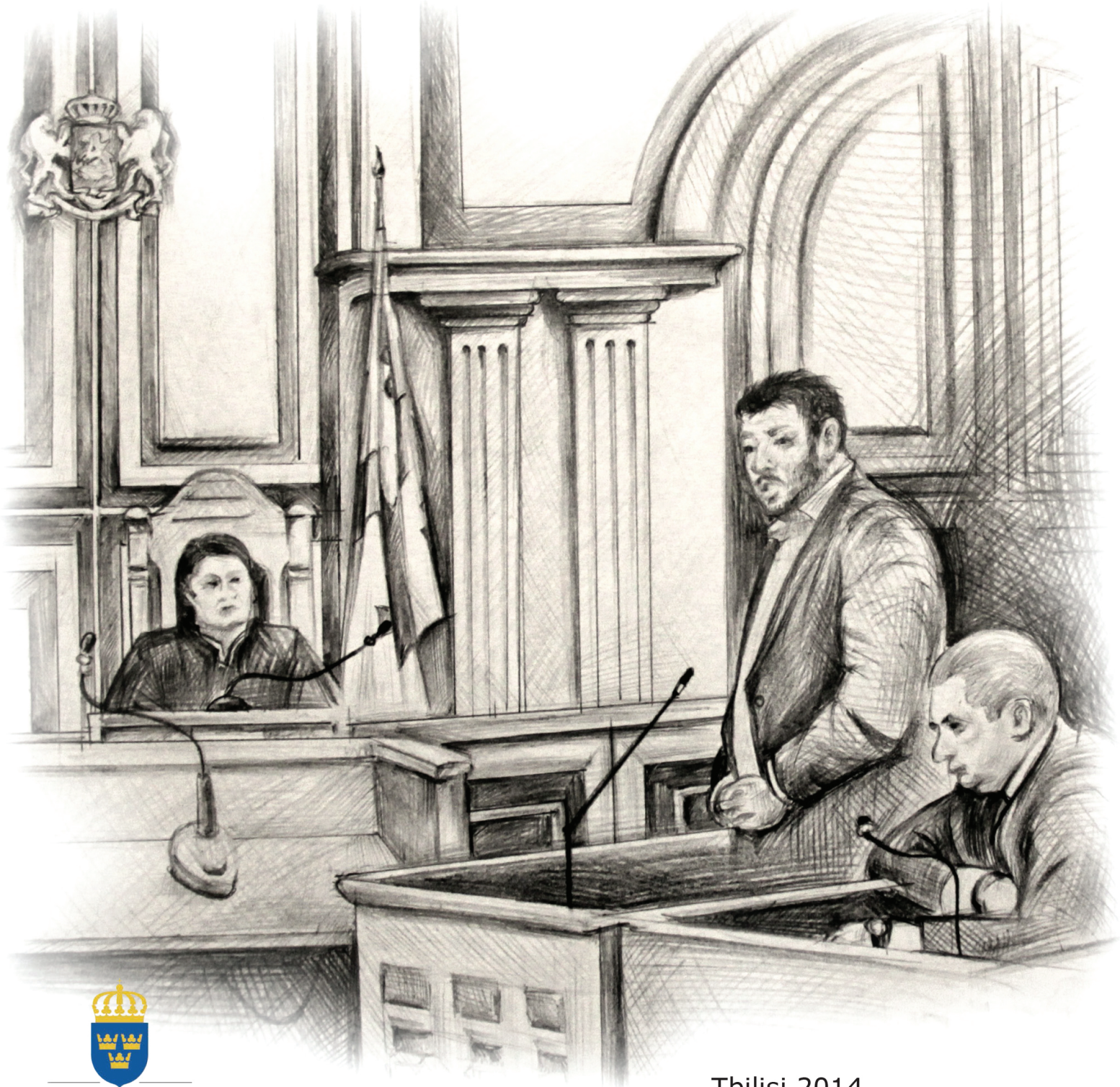


The Second Trial Monitoring Report of High-Profile Criminal Cases

Monitoring Period : July 2013 - April 2014



SWEDEN

Tbilisi 2014

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Executive Summary

Transparency International- Georgia has been monitoring court hearings on high-profile criminal cases since February 2013. This is the second monitoring report, and contains information on court proceedings from the period from July 2013 until May 2014. The organization's observers attended court hearings of cases of former and current high-level officials. Observation occurred in the Kutaisi and Tbilisi city courts.

Transparency International- Georgia believes that the noted project is particularly important, because making the monitoring results public will enable the public to review all of the high profile cases. Consequently, interested parties will be able to understand what is really happening in high profile criminal court cases in Georgia. For this reason, Transparency International Georgia's monitoring group attended hearings of high profile criminal cases, collected information about the proceedings, activities of the prosecution and defense, and the court's decisions, and compiled the information which is presented in this report, intended for public distribution.

Provided below is the information obtained and a description of the specific cases.

As a result of monitoring, the following are the main tendencies and facts noted:

- Compared with the previous monitoring period, a portion of the Prosecutor's actions have clearly improved. Their position in some cases has been more argumentative than during the previous monitoring period.
- Compared with the previous period, the prosecution is not basing their cases solely on witness testimony. In some of the cases the prosecution has brought other important evidences.
- Despite this, attention to the situation is still required and problems were clearly identified. As an example, in some instances, the objectivity of witnesses was clearly in doubt.
- A number of the prosecutor's witnesses were themselves accused of crimes and were the subject of ongoing criminal prosecutions. Some of the prosecutions against these witnesses were halted during the period in which they appeared as witnesses. The noted witnesses gave testimony against the former officials.
- A number of witnesses gave testimony against multiple former officials. For example, an individual who gave testimony against Ivane Merabishvili also appeared as a witness in Bacho Akhalaia's case. At one of Bacho Akhalaia's trials, it was discovered that the testimony this person provided was written on his palm.
- In some instances, witnesses were not properly separated while in the court's building. As a result, in one of the cases, a number of witnesses were called who were waiting together in the court's corridor wherein they were able to communicate with one another. Monitors frequently noted that witnesses were called that were speaking to each other in the court's corridor.
- Gigi Ugulava's and Davit Kezershvili's judge stated that according to information provided to him by his secretary, the prosecutor had contacted his secretary expressing an interest in the judge's official trips. The prosecutor acknowledged the communication, although he denied expressing interest in the judge's official trips. The judge stated that the General Inspector of the Prosecutor's office would be informed of the situation.

-Judges held both sides liable equally in instances of misconduct. As an example, Prosecutor Revaz Nadoi was fined 300 GEL for making inappropriate comments during a trial. The objective observers were left with the impression that the prosecutor was artificially attempting to prolong the trial. The judge also fined a number of defense attorneys for actions disrespecting the court.

- In several instances the defense has made some unjustified political statements.
- The defense has made several unjustified public statements about the judge and prosecutors being bias.
- Prosecutors at a number of trials were clearly trying to delay the trials without basis (for example, in the trials of Gigi Ugulava and Bacho Akhalaia.) In one instance, the defense also attempted to delay the trial.
- According to the defense, the names of witnesses which were to be questioned were not given to the defense by the prosecution sufficiently early (names were given one day in advanced of the trial).
- The three trial judges appointed to Bacho Akhalaia's criminal court trials (Besik Bugianishvili, Davit Mgeliashvili, and Giorgi Darakhvelidze) were transferred to the Tbilisi city court a short period of time before the examination began, on the same day, and at the same time. This coincidence clearly raises questions. Similar practices also bring the objectivity of the trial into doubt, as it does not meet the proper standards of transparency and indicates a deficit in court's reassignment system.
- During the monitoring period, the media was not interfered with and was given the means to work as mandated by law.
- During the monitoring period a number of high ranking officials made statements which directly violated the principle of the presumption of innocence. It is possible that these instances put an indirect form of pressure on the court's assessments. While trials were ongoing, politicians attempted to politicize the trials, which could have had an indirect effect on the judges.
- Bacho Akhalaia was detained on November 6th, 2012, while the first guilty verdict against him was delivered on October 28th 2013. The accused spent nearly a year in detention, during which time no guilty verdict had been delivered against him. It is true that this does not represent a legal violation, although it unambiguously points to a gap in legislation. Furthermore, it raises doubts as to whether it is possible that the prosecution maliciously and intentionally used the gap in legislation to ensure the detention of the accused for an extended period of time.
- Without Gigi Ugulava's presence at the court hearing, he was suspended from his position as mayor. While it is true that the court has the authority to examine this kind of issue without the participation of the interested parties, the case was of significant public interest as it related to the directly elected, sitting Mayor of Tbilisi. It would have been better to have the examination of the motion with Gigi Ugulava present and with the opportunity for the defense to present arguments on the motion.

Overview of Observed Cases

Ivane Merabishvili (*The Incident of the 26th of May*)

1. The Defendant and Charges Brought:

Ivane Merabishvili – Exceeding official power involving the use of violence and the offense of personal dignity.

2. Description of Offense:

According to the prosecution, on May 26, 2011, law enforcement used excessive force against peaceful protestors. The protestors were not allowed to leave the area, it was ordered to block all possible exits and to detain as many protestors as possible in order to prevent the rally from continuing. This order was issued by the then acting Minister of Interior, Ivane Merabishvili.

3. Significant Circumstances and Facts:

In the case, the defense has repeatedly requested the prosecutor's recusal on the grounds that Ivane Merabishvili, as a former high level political official, have charges presented against him, not by the prosecutor but rather by the main prosecutor. In response to this argument, the prosecution explained that the main prosecutor is responsible for addressing charges towards members of the government, when the accused is still an official during the period of prosecution. In the given situation however, Ivane Merabishvili is no longer a representative of the Ministry of Internal Affairs, and consequently the defendant should be charged by the prosecutor.

Ivane Merabishvili, as a sign of protest, left the court room a number of times. This occurred after the court rejected the motion to have an investigation started into his being taken from prison.

One of the prosecution's main witnesses was being criminally prosecuted during the trial, although while the witness was giving evidence at the hearing against Ivane Merabishvili, the prosecution had been temporarily suspended.

It is noteworthy that one of the witnesses (S.K.) giving testimony at the trial also testified against Bacho Akhalaia at his trial. **The defense discovered while the witness was giving testimony that S.K. had information written on his hand.** The defense noted the above mentioned fact regarding the witness at the trial. The witness did not deny the fact and stated that he may write anywhere on his body that he wishes and that this cannot be scrutinized by the defense attorney.

4. Pre-trial Measures:

The prosecution did not request any form of preventative measure as the accused was already imprisoned as a preventative measure by the Kutaisi city court on charges of vote buying and misappropriation of funds and embezzlement (see below). Consequently, as the defendant was already imprisoned, the Tbilisi city court believed that additional preventative measures were unnecessary.

5. The trial proceedings

5.1. Motions

A. Motions of the Defense:

1. The defense raised a motion for the recusal of the prosecutor, because the defense alleged that the main prosecutor must present the charges against Ivane Merabishvili.

The position of the prosecution: The prosecution explained that the main prosecutor is responsible for cases in which, at the time of prosecution, a person holds official status. However, in the current situation Ivane Merabishvili no longer represents the Ministry of Internal Affairs.

Ruling: The court did not grant the motion. The court agreed with the argumentation of the prosecution.

2. In Kutaisi City court, on the 17th of December, 2013, Ivane Merabishvili made a [statement](#)¹ regarding his removal from prison. In connection with the noted comment, Ivane Merabishvili, in Tbilisi City Court, raised a motion with the judge to have investigative organs begin an investigation into the circumstances of his removal from prison.

The position of the prosecution: The prosecution stated that an investigation has not been started in connection to Merabishvili's statement as there were no litigants. Therefore, the motion should not be granted.

Ruling: The court did not grant the petition as it was without basis. The judge explained that an investigation had not been started into Merabishvili's statements and the court could not consider these allegations without litigants. The defense raised similar motions at other hearings, yet the judge did not examine the motions. According to the judge's explanation, similar motions had already been examined by the court and there did not exist a new basis for examination. After the judge's decision, Ivane Merabishvili and a number of spectators left the hall as a sign of protest.

3. The defense requested more time to work out questioning tactics, because the prosecutor gave the defense the names of persons who would appear as witnesses the day before the hearing. Consequently the defense did not have a sufficient amount of time to prepare tactics for questioning.

The position of the prosecution: The prosecution claimed that the motion was without basis and requested that the judicial norm on which the defense's motion rested be explained to the defense.

Ruling: The judge did not adjourn the hearing, although he did announce a recess.

4. The defense raised motions on the subject of preventative measures a number of times.

Ruling: The judge did not grant any of the motions.

¹ See. <http://www.youtube.com/watch?v=qGSQmjyvKGg>

Motions of the Prosecution:

1. At a previous hearing, the prosecution motioned to have one of the defense's main pieces of evidence, the "Densus conclusion", be considered inadmissible as evidence. According to the prosecution, the "Densus conclusion²" was inadmissible as evidence at the trial. The prosecution alleged that in order to include the document, it would be necessary to include the authors of the report on the list of individuals to be questioned as witnesses.

The position of the defense: According to the defense, what is most important for the document to be admitted as evidence is its origin and authenticity, which in this case is evident.

Ruling: The judge did not grant the prosecution's motion.

5.2. Witness Testimony

According to Ivane Merabishvili, in the process of breaking up the protests, the police left a route open for the protestors to leave the territory. Due to the fact that the protestors did not leave through the area which was defined by the police, an offense was committed against a police officer who later passed away. According to Ivane Merabishvili, the offence against the officer and his death incensed a friend of the deceased, who was also a police officer, and this led to the use of excessive force by some of the officers.

Merabishvili characterized the main purpose of the protest as an attempt to disturb Georgia's Euro-Atlantic integration on the part of Nino Burjanadze together with Russia.

- The Prosecution's Witnesses:

One journalist who was questioned as a witness stated that protestors were trying to flee although all of the paths were cut off, and his exit was only ensured through his press card.

A portion of the witnesses say that the protestors had flag poles and plastic pipes, although they were not using them for violent purposes, and that had they had the desire to commit acts of violence with the noted implements, they would have been unable to do so at the location as there were significant numbers of special task force members.

According to Nona Gafrindashvili's testimony, the special task forces physically abused her. According to Gafrindashvili, the Special Task Force members were shouting, "This is from Misha, and this is from Ivane."

Nino Burjanadze was also questioned. She described the political developments of the time and the development of the events of the day of the breakup of the protest.

The prosecution's main witnesses were **Sh. J. and S.K.** These individuals directly participated in the Ministry of Internal Affairs meeting at which the plan for breaking up the protests was devised.

² Densus's conclusion – Regarding the events of May 26, 2011, conclusions were drawn by an American company.

The witnesses stated that the Ministry of Internal Affairs devised a plan according to which the police would attempt to detain the maximum number of protesters possible. The plan was devised with this goal and with the aim of holding the May 26th parade.

According to the witness, the original plan was to leave a passage open for protestors to leave the protest area, though, in reality on the 26th of May a different plan was carried out. According to the statements of **Sh. J. and S. K.** the Constitutional Security Department were inside of the parliament. They were forbidden from leaving the parliament building, but despite this, they did not follow orders, and left the territory of their own volition. They came out among the protesters and began to commit acts of physical violence against the people.

Witness Sh. J. stated that while the protest was being broken up, he called Ivane Merabishvili and reported to him the developments on the ground. According to the witness, Ivane Merabishvili, after having the developments reported to him responded with the following words: "You shouldn't lament it."

Note:

The defense's questioning revealed that the witness (Shalva Janashvili) had been under criminal prosecution in another trial, although apparently the case against him had been dropped.

The prosecution's second witness, Simon Karchadze, who was also present at the Ministry of Internal Affairs meeting stated that the old plan, wherein protestors would be allowed passage out of the protest area was in effect, although, in the process of breaking up the protest events did not occur as planned. According to the witness's testimony, members of the Special Forces appeared who were especially brutal. These forces cut off all exits and protestors were not left recourse to leave the area.

Note:

The above mentioned witness (Simon Karchadze) was also a witness in the Bacho Akhalaia case. During the Bacho Akhalaia trial, the defense discovered that the witness, S.K., had information written on his hand.

- The Defense's Witnesses

The main witnesses for the defense were Sh. T., I.F. and G.L.

The witnesses stated that in spite of all warnings given to the protestors, protestors had no intention to dissolve the protest of their own volition. Consequently, the police had the right to use means of violence to break up the protests.

One of the witnesses present at the headquarters created for monitoring the protests, was following the development of events on Rustaveli Avenue with the use of CCTV. At the headquarters, foreign experts were present who would later write a report on the events which has come to be known as the "Densusis Conclusion".

The defense's witnesses stated that they had intelligence regarding Nino Burjanadze's connections with Russia. The intelligence warned that Burjanadze together with Russia was attempting to endanger Georgia's Euro-Atlantic integration, and that they planned to bring the Russian Army into Georgia. They

were ordered to arrest only those who resisted during the breakup of the protests and/or those who physically resisted the police. The witnesses stated that a special exit was left open for protestors. The witnesses here also confirmed that individual police officers did use excessive force. According to the witnesses, investigations into the use of excessive force were ordered. The witnesses indicated that police aggression was caused by the death of one police officer who was hit by one of Nino Burjanadze's escorts.

6. Verdict:

On the 28th of May, 2013 Ivane Merabishvili was arraigned on charges of exceeding the rights of office with violence or the use of arms and the violation of personal dignity in relation to the events of the 26th of May under the Georgian Criminal Code, Article 333, Clause 3, Subsection's B and G.

The court found the defendant, Ivane Merabishvili, not guilty under Subsection G of the 333rd Article of the criminal code (Exceeding the rights of office and defamation or offence of personal dignity), while at the same time, the court found the defendant guilty under Subsection B of the 333rd Article of the criminal code (Exceeding the rights of office with violence or the use of arms).

Ivane Merabishvili was sentenced to six years in prison. The sentence was then reduced and set at four years and six months imprisonment.

7. Our Observations

Neither the prosecution's nor the defense's rights were violated in any significant manner during the trial. The prosecutor's position was different from during the previous monitoring period, as evidence did not consist solely of witness testimony. The prosecutor presented several volumes of evidence at the trial which included expert conclusions, medical histories, a GYLA report, a report prepared by the Public Defender, and video materials among other forms of evidence. Despite this, at the trial, in some instances, certain situations caused the credibility of witnesses to come into question. In one instance, at one hearing, a witness appeared who according to the defense's statement was being prosecuted in another case. This person was also the same individual who was discovered to have information written on his hand while giving testimony at Bacho Akhalaia's trial. It is notable that the defense stated that information on the witnesses to be questioned was only made available to them a short period of time before the trial started. Therefore, it is possible to view this as an attempt by the prosecution to hinder the defense in performing its duties. In these instances, there may have been a breach of the principle of equality.

No effective steps have been taken to this day to investigate the statements from the accused, Ivane Merabishvili, in regard to his removal from prison.

Ivane Merabishvili *(The government employment program and the appropriation of the Kvartati Vacation Home)*

I. The government employment program:

1. Defendants and the charges brought:

1. Ivane Merabishvili, former Minister of Internal Affairs and Prime Minister in 2012- vote buying, Abuse of Authority, and misappropriation and embezzlement of budgetary funds.
2. Zurab Chiaberashvili – Former Minister of Labor, Health, and Social Protection, Former Governor of Kakheti- Abuse of Authority, misappropriation and embezzlement of budgetary funds.

2. Description of Offense:

The prosecution alleged that before the 2012 parliamentary elections, Zurab Chiaberashvili and Ivane Merabishvili implemented a government unemployment program for the use of the United National Movement in elections. The prosecution relied on hundreds of witnesses' testimony which asserted the program fictitiously employed up to 22,00 citizens and each individual was given 240 GEL not as they had registered as unemployed, but rather for the benefit of The United National Movement's electoral agitation and for their votes in the following elections. According to the prosecutor, as a result of these actions, Merabishvili and Chaiberashvili spent 5,200,000 GEL from the state budget.

II. The episode of the appropriation of the Kvartati Vacation Home

1. Defendants the charges brought:

Ivane Merabishvili- Violation of the inviolable right to property, through the use of authority

2. Description of Offense:

In May of 2009, according to the prosecution, Ivane Merabishvili appropriated a vacation home without any legal basis and against the wishes of the owner, through coercion and intimidation. The family was unable to make use of their property for nearly four years. Merabishvili abused the authority of his office, and to satisfy the tastes of his family members, remodeled the vacation homes with Ministry of Internal Affairs' funds. In order to cover up the crime, Ivane Merabishvili used secret funds, which, according to the law, were to be spent on special operations measures in the fight against crime. Moreover, wages were taken from the same fund to compensate the workers remodeling the vacation home. As a result the government lost a total of 158,000GEL.

Note: The trial took place at the Kutaisi City Court.

3. Significant Circumstances and Facts:

At a hearing of the Kutaisi court on December 17th, 2013, Ivane Merabishvili stated for the first time that at 1:30AM he was taken from prison³. According to his supposition, he was taken to the Department of Corrections. Merabishvili stated that at the location he was received by two individuals. One individual, Otar Partskhaladze, a head prosecutor at the time, was present. (Merabishvili displayed a photograph of the head prosecutor Partskhaladze).

According to Merabishvili, the head prosecutor gave Merabishvili an ultimatum and stated that if he did not help the prosecutor with the Zhvania case and if he did not hand over President Mikheil Saakashvili's bank accounts, a very bad day would await him. At the meeting, he also stated that Irakli Gharibashvili would be in the government for a significant period of time and that during this time Merabishvili would not be leaving prison. At the same time, they threatened him saying that they would imprison his friends both in the party and outside the party as well as relatives. According to Merabishvili he was told that if the solution was acceptable to him, he would be given a period of time, and if he agreed they would let him go and give him the opportunity to travel abroad.

Merabishvili stated that his account of events could be confirmed easily through reviewing the CCTV recordings at the prison building's exit. Merabishvili demanded that an investigation into the matter be opened.

Ivane Merabishvili made statements about the above noted incident at multiple court hearings, demanding that an investigation into the events be opened.

At one of the hearings, as a sign of protest, Ivane Merabishvili left the court room. At that that point he had raised the issue of the recusal of his defense attorneys. The defense attorneys, despite the warnings of the judge that they could only leave the hearing after the judge had given them permission to do so, still left the court room. The judge considered this a disrespectful action taken against the court and fined each lawyer 200 GEL. Therefore, the accused, Ivane Merabishvili, remained in the courtroom without his defense team, and the court made a ruling regarding the appointment of an attorney for Merabishvili.

At the following hearing, the defense attorney requested recusal, and the judge explained that only after the defendant himself appeared at the trial could the requested recusal from the case be granted. After this the defense requested adjournment of the hearing as the case was voluminous and they needed time to review the case. The court did not grant the motion.

The defense questioned a number of witnesses as to whether or not they had been at the Prosecutor's Office several days earlier. In response to the question, the witnesses stated that they in fact been at the Prosecutor's Office several days earlier. The witnesses explained that while in the Prosecutor's Office they were informed in connection to the testimony they had to give and psychologically prepared for the day of the trial. Some of the witnesses stated that in the Prosecutor's Office, simply informed them about the responsibilities involved in giving a statement in court.

It is notable that the hearing was closed a number of times. The reason given each time was the questioning of witnesses involving the discussion of state secrets.

³ See. <http://www.youtube.com/watch?v=qGSQmjyVKGg>

The prosecution had 3969 witnesses, although due to the drawing out of the period of examination, not all 3969 witnesses were questioned.

Deputy, Goga Khachidze, took photos at the trial. The prosecution motioned to ban him from taking photographs. The judge explained that taking photos requires advanced permission. The judge called on the audience to refrain from taking photos.

At one of the hearings, Channel One recorded the hearing and in the process of recording did not disturb the trial. They had minor technical difficulties due to the location. In connection to this, the judge explained they themselves must ensure their own technical capacities.

At one of the trials the public broadcaster was unable to film, while the television station Rustavi 2 was able to do so, as Rustavi 2 had a letter giving them permission to do so.

4. Pre-trial Measures:

The prosecution motioned for the imprisonment of the accused as a preventative measure.

The court allowed Zurab Chiaberashvili to be released on 20,000 GEL bail. Ivane Merabishvili was imprisoned as a preventative measure.

Court Substantiation: Merabishvili has broad powers and authority, which he could possibly use malignantly. He could destroy material evidence and influence witness. The witnesses questioned by the investigation represent individuals under the authority of the subject of investigation, and consequently there is a large risk that they will be influenced by Merabishvili and as a result will no longer give accurate testimony.

Additional information connected to the Preventative Measures:

Regarding the preventative measures, a complaint was filed in the Kutaisi City Appellate Court, where the Chairman of the Kutaisi City Appellate Court, Malkhaz Gureli, examined the complaint. The defense raised doubts regarding Malkhaz Gureli's authority and the legality of the decision taken. According to their statement, Judge Gureli did not have the right to examine imprisonment as a preventative measure, because Malkhaz Gureli was a member of the Chamber of the Criminal Court, and according to Georgian legislation only members of the Appellate Court Investigations College have the right to examine imprisonment as a preventative measure.

For this reason, at the hearing, the defense raised a motion for the recusal of the judge and the entire composition of the court.

According to the defense, not only must the Kutaisi City Court be recused, but rather all of the courts in Western Georgia. The defense stated that in Western Georgia there is only one appellate court, which Malkhaz Guruli presides over. The decision was made by a Western Georgian court, and there is only one court of appeals in Western Georgia, the Kutaisi Appellate Court. The decision was made by the court's chairman, Malkhaz Gureli, and since the Chairman clearly had an interest in the case, he would make a subjective decision.

Ruling: The motion was not granted.

5. . The trial proceedings:

5.1. *Motions*

A. The defense's motions:

1. The defense presented a motion, which requested the cancelation of the preventative measures against Merabishvili (imprisonment) and Zurab Chiaberashvili (bail). The defense requested that the defendants be left without preventative measures, because according to the law, the criminal prosecution of officials or members of the government must begin in the Ministry of Justice. The defense attorney explained that because the charges against the accused individuals, Ivane Merabishvili and Zurab Chiaberashvili, dealt with a period of time in which they were in office, that the Ministry of Justice should present charges against them instead of the prosecutors. The defense also noted that Merabishvili had left Georgian territory a number of times and in every instance he had returned. Consequently, he did not represent a flight risk.

Position of the Prosecution:

According to the corresponding legal norms,⁴ for the Ministry of Justice to open an investigation against the accused on the charges presented, the accused must be officials. At the time of arrest, Ivane Merabishvili and Zurab Chaiberashvili were not Ministers, and consequently the Ministry of Justice did not have the responsibility to present the charges. Therefore, the prosecutor believes that the defendants were charged in accordance with the law.

Ruling: The motions were not granted and the accused were not freed from preventative measures.

1. The defense requested that Ivane Merabishvili's pretrial imprisonment be switched to bail set at the sum of 20,000GEL or another amount set by the court, and/or the giving up of the defendant's passport for a reasonable period of time.

The position of the prosecutor: The prosecutor disagreed with the motion. According to their statement, Ivane Merabishvili has significant influence and if released from imprisonment could disturb the proceedings of the trial and exert influence on the witnesses.

Ruling: The motion was not granted, as the judge did not consider the motions to be properly grounded.

2. The defense motioned to adjourn the hearing, because at the ongoing hearing the list of witnesses to be questioned was distributed the evening before. For the same reason, Ivane Merabishvili did not appear at the trial.

The position of the prosecution: The prosecution stated that they had provided the list of witnesses to be questioned in a reasonable time frame and in accordance with the law.

Ruling: The judge adjourned the hearing, explaining that the hearing was to be postponed because of the absence of the accused and not because of the motives cited by the defense.

⁴ Law of Georgia on Prosecution Services

B. Motions of the Prosecution:

1. The prosecution motioned to not allow the questioning of witnesses for which the defense did not provide sufficient information about the circumstances in which a witness would or would not be questioned.

Position of the Defense: The defense stated that the prosecution had been given the individuals names and last names which should suffice for the prosecution regarding the mentioned individuals, because they were members of the cabinet of ministers.

Ruling: The prosecution's motion was not granted.

3. The prosecution put forward a motion to transfer the case to merits.

The position of the Defense: The defense did not agree to the motion and believed that the criminal prosecution should be stopped in the absence of criminal behavior.

Ruling: The motion was granted. The case was transferred to merits.

5.2. Witness Testimony

A. The prosecution's witnesses:

Witness testimony on the employment program episode:

Employees of the Labor, Health and Social Protection Ministry were interviewed, as well as individuals involved in the employment program and individuals connected with the events which occurred in connection to the Kvartati summer home among other witnesses.

The prosecution's witnesses spoke about the more than 5,000,000 GEL in budget expenditures in connection to the work program.

The employees of the ministry, which appeared as witnesses for the prosecution read a letter which they received from Zurab Chiaberashvili, according to which, they were required to decrease the amount of money spent on health programs and transfer the money to the employment program.

The prosecutor's witnesses stated that the employed persons were paid to distribute booklets and agitate for the United National Movement in exchange for the corresponding compensation.

Those employed in the program who appeared in the court as witnesses, did not confirm the assertion that they received tasks directly from either Ivane Merabishvili or Zurab Chaiberashvili.

Witness Testimony related to the Kvartati Summer Home:

The summer home in Kvartati belonged to a private person. An individual who was working as a driver at the summer home appeared as a witness. According to his statement, one evening in May of 2009, 20-25 armed employees of Constitutional Security Department invaded the home. The individuals who were

there stated that it was the minister's order that the family leave the home. According to the witness's statement, the family was threatened by the employees.

Some of the witnesses confirmed that they themselves saw Merabishvili and his family resting at the summer home. Some witnesses gave hearsay as evidence and stated that they themselves had not personally seen Merabishvili at the summer home although they had heard about it from the neighbors a number of times.

The owner of the home returned to the home in May of 2013. According to the victim's statement, upon returning home, he found that the home had an unpaid electricity bill of 15,000 GEL..

According to the witnesses, from the day of confiscation of the property, until the return to the summer home, the land was placed on the Constitutional Security Department's balance sheets and it was held by a specially appointed sub-unit of the Ministry of Internal Affairs.

The prosecution questioned employees of the Ministry of Internal Affairs as witnesses. According to their testimony, the minister's (Ivane Merabishvili's) order was given in connection to Adjara's Constitutional Security Department's head, who gave consultations in connection to the remodeling of the summer home. Specialists were sent to make an estimate of the costs of remodeling. The results were reported to the minister by the witness himself. The same witness stated that the transfer of the money for remodeling came from the state budget. In connection with this fact, at a closed hearing, the former head of the Constitutional Security Department was questioned by the prosecutor. In a statement distributed by the prosecutor, it was noted that the witness' questioning confirmed Ivane Merabishvili's guilt in the charges against him and factual circumstances of the offense. He also stated that it showed that in May of 2009, Minister Ivane Merabishvili ordered the appropriation of the vacation home located in Kvartati. In the statement it is also noted that the examination of the witness at a closed hearing was done at the initiative of the defense.

B.The defense's witnesses:

a. Witness testimony in the Employment Program Incident:

Dimitri Shashkin, who was the minister of Education until the 4th of July, 2012 and the Minister of Defense from the 4th of July until the 28th of October 2012, was questioned as a witness. According to his statement, the employment program served the purpose of registering the unemployed. Shashkin mainly spoke about the details of the program,

The defense called eight witnesses which stated that one of the program's goals was the registration of the unemployed into a united database and the creation of workplaces for them. The witnesses questioned denied that Ivane Merabishvili exerted any pressure on the program.

The defense also questioned Zurab Chaiberashvili who spoke on the necessity of starting the employment program. At the trial, he noted that the Social Service Agency was selected due to their extensive experience and appropriate infrastructure. While being questioned, Zurab Chaiberashvili recalled a conversation with Ramaz Sulamanidze (the former head of the Social Service Agency). According to Chaiberashvili, Ramaz Sulamanidze told him about a meeting in the prosecutor's office with Lasha Natsvlishvili. In the meeting it was suggested that they give testimony against Ivane Merabishvili in exchange for his case being diverted.

According to Chiaberasvhili's assertion Ramaz Sulamanidze stated to him that if he gave testimony against Ivane Merabishvili he will be diverted as well.

Note: Ramaz Sulamanidze was questioned as a witness⁵.

Witness testimony connected with the Kvartati Summer Home Episode:

The defense questioned Tengiz Gunava as a witness. In 2012 Gunava was head of regional police and thereafter became the General Inspector of the Ministry of Interior Affairs. According to his statement, he had been to the vacation home in Kvartati a number of times. According to his information, the vacation home was the property of the Ministry of Internal Affairs, although he had not seen the property's documentation. He also was unaware of any information regarding the money spent on the remodeling of the vacation home. According to Gunava's assertions, the Ministry of Internal Affairs purchased the vacation home for the purposes of temporarily accommodating Ministry employees and it was not for Ivane Merabishvili's personal use.

6. Verdict:

The qualification of charges against Zurab Chiaberashvili's was changed. Specifically, instead of abuse of authority, he was found guilty of neglecting official duties and was ordered to pay a fine of 50,000 GEL to the state budget.

Ivane Merabishvili was found guilty in both episodes, and was sentenced to five years imprisonment. He was also banned from holding public office for a period of one year and six months.

7. Our Observations

The information disseminated by Ivane Merabishvili about his removal from prison is significant. Transparency International Georgia has responded to the statement, because the statement clearly contains information suggesting a crime. The prosecutor's statement that he does not intend to open an investigation into the events is particularly alarming. This position is disappointing and goes against Georgian regulations.

Until the time that an investigation is started by the investigative organs, their duties have not been fulfilled. An investigation has only been conducted by the Ministry of Corrections General Inspector. Although an internal investigation was carried out, this does not mean that the duties and responsibilities set out in legislation were fulfilled. Within the framework of the previously noted investigation, it was stated that at present the recordings of the CCTV monitoring no longer exists, because in the Prison and in the Department of Corrections' facilities the current video monitoring technologies do not have the capacity to view recordings older than 24 hours as they are automatically erased. At the same time it is notable that the Minister of Corrections, Probation, and Legal Aid, before the publication of the conclusions of the General Inspector, stated that video recordings are saved for ten days, although the minister later denied this.

⁵ See. http://www.for.ge/view.php?for_id=29015&cat=3

The 101st article of the Criminal Court's Code directly states that the investigator and prosecutor are responsible to open investigations on the basis of information published in the mass media. The statement of the former Prime Minister is the exact kind of statement which requires a timely and effective investigation through which an answer to the questions existing in society would be answered. Moreover, it must be noted that the addressee of the accusations was the head prosecutor. The state has a very special obligation to pay attention to ensuring the objectivity of the investigation, without influence being exerted on the investigation by ongoing political processes.

The accused, Ivane Merabishvili, motioned for the recusal of his defense team after they had left the court room. This may be appraised as an attempt by the defense to delay the trial proceedings.

It is worth mentioning that although most of the witnesses along with alleged crimes were in Tbilisi, the case is nonetheless proceeded at the Kutaisi City Court. Although the legislation provides for that possibility, a disproportionate use of the legal mechanism permitting to hold case proceedings in a different location and is to be considered as a significant flaw in the existing legislation.

Ivane Merabishvili, Davit Akhalaia and Others (The Sandro Girgvliani Case)

1. The accused and charges brought:

Ivane Merabishvili - Former political office holder, exceeding the rights of office, and Abuse of Office.

David Akhalaia – Former head of the Constitutional Security Department inside of the Ministry of Internal Affairs – the use of life threatening violence, illegal deprivation of liberty, abuse of power, abuse of authority, and official fraud.

Oleg Melnikovi- Ministry of Internal Affairs Employee- Illegal deprivation of liberty and Abuse of Authority

Geronti Alaniasa and Valerian Metreveli- (Constitutional Security Department)– Accused of the illegal deprivation of liberty of the citizen V.A and K.D, abuse of authority and degrading and inhumane treatment against them.

2. Description of Offense:

In January of 2006, 28 year old Sandro Girgvliani was taken captive from the Shardeni café, and was taken to the Okrokani Cemetery near Tbilisi. MIA employees savagely beat Sandro Girgvliani leading to a significant number of injuries which resulted in his death.

In order to avoid political and official liability, Ivane Merabishvili together with Davit Akhalaia and other officials, for personal reasons, planned and carried out crimes depriving Sandro Girgvliani of his life and liberty. Evidence exists suggesting that the accused made a premeditated and intentional attempt to hide and change evidence in order to avoid responsibility for the crimes committed. Merabishvili and other officials agreed to stage the investigation of crimes against Sandro Girgvliani, the purpose of which was on the one hand to hide and cover up the participation in crimes of high-level officials, among them the former Minister of Internal Affairs' wife and possibly the Minister himself. On the other hand, the actions of the accused aimed at managing G. Alanias, A Aftsiauri, Al. Ghachava, and M. Bibiluridze's liability before the criminal court guaranteeing in advanced shorter periods of imprisonment, the conditions of imprisonment, as well as making guarantees with the above noted individuals.

3. Significant Circumstances and Facts

In the above noted case, the defense stated that the crimes supposedly committed by Ivane Merabishvili were no longer prosecutable. The defense stated that the statute of limitations for the charges was seven years and consequently that the statute of limitations had expired. Therefore the defense requested that the case be dismissed on merits.

The prosecution however stated that in Ivane Merabishvili's situation, there is a 15 year statute of limitations due to the fact that the statute of limitations was extended to 15 years from seven during the period of time when the crimes were ongoing.

4. Pre-trial Measures:

The prosecutor's request: The prosecutor requested the imprisonment of Ivane Merabishvili as a preventative measure.

The position of the defense: The defense stated that Ivane Merabishvili had already been imprisoned twice as a preventative measure, and therefore the basis for another detention did not exist.

The Ruling of the Court: The court agreed with the position of the defense and did not impose any form of preventative measure. The court did not grant the prosecution's motion. The judge did not give further substantiation for his ruling in court.

5. The procession of the trial:

5.1. Motions

Motions of the defense:

1. The defense motioned to dismiss the trial without the examination of the case on merits. The defense stated that the accused, Ivane Merabshvili was arraigned on crimes which he is accused of committing before March of 2006. Consequently, according to Georgian legislation⁶, the statute of limitations had expired.

Note: On the 25th of July, 2006, the Criminal Code of Georgia was changed, according to which the statute of limitations of the charges brought against Ivane Merabishvili rose from seven to fifteen years.

The position of the Prosecution: According to the prosecutor's statement, in Ivane Merabishvili's situation, instead of the seven year statute of limitations the fifteen year statute of limitations which was established in the new version of the Criminal Code should be applied. They argued that because the changes to the statute of limitations were accepted on the 25th of July 2006 and on the 7th of August 2006 the statutes came into effect, and the statute of limitations on the charges remained in effect when the new statute of limitations came into effect, the 15 year statute of limitations should be applied.

Ruling: The judge did not grant the motion and explained as follows: It is true that if the law tightens penalties or defines something as a crime that the law is not retroactive, although article 71 which the defense has indicated, does not define a statute of limitations nor does it make the penalty stricter. Consequently, the motion to have the trial dismissed does not have a basis. Then, when the changes to the law came into force, the active Criminal Code defined the statute of limitations and it had not been exhausted. Consequently, the dismissal of the trial was without basis.

2. The defense motioned to make inadmissible as evidence the testimony of witnesses who were questioned during evening hours. According to the defense, the questioning was conducted in violation of the law, because during evening hours it is only allowed to question witnesses during urgent situations. However the questioning of witnesses in this context was not of an urgent nature.

Position of the Prosecution: The prosecution stated that the motion was without basis and should not be granted, because the questioning of witnesses in the evening hours was done at the witnesses' request.

⁶ Georgian Code of Georgia, article 71

Ruling: The judge agreed with the defense's position and granted the motion. According to the judge's decision, the questioning of witnesses, which was conducted during evening, was without a legal basis.

3. The defense motioned to make the evidence submitted in the Russian language inadmissible.

Position of the Prosecution: The prosecution believed that the Russian language evidence should be included in the trial, because together with the Russian language materials a Georgian translation was submitted, which was enclosed and is authentic.

Ruling: The court satisfied the motion, explaining that the proceedings are to be conducted in Georgian and that the evidence presented in the case should also be in the Georgian language.

4. The defense raised a motion requesting that the record of the investigation's tests be taken off of the list of evidence, because those present at the testing did not give signatures.

Position of the Prosecution: The prosecution stated that the testing was conducted in full compliance with the law.

Ruling: The court believed that the records of the tests should be considered inadmissible explaining that the signature of those present during testing is a legal requisite required for their use as evidence. The judge ruled that in instances where records do not have signatures, they will not be considered as evidence.

5. The defense motioned to make records of witnesses testimony inadmissible, in circumstances in which questioning occurred over a period of more than four hours. The defense also requested that the records of the testimony of those witnesses questioned during the day time hours and continuing into the evening hours be considered inadmissible.

Position of the Prosecution: The prosecutor stated that not a single witnesses' questioning exceeded four hours. He stated that questioning was always completed in less than four hours, but that witnesses read their testimony after giving it, causing the time periods to be over four hours.

Ruling: The motion was not granted, as the judge stated that the amount of time was only slightly exceeded, which was clearly necessary due to the conditions mentioned. With the same explanation, the judge also denied the defense's second request.

Motions of the Prosecution:

1. At one of the hearings, the prosecution presented Russian language evidence translated into Georgian as evidence.

Ruling: The court did not admit the document as admissible evidence, due to its belated presentation. In the substantiation of this, the court indicated that the document was on the list of evidence and as such, from the very beginning it was possible to translate the document and deliver it to the defense five days before the hearing, which the prosecution did not do. Consequently, at the stage when the prosecution requested that the document be admitted as evidence, it was not possible to accept the document.

2. The prosecution motioned to include the verdicts in Data Akhalaia's Eleg Menikov's and Geronti Alania's trial as evidence, because this evidence was indicative of the defendant's character.

Position of the Defense: The defense did not agree to the motion, stating that the above noted verdicts have not been brought into legal effect, because the cases have been sent to an appellate court.

Ruling: The motion was granted, and the verdicts were admitted as evidence in the case.

5.2. Witness Testimony

Witness testimony has not yet been given.

6. Verdict:

A verdict has not yet been given as examination of the case is ongoing.

7. Our Observations

The trial is currently ongoing, and as a result of our monitoring we have not identified a significant violation, which encroached on the competition. Consequently it is possible to say that in the trial it has been possible for both sides to equally present their arguments, evidence, implement procedural actions, and to present their own interests.

During the trial a number of pieces of evidence were considered inadmissible by the court. The court did not admit witness testimony which was collected after day time hours. The collection of evidence outside of day time hours was without legal basis as it is clearly prohibited under Georgian legislation. Also, the court did not admit the materials submitted in the Russian language as evidence. These incidents clearly show deficits in the prosecution's work, although the noted problems cannot be considered significant violations.

During the trial the court identified a number of violations of procedural rules, which in turn led to the court not admitting witness testimony which was gathered in evening hours as evidence. Undoubtedly, the after-hour questioning of witnesses was in clear violation of Georgian legislation. Also, the prosecution's late presentation of a Georgian translation of evidence in the Russian language led to the evidence's non-admittance. All of this clearly shows the shortcomings of the prosecution in certain aspects, although, the noted shortcomings cannot be considered significant violations.

Giorgi (Gigi) Ugulava and Davit Kezerashvili

1. The accused and the charges brought:

Giorgi (Gigi) Ugulava – The former mayor of Tbilisi- Laundering large sums of illicit income, appropriation of another's property.

Davit Kezerashvili- The former Minister of Defense- Laundering large sums of illicit income, appropriation of another's property.

2. Description of Offense:

In 2008, Joseph Kay held the controlling share of Imedi Television. During that time, he spent 10,000,000 USD on the operation costs of the television station. The prosecution alleges that Davit Kezerashvili met Joseph Kay in the name of the authorities and through threatening Kay, persuaded him to hand over Imedi Television. In conjunction with the threats, Kezarashvili also promised Kay that Giorgi Ugulava would compensate him for the expenses incurred to the sum of 10,000,000 USD.

According to the prosecution, Giorgi Ugulava indicated that Joseph Kay should transfer control of the company to Bordex Limited, a company registered in Panama, which was under Davit Kezerashvili's control. Thereafter, Giorgi Ugulava negotiated with the owners of Akhali Riki Ltd. to pretend to repurchase the property they had acquired in 2006 for 7,000,000 USD at the price of 17,000,000 USD. From this transaction, 10,000,000 USD would be transferred to Joseph Kay. The Mayor, on the 29th of December 2008, in the name of the city of Tbilisi issued a resolution on the basis of which the Mayor founded the "Old Town Rehabilitation and Development Fund." In order to repurchase the territory, 17,000,000USD was transferred to the company Akhali Riki Ltd. Thereafter, the head of Akhali Riki LTD and Joseph Kay's Company Lake Brow Limited formed an agreement, on the basis of which a transfer of 8,811,189 USD was completed from Riki LTD to Joseph Kay's company. The investigation of all of the facts noted above has led to the conclusion that the Television Company Imedi was appropriated using funds embezzled and then laundered from the state budget.

According to the prosecution, Davit Kezerashvili's participation in the above noted events can be described as follows: Davit Kezerashvili met with Joseph Kay in the name of the authorities and through threatening Kay, ensured the handover of Imedi Television to the authorities. The sole condition of the handover was that Joseph Kay would be compensated by Gigi Ugulava to the sum of 10,000,000USD which represented the costs incurred in operating the station. As Gigi Ugulava instructed, Joeseph Kay transferred his controlling share to Davit Kezerashvili's control through transferring his stake to Bordex Limited, a company registered in Panama.

3. Significant circumstances and facts:

At the opening of the trial the judge asked the prosecutor whether or not he had contacted his assistant and secretary to speak with them in connection to the case and if he had contacted them not in connection to the case, why he had contacted them. The prosecutor stated that he had been in touch with them to find out the date of the session. The judge told the prosecutor that his assistant and secretary had told him that the prosecutor had contacted them in regard to an official trip the judge was to go on. The prosecutor denied having such an interest. The judge explained that he was required to submit the information provided by the hearing secretary and his assistant to the head prosecutor and General Inspector.

It is interesting that one of the prosecution's witnesses was also being prosecuted. On this subject, the defense stated that it raised doubts about the credibility of the noted witness, and the defense motioned to include the allegations against this witness as evidence. For this reason, the defense requested that the information displayed on the official web site of the Ministry of Finance regarding G. M.'s case be admitted as evidence.

4. Pre-trial measures:

The prosecutor requested that Gigi Ugulava's bail be set at 1,000,000 GEL.

The position of the Defense: The defense did not agree to the motion and stated that it was not necessary to use preventative measures, because the accused, Giorgi (Gigi) Ugulava had left the country a number of times and in spite of the allegations against him had returned to Georgia and had been cooperating with the investigation.

2. The prosecution also motioned that the Tbilisi Mayor not be allowed to cross Georgian borders and requested that Giorgi (Gigi) Ugulava be obliged to provide a statement in the investigation department weekly.

Ruling: The motion was not granted. As a result, no preventative measures were taken against Giorgi (Gigi) Ugulava.

3. The prosecution presented a motion for the dismissal of Giorgi (Gigi) Ugulava from office.

Ruling: The court did not grant the prosecution's motion. According to the explanation of the court, Giorgi (Gigi) Ugulava should not be removed from office because the prosecution's motion to remove Ugulava from office was general and unsubstantiated.

5. In connection with Davit Kezerashvili, the prosecutor requested imprisonment as a preventative measure, because he was not present at the trial, and consequently there was a suspicion that he would hide from the court.

The position of the defense: The defense requested that bail be set and asserted that it was not necessary to imprison Kezerashvili as a preventative measure.

Ruling: The prosecution's motion to have Davit Kezerashvili detained as a preventative measure was granted by the court.

5. The Trial Proceedings:

5.1. Motions

A. The Defense's motions:

1. The defense raised a motion to include in the case as evidence information from the official website of the Ministry of Finance and articles which dealt with the criminal prosecution of one of the witnesses, G.M. The defense tried to raise the question of the credibility of the witness through this motion.

The position of the prosecution: The prosecution explained that the defense knew two days before the trial that the witness G.M. was to be questioned. Consequently the prosecution did not believe that the motion should be granted.

Ruling: The court granted the motion and explained as follows: "That if a person is accused of being a criminal this does not mean, that he is a criminal. This is a violation of the presumption of innocence. As it is not possible to objectively examine the evidence until it is presented, we do not have a violation and the evidence may be included in the trial. Even though Miqadze was in prison, it does not mean that his testimony is not credible. A review of the records does not confirm significant factual circumstances. Therefore I do not see a problem with the inclusion of it as evidence. **The court shall include this additional evidence in the trial** and other evidence which bears on the case as well as the assessment of the credibility of witnesses. "

B. Motions of the Defense:

1. The defense motioned to allow the admission of the decision of the French Court to deny the extradition of Davit Kezerashvili.

Ruling: The motion was granted.

2. The defense raised suspicions about the testimony of witness G.M.'s testimony and motioned that information on G.M.'s case from the Ministry of Finance's official website be introduced as evidence. On the website there is information about witness G.M.'s prosecution on charges of embezzlement.

The position of the prosecution: The prosecution stated that the defense's motion could have been presented before questioning. The prosecution did not agree with the motion.

Ruling: The motion was granted.

B. Motions of the Prosecution:

1. The prosecution motioned several times to have Davit Kezerashvili tried separately. According to the assertions of the prosecution, separate trials were necessary to avoid delay in the consideration of the cases and in order to protect the rights of the accused.

The position of the defense: The defense believed the motion to be illegal and unsubstantiated. The defense stated that appearing in the present trial is the defendant's right and he was not obliged to be tried separately. Davit Kezeashvili himself denied that his inclusion in the given trial was a violation of the rights of the accused.

Ruling: The court did not grant the prosecution's motion. According to the court's explanation the prosecution did not present an appropriate argument as to why Giorgi (Gigi) Ugulava and Davit Kezerashvili being tried together would cause delays.

2. The prosecution motioned to include in the trial the information received from official departments in France which confirm that Davit Kezerashvili was in France and in prison.

The position of the defense: The defense agreed about the inclusion of the above noted documentation.

Ruling: The court granted the prosecution's motion and the information was included in the case.

5.2. Witness Testimony

A. The prosecution's witnesses:

According to evidence presented in the trial, Akhali Riki LTD acquired the Riki territory in 2006. Witnesses were questioned in connection to this, who had participated in the municipality's hearings on the subject. At the municipality's meetings a decision needed to be made regarding which two companies would receive the territory (among them one was Akhali Riki). The witnesses stated that as far as they knew, the company had presented all of the required documentation. They recall voting on the issue and they confirm that the vote was in favor of Riki LTD. The witnesses stated that they did not personally know Davit Kezerashvili or Giorgi (Gigi) Ugulava and were unaware of any connection between them and the company. Some of the witnesses stated that Akhali Riki LTD presented complete documentation, however they could not remember some information regarding the documents. Generally, the witnesses confirmed the existence of both companies and that Akhali Riki LTD was selected.

An expert was questioned who worked on the establishment of prices on the Riki Territory, especially the reasons behind large differences in prices. With regard to whether or not a difference was caused by the 2008 war, the expert stated at the trial that he was unaware of how the price rose from 7,000,000USD to 17,000,000USD.

A representative of the State Audit Authority was questioned as a witness. He stated that a competition was announced in 2006, for the improvement of the infrastructure of Riki territory and that the winner would be obliged to present a one year bank guarantee. Akhali Riki LTD won and acquired the Riki Territory for 7,000,000 USD. Still, they did not meet any of the obligations required of them. In December of 2008 the mayor repurchased the territory of Riki for 17,000,000 USD. The transfer of funds occurred through the "Old Tbilisi Rehabilitation and Development Fund" which was set up by the mayor. The resale price was clearly inappropriate and therefore it was decided to legally examine the price.

The witness G.M., who acquired a 15% share of Imedi in 2006, was questioned. According to the witness's statement he personally was not connected to Ivane Merabishvili and requested a meeting, and he also met with Giorgi Arveladze. At the meeting they stated that he had to acquire a 15% share of Imedi. According to the witness's information, he was also threatened. According to the witness's statement, he did not want to acquire a 15% share in Imedi and the contract of sale was fictitious. According to the witness's statement he was selected, because he was not a well-known personality and there would be less suspicion on the part of the public. After a year he gave up his share of Imedi.

The prosecution also questioned G.M. as the general director of Rakin Development. This person is being investigated by the Ministry of Finance for the appropriation/embezzlement of a large sum of money.

The witness, G.M., recalled a press conference, whereat Joseph Kay made a statement about Mark Monem acquiring a controlling share in Imedi TV. The witness stated that Mark Monem was selected by Giorgi Ugulava because he was not a Georgian national. In this situation, it was possible for Imedi Television to be acquired by another foreigner interested in buying into a television company.

The defense raised questions about the credibility of the witness and motioned to include the information on the Finance Ministry's official website showing that the witness was being prosecuted for embezzlement of funds. The witness was also testifying in other trials against the accused. The defense stated that this directly raises questions about the credibility of the witness.

The former Vice-Mayor of Tbilisi was questioned, who was the chairman of the session discussed above. According to his statement, the competition was announced in the newspaper 24 Saati. Akhali Riki LTD won the competition. Also according to his statement, everything was done legally, because permission was granted from the central government.

B. The defense's witnesses

The stage wherein the defense presents evidence has yet to begin. Currently, the prosecution is still questioning witnesses.

6. Verdict:

A ruling has not been delivered as the examination of the case's merits is ongoing along with the questioning of witnesses.

7. Our Observations

Rights violations have not been noted at the trial. While the trial was ongoing the judge made a statement about the prosecutor's communications with his assistant. This piece of information should be paid attention to, and it is necessary that the corresponding departments pay attention to this information and ensure that measures established by the law are followed.

At the trial one of the main witnesses is being investigated by the Ministry of Finance for the embezzlement of a significant sum of money. Similar instances have occurred at a number of trials. Facts such as these clearly place doubt on the credibility of the witnesses.

Giorgi (Gigi) Ugulava and Others (*The Case of the Tbilisi Development Fund*)

1. The accused and the Charges brought:

1. Giorgi (Gigi) Ugulava- Abuse of Authority, Consumer Fraud
2. Aleksi Tavbuashvili, the former Chief of Staff of the Procurement Services- Misappropriation of large amounts of other's property and/or embezzlement by an organized group
3. Davit Avaliani, The Gamgebeli of Old Tbilisi- the Misappropriation or embezzlement of other's property
4. Dimitri Chkheidze, the former Old Tbilisi Gamgebeli's Deputy of Procurement- Misappropriation or embezzlement of other's property
6. Davit Alavidze, the Former Deputy Mayor- the embezzlement or misappropriation of other's property
6. Giorgi Sabanadze- The former head of the Tbilisi Development Fund- Misappropriation or embezzlement of another's property

2. Description of Offense:

The prosecutor stated that Gigi Ugulava, together with the other individuals accused, created a criminal scheme, in which the Tbilisi Development Fund was created for the purposes of Tbilisi's Rehabilitation but the funds were embezzled into the United National Movement's pre-electoral campaign. The accused embezzled 48,180, 460 GEL which supported and financed the United National Movement's pre-electoral campaign. From August to November of 2011, 100,000 GEL was transferred to the fund's account at Liberty Bank.

According to the prosecution, the accused also prepared "plastic cards", onto which salaries were to be transferred to individuals who had rendered services. The noted bank cards in reality were given to members of the United National Movement. From the cards, pre-selected individuals were able to withdraw money.

According to the prosecution, the amount withdrawn from cards reached 40,000GEL per person, which lead to the possibility that the tax authorities would take notice. In order to solve this problem, on Ugulava's order, it was decided that money would no longer be transferred to the bank accounts, but instead cash would be distributed.

3. Significant Facts and Circumstances

In the trial, the prosecutor presented as evidence a telephone conversation between Gigi Ugulava and his child. This action, especially as this private conversation did not directly bear on the case, is in violation of Georgian Legislation as well as international standards. Similar actions represent the coarse violation of the

rights of personal life and goes against the constitution of Georgia and the European Convention on the Defense of Human Rights. The judge recognized the evidence as inadmissible, and correctly in these circumstances, indicated this in the judge's own substantiation of the ruling.

The Tbilisi City Court on the 21st of December did not grant the head prosecutor's motion for the pre-trial detention of the city's mayor, Gigi Ugulava, and bail was set at 50,000 GEL. Later however, on December 22nd, late at night, the court suspended Gigi Ugulava from office. According to the Criminal Court Procedural Code, the court may consider such a motion without the participation of the parties. Despite this, the trial was of significant public interest, as the trial involved the directly elected mayor of Tbilisi. Furthermore, up to the time that the ruling had been made, a number of hours earlier, the same judge examined other motions of the prosecutor. It would have been better if it would have been possible for arguments to be given about the removal from the position of mayor with the presence of both parties, and if the defense had been given the opportunity to present arguments. The Criminal Courts Procedural Code is based on the constitutional principles of equality and the adversarial principle, and it is important that each judge adhere to these principals in any case.

On the 23rd of May 2014, the Constitutional Court of Georgia ruled on Gigi Ugulava's suit, and the court found that according to the normative content of article 159 of the Criminal Court Procedural Code the court had made an unconstitutional ruling, taking into account local self-governance's universal equality and the principal of direct election, officials can be removed from office by ballot and by the same Code's article 160, part one, sentence two, which does not allow for such a decision to be made without an oral hearing. The constitutional court noted that officials chosen by the people can be dismissed or suspended. At the same time, the court noted that this means that through the mandate of the people a directly elected official may be suspended or dismissed and this incident represents a coarse meddling into the authority of local government. At the same time, it is important that the legislation does not provide for periodic revision or the cancelation of judgments, in which case if removal is the purpose of investigation there should be no danger of interference through official investigation.

The constitutional court also established that without oral arguments, the removal of a person from office and the examination of a motion to do so is a disproportionate violation of the defense's constitutional rights. Examination of a motion for removal from office requires the study of factual circumstances, and the assessment of material and procedural issues. Legislation should not allow for the possibility that such a decision be taken by the courts, based on information only from the prosecution nor without the defense being given the opportunity speak on the issue. The rights of the accused must be protected, especially the right of the accused to be represented before the court through their attorneys or by themselves, as this reduces the risk of a mistake being made by the court. Only in these circumstances will it be possible for fair competition and consequently the courts' defense of constitutional rights.

Before one of the hearings, Gigi Ugulava made a statement⁷, that the trial was clearly being conducted with pressure being exerted on the judge by specific individuals, among them, the Ministry of Internal Affairs', General Inspector and former employees of the ministry. He named specific persons who according to his statement were attempting to influence the judge.

It is notable that the witness R.S appeared in this trial as well as in Ivane Merabishvili and Davit Chiaberashvili's trial, which was being examined in the Kutaisi City Court.

⁷ See. <http://politico.ge/index.php/news/view/9187>

Gigi Ugulava made political statements a number of times, as well as statements about pressure on the court. The judge rebuked him for doing so multiple times.

4. Pre-trial measures:

The prosecutor requested the use of imprisonment as a preventative measure. The prosecution stated that the investigation could not find clear evidence and that the accused was suspected of hiding and destroying evidence. Also the prosecutor's representatives explained that Ugulava managed a number of people as a high official and the majority of witnesses are Gigi Ugulava's employees. Consequently it was necessary to have pre-trial detention, because this would be the only guarantee that witnesses were not influenced. The prosecutor also spoke about Gigi Ugulava as a flight risk. In regard to this they brought up the incident in connection with the library, due to which Gigi Ugulava was requested to appear in the prosecutor's office for questioning, and consciously did not appear a number of times.

The position of the Defense: In response to the prosecutor's arguments the defense stated that Ugulava had crossed Georgian borders ten times already after his criminal prosecution had started. According to the defense, Gigi Ugulava was always present at the trial, working with the investigation, and never attempted flight. The defense requested that personal guarantees be used as a preventative measure, suggesting **Davit Bakradze, Davit Sakvarelidze, and Giorgi Vashadze** as candidates.

Ruling: The prosecution's motion in connection to the use of **imprisonment** as a preventative measure was **not granted**; the defense's motion to use **personal guarantees** was **not granted**. The court set Gigi Ugulava's **bail at 50,000 GEL**

Later the Tbilisi Mayor, Gigi Ugulava, on the basis of the prosecutor's motion, was suspended from office. The decision was made without a hearing with both parties.

5.The Trial Proceedings:

5.1. Motions

A. Motions of the Defense:

1. The Defense made multiple motions to have a number of witnesses' testimonies made inadmissible, because the witnesses were questioned at a time when they were not given the right to counsel, although the proceedings of the questioning were only formally presented. Furthermore, Alex Tavbeashvili and Dimitri Chkheidze were questioned in the evening. The defense stated that this represented a violation of the law. These individuals were also detained at the same time as when they were in the prosecutor's office, and when their arrest occurred, they were not given notice of their rights.

Position of the Prosecution: The prosecution stated that Aleks Tsvitashvili was questioned as a witness, and that his testimony should not be considered as inadmissible as his rights were not violated, which is confirmed by his signature on the record of his testimony. The prosecution stated that up unto being taken into the prosecutor's office, he did not have the status of being accused of a crime.

Ruling –The motion was partially granted. The judge only made the testimony of Aleksi Tavbuashvili and Dimitri Chkeide inadmissible as evidence, because until then the question of pre-trial measures had been ongoing in the Rustavi City Court from which time they acquired the status of accused of a crime. Consequently they should have been provided with the rights of an accused person as opposed to those of a witness.

2. According to the law,⁸ as a result of active investigations, if information is found during an investigation which is not related to the facts of a person's guilt or innocence, but it does consist of incriminating information, it is not possible to disclose or use the information against the person for any reason. On this law's basis, the defense requested that Gigi Ugulava's conversation with the Mayor's underage son be inadmissible. The defense stated that the content of the telephone conversation had no bearing on the case.

The prosecution's position: The prosecution did not agree with the motion and believed that the telephone conversation should be admissible as evidence, because it demonstrated that after Gigi Ugulava's suspension from authority, he continued to work. Furthermore, the conversation was connected to issues related to funds.

Ruling – The court decided that some of the telephone recordings, among them, those between Gigi Ugulava and his child, would be considered inadmissible as evidence. The Court ascertained that the recordings were made illegally and they were not connected to the trial.

B. Motions of the Prosecution: the Law on Operational Investigative Activities

1. The prosecution requested that the accused, Zurab Adeishvili and Giorgi Sabinidze's⁹ materials not be admitted. According to the prosecution, the defense did not have the right to initiate special actions outside of Georgia, because according to the law on legal aide, motions must be presented first to the Justice Minister and afterwards special procedural actions may be taken. Consequently, the prosecution believed that the records and video materials were gathered illegally. The prosecution appealed that Zurab Adeishvili is wanted and under suspicion of having committed a crime, and it is clear that the defense managed to contact him, whereas on the recorded materials an address is not indicated, nor location or time among other details, all of which places Adeishvili's signature under suspicion.

The prosecution requested that only the record of proceedings be considered inadmissible. The judge explained that making the record of proceedings inadmissible would not mean that Zurab Adeishvili and Giorgi Sabanadze's would be removed from the list of individuals to be questioned. The noted persons could still be questioned in court.

The position of the defense: The defense stated that in Georgian legislation it is nowhere stated that evidence may only be gathered in Georgia. Consequently the evidence was found in full compliance with the law and the evidence should not be considered inadmissible.

Ruling: The judge granted the motion, explaining that Zurab Adeishvili's interview was conducted in violation of the Criminal Courts Procedural Code.

⁸ The law on Operational Investigative Activities, Article 6. Part 4

⁹ See. <http://www.kvirispalitra.ge/politic/20939-zurab-adeishvili-qgadavtsyvite-qnacmodzraobisq-dasafinanseblad-qthbilisis-ganvitharebis-fondisq-fuli-gamomeyenebinaq-eqskluzivi.html?lang=ka-GE&add=1>

Note: According to the description of the proceedings Zurab Adeishvili admitted committing criminal acts. Zurab Adeishvili during the interview stated that he committed a crime and not the accused.

2. The prosecutor motioned to recuse two of the defense attorneys, Giorgi Kondakhishvili and Elene Laqariashvili. The prosecutor cited the fact that the lawyers during the investigation period served the accused and also the prosecution's witnesses which should be considered a conflict of interest.

The position of the defense: The defense did not agree with the prosecution's arguments.

Ruling: The judge did not grant this motion stating that this did not represent a conflict of interest.

5.2. Witness Testimony

Questioning of the witnesses has not yet begun.

6. Verdict:

A verdict has not yet been given as the trial is still being considered on its merits.

7. Our Observations

The principle of equality of sides was observed during the trial process, although there were certain incidents which could be appraised as violations of the principle of equality. In this vein, the issue of Gigi Ugulava being removed from office is an important issue, which occurred at a session where he was not present. It is true that the decision and examination of analogous motions can be made without the participation of the office holder. Despite this, it must be noted that the trial was of significant public interest as the trial is in connection to the directly elected Mayor of Tbilisi. It would have been better if the motion on the removal of Ugulava from his office had been examined in his presence and the defense should have been able to present its own arguments.

A witness who appeared in the present trial also testified against Ivane Merabishvili and Davit Chaiberashvili in their trial which was examined in Kutaisi City Court. Unfortunately, similar situations have been found in a number of trials. It is natural that legislation does not prohibit one witness from being used in a number of cases, although this approach places doubt on the credibility of the witness and may suggest a bias on the part of the prosecutor.

The presentation of Gigi Ugulava's telephone conversation with his underage child, and similar actions do not meet moral standards and the prosecutor's actions should be seen as unjust. It was clearly evident that the conversation did not contain information related to criminal actions. The noted fact clearly indicates a problem in the country with the protection of personal information. This and other similar instances clearly demonstrate that personal information is not well protected in the country, because the organs which are obliged to ensure the protection of personal information do not avoid their release. Making personal information public as described above is in violation of moral standards.

Gigi Ugulava made a statement at one of the trials concerning the judge being under pressure. In this circumstance it is absolutely necessary that the corresponding organs (Investigative Organs and The High Council of Justice) show interest and find out the veracity of the claims in a timely manner. Unfortunately, not a single competent authority has acted on this event.

Nikanor Melia, Zurab Adeishvili, Cezar Chocheli and others (The Fraudulent Bankruptcy of Kartu Bank)

1. The accused and the charges brought:

1. Nikolai Melia, former Head of the National Bureau of Enforcement- Abuse of authority, Falsely concealing a property transaction in relation to fiscal liability organized by a group
3. Zurab Adeishvili, Former Minister of Justice- Organizing Abuse of authority, Going against the public interest for his own and other's personal benefit at substantial damage to physical and legal persons' rights, society and the state's legal interests, committing acts of violence, and violation and offense of personal dignity.
4. Cezar Chocheli, Governor of Mtskheta-Mtianeti- Forging official documents, Falsely concealing a property transaction in relation to fiscal liability organized by a group

Also accused in the trial are the following: Jambul Ebanoidze, Davit Giorgadze, Grigol Morchiladze, Gocha Tskhenosanidze, Nugzae Sajaia, Davit Kodua, Vasil Chigogidze, LEvan Sakverlidze, Ilia Antadze, Laura Ghachava, Nika Kubaneishvili, and Irakli Taktakishvili.

2. Description of the offense

According to the accusations of the prosecution, the accused took actions near the end of 2011 and the beginning of 2012 against Kartu Bank. Specifically, the accused contacted the management of organizations which had loan agreements with Kartu, and forced them to insert false information into the organizations' declarations, so as to create significant liabilities owed to the government. After the insertion of false information into the declarations, the managements of the organizations were forced to acknowledge the significant liabilities to government before a court and as a result the liquidation of those organizations real estate was initiated. This occurred through a fictive internet based auction where the criminal group set up a legal entity before the auction with which to participate in the auction. After winning the auctions, the group refused to pay the money bid during the auction. As a result, the property was transferred to the government's balance sheet. The real estate was placed on the government balance sheets at a price significantly lower than its market value, and the properties were purchased from the government by the previously mentioned legal entity. At the same time, the indebted organizations decided to default on loans, and the bank was no longer able to attempt to liquidate the properties which had been used as security on the loans as they were no longer possessed by the indebted organizations. The scheme consisted of a number of stages and its final goal was the bankruptcy of Bidzina Ivanishvili's Kartu Bank.

According to the legislation of the period in question, in instances wherein tax liabilities were discovered, the government was able to put the organization's real estate up for auction whether or not the real estate was being used as a security on a loan. According to the allegations of the prosecution, former high level officials changed legislation in parliament especially for this purpose.

3. Significant facts and circumstances

None of the defendants pleaded guilty besides Jabmul Ebanoidze and Nika Kubaneishvili, who stated that their confession was voluntary, and given without compulsion, threat of violence, violence, promise, or any other illegal activity.

It must be noted that in the trial, one of the accused, Nikanor Melia (United National Movement's Tbilisi Mayoral Candidate) is also a defendant in another trial where he has been charged with disorderly conduct. The accusations are in relation to the events which occurred on the 12th of May, 2013 involving a fight in the restaurant Latrufe.

During the opening address, the defendants' lead attorney argued that they were in reality not criminals but in fact were victims as they had been placed under significant pressure. According to their statement, they were not acting of their own volition. According to two of the defense attorney's statements, the fact that these persons were being guarded confirms the fact that they had been under pressure during the period when both persons were arrested.

4. Pre-trial Measures

The prosecutor raised the motion to have Zurab Adeishvili imprisoned as a preventative measure, while Jambul Ebanoidze, Roman Chkenkeli, Mamuka Lashkia, Otari Agladze, and Nikanor Melia were to be given bail.

The court ruled that Jambul Ebanoidze's bail would be set at 30,000 GEL, Roman Chkenkeli's at 15,000 GEL, Mamuka Lashkia and Otari Agladze at 8,000 GEL, while Nikanor Melia's bail was set at 25,000 GEL.

5. Trial Proceedings

5.1. Motions

A. Motions of the Defense:

1. The defense filed a motion for recusal of the prosecutor. As a basis for the motion he indicated that in the current circumstances, that as Zurab Adeishvili was a member of the government, due to his position, only the head prosecutor had the right to start a prosecution against him (According to current legislation, the Minister of Justice). According to the defense's statement, if the prosecutor did not have the right delegated to him from the main prosecutor to implement the prosecution of a criminal case and he did not possess the corresponding document, then this represented a basis for the recusal of the prosecutor.

The Prosecution's Position: In connection with the above noted, the prosecutor stated that for this period, when the criminal prosecution of Adeishvili had started, he was no longer an office holder and consequently it was not necessary for criminal proceedings to be started by the head prosecutor.

Ruling: The judge did not grant the motion, explaining that the motion was without basis.

B. Motions of the Prosecution:

The prosecutor motioned for Nika Kubaneishvili, one of the defendants in the case, to be tried separately and for another judge from the Criminal Court College to be assigned to his trial. In regards to the basis for this request, the prosecutor stated that a procedural agreement had been reached with the accused and both sides agreed to settle the case without a discussion of merits.

Ruling: After listening to the position of the Kubaneishvili, his defense attorneys, and the positions of the other accused, the judge granted the above noted motion.

5.2. Witness Testimony

A. The Prosecution's Witnesses:

They mainly questioned the directors of organizations and persons connected to them which were involved in the scheme to bankrupt Kartu Bank. One of the directors recalled during questioning the circumstances surrounding a loan from Kartu Bank. The director had given his own apartment as security on the loan. The witness reported that the Income Authority contacted him, and immediately demanded a list of property which was being used as security as well as the company's accountant's password so that they would be able to insert false information into the companies old declarations in such a way as to make it appear that the company was liable for payments to the government. The debts were supposed to be hidden in the agreements which concerned the value of the property being used as security, and the debt agreements containing false information had to be presented as having occurred before the agreements with Cartu Bank were formed. According to the plan, property was to be transferred to the government, but it was to be transferred through the use of a trustee. Later this property was put in the name of his wife and brother in law. The organization's director's relatives and wife were also questioned.

B. The Defense's Witnesses

The defense's turn to call witnesses has not yet begun. Currently, the prosecution is still calling witnesses.

6. Verdict:

The ruling has not been delivered. The case is being considered on merits, and witnesses are being questioned.

7. Our Observations:

The trial has given equal opportunities to both sides. At this stage there have not been any significant violations which have violated the principle of equality.

8. Another important case against the accused, Cesar Chocheli.:

A. Brief Description of the Case

Besides the above noted case, another case is ongoing against Cezar Chocheli. The Prosecutor of Georgia has arraigned Mr. Chocheli for fraud and money laundering. Transparency International – Georgia only

observed several stages of the trial, although due to the significant public interest present in the trial, the organization studied a portion of the case's materials.

B. The Prosecutor's Accusations

Cezar Chocheli's was arraigned on charges in two episodes:

- The former deputy minister of the Ministry of Economics and Sustainable Development, with the help of Davit Giorgadze's deceptions, masterminded the defrauding of the government of property associated with "Rkinabetoni Spalis Karkhana" LTD. According to the prosecutor, the deputy minister artificially decreased the market price of Rkinabetoni Spalis Karkhana LTD so that Cezar Chocheli was able to give his brother's company (Iago Chocheli) Miqsers LTD the means to purchase the factory at a price lower than market value.
- On September 21st, 2010, Miqser LTD acquired Rkinabetoni Spalis Karkhana LTD's assets at auction for the price of 6,850,000 USD. At the auction, the company acquired a factory which was appraised at 6,700,000 USD. The prosecution's position is that the deputy minister and Cezar Chocheli carried out a plan in which during the period in which the final conclusions regarding the appraisal of the property value were being made, a number of circumstances were not considered during the appraisal which would have increased the value of the factory, resulting in the government receiving less than the market value for its property. According to the prosecutor, as a result of the events described above, the state budget was deprived of 19,696,764.33 GEL.
- Cezar Chocheli has also been arraigned on charges of using the profits of Rkinabetoni Shpali Karkhana LTD for the investment in and development of his family members' property. However, according to the prosecutor, the factory, in different periods, was helped by Georgian Beer Company (The brewer of Zedazeni), Miqsors LTD, Barambo LTD, and Berta LTD. As a result, in the opinion of the prosecutor, Cezar Chocheli laundered a total of 49,931,429 GEL.

C. Our Assessment

Today, all of the assets associated with Cezar Chocheli's companies are frozen. According to the prosecutor's allegations Cezar Chocheli has disposed of profits received from the Rkini Betoni Shpali factory in order to legalize the money thus, the prosecutor has accused Chocheli of money laundering.

We consider that the documentation presented in the charges and the circumstances surrounding the case insufficient to confirm the accusation of money laundering. Specifically, the first section of the 194th article of the Georgian Criminal Code describes the legalization of illicitly earned incomes. According to the law, it is illegal to conceal and/or attempt to give legal cover for property which is of illicit origins. The second section of the same article defines the meaning of illegal property. According to this article, income generated from illegal property is also defined as illicit property including the property and/or stocks (shares) which a person, his family members, close relatives or an associated person, has gained through violation of the law. In the accusation against Cezar Chocheli, the dividends received from the factory were reinvested in his other companies, which in the opinion of the prosecutor, represents an illegal source of money. It is unclear why the prosecutor considers the use of dividends illegal. The owner has the full right to take money earned from one company and to use it as an investment in another company. The noted process cannot be money laundering because the Georgian Criminal Code, article 194, notes that in order for an action to be money laundering, it is necessary that it be done for the reason of hiding illegal income. The investment of dividends however does not qualify under this definition.

It is unclear what motivation, which facts and what risks conditioned the court to make the decision to freeze the activities of all of Cezar Chocheli's companies.

Article 151, section 1 of the Georgian Criminal Court's Procedural Code, defines the basis for sequestration of property. According to this article, in instances wherein facts or data suggesting that individuals are trying to hide expenditures, property, and/or that a property was illicitly acquired, the court may make a motion for the sequestration of the property of the accused or persons close to the accused (Bank accounts are among properties which may be sequestered). Sequestration's can include the confiscation of property to ensure that it is not removed. In instances, when someone is accused of money laundering, additional documentation and factual circumstances are required. It is unclear what made it necessary in the ongoing trial for the courts to stop a number of companies' production at the same time. As a result, production at a number of companies was hampered, and consequently there exists a risk of significant damages being incurred.

The decision taken by the court is not appropriately substantiated. Consequently it is possible to say that the court is using disproportionate measures (sequestration) against the defendant. In these circumstances it is important that the case is objective, and in connection to the trial's proceedings the encroachment of legitimate interests should not occur. The use of such disproportionate measures is a mistake which hampers the accused's business units.

Megis Kardava (*Sergo Tetradze and other episodes of torture against other individuals*)

1. The accused and the charges brought:

Megis Kardava- The illegal deprivation of liberty, Abuse of authority, Kidnapping, Aggravated Torture

Rati Mgeladze, Zviad Kapanadze, Mamuka Tsurtsunia, Sergo Bitsadze, Alexandre Juchuashvili, Tornike Gunava, Merab Metreveli, Giorgi Samushia, Victor Kacheishvili, Oleg Fatsatsia, Alexandre Mukhadze, Kotkhata Kodua- Committing Violent Actions of a Sexual Nature

2. Description of the Offense:

The accused committed violent actions including torture, violent actions of a sexual nature and other forms of violence against S. Ch, S T, G.Ch, D.L, and G.G to extort confessions of espionage.

3. Significant Circumstances and Facts

After the 2012 elections, the investigation into S.T.'s death was re-opened. Within the framework and for the purposes of the investigation, medical experts exhumed the deceased. Examination revealed injuries to the body. The injuries were not mentioned by the first experts who had conducted an examination of the body a number of days after S.T.'s death.

At the session, due to a statement, the court fined a defense attorney 200GEL.

On the 23rd of July, the situation at the trial became tense, because a dispute occurred between the family members of the deceased and Aleksandre Mukhaidze's mother. In the end, the Judge Besik Bugianishvili, Tetradze's lawyer, Magda Kotrikadze and Mukhadze's mother were expelled from the court room.

S.T. passed away five days after being detained in Gldani Prison #8 on September 23, 2011. According to the then official version, the deceased died due to a heart attack. In September of 2012, Vladimer Bedukadze, the acting prison inspector announced that Tetradze was tortured to death in Gldani Prison #8.

4. Pre-trial Measures:

The prosecutor's motion: The prosecution requested imprisonment as a preventative measure, considering that due to the weight of the crimes, it is possible that influence could be exerted over witnesses and one of the defendants, Megis Kardava, was at risk of going into hiding.

The position of the defense: The defense did not agree with the prosecution's request and indicated that no direct evidence of the crimes existed (The non-existence of expert conclusions).

Ruling: The judge examined the issue, with consideration to the existing situation and the fact that Megis Kardava had been in hiding. As a result the court granted the prosecution's motion.

5. The trial process:

5.1. Motions

A. The prosecution's motions

1. The prosecution motioned to remove 5 of its own witnesses from the trial. The prosecution stated that a sufficient number of witnesses had been questioned since the start of the trial and that the remaining 5 witnesses would not be able to provide additional information.

The position of the defense: The defense was against the removal of one of the witnesses.

Ruling: The prosecution's motion was granted. The judged explained to the defense attorney that the witnesses were called as witnesses of the prosecution and consequently the prosecutor had the full right to clarify their own list of witnesses.

2. The prosecution requested that five witnesses' testimony be deposited into the record. According to the prosecutor, the five witnesses which were questioned in full compliance with the law have left Georgia. The prosecutor stated that they had exhausted all possible attempts to summon the witnesses to the trial.

Ruling: The court granted the motion.

B. The defense's motions:

At the sessions observed by us, the defense did not raise any motions.

5.2. Witness Testimony

In connection to the victim, S.Ch.

According to the prosecution and S.Ch.'s testimony, the victim, S.Ch, was accused of espionage, which as a result led to the search of his home wherein a red memory card was claimed to have been found, which in reality he did not own. The victim during the search still signed the record of the search, because he thought the object was his grandchild's. S.Ch. was transferred to a location, according to him, which turned out to be Bacho Akhalaia's office. In order to be allowed to leave, he was required to admit to espionage and in order to force him to give testimony the victim was physically assaulted. According to S.Ch., after refusing to admit to espionage, he was threatened by statements that acts of violence would be committed against his family members. According to the victim, Megis Qardava, in his presence, gave the order to detain his family members. In order to protect his family members, the victim, S.Ch decided to admit to being a spy. As a result they detained him on espionage charges.

In connection to the victim, D.L.

According to the prosecutor's allegations, in order to have D.L. admit to espionage, in the Defense Ministry building, Megis Kaddava and others committed acts of physical violence against D.L. D.L was afterwards coerced into admitting the crime through the threat of sexual violence. D.L. stated that at the time, the Akhalaia brothers were present in the room.

After this, the accused accepted an agreement about the admission of criminal wrong-doing. They then started to discuss how they would stage the crime. The scenario was as follows: D.L. would meet a so-called Russian agent. D. L. would have a camera and listening devices attached to his clothing. D.L. also wrote a script about money. He had to follow the script when speaking with the so-called Russian agent. D.L. was also to transfer the memory card to the so-called agent, which would then have to be returned by the agent to D.L.

In connection to G.G:

Members of the security service searched G.G.'s apartment. G.G. denied being present to witness the search. As a result of the search a memory card was found. The victim was taken to the Ministry of Defense, where he was brutally beaten for the entire day. He was tortured with a so-called stick with spikes. The victim remembers "I begged that they didn't hit me on the back, because I had recently had an operation on a disc. When they found this out they kicked me in the back. Afterwards, Kardava put a bag on my head. He had scissors in his hand and was asking me which of my fingers he should cut off?!" G.G. attempted to commit suicide, by trying to drive the steel from his glasses into his throat. The victim stated that Megis Qardava was there. According to G.G., a protocol was later written up, where they wrote that two days before being detained he fell down from an attic and received injuries to the body from this event, although according to the experts who conducted the examination, the injuries which were found on G.G.'s body were impossible to receive from falling from an attic a single time.

In connection to the victim, G.Ch.:

The accused illegally deprived G.Ch. of his liberty in Zugdidi. According to the victim's statement the accused forced him to admit to committing espionage. The victim, G.Ch. did not admit to espionage, after which he was taken to Tbilisi. Gunava Tsurtsunia and others tied G.Ch. to a bed, beat him several times a day, and threatened him with torture as well as rape. They demanded that he admit to espionage and eavesdropping. G.Ch. was not fed or given basic means of hygiene among other deprivations.

According to the victim, he could not bear his circumstances and attempted to commit suicide. Specifically, at one moment, he managed to free himself from his shackles and jumped from the window. The victim G.Ch. was taken to the hospital, where the abuse continued. He stated that he was not allowed to sleep, receive food, or satisfy basic bodily functions. At the trial, a witness was questioned who worked at the military hospital and confirmed that the patient was shackled to the bed and supervised via extraordinary means. They were warned not to ask too many questions in connection to the patient.

The witnesses confirmed that the patient was brought to the Gori Hospital. They said that they were told that the patient was Kardava's relative and that they should take proper care of him. The witnesses stated that a stranger was sitting in a chair and the patient's hands were attached to the bed. A witness remembers that when he asked who it was, they told him that he was brought here on Kardava's orders and they ordered us not to be in contact with him.

One of the witnesses says that Kardava was there in the room with G.Ch. wherein G.Ch. and Kardava had a conversation for a minute to a minute and a half. After Megi Kardava left G.Ch., he ordered that no one should speak with G.Ch., and that he should only be allowed water, food, and use of the toilet. Gunava and Tsurtsunia went into the hospital and they took him away from the hospital. En route he was chained up and they headed in the direction of Atries. While en route they again demanded that he admit to espionage. G. Ch. remembers that later they brought him to the Kutaisi military hospital. Before arriving they put

something in a plastic bag in his pocket. After conducting a search, they discovered narcotics, for which he was given a seven month prison sentence.

In connection to the victim S.T.

On September 17th, 2011 S.T.'s apartment was searched without a search warrant or witnesses. S.T.'s spouse noted that as a result of the search the security officers found nothing. They took S.T.'s passport and mobile telephone. These items were placed on a table. Together with them on the table was a red memory card, which M.T. (the victim's wife) stated did not belong to any of the family members. In order to question S.T., representatives of the security forces detained S.T. In several hours, a group of twenty men searched the basement of the home again for a period of two hours. According to the witness, that same day, a person came to their home and asked them to sign a record of the search. S.T. signed the record. M.T. was told by this person that her spouse was being interrogated. The witness stated that her lawyer was only able to find out the next day where S.T. was located, which was in pre-arrest isolation where acts of physical violence were committed against the victim. On the evening of September 19, 2011 at 19:00, S.T.'s court hearing was held where he was arraigned on charges of espionage. M.T. was not allowed at the hearing, but saw that her husband was having difficulty moving. M.T. never saw her spouse again. On the 24th of September, S.T.'s family was informed that S.T. had passed away and that the deceased should be laid to rest. According to the witness, when her husband was taken to the house, he was not dressed in his own clothes, bore marks of torture and on his face, make up had been applied.

One of the witnesses who was a prison employee recalled a white-haired man's torture and death which occurred in September of 2011 on the prison facilities.

The witness also remembered seeing him in the cell and how they removed S.T. from the cell and afterwards he heard the man's screams. The witness also noted that on the 23rd of September, he noticed that they removed S.T. from his cell, dead.

One of the prison employees was questioned on his signature on the record in connection to S.T.'s death. According to the witness, in reality, he knew nothing about the incident, as he had not actually prepared the record, but had only signed his name. When asked how he knew that S.T. had been transferred to the hospital, he responded that Bedukadze transferred him according on the order of the director. S.T. was taken from the prison with the director's car. A witness who was a prison employee also remembered that one month of video recordings had been erased from the server.

The doctor's evidence was published which declared that the patient was in a coma and his pulse could not be felt.

6. Verdict:

Megi Kardava was found not guilty on the charges in the case of the torture of S.Ch., the charges of organizing acts of sexual violence and torture in S.T.'s case. Kardava was also found not guilty of the offense of dignity and coercion, the offense of dignity and the use of violence committed in the process of depriving one of liberty (In connection to G.Ch.).

The accusation against Kardava, the abuse of office using violence was reclassified to the abuse of authority.

Megis Kardava was **found guilty** in the episodes of torture of D.L. and G.G., in the case of the illegal deprivation of liberty of G.Ch., as well as on the charge of abuse of authority. Megis Kardava was sentenced to a total of nine years in prison. He was also banned from holding public office for a period of three years.

According to the ruling, Rati Mgeladze, Merab Metreveli, Alexandre Kuchuashvili, Mamuka Tsurtsunia, and Giorgi Samushia were acquitted of all charges.

The accused, Zviad Kapanadze, Sergo Bitsadze, Alexandre Mukhadze, Oleg Fatsatsia, and Victor Kacheishvili **were found guilty by the court on all charges**. Zviad Kapanadze and Sergo Bitsadze were sentenced to one year and six months in prison, while Alexandre Mukhadze, Oleg Fatsatsia and Victor Kacheishvili were sentenced to nine years in prison and were banned from holding public office for a period of three years.

As it relates to Tornike Gunava and Kokhta Kodua, they **were found not guilty** in the cases of G.Ch. involving humiliation, coercion, inhumane and degrading treatment, and in illegal deprivation of liberty.

On the charge of the abuse of authority involving violence, Tornike Gunava, and Kotkha Kodua were found guilty of the abuse of office and the illegal deprivation of liberty and **they were sentenced to prison for a period of six years**.

7. **Our observations:**

During the examination of the case it was unclear whether communication between witnesses was avoided. A number of the witnesses summoned at the trial were waiting together in the corridor and it is possible that they communicated with one another.

There were also tensions between those present at the trial which were resolved by the court.

Transparency International- Georgia monitors did not observe any other significant violation which would have an influence on the equality of sides or the violation of rights.

1. The Accused and the charges brought:

Nika Gvaramia- Former Minister of Justice, Former Minister of Education, General Director of the Television Company, Rustavi 2- Participating in bribery, Preparation and Use of Forged documents for tax evasion, and the use of forged money together with a group.

In the trial the following individuals were also defendants: Aleksandre Khetaguri, Kakhaber Damenia, Devi Kandelaki, Ashot Manukiani, Izabella Gutidze, Giorgi Nemsitsveridze

2. Description of the offense:

The Prosecutor's Office alleges that the defendants were a part of a corruption scheme. Negotiations were underway with the Minister of Energy so that "Inter Rao", the parent company of "Khramhesi 1", "Khramhesi2", "Mtkvari Energetics" and "Telasi" would evade tax inspection.

According to the Investigative Office of the Ministry of Finance, in order for the above-mentioned companies to evade tax inspection, Devi Kandelaki offered a bribe to Aleksandre Khetaguri in the amount of 1,000,000 USD, to which the former Minister of Energy consented. Furthermore, according to the indictment, Nika Gvaramia was personally involved in the organization of these negotiations. In particular, the prosecution alleges that Nika Gvaramia has disclosed to Devi Kandelaki the criminal scheme designed for covering up the transfer of 1,000,000 USD. At the instruction of Nika Gvaramia, Giorgi Nemsitsveridze fictitiously set up "L&F Service" LTD, which, as alleged by the prosecution, pursued fake consulting activities. "L&F Service" LTD was registered on 26 July, 2012. Afterwards, money was transferred from the accounts of "Khramhesi 1", "Khramhesi 2", "Telasi" and "Mtkvari Energetics" to the account of "L&F Service" to compensate for the fictitious consultation services rendered by "L&F Service" LLC to these companies. A total of 950,000 USD was transferred to "L&F Service".

3. Significant Facts and Circumstances

At one of the hearings the prosecutor did not appear, and a statement was presented, in which the prosecutor stated that he was on an official trip in Batumi, and consequently requested that the hearing be postponed. According to the accused, Nika Gvaramia, this was in order to delay the trial so that the sentence would not be delivered while Mikheil Saakashvili was still president so that it would not be possible for him to be given a pardon. Nika Gvaramia was against the postponement, because he stated that no documentation was attached which confirmed the assignment of the trip to Batumi. Despite this, the judge granted the prosecution's motion and the hearing was postponed.

4. Pre-trial Measures

The Prosecutor's Office requested the application of detention as a preventive measure towards the defendants. A bail in the amount of 50 000 GEL as a preventive measure was applied to I.Gutidze.

Position of the defense: The defense objected to the prosecution's motion, claiming that the application of detention as a preventive measure was not necessary.

Ruling: The court has examined the issue and in light of case circumstances has applied bail as a preventive measure in the amount of 30,000 GEL for Nika Gvaramia, Aleksandre Khetaguri, Kakhaber Damenia and Devi Kandelaki, while bail was set at 15,000 GEL for Ashot Manukian, Izabela Gutidze and Giorgi Nemsitsveridze. The prosecution's motion on the application of detention towards the defendants was not granted.

5. The Trial Process:

5.1. Motions

The prosecution presented a motion to postpone a hearing, because the prosecutor was on an official trip in Batumi.

The position of the Defense: The defense considered the motion an attempt to delay the trial in order for the verdict to be given after the presidential term of Mikheil Saakashvili had ended, so that he would not have the means to give Nika Gvaramia a pardon.

Ruling: The prosecution's motion was granted.

5.2 Witness Testimony

Witness testimony was discussed in the previous report.¹⁰

Employees of the Income Service were questioned as witnesses. This confirmed that an audit of Khrami1, Khrami2, Telasi and Mtkvari Energetika was started in September of 2012. At a later date, at Alexandre Khetaguri's order, the audit process was stopped.

An expert was also questioned as a witness regarding his analysis of a document's signature.

6. Verdict:

The court delivered the verdict, and found all defendants innocent on all charges.

7. Our observations:

At the trial, Transparency International's monitoring did not find any violations. During the entire trial, equality of sides was protected.

¹⁰ See.

http://transparency.ge/sites/default/files/post_attachments/gaxmaurebuli%20sisxli%20samartlis%20saqmeebis%20samartlo%20monitoringis%20shualeduri%20angarishi,%20agvisto%202013_1.pdf

Davit (Data) Akhalaia (The case regarding the assault of police)

1. The accused and the charges brought:

Data Akhalaia- The former director of the Ministry of Interior's Constitutional Security Department
Ioseb Tofuridze- Data Akhalaia's deputy- Abuse of office and illegal deprivation of freedom.

Geronti Alania- Former head of the Constitutional Security Department's First Management Division

Oleg Melnikovi- An employee of the Ministry of Internal Affairs Constitutional Security Department

2. Description of the offense:

The prosecutor alleged that on the 5th of January, 2005 Data Akhalaia, summoned an employee of one of the divisions of police and his colleague to a module building, where one of them was beaten by Akhalaia, his deputy, Tofuridze, and an employee of the Constitutional Security Department, while Data Akhalaia instructed that the second person be beaten by other Constitutional Security Department employees. The reason given for these actions was that the officers had supposedly insulted Ivane Merabishvili's wife several days earlier in a restaurant. Merabishvili was Minister of Internal Affairs at the time. According to the prosecutor, the victims were also illegally deprived of their liberty.

3. Significant Circumstances and Facts

Data Akhalaia's lawyer and the prosecutor were involved in a physical confrontation in the prosecutor's building. In connection to these events, Romeo Sajaia, the defense attorney, made a public statement, calling for an investigation from the Prosecutors' and Defense Lawyer's Association.¹¹ The prosecutor also announced¹² an investigation into the incidents.

Notably, Geronti Alania is a defendant in the case. Alania is one of the four Constitutional Security Department employees convicted in the Girgvliani case, who was later pardoned in 2009.

At one of the hearings Melnikovi stated that in Ukraine, the security services were exerting pressure on him. They showed him a picture with his wife and children while they were leaving and it was clear that these actions were taken in connection to the trial. Also, pressure was being exerted by unknown persons on his mother, who was warned that if Melnikvi Chvianurai did not behave, he would receive a large punishment. The judge explained that he could go to the security services and make a statement requesting the opening of an investigation into the circumstances, but that there was nothing the court could do.

The defense tried a number of times to dispute acceptance of the orders regarding appointment by the prosecution. The defense attorney indicated that the events in question occurred on January 5th, 2005. Melnikov and Akhalaia were nominated as official on the 12th of January 2005. Consequently they could not be considered as officials on the 5th of January and could not be charged with crimes committed by officials. The prosecution stated that the orders occurred earlier, and consequently it came into force afterwards, but when they started to be authorities, or in other words from the 3rd of January, 2005 they could be

¹¹ See. <http://1tv.ge/news-view/61434>

¹² See. http://pog.gov.ge/geo/news?info_id=341

considered officials. The prosecution also stated that the orders were distributed late which caused the consolidation of the Security and Interior Ministries.

The court held 20 hearings. The prosecution questioned 12 witnesses and the defense questioned six.

4. Pre-trial Measures:

The prosecutor requested the detention of the accused as a preventative measure.

Ruling: Preventative measures were not possible as none of the accused were present in Georgia. The preventative measure which will be applied if they return will be imprisonment.

5. The Trial Process:

5.1. Motions

A. Motions of the Prosecution:

Our monitors did not observe any motions raised by the prosecution at the sessions they attended.

B. Motions of the Defense:

1. The defense requested the judge, Ketevan Jachvadze's recusal, arguing that he was biased based on the fact that he supported the prosecution's position despite its weak substantiation. The defense argued this was a barrier to their rights and that the defense doubted the judge's qualifications. They indicated that they wanted a judge with the appropriate knowledge and experience to examine the case.

Ruling: The judge did not grant the defense's motion. Ketevan Jachvadze considered the defense's statements disrespectful of the court and fined them 500GEL.

2. The defense raised a number of motions to change the preventative measures. The defense stated that in regard to Melnikov that he himself agreed to extradition to Georgia once again demonstrating his will to cooperate with the courts.

The position of the prosecutor: The prosecution alleged that the imprisonment should be extended because he had not made any agreement to extradition. He was arrested in Ukraine by security services and forced to come back to Georgia by extradition. Furthermore, Melnikov had attempted to gain refugee status in Ukraine a number of months earlier. This fact indicates that Melnikov was trying to evade Georgian justice bodies.

Ruling: The judge did not satisfy the motion. She considered the defense's argumentation inappropriate. She also indicated that there was also the risk of the individual's flight.

3. The defense requested the recusal of the prosecutor, Levan Bachiashvili. The defense stated that the prosecutor could not be unbiased because he himself as a prosecutor was connected to violence when in the prosecutor's office, he physically assaulted Data Akhalaia's attorney.¹³

"I am like Data Akhalaia, also like Bacho Akhalaia's lawyer. Levan has a personal interest and this is conflict, therefore he will not be able to be objective."

The position of the prosecutor: The prosecution stated that the motion was baseless and should not be granted. He stated that there is no conflict of interest in relation to the trial.

Ruling: The court did not grant the motion due to a lack of substantiation.

4. One of the accused, Geronti Alania's lawyer, motioned to have the right in court for the concluding arguments at the trial to be included electronically.¹⁴

The position of the prosecution: The prosecution was against the motion indicating that legislation did not grant analogous actions to be taken.

Ruling: The court did not grant the defense's motion.

5.2. Witness Testimony

The prosecution's witnesses:

The victim Z.M. reported that the day when acts of physical violence were committed against him, he was taken to a module building, and severely beaten. M.A. (The other victim in the case), who was mistaken for another, and therefore was beaten, for offending Ivane Merabishvili's wife.

The victim stated that they took him to an office where Data Akhalaia was. Data Akhalaia ordered that he be transferred to another room. He denied speaking offensively about Ivane Merabishvili's wife, which as a result, had led him to be severely beaten. They also threatened him with drug charges. They coerced a specific person to give up their hand and write everything in a letter. Malnikov requested him to admit to the same experience. Later this victim was released from the building although he left his gun and identification.

One of the witnesses remembered that M.A. was told that he had been summoned to the module building, confirming that Z.M. had been summoned to the module building, which had been discussed on the phone. Later, M.A., who was severely beaten by MZ, found out by phone that he intended to go to the module building.

The victim D.Ka was also questioned. He denied speaking offensively about Merabishvili's wife and reported that he was also summoned to the Module building. Shortly after S.T went there, Data Akhalaia entered the room where Alania was present and asked questions about the event at the restaurant. They told D.K that they intended to plant drugs on him. The victim begged them to call Z.M. He however called his boss directly, to ask what time they were "taking drugs". A person was questioned as a witness who

¹³ See. <http://www.tabula.ge/ge/story/78903-prokurorma-da-axalaia-advokatma-ertmanets-fizikuri-sheuracxkofa-miakenes>

¹⁴ The Code of Criminal Procedure, articles 253 and 38.

spoke on the telephone and during the questioning confirmed that Melnikov said that he saw them kill a person while beating them. In the end, the accused decided to release them unarmed because D.K. was the then Justice Minister Zurab Adeishvili's deputy, David Chkhatarashvili's best man.

Ivane Merabishvili's spouse, Tamar Salakaia was questioned, and could not remember whether or not she was in the restaurant "Dvel Sakhli" on the 2nd of January. She did not remember a conflict either.

The Defense's Witnesses:

The defense's witnesses generally spoke about the orders for the accused's appointments as legal and about the time at which they went into force. One of the witnesses which worked in the administrative courts said that a person's appointment occurs through an individual judicial act and that the act came into effect on the 14th of January, 2005, and consequently the individuals would be officials from that date and not from the third of January, 2005 when the individuals began fulfilling the duties of office.

Levan Kardava (Megis Kardava's brother) was also questioned, and stated that he had not heard about the actions of appointment on the 5th of January, 2005. In his testimony he states that the accused was nominated at the end of January. The defense called another witness who gave nearly identical testimony.

6.Verdict:

The court found Davit Akhalaia not guilty on the charges of committing acts of violence against the life and health of individuals as part of a group as well as on charges of illegal deprivation of liberty. The accused, Davit Akhalaia, Ioseb Toporidze, Geronti Alania, and Oleg Melnikov were found guilty of abuse of authority. In line with the amnesty, the court sentenced the defendants to three years and nine months imprisonment and a one year and six month ban on holding public office.

7.Our Observations:

Not a single procedural violation was noticed during monitoring, nor was there any situation which warrants special attention.

Bacho Akhalaia (*The So-Called Prison Riot Case*)

1. The accused and the charges brought:

Bacho Akhalaia – the former Minister of Defense of Georgia, Minister of Internal Affairs, and the Head of the Penitentiary Department- Abuse of Authority involving violence and offense of human dignity.

Megis Kardava- former Head of the Military Police Department of the Ministry of Defense of Georgia;

Revaz Charbadze- Former Minister of Defense and former head of the procurement department.

Davit Chakua- Former Minister of Corrections, Probation, and Legal Aide. Former Chairman of the department of corrections.

2. Description of the Offense:

According to the indictment, Bacho Akhalaia designed a plan, according to which the general public should have been under the impression that the inmates of Institutions N1 and N5 of the Penitentiary Department and the medical institutions of convicts and inmates had planned the riot. **This plan aimed at refuting the released information about the torture of inmates and the cruel treatment towards them by Bacho Akhalaia.** Later it turned out that the accomplices of the plan P.M., Z.V., G.A. and L.TS. did not fulfilled actions foreseen in the plan, for which the defendants assaulted them physically and verbally. Degrading treatment was carried out in front of other people present in the penitentiary institution, which, according to the indictment, resulted in the commotion in the medical, N1 and N5 Institutions, which finally developed into the riot.

3. Significant Circumstances and Facts

At one of the hearings, the prosecutor requested a one month postponement on the trial because they had a significant number of cases and they could not finish studying case materials thoroughly. The court did not satisfy this motion. As a result the prosecutor did not appear at the next hearing. According to the prosecution's official statement, the prosecutor's absence was caused by health problems. However, the same day, information was revealed that the prosecutor was found in the streets and his health problems were not evident. The court fined the prosecutor, Revaz Nadoi 300 GEL.

Later, a hearing was postponed as the prosecutor had recused himself. The prosecutor stated that he could not be objective, because his wife and Bacho Akhalaia were both from Abkhazia. Consequently, they had mutual friends. According to the prosecutor, this fact affected his objectivity.

The prosecutor's attempted to delay the trial so that closing arguments would not take place on September 10th, 2013. Closing arguments originally scheduled for September 10th were given on October 17th and the decision in the case was not made public until October 28th of 2013.

Similar developments give reason to doubt that the prosecutor's motivations for delaying the trial were due to the circumstances surrounding the case, but rather imply that they were attempting to delay the trial. A number of times the prosecutor's requests to postpone the trial were granted and this seriously disturbed the timely resolution of the trial.

Bacho Akhalaia was charged in three cases before the criminal courts. The judges nominated to the cases were transferred to the Tbilisi Court on the same day from three different courts. This coincidence raises questions and doubt about the objectivity of the trial and does not meet the appropriate standards of transparency and indicates deficits in the rules regarding transfer of judges.

4. Pre-trial Measures:

The prosecutor requested that Bacho Akhalaia be detained as a preventative measure. According to the prosecution, there was a significant danger that Akhalaia could influence witnesses.

The position of the defense: The defense did not agree with the motion. The defense's main objection to Bacho Akhalaia's detainment as a preventative measure was that he had been detained a number of times already, and that consequently another imprisonment would be a violation of the law. At the same time, the imprisonment of Akhalaia, would mean that there did not exist the risk of the defendant influencing witnesses.

Ruling: The judge discussed the issue and Bacho Akhalaia was given imprisonment as a preventative measure. The other defendants were also detained as a preventative measure.

5. The trial proceedings:

5.1. Motions

A. The prosecution's motions:

1. The prosecutor motioned for the hearing to be postponed for nearly a month on the basis that they had a significant amount of work to do in the month of September.

Ruling: The court found the motion unreasonable and did not grant it.

2. The prosecutor motioned to recuse himself. The prosecutor noted that he was unable to make independent decisions because he is from Abkhazia and Akhalaia's wife is as well. They have common friends and these facts produced a psychological effect on the prosecutor personally as well as through his social network. According to the prosecutor, he was also friends with Akhalaia's attorney, Goga Oniani. The prosecutor stated that he was unable to make objective decisions and therefore he requested to be recused.

The position of the defense: The defense stated that the arguments presented were not solid. They believed that the prosecutor was attempting to delay the trial. Bacho Akhalaia also assessed this as an attempt to delay the trial.

Ruling: The judge explained that when a doubt exists that independent decisions cannot be made by the prosecutor, they must be recused from the trial, and consequently the judge satisfied the prosecutor's motion.

B. The defense's motions:

1. Following opening statements, the defense motioned for the prosecution of Bacho Akhalaia to be dismissed due to the expiration of the statute of limitations. The defense stated that the investigation into the case which started in 2006 was a violation of the first section of Article 333 of the Criminal Code which represents a lighter offense. The statute of limitations then, which was in effect, was for six years, which in March of 2012 expired. Consequently the defense believed that the criminal prosecution of the episodes which was currently ongoing was illegal and they requested that the case be dismissed.

Ruling: The judge did not grant the defense's motion. As a basis for the ruling, the judge indicated that the defense violated the rules of making a motion. The previous motion should have been made at the previous hearing as the court can only make this kind of decision together with a summary decision. Consequently at this stage in the trial, the judge did not have a legal basis on which to examine the motion.

5.2. Witness Testimony

The prosecution and the defense questioned witnesses. The defense's witnesses denied Bacho Akhalaia's involvement with guns or his use of violence, whereas the prosecution's witnesses confirmed the abuse of the convicted.

Bacho Akhalaia also appeared as a witness and according to his testimony, in the period the charges relate to, in prisons it was complete "anarchy". Thieves in law managed prisons and the entire system was in their hands. He however attempted to take away the authority of the thieves. The accused said that he absolutely made correct decisions and that it is yet possible for things to return to the way they were. He also denied that he physically assaulted anyone.

6. Verdict:

The court found Revaz Charbadze, Davit Chakua, and Megis Kardava guilty of abuse of authority, offense of personal dignity, as well as inhumane treatment of two or more people.

Bacho Akhalaia was found not guilty on charges of abuse of power, and offense of personal dignity. He was found guilty of committing degrading and inhumane treatment, committed as part of a group implemented through the use of assistants and was against two or more people.

On December 28th of 2012, on the legal basis of the amnesty, all of the defendants were given sentences of three years and nine months, and a prohibition from serving in public office for a period of two years and three months. Also, Bacho Akhalaia was given an additional fine of 4,000GEL, while the rest of the defendants were fined 3,000GEL which was directed towards the state budget.

***Note:** The convicted, Bacho Akhalaia, was pardoned by the president. The president announced this decision on his personal website.*

7. Our observations:

At the trial the prosecutor was irresponsible on a number of occasions. It was clear that different prosecutors for fraudulent reasons and without substantiation made all sorts of attempts to make motions in order to delay the trial. This approach is unacceptable, especially in the given conditions when the

accused person is imprisoned as a preventative measure. The prosecutor's office should consider pre-trial detention a last resort and it should not be used in order to delay the trial.

No other circumstances were noted which exerted an effect on the trial proceedings.

Bacho Akhalaia (*The So- Called Ranger Case*)

1. The accused and the charges brought:

Bacho Akhalaia - Minister of defense, Minister of Internal Affairs- Abuse of authority with the use of violence and the offense of personal dignity. Torture conducted by assistants, directed against more than two individuals as part of a group due to political opinions. Degrading and inhumane treatment carried out by assistants directed against two or more people as a group due to political outlook.

Davit Vekua – Head of the Ministry of Internal Affairs first management.

Davit Chubinidze – Contracted employee of the Ministry of Internal Affairs Strategic Defense Department.

Aleksi Davitashvili, Davit Giorgashvili, Robert Sutidze, Vladimer Zangieva - Members of the Ministry of Defense's Mountain Reconnaissance military batalion.

Mamuka Abashidze- Head of the Ministry of Internal Affairs Special Operations Center, Colonel

2. Description of the offense:

All eight people are accused of torturing seven employees of the First Unit of the Special Operations Department of the Ministry of Interior on the Iaghluji training base, of illegally depriving them of liberty, and of exceeding official powers. Pursuant to the indictment, Bachana Akhalaia has learned that these persons were the supporters of the "Georgian Dream" Coalition, and decided to torture them and subject them to degrading and inhumane treatment, organizing all of this through the abuse of official position. On 18 August 2012 Bachana Akhalaia was in the territory of the First Unit when he verbally insulted Z.F., while Davit Vekua humiliated and infringed upon the honor and dignity of six others. Later these people were forced to write letters of resignation, however, instead of being dismissed they were transferred to Ialghuja training base. The physical and verbal insult of servicemen then continued at the Ialghuja base.⁶

Note: The case presented above was fully discussed in the previous report.¹⁵ After the publication of the report, the court examined every stage of the case, consequently the trial came out with the verdict.

In the case, the prosecution and defense questioned witnesses. The prosecution's witnesses, who were the victims in the trial stated that physical and verbal abuse was directed against them. According to the witnesses, the illegal actions that were taken against them were accompanied by verbal abuse because of their political positions.

According to the defense's witnesses, however, psychological pressure represents a component part of the course, which could possibly be depicted as verbal and physical abuse. The accused denied the charges against them. The defense at the trial presented photographs of the victims from the time period according to which they were supposedly being tortured.

3. Verdict:

In the so-called ranger course case the Tbilisi city court found the former Interior Minister and Minister of Defense along with the other defendants not guilty.

¹⁵ See. <http://transparency.ge/post/report/gakhmaurebuli-siskhlis-samartlis-sakmeebis-sasamartlo-monitoring>