



INTERIM REPORT

TRIAL MONITORING PROJECT GEORGIA

WARSAW, 12 MARCH 2014

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I. EXECUTIVE SUMMARY

This Interim Report has been prepared to inform the Government of Georgia on the progress of the trial monitoring project launched by ODIHR in February 2013 based on an invitation issued by the Ministry of Foreign Affairs in January 2013.

The trial monitoring project is implemented on the basis of ODIHR's trial monitoring methodology as outlined in the "Trial Monitoring: A Reference Manual for Practitioners"¹ and the Legal Digest of International Fair Trial Rights.²

Under the project, ODIHR selected cases for monitoring where the defendant or one of the defendants meets the definition of "official" under article 2 of the Law on Conflict of Interest and Corruption in the Public Service of Georgia.

Between the start of monitoring on 20 February 2013 and 20 February 2014, ODIHR has monitored 270 hearings in 14 cases as outlined in Annex I to this Report. Of the 14 monitored cases, seven remain at the first instance and seven have been disposed at the first instance. Two cases are on appeal in the Tbilisi City Court, which upheld the trial court's judgment in a third case. One case is on appeal to the Georgian Supreme Court. Eleven appeal hearings have been monitored.

All stakeholders and beneficiaries of the project have welcomed ODIHR's engagement and expressed their support to the conduct of the trial monitoring activities. The Office of the Chief Prosecutor, the Tbilisi City Court and the Supreme Court of Georgia have appointed Focal Points to facilitate unrestricted access to court proceedings to ODIHR's trial monitors, and have provided ODIHR upon request with comprehensive information of scheduled hearings and with indictments and, where applicable, first instance judgments related to the monitored trials.

The legal and institutional framework regulating the Georgian judiciary and criminal justice system in particular is generally comprehensive and provides an increasingly sound basis to conduct trials in accordance with rule of law principles and international fair trial standards.

The Constitution of Georgia enshrines the principle of an independent judiciary³, which is echoed by the Law on Common Courts.⁴

There are concerns that despite the numerous efforts made by governments of Georgia in recent years to reform the judiciary and separate it from the executive branch of power, systemic weaknesses exist that have the potential of making judges susceptible to pressure from other branches of government and to negatively impact the public perception of an independent judiciary in Georgia.

With regard to specific fair trial standards, Georgian law includes, among others, the following provisions, which are relevant for the monitored trials:

¹ Available at <http://www.osce.org/odihr/94216>

² Available at <http://www.osce.org/odihr/94214>

³ Constitution, arts. 82(3) and 85.

⁴ Law on Common Courts, art. 1(1).

The right to a public hearing is explicitly stated in the Constitution and in the Criminal Procedure Code, which provides that “[a]s a rule, the court session is oral and public.”⁵

Once charged with a crime, every person has the right to be presumed innocent until proven guilty.⁶ The Constitution and the Criminal Procedure Code also guarantee a defendant’s privilege against self-incrimination.⁷

In relation to defendants’ rights to receive and understand information regarding their rights the Georgian Criminal Procedure Code prescribes that, before any questioning, a defendant shall be informed of his or her rights. In relation to the right to trial within a reasonable time the law guarantees an expedient administration of justice and obliges courts to prioritise cases where a defendant is in detention.⁸

Regarding the right to equality of arms and adequate preparation of one’s case, the Criminal Procedure Code requires that all evidence on which a party intends to rely at trial be disclosed to the opposing party in advance of the trial.⁹ In addition, the prosecution must disclose all exculpatory evidence in its possession.¹⁰

The Criminal Procedure Code supports the right to be heard in its provision granting the defendant an exceptional right to present evidence outside the normal rules, though permitting a judge to impose “procedural costs” on the defence to limit the use of this exceptional right.¹¹

The Criminal Procedure Code sets forth a general right to call witnesses.¹² All persons charged with a criminal offence have the right to examine witnesses against them and to call witnesses on their own behalf.

Regarding the right to be present at one’s trial, the Code states that consideration of a case without the defendant’s participation may be permissible only if the defendant is avoiding appearing before the court. In this case the participation of the defence counsel shall be mandatory.¹³

All defendants in Georgia have the right “to a counsel and the right to choose the counsel, as well as the right to substitute the counsel of his/her choice at any time.”¹⁴

The Constitution guarantees the right to a public pronouncement of judgment.¹⁵ Although the right to a reasoned judgment is not set forth explicitly in the Criminal Procedure Code, the Code does state that “a court judgment shall be legitimate,

⁵ Criminal Procedure Code, arts. 182(1) and 10; Constitution, art. 85(1).

⁶ Constitution arts. 40(1) and 17.

⁷ Constitution, art. 42(8); Criminal Procedure Code, art. 15.

⁸ Criminal Procedure Code, arts. 8(2), (3).

⁹ Criminal Procedure Code, art. 83(6).

¹⁰ Criminal Procedure Code, art. 83 (1).

¹¹ Criminal Procedure Code, art. 84.

¹² Criminal Procedure Code, art. 14(2).

¹³ Criminal Procedure Code, art. 189(1).

¹⁴ Criminal Procedure Code, art. 38(5).

¹⁵ Constitution, art. 85(1).

substantiated, and fair.”¹⁶

The vague manner in which some fair trial rights are stipulated in the Georgian legislation provides ample room for interpretation and discretionary power by the judiciary, often making the consistent application of legislation difficult.

ODIHR will assess the legal and institutional framework in detail and insofar as it is of relevance to the monitored cases, to identify shortcomings concerning the respect of fair trial rights in Georgia.

ODIHR will issue a report on the monitored trials, including a set of recommendations to the Government of Georgia, subject to the adjudication of a sufficient number of the selected and monitored cases in the appellate or cassation instances.

II. BACKGROUND

Following a change of Government in Georgia in October 2012, a wave of arrests of ex-officials from the previous administration put the country under domestic and international scrutiny, raising concerns that these and any subsequent trials might be politically motivated. Since October 2012, Georgia’s Chief Prosecutor’s Office, on the basis of citizens’ and other actors’ complaints as well as ex-officio, has initiated criminal cases against Government officials of various ranks.

In light of its OSCE commitments, Georgia faces the challenge of handling these cases in a transparent manner consistent with rule of law and fair trial standards. The manner in which these cases are dealt with by the Georgian judiciary, the Prosecution Service, and other participants in the judicial process are important indicators of the independence of the judiciary from the executive branch of power, as well as the extent to which the full range of commitments and international standards relating to fair trials and the rule of law are being implemented in the criminal justice system of Georgia.

Following an exchange of letters between ODIHR and the Ministry of Foreign Affairs in January 2013, and in response to an invitation on 29 January 2013 of the Georgian Ministry of Foreign Affairs to ODIHR to conduct monitoring of trials of persons who held high political office in the former Government of Georgia, ODIHR undertook a familiarization visit to Tbilisi from 6-10 February 2013. As a result of this visit, ODIHR set up a trial monitoring project, which commenced on 20 February 2013 based on ODIHR’s trial monitoring methodology as outlined in the “Trial Monitoring: A Reference Manual for Practitioners”¹⁷ and the “Legal Digest of International Fair Trial Rights”.¹⁸

Under the project, ODIHR selected cases for monitoring where the defendant or one of the defendants meets the definition of “official” under article 2 of the Law on Conflict of Interest and Corruption in the Public Service.

Since the inception of ODIHR’s trial monitoring activity, the Office of the Chief Prosecutor, the Tbilisi City Court and the Supreme Court of Georgia have appointed Focal Points to

¹⁶ Criminal Procedure Code, arts. 259(1) and (2); *see* Criminal Procedure Code arts. 273 and 275.

¹⁷ Available at <http://www.osce.org/odihr/94216>

¹⁸ Available at <http://www.osce.org/odihr/94214>

facilitate unrestricted access to court proceedings to ODIHR's trial monitors, and have provided ODIHR upon request with indictments and, where applicable, first instance judgments related to the monitored trials.

The trial monitoring project is managed from Warsaw and implemented in Georgia by a non-permanent international Team Leader and a rotating number of 42 international trial monitors¹⁹ who monitor trials in pairs. Trial monitors are drawn from an externally recruited pool of experts with criminal trial or relevant monitoring experience in the OSCE region, as well as from staff experienced in conducting trial monitoring in ODIHR and in OSCE Field Operations.

III. ODIHR TRIAL MONITORING METHODOLOGY

OSCE participating States have undertaken a number of significant commitments on fair trial standards, the rule of law, independence of the judiciary, administration of criminal justice and, more broadly, on human rights (Vienna 1989, Copenhagen 1990, Paris 1990, Moscow 1991). Foremost among these is the commitment to ensure the right to a fair and public hearing within a reasonable time frame before an independent and impartial tribunal. In addition to the OSCE commitments on fair trial rights, OSCE participating States have also more specifically “accept[ed] as a confidence building measure the presence of observers [...] at proceedings before the courts.”²⁰

Based on these commitments, ODIHR has developed a trial monitoring methodology as outlined in the *Trial Monitoring: A Reference Manual for Practitioners* and the *Legal Digest of International Fair Trial Rights*. The methodology aims to assess compliance of monitored trials and relevant domestic law with international fair trial standards, identify possible shortcomings in the criminal justice system, and present the national authorities with eventual recommendations aimed at enhancing the administration of criminal justice in light of OSCE commitments. Trials are monitored by pairs of monitors, who record relevant information after each hearing.

ODIHR's trial monitoring methodology is based on strict adherence to the principles of objectivity and of non-intervention in judicial processes. In terms of its non-partisan stance, ODIHR monitors for procedural fairness and due process, rather than substantive outcomes of trials, in line with international standards, good practices, and OSCE commitments.

While performing their duties, ODIHR monitors are bound by the ODIHR Trial Monitoring Code of Conduct, including the duty of non-intervention, impartiality, and professionalism. Monitoring teams are bound by confidentiality and do not communicate with the media.

In line with the principles of non-intervention, objectivity and impartiality, and in order to pay due consideration to the independence of the judiciary, ODIHR principally discloses information about the conduct of the proceedings and findings thereof to the involved parties and the public only once judgements in cases under monitoring have been concluded in the appellate or cassation instances or have been concluded otherwise.

¹⁹ As of 24 February 2014

²⁰ Copenhagen 1990, para. 12

IV. TRIAL MONITORING ACTIVITIES

ODIHR commenced its trial monitoring project on 20 February 2013, prior to which ODIHR conducted a familiarization visit to Tbilisi from 6-10 February 2013 and met with representatives from the Ministry of Foreign Affairs, the Minister of Justice, the Chairperson of the Supreme Court of Georgia, the Chief Prosecutor of Georgia, the Chairperson of the Tbilisi City Court and the Public Defender of Georgia. ODIHR also met with a number of national and international civil society representatives monitoring the human rights situation and the judicial process in Georgia, and conducted meetings with the Delegation of the European Union and Diplomatic Representations in Georgia. The project team also maintains contacts with the Tbilisi City Court, the Kutaisi City Court, the Tbilisi Appeals Court, the Office of the Chief Prosecutor of Georgia, and the Supreme Court of Georgia. ODIHR has issued two press releases to inform the public about the beginning of the project and the applied methodology.²¹

Between the start of monitoring on 20 February 2013 and 20 February 2014, ODIHR has monitored 270 hearings in 14 cases as outlined in Annex I to this Report. Of the 14 monitored cases, seven remain at the first instance and seven have been disposed at the first instance. Two cases are on appeal in the Tbilisi City Court, which upheld the trial court's judgment in a third case. One case is on appeal to the Georgian Supreme Court. Eleven appeal hearings have been monitored.

The project, which was initially planned until December 2013, was extended until 30 June 2014 due to the fact that most trials are still ongoing in either the first, second or third instance.

In addition, ODIHR assesses the Georgian legal and judicial framework related to fair trial rights and rule of law with regard to their compatibility with international standards and OSCE commitments, as pertaining to the cases monitored. This assessment together with the findings from monitoring the court proceedings will form the basis for the final report.

V. LEGAL FRAMEWORK AND JUDICIAL SYSTEM

The right to be tried before a competent, independent, and impartial tribunal established by law is one of the fundamental guarantees of a fair trial.²² In accordance with the UN Basic Principles on the Independence of the Judiciary, states must ensure that judicial proceedings are conducted fairly and in accordance with the principle of independence of the judiciary.²³

²¹ See ODIHR press releases of 7 February 2013 at < <http://www.osce.org/odihr/99413> > and of 20 February 2013 at < <http://www.osce.org/odihr/99716> >

²² International Covenant on Civil and Political Rights, 23 March 1976, art. 14(1), <<http://www.refworld.org/docid/3ae6b3aa0.html>>; European Convention on Human Rights, 3 Sep. 1953, art. 6(1) <http://www.echr.coe.int/Documents/Convention_ENG.pdf>.

²³ UN Basic Principles on the Independence of the Judiciary, 13 Dec. 1985, arts. 1 and 2, < <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx> > .

OSCE participating states have committed to uphold standards on independence and impartiality of the judiciary set out under international instruments.²⁴

The Constitution of Georgia enshrines the principle of an independent judiciary,²⁵ and a number of legal provisions reiterate the principle in both general and specific terms. The Law on Common Courts echoes the Constitution with its statement on judicial independence.²⁶ It also regulates the composition of courts, the appointment and dismissal of judges, and the many duties of judges in maintaining an independent and impartial judiciary.²⁷ The Norms on Judicial Ethics delineate a more specific set of rules regarding independence, impartiality, competence, and diligence as well as judges' interaction with the media and non-judicial activities.²⁸

Article 83 of the Constitution establishes the Constitutional Court and the system of general courts. General courts include the Supreme Court, two Appeals Courts, and 26 City Courts. The Organic Law of Georgia on Common Courts (Law on Common Courts), first adopted by the Georgian Parliament on 13 June 1997 and entered into force in 1998, defines the system and organization of the courts and establishes the regulatory framework for the composition of the courts and the appointment and dismissal of judges. The original Law on Common Courts provided for the three-tiered system of courts and established the High Council of Justice (HCOJ) as a consultative body to the President. The implementation of the Law on Common Courts was part of an initial wave of reform legislation passed in order to strengthen efforts in creating a more independent judiciary.

In 2005, the Government initiated a broader set of judicial reforms that provided both legislative and institutional changes that sought to reorganize and unify the system of courts, as well as significant investments in judges' salaries and infrastructure to curb judicial corruption. Some of the key changes included the establishment of the principle of consecutiveness of judicial instances between the city, appeals, and supreme courts and the reformation of the processes of selection and training of judges. Additionally, the HCOJ was transformed into a formally independent structural organ of the judiciary, pursuant to amendments to the Constitution of Georgia made on 27 December 2007. The 2007 amendments took away the authority of the President to appoint and dismiss judges and placed it in the hands of the HCOJ.

In March 2012 the Georgian Parliament approved further amendments to the Law on Common Courts that focused, *inter alia*, on the composition of the HCOJ, and the appointment and transfer of judges. Amendments to the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts and the Law on Common Courts additionally allowed for more transparency in the process of appointing judges and the release of information in relation to disciplinary proceedings. 2013 amendments to the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts further contributed to strengthening the independence of the judiciary.

²⁴ OSCE Human Dimension Commitments, 2005, pgs. 91-92, < <http://www.osce.org/odihr/elections/16363>>.

²⁵ Constitution, arts. 82(3) and 85.

²⁶ Law on Common Courts, art. 1(1).

²⁷ See Law on Common Courts.

²⁸ Norms on Judicial Ethics of Georgia, available at <<http://www.supremecourt.ge/judges-self-governance/judges-ethics-code/>>

In 2010, constitutional amendments foresaw the lifetime appointment of judges to replace the maximum appointment of ten years. In 2013, another set of amendments to the Law on Common Courts was approved by the Government of Georgia, which included a three-year probationary period for all judges before reaching life time appointment. However, following public debates and criticism from civil society organizations, the Parliament²⁹ postponed the definition of a new system for the evaluation and the monitoring of judges to complement the three-year probationary period. Other amendments to the Law on Common Courts increased the minimum qualifications for judges.

The legal and institutional framework regulating the Georgian judiciary and criminal justice system in particular is generally comprehensive and provides an increasingly sound basis to conduct trials in accordance with rule of law principles and international fair trial standards.

There are, nevertheless, concerns that despite the numerous efforts made by governments of Georgia in recent years to reform the judiciary and separate it from the executive branch of power, systemic weaknesses exist that have the potential of making judges susceptible to pressure from other branches of government and to negatively impact the public perception of an independent judiciary in Georgia.

VI. FAIR TRIAL RIGHTS

With regard to fair trial standards, Georgian law includes the following provisions:

The **right to a public hearing** is explicitly stated in the Constitution and in the Criminal Procedure Code, which provides that “[a]s a rule, the court session is oral and public.”³⁰ Moreover, the Constitution limits any restrictions on the right to a public hearing by making the consideration of a case at a closed hearing “permissible only in the circumstances provided for by law.”³¹ These provisions are reiterated in the Law on Common Courts.³²

Once charged with a crime, every person has the **right to be presumed innocent** until proven guilty.³³ The Constitution and the Criminal Procedure Code also guarantee a defendant’s **privilege against self-incrimination**.³⁴ Defendants may “remain silent at any time,” and the exercise of that right “cannot be evaluated as evidence proving his or her guilt.”³⁵ Giving testimony “shall be the right of the defendant.”³⁶

At all stages of the criminal process, judges should ensure **defendants receive and understand information regarding their rights**.³⁷ This protects the integrity of the judicial

²⁹ Coalition for an independent and transparent judiciary, statement of 3 October 2013, *available at* <<http://transparency.ge/en/post/general-announcement/coalition-independent-and-transparent-judiciary-calls-georgian-parliament>>

³⁰ Criminal Procedure Code, arts. 182(1) and 10; Constitution, art. 85(1).

³¹ Constitution, art. 85(1).

³² Law on Common Courts, art. 13.

³³ Constitution arts. 40(1) and 17.

³⁴ Constitution, art. 42(8); Criminal Procedure Code, art. 15.

³⁵ Criminal Procedure Code, art. 38(4).

³⁶ Criminal Procedure Code, art. 74(2).

³⁷ Criminal Procedure Code, arts. 174(1) (on arrest), 197 (first appearance), 219(1) and (3) (pre-trial), and 230 (at trial).

process by helping defendants make informed decisions on how to proceed with their defence. The Criminal Procedure Code prescribes that, before any questioning, a defendant shall be informed of his or her rights, including the right to remain silent and the privilege against self-incrimination, the right to testify as a witness, and rights related to jury trials.³⁸

The **right to trial within a reasonable time** aims to keep persons facing legal proceedings from existing in a state of uncertainty. The Criminal Procedure Code guarantees an expedient administration of justice and obliges courts to prioritise cases where a defendant is in detention.³⁹ Pre-trial hearings should take place no later than 60 days after a defendant's arrest, but "a party may file a substantiated motion with the court requesting to extend or shorten this term by a reasonable time."⁴⁰

Regarding the right to **adequate facilities to prepare one's case**, the Criminal Procedure Code requires that all evidence on which a party intends to rely at trial be disclosed to the opposing party in advance of the trial.⁴¹ In addition, the prosecution must disclose all exculpatory evidence in its possession.⁴²

The Criminal Procedure Code supports the **right to be heard** in its provision granting the defendant an exceptional right to present evidence outside the normal rules, though permitting a judge to impose "procedural costs" on the defence.⁴³ Under the Code, the court decides on the evidence before the main trial following an evidence admissibility discussion at the pre-trial hearing.⁴⁴ However, additional evidence is allowed upon a party's motion subject to court's approval.⁴⁵

All persons charged with a criminal offence have the **right to examine witnesses against them and to call witnesses** on their own behalf.⁴⁶ The Criminal Procedure Code sets forth a general right to call witnesses.⁴⁷ As well, parties may call witnesses who were not originally disclosed at pre-trial stage if the court finds the justification by the party sufficient.⁴⁸

Regarding **the right to be present** at one's trial, "Consideration of a case without the defendant's participation may be permissible only if the defendant is avoiding appearing before the court. In this case the participation of the defence counsel shall be mandatory."⁴⁹ On the right to appeal, "when a judgment of conviction is rendered *in absentia*, the convict has a right to file an appeal against the judgment within one month from the moment of imprisonment; from the moment of appearance before relevant bodies, or from the moment of pronouncement of sentence by the Court of First Instance, if the convict requests the review of the appeal at the Appellate Court without his/her participation."⁵⁰

³⁸ Criminal Procedure Code, arts. 38(2), 230(1), and 219(3).

³⁹ Criminal Procedure Code, arts. 8(2), (3).

⁴⁰ Criminal Procedure Code, arts. 205(3) and 208(3).

⁴¹ Criminal Procedure Code, art. 83(6).

⁴² Criminal Procedure Code, art. 83 (1).

⁴³ Criminal Procedure Code, art. 84.

⁴⁴ Criminal Procedure Code, arts. 219(4) and 220.

⁴⁵ Criminal Procedure Code, art. 239. See also Criminal Procedure Code, art. 84.

⁴⁶ International Covenant on Civil and Political Rights, art. 14(3)(e); European Convention on Human Rights and Fundamental Freedoms, art. 6(3)(d).

⁴⁷ Criminal Procedure Code, art. 14(2).

⁴⁸ Criminal Procedure Code, art. 239(2).

⁴⁹ Criminal Procedure Code, art. 189(1).

⁵⁰ Criminal Procedure Code, art. 292(3).

All defendants in Georgia have the **right “to a counsel** and the right to choose the counsel, as well as the right to substitute the counsel of his/her choice at any time.”⁵¹ This right is reinforced by procedural measures that allow the court to appoint replacement counsel at the expense of the state and to postpone proceedings for up to ten days (and for an additional five days on the basis of a well-grounded motion), presumably to permit the new counsel to review the case.⁵² Defence counsel is mandatory in several circumstances, including if “a defendant is in the process of negotiating a plea agreement...is charged with a crime for which this Code foresees a jury trial...evades from appearance before the investigative bodies,”⁵³ or where the defendant has absconded.⁵⁴ In cases where the mandatory defence provisions apply and the defendant is not represented, “the State shall bear the costs of the defence.”⁵⁵ Further, defendants have the right to confidential communications with counsel.⁵⁶

The Constitution and the Criminal Procedure Code guarantee the right to a **public pronouncement of judgment**.⁵⁷ Although the **right to a reasoned judgment** is not set forth in such terms, “A court judgment shall be legitimate, substantiated, and fair.”⁵⁸

The vague manner in which some fair trial rights are stipulated in the Georgian legislation provides ample room for interpretation and discretionary powers by the judiciary, often making the consistent application of legislation difficult.

VII. CONCLUSIONS

All stakeholders and beneficiaries of ODIHR’s trial monitoring project in Georgia have welcomed ODIHR’s engagement and expressed their support to the conduct of trial monitoring activities in line with ODIHR’s trial monitoring methodology as outlined under Section III of this report.

The favorable pre-conditions and the project extension until 30 June 2014 allow ODIHR to effectively monitor proceedings and to assess the respect for fair trial rights in the selected cases.

ODIHR endeavors to issue a trial monitoring report including key findings and a set of recommendations to the Government of Georgia, subject to the adjudication of a sufficient number of the selected and monitored cases in the appellate or cassation instances, in the course of June/July 2014.

An eventual second extension of the project will be subject to the conclusion of a sufficient number of monitored cases in the appellate or cassation instance.

⁵¹ Criminal Procedure Code, art. 38(5).

⁵² Criminal Procedure Code, art. 190(1).

⁵³ Criminal Procedure Code, art. 45.

⁵⁴ Criminal Procedure Code, 189(1).

⁵⁵ Criminal Procedure Code, art. 46(1).

⁵⁶ Criminal Procedure Code, art. 43.

⁵⁷ Constitution, art. 85(1); Criminal Procedure Code, art. 10(2).

⁵⁸ Criminal Procedure Code, arts. 259(1) and (2); *see* Criminal Procedure Code arts. 273 and 275.

ANNEX I: OVERVIEW OF CASES MONITORED

As of 20 February 2014

CASES AT FIRST INSTANCE

1. Alania; Akhalaia, Davit; Melnikov; Topuridze

18 hearings monitored

- Alania, Geronti, *in absentia*. Former Constitutional Security Department (CSD) officer.
- Akhalaia, Davit, *in absentia*. Former Deputy Defence Minister, CSD chair.
- Melnikov, Oleg, originally *in absentia*, then extradited from Ukraine. Currently in detention. Former CSD officer.
- Topuridze, Ioseb, *in absentia*. Former deputy head of CSD.

The defendants are accused of beating three individuals they believed insulted the wife of then-Internal Affairs Minister Ivane Merabishvili in a Tbilisi restaurant. They are variously charged with illegal imprisonment and exceeding official authority.

2. Adeishvili, Chakua

3 hearings monitored

- Adeishvili, Zurab, *in absentia*. Former Minister of Justice, Prosecutor General, head of President's Administration, Minister for State Security, Member of Parliament.
- Chakua, Davit, *in absentia*. Former head of Penitentiary Department.

According to the prosecution, in October 2012 the defendants orchestrated prisoner abuse, video-recorded it, and blamed it on individuals affiliated with Georgian Dream (GD) in order to cover up ongoing abuse of prisoners and to decrease the chances of GD's success in the October 2012 elections. They are charged with abuse of official authority, torture, provocation of crime, and fabrication of evidence.

3. Adeishvili, Antadze, Chigogidze, Chocheli, Ebanoidze, Gatchava, Giorgadze, Gumbatashvili, Kapanadze, Kodua, Kubaneishvili, Melia, Morchiladze, Sajaia, Sakvarelidze, Tskhenosanidze

14 hearings monitored

- Adeishvili, Zurab, *in absentia*. Former Minister of Justice, Prosecutor General, head of President's Administration, Minister for State Security, Member of Parliament.
- Antadze, Iliia. Director of a company.
- Chigogidze, Vasil. Director of Arc Ltd.
- Chocheli, Tsezar. Head of the supervisory board of beverage company Natakhtari.
- Ebanoidze, Jambul. Executive director of Tegeta motor car company.
- Gatchava, Laura. Director of a company.
- Giorgadze, Davit. Former deputy minister of economy.

- Gumbatashvili, Irakli. Director of CDM Co.
- Kapanadze, Lukhum, *in absentia*.
- Kodua, Davit. Director of a company.
- Kubaneishvili, Nika. Director of Interplast or Kplast.
- Melia, Nika. Former governor of Mtatsminda District in Tbilisi.
- Morchiladze, Grigol. Head of a company.
- Sajaia, Nugzar. Director of Planex Co.
- Sakvarelidze, Levan. Director of a company.
- Tskhenosanidze, Gocha. Director of a company.

The defendants allegedly attempted to force Cartu Bank into bankruptcy. They are variously charged with illicit practices relating to bankruptcy and forging or use of credit or settlement card. Adeishvili is charged with abuse of official position.

4. Kezerashvili, Janashvili, Lapanashvili, Iakubov, Melashvili, Imnadze, Kakiashvili, Davitashvili

25 hearings monitored

- Kezerashvili, Davit, *in absentia*, currently in extradition proceedings in France. Former Minister of Defence.
- Janashvili, Meiri, *in absentia*.
- Lapanashvili, Levan.
- Iakubov, Aleksandre.
- Melashvili, Mikheil.
- Imnadze, Ioseb.
- Kakiashvili, Zviad.
- Davitashvili, Nikoloz.

According to the prosecution, in 2006 Davitashvili and Imnadze began importing ethanol from Ukraine without paying taxes and used it to produce cognac in Georgia, which was then illegally exported to Ukraine and Belarus. They asked Janashvili to provide protection through his contacts with Kezerashvili, then director of the finance police, and Kezerashvili agreed in exchange for around USD 13 million. The other defendants are customs officers. They are variously charged with forging or use of credit or settlement card; breach of customs procedures; giving bribes; preparation or using of forged document, seal, stamp or blank; counterfeiting money or security or using thereof; and accepting bribes.

5. Kardava, Khizanishvili, Liluashvili

9 hearings monitored

- Kardava, Levan. Former head of CSD.
- Khizanishvili, Shota. Former Deputy Interior Minister.
- Liluashvili, Vazha. Former deputy director of CSD.

Prosecutors allege that on 26 September 2012 defendants instructed the CSD to obtain materials from the computers of Georgian Dream activists. Defendants also asked CSD to publish on YouTube secret recordings of GD politicians apparently made by then candidate

for Prime Minister Bidzina Ivanishvili's bodyguard and paid Ivanishvili's bodyguard USD 100,000 to say that he recorded the conversations upon Ivanishvili's request. They are variously charged with misappropriation/embezzlement; exceeding official authority; recording and distributing an illegally-recorded private conversation; damaging or destroying another's possession causing substantial injury; illegal access to computer information protected by law; and creation of a program that damages a computer.

6. Merabishvili

22 hearings monitored

- Merabishvili, Ivane. Former Prime Minister. In detention since 21 May 2013.

Merabishvili is accused of ordering the use of excessive force against protestors at the 25 May 2005 demonstrations, resulting in two deaths and scores of injuries. At the time, he served as Minister of Internal Affairs. He is charged with exceeding official authority.

7. Kezerashvili, Ugulava

14 hearings monitored

- Ugulava, Gigi. Tbilisi mayor until the court in late December 2013 suspended him from this position pending the outcome of these proceedings. Former Deputy Security Minister, and Governor of Samegrelo-Zemo Svaneti.
- Kezerashvili, Davit, *in absentia*. Former Minister of Defense.

The case addresses three episodes: (1) the creation of a shell company through which state money was funnelled to 712 UNM activists; (2) the misappropriation of USD 10 million in state funds intended for a rehabilitation project in Old Tbilisi for the purpose of taking over Imedi TV, and (3) laundering of the allegedly misappropriated funds. Defendants are charged with misappropriation or embezzlement and legalisation of illegal revenues (money laundering).

DISPOSED AT FIRST INSTANCE/ON APPEAL

1. Akhalaia, Kalandadze, Shamatava, Mkurnalidze, Daraselia, Kintsurashvili, Gorgadze, Kikabidze

44 hearings monitored, including 4 appeal hearings

The case relates to three incidents: (1) Akhalaia, Kalandadze, and Shamatava abused interior ministry drivers who refused to participate in morning training; (2) assault and imprisonment of Zviad Abegadze in retaliation for insulting Kalandadze; (3) physical abuse of Paata Paataashvili.

Most defendants were acquitted by the first instance court. On 4 December, the Tbilisi Court of Appeals upheld the judgment but re-qualified the charges against the two convicted defendants and increased their sentences. An appeal has been submitted to the Supreme Court.

- Akhalaia, Bachana. In detention since early November 2012. Former Minister of Internal Affairs, Minister of Defense, head of Penitentiary Department of Ministry of Justice, Deputy Public Defender. Found not guilty of exceeding official authority, illegal imprisonment, and torture.
- Kalandadze, Giorgi. Brigadier General and Chief of Joint Staff of Georgian Armed Forces. Found not guilty of exceeding official authority and illegal imprisonment by the first instance court. Found guilty of abuse of military service by the Tbilisi Court of Appeals and restricted from military service for three months, though released from that sentence under the Amnesty Law.
- Shamatava, Zurab. Former commander of the armed forces' Vaziani Fourth Infantry Brigade. Found guilty of exceeding official authority and battery. Sentenced to four and six hours of community service; imposition of sentence revoked under 2012 Law on Amnesty. The Tbilisi Court of Appeals requalified the charges and increased the sentence; Shamatava is now in prison.
- Mkurnalidze, Gaga. Former deputy to the chairperson of the Penitentiary Department. Found not guilty of illegal imprisonment.
- Daraselia, Manuchar, *in absentia*. Former Penitentiary Department employee under the Ministry of Corrections and Legal Assistance. Not guilty of illegal imprisonment.
- Kintsurashvili, Giorgi, *in absentia*. Former Penitentiary Department employee under the Ministry of Corrections and Legal Assistance. Not guilty of illegal imprisonment.
- Gorgadze, Alexandre. Fourth Infantry Brigade sergeant. Guilty of exceeding official authority and battery; sentenced to 140 hours of community service; imposition of sentence suspended under 2012 Law on Amnesty. The Tbilisi Court of Appeals requalified the offence and increased the punishment; Gorgadze is now in prison.
- Kikabidze, Merab. Commander of the Second Infantry Brigade of the Ministry of Defence. Not guilty.

2. Akhalaia, Davitashvili, Chubinidze, Giorgashvili, Sutidze, Abashidze, Vekua, Zangieva

30 hearings monitored, including 4 appeal hearings

On 31 October 2013, all Defendants were acquitted of torture and imprisonment of seven Ministry of Interior staff they accused of insubordination and sympathizing with Georgian Dream. The case is on appeal.

- Akhalaia, Bachana. In detention since early November 2012. Former Minister of Internal Affairs, Minister of Defence, head of Penitentiary Department of Ministry of Justice, Deputy Public Defender. Acquitted of abuse of official authority, torture, and degrading or inhuman treatment.
- Davitashvili, Aleksi. Rangers program instructor. Acquitted of illegal imprisonment, torture, degrading or inhuman treatment, violation of human equality.
- Chubinidze, Davit. Rangers program instructor. Acquitted of degrading or inhuman treatment, violation of human equality.
- Giorgashvili, Davit. Rangers program instructor. Acquitted of illegal imprisonment, torture, degrading or inhuman treatment.
- Sutidze, Robert. Rangers program instructor. Acquitted of illegal imprisonment, torture, degrading or inhuman treatment.

- Abashidze, Mamuka. Head of the Rangers course in the Ministry of Defence. Acquitted of threat of torture, degrading or inhuman treatment.
- Vekua, Davit. Head of the First Division, Special Task Forces Department of the Ministry of Interior. Acquitted of torture, degrading or inhuman treatment.
- Zangieva, Vladimir. Rangers program instructor. Acquitted of illegal imprisonment, torture, degrading or inhuman treatment.

3. Akhalaia, Charbadze, Kardava, Tchakua.

15 hearings monitored, including 2 appeal hearings

According to the prosecution, in spring 2006 defendants urged imprisoned *thieves-in-law* to record a conversation about faking an assault by Akhalaia on an inmate so that Akhalaia could later release the recording to demonstrate that allegations about his mistreatment of prisoners were invented to discredit him. The imprisoned *thieves-in-law* did not implement Akhalaia's order. In response, Akhalaia, Kardava, and Charbadze humiliated and beat them. Other prisoners protested the beatings, and the protest devolved into a riot.

On 28 October, the Tbilisi City Court acquitted all defendants of exceeding official authority and convicted them of degrading or inhuman treatment; they received 5-year sentences (reduced to 3 years, 9 months under the December 2012 Amnesty Law) and are temporarily barred from serving in an official position. Akhalaia was fined GEL 4,000 and the rest GEL 3,000. The prosecution appealed. On 5 November, media reported that Saakashvili pardoned defendant Charbadze and Akhalaia; reports of pardons cannot be confirmed as nothing has been made public. In a discussion at the 5 Feb. appeal hearing, the parties said only Akhalaia had been pardoned, not Charbadze. The Tbilisi Court of Appeals upheld the trial court's judgment.

- Akhalaia, Bachana. In detention since early Nov. 2012. Former Minister of Internal Affairs, Minister of Defense, head of Ministry of Justice Penitentiary Department, and Deputy Public Defender.
- Charbadze, Revaz, *in absentia*. Prison department staff.
- Kardava, Megis, *in absentia*. Prison department staff.
- Tchakua, Davit, *in absentia*. Former head of Penitentiary Department.

4. Dzimtseishvili

11 hearings monitored

The Tbilisi City Court found Dzimtseishvili to have misappropriated GEL 126,900 of Ministry of Interior funds and fuel vouchers, which were used to hire minibuses to take people to a UNM rally in Zugdidi. Media reported on 30 October that then President Saakashvili pardoned him, but this has yet to be confirmed.

- Dzimtseishvili, Nikoloz, *in absentia*. Former Deputy Minister of Internal Affairs. Guilty of embezzlement; not guilty of abuse of official authority. Given a reduced sentence of 6 years and 9 months.

5. Gunava

10 hearings monitored

Accused of shooting his driver in the leg and causing light bodily injury. Also charged with exceeding official powers through the misappropriation of fuel from the Ministry of Internal Affairs with the use of fuel vouchers. Acquitted of light bodily injury; convicted of misappropriation. Pardoned by then President Mikheil Saakashvili.

- Gunava, Tengiz. Former acting governor of Samegrelo-Zemo Svaneti region. Former head of General Inspection of Ministry of Interior. Guilty of two counts of misappropriation of public funds, sentenced to six and eight years imprisonment. The sentences will be halved under the amnesty law and served concurrently. Not guilty of exceeding official power and light bodily injury.

6. Gvaramia, Khetaguri, Kandelaki, Manukyan, Nemsitsveridze, Damenia, Gutidze.

25 hearings monitored, including 1 appeal hearing

Prosecutors claimed that in July 2012 then energy minister Khetaguri entered into a corrupt deal with Telasi electricity distribution company through which the electricity distributor and three of its subsidiaries evaded tens of millions of GEL in taxes in exchange for US\$1 million. Kandelaki, at the time CEO of the Telasi subsidiaries, was involved in the illegal negotiations. Gvaramia asked Nemsitsveridze to register a shell consultancy company, L&F Service, which received the USD 1 million from Telasi and its subsidiaries. Nemsitsveridze withdrew funds on August 30, 2012 and handed them over to Gvaramia. Gvaramia involved Damenia, a partner at GDC Solutions, in the scheme by entering into a contract with L&F Service and acting as a sham sub-contractor in providing consultancy services to Telasi and its subsidiaries.

The defendants were charged with accepting bribes, giving bribes, legalization of illicit income, tax fraud, preparation or using of forged document, false entrepreneurship, and covering up a crime. All were acquitted on 14 November. The case has been appealed.

- Gvaramia, Nika. Director General Rustavi 2 TV. Former Science and Education Minister, Justice Minister, and First Deputy General Prosecutor. UNM Member of Parliament from 2004-2007.
- Khetaguri, Alexander. Former Minister of Finance, Minister of Energy, director general of the Georgian Oil and Gas Corporation, First Deputy Minister of Energy, Deputy Minister of Energy.
- Kandelaki, Devi. CEO of Telasi,
- Manukyan, Ashot, in absentia. CEO of Telasi.
- Nemsitsveridze, Giorgi. Partner, L&F Service.
- Damenia, Kakha. Former Minister of Economy. Partner in GDC Solutions audit company.
- Gutidze, Isabela. Partner, GDC Solutions.

7. Merabishvili, Tchiaberashvili

32 hearings monitored

On 17 February 2014, the Kutaisi City Court convicted the defendants on various charges for directing millions of GEL in public funds to UNM party activists via an employment program. Merabishvili was also found guilty of forcing a house to be transferred to state ownership for his personal use. Merabishvili received a ten-year sentence, reduced to five years under Georgia's Amnesty Law. Tchiaberashvili was fined GEL 52,000, reduced to GEL 50,000 on account of the two days he spent in pre-trial detention. Both sides have said they will appeal.

- Merabishvili, Ivane. Former Prime Minister. In detention since 21 May 2013.
- Tchiaberashvili, Zurab. Former governor of Kakheti region, Central Election Commission chair; mayor of Tbilisi; permanent representative to the Council of Europe; ambassador to the Swiss Confederation and Principality of Liechtenstein; permanent representative to UN office and other international organizations in Geneva; and Minister of Health, Labour and Social Affairs.

ANNEX II: INFORMATION ON INTERNATIONAL MONITORS

The 42 monitors (23 women, 19 men) deployed in the project are citizens of the following participating States:

Armenia
Azerbaijan
Belarus
Bosnia and Herzegovina
Canada
Croatia
Finland
France
Germany
Greece
Italy
Kazakhstan
Kyrgyzstan
Former Yugoslav Republic of Macedonia
Moldova
Norway
Poland
Portugal
Romania
Switzerland
Serbia
Slovakia
United Kingdom
Ukraine

United States

This includes 3 ODIHR staff members and 8 staff from OSCE field operations.

***The English version of this report is the only official document.
An unofficial translation is available in Georgian.***