December 15. Monitoring was conducted by financial support of National Endowment for Democracy (NED).

In the beginning the report presents monitoring methodology. Afterwards, the results of monitoring are presented in following chapters: public hearing, principles of adversarial proceeding and equality of arms, right to reasoned decision, right to defense, independence and impartiality of judiciary and other observations.

The main conclusions and recommendations are presented at the end of the report.

Methodology

The monitoring was conducted on high profile criminal cases where former government officials were main defendants.

Information presented in the report has been obtained by monitors/lawyers of Human Rights Center who attended the trial hearings. Obtained information is analyzed in terms of its compliance with international and Georgian legislation.

Monitors of Human Rights Center observed pre-trial and trial hearings of selected cases in Tbilisi City Court with following method:

- a) Described the process of the hearing, wrote down important facts, discussions and motions;
- b) Filled in the special questionnaire which included special questions interesting for monitoring

Human Rights Center observed whether following principles of right to fair trial guaranteed by international and Georgian law were ensured at trial hearings:

- Public Hearing
- Principle of Adversarial Proceeding and Equality of Arms
- Right to Reasoned Decision
- Right to Defense
- Independence and Impartiality of Judiciary

Under the trial monitoring project, journalists of Human Rights Center covered trial hearings. Articles were published on Human Right Center's website – www.humanrights.ge. 60 articles were published in sum during the monitoring period. The trials which were covered by journalists were selected on the basis of significance and high public interest.

Selected Cases

During the monitoring period, monitors of Human Rights Center observed pre-trial and trial hearings of following cases in Tbilisi City Court:

- 1) Criminal case against Bachana Akhalaia, former Minister of Defense and Internal Affairs, Giorgi Kalandadze, former Chief of Joint Staff of the Georgian Armed Forces (hereinafter – the **so-called case of soldier's abuse**)

Charges brought against Bachana Akhalaia:

- Exceeding official powers by state-political official that has inflicted a substantial damage to the right of a natural or legal person, legal public or state interest, by insulting dignity of a victim (offense envisaged by part II and paragraph C of part III of Article 333 of Georgian Criminal Code (GCC));
- Illegal imprisonment by a group's prior consent (paragraph A of part III of Article 143 of GCC)
- Organization of torture against two or more persons, by using one's official position (paragraphs A and D of Article 144¹ of GCC)

Charges brought against Giorgi Kalandadze:

- Exceeding official powers by an officer or a person equal thereto that has inflicted a substantial damage to the right of a natural or legal person, legal public or state interest, by insulting a dignity of a victim (paragraph C of part II of Article 333 of GCC)
- Illegal imprisonment by a group's prior consent (paragraph A of part III of Article 143 of GCC).

Tbilisi City Court delivered verdict of not guilty against all defendants¹ in this case. Office of Prosecutor appealed against this judgment to Tbilisi Appeal Court. Appeal Court upheld the verdict of City Court towards Bachana Akhalaia and Giorgi Kalandadze. However, Appeal Court changed the verdict towards two other defendants, Zurab Shamatava and Aleksandre Gorgadze and sentenced them to three years and nine months imprisonment.

- 2) Criminal case against Bachana Akhalaia and former officials of Ministry of Internal Affairs (MIA) (hereinafter – the **so-called case of 7 servicemen of Special Task Force**²).

Charges brought against Bachana Akhalaia:

- Abuse of official authority by a state-political official in contempt of public service requirements in order to gain any profit or privilege for oneself or others that has come as a substantial prejudice to the right of a natural or legal person, legal public or state interest, committed under violence and by insulting a dignity of a victim (paragraphs B and C of part III and part II of Article 332 of GCC);
- Complicity in organization of torture, by using one's official position, against two or more persons, by group and because of victim's political views (paragraphs A, B, D, E, F of part II of Article 144¹ of GCC);
- Complicity in organization of inhuman and degrading treatment, committed by state official by using his/her official position; against two or more persons; by group; because of victim's political views (paragraphs A, B, D, E, F of part II of Article 144³ of GCC);

Tbilisi City Court delivered verdict of not guilty against Bachana Akhalaia and other defendants in this case. Office of Prosecutor appealed the verdict to Tbilisi Appeal Court. The proceedings are still in progress at the time of writing this report.

- 3) Criminal case against Bachana Akhalaia and Megis Kardava, former head of Military Police Department of Defense Ministry (hereinafter - the **so-called Prison Mutiny Case**³).

Charges brought against Bachana Akhalaia:

¹ <http://humanrights.ge/index.php?a=main&pid=16901&lang=geo>

² <http://humanrights.ge/index.php?a=main&pid=16955&lang=eng>

³ <http://humanrights.ge/index.php?a=main&pid=17073&lang=eng>

- Abuse of official authority by violence, by insulting dignity of victim (paragraphs B and C of Article 332 of GCC).

Tbilisi City Court delivered guilty verdict against Bachana Akhalaia and other defendants in this case⁴. Bachana Akhalai and Megis Kardava were sentenced to three years and nine months imprisonment. In about one week after the decision of City Court, former President Mikheil Saakashvili pardoned Bachana Akhalaia⁵.

4) Second criminal case against Megis Kardava⁶. Charges brought against him:

- Sexual Abuse under Violence, threat of violence or abusing the helplessness of the victim (Article 138 of GCC);
- Hostage-taking (Article 144 of GCC);
- Torture under aggravating circumstances (Article 144¹ of GCC).

The trial hearings of this case are at final stage. Megis Kardava has been declared internationally wanted by Interpol Red Notice.

5) Fourth criminal case against Bachana Akhalaia⁷. Charges brought against him:

- Abuse of official authority (Part II of Article 332 of GCC).

The trial hearings on this case are at initial stage.

6) Criminal case against former head of General Inspection of MIA, head of Regional Police Department of Samegrelo-Zemo Svaneti Region and former Governor of Samegrelo-Zemo Svaneti, Tengiz Gunava⁸.

Charges brought against Tengiz Gunava:

⁴ <http://humanrights.ge/index.php?a=main&pid=17292&lang=eng>

⁵ <http://humanrights.ge/index.php?a=main&pid=17310&lang=eng>

⁶ <http://humanrights.ge/index.php?a=main&pid=16654&lang=eng>

⁷ <http://humanrights.ge/index.php?a=main&pid=17313&lang=eng>

⁸ <http://humanrights.ge/index.php?a=main&pid=16574&lang=eng>

- Exceeding official power of state official, by using arms (paragraph B of part III of Article 333 of GCC)
- Intentional Light Damage to Health (Article 120 of GCC);
- Misappropriation of other's movable object by using one's official position (paragraph D of Article 182 of GCC).

Tbilisi City Court found Tengiz Gunava guilty of offense of misappropriation and sentenced him to 4 years imprisonment. Former President, Mikheil Saakashvili pardoned him before the case was transferred to Appeal Court.

- 7) Criminal case against former Prime Minister Vano Merabishvili and former Governor of Kakheti, Zurab Chiaberashvili.

Charges brought against Vano Merabishvili:

- Abuse of official authority by a state-political official (part II of Article 332 of Criminal Code of Georgia);
- Electoral bribery (Article 164¹ of Criminal Code of Georgia);
- Misappropriation of one's movable object (Article 183 of Criminal Code of Georgia).

Charges brought against Zurab Chiaberashvili:

- Abuse of official authority by a state-political official (part II of Article 332 of Criminal Code of Georgia);
- Electoral bribery (Article 164¹ of Criminal Code of Georgia);

According to the place of crime, trial hearings on this case are held in city of Kutaisi. The case is on the stage of substantive hearing. As the trial monitoring project envisaged conducting monitoring only in Tbilisi, Human Rights Center was unable to monitor this case. However, regional journalist of Human Rights Center attended the hearings and prepared articles.

The charges imposed against Merabishvili and Chiaberashvili are related to the alleged funneling of over 5 million GEL of public funds into UNM party's election campaign and alleged misappropriation of private property⁹.

8) Criminal case against Vano Merabishvili. The trial hearings are taking place in Tbilisi City Court. The charges brought against him are related to May 26th protect action break-up¹⁰ and case of Sandro Girgvliani¹¹:

- Exceeding official authority by state-political official (paragraphs B and C of part III of Article 333 of GCC);
- Abuse of Official Authority by state-political official (part II of Article 332 of GCC).

Trial hearings are at initial stage on this case. It should be noted that in the case of May 26th protest action break-up, report of Human Rights Center on legislation and practical implementation of right to assemblies and manifestation during year of 2011¹², has been admitted as evidence¹³.

9) Criminal case against mayor of Tbilisi, Gigi Ugulava and former Defense Minister, David Kezerashvili¹⁴.

Charges brought against Gigi Ugulava:

- Illegal Appropriation of one's property (parts II and III of Article 182 of Criminal Code of Georgia);
- Legalization of Illicit Income (paragraph C of part III of Article 194 of Criminal Code of Georgia).

Charge brought against David Kezerashvili:

- Illegal appropriation of one's property (parts II and III of article 182 of Criminal Code of Georgia).

⁹ <http://humanrights.ge/index.php?a=main&pid=17166&lang=eng;>

¹⁰ <http://www.civil.ge/eng/article.php?id=26123>

¹¹ <http://www.civil.ge/eng/article.php?id=26207>

¹² http://humanrights.ge/admin/editor/uploads/pdf/02%20English_final.pdf

¹³ <http://humanrights.ge/index.php?a=main&pid=17375&lang=eng>

¹⁴ <http://humanrights.ge/index.php?a=main&pid=16858&lang=eng>

Trial hearings are at initial stage on this case. David Kezerashvili had been declared internationally wanted by Interpol Red Notice. He was detained in France. At the time of writing this report, the issue of his extradition has not been decided yet.

10) Second criminal case against David Kezerashvili¹⁵. Charges brought against him:

- Preparation or Usage of Forged Document (part II of Article 362 of GCC);
- Inflow or outflow of a large quantity of movable objects across the customs border of Georgia (parts II and VI of Article 214 of GCC);
- Forging or Usage of Forged Credit or Settlement Card (part II of Article 210 of GCC);
- Accepting bribes by a state-political official (parts II and III of Article 338 of GCC).

Trial hearings are at final stage on this case.

11) Criminal case against Nika Gvaramia, former Deputy Chief Prosecutor, Minister of Justice and Minister of Education and Science and Aleksandre Khetaguri, former Minister of Energy and Minister of Finances¹⁶.

Charges brought against Nika Gvaramia:

- Assistance to accepting bribe, by a group's prior contest (Article 25 and paragraph C of part II of Article 338 of GCC);
- Legalization of Illicit Income by using one's official position, by a group, involving generation of income in large quantities (paragraph B and C of part III and paragraph A of part II of Article 194 of GCC);
- Preparation of Forged Document causing significant damage (paragraph B of part II of Article 362 of GCC);
- Assistance to false entrepreneurship (Article 25 and 193 of GCC)

¹⁵ <http://humanrights.ge/index.php?a=main&pid=16610&lang=eng>

¹⁶ <http://humanrights.ge/index.php?a=main&pid=16555&lang=eng>

Charges brought against Aleksandre Khetaguri:

- Giving bribes in large quantity (Article 339 of GCC)
- Legalization of Illicit Income (Article 194 of GCC)

Tbilisi City Court delivered verdict of not guilty against all defendants in this case¹⁷.

12) Criminal case against David Akhalaia, former head of MIA Department for Constitutional Security¹⁸.

Charges brought against David Akhalaia:

- Abuse of Official Authority, committed under violence and by insulting dignity of a victim (paragraphs B and C of part III of Article 332 of GCC);
- Organization of torture, by using one's official position, against two or more people (Article 25 and part I and paragraphs B, D, E, G and H of part II of Article 144¹ of GCC);
- Illegal imprisonment committed by a group's prior contest, against two or more people, in order to facilitate commitment of another crime (Article 25 and part I and paragraphs A, C and G of part II of Article 143 of GCC);
- Abuse of authority (part I of Article 332 of GCC).

Trial hearings are currently at the main stage. David Akhalaia is declared internationally wanted by Interpol Red Notice at the time of writing this report.

13) Criminal case against Minister of Justice Zurab Adeishvili and former Governor of Mtskheta-Mtianeti Tsezar Chocheli (the so-called case of Cartu Bank).

Charges brought against Zurab Adeishvili:

- Exceeding official authority of state official that inflicted substantial damage to the right of a natural or legal person, legal public or state interest (Article 333 of GCC);

¹⁷ <http://humanrights.ge/index.php?a=main&pid=17362&lang=eng>

¹⁸ <http://www.civil.ge/eng/article.php?id=26233>

- Forging financial documents (Article 210 of GCC).

Charges brought against Tsezar Chocheli:

- Instigator of concealment of property (Articles 25 and part III of Article 205);
- Usage of forged invoices (part II of Article 210)

14) Case of former head of MIA Press Service Guram Donadze and former head of Main Department of Tbilisi Patrol Police, Zurab Mikadze.

Guram Donadze is charged with following offenses:

- Abuse of official authority by state official that has inflicted a substantial damage to the right of a natural or legal person, legal public or state interest (part III of Article 332 of GCC).

Charges brought against Zurab Mikadze:

- Exceeding official powers by state-political official that has inflicted a substantial damage to the right of a natural or legal person, legal public or state interest, by using arms (part III of Article 333 of Criminal Code of Georgia);
- Forcing the victim to give evidence (Article 335 of Criminal Code of Georgia);
- Illicit purchase or keeping of fire-arms (Article 235 of Criminal Code of Georgia).

Trial hearings are currently at the main stage in this case.

During the monitoring period, Human Rights Center monitored 185 trial hearings.

During the monitoring period, trial hearings on cases of torture and inhuman treatment of prisoners in Gldani prison No.8¹⁹ in which 17 former prison officials were charged and hearings on case of illegal surveillance in which 11 former MIA officials were charged²⁰ were underway. Trials into these cases were ongoing behind the closed doors based on sensitivity of the case and need of protection of privacy of individuals involved in the court proceedings.

¹⁹ <http://www.civil.ge/eng/article.php?id=26181>

²⁰ <http://www.civil.ge/eng/article.php?id=25457>

Public Hearing

Right to Public Hearing

Right to public hearing is guaranteed by Article 85 of Constitution of Georgia, Article 6 of European Convention on Human Rights and Article 10 of Criminal Procedure Code of Georgia.

Along with right of defendant to be entitled to public hearing, principle of public hearing also implies right of public to receive information and have opportunity to attend trial hearings.

During monitoring period, in general, the trial hearings on high profile criminal cases were held in large courtrooms allowing maximum number of interested people to attend the hearing. However, Human Rights Center observed several instances when, despite big number of people wishing to attend hearing, the hearings were held in smaller sized courtrooms that deprived them opportunity to attend the hearing.

The final hearing was held in smaller sized courtroom on **July 31st of 2013** in the so-called Soldiers' Abuse case where Bachana Akhalaia, former Interior and Defense Minister and Giorgi Kalandadze, former chief of Joint Staff of Georgian Armed Forces and other former officials of Ministry of Defense were defendants. It should be noted that up until this moment the hearings were always held in large courtrooms in this case because of high public interest and high attendance. Holding final hearing in smaller sized courtroom deprived many interested people chance to attend the hearing. According to the information checked by monitors of Human Rights Center, large courtroom of Tbilisi City Court was free at this time.

On February 20th of 2013, at the pre-trial hearing in the same case, in order to stop large number of people to enter courtroom, the bailiffs created life barrier and pushed them back. They explained to people that the courtroom was full and asked them to step back.

Despite this explanation, bailiffs ensured that the members of Parliament of UNM party (United National Movement) (Chiora Taktakishvili, Akaki Minashvili and others...) went through the flow of people and entered the courtroom. People expressed displeasure as a result. Bailiffs expressed aggression against the displeased people and threatened them to remove from the court building.

It should be noted that Georgian legislation does not define who should be given priority to attend the hearings for similar situations. Considering that among people who wished to attend the hearing, there were family members and relatives of the victims and defendants (many of who were unable to enter the courtroom) it is unclear why the MPs of UNM were given priority to attend the hearing.

In this regard, it is interesting that on **March 5 of 2013**, at the pre-trial hearing of former Minister of Justice and Education Nika Gvaramia and other former officials, the bailiffs explained to the public that the priority to attend the hearing would be given to family members and relatives, after that the press representatives and then other interested individuals. It should be noted that despite large number of people wishing to attend this hearing, it was held in smaller sized courtroom.

The pre-trial hearing in the case of Tbilisi Mayor Gigi Ugulava and former Defense Minister David Kezerashvili was held on July 3rd of 2013 in smaller sized courtroom. This hearing also enjoyed large number of public interested to attend, but many were deprived chance to do so as the courtroom was full.

Closed Hearings

According to part III of Article 82 of Criminal Procedure Code of Georgia, the judge can decide to partially or completely close the hearing by his own initiative or on the basis of party's motion on various grounds including protection of interests of victim of sex crime.

In one of the monitored cases, former head of military police Megis Kardava and former officers of Gldani #8 prison were charged with the offenses of torture and various kinds of sex crimes which caused death of the victim. The public hearings held in this case included detailed description of the violence including sex crimes committed against the victim.

Human Rights Center considers that in order to have ensured the protection of dignity and privacy of the deceased victim, these hearings should have been closed. According to part III of Article 182 of Criminal Procedure Code of Georgia²¹, the judge could take this decision by his own initiative in order to protect interests of the victim of sex crime. The judge and prosecutor are obliged to ensure protection of dignity and private life of criminal trial participants according to Article 4 of Criminal Procedure Code as well.

It should be noted that the prosecutor did not file the motion with the request to close the hearings. However, judge could take this decision by his own initiative as explained above. Though there was high public interest towards the case, Human Rights Center considers that hearings should have been closed considering particular sensitivity and gravity of the case to defend victim's interests.

²¹ Paragraph D of part III of Article 182 of Criminal Procedure Code:
http://www.tcc.gov.ge/uploads/kanonebi/axali_sisxlis_samartlis_saproceso_kodeqsi.pdf

The existing regulations of Criminal Procedure Code of Georgia do not give right to sufferer/legal successor to officially address prosecution with the request to file the motion of partial or complete closing of trial hearing on the grounds envisaged by part III of Article 182 of Criminal Procedure Code²².

Human Rights Center considers that the sufferer/legal successor must be entitled to officially address prosecution with the request to partially or completely close the trial hearing on the grounds envisaged by part III of Article 182 of Criminal Procedure Code. Human Rights Center supports the draft law of Ministry of Justice according to which, if the prosecutor declines this request, he/she must be obliged to make a reasoned resolution²³.

It is interesting that in similar cases, in order to protect interests of victims of torture, the trial hearings were closed. The hearings were closed, for example, in the case of former officials of Penitentiary Department who were charged with the offense of torture after the videos of prison abuse went viral²⁴ and the case of law enforcement officers charged with offenses of torture and sexual abuse after torture videos were found in the archives in Samegrelo region²⁵. These instances demonstrate inconsistent practice of closing trials in high profile cases.

Other grounds for partial or complete closing of a trial hearing can be disclosure of a private message or correspondence²⁶. Such fact took place at the trial hearing of former head of MIA General Inspection and former Governor of Samegrelo-Zemo Svaneti, Tengiz Gunava on **March 26th of 2013**, where the prosecutor filed motion to partially close the part of the hearing where information regarding personal correspondence of the sufferer would be disclosed.

The judge stated that it is unknown whether the personal information will be revealed by disclosing the contents of the message and declined the motion.

²² According to part III of Article 182 of Criminal Procedure Code, the grounds for partial or complete closing of trial hearing can be: protection of personal, professional or commercial secret; protection of interests of juvenile; protection of safety of criminal trial participant or his/her family member; usage of special measure of protection which requires closing of trial hearing; protection of interests of victim of sex crime or trafficking; disclosure of a private correspondence or message at the trial hearing, if the individual in question is against its public disclosure; http://www.tcc.gov.ge/uploads/kanonebi/axali_sisxlis_samartlis_saproseso_kodeqsi.pdf

²³ Part III of Article II of the draft law:

https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2083578&lang=ge

²⁴ <http://www.humanrights.ge/index.php?a=main&pid=16509&lang=eng>

²⁵ <http://www.humanrights.ge/index.php?a=main&pid=16779&lang=eng>;
<http://www.civil.ge/eng/article.php?id=26191>

²⁶ Paragraph E of part III of Article 182 of Criminal Procedure Code:

http://www.tcc.gov.ge/uploads/kanonebi/axali_sisxlis_samartlis_saproseso_kodeqsi.pdf

Human Rights Center considers that this explanation lacks adequate reasoning considering that the case materials and substance of the case raised high doubt that the personal information would be disclosed at the trial hearing in question.

It should be noted that the judge did not discuss opposing interest which could have been in conflict with the interest of protection of sufferer's personal life, namely, high public interest existing towards the case. His argument for not closing the hearing was only the above mentioned explanation.

Video Recording inside Courtrooms

Monitoring revealed that the legislation regarding granting right to carry out video recording inside the courtrooms needs to be more developed. According to Article 13¹ of Organic Law of Georgia on Common Courts, Georgian Public Broadcaster is authorized to carry out video recording of trial hearings without hindrance. If the Public Broadcaster does not apply this exclusive right, any other TV Company with license of general broadcasting can address the respective judge with written request to carry out the video recording of trial hearing inside the courtroom. If more than one TV Company submits this request, the judge selects one through drawing lots/selection by lot²⁷.

Order issued on May 22nd, 2013 by Tbilisi City Court determines the rules according to which the issue of carrying out the video recording is decided²⁸. According to paragraph III of the order, the results of selection are notified to the relevant individuals “*by phone, in reasonable time before the hearing takes place*”²⁹.

This paragraph implies that the process of selection by lot takes place without the participation of relevant TV companies. ***Human Rights Center considers that the process of selection by lot must be held publicly and respective TV companies and interested individuals must be given right to attend the process. Human Rights Center also considers that the internet TVs should also be given right to submit a request to carry out video recording of trial hearing. They should be granted this right when no TV Company with license of general broadcasting has requested to carry out video recording.***

²⁷ Organic Law on Common Courts, Article 13¹; <http://hcoj.gov.ge/ge/saerto-sasamartloebis-shesakheb/1732>

²⁸ See the order: <http://tcc.gov.ge/index.php?m=552&newsid=8>

²⁹ *ibid*

Video Recording at Bachana Akhalaia's Trial Hearing

On February 20th of 2013, in the so-called case of soldiers' abuse, the defense filed a motion to allow carrying out of video-recording, audio recording and live broadcasting considering high public interest towards the case. The defense argued that the relevant amendments which allow carrying out of video-recording have already been made to Georgian legislation and would take force from March 1st of 2013. The prosecution did not agree with this motion and indicated that allowing video-recording and live broadcasting would protract the process and would cause postponing of hearings. They also indicated that the legislative amendments mentioned by defense were not relevant as they had not taken force yet.

The judge partially satisfied defense's motion and allowed audio recording. However, video recording and live broadcasting was not allowed. Judge explained that considering that the case might be heard by jury, there was risk that they would form prejudiced views by watching the pre-trial hearing on TV. The judge explained that the issue of admission of evidences was discussed at this hearing and that inadmissible evidence would affect the opinions of jurors. He also noted that the hearing was public and there was no necessity for video recording. As for the live broadcasting, he explained that it was not technically possible.

Human Rights Center considers that though the amendment which allowed video-recording inside the courtroom had not taken force yet, the judge had right to issue permission of carrying out video-recording according to the regulations existing at that time. Considering particularly high public interest towards this case, Human Rights Center considers that the video-recording should have been allowed. As for the judge's comment that this would have affected the opinions of jurors, it should be noted that this case had special media coverage from the very beginning and the testimonies and evidences given to the investigation were actively covered by various media outlets from the start. Thus allowing video-recording from the beginning of trial hearings would have only contributed to the objective and unbiased litigation.

Adversarial Proceeding and Equality of Arms

Principles of adversarial proceeding and equality of arms represent foundations of criminal trial. The principles are guaranteed by Article 85 of Constitution, Article 6 of European Convention on Human Rights and Articles 9 and 25 of Criminal Procedure Code of Georgia.

According to principles of adversarial proceeding and equality of arms, the court is obliged to ensure equal opportunities for opposing parties to defend their legal interests. No party should be given any privilege. They must be entitled to equal opportunities to examine the evidence.

The principles of adversarial proceeding and equality of arms imply that the parties have equal chances to prove their point, to explain facts and present evidence. These principles also imply that the judge must control the actions of the parties and ensure the order inside the courtroom.

During the monitoring period, principles of adversarial proceeding and equality of arms were mostly ensured. In general, the violations were not frequent with the exception of the so-called case of soldier's abuse where there were particularly many violations observed.

The defense and prosecution mostly had equal opportunities to defend their positions. However, in the so-called cases of soldiers' abuse and 7 servicemen of Special Task Forces where former Interior and Defense Minister Bachana Akhalaia was defendant, it was serious problem to ensure order at the trial hearings.

At the hearings of the so-called case of soldiers' abuse and 7 servicemen of Special Task Forces, lawyers often asked witnesses aggressive, offensive and derogatory questions. Defendants and their family/friends often insulted witnesses verbally. However, judge did not use adequate sanctions.

Lawyers often asked witnesses irrelevant and offensive questions like: "You are well prepared to lie," „Have you ever been to the protest action? Probably you have not. You are not good at anything", "Fortunately, I do not think like you," "Did you sell your mental disability?" and others... Though sometimes judges asked lawyers to refrain from offensive comments, this kind of behavior still continued. Considering that the light reproof did not work, judges should have applied stricter sanctions.

The judge violated principle of adversarial proceeding at **June 6, 2013** trial hearing where new lawyer who just joined the case, requested to be acquainted with the case materials and the protocols of the trial hearings composed before he joined the case. Lawyer noted that he addressed the court with this request but it was not satisfied.

Judge refused to satisfy request of the lawyer. He explained that the protocol could not be given to him without signing it and that the case materials would have been given to him in 5 days after this hearing ended according to Article 195 of Criminal Procedure Code of Georgia.

However, the lawyer was requesting the protocols of the hearings which were held in the past and the regulation that the judge referred to was inadequate to this situation.

Human Rights Center considers that by denying the lawyer right to get acquainted with the case material of trial hearings held before he joined the case, the judge put defense side in unequal position relative to prosecution. This violated principle of adversarial hearing which ensures equality of arms in criminal process.

On June 25th of 2013, the judge refused defense to allow to interrogate witness for the reason that the witness's last name was spelled incorrectly in the list of evidences, particularly, instead of Kharazishvili, Kharashvili was written. However, on May 25th hearing, this judge interrogated witness whose last name was not even listed in the list of evidences that was explained by technical fault. When the lawyer indicated that this kind of fact took place in the past, judge stated that this fact never took place.

In the so-called soldiers' abuse case, different lawyers often asked witnesses the same, often irrelevant questions that unreasonably protracted the hearings. Though the interrogation often continued for hours, the judge did not use right to limit the time of the interrogator. Human Rights Center considers that in order to have ensured conducting of hearings in a reasonable time, judge had to define reasonable time for the interrogation of witnesses.

At the hearings of this case, there were instances when the judge first asked the defendants if they pled guilty and afterwards explained their right to be silent and that they were not bound by the testimony given to the investigation. This instance demonstrates that explanation of right of defendant was perceived as formality and not as important procedural guarantee.

Monitoring revealed that in the so-called prison mutiny case, during several hearings held at initial stage, judge asked every witness whether they had criminal record. According to Georgian Criminal Procedure Code, the witness can be questioned about his/her criminal record if it is needed to ascertain their trustworthiness. However, this cannot happen indiscriminately to every witness.

Right to Reasoned Decision

According to Article 194 of Criminal Procedure Code, the court decisions must be reasoned. Reasoned decision means that reasons behind it must be presented clearly and duly. The principle of making reasoned decision applies not only to the court verdict but to different decisions judge makes during the trial hearings. Though the judge is not obliged to respond to each question, he is obliged to clearly answer the argumentations important for the outcome of the case. This principle also derives from Article 6 of European Conventions of Human Rights, right to fair trial.

Compulsory Measure Applied against Bachana Akhalaia

During the monitoring period, there were several instances when the judge's argumentation was not reasoned and did not reply to important argumentation of the applicant.

At March 1st, 2013 pre-trial hearing in the so-called soldiers' abuse case, defense filed a motion to change the compulsory measure of imprisonment by imposing payment of 50 000 GEL bail against the defendant. Along with other arguments, lawyer indicated that the investigation into the case was over and that many witnesses changed testimonies and threat that the witnesses would be pressured no longer existed. Defense also stated that after Georgian Parliament passed Amnesty Law, the lengths of sentences significantly decreased and the threat that the defendant would run away no longer existed.

Lawyer referred to decisions of European Court of Human Rights according to which the grounds for imprisonment must always exist and if these grounds alter, the imprisonment measure must be re-examined.

The prosecution noted that the threat that witnesses would be pressured still existed as they had not yet been interrogated at the trial hearings. He also noted that there is no new circumstance to revoke the decision of imprisonment.

Judge explained that in order to re-examine the decision of compulsory measure, new circumstance must emerge. *"Case law of European Court is not a new circumstance,"* – judge noted.

Judge did not discuss whether the circumstances which became grounds of imprisonment initially were still in progress.

Paragraph 8 of Article 206 of Criminal Procedure Code establishes that new circumstances which were not known at the time of deciding compulsory measure can become grounds for changing the used measure. This provision implies that if the circumstances which became grounds for imprisonment initially change later, imprisonment measure can also change. This principle also derives from case law of European Court of Human Rights.

In the above mentioned case, judge did not discuss important argumentation of the lawyer regarding existence of the initial grounds of imprisonment. He only noted that there were no new circumstances in the case that was not adequate reasoning for his decision.

On June 25th, 2013, at the hearing of the same case, in order to check witness's statement, audio recording was switched on. Though it was impossible to ascertain what witness said because of bad quality of the recording, judge explained what he thought the witness said according to his memory. Along with the problem of making unreasoned decision, this instance shows bad quality of Tbilisi City Court's audio recording. It should be noted that audio recording was the only way to check what witness said in this instance.

Compulsory Measure Applied against Gigi Ugulava

The decision of judge at **February 25th, 2013** hearing in Gigi Ugulava's case lacked adequate legal reasoning.

The prosecution requested to impose payment of 1 000 000 GEL bail against the mayor of Tbilisi, Gigi Ugulava. Along with other arguments, the danger that he would run away as he was charged with serious crimes was noted. The prosecution also noted that despite receiving relevant order, the defendant did not pay visit to investigative bodies.

The defense requested not to impose any compulsory measure against the defendant or to impose the guaranteeing measure with 34 members of Parliaments and 24 members of Tbilisi City Council as personal guarantors. Defense also stated that the requested money was not adequate to the financial state of the defendant.

Court decided not to impose compulsory measure against the defendant. Tbilisi City Court disseminated statement in regards with this decision:

*"When discussing the motion, the prosecution could not verify formal basis for the application of compulsory measure. Based on these circumstances, the Court concluded that Giorgi Ugulava is not expected to run away, commit a new crime, influence participants of trial hearing and hinder investigation process; appropriate behavior of the defendant in the concrete case, his appearance to the investigative body and court will be ensured even without imposing any compulsory measure."*³⁰

The court decision lacks appropriate legal reasoning. Not imposing any compulsory measure against the defendant charged with serious crime is unprecedented decision. The court should

³⁰ See statement by the Tbilisi City Court (Georgian) http://court.ge/geo_news_537_giorgi-ugulavas-mimarT-ar-igna-gamoyenebuli-aRkveTis-RonisZiebis-arc-erTi-saxe

have considered that the defendant did not pay visit to the investigative body several times and impose some kind of compulsory measure against him.

Appointment of Jury Trial

Monitoring revealed that in high profile cases, when deciding whether the case should be heard by jury, judges often made decision without presenting clear reasoning and took refusal of defendants as sole sufficient grounds for not appointing the jury trial.

According to part I of Article 226 of Criminal Procedure Code of Georgia, judge does not appoint jury trial on following grounds:

“Considering the gravity and character of the crime, the lives, health or safety of jurors might be endangered and if jury trial substantially violates right to objective and fair trial.”

On March 17th of 2013, in the so-called case of 7 servicemen of Special Task Forces, the judge explained provisions regarding jury trial. Defendants stated they do not want jury trial and that they are given privilege to choose whether or not to allow jury to hear their case. They added that as the case is actively covered in media, it will affect jurors and they would not be objective.

Prosecution stated that the law gave defendants privilege to choose whether or not to have jury trial and they had nothing to say.

Judge did not assign jury trial. He did not explain which interest envisaged by above mentioned part I of Article 226 was at stake.

Without clear reasoning, only on the basis of defendants’ refusal, judge decided not to appoint jury trial in the so-called soldiers’ abuse case at **March 5th 2013** trial hearing. Judge explained provisions regarding the jury trial and asked the defendants if they wanted to have jury trial. After all of them refused, the judge decided not to appoint jury trial.

Human Rights Center agrees that when there is a high public interest towards the case, it is not advisable to appoint jury trial as there is risk that the jurors might fall under the influence of public opinion. However, at abovementioned instances the judges did not explain what interest was at stake if the cases were heard by the jury. They took defendants’ refusal as sole sufficient grounds not to appoint jury trial. This practice creates risk of not appointing jury

trial in other types of cases as well even if abovementioned grounds envisaged by part I of Article 226 do not take place.

Case of Giorgi Kalandadze

On November 10th of 2012, Office of Prosecutor addressed Tbilisi City Court to dismiss chief of Joint Staff of Georgian Armed Forces, defendant Giorgi Kalandadze from his job. Judge L.O. of Tbilisi City Court satisfied this request on November 11, 2012.

According to the official information obtained by the Office of Ombudsman, the extract from the order of Judge L.O. stated:

“Defendant Giorgi Kalandadze, chief of Joint Staff of Georgian Armed Forces is dismissed from his job before the final verdict is made in the case³¹.”

By this decision, the judge violated Article 160 of Criminal Procedure Code of Georgia according to which the judge is not authorized to dismiss defendant from job. The judge is authorized to address the respective body which must immediately execute the order.

The judge was obliged to indicate which body was authorized to dismiss Giorgi Kalandadze from job according to Article 160. In this case, such body was the President of Georgia. The judge noted in the order that he was transferring order for the execution to the body which executes the compulsory measures. However, dismissing from job is not compulsory measure as defined by the Criminal Procedural Code. Thus, judge’s order did not comply with the requirements of the law.

On November 20th of 2012, President of Georgia dismissed Giorgi Kalandadze from job.

Before Giorgi Kalandadze was dismissed, on **November 13th of 2012**, prosecutor addressed Tbilisi City Court and requested to apply imprisonment as compulsory measure against Giorgi Kalandadze. Judge B.Sh. imposed bail as compulsory measure against the defendant. According to official information of Office of Ombudsman of Georgia, according to November 13th, 2013 protocol of Tbilisi City Court, lawyer extensively explained procedural violations committed in the case. As a response, judge stated that no substantive violation took place against Giorgi Kalandadze.

On November 13th, Giorgi Kalandadze was still holding job of Chief of Joint Staff of Georgian Armed Forces. According to paragraph C, part I of Article 8 of Georgian Law on Prosecution

³¹ <http://www.ombudsman.ge/files/downloads/ge/iicsizmorgdfkakhkdqvc.pdf>

Service, criminal prosecution against Chief of Joint Staff of Georgian Armed Forces is executed by Minister of Justice. Thus, allowing prosecutor to execute criminal prosecution against Giorgi Kalandadze violated the law.

Therefore, judges L.O. and B.Sh. unduly fulfilled their responsibilities in above mentioned instances.

Right to Defense

Right to defense is guaranteed under Article 42 of the Constitution of Georgia and Article 38 of the Criminal Procedure Code of Georgia. Right to defense means that defendant has right to select and have a lawyer and to change the lawyer at any time; but if the defendant cannot afford to enjoy the right to defense, state shall appoint budget-funded lawyer. Defendant shall have reasonable time and opportunity to prepare for the defense. Criminal Procedure Code also regulates the cases of appointing mandatory defense, for example if the defendant is underage, does not understand the language of the criminal process, if prosecutor's office negotiating plea-agreement with him/her, etc.

During monitoring period, the right to defense was mostly ensured though in one case the defense side was not allowed to properly implement his rights. Namely, the lawyer was not allowed to study the case materials composed before he joined the case that violated principle of adversarial proceeding.³²

Court decision in the so-called soldiers' abuse case at **April 29, 2013** hearing where Bachana Akhalaia's lawyer-intern Romeo Sajaia was deprived right to defend his client raised some questions. Judge clarified that Sajaia was only intern without lawyer's license and warrant.

According to the Georgian legislation, lawyer-intern cannot participate in the process of trial to defend the interests of the defendant. Particularly, according to the Article 44 Part II of the criminal procedure code, in order to participate in the trial hearing, lawyer shall provide a license and warrant. In this case, ***the lawyer-intern was allowed to question witnesses initially and he was quite actively involved in the process of trial hearing. It raises questions why he was allowed to perform these actions considering that judge should have been informed about absence of license and warrant from the very beginning.***

³² See p. 15

Independence and Impartiality of Judiciary

Article 82 of the Constitution of Georgia guarantees independence of judiciary. In accordance to the Article 59 of the Criminal Procedure Code, judge cannot participate in the trial hearing if there are concrete circumstances that make his/her impartiality and objectiveness questionable. According to Article 6 of the European Convention on Human Rights, everyone has right to fair and public hearing by independent and impartial court. When assessing the independence of the domestic court, European Court relies on several factors:

- Appointment of the court members
- Term of judge's appointment on the position
- Guarantees that protect judges from oppression
- Demonstration of independence by judiciary

On August 3, 2013 nongovernmental organization Human Rights Education and Monitoring Center (EMC) spread statement about the appointment of judges in cases against Bachana Akhalaia. The organization stated that judges appointed in all three criminal cases against Bachana Akhalaia were moved to the Tbilisi City Court from different courts on the same day.³³

According to the official information obtained by the organization, Judge Giorgi Darakhvelidze, who acquitted Bachana Akhalaia in the so-called soldiers' abuse case, was sent to the Tbilisi City Court from Sachkhere District Court on February 6, 2013 based on the decision of the Supreme Council of Justice. On March 18, 2013 Giorgi Darakhvelidze started substantive hearing of Bachana Akhalaia's case and next day, on March 19, he was appointed to the position of the judge at the Tbilisi City Court.³⁴

Judge Davit Mgeliashvili, who also acquitted Bachana Akhalaia in the so-called case of 7 servicemen of Special Task Force, was moved from the Gori district court to Tbilisi City Court, again based on the decision of the Supreme Council of Justice on February 6, 2013. On March 19, 2013, Supreme Council of Justice appointed him to the position of the judge at the Tbilisi City Court.³⁵

As for the third, so called prison riot case, judge Besik Bugianashvili was replaced by Judge Lasha Chkhikvadze. The latter, like aforementioned judges, was moved to the Tbilisi City Court

³³ See statement (Georgian) <http://netgazeti.ge/GE/105/News/22312/>

³⁴ Ibid

³⁵ <http://netgazeti.ge/GE/105/News/22312/>

from the Rustavi City Court based on the February 6, 2013 decision of the Supreme Council of Justice.³⁶

Human Rights Center shares the doubts of the ECM and believes that this coincidence raises some questions about the process and requires well-grounded verifications from the judiciary. ***It should be noted that judiciary has not made any clarifications yet about this fact.***

Other Findings

President Pardoned Convicted Former Government Officials

Human Rights Center monitored implementation of principles of fair trial at trial hearings. However, the organization decides to pay attention to violations committed by other institutions also. One such issue was pardoning of former defense and interior minister Bachana Akhalaia, convicted in the so-called prison mutiny case and former head of Samegrelo-Zemo Svaneti Regional Police Tengiz Gunava by ex-president Mikheil Saakashvili.

President of Georgia pardoned convicted Tengiz Gunava based on July 30, 2013 decree and annul his criminal record.³⁷ On November 3, 2013, President of Georgia, 14 days prior his term as a President expired, pardoned former Interior Minister Bachana Akhalaia convicted in the so called prison mutiny case, in which the court had passed verdict on October 28 and sentenced Bachana Akhalaia and co-defendants to three years and nine months imprisonment.³⁸ It should be noted that the prosecution appealed against this decision To Tbilisi Appeal Court. The President made unprecedented decision to pardon convicts before the Appeal Court had made decision.

President's July 19, 2004 Decree # 277 on the Rules to Pardon Convicts, sets concrete rules to be followed when pardoning a person. One of them is that prisoner must have served at least 1/3 of his/her term and the person shall appeal to the President for pardoning. However, in accordance to the Article 2 Paragraph VII of the Decree, President of Georgia has right to pardon convicted person even without following these rules.³⁹

³⁶ Ibid

³⁷ <http://www.radiotavisupleba.ge/content/tengiz-gunava-tavisupalia/25061427.html>

³⁸ <http://www.radiotavisupleba.ge/content/soldier-and-state-weekly-rubric/25156694.html>

³⁹ See president's decree

https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=35644&lang=ge

It is alarming that this paragraph does not clarify what criteria allow the President to use this right. It contradicts the principle of legal certainty, which states that law shall give possibility to predict under which circumstances it will take force. Otherwise, there is threat to use it selectively.

As for annulling Tengiz Gunava's criminal record based on the President's decree, according to the Article 78, Paragraph 2 of the Criminal Code of Georgia⁴⁰ criminal record can be annulled if the person has already served sentence. Tengiz Gunava had not served his sentence when President made this decision. Therefore, his criminal record was illegally annulled.

Considering the fact that aforementioned cases were of particular public interest, it was necessary to have clear circumstances based on which the convicted persons were pardoned. These circumstances shall be clearly defined by the law in order to avoid malicious interpretation of the law.

Human Rights Center believes that law shall not grant exclusive right to the President to pass pardon acts without relevant recommendations from the Pardon Commission. Serving 1/3 of sentence, regret and confession of the crime must be necessary preconditions for act of pardoning⁴¹.

Protraction of Trial Hearings in So-called Prison Mutiny Case

In the so-called prison mutiny case, the prosecutor's office seemed to protract the trial hearings. Namely, **on September 17, 2013**, Prosecutor Revaz Nadoi did not appear at the trial where he had to make final speech. **On September 19** worsened health was named as reason of his absence. Judge allowed a new prosecutor – Ia Darjania - to take up the case without having received a medical notice on Nadoi's health conditions. In accordance to the Article 62 Paragraph V of the Criminal Code of Georgia, prosecutor's self-recusal shall be verified. Official medical notice on Revaz Nadoi's health was not provided to the court.

Prosecutor Ia Darjania, who took up case on September 19, requested to postpone the trial for 30 days to study the case materials. Judge gave her 10 days. The prosecutor appeared at the next trial unprepared and requested additional 20 days; the judge gave additional 7 days to her stating that case materials were of large volumes and needed time to study.

⁴⁰ http://www.tcc.gov.ge/uploads/kanonebi/sisxlis_samartlis_kodeqsi.pdf

⁴¹ <http://humanrights.ge/index.php?a=main&pid=17310&lang=eng>

On October 7, Prosecutor motioned for self-recusal saying she was internally displaced person from Abkhazia like Ani Nadareishvili, wife of the defendant Bachana Akhalaia, and they had common circle of acquaintances and that she experienced psychological oppression from them. Ia Darjania clarified that she knew about this problem from the very beginning but she was subjected to the psychological oppression lately. The Prosecutor added that she was friend of the defendant's lawyer. She clarified that in order to avoid additional questions and possible impact on her professional activities she preferred to leave the case.

The judge satisfied the prosecutor's motion for self-recusal. *"Self-recusal is acceptable at any stage of the trial hearing. Prosecutor states that she cannot be impartial due to mentioned circumstances. Therefore, Court cannot allow the prosecutor to participate in this case,"* Judge said.

The fact that Prosecutor Ia Darjania repeatedly requested additional time for case study and mentioned all aforementioned circumstances only after the term expired, whilst she already had information about these circumstances, causes doubt that this served aim to protract the process. Although she noted that psychological oppression had happened lately, the fact that she took up the case despite common acquaintances with the defendant's side and conflict of interest, raises questions. It is noteworthy that she did not disclose this information at the trial on September 30 but requested additional time to study the case.

Vladimer Bedukadze Completely Acquitted of Criminal Liability

On June 14, 2013 Tbilisi City Court finished hearing criminal case on torture, inhuman and degrading treatment of the inmates of Gldani Prison # 8. The substantive hearing of the case was going on through closed doors to protect privacy of the trial hearing participants.

Judge delivered guilty verdict against all 16 defendants. However, one of the defendants, *Vladimer Bedukadze was completely acquitted of criminal liability. Tbilisi City Court spread statement in regards with this issue:*

*"Defendant Vladimer Bedukadze, **despite the crime he had committed**, was completely acquitted of criminal liability as a result of plea-agreement signed based on his "special cooperation with Office of Prosecutor."⁴²*

⁴² <http://www.tcc.gov.ge/index.php?m=443&newsid=533>

Chief Prosecutor's Office clarified that Bedukadze was discharged from criminal liability because he supported "revelation of systemic crime."⁴³

"The fact that crime committed by Vladimer Bedukadze was revealed only on the basis of the video material submitted by him himself, without which neither crime committed by Vladimer Bedukadze nor crime committed by any other persons would be possible to be determined was taken into account. By submitting this video material Vladimir Bedukadze endangered not only his official career, but also his own safety, which is why he was forced to leave the country. The life and health of the family members of Vladimer Bedukadze were endangered as well," the June 19 statement of the Chief Prosecutor's office reads.

According to the Article 218 of Part I of the Criminal Procedure Code of Georgia, *"in special cases, when senior official or/and person who committed grave or particularly grave crime is revealed as a result of the defendant's/convict's cooperation with the investigative bodies and when with his/her assistance essential conditions are created to detect a crime, chief prosecutor of Georgia has right to solicit to the court to completely acquit the defendant from liability or from the punishment or to revise the sentence of the convict."*

However, according to Article 218, Part VIII of the Code, person convicted in crimes envisaged under the Article 144¹ (torture), 144² (threat of torture), 144³ (degrading or inhuman treatment) of the Criminal Code of Georgia cannot be fully acquitted.

Although Vladimer Bedukadze was **a defendant and not a convict**, his complete acquittal from any liability contradicts the international conventions ratified by Georgia.

According to the Law of Georgia on Normative Acts,⁴⁴ in the hierarchy of legal documents international agreements and treaties of Georgia are of higher rank than Organic Law and Law of Georgia and follow the Constitution of Georgia and Constitutional Agreement.

According to the Article 3 of the European Convention on Human Rights, prohibition of torture is absolute right that means that torture can never be allowed. Consequently, it is inadmissible to completely acquit person charged with this offense.

⁴³ <http://www.radiotavisupleba.ge/content/prokuratura-da-bedukadze/25039580.html>

⁴⁴ Article 7, Part III ; http://hcoj.gov.ge/files/pdf%20files/law_normative_acts.pdf

Convention against Torture, Inhuman and Degrading Treatment or Punishment⁴⁵, which was ratified by Georgia, imposes a responsibility on the states to ensure that all acts of torture must be punished under national criminal laws.

Human Rights Center acknowledges that Vladimer Bedukadze played significant role to reveal the systemic nature of torture in Georgian prisons. However, his full acquittal did not comply with the requirements of international conventions ratified by Georgia.

Inadequately low sentences imposed against the convicts in torture cases raises concern. According to Amnesty Law, their sentences were decreased to following length: Levan Purtskhvanidze – 6 years and 9 months imprisonment, Oleg Patsatsia – 6 years and 9 months imprisonment, Guram Tsomaia – 1 year and 6 months imprisonment, Levan Pkhaladze – 4 year imprisonment, Boris Parulava – 9 months imprisonment, Koba Chikvatia – 2 year imprisonment⁴⁶.

According to Article 144¹ of Criminal Code of Georgia, torture is punished by 7 to ten years imprisonment. Even considering decrease of length of the sentence by $\frac{1}{4}$, many of these sentences are inadequately low for the crime of torture.

Main Findings

- During the monitoring period, principles of adversarial proceeding and equality of arms were mostly ensured. In general, the violations were not frequent with the exception of the so-called case of soldier's abuse where there were particularly many violations observed.
- The defense and prosecution mostly had equal opportunities to defend their positions. However, in the so-called cases of soldiers' abuse and 7 servicemen of Special Task Forces where former Interior and Defense Minister Bachana Akhalaia was defendant, it was serious problem to ensure order at the trial hearings.
- Human Rights Center observed several instances when, despite big number of people wishing to attend hearing, the hearings were held in smaller sized courtrooms that deprived them opportunity to attend the hearing.

⁴⁵ Article 4 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

⁴⁶ <http://www.tcc.gov.ge/index.php?m=443&newsid=533>

- In one of the cases monitored by the Human Rights Center, details of torture and sexual abuse as a result of which the victim died were described at the public hearings. Human Rights Center considers that for the protection of the interests of the deceased victim, ensuring his dignity and privacy, due to sensitivity and gravity of the topic, it was preferable to close trials in accordance with the Criminal Procedure Code of Georgia;
- Monitoring revealed case when the judge groundlessly refused to close the trial hearing when information about victim's intimate correspondence was to be revealed;
- The monitoring revealed necessity to develop rules for granting right to TV companies to carry out video recording. Proceeding where TV company is selected to be given right to carry out video recording must be held publicly and respective TV companies and interested individuals must be given right to attend the proceeding; internet TVs should also be given right to submit a request to carry out video recording of trial hearing. They should be granted this right when no TV Company with license of general broadcasting has requested to carry out video recording.
- Monitoring revealed that in the so-called prison mutiny case, during several hearings held at initial stage, judge asked every witness whether they had criminal record.
- Monitoring revealed that practice of deciding the matter of appointing jury trial contradicts existing legislation.
- Decision of not imposing any compulsory measure against defendant Gigi Ugulava, Tbilisi City Mayor, was unprecedented fact and lacked clear reasoning. The court should have considered the fact that the accused did not pay visit to the investigative body several times and should have imposed certain kind of compulsory measure.
- In the so-called prison mutiny case, the prosecutor seemed to unreasonably protract the trial hearings.

Considering the fact that violations observed in the so-called soldiers' abuse case were frequent, Human Rights Center separately presents its findings in this case:

- Lawyers often asked witnesses aggressive, offensive and derogatory questions. Defendants and their family/friends often insulted witnesses verbally. However, judge did not use adequate sanctions.

- Different lawyers often asked witnesses the same, often irrelevant questions that unreasonably protracted the hearings. Though the interrogation often continued for hours, the judge did not use right to limit the time of the interrogator. Human Rights Center considers that in order to have ensured conducting of hearings in reasonable time, judge had to define reasonable time for the interrogation of a witness.
- By denying the lawyer right to get acquainted with the case material of trial hearings held before he joined the case, the judge put defense side in unequal position relative to prosecution. This violated principle of adversarial hearing which ensures equality of arms in criminal process.
- When discussing issue of allowing video-recording of the trial at the initial stage, the judge had right to issue permission of carrying out video-recording according to the regulations existing at that time. Considering particularly high public interest towards this case, Human Rights Center considers that the video-recording should have been allowed.
- When hearing motion on changing compulsory measure, the judge did not discuss significant arguments presented by the lawyer on the absence of initial basis for the imprisonment;
- Initially lawyer-intern was allowed to question witnesses and actively participated in the process. Later, the judge deprived him right to participate in trial hearing. It is questionable why he was given this right from the very beginning as the judge should have known about absence of license and warrant;
- Monitoring revealed that at one of the hearing held in this case, in order to check witness's statement, audio recording was switched on. Though it was impossible to ascertain what witness said because of bad quality of the recording, judge explained what he thought the witness said according to his memory. Along with the problem of making unreasoned decision, this instance shows bad quality of audio system of court. It should be noted that audio recording was the only way to check what witness said in this instance.
- The judge refused defense to allow to interrogate witness for the reason that the witness's last name was spelled incorrectly in the list of evidences, particularly, instead of Kharazishvili, Kharashvili was written. However, on May 25th hearing, this judge interrogated witness whose last name was not even listed in the list of evidences that

was explained by technical fault. When the lawyer indicated that this kind of fact took place in the past, judge stated that this fact never took place.

- The monitors observed instances when the judge first asked the defendants if they pled guilty and afterwards explained their right to be silent and that they were not bound by the testimony given to the investigation. This instance demonstrates that explanation of right of defendant was perceived as formality and not as important procedural guarantee.

Recommendations

Based on the monitoring results, Human Rights Center elaborated following recommendations:

- Ensure holding trials of high profile cases in large courtrooms, in order to allow maximum of interested people to attend the trials;
- Adopt amendments to the May 22, 2013 decree of the Tbilisi City Court according to which proceeding where TV company is selected to be given right to carry out video recording must be held publicly and respective TV companies and interested individuals must be given right to attend the proceeding; internet TVs should also be given right to submit a request to carry out video recording of trial hearing. They should be granted this right when no TV Company with license of general broadcasting has requested to carry out video recording.
- Judges must ensure order in the courtrooms and combat systematic oppression and insulting from any party;
- Judges must ensure protection of dignity of the victims of sexual crimes and right to privacy and apply their right to close hearings where the relevant grounds exist;
- Defendants' refusal to appoint jury trial shall not be accepted as sole basis for hearing the case without jury. Judges must present clear reasoning which legal interest is breached if the case is heard by jury;

- Human Rights Center recommends to the Parliament of Georgia to amend Criminal Procedure Code of Georgia and to give right to defendant/legal successor to appeal to the prosecutor to fully or partially close the trial hearing under the grounds envisaged by part III of Article 182 of the Code. Human Rights Center supports the draft law of Ministry of Justice based on which if the aforementioned solicitation of the defendant/his representative is not satisfied, prosecutor shall pass well-grounded resolution on the matter;
- Human Rights Center recommends to the President of Georgia to annul Paragraph VII of the Article 2 of the July 19, 2004 Decree # 277 of the President of Georgia on Pardoning, according to which President of Georgia can issue pardon acts without following the regulations set by the same decree.
- Human Rights Center recommends the Parliament of Georgia to adopt amendments to Criminal Procedure Code of Georgia and define who should be given priority to attend the trial hearing when particularly large number of people is interested to do so.