Georgian Young Lawyers' Association

Legal Analysis of Cases of Criminal and Administrative Offences with Alleged Political Motive

Executive Summary

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LEGAL ANALYSIS OF CASES OF CRIMINAL AND ADMINISTRATIVE OFFENCES WITH ALLEGED POLITICAL MOTIVE

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INTRODUCTION

This research analyzes cases of criminal and administrative offences with alleged political motive. Purpose of the research is to study a specific case and to establish the extent to which political motives could have influenced pre-trial and court proceedings. This was done by evaluating whether or not the applicable laws and regulations were followed. This report mainly entails legal analysis of persons detained/arrested during and following spring 2009 protest rallies. We and our partner organizations saw the necessity of doing the research after the topic of political prisoners in Georgia became widely discussed in public and international circles[1]. Following served as criteria for case selection: high public interest in a particular case, as well as alleged political motive of criminal prosecution or administrative responsibility.

24 cases were selected for the research, including 6 cases involving administrative violation and 18 criminal cases[2]. The cases have been picked out from several different regions[3]. Eleven cases involved charges of illegal possession of firearms and drugs, as the number of facts of detainment of protest rally participants and opposition activists on the noted charges was increased during the period. Rest of the cases were selected according to publicity they had received due to well-known detained persons and their political activities or due to political activities of the detained person's friends and family. All of these cases are reviewed within the Criminal Procedure Code 1998 having been in force till 2010.

[1] After the Rose, the Thorns: Political Prisoners in Post-Revolutionary Georgia, fidh Publication, 7th August, 2009, http://www.fidh.org/IMG/article_PDF/article_a6870.pdf lst accessed on 25 September, 2010 State of Human Rights in Georgia 2007 /2nd half , 2008/1st and 2nd halfs –Public Defender of Georgia; Lists of allaged political prisoners presented by different political parties.

[2] Most of the cases have been concluded; sentence was delivered and has entered in legal force.

[3] Cases from following regions have been studied: Tbilisi, Shida Kartli,Kvemo Kartli, Samegrelo, Svaneti, Kakheti, Guria

Groups of Crime

Analyzed cases could be divided into the following categories:

I. Prosecutions for crimes related to drugs and firearms

GYLA analyzed 11 cases where individuals were convicted (or are still being prosecuted) on charges of illegal acquisition, storage or transportation/shipping/carriage of firearms or drugs. Although each case is unique, common trends are evident:

Investigation was launched on the grounds of operative information which is not subject to verification, followed by procedural compulsion measures (search) and afterwards, detention on the basis of search. Alternative sequence of measures was also revealed – detention without any legal grounds, followed by search only afterwards. It directly contradicts the Constitution and the criminal justice law.

In all of the cases investigative action was performed in the mode of immediate necessity, without any grounds. During search the right to summon a witness guaranteed by the law was unfoundedly restricted.

During the process of investigation, forensic examination of the object of crime (weapons, drugs) to determine possible ownership was not performed in all except one of the cases[4].

Similarly, exhibits were not examined during trial in all except one of the cases[5], which contradicts the principle of oral examination of courts guaranteed by domestic and international legal acts.

In most of the firearms-related cases defendants were found guilty of purchase as well, while no evidence certifying the purchase was introduced into the court, moreover, in the indictments as well as in the verdicts of guilty the formulation of the incrimination namely states that these defendants purchased the firearm at unidentified

[4] Except for the criminal case against Tsintsadze
[5] Except for the criminal case against Gocha Jikia

time and in unidentified circumstances, i.e. without proof defendants are charged with this offence.

II. Cases related to qualification of crime

Six cases of criminal justice were identified, where qualification under a certain Article raises serious doubts.

The court failed to consider the necessary circumstances that it had an imperative obligation to establish when qualifying actions under certain Articles: intention, motive, purpose. The following trends were revealed: actions were qualified under a more serious Article than they should have been pursuant to the applicable law; furthermore, actions punishable by criminal justice were not differentiated unequivocally from civil violation.

III. Cases of Administrative Offence.

The research examined cases of individuals detained during the protest rallies in 2009 and sentenced to 30 days of administrative imprisonment on charges of petty hooliganism and malicious resistance to legal orders of the law enforcement officers. Legal analysis of the noted cases clearly reveals that court failed to examine what constituted petty hooliganism or malicious resistance to legal orders. The court was guided by explanations of police officers only and its refusal to uphold statements of the detained persons was not justified.

Common Trends

Common trends were present in many cases examined by us: unjustified and serial refusals to grant the defense's requests; undue delays in criminal prosecutions and pre-trial investigations to allow law enforcers to exercise pressure on individuals concerned; unsubstantiated and disproportional punishments - extenuation and unexpected clemency of court in certain parts of crime without justification.

Conclusion

Legal analysis of cases reviewed in the research determined serious methodological errors in the execution of criminal justice in relation to individuals who can be considered as possible opponents of the authority due to political or public activities of these persons or their friends and family. It is further encouraged by both legislative flaws and incorrect interpretation of procedure legislation, as well as malpractice reinforced by inaccurate practice of the applicable law. In the cases that have been analyzed, any doubts, whether caused by legislative flaw or failure to collect authentic evidence, are generally interpreted against the detained, the accused or the defendant. Judicial authority fails to properly control arbitrary actions of the investigative agency. Furthermore, the position of the prosecution is always upheld by the judicial authority, whose role in the process of implementation of justice is profoundly diminished[6].

[6] The only exception was the case of Zuriko (Mamuka) Chkhvimiani terminated with the Court order on 2009 after the prosecution dropped the charges.

I. ANALYSIS OF CASES INVOLVING ILLICIT POSSESSION OF FIREARMS OR DRUGS

The Georgian Young Lawyers' Association studied 11 cases where individuals detained (or individuals that are being persecuted) have been convicted with illegal possession, acquisition, storage or transportation/shipping/carriage of firearms or drugs. Although all cases were individual, we were able to identify common trends.

Operative information – basis for search and detention

Almost in all of the cases investigative activity (search) was based on operative information. Specifically, all case materials include a report that constitutes a written statement of a police officer. Generally a report indicates that a police officer possesses operative information about an alleged crime. Form #1 is filled out on the basis of the written statement, which officially certifies launch of preliminary investigation, followed by search.

The Criminal Procedure Code of Georgia 1998 (hereinafter, the Procedure Code) mandated that a search must be performed on the basis of evidence that would allow for a reasonable doubt that any specific illicit item was stored with the person[7]. According to the Procedure Code, operative information in itself does not constitute evidence[8]. Therefore, performing a search based on a report is forbidden. Before a search was performed there was no evidence whatsoever (apart from the report) in the case materials that would have allowed for a suspicion that a person possessed firearms or drugs. Therefore, it is impossible to verify the information that served as the basis for conducting a search or whether there in fact was operative information. The noted circumstances paves the way for arbitrariness – the noted practice lets law enforcers draw up a report without inviting a witness, search a person in the mode of

[7] According to the new Criminal Code that entered in force on October 1, 2010, search can be performed on the basis of substantiated assumption.
[8] Article 110 of Criminal Procedure Code

urgent necessity and seize the illegal item. In such cases it is almost impossible to establish whether the person really had the illegal item before the search.

Among the cases we have studied, detention occurred before the search in two of them. According to the procedure law, any of the grounds for detention foreseen by Para 1 Article 142[9] of the Criminal Procedure Code should be evident in such case. Detention on the basis of operative information is not one of them. As the law enforcer clarified, detention was based on the fact that the person was caught in the act. Yet our analysis of the case materials in these two cases clarified that there were no such legal grounds at the time of the detention. Therefore, grounds for the detention in these cases are unclear.

Justification of Search Performed due to Immediate Necessity

Court warrant is necessary for performing a search. In exceptional cases, when search is performed in the mode of immediate necessity, court warrant is not necessary, although later it should be legalized by court. According to the Criminal Procedure Code[10], existence of immediate necessity should be proved, meaning that specific facts and circumstances that called for immediate action (and therefore, without a court's permission) should be pointed out. In all of the cases analyzed by us, search was performed in the mode of immediate necessity and correspondingly, without a court warrant. Nevertheless, all of the cases fail to provide justification for

[9] Pursuant to Para I of Article 142 of the Criminal Procedure Code police may arrest a suspect if:

1. The person was caught committing a crime or immediately after committing it;
2. In an eye witness or victim identifies the person as having committed a crime;
3. A clear evidence of the crime is found on the person or his/her cloths;
4. If the suspect was hid after the crime but was later identified by the victim;
5. When a decision or order for searching for the person has been made;
6. There is a possibility that a person may hide.

[10] P Para 2 of Article 13 and Para 2 and 4 of Article 290 of Criminal Procedure Code

performing the search due to immediate necessity by pointing out specific facts and circumstances.

Summoning a witness to attend search

According to the Criminal Procedure Code of Georgia, a witness is summoned to observe search and seizure - **fact, process and results.** A witness is a protective mechanism against any possible arbitrary actions. After a witness is summoned his/her participation is obligatory in investigative activities. Participation entails full monitoring of the process of search in a way that actions of the person performing search are visible.

Out of the cases that we have studied, person to be searched was notified about his/her right to summon a witness only in four of them[11]. In these four cases persons to be searched have utilized this right. None of the witnesses were allowed to thoroughly observe the process. In two cases the witnesses do not confirm the fact of seizing a weapon.

In other cases police officers note that they informed the person to be searched of his/her right to summon a witness, although they have not utilized the right; while the persons to be searched stated that the police had not clarified their right to summon a witness.

The cases that have been studied reveal a trend of disregarding the institute of summoning a witness. Therefore, in most of the cases police officers only, i.e. persons that performed the search confirm the fact of seizing a weapon or drugs.

[11] M. Shengelia's case should be mentioned separately. In this case search was conducted in his apartment and house. The witness was not summoned during search of the apartment. However, the witnesses were present during the search of the house. We were not able to study Mr. Shengelia's case thoroughly since Shengelia's family and lawyer failed to submit all the materials related to the present case. Therefore we are not in the position to judge whether the witnesses were able to fully observe the search conducted in the house of Mr. Shengelia.

Failure to perform forensic tests

In the cases to be reviewed none of the persons plead guilty or confirm that the seized item belonged to them. Therefore, dactyloscopic test is needed to identify fingerprints on the seized item and establish ownership of the item. Among the cases that we have analyzed, forensic test at the initiative of the investigation was performed only in a single case[12].

It should be noted that when ballistic tests were performed for all seized weapons in order to determine whether they were usable, the investigation did not raise the question of performing dactyloscopic tests. The Georgian legislation does not envisage direct stipulation for performing such type of test, although as investigation is obliged to objectively investigate the case, it also has a burden of proof. Additionally, when the fact of weapon ownership is disputable, due to its obligation to objectively investigate the case the agency conducting the investigation shall perform a dactyloscopic test and identify whether there are any fingerprints on the weapon.

The issue is particularly important when an item has been seized during a search of an apartment or a vehicle and there are other adults living in the apartment, or there were other persons sitting in the vehicle. It is important to dispel any doubts and establish which person the illegal item belongs to.

Obligation to examine evidence at the trial

In most of the cases that we have studied a person was criminally convicted without examination of the seized weapon at the trial, i.e. the court found the person guilty without taking an interest in examining the seized item.

According to Article 475 of CPC all evidence shall be submitted and examined in court. One of the types of evidence is an exhibit. Pur-

[12] Ref. to Tsintsadze's case

suant to Article 485 of the CPC the court examines exhibits during court investigation. If exhibits are not examined at all by court, they may not be utilized during the court dispute or mentioned in the sentence. Pursuant to Article 496 of CPC, sentence should be substantiated, which means that it should be based only on examined evidences.

For example, in Vladimer Vakhania's case the defence was raising the request for presenting the seized fire-arm at the trial and examining it. Neither the Court of First Instance nor the Court of Appeals granted the request.

Criminal Liability for Acquisition of Weapon or Drugs

In order to institute criminal liability for illegal acquisition of a weapon or drugs, the exact date and time of acquisition shall be determined. In most of the cases that we have analyzed, a person is convicted for acquisition of a fire-arm or drugs without determination of the time and the date. The case materials note that the acquisition occurred "at undetermined time and under the undetermined circumstances". The term "at undetermined time and under the undetermined circumstances" can be used when a person is convicted for storage or selling of drugs or a weapon or in other cases; as for acquisition, exact time when the action was performed shall be established.

If it is impossible for the investigation to precisely define the time of acquisition of firearm, at minimum following doubts remain undispelled:

- doubt whether time allowed by the statute of limitation has run out
- doubt that non-incriminating circumstances or circumstances releasing from responsibility are evident.

As trying a person after expiration of the limitation constitutes viola-

tion of Article 42, Para 5 of the Constitution of Georgia, it is necessary to prove that time allowed by the statute of limitation has not run out.

If the above noted elements are not specifically defined, the principle of resolving all doubts in favor of defendant is violated.

II. ANALYSIS OF CASES OF CRIMINAL OFFENCES WITH ALLEGED POLITICAL MOTIVE WHERE ILLEGAL ACQUISITION/STORAGE OF DRUGS AND FIRE-ARMS IS NOT INVOLVED

In cases where illegal acquisition/storage of firearms or drugs is not involved but were selected for the analysis due to political party affiliation of the detained persons or political activities of their friends and family, wrong qualification of actions has been observed as a trend. It was translated into aggravated condition of the accused (as the case was qualified as a graver offence) on the one hand and wrong criminal qualification of the performed action on the other. For instance,

Qualification of the action

I. Shalva Goginashvili was convicted pursuant to Para 1a of Article 19 - 109 of the Criminal Code (attempt of premeditated murder in aggravating circumstances related to the official activities of the victim)

During the protest rallies held at Rustaveli Avenue in Spring 2009, after the clash between police officers and rally participants two policemen were injured. Sh. Goginashvili was charged with injuring one of the police officers.

The study of the case ascertained that case materials fail to substantiate legality of qualifying Sh. Goginashvili's action as attempt of premeditated murder in aggravating circumstances. On the basis of the analysis of the factual circumstances of the case, we can conclude that the suspicion whether Sh. Goginashvili's action constitutes a part of a lighter offence (i.e. offence stipulated by one of the Articles on the crime against health) has not been eliminated. In addition to the fact that legality and authenticity of the forensic finding is disputable, it is evident that subjective composition of the crime such as intent and motive has not been properly ascertained.

Specifically, whether the accused had an intent to commit premeditated murder of the victim and why the accused may have had this intent. Furthermore, Sh. Goginashvili was convicted of an attempt of murder related to "discharging of public obligations of the victim". After the study of case materials it has been established that neither the victim nor persons standing next to him wore official uniform. The suspicion whether the victim was a police officer and whether he was discharging his public obligation has not been eliminated. Specifically, the case is missing a document that would certify that the victim was a law enforcement officer. It is also noted in the case materials that as the victim himself clarifies he is unemployed. Therefore, legality of criminal qualification of Shalva Goginashvili's action is disputable.

II. Levan Gogichaishvili was convicted for intentionally inflicting grave damage to health with intention of hooliganism. The noted qualification is not supported with evidence collected in the case, which gives an impression that gravity of the qualification has been artificially increased. According to the bill of indictment Levan Gogichaishvili gratuitously insulted Davit Lezhava verbally, who slapped him in the face for the insult. At the same time L. Gogichaishvili injured Davit Lezhava in his left groin with a stab-wound by a knife that he was carrying.

The bill of indictment as well as the sentence indicates that L. Gogichaishvili stabbed the victim gratuitously. Legal evaluation of Davit Lezhava's (the victim) testimony before the agency conducting the proceedings rules out any hooligan intent. According to the victim Gogichaishvili stabbed him with a knife after the victim verbally abused L. Gogichaishvili's close friend. Furthermore, court investigation confirms that initially Davit Lezhava, recognized as a victim, slapped Gogichaishvili in his face, i.e. personal motive is present, ruling out hooligan intent.

III. Sergo Beselia was convicted for hooliganism. Objective composition of the crime includes an action committed with violence or threats of violence and resulted in crude violation of public order.

Clear disrespect for the society is also one of the qualifying circumstances of the action. Correspondingly all fights, disputes and loud talking motivated with personal motive even if it rudely violates public order should not be considered as hooliganism if it is not characterized with clear disrespect for the society. Premeditated intent of clear disrespect for society is also a necessary part of the offence; i.e. violating public order does not a priori equal disrespect to the society. According to the Supreme Court case law, motive of the conflict is important, notwithstanding the scene of the fight[13]. Hooliganism is ruled out when motive of the fight is personal, notwithstanding the scene of the fight[14].

Qualifying Sergo Beselia's case as hooliganism is groundless, as his action was motivated with his personal interest, as opposed to the aim of disrespecting the society. Specifically, during the first stage of the conflict Beselia was trying to mediate the parties (confirmed by witness testimonies). He got involved in the fight only after his sister was sworn at. His motive in this case was personal, which makes qualifying his case as hooliganism disputable.

IV. Qualifying Melor Vachnadze's action as fraud is also disputable. Case evidence and circumstances failed to establish whether the action Melor Vachnadze was convicted for is subject to civil liability or criminal responsibility. Whether Melor Vachnadze deceived a person when taking a possession of his item (circumstance qualifying the action as fraud), whether deception was used as means of taking a possession of the item, or whether he had previously planned to sell the vehicle to another person after getting money from the victim – i.e. premeditated intent of deception, could not be established. Not a single evidence indicates premeditated intent, neither the judge makes any reference to these circumstances in the sentence delivered.

[13] Judgment of the Chamber of Criminal Cases of the Supreme Court of Georgia N210ap-, dated February 28, 2007

[14] Judgment of the Chamber of Criminal Cases of the Supreme Court of Georgia N109ap-10, dated May 7, 2010

In the context of this case it should be noted that inconsistent approach of law enforcement agencies and obscure practice in terms of qualifying actions as criminal or civil cases is evident. At the legal aid center of the Georgian Young Lawyers' Association most of the consultations rendered in the field of criminal law feature explanation of procedures for appealing decisions made by investigative agencies on refusal to start preliminary investigation. Most frequently the basis for refusal to start preliminary investigation is the fact that the disputed issue is the matter of civil law. The research discusses two other examples, where actions were not deemed as a matter of criminal law and therefore preliminary investigation had not been started. Therefore it is unclear what guides the law enforcement officers for deeming one action as a matter of criminal law and another as a matter of civil law.

V. The case of Vazha Kapanadze should also be noted. The prosecution claims that during inspection Vazha Kapanadze excised a private sector producer with a customs declaration when he should have excised with an invoice.

There are two contradicting forensic findings in this case about the matter. The court turned down the motion for performing a complex forensic test in order to shed a light on an obscure case. The case also features a protocol of the Revenue Service advisory board. This protocol determines that initial document on purchasing goods foreseen by Article 93 of the Tax Code of Georgia allowing for deduction of expenses shall be the invoice provided by the exporter (certified both by the exporter and the importer) while sums to be deducted should be the amounts recorded in the invoice as opposed to the customs prices listed in customs declaration.

Hereby it should be also noted that the above-mentioned Article does not indicate which document shall be applied for deducting costs – invoice or customs declaration. The advisory board of the Revenue Service determined that for the purposes of the Article an invoice should rather be utilized. The Tax Code itself lists customs declaration instead of invoice in the list of official documents.

Therefore, convicting a person criminally for the matter that is clearly unregulated by law and disputable in practice is peculiar.

VI. Qualification of criminal case of Neli Navariani also raises suspicion. N. Navariani was found guilty pursuant to Article 181 of Criminal Code of Georgia – extortion, perpetrated by a group and for the purpose of obtaining movable property in large quantities in addition to threats of violence leveled against the victim.

Pursuant to factual circumstances of the case, Neli Naveriani and her family members demanded money from investor's representative in return for a land plot that they believed had belonged to her family for generations and that had been alienated by the government to the investor.

In order for a person to be convicted pursuant to Article 181 of the Criminal Code following mental element should be evident: a person realizing that the item belongs to another person. In addition to the mental element, element of conduct should also be evident – making threats. The case materials clarify that N. Naveriani considered the land plot that her family used for dozens of years to be hers and she had no doubts about it. Moreover, she intended to get the money by means of court, as compensation. These factual circumstances rule out that Neli Naveriani realized that the item belonged to another person. As for the necessary element of conduct – threats – the case materials fail to substantiate that Neli Naveriani leveled threats. For structure of extortion at least verbal threats on part of Neli Naveriani or threats expressed through her conclusive acts should have been evident, none of which is authentically substantiated in Neli Naveriani's case.

The trend of turning down motions raised by the defence side

In some cases, both during preliminary investigation and court review important motions raised by the defence side were not granted. In the cases discussed in the research motions of the defence

were turned down, such as: questioning the defence witnesses, performing complex forensics test; soliciting information of essential importance for the case and enclosing it to the case; enclosing recordings and video materials and recordings to the case, etc. In Vladmer Vakhania's case for instance, with active involvement of the defence a tape recorded by camera installed in the house was recovered. The tape showing what actually happened contradicts testimony of the prosecution witnesses (police officers) that they gave at the trial. The noted material was groundlessly refused to be enclosed to the case. Furthermore, in Rati Milorava's case the prosecution presented a video recording in favor of the defence, which clearly displayed that rights of an under age person were violated[15] in the process of investigative activity. The video recording was disregarded by the court.

Unreasonable delays in the criminal persecution and preliminary investigation

In Gocha Jikia's[16] case preliminary investigation was started on November 26, 2007. Basically the investigation exhausted all investigative activities that later served as the basis for the sentence in the period of three months. From an objective viewpoint it was possible to conclude proceedings of the criminal case and refer the case to court; while instead the case was unreasonably delayed and the case was referred to court in November 2008 (ten months after basic investigative activity was carried out). First trial was held on March 30, 2009 (four months after the case was referred to court), several days prior to the launch of Spring 2009 protest rallies.

Preliminary investigation and criminal persecution were similarly delayed in Merab Katamadze's criminal case, where preliminary investigation was completed and the bill of indictment was drawn up

[15] The video recording displayed that Rati Milorava was misled by the prosecutor as if his lawyers refused to defend him (Paragraph 4 of article 286 of the Criminal procedural Code was violated)

[16] Gocha Jikia was active participant of the protest rallies in 2007 and 2009.

five days before expiration of the 12-month term of being an accused, while last investigative activity was carried out on December 14, 2009. The case was basically immovable for almost six months and was referred to court only in June 2010. Although it has been more than ten months after the case was referred, trial has not been scheduled yet.

Noted cases demonstrated two main issues: first, unreasonable delays in legal proceedings during preliminary investigation, where although main investigative activities have been completed the case is not referred to court until the 12 month term mandated by law is expired; second, delays in the criminal proceedings during the process of court review - after criminal cases of persons that have been bailed are referred to court, the cases are not reviewed and trials are not appointed within reasonable period of time. While the first case constitutes an issue in legal practice, second case can be viewed as legislative flaw as the law does not provide for a term for court's reviewal of a criminal case of the person who has been bailed.

After concluding preliminary investigation into Mamuka Tsintsadze's criminal case and referring it to court, review was scheduled and started in a timely manner[17] (the bill of indictment was drawn up on July 15, 2009 and court review was scheduled for July 30). Although after interdictory measure of M. Tsintsadze – arrest – was replaced with bail the process was delayed. On October 1, 2009 the defence requested questioning the investigator as an additional witness. Since then[18], the process has been postponed either because of absence of the witness from court or frequent change of prosecutors in the trial[19]. Therefore during 11 months it was basically impossible

[17] At the stage of referring the case to the court defendant Tsintsadze had been sentenced to imprisonment, which later, during review of the case in court on August 18, 2009 was substituted with bail on the basis of the defense motion.

[18] i. e. by April 2011

[19] When a different prosecutor attends the court session, who is not aware of the criminal case materials, he is usually given a certain amount of time to familiarize himself with the case materials. This was the case in the lawsuit to be reviewed.

to hold a trial for M. Tsintsadze's case.

In Melor Vachnadze's case it is safe to say that preliminary investigation that has been basically put on hold was renewed after Melor Vachnadze's active involvement in public matters during Spring 2009 protest rallies. The investigation into the noted case was launched on May 26, 2008, although the criminal persecution – his detention and conviction – was instituted after the political activities of Melor Vachnadze (April 2009 protest rallies). Specifically, Melor Vachnadze was charged on July 27, 2009 and investigative activities for his case were carried out in May 2009. The fact that the criminal proceedings for the case that has been put on hold for more than one year was started only after Melor Vachnadze got actively involved in Spring 2009 protest rallies raises suspicions.

Proportionality of Punishment

The Court of Appeals radically decreased punishments in criminal cases of Roman Kakashvili, Tamaz Tlashadze, Davit Gudadze and Gocha Jikia.

In Roman Kakashvili's verdict of guilty, the Court of Appeals decreased the prescribed punishment with 3 years and 6 months and ultimately ordered him to pay GEL 2,000 as a fine. The Court made a general comment that it considered alleviating circumstances, although it did not specify them.

In Davit Gudadze's verdict of guilty, where the Court of First Instance sentenced him to 4 years of imprisonment, the Court of Appeals substituted the sentence with a fine of GEL 2,000 without specifying special alleviating circumstances that served as the basis for its decision.

The sentence prescribed to Gocha Jikia by the Court of First Instance – 3 years and 6 months of imprisonment – was decreased by the Court of Appeals, which ordered the defendant to pay GEL 2,500 as a fine without specifying concrete alleviating circumstances that

served as the basis for decreasing the punishment. It shall be noted that the prosecutor himself raised the motion of decreasing the punishment in this case.

The sentence prescribed by the verdict of guilty delivered by the Court of First Instance against Tamaz Tlashadze – 3 years of imprisonment – was decreased by the Court of Appeals and the defendant was sentenced to 6 months of imprisonment. The Court stated that it considered the fact that the defendant was a first-time offender as an alleviating circumstance. The Court failed to specify concrete circumstances that served as the basis for decreasing the punishment.

In all of the afore-mentioned cases the Court of Appeals upheld the qualifying circumstances of crime, established by the Court of First Instance, whereas it turned down procedural violations specified by the defense.

The July 25, 2007 *Guiding Proposals and Recommendations of the Supreme Court of Georgia regarding the Problematic Issues of the Court Practice in the Field of Criminal Law* lays out instructions and defines alleviating and aggravating circumstances for certain crimes[20]. It lists being a first-time offender, cooperation with investigation and confessing the guilt as alleviating circumstances. When these circumstances exist, punishment is slightly decreased in a way that imprisonment remains to be the type of punishment applied. Hereby it is specified that when other significant circumstances exist, punishment can be increased or decreased with 6 months[21].

In the afore-mentioned cases only a single alleviating circumstance existed – the defendants were first-time offenders[22]. At the same time, the Guiding Proposals and Recommendations of the Supreme Court of Georgia considers committing a crime in a public place as an aggravating circumstance, while in Roman Kakashvili's case al-

[20] It shall be noted that instructions for drug crime (Article 260) are not defined, while instructions for storage and carriage of a firearm (Article 236) are provided.
[21] Ref. guiding recommendations and proposals, p. 177
[22] Except for Gocha Jiki, who had been tried by court earlier.

leged crime was committed in a public place.

It shall also be emphasized that the Court of Appeals delivered verdicts for these cases during the same period. Specifically, the verdict against G. Jikia's was delivered on November 19, 2009, R. Kakashvili – November 17, 2009, D. Gudadze – November 16, 2009 and T. Tlashadze – November 17, 2009.

III. THE CASES OF ADMINISTRATIVE OFFENCE

The research reviews the case of Irakli Kakabadze, who was fined by the court on August 15, 2010 and five cases of persons detained outside the headquarters of the Ministry of Interior Affairs on June 15, 2009. They were sentenced to 30 days of administrative imprisonment by court the same day for petty felony and disobedience to the legal orders or instructions of law enforcement officers.

Legal analysis of the noted cases demonstrates that court wrongfully applies Article 173 of the Code of Administrative Offences - disobedience to the legal orders or instructions of law enforcement officers – without establishing and determining what was the legal instruction of law enforcement officers and what constituted disobedience to these instructions.

In cases of the noted category[23] review of the case was formal in nature: mainly explanations submitted by the law enforcement agencies and explanation of the detained person are heard. The court does not take interest in any other evidence; i.e. when the two opposing parties deliver contradicting explanations (police officer and the detained person) the court upholds explanation of police officers without providing any grounds for deeming the explanation of law enforcers more authentic than that of the detained person; though it is not prohibited by law, it is advisable that the testimony of the police officers only that have detained the accused shall not be deemed as sufficient evidence. Cases of the noted category frequently lack evidence for convicting a person as administrative offender. The issue becomes particularly important against the background that during its review of administrative detention cases the ECHR[24] clarified that with its nature and gravity of the sentence that has been prescribed, administrative relation equals to criminal relation. Therefore, all guarantees enjoyed by a person detained according to the criminal procedure shall also apply to the person detained according to administrative procedure.

[23] It was mainly evident during the trials of the persons detained on June 15, 2009.
[24] Cases of Gurepka v. Ukraine and Galstyan v. Armenia

CONCLUSION

Legal analysis of cases reviewed in the research determined methodical errors in the execution of criminal justice in relation to individuals who can be considered as possible opponents of the authority due to political or public activities of these persons or their friends and family. It is further encouraged by both legislative flaws and wrong interpretation of procedure legislation, as well as malpractice reinforced by inaccurate practice of the applicable law. In the cases that have been analyzed, all of the suspicions, whether caused by legislative flaw or failure to collect authentic evidence, are generally interpreted against the detained, the accused or the defendant. Judicial authority fails to properly control arbitrary actions of the investigative agency. Furthermore, position of the prosecution is always upheld by the judicial authority, whose role in the process of implementation of justice is profoundly graded[25].

The research that was undertaken for this report focused on a representative sample of cases where there were allegations of political motives for prosecution. The noted deficiencies in the judicial process and the established violations of legal and procedural norms do indeed give rise to concern over the administration of justice in these cases. We have not performed a cross-comparison with similar cases where allegations of political motives are absent, within the scope of research undertaken for this report. However, given the serious nature of the deficiencies observed by us, we see two possible conclusions:

1) The cases under our review are representative examples of politically motivated prosecution,

or, if the cases under our review are "normal" and not politically motivated, that:

2) the process of prosecution on criminal and administrative offences in Georgia is seriously flawed across the board.

The latter would be an equally grave conclusion.

[25] The only exception was the case of Zuriko (Mamuka) Chkhvimiani terminated with the Court order on 2009 after the prosecution dropped the charges.

The research is enclosed with brief information about cases that have been analyzed:

Criminal Cases

1. Merab Katamadze

- Member of the National Committee of Republican Party, editor of the Republicans bulletin;
- He has been charged pursuant to Para 1 of Article 236 of the Criminal Code of Georgia – illicit purchase and storage of firearms and ammunition.
- Preliminary investigation has been completed and the case has been referred to court. Court review of the case has not yet started.

2. Neli Naveriani

- Member of Mestia Municipality Sakrebulo from the electoral bloc Alliance for Georgia; one of the witnesses exposing high-ranking officials of the authority in the preliminary investigation into May 3, 2010 incident that occurred in Mestia in pre-election period.
- She has been charged pursuant to Para 2, Article 181 of Criminal Code of Georgia, sub-paragraphs "a" and "b" – extortion, perpetrated by a group and for the purpose of obtaining property in large quantities.
- The court sentenced her to 4 years of imprisonment
- The Court of Appeals upheld the previous sentence
- The convict waived the right to appeal for cassation.

3. David Zhorzholiani

- Brother of Kakha Zhorzholiani who was running in elections as a candidate from the electoral bloc Alliance for Georgia. During May 3, 2010 incident in Mestia, K. Zhorzholiani managed to get Sakrebulo majoritarian candidates from opposi-

tion – Vakhtang and Levan Nakanis - out of the building of Mestia Municipality Gamgeoba, as the candidates were forced to write an application for their removal from electoral registration;

- He has been charged pursuant to Article 117 of the Criminal Code of Georgia – intentional grave damage to the health.
- The court sentenced him to 3 years of imprisonment
- The Court of Appeals upheld the previous sentence
- The Supreme Court deemed the complaint inadmissible

4. Mamuka Tsintsadze

- Member of the youth organization of Republican Party, who actively participated in April 2009 protest rallies.
- Charged pursuant to Para 1 of Article 236 of the Criminal Code of Georgia – illicit purchase and storage of fire-arms.
- Currently court is reviewing the criminal case.

5. Gocha Jikia

- Active supporter of Republican Party, actively participated in Fall 2007 and Spring 2009 protest rallies;
- Charged pursuant to Para 1 and 2 of Article 236 of the Criminal Code of Georgia – illicit acquisition, storage and carriage of ammunition, explosive material and explosive device.
- The court sentenced him with 3 years and 6 months of imprisonment
- The Court of Appeals amended the punishment part of the sentence and fixed the penalty at GEL 4 000, which was alleviated considering the term Gocha Jikia had served in prison and ultimately he was prescribed a penalty in the amount of GEL 2 500.

6. Tamaz Tlashadze

- Supporter of Republican Party, active participant of Spring 2009 protest rallies, including lodger of the City of Tents and

one of the founders of the non-governmental organization Our City.

- Charged pursuant to Para 1 of Article 260 of the Criminal Code – illicit acquisition and storage of narcotics;
- The Court of First Instance sentenced him to 3 years of imprisonment as a principal sentence;
- The court of appeals amended the punishment part of the sentence and reduced the term of imprisonment with six months.

7. Davit Gudadze

- Member of Gori organization of Republican Party, active participant of Spring 2009 protest rallies;
- Charged pursuant to Para 1 and 2 of Article 236 of the Criminal Code of Georgia – illicit acquisition, storage and carriage of explosive material and explosive device.
- The Court of First Instance sentenced him to four years of imprisonment;
- The Court of Appeals amended the punishment part of the sentence and replaced the imprisonment with a sanction in the amount of GEL 3 000.

8. Roman Kakashvili

- Chairman of Kareli regional organization of political party "Freedom", active participant of Spring 2009 protest rallies, including lodger of the City of Tents.
- Charged pursuant to Para 1 and 2 of Article 236 of the Criminal Code of Georgia – illicit acquisition, storage and carriage of firearm and ammunition.
- Court of First Instance sentenced him to 3 years and 6 months of imprisonment;
- The Court of Appeals amended the punishment part of the sentence and replaced the imprisonment with a sanction in the amount of GEL 5000.

9. Mamuka Shengelia

- Supporter of the political movement Democratic Movement for the United Georgia, a close friend of Badri Bitsadze, used to work at the Border Police of Georgia to 2009.
- Charged pursuant to Para 1 of Article 236 of the Criminal Code of Georgia – illicit storage of firearm, ammunition, and explosive device (two episodes); assistance to acquisition of firearm – Article 25, Para 1 of Article 236 (third episode), and Para 2a of 19-260 Article, of the Criminal Code – attempt of illicit acquisition of narcotics in large quantities.
- The Court of First Instance imposed a sanction in the amount of GEL 3000 on him, as a measure and type of punishment for all three episodes of the Article 236 and sentenced to 7 years of imprisonment for the Article 260.
- The Court of Appeals upheld the previous sentence.
- The Supreme Court deemed the complaint inadmissible

10. Edisher Jobava

- Member of the political party New Rights, representing the party in Khobi Municipality Sakrebulo, active participant of Spring 2009 protest rallies;
- Charged pursuant to Para 1 of Article 236 of the Criminal Code of Georgia – illicit acquisition and storage of fire-arms; and Para 1 of Article 260 – illicit acquisition and storage of narcotics.
- During review of the case in the Court of First Instance, a plea bargaining agreement was concluded and Edisher Jobava was sentenced to one year, which was suspended by a one year probation term and he was ordered to pay a sanction in the amount of GEL 2000.

11. Zuriko (Mamuka) Chkhvimiani

- Chairperson of Dmanisi regional organization of Conservative Party, active participant of Spring 2009 protest rallies, including a lodger of the City of Tents;

- Charged pursuant to Para 1 of Article 236 of the Criminal Code of Georgia – illicit acquisition and storage of ammunition and explosive device;
- The criminal prosecution was repealed in the Court of First Instance.

12. Merab Ratishvili

- Sponsor of By Ourselves political party, holding dual citizenship of Russia and Georgia, a businessman in Russia and Georgia, founder of the national association Golf.
- Charged pursuant to Sub-paragraph of Para 3 of Article 260 of the Criminal Code – illicit acquisition and storage of narcotics in especially large quantities;
- The Court of First Instance sentenced him to 9 years of imprisonment
- The Court of Appeals upheld the previous sentence.
- The Supreme Court deemed the complaint inadmissible

13. Shalva Goginashvili

- Member of the political movement November 7, active participant of Spring 2009 protest rallies;
- Charged pursuant to Para 1a of Article 19-109 of the Criminal Code – attempt of premeditated murder related to the official activities or discharging of public obligations of the victim or his/her close relative; and Para 1 of Article 353 of the Code - Resisting a police officer or any other government representative to impede the protection of public order or terminate or change his/her activity.
- The Court of First Instance sentenced him to 15 years of imprisonment for both offences.
- The Court of Appeals upheld the previous sentence
- The judgment was challanged before the Supreme Court and was ruled as inadmissible.

14. Kote Kapanadze

- Used to work as acting chief inspector at the Telavi Tex Inspection of Tax Department, Ministry of Finance of Georgia till September 18, 2009. He was dismissed from the office on the basis of his personal application. Kote's brother, Vazha Kapanadze is an oppositioner – member of New Rights. He has founded a regional office in Lagodekhi. Kote became actively involved in the noted activity, specifically he collected signatures for holding a plebiscite for the extraordinary presidential election;
- Charged pursuant to Article 332 of the Criminal Code of Georgia – abuse of official authority that has come as a substantial prejudice to the public interests.
- The Court of First Instance sentenced him to 2 years and 6 months of imprisonment
- The Court of Appeals upheld the decision
- The judgment was challanged before the Supreme Court and was ruled as inadmissible

15. Melor Vachnadze

- Representative of the political movement Join Us, active participant of Spring 2009 protest rallies, including lodger of the City of Tents;
- Charged pursuant to Para 2b of Article 180 of the Criminal Code of Georgia - fraud, i.e. taking possession of other's object through deception that has caused a substantial damage;
- The Court of First Instance sentenced him to 4 years of imprisonment;
- The Court of Appeals upheld the decision
- he judgment was challanged before the Supreme Court and was ruled as inadmissible

16. Sergo Beselia and Rati Milorava

- Sergo Beselia – brother of Eka Beselia, former member of

Movement for the United Georgia political party, Rati Milorava – son of Eka Beselia;

- Charged pursuant to Article 239 of the Criminal Code – hooliganism and Para 2 of Article 353 - Resisting enforcer of public order;
- Pardoned with Presidential Decree, dated August 28, 2010.

17. Levan Gogichaishvili

- Representative of November 7 Movement
- Charged pursuant to Para 5c of Article 117 of the Criminal Code – intentionally inflicting grave damage to health hooligan intent;
- The Court of First Instance sentenced him with 7 years of imprisonment
- The Court of Appeals upheld the previous sentence
- The Supreme Court deemed the complaint inadmissible.

18. Vladimer Vakhania

- Holding dual citizenship of Russia and Georgia; co-founder of the political party _ "The United Georgia", awarded with a number of academic degrees;
- Charged pursuant to Para 2 of Article 154 of the Criminal Code – illegal interference into professional activities of journalist and Para 1 of Article 236 of the Criminal Code of Georgia – illicit acquisition and storage of fire-arm and ammunition.
- The Court of First Instance sentenced him to 4 years of imprisonment for both counts as a type of principal sentence.
- The Court of Appeals amended punishment part of the sentence and sentenced him to 3 years and 6 months of imprisonment.
- The decision was appealed in the Supreme Court and was ruled as inadmissible.

Cases of Administrative Violation

1. Irakli Kakabadze

- Founder of the Equality Institute, holder of U.S. citizenship, a poet, organized/participated in a number of protest rallies. Detained during participation in the protest rally at the junction of George Bush and Lech Kachinski Streets.
- Charged with Article 173 of the Code of Administrative Offences - disobedience to the legal orders or instructions of law enforcement officers.
- The Court of first instance pronounced I. Kakabadze as an administrative offender and ordered him to pay a sanction in the amount of GEL 400.
- The Court of Appeals upheld the previous order.

2. **Merab Chikashvili** – representative of the civil movement Ratom; **Dachi Tsaguria** – representative of the civil movement November 7; **Mikheil Meskhi** – representative of the civil movement Equality Institute; **Giorgi Sabanadze** – representative of the political party New Rights; **Giorgi Chitarishvili** – representative of the civil movement November 7; and participants of the protest rally held outside the MIA Headquarters on June 15, 2009 and protest rally held outside the Parliament on July 12, 2009.

- Charged with Article 173 of the Code of Administrative Offences - disobedience to the legal orders or instructions of law enforcement officers; and Article 166 of the Code – petty hooliganism[26].
- The Court of First Instance pronounced the accused as administrative offenders and sentenced them to 30 days of imprisonment.
- The claim for the new trial in the Court of Appeals that was turned down[27].

[26] Girogi Chitarishvili was convicted pursuant to only Article 173 of the Code of Administrative Offences.
[27] Ruling about Giorgi Sabanadze has not been appealed.