



# Vanishing Rights

**Behind the Façade:  
Georgia, events of 2009**



This project is funded  
by the **EUROPEAN UNION**



A project implemented  
by the **HUMAN RIGHTS CENTRE**  
(HRIDC)



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**Tbilisi, 2010**

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**On the cover:** Police dismantling demonstration in Tbilisi, June 15, 2009

*Courtesy photo by information agency InterPressNews*

Non-governmental organization the **Human Rights Centre (HRIDC)**, formerly Human Rights Information and Documentation Center (HRIDC) was founded on December 10, 1996 in Tbilisi, Georgia.

The **Human Rights Centre (HRIDC)** is dedicated to protection and promotion of human rights, rule of law and peace in Georgia. It is free of any political and religious affiliation.

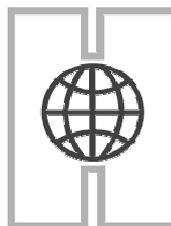
The Human Rights Centre (HRIDC) believes that everyone is entitled to exercise her/his civil, political, social, economic and cultural rights freely and without any discrimination as guaranteed by national and international law. We consider that protection and promotion of these rights and respect for rule of law are the key preconditions for building sustainable peace and democracy in Georgia.

The **Human Rights Centre (HRIDC)** has five priority areas of action: strengthening the rule of law, supporting freedom of expression and media, promoting equality and social inclusion, reinforcing democratic processes and supporting transitional justice.



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*The contents of this publication are the sole responsibility of the Human Rights Centre (HRIDC) and can in no way be taken to reflect the views of the European Union.*



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The **South Caucasus Network of Human Rights Defenders**, a new initiative of the Human Rights Centre (HRIDC) (Georgia) and Human Rights House Foundation (Norway) came into existence in the spring 2009.

The Network is financially supported by the European Union and the Norwegian Ministry of Foreign Affairs.

The South Caucasus Network of Human Rights Defenders unites 30 human rights NGOs in Armenia, Azerbaijan and Georgia. The Human Rights Centre coordinates the Network in Georgia.

The Network seeks to facilitate creation of a safer and enabling environment for human rights defenders in Armenia, Azerbaijan and Georgia. By increasing cooperation and solidarity among defenders, the Network also seeks to strengthen voices of human rights defenders at national and regional levels and increase their visibility internationally.

The Network provides a regional platform for defenders from Armenia, Azerbaijan and Georgia to join their voices and resources for strengthening each other and reaching their common goal – making human rights real.

- The Network offers legal, physiological, medical and financial support to persecuted human rights defenders or those at risk, including immediate evacuation and assistance in obtaining temporary residence or seeking asylum in a safer country.

- The Network monitors policy, legal and security environment affecting defenders /NGOs and their work as well as human rights and freedoms in general. The Network monitors trials against human rights defenders to evaluate compliance of each individual trial with national and international standards of fair trial and procedural as well as substantial justice.

- The Network holds various actions and issues joint statements to raise public scrutiny on the governments' policies and actions in the three countries and to attract national and international public attention to important human rights issues in these countries (e.g. freedom of media, illegal persecutions on political or other grounds, detention and harassment of journalists, etc.)

- The Network is involved in international lobbying and advocacy with EU, CoE, OSCE/ODIHR, UN, policy makers, diplomatic missions and other relevant stakeholders and seeks to:

- increase the protection and promotion of human rights and individual freedoms in Armenia, Azerbaijan and Georgia.

- give higher visibility to local human rights defenders and to their work in the field of protection and promotion of human rights and freedoms.

For further information about the Network, please see

[www.caucasusnetwork.org](http://www.caucasusnetwork.org)

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## Introduction

This report represents one of the Human Rights Centre's annual efforts to measure Georgia's compliance with its own Constitution and international legal, as well as political commitments undertaken by the government in the field of human rights and rule of law.

The report mainly focuses on the situation with respect to civil and political rights; it zooms on the areas which the Human Rights Centre has identified among the most problematic ones in 2009:

- **Judiciary and its role in upholding the rule of law**, including the issue of political prisoners, ineffectiveness of the court system to provide redress to victims of rights' violations and the issue of selective justice;
- **Humanitarian and legal consequences of the August War 2008**: deplorable living conditions of the IDPs and those living in the war-affected areas, continuous enforced disappearances and/or illegal detention of civilians on both sides of Georgia's administrative boundary with *de facto* South Ossetia, and the need for accountability for grave crimes committed during the August armed conflict.
- **Widespread violations of the right to peaceful assembly**: illegal and/or undemocratic means used by the government of Georgia during the spring-summer demonstration to intimidate demonstrators and impede the realization of their right to freedom of assembly and manifestation.
- **Significant deterioration of media freedom**, continuous pressure and intimidation of journalists and the climate of impunity further encouraging such actions.

2009, on the other hand, witnessed certain positive steps undertaken by the Georgian government; at the institutional and/or policy levels little has been changed, however; political considerations continued to take priority over the rule of law considerations, implementation of laws remained subject to particular political context present or absent in a certain case.

Although positive results of the reforms remain of limited scope and significance in practice, the reforms implemented and their pace have managed to create a façade of a progressively developing transitional democracy in Georgia;

**"Vanishing Rights"** looks behind this façade and discloses an emerging loophole where rights and freedoms started to vanish in Georgia under the climate of impunity, government's policies of sidelining alternative voices and ongoing process of amending or adopting the laws diminishing the substance of rights and freedoms guaranteed and limiting their scope of application.

The report concludes with a chapter on human rights defenders, mapping and analyzing key challenges and constraints encountered by those, who work at their own risk to provide a human fence against continuing practices of vanishing rights in Georgia.

## Lack of Judicial Independence

The Constitution and laws of Georgia provide for judicial independence and impartiality as well as universal right of access to courts to protect one's rights and freedoms.<sup>1</sup> Practical problems with the realization of these rights, however, remain one of the key obstacles for Georgia's successful transition to a rule of law democracy.

It is commonly acknowledged that the administration of justice in civil proceedings has been improved significantly over the last years, leaving little room for concern; the situation in criminal and administrative proceedings, where state interest is directly or indirectly involved, remains critical however: Instead of protecting individuals from abuse and providing redress to victims, Georgian judiciary often turns to legalize injustices and cover up violations of law and procedure committed by some representatives of the executive.<sup>2</sup>

On the positive note, situation has become better in terms of maintaining order during court hearings, conditions to fight corruption in the judiciary were improved, important legislative amendments were introduced to avoid delay in court hearings, and working conditions in the courtrooms were improved as well.

These improvements however had little effect on the fairness and legality of the decisions delivered by the court.

The selective application of justice remained a major problem throughout 2009: at times law enforcement authorities and courts provided a shield for perpetrators and at other times were turned into a punitive mechanism to silence the dissent and critical voices.

Level of conviction and use of custodial measures remained extremely high; acquittals by the courts remained very low. Questionable plea bargain agreement continued to be frequently applied, rising concerns regarding supremacy of law and human rights.

Judiciary remained one of the least trusted public institutions in Georgia.<sup>3</sup>

### The Reform

Ever since 1997 the judicial reform has been ongoing in Georgia; the first phase of the reform clearly failed to produce desirable results. The second phase of the reform started in 2005 after the current political leadership came into power. While adhering to the principles of democracy, separation of power and human rights were declared among the top priorities by the government, implementation of these values in the actions and policies of the government remained minimal however.

Among the very first steps taken by the government after coming into power in 2003 were constitutional reforms which strengthened executive control and oversight over the other two branches. These constitutional amendments significantly weakened judicial independence and undermined its role in the administration of justice in general. The brief timeline of events were as follows<sup>4</sup>:

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<sup>1</sup> Organic Law of Georgia regarding the General Courts was adopted by the Parliament of Georgia on 13.06.1997. It states: "every person has the right to protect his rights and freedoms through the judiciary. The Judicial system shall be independent from the rest of the governance branches; it shall carry out its function through courts. Judges shall be independent and bound only by the Constitution of Georgia, international covenants, treaties and laws. State bodies and bodies of self-governance, state institutions, public and political unions, state officers, legal and private entities are prohibited from infringing court independence."

<sup>2</sup> See the Human Rights Centre (HRIDC)'s reports: *Trial Monitoring Report* (2009) at <http://humanrights.ge/admin/editor/uploads/pdf/report-ENG.pdf> and *License to Kill issued in Georgia: 2004-2009* (2009) at <http://humanrights.ge/admin/editor/uploads/pdf/license-to-kill-bolo.pdf>

<sup>3</sup> E.g., according to the Global Corruption Barometer, released by the Berlin-based Transparency International on June 3, 2009 most of the Georgian citizens rank the judiciary as the most corrupt institution in the country. Like in previous similar surveys held in 2005 and 2007, the judiciary again topped the list of least trusted institutions with only 14% of respondents saying there is no corruption in the judiciary and 37% say it is vastly corrupt.

<sup>4</sup> See the Human Rights Watch's world reports, events of 2005, 2006, and 2008 at <http://www.hrw.org/>

**Early 2004** - Constitutional amendments increase the Georgian president's authority to dismiss and appoint judges. The government then began an effort to address corruption in the judiciary, but the procedures for removing allegedly corrupt judges have lacked transparency and due process.

**2005** - The authorities inform a number of judges that they should either resign or face disciplinary hearings; 21 of 37 Supreme Court judges resigned under this pressure. Nine refused to resign but were then made subject to disciplinary proceedings in December 2005, were found guilty, and were suspended from office. The proceedings addressed matters related to the judges' interpretation of law rather than issues of ethics or conduct subject to disciplinary evaluation.

**2005 (April)** - after months of uncertainty the structure of Tbilisi court was changed based on a presidential decree, that led to the dismissal of significant numbers of judges. The decree, administered by the High Council of Justice, a body headed by President Saakashvili, did not set out criteria for deciding which judges would be removed from their positions. The arbitrary decision-making process heightened the sense of executive prerogative.

**2006 (August 10)** - the Disciplinary Chamber of the Supreme Court upheld the decision against the judges. These steps have had a chilling effect on new and remaining judges, who may legitimately see their positions as tenuous and their decisions as subject to executive approval.

**2008 (October)** - parliament passed amendments on judicial restructuring, creating a new Ministry of Probation and the Penitentiary System and merging the General Prosecutor's Office with the Ministry of Justice. Independence of the judiciary in Georgia is a longstanding concern; the merger risks weakening the judiciary further.

Owing to those changes and their results, judiciary has been one of the most often criticized state institutions in recent years for the lack of independence and at times – for direct involvement in covering up violations committed by some representatives of the executive branch.

In 2004-2009 e.g., tens of cases of excessive use of force by law enforcement officials were documented in the course of combating organized crime, which led to deaths of tens of civilians. None of those cases which led to loss of life as result of the use of force by law enforcement officials was investigated thoroughly and independently, court hearings were clearly biased in favour of the accused – a law enforcement official, in particular courts often disregarded evidence incriminating the police and law enforcement officials, motions of the victim's lawyers were rejected in absolute majority of cases, decisions were based on the arguments and evidence presented by the defense side (or in its favour).

To cite just one notorious example when there has been no damage at all on the side of the police while ill three civilians targeted (allegedly criminals) were shot dead by the police - Kiziria was shot by 53 bullets (among them, one bullet was shot in the head and another in the armpit), Babukhadia - 19 and Bendeliani– 28 bullets, the court found that the use of force by the police was not excessive.<sup>5</sup>

The general atmosphere during the trials often indicated that the Ministry of Interior (under which are the law enforcement bodies) had an upper hand over the judiciary.

In a few cases when law enforcement officials were found guilty, sentences were often inadequate to the crime actually committed.<sup>6</sup>

In addition to the lack of independence from executive power, administration and equipment of courts was also problematic. e.g., in the annual report for 2006 Human Rights Centre (HRIDC) wrote:

"It is almost impossible to know in advance when hearing will be held. The timetables in the courts do not comply with the real dates of the hearings. The trials often begin several hours late. The same happened in 80% of the cases monitored. The ineffectiveness of the court's work is caused by many reasons, mostly stemming from the lack of amenities, such as microphones, chairs, lights, etc. In addition, many of the courts have been under construction for half a year already. Courtrooms are too small and the conditions are intolerable. People often fight to get into the courtroom, which makes it difficult to know what is happening, especially in criminal cases for relatives of the defendant. As a result, we have many interested people standing outside the courtroom... In the Criminal Division of the Tbilisi

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<sup>5</sup> Investigative authorities concluded that the use of force by law enforcement officials was not excessive, but constituted a self-defense, as submitted by the law enforcement officials, and based on this finding they terminated the investigation. The Court further rejected an appeal filed against this decision, finding that the termination of the investigation "was legally correct," "the force used was not excessive and the police acted in full compliance with the law." The court based its decision on the testimonies by those law enforcement officials who themselves participated in the police operative activity, while it rejected the motions submitted by the lawyer representing the interests of those who were killed in the special operative activity. The case is pending before the European Court of Human Rights in Strasbourg.

<sup>6</sup> One of the most problematic issues in this respect is that law enforcement officials are often charged with and tried for *negligent killing*, while the evidence and witness testimonies indicate that the crime committed was a *murder*.

City Court and other courts in the regions, because there was no space, some trials took place in the judge's chamber. A judge's chambers are mainly used for bond hearings, which even the defendant's relatives are not allowed to attend."<sup>7</sup>

Throughout the reform several significant improvements have been achieved to overcome these problems: In the course of reform court houses were renovated and court rooms were better furnished and equipped, the Organic Law of Georgia on General Courts introduced the position of a bailiff to maintain order in general court houses and to support the unrestricted implementation of justice. Even the mere presence of bailiffs with uniforms in courtrooms created a better environment there;

Important legislative amendments were introduced regarding the procedure. In particular, the procedures for adjudicating cases became simpler; judges have the opportunity to use flexible and effective legal mechanisms to avoid delay in hearing cases; salary of judges have increased: before 1999 they received a mere 30 GEL salary per month, which made it difficult to struggle against corruption. Now the minimum salary of the judges of general courts is 1,550 GEL and the maximum is 4,100 GEL. The salaries of the general court administration officers and supporting staff were increased as well. The minimum salary of the court administration officers before 2007 had been 70 GEL and the maximum – 250 GEL. After January 1, 2007 the minimum salary has become 140 GEL and the maximum – 1,250 GEL.

**In the end of 2009**, two third of court reform was declared as accomplished and the new system was said to be already under operation.<sup>8</sup> And while important several achievements have been made during this time, as outlined above, the key - independence of the judiciary – remains unachieved.

There is almost a unilateral acknowledgement that administration of justice in civil courts has been significantly improved and leaves little room for concern. Whereas in criminal (and also administrative) cases situation remains critical, two main problems being executive's control and lack of transparency.

#### **Prosecutorial influence on the judiciary**

While on the one hand there is extremely high level of conviction and use of deprivation of liberty as a sanction by the courts, there is a clear failure from their side to hold perpetrators accountable and protect victims' rights in high profile 'political' cases.<sup>9</sup> Miscarriages of justice remains a source of concern in 'ordinary' cases as well. Equality of arms and a right to adversarial trial, as well as obligation of the court to study aggravating as well as exonerating circumstances of the case and deliver a reasoned judgment are widely ignored. Court hearing often constitutes a mere formality. Instead of studying the case materials comprehensively and making a judgment based on facts and the law, in absolute majority of cases judges fully follow the motion of the prosecutor while rejecting arguments and evidence of the defense lawyers, often without even providing an explanation for that.<sup>10</sup>

Instances when judges disagreed with the motion of a prosecutor are very rare, if at all.

#### **Use of deprivation of liberty as a rule rather than exception**

Application of custodial measures both during pre-trial investigation as well as afterwards constitutes a rule rather than exception. Number of acquittals is very low. In addition to the fact that this practice contradicts to Georgian legislation as well as to international norms binding on Georgia, it also

<sup>7</sup> Human Rights Centre (HRIDC), *The Velvet Downfall, Human Rights Situation in Georgia in 2006* at <http://www.humanrights.ge/files/The%20Velvet%20Downfall.pdf>

<sup>8</sup> See the statement by the *Chairman of the Supreme* dated December 30, 2009 At [http://www.supremecourt.ge/News.aspx?sec\\_id=40&lang=2&news\\_id=642](http://www.supremecourt.ge/News.aspx?sec_id=40&lang=2&news_id=642)

<sup>9</sup> See e.g., Human Rights Centre (HRIDC), *License to Kill issued in Georgia: 2004-2009* (2009); [the Human Rights Centre (HRIDC) has not been able to identify even a single case involving the loss of life as a result of use of force by law enforcement official in 2004-2009 which was investigated thoroughly and independently, where the court hearing was fair and the court sentence was adequate to the crime actually committed. <http://humanrights.ge/admin/editor/uploads/pdf/license-to-kill-bolo.pdf>

<sup>10</sup> Human Rights Centre (HRIDC): *Trial Monitoring Report* (2009) at <http://humanrights.ge/admin/editor/uploads/pdf/report-ENG.pdf>

causes another serious problem in practice. The prisons in Georgia are operating at 130% capacity.<sup>11</sup> The number of prisoners has tripled during the last several years.

In his parliamentary report for the second half of 2009, the Public Defender of Georgia identified overcrowding and poor conditions in prisons as one of the major problems in the penitentiary system. He underlined two reasons for behind this problem: high number of prisoners and lack of necessary infrastructure. In the same paragraph he noted that building new facilities and renovating the old ones alone could not provide a solution to this problem. He underlined the need to revisit existing criminal law policy and make a shift towards application of non-custodial measures in respect of crimes posing less threat to the public.<sup>12</sup>

### **Plea Bargain Agreement: denial of victim's right, defendant's right, sidelining the judge**

Another problematic feature of the judicial independence in Georgia remains the notorious plea bargain agreement. In 2005 – 2009(February) 36 percent of the total number of cases submitted to general courts - 23 175 cases out of 64,217 - ended up with plea bargain agreement,<sup>13</sup> a procedure which under the cover of a 'speedy justice' practically sidelines the court - giving discretionary powers to the prosecutor, fails to guarantee fair trial rights to an accused and completely ignores the interests of a victim.<sup>14</sup>

Plea bargain agreement provides a possibility to render a judgment without having studied and adjudicated the case comprehensively, mainly the agreement is reached between the prosecutor and the accused. In practice a defense lawyer is only involved during signing official plea bargain agreement which contradicts the law itself. Formally the court has a right either to endorse the agreement or to reject it. So far no case has been observed when the court rejected the agreement.<sup>15</sup>

While in other countries plea bargain agreement is an agreement in a criminal case whereby the prosecutor offers the defendant the opportunity to plead guilty, usually to a lesser charge or to the original criminal charge with a recommendation of a lighter than the maximum sentence, in Georgian that was translated into a 'cash for freedom' mechanism, which sets an accused completely free in exchange of payment money, the limits of the sum are not specified in the law, which usually is quite large.<sup>16</sup>

On the one hand, the system completely ignores the rights of the victim. No legislative or procedural mechanism exists for the victim's participation in the decision making process. Nothing in the law limits the prosecutor from signing a plea bargain agreement with a person charged with torture or rape, while victim has no right either to cancel the agreement, or to obtain compensation from the perpetrator or percentage of the money paid by the accused to the state budget in exchange for the agreement.

On the other hand the system leaves a lot of room for abuse of power and violation of the rights of an accused by the prosecutor.

In a country where pre-trial detention is a rule rather than exception, conviction rates in criminal cases approached 99%,<sup>17</sup> prison conditions are very poor and prospects for a fair trial -very low, and

<sup>11</sup> Georgian NGO Coalition (TI Georgia, ISFED, GYLA, Green Alternative, CSRDG): *Report on the Implementation of Georgia's European Neighborhood Action Plan* (2009) at [http://georgien.boell-net.de/downloads/ENPAP\\_25November2009draft-27.11.09.pdf](http://georgien.boell-net.de/downloads/ENPAP_25November2009draft-27.11.09.pdf)

<sup>12</sup> The Public Defender also stressed that bringing existing infrastructure of the penitentiary system in line with established standards would be possible only by using the alternative measures to detention, while achievement of the key aim – re-socialization of those deprived of liberty would be possible only by ensuring normal and human conditions to prisoners.

<sup>13</sup> Human Rights Centre (HRIDC): *Trial Monitoring Report* (2009); [Statistic information provided by the Chief Prosecutor's Office within the Ministry of Justice to Human Rights Centre (HRIDC)] see at <http://humanrights.ge/admin/editor/uploads/pdf/report-ENG.pdf>

<sup>14</sup> Plea bargain agreement was introduced in Georgia in 2004. Although the law regulating the agreement was later modified in response to a harsh criticism from national and international human rights groups, the current provisions in the law and its practical implementation still remain problematic.

<sup>15</sup> Human Rights Centre (HRIDC): *Trial Monitoring Report* (2009) at <http://humanrights.ge/admin/editor/uploads/pdf/report-ENG.pdf>

<sup>16</sup> Initially when plea bargain agreement was introduced, there were two funds where the money paid by defendants entering into plea bargain agreement was transferred, one was known to the public, and another was held into secret. Now the money from plea bargain agreement is sent to the Ministry of Finance.

<sup>17</sup> Georgian NGO Coalition (TI Georgia, ISFED, GYLA, Green Alternative, CSRDG): *Report on the Implementation of Georgia's European Neighborhood Action Plan* (2009); [http://georgien.boell-net.de/downloads/ENPAP\\_25November2009draft-27.11.09.pdf](http://georgien.boell-net.de/downloads/ENPAP_25November2009draft-27.11.09.pdf)

besides it may take years to go through all three instances of the court system, where the judiciary remains under executive's particularly prosecutor's control, the plea bargain agreement has turned into a system of legalized racketeering by the state, the real motive behind which seems to be fundraising rather than execution of justice.<sup>18</sup>

#### **Low public confidence in the judiciary and lack of transparency in the court room**

Major flaws in the judiciary's way of handling the cases has led to an alarmingly low level of public confidence in it and a widespread perception that courts act like a public notary putting a rubber stamp rather than an independent arbiter, a soviet-time metaphor which re-emerged in independent Georgia in reference to plea bargain agreement first.

Public's widespread disillusionment with the judiciary under the new government started later, in 2006-2007, against the background of high profile murder cases where numerous grave violations of procedure and law were recorded during the court hearing by the journalists. That unveiled miscarriages of justice by the courts and triggering biggest public outcry since the rose revolution in Georgia. In response to lingering crisis in the country, parliament promptly changed the law and imposed a blanket ban on photo-video and film recording in the court premises and a court rooms.<sup>19</sup> However, that has not helped to restore the broken public confidence in the judiciary, but rather strengthened existing mistrust.

## **Political Prisoners and Politically Motivated Persecutions**

**In 2009 the Paris-based International Federation for Human Rights (FIDH) published a report following its fact finding mission to Georgia in spring that year. The FIDH report concluded that political prisoners do exist in Georgia, which cast serious doubts on judicial independence in Georgia.**

Non-governmental organizations and Public Defender of Georgia have been asserting existence of politically motivated persecutions and existence of political prisoners ever since the National Movement came into power. However FIDH was the first international organization to confirm that.

The FIDH report does not provide the complete list of such persons. The research focuses on eight pilot cases in which people were detained and sentenced in relation to different political developments which took place in the country.

It is noteworthy that the research does not try to present all eight convicts as not guilty but rather focuses on factors of their relation with opposition activities and controversial character of charges, trails or procedures.

A trend of irregularities and the number of similarities shared by most of above listed cases identified are the following:

- a) Detainees and/or their relatives are particularly involved in government opposition;
- b) The period of pre-trial detention and launch of the trial is linked to detainees' specific political activities;
- c) Detainees assert that the authorities themselves unofficially linked their arrests to their political activities by negotiating their release in exchange for political guarantees;
- d) The formal charges seem incoherent and are strongly discredited by reliable testimony from relatives, professional interlocutors and detainees' past activities (cases that are allegedly total fabrications);
- F) Similar unlikely formal charges are brought against many people involved in the same opposition activities (cases that are allegedly total fabrications);
- G) There are serious doubts regarding the fairness of trials.<sup>20</sup>

<sup>18</sup> Between January and August 2009 alone over GEL 33 million entered state coffers, see Georgian NGO Coalition, *Report on the Implementation of Georgia's European Neighborhood Action Plan* (2009); [http://georgien.boell-net.de/downloads/ENPAP\\_25November2009draft-27.11.09.pdf](http://georgien.boell-net.de/downloads/ENPAP_25November2009draft-27.11.09.pdf)

<sup>19</sup> These legislative amendments were endorsed by the Parliament in July 2007.

<sup>20</sup> International Federation for Human Rights, *After the Rose, the Thorns: Political Prisoners in Post-Revolutionary Georgia* (2009) see at <http://humanrights.ge/admin/editor/uploads/pdf/georgie528a2009.pdf>

### **Notion of a political prisoner**

For the identification of the term the research uses the definition of the Council of Europe, also used in case of Azerbaijan which sets the following criteria:

“(a) The detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights (ECHR) and its protocols, in particular freedom of thought, conscience, religion, expression, information, assembly and association.

“(b) The detention has been imposed for purely political reasons, unrelated to any offence.

“(c) Due to political motives, the length of detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of.

“(d) Due to political motives, he or she is detained in a discriminatory manner as compared with other prisoners.

“(e) The detention is the result of proceedings that were clearly unfair, and this fact appears to be tied to political motives on the part of the authorities.

The cases were sorted in 5 categories: drug users (accused of drug possession); relatives of fugitives; conspirators (accused of attempts to overthrow the government); businessmen; journalists. One or two prisoners were picked from each of above listed groups.

The data was collected by interviews with relatives, lawyers, family members. Arguments were collected from the Public Defender of Georgia, human rights activists, from the Civil Society Human Rights Commission<sup>21</sup>, also by examining all existing documented material.

The eight cases researched by the mission include:

1. **Nora Kvitsiani**, the sister of Emzar Kvitsiani, the former representative of Eduard Shevardnadze in Kodori Gorge which refused to obey Saakashvili in following his dismissal resulting in operation of the Ministry of Defense and the Ministry of Internal Affairs in the Gorge ending with Kvitsiani fleeing to Russia. Nora was accused of being involved in paramilitary activities alongside her brother and arrested without any warrant during the operation in the village. Later she was also charged of holding arms and appropriation of state property. Examining the case, the FIDH concluded that the arrest is linked to efforts of seizing her brother, Emzar, procedural violations and the lack of fair trail are present and that Nora Kvitsiani is a political prisoner.
2. **Joni Jikia** Was arrested on 2<sup>nd</sup> of November 2007 in Zugdidi. The police found narcotics at his disposal and an illegal pistol in his flat. Grenades were also found in his basement. Jikia's arrest was associated with the planned protests for November 2<sup>nd</sup> in the framework of the “Georgia Without the President” campaign held by the opposition. Jikia was handling preparations for the demonstration. It is also noteworthy that some time before the arrest, the neighbor noted a policeman entering Joni Jikia's house. The FIDH concludes that the arrest has prevented the opposition activist from conducting political activities in Tbilisi and Zugdidi and violated his freedom of assembly and speech; also the procedures were wrongly conducted from the start, therefore Joni Jikia is considered a political prisoner.
3. **Revaz Kldiashvili**, the ally of the former Defence Minister, Irakli Okruashvili, a colonel and the chief of the Military Police for one year was arrested on 13<sup>th</sup> November 2007 with the suspicion of holding weapons after he took part in a political rally on 7<sup>th</sup> same month wearing a military uniform. The ID card of the military police officer with his name was found in his house which he should have submitted during resignation. His family members and lawyers claim that he was beaten and mistreated during the time of arrest and detention. Kldiashvili was alleged of illegally holding firearms and using forged documents. Even though charges against Kldiashvili are not completely fabricated and the case is a mixed one, FIDH considers him a political prisoner as his arrest is linked to his political activities, particularly support of Irakli Okruashvili and even if his actions were criminal, it is questionable whether the failure to hand back the documents in time can be considered a forgery.
4. **Shalva Ramishvili**, the co-founder of the private television company TV 202.<sup>22</sup> Ramishvili was the supporter of Saakashvili before and after the rose revolution but turned critical a year after. In 2005 his TV channel was

<sup>21</sup> The Commission functioned under the Conservative Party of Georgia and was chaired by their leader Kahka Kukava.

<sup>22</sup> Shalva Ramishvili is currently released from the Prison. Another co-founder of the TV station 202, David Kokhreidze was pardoned in 2007.

preparing a documentary concerning illegal activities of the member of the parliament and the National Movement, Koba Bekauri. From May to August 2005 Bekauri tried called Ramishvili several times, trying to convince him to block the film. During their meeting the co-sharer of the TV channel agreed to block the film in exchange for 100 000 U.S. dollars. Bekauri reported to the Ministry of Interior and recorded the next meeting secretly where he handed 30 000 marked U.S. dollars to Ramishvili another co-founder of the TV station David Kokhreidze. Both men were arrested and searched as soon as they left the flat and got into Kokhreidze's car. On 29 March 2006, the Tbilisi city court convicted the two broadcasters of conspiracy to commit extortion and sentenced Ramishvili to four years in prison and Kokhreidze to three. On 30 June 2006, Tbilisi's appellate court upheld the verdict. Ramishvili and Kokhreidze unsuccessfully challenged the appellate court's decision of 30 June 2006 before the country's Supreme Court. According to the FIDH the case is also a mixed one. There is no evidence that the charges are even partially fabricated however as the crime was a result of a provocation by Bekauri, the member of the ruling party, supported by authorities and the case was used to dismantle the critical TV channel, also preventing it from airing the documentary, Shalva Ramishvili was also considered a political prisoner.

**Ramishvili was released from prison after a 4-year sentence in August 2009.**

5. **Maia Topuria**, the relative of the former Minister of State Security Igor Giorgadze, was arrested on September 3<sup>rd</sup> 2006 alongside 12 others on the basis of two witness statements. Igor Giorgadze was accused in plotting the assassination of the President Shevardnadze in 1995. He fled Georgia and lives in Moscow. In 2008 he expressed intentions to run for the presidency and declared that he will overthrow Saakashvili's regime with a "nettle revolution". The prosecution claimed that the conspirators met on 24 May 2006 and plotted to overthrow of the government. However, when it became known that one of the so-called conspirators was in Germany on that date, the prosecution changed the date of the alleged meeting to 4 May 2006. The court found accused guilty for attempting a coup d'état and illegal storage of weapons. The fact that the trail was closed and all evidences were contained official secret, leads to a conclusion that the charges were groundless and the Maia Topuria, as well as other convicts are political prisoners.

6. **Demur Antia**, one of the activists of the opposition in Zugdidi, was arrested for illegal holding of firearms, in particular an automatic rifle. Antia is the chairperson of the regional branch of the Conservative Party. During the 2008 military conflict when the government officials fled the city, Antia denounced the behavior of the authorities at the UN office. On 5<sup>th</sup> of September some 20 to 30 men came to Antia's house, gathered everybody on the ground floor and searched the house. Then called the witnesses and searched again. During the second search the rifle was found. Although 6 people lived in the house, Demur Antia was immediately considered as the owner of the rifle. His advocate claims that the gun was planted during the first search. He also recalls the investigator addressing his client that if the government fled, it was not his business, he should not have complained at the UN. It is also noteworthy that according to the police data, the rifle found in the house did not have the identification number, but the gun presented at the court and attached to the case had one. As Demur Antia during his arrest was involved in serious preparations for November 2008 protests, as the investigation and trail have serious weaknesses and the convict was the victim of political repression before, FIDH assumes that the case was fabricated and the opposition activist is a political prisoner.

**Demur Antia was released after one year imprisonment in September 2009.**

7. **Omar Kutsnashvili** is the father of the famous lawyer and civil society representative, Zakaria Kutsnashvili. He is the co-founder of Geoengineering Ltd. and holds a contract with the Fund-Millennium Challenge Georgia. In December 2007 he received a call from the national movement, offering him to join the party and provide financial support for the elections. He declined the offer and expressed the desire to stay out of politics. His son Zakaria Kutsnashvili alleged that the financial police threatened to arrest his father if Zakaria participates in the elections. The case was filed against Omar, however he was not arrested, his personal computer and documents were taken by the police. Zakharia was not intending to participate in elections but he made critical comments concerning electoral fraud on July 4th on the opposition channel. The same day the final decision to arrest Omar Kutsnashvili was made, on 7<sup>th</sup> the financial police were ordered to make the case and on July 10 he was arrested. The prosecutor accused Geoengineering of having "artificially increased the percentage data of the works" on several occasions. Geoengineering is accused of misappropriating USD 115,348. In the end of February 2009 the court declared him innocent in embezzlement. The lawyer believes the prosecutor was unable to find any evidence supporting the accusations as both sides of the contract were happy with the work carried out. As Omar Kutsnashvili has refused to financially contribute to the National Movement electoral campaign, being politically active and his son critical of the government, in addition as he was cleared of guilt in main charge of embezzlement, FIDH concludes that Omar Kutsnashvili was indeed a political prisoner.

8. **Merab Ratishvili** was arrested on 26 October 2007, accused of the illegal possession and use of drugs in huge amounts. Ratishvili had lived in Moscow and returned to Tbilisi in 2003. He had close ties with both government and opposition representatives. In 2007 Ratishvili founded the Tbilisi Discussion Club, became more active and lent financial support to opposition members. Ratishvili claims that the drugs were planted to him. According to his lawyer his client requested two witnesses when the police was searching his car and his flat but received a denial, the officers were concerned that witnesses could destroy the evidence in presence of 10 policemen. Ratishvili also asserts that while detained he was asked to acknowledge his relation to Russian security services and make discrediting statements about opposition members. As Merab Ratishvili was an active opposition member and his case contains several significant weaknesses, FIDH considers him a political prisoner.

## Continuous political persecutions

Persecutions and imprisonment on political grounds continued throughout the year. While during the visit of FIDH to Georgia national NGOs talked about 26 political prisoners in Georgia, the process continued however and at one point in 2009 the figure exceeded 100. Politically motivated detentions took a systematic form in the course of spring-summer opposition demonstrations. Part of them was released on several stages, however several tens of people remained behind the bars to the year's end based on politically motivated charges.

Some in that list are:

**Beselia Sergo**, brother of Eka Beselia (a leader of Movement for United Georgia). He was arrested on August 20, 2009 for hooliganism, resistance and threat or Violence against Protector of Public Order or Other Government Representative. Was sentenced for 2 years and 6 months;

**Gogichashvili Levan**, leader of protest movement "9 April", arrested on 16-June, 2009 for intentional damage to health and was imprisoned for 7 years.

**Narsia Vakhtang, Avaliani Zurab, Gogratshadze David** - all three from the political party Democratic Movement – for United Georgia, all were detained in March all detained for purchase and keeping of firearms, among other violations, dactiloscopic expertise of an allegedly illegal weapon was not conducted in any of the cases.

**Tlashadze Tamaz**, a member of the Republican Party of Georgia, was arrested on 15-June 2009 under the charges of drug possession ("Subotex") and sent to prison for 3 year. Witnesses didn't attend the search process. The fact of consuming narcotic substances by Tlashadze was not identified.

**Mikeladze Dazmir**, a member of Democratic Movement – United Georgia" was arrested on 10-June 2009 for purchasing and keeping of firearms and sent to prison for 1 year and 2 months. There were no witnesses during the search process and dactiloscopic expertise of the grenade was not conducted.

**Vakhania Vladimir**, planning to establish an opposition political movement in Zugdidi was arrested on 11-March 2009 under charges of illegal disturbance of the journalist in his professional work and purchase, keeping of firearms. He was sentenced to 4 years of imprisonment. People who are referred in the case file as attendees declare that they didn't participate in the search and their signatures on protocol are false. The fact of false signatures is confirmed by the expertise.

## Mutiny at the Mukrovani Military Base

In the morning of May 5, 2009 Georgian TV-channels reported about a mutiny in Mukrovani military base. Officials stated, organizers of the mutiny were former high-ranking military officials and aimed to fail NATO military trainings in Georgia and it even aimed at large-scaled military mutiny in the country. Part of the rebels had direct contact with Russian military officials and received directions from

them as well as money. According to our information, Black Sea Military Fleet of Russia was ready for fight.<sup>23</sup>

This information surfaced against a backdrop of then month-long opposition demonstrations in Tbilisi demanding resignation of President Saakashvili and less than a year after Russia-Georgia war in August 2008, which left one third of Georgia's internationally recognized territory out of Georgia's *de facto* control.

Russian officials denied connection with the mutiny, calling Georgian statements "ridiculous and unfounded"<sup>24</sup>

Opposition leaders commented, that although they did not believe in the government's allegations, they would not precede further with their plan to block key highway at three locations close to Tbilisi, planned to be done on May the 5<sup>th</sup>.

Military experts downplayed government's claims about the mutiny.<sup>25</sup>

Several hours after the news spread about the mutiny, president himself went to the Mukrovani military base to negotiate with the mutineers. There he made a statement for which he was later harshly criticized: president told the soldiers that the base was surrounded by armed men who could fire at the army any time.

Authorities detained dozens of military personal as well as civilians. Detention of these people as well as investigations as well as were plagued with irregularities and violations of law:<sup>26 27</sup> some of the detainees were subjected to torture,<sup>28</sup> in some cases it was reported that people charged with participation in the mutiny were grabbed at random and labeled as mutineers.

Those three military that were identified as key master minders of the mutiny were declared as wanted and monetary awards were offered in the exchange of information of their whereabouts.<sup>29</sup> In two weeks time two of them were apprehended and the third shot dead in a police special operation.

Trials of several tens of people hold under pre-trial detention in relation to the mutiny started in the end of August 2009 and continued till the years' end.

### Special Operative Activity

On May 21 the Ministry of Interior made a statement that two out of three leaders of the mutiny were wounded and the third - shot dead in a special operation carried out to apprehend the three master minders of the mutiny. The special operation triggered controversies as to why the authorities

<sup>23</sup> Year for Great Military Thrill and Replacements by Koba Liklikadze, Radio Liberty, see at <http://www.humanrights.ge/index.php?a=article&id=4530&lang=en>

<sup>24</sup> Russia ridicules Georgia's coup claims, ABC News, by Moscow correspondent Scott Bevan, May 5, 2009 at <http://www.abc.net.au/news/stories/2009/05/05/2561817.htm?section=justin>

<sup>25</sup> For extensive comments see Human Rights Centre (HRIDC): *Repressive Democracy?! (Chronicles of State Sponsored Violence in Georgia during the spring 2009)* at <http://www.humanrights.ge/admin/editor/uploads/pdf/repressive%20democracy.pdf>

<sup>26</sup> Reportedly, detained soldiers were denied the right to obtain a lawyer at their own choice and to notify their family members about their detention. According to lawyer Lali Aptsiauri, representing the interests of a number of detainees, prosecutor's office recruited around 100 state-provided legal aid lawyers (public lawyers) from the regions, not Tbilisi, to represent the interests of the detainees. According to her, this was done because the government could not trust independent lawyers chosen by the detainees themselves. In support of her allegations, Aptsiauri referred to the fact that those public lawyers never raised any objections to the motions of the prosecutors to defend the rights and interests of the detained soldiers.

<sup>27</sup> *Key Defendant In Georgian Mutiny Trial Pleads Guilty*, Radio Free Europe, see at [http://www.rferl.org/content/Key\\_Defendant\\_In\\_Georgian\\_Mutiny\\_Trial\\_Pleads\\_Guilty/1839398.html](http://www.rferl.org/content/Key_Defendant_In_Georgian_Mutiny_Trial_Pleads_Guilty/1839398.html)

<sup>28</sup> In his interview with a newspaper Rezonansi, dated May 14, 2009, the then Public Defender, Sozar Subari, stated that four people detained in relation to the Mukrovani Incident were tortured, in particular Akaki Aptsiauri, Nikoloz Bibilashvili, Temur Meliqidze and Sandro Veshaguri. The Public Defender stated that his representatives, who visited the four in detention, had detected the visible signs of torture on their bodies. Public Defender did not exclude the possibility that other detainees may have also been tortured; he also noted increasing number of reports about the torture and physical ill-treatment in general.

<sup>29</sup> The Ministry of Interior offered GEL 50,000 as a reward in exchange of information about whereabouts of Amiridze and Krialashvili and GEL 200,000 (about USD 121,000) for the information on Koba Otanadze's whereabouts.

choose to carry out special operation at night, in a compact residential district while suspects were trying to flee by car, if they had the three under their sight and knew about their whereabouts for several days before the special operation – as the Ministry of Interior’s press release said.<sup>30 31</sup>

Moreover, some eyewitnesses who did not want to disclose their identities stated that there was no shootout between the law enforcers and mutineers at all and there were no blood stains on the place of the incident.

The wife of the killed suspect, Krialashvili also stated that the body of her husband did not have bullet wounds. She stated it was suspicious that his head was swollen a day after his body was brought home.<sup>32</sup>

Suspicious and questions marks about the special operation were increased as several hours after the special operation road reconstruction activities were carried out on that particular place, practically eliminating the official crime scene.<sup>33</sup>

Independent verification of different accounts about the special operation remained impossible, since the Ministry of Interior declined to release to anyone the video footage from the street surveillance cameras near the incident.

Investigation into the issue of special operation was launched under article 114 of the Georgian Criminal Code - exceeding the force necessary to apprehend a criminal. The investigation continued till the year’s end without producing any results.

### **Violence against family members of suspect Otanadze**

A week after Mukrovani Mutiny, on May 12, the law enforcement authorities detained the brother of suspect Otanadze. They came to his house at night under the pretext that N. Otanadze was hiding the mutineers there but arrested N. Otanadze for ‘resistance to the police’ in the end.

Lawyer of Otanadze stated that when detained Otanadze was neither informed about the grounds of his detention, nor about his procedural rights as a detained person. According to the existing legislation, these violations must have provided the basis for his immediate release, which did not happen however.

At the police station Otanadze was subjected to physical and physiological pressure<sup>34</sup> in order to disclose the whereabouts of his brother. Such actions by the law enforcement officials, inter alia violated the criminal law of Georgia stating that no one can be compelled to give a testimony against one’s relative.

Ministry of Interior denied allegations about physical and physiological pressure exerted on Otanadze, claiming he had sustained those injuries while resisting to the police during the detention.

Detention protocol, which is an official document where physical injuries sustained during the detention must be reported, is silent about this fact however. Moreover, medical examination proves that Nugzar Otanadze was subjected to severe physical pressure while being in the premises of the police. The fact was also confirmed by the representatives of the Public Defender of Georgia who visited Nugzar Otanadze in detention.

No official investigation was launched on the matter.

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<sup>30</sup> The Ministry of Interior released a statement on May 21 stating that the exchange of fire took place when the mutineers were about to leave Tbilisi and “heading towards territories currently under Russian occupation and military control...When suspects attempted to leave the surroundings of Tbilisi the Ministry of Internal Affairs has held a special operative activity aimed to detain the wanted persons due to which suspects have put up armed resistance to the police forces.”

<sup>31</sup> In fact, eyewitnesses reported that a medical unit came only after the Minister of Internal Affairs paid a visit to the scene.

<sup>32</sup> “I am the law: When justice looks into the eyes of the President” by *Madlen Macharashvili* see at <http://www.humanrights.ge/index.php?a=article&id=4071&lang=en>

<sup>33</sup> Otanadze’s defence lawyer said that investigators told him that they had carried out examination and taken samples from the crime scene as required by law. But because the defence lawyer cannot get access to these materials it is impossible to say whether the investigation has carried out the procedures required by law appropriately.

<sup>34</sup> The lawyer of Nugzar Otanadze, Onise Mebonia reported that Otanadze was severely beaten by truncheons during the detention. According to the lawyer, the beating lasted for approximately one hour. Otanadze lost conscious several times, law enforcers would pour water on him to regain consciousness and continue beating. As a result, among other injuries Otanadze had his arm broken.

Otanadze was sentenced to two months pre trial detention for resistance to the police.

On May 20, 2009 another brother of Koba Otanadze, Jimsher Otanadze, his wife and 19-year old son disappeared for several hours. The family lawyer and the public defender of Georgia released this information at the press conference.<sup>35</sup> According to the clarifications provided by the authorities later, the three were merely called in for giving testimonies and were being questioned,<sup>36</sup> while their whereabouts were No protocols of giving testimonies were drawn up, however, as required by the procedure.

Reportedly, law enforcement authorities also temporarily detained 11 relatives of Koba Otanadze including a 8-months old baby who was taken together with her parents.<sup>37</sup> <sup>38</sup> None of them pursued their cases after release, however, fearing repercussions from their employers - public agencies.<sup>39</sup>

### **The Case of Vakhtang Maisaia<sup>40</sup>**

Vakhtang Maisaia, former Counselor at the Georgian mission in NATO and one of the leading Georgian political scientists and a military expert, was arrested on May 5<sup>th</sup> 2009 with charges in espionage for the Russian Federation as well as gathering and passing of secret information (first and second parts of criminal code's article 314).<sup>41</sup> The arrest, court hearings and the case in general had a wide resonance in the civil society. Charges were immediately put to doubt by NGOs.

Reportedly, immediately after the detention Maisaia was subjected to psychological and physical pressure, as a result of which he pleaded guilty. Later Maisaia reported being under pressure to give testimonies and denounce as spies a number of Georgian and foreign diplomats, which he did not do in the end.

The hearing of Maisaia's case in court was closed, case materials were declared secret and only the judge, the prosecutor, and the defense lawyer were given access to them. According to the defense lawyer, charges against Maisaia were ill-grounded; she also reported violations of appropriate legal procedures while collecting the evidence.

Tbilisi City Court found Vakhtang Maisaia of espionage in favor of Russia and sentenced him to 20 years in prison.

<sup>35</sup> See news agency "Civil Georgia", 20 May 2009, "Alleged Mukhrovani Mutiny Mastermind's Relatives 'Detained' at <http://www.civil.ge/eng/article.php?id=20957&search=otanadze%20arrested>

<sup>36</sup> During his interview on live Program Givi Targamadze, Head of the Parliamentary Committee of National Defence and Security acknowledged the fact of their detention however said that they were detained for several hours not exceeding the limit established by law for questioning. Prosecutor's Office denied the fact of detention in official correspondence with Human Rights Centre (HRIDC).

<sup>37</sup> Reported by the Public Defender Sozar Subari, and defense lawyer representing the interests of Otanadze's, Onise Mebonia reported at a press conference on May 20, 2009 see at <http://www.civil.ge/eng/article.php?id=20957&search=otanadze%20arrested>

<sup>38</sup> The defence lawyer has explained to Human Rights Centre (HRIDC) that these 11 relatives are not willing to bring charges or illegal detention as they work in public institutions are afraid that if they do so, they will loose their jobs.

<sup>39</sup> According to the clarification provided by Otanadze's lawyer, "usually when a person is detained a law enforcing body must fill in the detention record. It should be indicated in the record of what crime the person is suspected; If the charge is not proven, he is released and given a document issued by the court which gives the information about the reasons for his arrest and then release. If these documents are unavailable this means that the law enforcement officers arrested the person illegally and he was a hostage. Also, when a detention record and an official document on the release are not available the law enforcement officers might manipulate the situation by, for example, arresting the person again as a suspect for having committed the same crime."

According to the lawyer, law enforcement authorities did not follow any formal procedures of arrest and release with Jimsher Otanadze, his wife and their son.

<sup>40</sup> Based on the journalistic investigation conducted by HRIDC on Maisaia's case

<sup>41</sup> Court Jails Ex-Diplomat for Espionage: see news agency "Civil Georgia", 29 January, 2010 at <http://civil.ge/eng/article.php?id=21932&search=maisaia>

### Arrest and detention

Maisaia's arrest took place on the day of alleged Mukrovani Munity at the University of Georgia where he was giving lectures. His arrest happened directly during the session in front of students and colleagues and it is questionable whether such form of arrest, harming his dignity was necessary. Maisaia could have been arrested after the lecture or before going to the University.

As the advocate, Natia Korkotadze states, 2 hours before the arrest, Maisaia was called from Bratislava and asked what was actually going on concerning the alleged munity. The expert replied that it was all bluff and asked to be called in 2 hours, he said he would be able to provide additional information on the matter. After two hours he was arrested (humanrights.ge 27.01.10).

After the arrest, Vakhtang Maisaia was taken to the "module" building where he was being interrogated for 5 hours. As the attorney claims, the detainee was constantly being taken out of his cell for further interrogations every 2 to 3 days where his advocate was not present.

### Evidence and Charges

According to the defense, immediately after the detention Maisaia was subjected to psychological and physical pressure, as a result of which he pleaded guilty. Based on his testimony, Irakli Batkuashvili and Besik Oboladze were also arrested. The video version of the testimony, aired by the media was suspicious and controversial. "They turned on a video camera. They put a monitor in front of me and ordered me to read the text from the monitor word for word". Careful analysis of the video tape unveils clear signs, confirming that the detainee was reading a text. Psychologists who decided to remain anonymous, conclude that while speaking, the person showed on the video was looking at one place, not into the camera, often stuttered when pronouncing new words and then returned back to repeat them.

The charges against Maisaia included spying for a foreign country. According to the Ministry of Interior, Maisaia was transmitting information on *"military and economic situation in Georgia, as well as about replacements in the Georgian government and about armament purchased by Georgia"* (civil.ge 06.05.09). According to the prosecutor, during the August war he was regularly sending the data to Russian military concerning movement of Georgian troops and armament.

By Georgian Law on State Secrets, the information about "strategic and operative movements of armed forces, their mobilization, their placement on high alert and usage of mobilization resources" is secret. However the issue is that the number of media sources including Rustavi 2 TV channel, closely associated with the government, were also publicly broadcasting the information regarding movement of Georgian armor and mobilization of reservists but nobody put blame on them in doing the same.

One of the main evidence against Maisaia were the reports which he allegedly had sent to foreign security services. Maisaia did not deny that reports belonged to him, however he doubts their integrity.<sup>42</sup> According to him, some parts were not made by him and supposedly were edited by law enforcers. One of the reports contains information regarding the accuracy of LAR-160 rocket launchers effectively used by the Georgian military. This report was also published on the Ministry of Interior's webpage. A contradictory fact concerning this report is that it is dated by October 9<sup>th</sup> when the war was over already for two months and the data should not have any value for Russian special services by that time.

According to official charges, former Counselor at the Georgian mission in NATO was payed for his "job". The source of payment was Slovakia, where allegedly he was cooperating with other "Russian spies". However the official documents received from Bratislava confirm that, Maisaia was accepted at the department of Social and Economic Sciences on a 5 year doctoral study and the payment was received for his study.

It is noteworthy that after the arrest the president already declared Maisaia guilty by stating that *"it has already been established and he (Maisaia) also has confessed that every two hours he was transferring to the enemy (during the August war) information about the movement of Georgian armed forces so that the enemy could easily find our military units and bomb them"*. The statement clearly

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<sup>42</sup> These reports originally existed in electronic form, on CDs and pen drives, however the ones which were brought at the place of interrogation were already on paper. This leads to a conclusion that the evidence (the computer and other means of storing data) which were sealed during the arrest, confirmed by signatures of witnesses were unsealed illegally by the police and reports were printed out.

violated the presumption of innocence as according to Georgian legislation confession is considered not as a proof of guilt but as evidence and only the court is authorized to declare a person guilty.

#### “FSB” Representative Questioning the Detainee in Georgia

By his diary, which he handed to journalistic investigation, Vakhtang Maisaia informed about the presence of the representative of Russian Federal Security Service (FSB) at one of interrogations, held on 20<sup>th</sup> of June. According to this data, he was taken out of his cell and to the 3<sup>rd</sup> floor at around 8:30pm. *“It was a so-called “meeting room”, officials from the Counterintelligence Department within the Ministry of Interior – investigator Lado Datashvili, operative worker and my personal supervisor – Zviad and the third person, a dark, middle-sized man with foreign complexion, with round face, straight nose, blue eyes and dark hair were sitting when I entered”* – recalls the expert. The stranger was introduced to him as a representative of the Russian Federal Security Service. This man, to whom law enforcers referred as “Spartak” asked several questions. According to Maisaia, the stranger was interested to know, how Vakhtang managed to obtain information concerning special services of the Russian Federation, also political, economic, military and business interests of the Kremlin in Abkhazia. The presence of FSB agent during interrogations is at least strange, not to say suspicious, as “Spartak” was representing the exact country for cooperation with which Maisaia was arrested.

#### The list of spies

The suspect was not making any public comments up until his family hired him a new attorney, Natia Korkotadze. After that Maisaia started to comment on his detention and conditions. Such behavior was not welcomed by the authorities and as the expert claims, resulted in threats from their side. They allegedly told Maisaia that they did not like his behavior, possibly a 20 year imprisonment was awaiting him and it was not yet clear whether he would live those 20 years.

Maisaia also stated that he was given a list of Georgian and foreign diplomats, statesmen and military who he should have proclaimed as spies in his testimony, what the suspect refused to do. The list contains highly ranked Georgian officials, members of the Parliament, Ministry of Defense and even employees of the U.S. Embassy in Georgia.

The list was as follows, according to Maisaia:

**Aleksandre (Kakha) Lomaia, the Georgian ambassador to the UN;**  
**Gela Bezhuashvili, a former Minister of Foreign Affairs of Georgia;**  
**Giorgi Manjgaladze, a former Deputy Minister of Foreign Affairs;**  
**Levan Geradze, a representative of the Abkhazian legitimate government;**  
**Irakli Toronjadze, a Deputy Director of the Department of Foreign Affairs;**  
**Davit Nairashvili, a General of a brigade within the National Guard;**  
**Giorgi Gvalia, a member of the Security Council;**  
**Tornike Turmanidze, an associate professor in Ivane Javakhishvili Tbilisi State University;**  
**Nikoloz Rtveliashvili, a director of a department within the Ministry of Defense;**  
**Nodar Kharshiladze, a director of a department within the Ministry of Defense;**  
**Tornike Sharashenidze, an expert on political and military issues;**  
**Levan Tsutskiridze, a former rector of the Georgian Institute of Public Affairs (GIPA) and an expert on military and political issues; and**  
**Zviad Mikhanashvili, Tornike Parulava, Tato Janashia, Davit Nardaia, Kote Elizbarashvili, Kakha Chikovani, Nikoloz Khundzagishvili, Omar Bedoidze, Sergo Abashidze. Beka Aladashvili, Kakha and Lasha Dzebisashvili – Ministry of Defense**  
**Zurab Kipiani, Gela Kvashalava, Zviad Chkhaidze, Andro Gotsiridze, Irakli Batkuashvili, Beso Oboladze**

The rest were representatives of international missions accredited in Georgia:

**Robert Kenety, deputy head of the US mission to Georgia;**  
**Ian Lent and Rob Fuller, diplomats of the mission of Great Britain;**

**Adina and Ibrahim, members of the OSCE mission; and Bodgan Udriste, a member of the OSCE mission. Michael Simson – British diplomat, John Anton – US embassy**

### Court Hearing

The hearing in court was closed, all evidences were declared secret and only the judge, the prosecutor, and the defense had access to them. As the attorney states, many of these evidences were simply ridiculous as the information was taken from internet or other publically available sources. Presentation of the material evidence at the court room was also conducted with the violation of the law. As we have mentioned above, the evidence has to be sealed, confirmed by two witnesses. In Maisaia's case the laptop computer taken from his house was indeed sealed but at the court room it was presented in unsealed condition to which the defense protested and the judge interrupted the hearing. After 15 minutes when Korkotadze, had already left, she was called back to see the evidences sealed again.

Tbilisi City Court found Vakhtang Maisaia, a military analyst and a former diplomat, guilty of espionage in favor of Russia and sentenced him to 20 years in prison.

### Verdicts for those charged with participation in the *mutiny*

The trials continued untill the year's end. The connection of the mutineers with Russia was not exposed. On January 11, 2010 Tbilisi City Court passed its verdict on the rebels of the Mukhrovani Mutiny. 41 people, 26 military and 15 civilians were detained for the attempted state coup and military mutiny in May of 2009. 20 of them were released as a result of plea bargain at various times. Court released Koba Kobaladze from the court room without any bail and fine. Davit Sul Khanishvili received his bail back and was imposed with three-year suspended sentence and fine of 20 000 GEL. Other 19 accused were sentenced to imprisonments from 2 to 11 years. Otanadze was sent to prison for 29 years and Amiridze for 28 years.

## **Undermining Guarantees of the Right to Life**

Deprivation of the right to life due to excessive use of force by law enforcement officials, followed by ineffective investigations and unfair court hearings, has been one of the most often voiced criticisms against the current political leadership of Georgia since 2004.

Civil society groups, the Ombudsman of Georgia, NGOs, the media and international organizations have continuously reported cases of excessive use of force and perversion of justice by law enforcement officials and time and again raised concerns about Georgian authorities condoning such practices.<sup>43</sup>

2009 witnessed statements and actions taken by the political leadership of the country, which affirmed those allegations and triggered further concerns. In particular, on the 2<sup>nd</sup> of September, 2009 the President publicly acknowledged to have given orders to "exterminate" Aprasidzes family in 2004 and to open the fire at their house from the helicopters, further clarifying he did not regret anything.<sup>44</sup>

<sup>43</sup> Human Rights Centre (HRIDC), *License to Kill - issued in Georgia 2004-2009* (2009); <http://humanrights.ge/admin/editor/uploads/pdf/license-to-kill-bolo.pdf>

<sup>44</sup> "I have given order to exterminate the Mestian bandits [referring to Aprasidzes'] and I do not regret that. This was Afrasidzeebi's gang, which was controlling the whole Svaneti region and fortified in a high tower from the Soviet times. By my order, the helicopters opened fire, and in a result were destroyed these bandits and tower. . . . This was right decision - the whole Svaneti breathe out after that. Who wants can say that it was brutality, however I feel sorry for every human being and I do not wish bad to anybody. There not exists development in Georgia without order. No compromise will be from our side in this issue."

No legal consequences followed to this statement.

Later the same month, President issued an amnesty and halved the sentences of those convicted for Girgvliani's murder - the most notorious murder case in the recent history of Georgia exposing involvement of officials of the interior Ministry and revealing possible links of the crime with the highest ranking officials from the Ministry as well as the wife of the Minister himself. Furthermore, in September, the four convicted for Girgvliani's case were released from the prison through the procedure of preterm release.<sup>45</sup>

Punishment of Girgvliani's murderers and exposure of all participants in the crime were considered by many to be "a concern for entire society and a question of dignity for every person with self-respect." Many saw such decisions of the President's and Parliament as a major offensive against the right to life and notion of justice in Georgia.<sup>46</sup>

Reports about of excessive use of force by law enforcement officials leading to the deprivation of life continued throughout the year.

### **Girgvliani's Case**

Sandro Girgvliani, 29, head of the United Georgian Bank's international relations department, was kidnapped, taken to the outskirts of Tbilisi and severely tortured by the employees of the Ministry of Interior, in particular the Constitutional Security Department (*hereinafter* CSD) on January 27, 2006.

The next day Girgvliani was found dead as a result of multiple physical injuries.

Girgvliani's case came under the spotlight of the society as a result of Imedi TV's weekly program 'Droeba.' Accusations were voiced that top-ranking officials of the Ministry of Interior and the wife of the Minister of Interior herself were those who had 'ordered' execution of the crime.

Initially it was the Ministry of Interior who was investigating the case. This violated the principle of independent and impartial investigation, since the Ministry of Interior was conducting investigation into the crimes allegedly committed by its own high ranking officials.<sup>47</sup>

Only after the mounting pressure from the family, media, political opposition and the society in general, the case was transferred to the prosecutor's office for investigation.

Prosecutor's office promptly dismissed the allegations that the four high ranking officials of the Ministry of Interior and the wife of the Minister had links with the case.

Investigation carried out into Girgvliani's murder was flawed with numerous irregularities, the trial failed to be independent and guarantee equality of arms and principles of adversarial trial.

Four high ranking officials of the Constitutional Security Department of the Ministry of Interior were charged with the crime of inflicting injuries which resulted in death and were sentenced to 8 and 7 years of imprisonment. The case went all the way up to the Supreme Court. The Supreme Court further decreased the term of imprisonment.

While the trial was ongoing, in 2006 the Parliament of Georgia passed several legislative amendments in the Georgian Criminal Code. There were allegations that this was done in order to ensure lighter sentences for Girgvliani's murderers.

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(The Statement was made at the opening ceremony of the Radisson Hotel" in Tbilisi, September 2, 2009; The full statement is available at <http://www.president.gov.ge/?l=E&m=0&sm=3&st=0&id=3030> )

<sup>45</sup> According to the Ministry of Penitentiary and Probation, the four were subjected to the procedure of preterm release since they cooperated with investigation, committed no wrongdoing during their term in prison and had already served part of their jail term. [See news agency "Civil Georgia", September 8, 2009: *Ruling Party MPs Defend Preterm Release of High-Profile Murder Convicts* ]

<sup>46</sup> E.g., MP Giorgi Akhvlediani of Christian-Democratic Movement, part of parliamentary minority group, said at the parliamentary session on September 8, that the four men's preterm release was "negligence of public opinion" News agency "Civil Georgia", September 8, 2009: *Ruling Party MPs Defend Preterm Release of High-Profile Murder Convicts*; An MP from the ruling party, Akaki Bobokhidze, commented: "no matter of public opinion" the law should be observed and those four men should have been released if they were eligible for that measure. [News agency "Civil Georgia," September 8, 2009].

<sup>47</sup> The Minister of Internal Affairs, Merabishvili explained the deviation in the following way: "We had information that the criminals were employees of the [Interior Ministry]... That is why we were very careful and were refraining from unveiling the details of the investigation, See News agency "Civil Georgia", February 25, 2006.

The lawyer of the Girgvliani's family, the Public Defender, human rights groups, media and the general public criticized the final verdicts and accused the investigative authorities as well as the courts of shielding from justice the representatives of the Ministry of Interior. Key arguments against the verdict and the whole case were that charges brought against the four were not adequate and fair in relation to the crimes actually committed by them; in particular, the four must have been charged with more serious crimes, including torture, consequently, the sentence must have been stricter, than the one imposed by the court. Moreover, possible links with those who allegedly 'ordered' the crime must have been investigated independently and effectively, which was never done.<sup>48</sup>

Lack of transparent investigations into high-profile cases of murders by the police officers "turned into the most serious crisis for the authorities since the 2004 developments in South Ossetia"<sup>49</sup> (when clashes erupted there) and reached its peak in November 2007<sup>50</sup> when thousands of Georgians went to streets accusing the President of authoritarianism and demanding earlier elections. November demonstrations were violently dispersed by the authorities.

In 2009 President of Georgia issued amnesty for those sentenced for Girgvliani's murder, later on in September the four were released from the prison through the procedure of preterm release.

### **Aprasidzes' Case**

On the 24<sup>th</sup> of March, 2004 special operative activity was carried out in Svaneti, district of Mestia against the family of Afrasidze's. The father of the family and his two sons were killed by the Special Forces. The special operative activity was conducted by using 12 helicopters and around 1000 men. The necessity and proportionality of the use of such force in that case remains highly contested. Moreover, by using such force and the way the special operative activity was conducted ignored the threats their activation posed to other people around, including to minors.

Before the special operative activity, the Afrasidzes' family had been demonized in the media as 'bandits', 'kidnappers', 'killers', etc. starting from before the Rose Revolution. However, the special operative activity to apprehend them was carried out while charges had not been brought against them officially. Neither had they been called in by the law enforcers to appear for giving testimonies, etc.; Therefore, the legal basis – and first and foremost the necessity - for the special operative activity carried out Afrasidze's remains highly contested.

Ministry of Interior, Ministry of Security and their top ranking officials, as well as internal troops, around 1000 men and 12 helicopters participated in the special operative activity.

The special operative activity started at around 7 a.m. in the morning: The police attacked house in which children and women were sleeping and started shelling it.

Evgeni Afrasidze, father of the family, came out of his house with his hands up, his 10 years old grandchild followed him. 'He was going to surrender, but suddenly the fire was opened from the planes without any warning. Evgeni was killed by a sniper. It is a miracle that the child did not get killed, though a bullet touched his trousers. He saw how his grandfather was murdered. The son of Evgeni ran out of the house and took his dying father inside, '– describes the lawyer the situation based on witness testimonies.

After Evgeni's body was taken inside the house, the house was shelled and armed people descended from the helicopters and stormed into the house while the wife of Evgeni, wife of his son - Shmagi and their three children, four men from the family and another person – Muraviov were all inside.

<sup>48</sup> In March 2007 four high ranking officials who were allegedly involved in Girgvliani's murder quit their jobs in light of the increasing public discontent and the ultimatum by the political opposition pledging that alternatively they would launch a campaign for the resignation of the Minister of Interior himself and.

<sup>49</sup> See news agency "Civil Georgia", March 16, 2006: *Analyst Commented on Recent Political Developments* [quoting Gia Nodia] at <http://www.civil.ge/eng/article.php?id=12086&search=March%2016,%202006:%20Analyst%20Commented%20on%20Recent%20Political%20Developments>

<sup>50</sup> International Crisis Group, *Georgia: Sliding Towards Authoritarianism?* 2007, [According to analysis by International Crisis Group, the lack of transparent investigations into high-profile cases, including Girgvliani case, was a major reason for the November 2007 protests]; <http://www.crisisgroup.org/en/regions/europe/caucasus/georgia/189-georgia-sliding-towards-authoritarianism.aspx>

The armed forces did not allow the family members, neighbors and relatives to take Evgeni Afrasidze's body out of the burning house.' - says the lawyer of Afrasidze's.

According to the video-materials and witness testimonies two houses next to Afrasidze's houses also came under attack. In fact, there are reports that at first they made a mistake and bombed a neighbor's house. The lawyer recalled in the interview with the Human Rights Centre (HRIDC) that when he went to Svaneti to conduct interviews, he saw how the children were playing with lots of remains of those grenades.

According to witnesses, Omekh Afrasidze, one of the Evgeni's sons, was shot when he was on his knees handcuffed. Lasha Afaqidze, 6-7 years old, witnessed how his uncle was shot and then robbed - a cross and a ring was taken away from him. Another son of the family, Gocha was assaulted by certain kind of a big knife, he was badly injured, despite the fact that he was not resisting.

For the defense lawyer as well as many others it remains a question why was it necessary to conduct a special operative activity. "It was easily possible to detain e.g. Omekh Afrasidze any other time, everyday he was traveling from his village to another one alone. The special operative activity was done to terrorize the village, there is no other explanation," - says the lawyer. He supported this suggestion by the fact that dozens were arrested in a police round-up in the village that day. Armed forces searched them several times, held them under detention in the tower yard for a day, from the morning to the evening disregarding the legal procedure. Later on a few of them were arrested for the possession of drugs. Gocha and Shmagi Afrasidzes were arrested and still remain under detention, which their lawyer considers to be illegal.<sup>51</sup>

There are reports about irreparable damage sustained by untargeted innocent civilians as a result of this special operative activity: e.g., because of the manner the operation was conducted the wife of Schmagi Afrasidze became mentally ill and a neighbor, Ms. N. Gurchiani, who was ill and lying in the bed in her house during the operation, died as a result of fear. No action has been taken by the government to provide compensation for this damage or to raise the issues of accountability of any of its agents for such consequences.

Officially the special operative activity was assessed as a particularly successful one. Georgian President Mikheil Saakashvili hailed the anti-criminal operation saying: "We will continue to struggle against criminal gangs in Georgia. Not a single criminal band will remain in Georgia."<sup>52</sup>

Necessity and proportionality of the use of force has never been investigated.

## Humanitarian and legal consequences of the Russia-Georgia War

### A. Internally Displaced People

The Results of a one week conflict between Georgia and Russia in August 2008 were devastating. It is estimated that several hundred people have died; including civilians who did not take part in the military operations. Thousands had their households destroyed and were forcefully displaced.

Part of those who were displaced immediately after the war was gradually able to return back to their villages, their living conditions however remained deplorable throughout 2009 owing to fragile security situation and lack of material and other resources to satisfy basic human needs.

Material conditions in the IDP settlements remained extremely poor as well. Assistance provided by the Georgian government has been rather chaotic and far from being sufficient.

According to the Ministry of Refugees and Accommodation of Georgia there are 228, 142 IDPs from Abkhazia and South Ossetia resettled in various districts of Georgia sheltering either in private

<sup>51</sup> The defense reported numerous violations of law and procedure in relation to their detention and imprisonment. E.g., he reported that while the law sets 48 hour deadline for bringing charges against a person after the moment of detention, authorities did not bring charges against Gocha Afrasidze for three months after detention.

<sup>52</sup> See news agency "Civil Georgia", March 24, 2004: President Hailed Anti-Crime Operation in Svaneti at <http://civil.ge/eng/article.php?id=6513&search=President%20Hailed%20Anti-Crime%20Operation%20in%20Svaneti>

sector or in collective centers or in new settlements. 42 % of them, which makes 96 037 IDPs live in collective centers; remaining 58% - 132 105 IDPs live in private sector.<sup>53</sup>

Collective centers and cottages built in new settlements were built or renovated by private companies employed by the government. Those companies did their job very poorly and in a hurry. IDPs often complained about the low quality of buildings. In most collective centers inhabitants faced problems of sanitation, water and gas supply. In several settlements – Skra, Shavshvebi and Tserovani children were attacked by snakes. According to IDPs, the reason of large number of reptiles in those settlements was that the new villages were built up in swampy areas.<sup>54</sup> Problems with access to medical services due to financial constraints were also reported by the IDPs.

A large part of the IDPs' problems were caused as unjustified delays and/or denial of granting official IDP status to them by state organs persisted. Having an IDP status has a numerous practical implications to the displaced including guaranteed monthly allowances, free access to health care and public transport and provides a guarantee against forceful return. Moreover, not granting the IDP status to those forcefully displaced from South Ossetia violates the Georgian Law on Internally Displaced Persons.

Throughout 2009 the Human Rights Centre (HRIDC) has intervened in and documented several forceful attempts by the government representatives to oust IDPs from community centers and return them back to villages in the former buffer zone, located on or close to the administrative boundary with South Ossetia. IDPs were not willing to go back due to the security concerns.

IDPs from conflicts in 90ies have reported being openly discriminated by state authorities against the IDPs from August war 2008 for being of the IDPs from Shevardnadze's<sup>55</sup> times.

## B. Accountability for War Crimes

Several days after the outbreak of the August conflict in 2008 the Prosecutor of the International Criminal Court (ICC) confirmed that his Office was analyzing information related to alleged crimes committed in Georgia during Russia-Georgia war that fall under the Court's jurisdiction.<sup>56</sup> The Prosecutor requested information from the Governments of Russia and Georgia on 27 August 2008. Both the Russian and Georgian authorities responded. The Office conducted a visit to Georgia in November 2008.

According to Georgian side, national proceedings started in 2008 to investigate allegations of crimes possibly falling under the jurisdiction of the ICC; no news about this has been covered by Georgian media and no further details have been made known to the public in Georgia however.

Breaches of international law of human rights (right to life, prohibition of torture, right to personal security and liberty, right to property) and international law of the use of force (protection of non-combatants and civilian objectives, proportionality of use of force, prohibition of torture etc) were documented during and after the 5 day war between Russia and Georgia in August 2008 by the international and national non-governmental organizations.

On September 30, 2009 EU-funded Independent International Fact-Finding Mission on the Conflict in Georgia (IIFMCG), led by the Swiss diplomat Heidi Tagliavini, probing into the August war made its findings public. The report said that "The shelling of Tskhinvali by the Georgian armed forces during the night of 7 to 8 August 2008 marked the beginning of the large-scale armed conflict in Georgia" but report underlines that "Yet it was only the culminating point of a long period of increasing tensions, provocations and incidents".

<sup>53</sup> Official website of the Ministry of Refugees and Accommodation see at [http://www.mra.gov.ge/index.php?lang\\_id=ENG&sec\\_id=210](http://www.mra.gov.ge/index.php?lang_id=ENG&sec_id=210)

<sup>54</sup>How and Who Spends Funds Allocated for IDPs? Humanrights.ge 9 July, 2009, see at <http://www.humanrights.ge/index.php?a=article&id=3929&lang=en>; and Snakes Attack the IDPs Settled in Shida Kartli Region, Humanrights.ge 25 May, 2009, see at <http://www.humanrights.ge/index.php?a=article&id=3776&lang=en>

<sup>55</sup> Shevardnadze is the former president of Georgia who was ousted out of the office by the current political leadership.

<sup>56</sup> International Criminal Court monitoring events in Georgia, UN News, 20 August 2008 see at <http://www.un.org/apps/news/story.asp?NewsID=27759&Cr=Georgia&Cr1>

According to the report, Georgian authorities indicated they had to launch defensive operation to counter already started Russian invasion. Report assessed that reason “not in a position to consider as sufficiently substantiated the Georgian claim concerning a large-scale Russian military incursion into South Ossetia before 8 August 2008.” IIFFMCG also indicates on number of reports and publications, including of Russian origin, according to which the Russian side was carrying out training and military equipment of South Ossetian and Abkhaz forces prior to the August, 2008.

The report also notes about presence of “some Russian forces” in South Ossetia, other than the Russian peacekeeping forces, prior to 2:30pm on August 8, when Russia says it made a decision to intervene.

Russia justified its intervention by the intention to stop “genocide” of the Ossetian population, to protect Russian citizens in South Ossetia and its peacekeeping troops in the region. Russia claimed that two of its peacekeepers were killed in the morning of August 8 and five wounded in the Georgian attacks. Georgia denied any deliberate attacks on the Russian peacekeepers’ headquarters in Tskhinvali. IIFFMCG said it “does not have independent reports which could substantiate or deny the allegations of either side.”

As far as Russian and South Ossetian accusations of genocide are concerned, the report says that alleged Georgian intent for genocide “could not be proven.” However, based on “evidence of systematic looting and destruction of ethnic Georgian villages in South Ossetia, the report concluded that “ethnic cleansing was indeed practiced against ethnic Georgians in South Ossetia both during and after the August 2008 conflict.”

The report found shelling of Tskhinvali with GRAD multiple rocket launchers (MRLS) and heavy artillery during the night of August 7-8 was not justifiable under the international law as it did not satisfy the “requirements of having been necessary and proportionate.”<sup>57</sup>

The report further found that, “It follows from the illegal character of the Georgian military assault that South Ossetian defensive action in response did conform to international law in terms of legitimate self-defence. However, any operations of South Ossetian forces outside of the purpose of repelling the Georgian armed attack, in particular acts perpetrated against ethnic Georgians inside and outside South Ossetia, must be considered as having violated International Humanitarian Law and in many cases also Human Rights Law,”

As far as legality of use of force by Russia is concerned, IIFFMCG takes a “differentiated” approach, dividing “the Russian reaction to the Georgian attack” into two phases – the one, which was the immediate reaction in order to defend Russian peacekeepers in Tskhinvali and the second one, the invasion deep into the Georgian territories beyond South Ossetia.

IIFFMCG concluded that in the first instance, “there seems to be little doubt that if the Russian peacekeepers were attacked, Russia had the right to defend them using military means proportionate to the attack.” As far as the second phase is concerned, the report says that “much of the Russian military action went far beyond the reasonable limits of defence.” The report stated that “Russian military action outside South Ossetia was essentially conducted in violation of international law,” it also stated that Russia violated UN Charter when it and its Abkhaz allies attacked upper Kodori Gorge, the only part of breakaway Abkhazia under the Tbilisi control at that time.

IIFFMCG also concluded that recognition of breakaway Abkhazia and South Ossetia by a third country “is consequently contrary to international law” as well as “the mass conferral” of Russian passports to the residents of the breakaway regions.

Nearly a year after the August 2008 war over South Ossetia, there has been no accountability for violations of international humanitarian and human rights law committed by all parties to the conflict, a chief reason for the continued massive displacement of the ethnic Georgian population.<sup>58</sup>

<sup>57</sup> IIFFMCG’s explanation is that Georgia had a non-use of force commitment under the legally binding international documents, such as the 1992 Sochi Agreement and 1996 Memorandum on Measures to Provide Security and Strengthen Mutual Trust between the Sides in the Georgian-South Ossetian Conflict. “Even if it were assumed that Georgia was repelling an attack, e.g. in response to South Ossetian attacks against Georgian populated villages in the region, according to international law, its armed response would have to be both necessary and proportional,” the report reads.

<sup>58</sup> Parliamentary Assembly of the Council of Europe (PACE) debate on the state of human rights in Europe, June, 24, 2009 see at <http://www.hrw.org/en/news/2009/06/24/parliamentary-assembly-council-europe-pace-debate-state-human-rights-europe>

### C. Enforced Disappearances and Illegal Detention

Towards the end of 2009 it became evident, that accusations continuously raised by Tskhinvali de-facto authorities that Georgian side was holding hostages from August 2008 and others detained afterwards, were not groundless, although Georgian authorities had been categorically denying those allegations.

#### Tirdznisi Teens Case

On November 4, 2009 four Georgian teenagers between 14 and 17 years old, Giorgi Romelashvili, Aleko Tsabadze, Levan Khmiadashvili and Viktor Buchukuri, were detained in the vicinity of Tskhinvali, capital of the *de facto* South Ossetia. They were residents of Georgian-controlled village near the conflict zone – Tirdznisi.<sup>59</sup> Parties spread controversial information about the reasons of the detention.<sup>60</sup> Teenagers were prosecuted by the law of the Russian Federation and sentenced for “illegal crossing of the South Ossetian border and possession of explosives” by court of *de facto* South Ossetia.<sup>61</sup> Their detentions sparked an outcry in Georgia and calls from Georgian authorities and the European Union for their release.

The only available channel of communication with the boys has been through the International Red Cross which involved only letters delivered a few times by Red Cross officials between the Georgian teens and their parents in Tirdznisi.<sup>62</sup> While in prison, teenagers were visited by Georgian civil society representatives who reported that their living conditions were normal.<sup>63</sup> The release of the teenagers became possible after the intervention from the CoE human rights commissioner Thomas Hammarberg.<sup>64</sup>

#### Five Osetians' Case

Ibragim Laliev (born in 1974), Lavrenti Kaziev (born in 1974), Iakob Tekhov (born in 1941), Pavlik Tekhov (born in 1958) and Vladimer Eloev (born in 1978) were detained by the Georgian side on August 4, 2009.

<sup>59</sup> A village in the Gori district located roughly five kilometers away from Tskhinvali, under Georgian control

<sup>60</sup> According to one of the versions, boys went fishing and had explosives with them. The Head of the Provisional Administrative Entity of South Ossetia, Dimitri Sanakoev, stated the detention of the underage Georgian citizens was illegal, he also denied the allegations about teenagers carrying explosives. The deputy Speaker of Georgian Parliament Mikheil Matchavariani stated during the parliamentary session: “These kids have been taken hostage. They have not committed any crime and we are very sorry that we have to talk to the criminal regime about these issues...the Russians and their marionettes are ignoring the international law.”

<sup>61</sup> News agency “Civil Georgia”, 5 November, 2009, “Tskhinvali Detains Four Georgian Teens”, see at <http://www.civil.ge/eng/article.php?id=21642&search=disappear> ; The Court in Tskhinvali gave Giorgi Romelashvili and Aleko Tsabadze, both 14 years old, one year conditional sentence and was freed from the courtroom. But two others – Levan Khmiadashvili and Viktor Buchukuri, 17 and 16 years old, respectively - were sentenced to one year prison term.

<sup>62</sup> Kidnapped Georgian Schoolboys Remain in Russian Custody by Giorgi Kvelashvili, December 1, 2009, see at <http://jamestownfoundation.blogspot.com/2009/12/kidnapped-georgian-schoolboys-remain-in.html>

<sup>63</sup> Paata Zakareishvili: -Children looked clean and they told us the conditions are normal in the custody. They feel well too.

<sup>64</sup> Thomas Hammarberg had been holding intensive talks both in Tbilisi and Tskhinvali on release of detainees since November 27, 2009. Aleko Sabadze and Giorgi Romelashvili, each 14 years old, were given conditional sentences and released on December 2, while Levan Kmiadashvili and Viktor Buchukuri were released later on December 19, 2009.

From August 4<sup>th</sup> till December 2<sup>nd</sup> these people were considered to be missing,<sup>65</sup> The Ossetian side asserted that they were held in detention by the Georgian side, the latter however kept denying the fact, until the Council of Europe Human Rights Commissioner was involved in the situation and it was disclosed that there were some prisoners held by Georgian side.

The release of the four teenagers from Tirdznisi came after the Georgian side freed the five Ossetians early on December 2, 2009.

According to Tskhinvali that two South Ossetians – Ibragim Laliev and Lavrenti Kaziev were detained by the Georgian police in October, 2008 and the third one, Vladimir Eloev – in May, 2009,<sup>66</sup> Vladimer Fedoev was arrested near Orchosani village on April 31, 2009.<sup>67</sup>

According to the detainees, they were detained arbitrarily and deprived freedom in violation of due process.<sup>68</sup> Moreover, they were kept in secret detention even after the Georgian court had acquitted them.

### **Testimonies**

**Pavle Tekhov**, Georgian policemen detained him in the village of Disevi without any explanations and pushed him into the car.

*“Initially, our trial was held on March 24-25, 2009. We were judged for illegal storage of weapon and sentenced us to 5-year-imprisonment. On August 4, the upper instance of court found us not guilty but despite that we spent 4 months in Gori detention setting in unbearable situation. They did not accuse us in anything. We were in unbearable conditions - during 4 months we could not wash, they gave food only once a day,”* said Tekhov.<sup>69</sup>

Former prisoner Ibragim Laliev said the Georgian police detained him without any grounds because they had no weapon.

*“We did not have any weapon. I was transporting wheat flour to my relative in Artsevi village and they detained me on my way to them. I was subjected to three trials; final was in August. We endured hard time,”* said Laliev who spent one year and 2 months in the Georgian prison.<sup>70</sup>

**Ibragim Laliev** : *“We were arrested on October 8, 2008 in the village of Ditsi – on that day Russian army left the village. There were five detainees in Georgian police car. We were taken to Gori. They were beating me for 4 days without saying anything about our crimes; they even did not ask us anything. Then they said we had to be tried for illegal storage of weapon. They took us to a burnt house by car near Tirdznisi village. Georgian police wanted to stage an incident when both sides had to open fire and they would have killed us. But they asked whether we had relatives and friends among Georgians and when we said we had, they understood our relatives would start to look for us. So they changed the idea and took us back to Gori and then to Tbilisi. I was in jail hospital for 3 months. I had brain concussion because of beating. I could not even raise my head. I should note that we all 5 were sitting together in Gori, but in Tbilisi we were in separate cells. I spent 7 months in Tbilisi and then sent us to Rustavi. We spent final 4 months in Gori detention setting.”*<sup>71</sup>

According to Laliev, his first trial was in January of 2008; the court imposed suspended sentence on him but police did not release him.

<sup>65</sup> HumanRights.ge 14 December, 2009, Police Does not Have Right to Hide Information About Ossetian Detainees, See at <http://www.humanrights.ge/index.php?a=article&id=4467&lang=en>

<sup>66</sup> Tskhinvali Holds Four Teens in Two-Month Pre-Trial Detention, See news agency “Civil Georgia”, 19 November, 2009 at <http://civil.ge/eng/article.php?id=21697>

<sup>67</sup> Tskhinvali De-Facto Government Demands to Release the Convicted for Terrorist Act in Gori, 8 December, 2009 <http://www.humanrights.ge/index.php?a=article&id=4441&lang=en>

<sup>68</sup> Pavle Tekhov stated that he was arrested near the village of Disevi and was accused of storing bombs. According to Tekhov his trial lasted for 5 minutes. <http://www.humanrights.ge/index.php?a=article&id=4429&lang=en>

<sup>69</sup> Police Kept Arbitrarily Detained Ossetian Citizens in Gori Detention Setting 10 December, 2009, see at <http://www.humanrights.ge/index.php?a=article&id=4453&lang=en>

<sup>70</sup> *ibid.*

<sup>71</sup> *ibid.*

*“After the trial I spent one month and 10 days in the detention setting. Later I learned they were going to exchange me into another hostage and took me to the Georgian village of Plavismani. Then they arrested me again for illegal storage of weapon,” said Ibragim Laliev.<sup>72</sup>*

For Georgian society information about their detention before the court hearing as well as afterwards was practically held in secret. The society did not know why Georgian police detained those people, what crime they were charged for, when and how they were arrested, whether they enjoyed their right to defense and other procedural rights guaranteed by Georgian legislation, etc.

According to the Georgian authorities, they were ready to exchange Ibrahim Laliev, Lavrenti Kaziev and Vladimir Elloev for other Georgians detained by Tskinali de facto authorities already in the summer of 2009. Georgians then promptly changed the prison term of the three into conditional sentence and were preparing to take them to Ergneti for exchange, however the swap of detained persons failed in last minute since then whereabouts of the three men was unknown.

Later on Georgian side provided an explanation that the three Ossetians were in a private house “under the police supervision” since August 4. Georgian side explained the need for keeping the three men under the police supervision with the risk that they might again commit the crimes for which they had been arrested for – two of them for illegal possession of arms and one for taking a policeman in hostage.<sup>73</sup>

Georgian side cited the probability of Tskinali punishing those men for cooperation with the Georgian law enforcement agencies, as the reason for the refusal to hand over the three men to the South Ossetian side.

Such a regime of deprivation of liberty is however unknown to Georgian national legislation as well as international law and clearly contradicts both.

The five men were handed over by the Georgian authorities to CoE human rights commissioner, who brought former detainees to Tskhinvali. Georgian side was reluctant to say that exchange of hostages took place; The Head of Shida Kartli regional police department Vladimer Jugheli described the event as an expression of a good will from Georgian side: “we did not exchange hostages but Georgian side acted generously.”<sup>74</sup>

Leading national TV-companies avoided releasing the information about released 5 Ossetian detainees.<sup>75</sup>

### **Three Ossetians’ case**

Alan Khachirov,<sup>76</sup> 17 years old, Alan Khugaev, 20 years old and Soltan Piliev, years old 26, disappeared on October 13, 2009. Reportedly the three were going to Khugaev’s grandmother in the village of Bikari to take some products there when they were attacked by people dressed in the uniforms of Georgian police. Later on, relatives of the disappeared youngsters obtained a video recording showing the three being interrogated and tortured by Georgian-speakers.<sup>77</sup>

<sup>72</sup> *Ibid.*

<sup>73</sup> According to Georgian government's official response to European Courts of Human Rights, dated October 23, 2009

<sup>74</sup> HumanRights.ge, 4 December, 2009, Endless Hatred, see at <http://www.humanrights.ge/index.php?a=article&id=4428&lang=en> ; Georgian officials were reluctant to speak publicly about the release of five Ossetian men, who were held in the town of Gori, See also News agency “Civil Georgia”, 4 December, 2009 at <http://www.civil.ge/eng/article.php?id=21746>

<sup>75</sup> HumanRights. Ge, 4 December, 2009, Commissionaire of the CoE Discovered Disappeared Ossetian People see at <http://www.humanrights.ge/index.php?a=article&id=4429&lang=en>

<sup>76</sup> Alan Khachirov's father Iuri Khachirov was kidnapped by Georgian people from the field in 2006. He was sentenced to 15-year-imprisonment for illegal possession of weapon and remains behind the bars.

<sup>77</sup> The mother of Alan Khachirov was given photo-materials by the relatives who somehow found unofficial people who sold the video-recording of the torture of Khugaev, Khachirov and Pliev. The relatives paid 500 USD for it. Relatives of this people gave some video materials to Thomas Hammarberg. The amateur video-recording lasts 1

Ministry of Internal Affairs of Georgia has categorically denies their detention in Georgia.<sup>78</sup> Some, who believe the contrary, think that the three might be killed.<sup>79</sup>

### Charaeva Case

Khatuna Charaeva, resident of Akhagori, disappeared in December, 2009. Later on it became known that she was detained by Georgian law enforcement officials. Relatives did not have any information about her location and health conditions and the lawyer was not allowed to see her during the first month of the detention.

Charaeva was arrested in Tbilisi on December 21 when she arrived there, reportedly to sell walnuts. She was charged with the possession of false money. Relatives of the accused and Akhagori residents downplayed these allegations, stating that charges were fabricated.<sup>80</sup> De-facto administration of Akhagori district and most of the local population considered detention of Charaeva as an act of political persecution.

Brother in Law of Charaeva, Merab Charaev explained the detention with the fact that children of Charaeva often visited Tskhinvali and Georgian side did not like this very much. According to Charaev, Georgian side presumed that they had some politically grounded links with certain people in Tskhinvali. Charaev called this presumption “nonsense.”

The case, declared a Griffith Secret, continued to the year’s end.

### Others

There were incoming reports that hostages remained on both sides – Georgian and S. Ossetian.<sup>81 82</sup> It was however difficult to establish the precise list and whereabouts of those people. The information was practically held secret.<sup>83</sup> Hiding similar information contradicts the Constitution of Georgia and the law.<sup>84</sup>

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minute and 37 seconds; it shows three scared Ossetian boys who are insulted, scolded and beaten by Georgian-speaking men; the violators are not seen in the recording so it is difficult to speak about their personality. You can see the video-recording on the video-portal www.hridc.tv at <http://hridc.tv/index.php?a=view&id=53&lang=geo>

<sup>78</sup> According to Boris Chochiev, they tried to convince every participant of Geneva Conferences (among them Georgian participants too) that these adults were detained by Georgian special forces but the latter denied these allegations. “I wrote to the head of Georgian delegation Giga Bokeria about it twice but he replied both times: “They are not detained in Georgia and you should look for them in South Ossetia,”

According to Sozar Subari, former Public Defender, Georgian NGOs received the video recordings from Ossetian side and sent those to him and they. I appealed to the Ministry of Interior of Georgia and they replied to me that the fate of Pliiev, Khugaev and Khachirov is not known to them. Paata Zakareishvili, conflict scientist: “Pliiev, Khugaev and Khachirov disappeared after the war. I have seen the video-recording. Georgian side denies this fact but Ossetian side claims Georgian law enforcement bodies have done it because they saw Georgian policemen detain the Ossetian adults. Of course, the Ministry of Interior had to investigate who are those Georgians in the video. If those Ossetian detainees were looters, what was the source of their information? If the Ministry of Interior claims they were looters, it means they have some information and should prove it. The Ministry of Interior shall investigate the fact and should not deny they have arrested those people. I doubt these boys are already dead. And if Georgian side has done it, they should give at least bodies of the boys to the families.”

<sup>79</sup> Kidnapped Ossetian Adults Were Tortured, 23 Dec. '09 [to businessman Gocha Dzasokhov, and assumption of conflict scientist Paata Zakareishvili]

<sup>80</sup> According to them, Charaeva was an honest and hard-working person and it was the police who secretly planted 30 000 USD on Charaeva.

<sup>81</sup> News agency “Civil Georgia”, 2 December, 2009 , Tskhinvali Releases Two Teens, Holds Two Others, (Commissioner Hammarberg told reporters in Ergneti at the breakaway region’s administrative border that problems remained as there were people still detained on the both sides. )

<sup>82</sup> One of the released prisoners Pavle Tekhov reported to Tskhinvali media sources that he personally saw more 11 Ossetian prisoners when representatives of the Red Cross met them. Zakareishvili: We had openhearted conversation with the adults and they told us that Ossetian side has more 12 Georgian hostages and among them is 17-year-old Giorgi Archvadze. Unfortunately, we could not meet the rest 12 hostages, see at <http://www.humanrights.ge/index.php?a=article&id=4467&lang=en>

<sup>83</sup> The only high-ranking official of the Ministry of Interior, who confessed existence of Ossetian hostages, was head of Shida Kartli regional police department Vladimer Jugheli. He still confirms that they have detained several other Ossetian people too; among them are those people who Tskhinvali regime has been requesting for a long time.

Second, this increases chances for violations of the rights of those held in detention. Third, it causes serious complications in conflict resolution and confidence building among the sides to the conflict.

## **Violations of the Rights to Freedom of Assembly and Manifestation**

The Constitution of Georgian guarantees the right to peaceful assembly to everyone without arms either indoors or outdoors without prior permission, except for the members of the armed forces and Ministry of Internal Affairs. Only the authorities have the right to brake up a public assembly or manifestation in case it assumes an illegal character.<sup>85</sup>

The right to free and peaceful assembly constitutes one of the fundamental human rights; it imposes dual obligation on states: not to violate the right and to create conditions ensuring realization of the right.

In 2009 the Georgian government's commitment to freedom of assembly was once again called into question when stories of tens of cases of attacks and harassment of peaceful demonstrators started to emerge in the course of - at first sight well-handled by the authorities - spring-summer demonstrations in 2009. The political opposition and a part of the citizens accused President Saakashvili of authoritarian rule and of dragging Georgia in war with Russia last year. To symbolize the lack of freedom in the country some protesters settled down in the tents in the middle of a central avenue in Tbilisi. The tents blocked Tbilisi's main street throughout the summer.

Several days before April 9, which had been announced as a starting point for mass demonstrations, different opposition party members were detained on contested charges and sentenced to deprivation of liberty. On April 9 the central highways in the regions of Georgia were blocked to obstruct demonstrators from travelling to Tbilisi.<sup>86</sup> Arbitrary deprivation of drivers licenses were also reported to obstruct mini-buses drivers transporting people to the capital.<sup>87</sup>

Dozens of attacks and harassment of demonstrators committed by unidentified people have been documented in the course of demonstrations starting from April till July 2009. Such cases were taking place almost every day. All these cases had mainly similar patterns with a group of men, in some cases in masks, attacking participants of rallies, not immediately on the protest venues, but mainly on the nearby streets, mainly during the night time.

All attacks seem to follow the same pattern, to target specifically figures from the opposition and/or activists taking part in the protest. Testimonies point to the lack of reaction from the police, who in some cases stands accused of turning a blind eye to the attacks.<sup>88</sup>

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However, Jugheli does not want to release concrete information and does not tell the names of Ossetian detainees. He thinks the issue shall be agreed at higher level. [We have several detainees but cannot tell their names either. This information is not public." <http://www.humanrights.ge/index.php?a=article&id=4467&lang=en>

<sup>84</sup> "Generally, if the case is not Griffith Secret, policeman can announce the case details. As for the information about detainees, it shall be available even if the case is Griffith Secret. Identity of prisoners and their conditions in detention settings shall not be kept in secret. If the information is requested, police is entitled to announce the names of the detainees."

<sup>85</sup> The Constitution of Georgia, article 25

<sup>86</sup> HumanRights.Ge , 16 April, 2009, A Chronicle of Violence Before and After April 9, see at <http://www.humanrights.ge/index.php?a=article&id=3684&lang=en>

<sup>87</sup> HumanRights.Ge, 13 April, 2009, In Batumi Mini-Buses Were Deprived of Drivers, see at <http://www.humanrights.ge/index.php?a=article&id=3677&lang=en>; HumanRights.Ge, April 10, 2009, Demonstrators Are Forbidden To Travel From Regions, see at <http://www.humanrights.ge/index.php?a=article&id=3667&lang=en>

<sup>88</sup> Joint Press Release by International Federation of Human Rights (FIDH) and the Human Rights Centre (HRIDC): Violent attacks on peaceful demonstrators in Tbilisi, dated April 24, 2009

Attacks were directed to intimidate demonstrators and obstruct realization of their right to freedom of assembly.”<sup>89</sup>

Opposition political parties also reported several times cases arbitrary detention and/or enforced disappearances of their members and supporters. None of the reported cases of disappearances have been investigated by the authorities, strengthening speculations that those disappearances were condoned and encouraged by the state.

Law enforcement authorities failed in their obligation to guarantee demonstrators’ right to peaceful assembly. Moreover, at least in some of these cases police was present near the incident, however remained reluctant to intervene and protect citizens from attackers. In other instances they were involved in questionable practices, casting serious doubts on the institutional neutrality of the reformed police.<sup>90</sup>

Authorities further failed to carry out investigations into those cases to identify perpetrators and hold them to account. After almost a year, none of the investigations have led to identification and punishment of a perpetrator, while authorities were prompt to charge and sentence several demonstrators involved in clashes with the police and harassment of journalists from pro-government media outlets.

No one has faced criminal responsibility for using excessive force on May 6 and prohibited weapons on June 15 for dismantling demonstrators.

**On May 6, 2009** while allegedly establishing public order, police used plastic and rubber bullets against demonstrators, use of which was at that time prohibited by Georgian legislation.<sup>91</sup> At first, the Ministry of Internal Affairs was denying the fact, but later acknowledged it. Reportedly police also used stones, debris of bricks and sticks.<sup>92</sup>

According to official information, total of 29 people, one journalist and six policemen among them asked for treatment in two hospitals of Tbilisi afterwards.<sup>93</sup> Among those injured were several leaders and opposition supporters: Gia Maisashvili, Davit Gamkrelidze, Shalva Ogbaidze, Levan Gachechiladze and Gia Gachechiladze, as well as a correspondent of the Public Broadcasting- Salome Kokiashvili, a camera-man of the TV Company “Kavkasia”-Zaza Shukvani, a cameraman of the Rustavi 2-Levan Kalandia; Nino Komakhidze-journalist of the newspaper “Versia” and Ana Khavtasi – photo-reporter.<sup>94</sup>

A Ministry of Internal Affairs investigation into allegations regarding the use of force by police officers concluded that police acted in accordance with the law.<sup>95</sup> No one has been held accountable for use of prohibited weapons.

**On June 15, 2009** police, some in plain cloths and in masks, armed with batons attacked dozens of protesters from the youth pro-opposition groups, which were rallying outside the Tbilisi police headquarters on June 15.<sup>96</sup> Dozens of people were severely beaten, several journalists and cameramen were injured and their equipment was ceased (but was later returned back). 39 people were arrested, five activists from the pro-opposition youth group were arrested and sent to prison for a month, the Tbilisi City

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<sup>89</sup> Human Rights Watch Statement: Georgia: Justice Is Not Negotiable, dated May 11, 2009, see at <http://www.hrw.org/en/news/2009/05/11/georgia-justice-not-negotiable>

<sup>90</sup> Reportedly police, particularly traffic police was specifically targeting opposition activists and arbitrarily applying different sanctions against them. It was also reported that e.g., during May 6 incident special forces police was beating clubs on their shields, shouting the name of the President: “Misha, Misha” to drown out efforts of the opposition activists to speak. [News agency “Civil Georgia”, 7 May, 2009]

<sup>91</sup> The Law on Police, as it was at that time, provided for an exhaustive list of weapons which police was authorized to use, the list did not however include those means. Moreover, the law also banned “use of such special equipment, which may cause serious mutilation of a person”; rubber and plastic bullets belong to such category.

<sup>92</sup> News Agency Pirveli, 7 May, 2009 Sozar Subari: “Policemen Threw Stones and Debris of Bricks At Demonstrators From Inside the Yard of the Tbilisi Main Department of Ministry of Interior”

<sup>93</sup> News agency “Civil Georgia”, 6 May, 2009

<sup>94</sup> Statement by the Human Rights Centre (HRIDC), dated 7 May, 2009, see at <http://www.humanrights.ge/index.php?a=article&id=3733&lang=en>

<sup>95</sup> US State Department, 2009 Country Report on Human Rights Practices/Georgia

<sup>96</sup> See News agency “Civil Georgia”, 15 June, 2009 at <http://www.civil.ge/eng/article.php?id=21108>

Court fined others with GEL 400 and released.<sup>97</sup> A representative of the Public Defender's Office, Vakhtang Menabdze, was beaten by police although he was wearing a special uniform with the "Public Defender" designation on it.

The Ministry of Internal Affairs stated that the clash was sparked when police tried to clear the entrance of the police building and the traffic road however video footage<sup>98</sup> and eyewitness testimonies rebutted this allegation.

The Interior Ministry stated it was the police "mistake" that journalists were injured and impeded to perform their professional duties during the clash and apologized for it.<sup>99</sup> However, no one faced criminal responsibility for this act, which is punishable under Georgian Criminal Code.<sup>100</sup>

When asked about "excessive use of force by the police" on June 15 outside the Tbilisi police headquarters, Saakashvili said that policemen were sworn at by protesters "night and day" one should "not be surprised if these people [policemen] exaggerated."

### **Case of Melor Vachnadze, Giorgi Oniani and Revaz Revazishvili**

During the spring protests, the non-parliamentary opposition set up a "corridor of shame" in front of the Georgian Public Broadcaster, thus forcing GPB employees to pass the corridor to enter the station building. While passing through the "corridor of shame" on May 5, Nika Avaliani a journalist from Georgian Public Broadcasting was allegedly slapped and punched by three non-parliamentary opposition members Melor Vachnadze, Giorgi Oniani and Revaz Revazishvili. The three were arrested on charges of hooliganism. The facts of the incident remained contested since some eyewitnesses stated that the journalist himself provoked violence.

Three activists were released as a result of the mediation of Catholicos-Patriarch of Georgia, his Holiness and Beatitude, Illia II. They admitted guilt and were fined 200 lari (\$118), however at a May 7 press conference, Melor Vachnadze, Giorgi Oniani and Revaz Revazishvili stated that during their May 5 detention, they were forced to go through a corridor of shame, were beaten, verbally abused, and threatened with death and rape.

The Ministry of Internal Affairs opened an investigation into the allegations on May 25, the investigation continued at year's end.

### **Failed political dialogue to resolve the crisis**

In the middle of the demonstrations, the government invited the opposition for a political dialogue. Human Rights Centre (HRIDC) was among the few who from the very beginning welcomed the government proposition and called upon the political parties involved in the process to engage into a dialogue. We further stressed that the dialogue should not become an end in itself but the means for achieving a real change in the country and clarified that the dialogue between the opposing parties will have a very little chance to succeed if it fails to adequately address the crucial issues - restoring the constitutional balance of powers, freeing the Georgian media from governmental control and creating the environment conducive of political dissent.<sup>20</sup>

On May 11, 2009 opposition leaders met the President for a dialogue.

Earlier, on May 11, President Saakashvili had offered the opposition "a moratorium on further investigation and legal prosecution of all offences, which occurred because of excessive political

<sup>97</sup> News agency "Civil Georgia", 16 June, 2009

<sup>98</sup> Video footage shows that demonstrators did not resist or commit any violence, while police attacked them without any prior warning

<sup>99</sup> "We regret and apologize for that... This is our mistake and we acknowledge it," Eka Zguladze, the deputy interior minister, said. "The Interior Ministry will spare no efforts not to repeat the same in the future." [News agency "Civil Georgia", 15 June, 2009]

<sup>100</sup> According to official information, a body under Ministry of Interior conducted internal investigation regarding June 15 incident as a result of which several employees got disciplinary sanctions: 2 employees received reprimand, 4 employees received strict reprimand and 3 were suspended from authority till the end of official investigation. Names of those employees were not disclosed however, neither were the results of the investigation made public.

emotions in the course of protest rallies.” The proposal was downplayed by political opposition, as well as human rights groups.<sup>101</sup>

After the meeting the President made a public speech in which he talked about a number of proposals he offered to the opposition, including occupying high offices in the government. The opposition stated that president was inadequate to the grave situation created in the country which needs fundamental changes. Talks resumed, however they did not lead to any concrete solution of a political crisis in the country.

In addition to the Law on Police, In July the Parliament also amended the law on Assemblies and Manifestation.

In addition, Parliament amended the law on Assemblies and Manifestations and the Law on Administrative Offences.

The latter prolonged administrative detention from 30 to 90 days<sup>102</sup> without any justification and introduced particularly severe sanctions for the acts less dangerous for the public; as for the Law on Assembly it disproportionately limited the right to assembly and manifestation, e.g., prohibited assemblies which block the street except where this is the result of the large number of participants. The law did not however define what counts for ‘a large number of participants.’ The law also imposed a ban on assemblies and manifestation on extensions to the area around specified public buildings, etc.

Adoption of these amendments were evaluated as “a step back in the path to democracy” and as an indication that “the Government did not make an effort to overcome internal crisis through a dialogue, cooperation or compromise, but rather stirred up the confrontation and created risk of escalated violence.”<sup>103</sup>

**Statement by the Human Rights Centre (HRIDC)  
April 21, 2009**

*The Human Rights Centre (HRIDC) welcomes Georgian government’s call for a dialogue to solve the ongoing political crises in the country. The government made this proposal in response to thousands of opposition supporters calling on President Mikhail Saakashvili to step down at peaceful demonstrations throughout Tbilisi.*

*This proposal is a particularly welcome step after the years of the government deliberately ignoring and marginalizing the dissent and after having violently dispersed the November 7th Demonstration in 2007.*

*The Human Rights Centre (HRIDC) wishes to stress however, that the dialogue should not become an end in itself but the means for achieving a real change in the country. In this regard, we call upon the Georgian government to take concrete steps towards the change, inter alia to:*

*1 Initiate Constitutional amendments to restore the proper balance between the executive, judicial and legislative branches; the Constitution now grants overwhelming power and control over the other branches to the President.*

*2 Initiate prompt and effective investigation into irregularities documented during the raid on TV Imedi during the November 7th demonstrations, as well as investigate falsification of the official documents ordering the closure of Imedi by altering their dates.*

<sup>101</sup> News agency “Civil Georgia”, 20 June, 2009

<sup>102</sup> Whereas, the maximum term of pre-trial detention in criminal cases is two months

<sup>103</sup> Statement of Group of Civil Society Organizations on Rally-Related Bill, dated July 14, 2009; See news agency “Civil Georgia”, 15 July, 2009 at <http://www.civil.ge/eng/article.php?id=21239&search=Statement%20of%20Group%20of%20Civil%20Society%20Organizations%20on%20Rally-Related%20Bill>

3 Review the procedures for appointing the leadership of the Public Broadcaster and ensure meaningful participation of the political opposition in the selection processes of the new leadership.

4 Annul the illegal suspension of the broadcasting license of the TV company 202.

5 Initiate institutional changes in the Ministry of International Affairs of Georgia in order to decentralize the numerous functions which this organ has accumulated during the current government (such as police, security forces, counter-intelligence, frontier–security, etc.).

6 Start consideration of the cases of political prisoners in Georgia and take steps to ensure that people are not detained or imprisoned on political grounds in Georgia.

The Human Rights Centre (HRIDC) wishes to stress the fact that it was a massive violation of human rights and freedoms in the recent years, in particular of the right to life, freedom from torture, fair trial, freedom of speech and right to property, as well as the establishment of the arbitrary rule of men as opposed to the rule of law, which paved the way to the existing crises in Georgia.

Bearing this in mind, the Human Rights Centre (HRIDC) firmly believes that the dialogue between the opposing parties will have a very little chance to succeed if it fails to adequately address the issues listed above - restoring the constitutional balance of powers, freeing the Georgian media from governmental control and creating the environment conducive of political dissent.

Therefore, Human Rights Centre (HRIDC) calls upon all the potential participants of the dialogue, as well as upon its facilitators, including and more so - to international actors, to stress these issues with the government of Georgia during all the negotiations over the ongoing political crises in Georgia.

The Human Rights Centre (HRIDC) at the same time expresses its deep concern regarding the cases of violence and harassment of peaceful demonstrators and the mounting allegations that the state authorities themselves commit, order and/or support commission of such acts. Violence, especially if sponsored or condoned by the state, will only threaten to intensify the mistrust and hostility among the different parts of the society and undermines credibility of the proposed dialogue.

Therefore, the Human Rights Centre (HRIDC) calls upon Georgian authorities to:

1. take all the necessary steps to immediately stop violence against the demonstrators,
2. . publicly condemn all the acts of violence,
3. initiate prompt and objective investigation of all cases and bring perpetrators to justice.

The Human Rights Centre (HRIDC) calls upon all the parties involved to:

1. abide by the Constitution and laws of Georgia,
2. take all the measures to avoid further escalation of the conflict.

### **Amending the Law Instead of Dealing with its Violations by the Authorities**

Early in July, amendment to the Law on Police, the law on Assemblies and Manifestations and Administrative Code were initiated and were promptly, in two-week time, adopted by the parliament.<sup>104</sup>

**The amended Law on Police** made use of non-lethal means (including plastic and rubber bullets) lawful.<sup>105</sup> It is also noteworthy to say, that Georgian Law on Police fails to explicitly mandate that

<sup>104</sup> Parliament went through all stages of considering the proposed amendments in two weeks time and adopted the amendments on July 17<sup>th</sup>, at the extraordinary Parliamentary Session amendments to the three laws were adopted, contrary to calls by human rights groups and parliamentary opposition;

<sup>105</sup> Rules and conditions for the use of special means have to be approved by the order from Interior Minister.

use of force to be legally valid, it must be proportionate. Consequently, use of disproportionate force per se is not illegal.

**The amended Law on Assembly and Manifestation** disproportionately limited the right to assembly and manifestation while at the same time creating several loopholes for arbitrary application of the law.

**The amended Administrative Code** made it punishable under administrative code to violate the rule of organization and holding assembly and manifestation, inter alia by administrative detention. The amendments further extended the term of administrative detention from 30 to up to 90 days.<sup>106</sup>

The amendments contain several questionable features, e.g., article 174' of the Administrative Code states that violating the rule of organization and holding assembly and manifestation is punishable by fine of 500 GEL, while the same committed by the organizer of the assembly or manifestation – by 5000 GEL. Blocking the entrance of a court, holding a manifestation or assembly at a residence place of a judge or in the common court or within 20 meters from it, is punishable by up to 90 days of imprisonment.

Blocking buildings or holding an assemblage or manifestation inside or within 20 meters from the entrance of certain buildings, listed in the law, is punishable by administrative detention up to 90 days; (even when it brings no harm or creates not threat to any public good)

Full or partial blockage of a carriageway is prohibited, except when and only during the period of time when it is necessary due to the number of people participating in an assemblage or a manifestation. It is prohibited to block a carriageway with the use of vehicles, various structures and /or other objects. Violating these rules is punishable by administrative detention up to 90 days.

## **Undermining Freedom of Media**

**Government control of media, lack of editorial independence and self-censorship among journalists and media outlets persisted throughout 2009.**

**Cases of illegal interferences into journalists' activities, physical attacks and other forms of intimidation and pressure on journalists continued to go largely unpunished. The climate of impunity, created over the years in Georgia, further encouraged perpetrators and proved to have a chilling effect on media freedom and expression in Georgia.**

**Unfounded denial or unjustified delays in supplying public information to journalists was reported as a widespread problem, especially in the regions.**

**Un-transparent ownership, media concentration and unfriendly market condition continued to jeopardize possibilities for developing independent and self-sustainable media in Georgia.**

**On a positive note, political decision was made by the president to allow civil society representatives occupy several seats in the GPB board, although it has had a little influence on the overall landscape of the media situation in Georgia.**

**In general, problems with the independence of the media in Georgia remained closely linked with the level of democracy in the country and the existing political culture. Without improving the two, transforming the Georgian media into an independent watchdog institution proves to be largely impossible.**

### **Politically biased content**

TV continued to be the main source of information for the absolute majority of the public, the influence of the print media, radio and internet on public opinion-making remained limited.

Polarization of the TV channels along political lines, a pervasive character of the Georgian TV media, increased - leaving little room for neutrality and balance and depriving the media its key function of a public watchdog.

National channels tended to cover the same stories in largely the same way and shared the habit of not questioning actions taken by the Georgian authorities. Furthermore, the major channels provided

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<sup>106</sup> Whereas, the maximum term of pre-trial detention in criminal cases is two months.

no space for exclusive stories or investigative reports and were highly reluctant to air reports critical of the president and his government.<sup>107</sup>

In certain instances the line between the official position of the government and of the ruling party on the one hand, and the nation-wide TV channels on the other hand, was factually deleted. The nationwide TV channels were actively involved in voicing government's position on various issues and imposing those positions on general public, while at the same time they followed the line of the ruling party to marginalize political dissent and sideline critical voices. Examples of such instances were e.g., coverage of spring demonstrations, Tagliavini report and Mukrovani Mutiny.

**Coverage of Demonstrations:** nation-wide TV channels provided a very limited fact-based coverage of months-long, several thousands-strong demonstrations, which was flawed with numerous human rights violations, instances of excessive use of force and illegal weapons by the police to dismantle demonstrators, etc. Some insiders reported informally that journalists of those channels were given specific instructions to use certain terms in respect of demonstrators aiming to discredit and marginalize them in the public eye.<sup>108</sup> While covering demonstrations, the nationwide TV channels also misquoted the statements of the foreign Ambassadors<sup>109</sup> and censored speeches of other key figures to make them sound in favour of the ruling party.<sup>110</sup>

**Coverage of Tagliavini report<sup>111</sup>:** Assessment of Russia-Georgia war 2008, including Tagliavini report about this war was yet another issue which triggered totally controversial coverage in the TV media. While TV channels Kavkasia and Maestro, like many international observers, pointed at possible mistakes and/or wrongdoings of the Georgian government before, during and after the 5 day war, nation wide TV channels basically censored such information, whether being reported by foreign observers or national actors and mostly covered only those facts or statements, which were favorable for the government.

**Coverage of Mukrovani Mutiny:** This case was also indicative of a general trend in Georgian TV media. While following the alleged May 5 mutiny, Georgia's three national television stations - Rustavi-2, Imedi and Georgian Public Broadcasting - gave extensive time to the government's investigation and evidence against several prominent military figures, while the trial of those charged with the mutiny was largely ignored;<sup>112</sup> non nation-wide TV channel attempted to investigate the case independently and provide its coverage.<sup>113</sup>

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<sup>107</sup> Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation* (2009)

<sup>108</sup> E.g., journalists were instructed to use the word 'cage' in reference to what the demonstrators called 'cells' by which they started to occupy Rustaveli avenue during spring demonstrations

<sup>109</sup> E.g., Public broadcaster's First Channel said in one of its news bulletins on April 24, that in a joint statement Tbilisi-based EU diplomats "recommend both the opposition and the authorities to ensure this right" of freedom of assembly "in a peaceful and secure way." According to the same report the statement also called on the both sides "to create as minimal inconvenience to normal functioning of institutions and daily life of all citizens as possible." The same report was repeated in the public TV's main 8pm news bulletin on April 24. An original statement, released both in English and Georgian languages, reads: "They [EU diplomats] commend both the opposition and the authorities for ensuring the free exercise of this right [of freedom of assembly] in a peaceful and secure way, with minimal inconvenience for the normal functioning of institutions and daily life of all citizens."

<sup>110</sup> E.g., on April 8, a day before the official launch of the protest campaign, Ilia II, the Patriarch of the Georgian Orthodox Church, called on the opposition, the government and the Georgian army not to resort to force. "I address entire Georgia, I address our authorities, opposition, I address the Georgian army not to use force in any case. A person, a soldier, who raises his hand against his brother, can no longer properly defend his motherland," Ilia II said in the Holy Trinity Cathedral on April 8. The full statement was aired once on Imedi TV its management "blocked" to air statement in the later news reports,. Two journalists of the television stations decided to quit in protest after the Patriarch's remarks were censored.

<sup>111</sup> The report by EU-funded Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG), led by the Swiss diplomat Heidi Tagliavini

<sup>112</sup> Georgia: Media Tunes out Mukrovani Mutiny Trial by Molly Corso see at <http://www.eurasianet.org/departments/insight/articles/eav113009c.shtml>

<sup>113</sup> *Ibid.*

### Lack of investigative reporting

Investigative journalism remains rare in Georgia. While lack of professional human resources has been identified as one of the reasons, especially in the regions, pressure and intimidation remains the key obstacle in this field. Legislative obstacles, such as blanket ban on video-audio recording in the court room and problems with access to public information, including court expenses involved in appealing the denial of such information, also create significant challenges to investigative journalism.

Another part of the problem is an artificially blocked market for investigative journalism. National broadcasters do not air those few investigate reports which are produced by independent studios, neither do they produce their own investigative reports,<sup>114</sup> public can only access such reports on *Maestro* and *Kavkasia* TV channels, through internet or public presentations; all these having restricted geographic availability and being accessible to a limited number of the population, mainly in the capital. Financial vulnerability is yet another reality facing investigative journalism in Georgia, independent studios producing such reports are mainly donor-funded.

### Media markets, ownership and control

Un-transparent media ownership has been a long standing concern in Georgia. A serious part of the problem is that the Georgian legislation does not provide protection from ownership concentration and control in the media, nothing in the law sets a limit on the amount of market share that may be under control of one media group or one owner.

The results of such a legislative lacuna are evident: e.g., 30 percent of the shares of TV channel *Rustavi 2* and 45 percent of *Mze*, an entertainment channel and 65 percent of *I Stereo* are owned by one and the same Georgian Industrial Group (GIG). Furthermore, the off-shore entity Degson Limited is the major shareholder in both stations – *Rustavi 2* and *Mze*. GIG also owns Georgian Business Consulting, which publishes the English newspaper *Georgian Business Week* and operates the news-wire GBC.ge.<sup>115</sup>

Furthermore, founder of the GIG is Davit Bezhuashvili, an MP from the ruling party and brother of the current chief of the Georgian intelligence service and former minister of foreign affairs, Gela Bezhuashvili.<sup>116</sup>

Political control and interferences within the advertising market was used as a “soft” means of taming critical media: decisions to buy advertising with certain media depended on the “safety” of their content i.e. their political acceptability.<sup>117</sup>

### Pressure on media and journalists

Physical attacks, intimidation and forms of pressure against individual journalists as well as media outlets continued throughout 2009. Journalists faced problems both in seeking and receiving as well as disseminating information. Lack of effective investigations and accountability for pressure, intimidation and other illegal interferences into journalists’ activities persisted. [For further details see the next chapter.]

The cases below aim to describe the problems, and not to provide an exhaustive list of incidents that took place in 2009.

#### The case of TV channel Maestro

The Georgian National Communications Commission pressured several local cable affiliates to halt their rebroadcasts of *TV Maestro*, going as far as closing some of the stations temporarily for unspecified “technical reasons.” *Maestro* faced violence as well. In May an explosion at about 3am, apparently caused with a hand-grenade, shattered windows and damaged the television station’s iron gate. The channel did not terminate the broadcasting however.

<sup>114</sup> A pledge by Gia Chanturia, the general director of the public broadcaster, to launch investigative reports when he was running for the post – the promise, which has yet to deliver

<sup>115</sup> Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation* (2009)

<sup>116</sup> Ibid.

<sup>117</sup> European Union-Georgia: Civil Society Human Rights Seminar on Media Freedom, Final Report, November 2009, see at [http://ec.europa.eu/delegations/georgia/documents/news/10\\_11dec2009\\_en.pdf](http://ec.europa.eu/delegations/georgia/documents/news/10_11dec2009_en.pdf)

Maestro TV said that the police came to the incident site only 50 minutes later and forensic detectives came on the site about 90 minutes later. Mamuka Glonti, owner of the television station also said that 20 minutes after the blast policemen, who were patrolling on a nearby street, were approached and asked to come to the incident site, but, he said, they had refused and left the area.

Investigation into the case of “damaging or destruction of object perpetrated by setting fire, explosion or by any other dangerous means” continued to the year’s end.

Maestro’s general director, Mamuka Glonti, believed the blast was intended to prevent the station from airing a program about the 2006 slaying of banker Sandro Girgvliani.[see the chapter on right to life for more information about the case]

#### The case of Batumelebi

On November 25, 2009 Tedo Jorbenadze, a journalist of a regional newspaper “Batumelebi” was invited to the office of Special Operative Department (SOD) of Adjara Autonomous Republic within the Ministry of Interior of Georgia. Officials told him that the special services of foreign countries – in particular, Russia and Turkey - were interested in information about the newspaper. When Jorbenadze refused to cooperate with the SOD, the law enforcers threatened to blackmail him to send compromising pictures and video materials to his relatives and co-workers and upload them on Internet to discredit him.

The case received serious national and international publicity. In a statement to the Georgian authorities the Norwegian PEN, the Norwegian Helsinki Committee and the Human Rights House Foundation to promptly investigate both this and previous incidents of pressure on “Batumelebi” and to take all appropriate measures to ensure a safe and enabling environment for all journalists in Georgia<sup>118</sup>

The investigation was launched into the case by the prosecutor’s office.

#### Case of Chachibaia and Pazhava

On December 31, 2009 two journalists - Chachibaia and Pazhava were abused in Zugdidi. According to Chachibaia he tried to cover President Saakashvili’s visit in the ice rank of Zugdidi. Security guard ordered him to stay 100 meters away from the president like other people. Chachibaia protested their order and requested to stay on the spot together with other journalists. According to the clarification provided by the journalist he was attacked by around 50 policemen who physically assaulted him. He was pushed forward.

According to the clarification of the Public Defender’s Office after Saakashvili left the ice-rank, the journalist made several photo- shots by his camera. Local policemen once again insulted and assaulted him and made him leave the area.

Nana Pazhava reported that she had learned about the incident at about 1:00 pm on December 31, 2009 and arrived at Samegrelo-Zemo Svaneti region main police department. Officers of special services of the State Security and local policemen were near the building. The helicopter was waiting for the President of Georgia to leave Zugdidi in the area. Having noticed Alexander Kobalia, Zugdidi district governor, Nana Pazhava approached him to ask some comments about the incident. According to the journalist she was immediately approached by 30 security guards who ordered her to stop recording; Kobalia asked the guard to seize video-camera from the journalist. The law enforcement officers blamed the journalist she was recording state secret and seized the camera from her; the camera was handed to Megis Kardava, deputy head of regional police department. Despite many requests the camera was not returned to Nana Pazhava.

According to the journalist, on the same day at about 3:00 pm Nana Pazhava met Zugdidi district governor at the district administration building and requested her camera back. But the governor insulted her and left the area. Few minutes later, a law enforcement officer got in touch with the journalist and returned the seized camera back, though it was damaged. According to the statement of Nana Pazhava, she and Iliia Chachibaia were detained under administrative law. Member of the opposition party Kakha Mikaia was detained together with them too. Initially they were placed at the pre-detention setting but at about 11:00 pm they were taken to Zugdidi district court in order to impose administrative fine on them.

In accordance to the explanation letter, Pazhava and Mikaia found their cars (parked near the district administration building) damaged. According to the applicant, sugar was put in the fuel tanks of their cars. Representative of the Public Defender in Zugdidi confirmed the damage of the cars.

<sup>118</sup> <http://www.caucasusnetwork.org/index.php?a=main&pid=107&lang=eng>

Both Pazhava and Chachibaia were fined 100 lari (\$59) by the Zugdidi regional court for the offence against Kobalia and released early the next day.<sup>119</sup>

## Human Rights Defenders Facing Constraints and Violence

It has been unilaterally acknowledged that the primary duty for the protection and realization of human rights and freedoms rests with the national government of each country.<sup>120</sup> Domestic implementation of these rights, however, largely depends on the ability of individuals and groups to demand from their governments to live up to their legal and policy obligations in the field of human rights and freedoms.

Those who inquire, record and expose human rights violations, those who seek remedies for victims and accountability for perpetrators, and educate populations on their human rights play a crucial role to make the world a better place to live now and for generations to come.

These individuals are commonly known as "human rights defenders."

Human rights defenders can be lawyers, relatives of victims, teachers, trade unionists, journalists, and other human rights activists. It is their activities in this field that define them as human rights defenders.<sup>121</sup>

The work of human rights defenders often involves criticism of governments' policies and actions. However, governments should not see this as a negative. The principle of allowing room for independence of mind and free debate on a government's policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights.<sup>122</sup>

If an individual or a group faces harassment, retaliation or violence while or for protecting and promoting human rights, this may have a chilling effect not on that particular person or group only, but may also deter a wider community from seeking protection and promotion of one's own, as well as others rights and freedoms.

It has been commonly acknowledged therefore, that states have a duty not only to protect human rights and freedoms, but also to take all necessary measures to protect human rights defenders. States have a duty to protect them against violence, discrimination and retaliation,<sup>123</sup> to ensure independent and effective investigation of such acts and to hold those responsible accountable through administrative measures and/or criminal proceedings.<sup>124</sup>

States also have an obligation to ensure that their legislation, in particular on freedom of association, peaceful assembly and expression, is in conformity with internationally recognized human rights standards.<sup>125</sup>

States should also take effective measures to promote and respect human rights defenders and ensure respect for their activities.<sup>126</sup>

<sup>119</sup> <http://www.humanrights.ge/index.php?a=article&id=4589&lang=en>

<sup>120</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144 (8 March, 1999);

<sup>121</sup> PACE Resolution 1660 (2009) on the Situation of Human Rights Defenders in Council of Europe member states;

<sup>122</sup> European Union Guidelines on Human Rights Defenders (2008);

<sup>123</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144 (8 March, 1999);

<sup>124</sup> Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, (6 February 2008);

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

## Situation of Human Rights Defenders in Georgia

During 2009 human rights defenders in Georgia have faced different forms of pressure and intimidation which have included threats of imprisonment based on fabricated charges, e.g. espionage, physical and verbal assault, irregular inspections by state organs, stigmatization and smear campaign in media and by high ranking officials, etc.

In some cases state officials were personally involved in physical attacks and/or intimidation of the defenders.

Journalists were especially vulnerable during opposition demonstration in spring and summer 2009. Several of them became victims of physical and verbal abuse from state as well as non-state actors. Several journalists covering the demonstrations sustained serious physical injuries when authorities used prohibited weapons, in particular plastic and rubber bullets and reportedly stones as well.

No one was prosecuted for that.

In general, rarely any of the attacks or threats and pressure against human rights defenders were publicly denounced by the authorities, nor have the identification and prosecution of perpetrators occurred.<sup>127</sup> The main reason for the impunity present in the absolute majority of cases was the lack of political will on the part of the state to investigate and punish the crimes committed, rather than the lack of professional or material resources.

An environment of widespread impunity on the one hand, and a well documented trend of selective application of justice and lack of commitment to the rule of law on the other, exerted a chilling effect on critical voices and watchdogs, particularly in the regions.

It is interesting however, that against this reality, the number of official complaints lodged against abuses and intimidation remained very low. One reason identified behind that was the lack of trust and confidence among defenders towards the justice system. Another reason was the pressure exerted by the authorities to withdraw or not to lodge a complaint at all.

In some other cases e.g., journalists themselves abstained from suing authorities for abuses committed against them, fearing retaliations and refusals to cooperate, provide information etc. which journalists greatly depend on for carrying out their activities successfully.

In July the Georgian Parliament, like Azerbaijan, Ethiopia and Jordan, passed new legislation restricting freedom of association and assembly, thus joining the negative trend which is particularly pronounced in Africa and former Soviet countries.<sup>128</sup> Amendments to the Law on Assembly and Manifestations in 2009 were used by state officials to restrict freedom of peaceful assembly.<sup>129</sup>

A number of defenders reported having noticed being under surveillance in certain periods of time and/or having their mobiles and their email accounts tapped. Threats that their family and persons close to them would face 'problems' have also been reported by defenders as a form of pressure they have experienced.

## Challenges faced while defending rights in a courtroom

The law imposes a blanket ban on video and audio recording in the courtroom.<sup>130</sup> This provides a significant obstacle for journalists as well as for defense lawyers in documenting different irregularities taking place in the court room and raising public awareness about them.

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<sup>127</sup> An exception was when the president condemned publicly the fact that journalists sustained injuries during the spring demonstrations as a result of excessive use of force and prohibited weapons by law enforcement authorities, the interior ministry publicly apologized for it as well, however, no one has faced criminal responsibility.

<sup>128</sup> Human Rights Defenders in 2009: Front Line, annual report (2010)

<sup>129</sup> Ibid.

<sup>130</sup> In 2006-2007 started public's widespread disillusionment with the judiciary under the new government. The process was triggered by media reports, based on recordings in the court rooms, about miscarriages of justice in high profile murder cases. The recordings triggered biggest public outcry since the rose revolution in Georgia. In response to lingering crisis in the country, parliament promptly amended the law (in July 2007) and imposed a blanket ban on photo-video and film recording in the court premises and a court rooms.

Defense lawyers have been facing particular problems in ensuring protection of rights and interests of their clients (both defendants and victims) in courts due to the lack of judicial independence.<sup>131</sup>

Courts often fail to uphold the principle of adversarial trial and equality of arms, hearings very often constitute a mere formality, in absolute majority of cases judges fully satisfy the motion of the prosecutor while rejecting nearly all arguments and evidence of the defense lawyers, and rarely - if at all - providing an explanation for that.<sup>132</sup>

Georgia's Public Defender noted in his report for the second half of 2009 that "lack of proper justification of interim rulings and final verdicts represent one of the most problematic issues in the judiciary." The report also says that during the analysis of criminal cases heard in the courts, this problem has been revealed multiple times "indicating that insufficient justification of decisions is a systematic problem."

Such a reality undermines the role of the defense lawyer/victim's legal counsel and marginalizes them.

The application of custodial measures (both pretrial detention as well as imprisonment) constitutes a rule rather than exception, acquittals remain very low.

Plea bargain agreement continue to be widely used.<sup>133</sup> Whereas the law provides for a very limited role of the defense lawyer in this procedure, its practical implementation has limited it even further. In practice the key is that an agreement is reached between the prosecutor and the accused, the defense lawyer is only involved at the last stage when signing the agreement, which contradicts the law itself.

Two cases have been documented in 2009 when a defendant was offered to be released from prison based on a plea bargain agreement if the defence lawyer, in both cases an NGO providing free legal aid, would withdraw from the case, which in the end did happen considering the interests of the client.

### **Financial vulnerabilities**

The Lack of financial sustainability has a negative effect on the consistency and commitment in defenders' work, especially in the regions. Human rights NGOs often experience difficulties in accessing funding (both from national as well as international sources.)

The Labour Rights Code of Georgia is protective of the employer's interests and fails to offer any meaningful protection to the employee. This is particularly relevant as far as journalists are concerned since media owners rarely, if at all, offer to journalists contractual relationships setting out rights and obligations of each party which can be used in courts for protecting journalist's rights. Such an environment poses a lingering threat of dismissal to practically any journalist, providing a 'soft' tool to put significant limitations to their professional freedom and encourages self-censorship.

### **Situation in provinces**

Defenders who live and work in provinces are particularly vulnerable because they live in small communities where open criticism of local authorities, their actions and policies is more dangerous than in bigger cities and in the capital. One of the reasons for this is that there is significantly less presence and attention of international actors, like international human rights organizations, embassies or country missions, in provinces than in the capital.

### **Detention of advocates**

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<sup>131</sup> That applies to criminal and administrative cases.

<sup>132</sup> Human Rights Center: Trial Monitoring Report (2009)

<sup>133</sup> Although the law regulating the agreement was modified in response to a harsh criticism nationally and internationally, the modified one and its practical implementation still remain problematic. Plea bargain agreement is a procedure which under the cover of a 'speedy justice' gives discretionary powers to the prosecutor, while sidelining the court, as an independent actor. Formally the court has a right either to endorse the agreement or to reject it. So far no case has been observed when the court rejected the agreement. (Human Rights Center: Trial Monitoring Report (2009);

Detention of advocates on ill-grounded charges continued. Official statistical data as to how many advocates have been detained and remain behind the bars as of today have not been provided to the Georgian Bar Association.<sup>134</sup> Allegedly the number is approximately 200.<sup>135</sup> Serious allegations exist that, at least in some of the cases, imprisonment was motivated by the intention to silence those who are committed to pursuing legal ways at national as well as international levels in defense of human rights.

### **Freedom of expression and media**

National and international organizations have observed a deterioration of the situation of freedom of expression and media during the last years in Georgia. Government control of media, lack of effective investigations and accountability for illegal interferences to journalists' activities, including physical attacks and pressure on media outlets by different government bodies, self-censorship, denial of access to public information *to journalists*, un-transparent ownership and media concentration as well as unfriendly market for developing independent and self-sustainable media conditions are some of the key problems.

### **Access to public information**

Throughout 2009-2010 journalists continued to face problems when trying to obtain public information from authorities. Answers were either not sent to them at all, were sent after the deadline set by the law, or were incomplete, irrelevant and/or meaningless. Although the law allows anyone to appeal denial of public information to the court, expenses to be incurred by the applicant in this case have been identified as a serious barrier for journalists in pursuing their interests in courts. This situation affects most significantly the work of investigative journalists.

### **Media and defenders**

Deficit of independence, especially in Georgian electronic media, negatively affects defenders' abilities to reach out to citizens and provide them with information on different human rights programs, raise people's awareness about human rights violations and questionable practices documented by defenders, about human rights and available mechanisms for realization of these rights, etc.

A worrying tendency surfaced in 2009 - involvement of some media outlets, especially TV, in the smear campaign against human rights defenders. Defenders working to expose and seek remedies for IDPs and the population affected in the Russia-Georgia War of 2008 were particularly targeted.

The media, especially nationwide TV channels, were also used to impose on public an official version of the reasons, causes, facts and possible consequences of the Russia-Georgia war in 2008. Such a reality made it difficult for human rights defenders to document violations and seek redress for victims. For the same reason, it has remained difficult for the civil society in general to engage in and encourage free public discourse about the Russia-Georgia war 2008.

### **Civil Society's participation in the decision-making process**

Involvement of civil society in the consultations and decision-making process with the government regarding issues of public interest remained limited. Numerous calls by NGOs and the wider human rights community to bring perpetrators to justice in high profile cases, including violence and excessive use of force against peaceful demonstrators in 2009 and before that in 2007, remained largely ignored.

In July the parliament amended three laws, all restricting human rights and freedoms, including the rights of defenders, and increasing powers of the executive, e.g., the amendments to the Law on

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<sup>134</sup> According to the Head of the Bar Association of Georgia

<sup>135</sup> Ibid.

Assembly and Manifestation disproportionately limited the right to a peaceful assembly.<sup>136</sup> Furthermore, the Parliament went through all stages of considering the proposed amendments in two weeks time and adopted them at the extraordinary session without holding consultations with different stakeholders. The Parliament, as well as the President, ignored calls from major human rights NGOs in the country to put on hold adoption of the amendments till receiving commentaries to the draft laws from the Venice Commission.

On a positive note in December 2009, the president shortlisted and parliament elected 3 nominees advocated by the non-governmental organization Media-Club for the membership in the board of the public broadcaster.

### **‘Creating a real civil society’**

In May 2009 the President stated: “Now, we are creating a real civil society”<sup>137</sup>. The statement was soon followed by the official opening for a special Fund in June aiming to provide financial aid to CSOs.

Against the backdrop of ignoring and marginalizing alternative voices including NGOs since 2004 and a record of uninvestigated cases of abuses against human rights defenders committed by state agents, these two developments triggered concerns and was seen as a signal of the Government starting a top-down process of building civil-society in Georgia.

**The cases documented by the Human Rights Center in the framework of the project “*Creation of the South Caucasus Network of Human Rights Defenders*”, which is coordinated by Human Rights**

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[http://www.caucasusnetwork.org/admin/editor/uploads/files/pdf/Georgia\\_new%20laws%20unjustifiably%20restrict%20ofundamental%20rights.pdf](http://www.caucasusnetwork.org/admin/editor/uploads/files/pdf/Georgia_new%20laws%20unjustifiably%20restrict%20ofundamental%20rights.pdf)

<sup>137</sup>

<http://www.civil.ge/eng/article.php?id=20983&search=saakashvili%20says%20to%20create%20real%20NGOs%20in%20Georgia> Civil Georgia, 25 May, 2009

**Center in cooperation with regional partners, Legal Education Society and Armenian Helsinki Association and the Human Rights House Foundation as an international partner.**

This list of cases is not exhaustive, it is indicative of main trends only.

## **Smear Campaign against NGOs and human rights activists in the Media**

### **The Case of 'Human Rights Priority'<sup>138</sup>**

On December 10, 2009, International Day of Human Rights, the news program of Georgian Public Broadcaster released a telecast condemning Human Rights Priority's activities related to the protection of human rights.

The news item stated as if Human Rights Priority was 'using the tragedy of war for its own benefits'. Special attention was paid to the contract between Human Rights Priority and its potential clients based on which the organization is providing free legal aid to those affected by the August war in 2008. However none of the signed contracts was presented in the media report, moreover, the report was talking about the draft of the contract which gains binding force only after the signature from both parties.

The overall tone and the content of the media report released by the Public Broadcaster on the International Day of Human Rights harshly criticized those who dare to submit a complaint to the European Court of Human Rights versus Georgia.

### **The Case of the Georgian Young Lawyers' Association<sup>139</sup>**

On December 12, 2009 TV Company Rustavi 2 released a media report concerning the issue of hostage exchanges between Georgian and South Osetian sides. According to the report, the release of Georgian citizens detained in Tskhinvali was spoiled by the Georgian Young Lawyers Association complaint submitted "in defence of Ossetian criminals" to ECHR.

The media statement lacked any logical and factual ground and was misleading the public. Moreover it constituted an attempt to incite anger, promote intolerance and ethnic division.

Earlier the same year, Lia Mukhashavria, the head of the organization, was found to be in breach of article 166 of the Administrative Code of Georgia. Article 166 of the Administrative Code of Georgia defines "minor hooliganism" as using foul language, cursing, insulting citizens and similar activities in a public place. The finding was based upon the allegations of a citizen - Manana Sosebashvili, who accused Lia Mukhashavria of harassing her while carrying out her professional duties and of representing her friends in a private dispute. The allegations of harassment were reported by the Patrol Police officers, who themselves allegedly witnessed but ignored reports of harassment of Lia Mukhashavria by Manana Sosebashvili herself.

It is believed that the case against Lia Mukhashavria is related to her work in defending human rights in Georgia, particularly by representing victims of human rights abuses in cases against the state authorities.<sup>140</sup>

<sup>138</sup> Human Rights Priority is a Tbilisi-based NGO which is actively and successfully involved in strategic litigation - appealing cases related to human rights violations of the IDPs and those affected by the Russia-Georgia war 2008. After exhausting local remedies, Human Rights Priority appeals the cases to the European Court of Human Right.

<sup>139</sup> The Georgian Young Lawyers' Association (GYLA) is a membership based non-governmental organization in Georgia. GYLA aims to promote the rule of law, protect human rights and freedoms, increase public legal awareness, promote norms of professional ethics among lawyers, develop the skills and competence of lawyers, develop legislative basis for the civil society and rule of law country.

Mukhashavria appealed the case with no avail, however.

### **The Case of Sozar Subari, former public defender of Georgia**

In December TV Company Real TV prepared a one-sided and highly biased media report concerning former Public Defender Sozar Subari who is one of the most reputable people in Georgia for his human rights work carried out as a public defender. The media report portrayed Subari with highly negative connotation accusing him of being a defender of religious minorities and their rights and never the rights of orthodox Christians who represent the religious majority in the country. Recently there have also been other attempts to discredit Subari and his work carried out by him as a public defender.

### **The case of Thomas Hammarberg, COE Commissioner for Human Rights**

On November 4, 2009 four Georgian teenagers between 14 and 17 years old were detained in the vicinity of Tskhinvali, capital of the *de facto* South Ossetia. Parties spread controversial information about the reasons of the detention.<sup>1</sup> Teenagers were prosecuted under the law of Russian Federation and sentenced for “illegal crossing of the South Ossetian border and possession of explosives” by court of *de facto* South Ossetia.

Their detentions sparked an outcry in Georgia and calls from Georgian authorities and the European Union for their release.

On November 20, 2009, the Chair of the Parliamentary Committee for Foreign Affairs Akaki Minashvili of the ruling party criticized Thomas Hammarberg, the Council of Europe's commissioner for human rights, for “being inactive” in respect of four Georgian teenagers, who remain held in Tskhinvali since November 4.<sup>141</sup> Minashvili accused Hammarberg of taking “abstaining position” in all those cases, which regard Russia: “This person [Hammarberg] is doing nothing; he is totally inactive. Such action, first of all, harms the Council of Europe and questions its reliability...Urgent reaction is needed to ensure that either this person [referring to Hammarberg] takes reaction or he should be replaced.”<sup>142</sup> Parliamentary Chairman David Bakradze said that Thomas Hammarberg's inaction naturally triggered “negative assessments.” “It should not be seen as if Georgia is interested in confrontation with the Council of Europe or Commissioner for Human Rights, but we should understand that it is a test – if the Council of Europe, Mr. Hammarberg or his colleagues want to have a trust... this case really is a test, wherein everybody should spare no efforts,” said Bakradze.<sup>143</sup>

The release of the teenagers became possible after the intervention from the CoE human rights commissioner Thomas Hammarberg who had been holding intensive talks both in Tbilisi and Tskhinvali on release of detainees since November 27, 2009.<sup>144</sup>

### **The Case of Vakhtang Komakhidze**<sup>145</sup>

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<sup>140</sup> For further details see statement by FrontLine dated 2009/10/22 at <http://www.humanrightsdefenders.org/en/node/2211>

<sup>142</sup> Civil Georgia, 20 November, 2009

<sup>143</sup> Ibid.

<sup>144</sup> Aleko Sabadze and Giorgi Romelashvili, each 14 years old, were given conditional sentences and released on December 2, while Levan Kmiadashvili and Viktor Buchukuri were both sentenced to a year in prison each, but were released later, on December 19, 2009.

<sup>145</sup> Mr. Komakhidze runs an NGO *Studio Reporter*, which has produced a number of documentaries exposing grave human rights violations committed or condoned by the Government of Georgia, falsified elections, corruption, political prisoners etc. Among other films, Mr. Komakhidze is an author of a documentary investigating circumstances of Prime Minister Zurab Zhvania's death five years ago, casting serious doubts over official preliminary conclusions

Investigative journalist Komakhidze became victim of a continuous smear campaign because of his visit to the occupied territories and the meeting with the de facto leader of South Ossetia in 2009.

In particular, on December 17, 2009, on the same day when Mr. Komakhidze came back to Tbilisi from South Ossetia, where he met NGOs, war-affected families and de facto leader, high profile politicians in Tbilisi harshly criticized him and his colleagues for this visit. Their criticism was broadcasted in the news programs by various media outlets. For instance, Mr. Shota Malashkia, one of leaders of the ruling party said: "this is a disease not only for Georgia; such people [referring to those who visited Tskhinvali on December 16] always existed during the various occupation regimes and their actions there have already been responded by the population after the de-occupation. The same will happen in case of these people as well - for some of them it will be a response through [results] in elections and for others from the moral point of view."

At the same time, a vigorous media campaign started on several national TV channels scolding those who visited Tskhinvali and Moscow after the war and labeling them as "betrayers" of the nation.

In 2010 Komakhidze was subjected to further attacks by a media outlet "Real TV" who allegedly has close ties with the Ministry of Interior of Georgia. In particular, on February 9, 2010 *Real-TV* released a telecast concerning private life and professional activities of Komakhidze. The TV report spread incorrect information, saying that in 2004 Mr. Vakhtang Komakhidze worked at the Ministry of Security and had to leave the Ministry after one year because of financial machinations. True fact is that Mr. Komakhidze left the Ministry three months after his appointment based on his personal wish and moved to the Public Defender's Office of Georgia. The report also accused Mr. Komakhidze of polygamy and tried to portray him as a bad father for his children. The TV report also recalled a prison term which Komakhidze had served some 29 years ago when he was a juvenile.

Leading Georgian journalists and media experts denounced the telecast as "horrible," "nasty information", "propagandist method," "shame of Georgian journalism."<sup>146</sup>

### **The case of Inclusive Foundation**

On December 15, 2009 police raided office of "Inclusive Foundation," the first officially registered NGO in Georgia (2006) openly working on LGBT right. The office of the NGO was searched by police. Reportedly, during the raid officials used anti-homosexual slurs, made unnecessary strip searches, unnecessarily damaged organizational posters, and unnecessarily ransacked offices, the law enforcement officials were not wearing any uniforms and did not have a search warrant. They confiscated staff's cell phones and did not allow contacts to families and friends. The leader of Inclusive Foundation was arrested charged with drug possession - and released after a few weeks.

The Ministry of Internal Affairs denied that any procedural violations took place and maintained that the profile of the organization was irrelevant in terms of the law. The ministry reported that its General Inspection Office gave one officer a reprimand at the "severe" level in accordance with the police code of ethics, as his actions were determined to be non-ethical and inappropriate for police officers. Two other officers were also given a reprimand at the "severe" level for not preventing the above-mentioned officer from making the unethical statements.

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(officially the investigation is still ongoing) that the late Prime Minister died of carbon monoxide poisoning caused by an out of order gas heater. Mr. Komakhidze is a winner of several media awards at the national level. Since 2008, "Studio Reporter" is a member of the South Caucasus Network of Human Rights Defenders.

In March 2004, Mr. Vakhtang Komakhidze was severely beaten up by police officers in Adjara Autonomous Republic, on his way back to Tbilisi, as he was working on a film about illegal activities carried out by Mr. Aslan Abashidze's relatives. Mr. Abashidze was the leader of Adjara Autonomous Republic from 1991 to 2004. Despite the fact that some time after the incident Mr. Komakhidze himself identified one of the attackers and reported him to the authorities, the incident has not yet been investigated as up to date.

<sup>146</sup> <http://www.caucasusnetwork.org/index.php?a=main&pid=129&lang=eng>

Investigation into the alleged procedural violations during the search of the office is ongoing.

## **Challenges in the realization of the right to seek, receive and disseminate information**

### **The Case of Tedo Jorbenadze**

A regional newspaper "Batumelebi" reported that on November 25, 2009 the representatives of the Ministry of Interior Special Operation Department (SOD) of Adjara exerted moral and physiological pressure on Tedo Jorbenadze, a journalist and a Coordinator of the "Batumelebi" investigative team to make him start cooperating with the SOD. To exert pressure SOD officers tried to use stigma against sexual minorities widespread in Georgia.

On November 25, at around 19:00 near the adjacent area of "Batumelebi" office Tedo Jorbenadze was met by SOD staff who told him that they had some questions over some private issues to be thoroughly discussed at the department and asked him to follow them to the department. Jorbenadze replied he had planned a business meeting and promised them to visit the department a little later that day. Meanwhile He informed the editor in chief of the newspaper about this talk with the SOD department. At the moment he received a mobile call (the number is identified) being notified he was awaited at the department. During the phone conversation Jorbenadze was clarified the case referred to his sexual partner. Jorbenadze went to the SOD office accompanied by Eter Turadze, the editor-in-chief of the newspaper and Mzia Amaghlobeli, deputy editor. AT around 20:00 they reached the office. Mr. Jorbenadze was asked to go alone up to the fourth floor. Following his refusal to the request, two people (one of them having met him earlier in the street) came out and made him enter the ground floor of the building. Mrs. Turadze and Mrs. Amaghlobeli were not allowed to enter the building,

In one of the offices of the SOD, Tedo Jorbenadze was shown black and white printed photos featuring men in underwear and was told that one of the peoples in the photos was him. After this Jorbenadze received an offer to start cooperating with the SOD since special services of specific countries, in particular Russia and Turkey, were interested in the newspaper and therefore his help and cooperation with the SOD was needed. In response to his refusal, SOD officials threatened the journalist that those photos and some video material would be sent to his ill father, colleagues and uploaded on the Internet. Following the dissemination of those shots, the officers asserted he would lose his job or no one would grant him interviews.

Jorbenadze said he wouldn't be threatened through the dissemination of edited shots and left the building.

Few minutes later Tedo Jorbenadze received a phone call from the same number asking him to get back to the building together with the tow women. All three of them were taken up to the forth floor of the building. Eter Turadze asked whether a lawsuit had been instituted against Tedo Jorbenadze. The response was negative.

During the conversation the special service representative told Eter Turadze that Jorbenadze didn't deserve working at the newspaper for being "unscrupulous." The newspaper editor said she wouldn't let anyone, including special service staff, insult her colleagues. In addition, the SOD staff told the newspaper management they talked delicately due to respect to the newspaper, unless otherwise "Tedo would have been brought to the department in a different way."<sup>147</sup>

The investigation in the case is ongoing by Adjara Prosecutor's office. Tedo Jorbenadze has not however been granted the status of a victim as to date, but has been questioned as a witness of the incident

### Reaction of broader public and other stakeholders

On December 1, 2009 a rally was held in Tbilisi in support of "Batumelebi" and freedom of media in Georgia. Around 100 journalists, bloggers, human rights watchdogs and representatives of political opposition representatives attended the event.

International human rights groups, such are e.g., Norwegian PEN, the Human Rights House Foundation and the Norwegian Helsinki Committee, as well as South Caucasus Network of Human Rights

<sup>147</sup> <http://www.media.ge/en/node/26901>

Defenders<sup>148</sup> uniting 30 human rights NGOs in the region, condemned the pressure exerted on the journalist and media outlet and called for impartial and prompt investigation.<sup>149</sup>

### **The Case of “Batumelebi” Newspaper: Hindering journalists’ professional activities**

On August 15, 2009 editor-in-chief of “Batumelebi” newspaper, Eter Turadze and deputy-editor Mzia Amaglobeli crossed the Georgian-Turkish border to conduct a journalistic investigation about the customs clearance procedure, since journalists had been reported by some citizens that the customs clearance procedures were often conducted with certain violations.

In the course of their professional activities the customs staff demanded the journalists to quit their work and leave the territory, alleging that the journalists were hampering their work. The custom staff did not clarify the legal ground for such a demand to Turadze and Amaglobeli, despite were not asked the officers to explain a legal for such a demand, they were charged with the disobedience to the legal demand and were fined by a GEL 1,000 each.

The “Batumelebi” appealed the decision first at the Revenue Service of the Ministry of Finance and afterwards at the court to declare the fine as void. On February 4, 2010 the Tbilisi City Court refused to satisfy the complaint.

Georgian Young Lawyer’s Association, who represents the interests of the journalists, assessed the decision as a form of indirect censorship which is incompatible with Article 24 of the Constitution of Georgia.

### **The Case of Zviad Khujadze (2009): physical abuse and threats against a journalist**

Zviad Khujadze, the editor of the information service at the radio station “Old Town” was physically abused and threatened by the Head of the Department of Culture, Monuments Protection and Sport at the Kutaisi Mayor’s Office, Gizo Tavadze.

In May 2009, Zviad Khujadze hosted a radio program at the radio station “Old Town.” The topic of the discussion was a film “Grandfather from Kutaisi” by Gizo Tavadze. A journalist - Medea Chogovadze and a young poet - George Khasaia also participated in the discussion. During the discussion the film received negative feedback from the guests and from some listeners who called in the studio while the discussion was ongoing and expressed their views publicly.

Due to the negative feedback on his film, Tavadze became aggressive during the discussion. After the radio program was finished, he approached the program host and asked him to disclose the number of the person who called in during the discussion and criticized the film. When the host replied that they usually do not keep the numbers of their listeners who call in the studio, Tavadze boasted that he would anyway find out the number through the security services.

Several days after, on May 16, 2009, Tavadze called Khudjadze (the journalist) and asked for an appointment. After working hours Tavadze picked him up on his car to have a talk. Tavadze told the journalist that he was unhappy with Khudjadze talking about him behind his back although Khudjadze clarified to him that whatever he thought about Tavadze’s work, he was criticizing publicly. Since the journalist noticed that Tavadze was about to leave the city, he tried to convince him to turn the car back and not to commit any ‘stupid act.’ In that moment the journalist also warned Tavadze that if he was not going to stop the car immediately, he was calling a patrol police. This made Tavadze angry and without stopping the car, punched the journalist into his face and dropped him out of the car.

According to Khujadze, he had felt pressure afterwards, from Tavadze’s public comments and articles as well. Khujadze claims that Tavadze’s activities were directed at preventing him from further criticizing the later.

<sup>148</sup> <http://www.caucasusnetwork.org/index.php?a=main&pid=100&lang=eng>

<sup>149</sup> <http://www.caucasusnetwork.org/index.php?a=main&pid=107&lang=eng>

On May 16, 2009 authorities opened the investigation into the incident under article 118 (intentionally causing light damage to health). Khudjadze and his advocate from Georgian Young Lawyers' Association made a submission requesting authorities to handle the case as falling under article 154 (illegal interference within journalist's professional activities). The submission was rejected on August 6, 2009. On March 23, 2010 preliminary investigation into the case was terminated.

The case is pending before Tskaltubo regional Court under 118 of the Georgian Criminal Code.

### **Journalists fall victims of violence while covering police brutality**

On April 6, 2009 journalists Ana Khavtasi and Nino Komakhidze of "Versia" newspaper were physically assaulted at an opposition protest rally in front of the Public Broadcaster's building. Law enforcement officials issued an order to disperse participants of the rally. Ana Khavtasi was taking pictures as the policemen reportedly were beating the demonstrators. Allegedly, the police decided to take her camera away, but both journalists resisted. The police hit Khavtasi in the forehead and pulled Komakhidze's hair. The journalists managed to keep the camera and printed the photographs on the front page of Versia the following day. MPs condemned the incident. No investigation followed.

On June 15, police assaulted journalists covering a demonstration of the non-parliamentary opposition outside of Tbilisi police headquarters. Crew of opposition-leaning Maestro TV and Kavkasia TV were attacked during the incident. Zurab Kurtsikidze from the European Pressphoto Agency was beaten. Police seized video and photo cameras from a number of journalists and erased their footage and photographs.

On June 16, a spokesman for the Ministry of Internal Affairs acknowledged that its forces had attacked journalists and apologized for the incident. Equipment seized by police was returned to the journalists, including a camera belonging to a Reuter's correspondent in Tbilisi.

The spokesman for the Ministry of Internal Affairs said that the ministry had concluded an internal investigation into the case and that two employees were severely reprimanded, four employees were reprimanded, and three were suspended from duty pending further investigation. The names of those employees were not made public, however, and remain secret to this date. Results of further investigation similarly remain unknown to the public.

### **Threats and harassment of NGO leaders and activists**

#### **The case of Arnold Stepanian<sup>150</sup> (2009, 2010)**

Arnold Stepanian and the organization led by him, Public Movement "Multinational Georgia" experienced different forms of pressure and threats starting from 2006.

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<sup>150</sup> Arnold Stepanian is one of the leaders of Public Movement "Multinational Georgia" (having the Council of Europe partnership status) which focuses on minority rights protection and seeks to establish tolerance and diversity as natural conditions of the democratic society in Georgia. Stepanian is also a co-founder of the "Civil Manifesto" which unites Human Rights defenders and organizations in Georgia. He is one of the authors of the critical alternative report on the protection of minority rights in Georgia which was submitted to the Council of Europe.

Public Movement Multinational Georgia is a member of the *South Caucasus Network of Human Rights Defenders*.

More recent incidents concern developments in 2009.

In the beginning of 2009 the pressure on Arnold Stepanian has been expressed through sealing up the one-person enterprise “Arnold Stepanian” which operated a small market managed by his father. Despite of the reaction and public statements made by local NGOs and international organizations, like FIDH and FrontLine the pressure has been increased.

In 2009 Stepanian received direct threats from certain state officials. They warned Stepanian that if he would not subject his activities to the control of authorities, he would be imprisoned on fabricated charges of espionage; allegedly officers said the country would “probably be Armenia or Russia”. At that point the officers demanded from Stepanian to stop working on the topics related to the “specific” regions like Samtskhe-Javakheti, Kvemo Kartli,<sup>151</sup> South Ossetia and Abkhazia<sup>152</sup>, as well as to stop the initiative on the Russian-Georgian Civil Society Dialogue

Stepanian also reported that in August 2009 representatives of the Ministry of Interior tried to deter him from implementing a project in Akhalkalaki.<sup>153</sup> The project was financed by “Open Society - Georgia” Foundation and aimed at increasing awareness of the leaders of public opinion of Samtskhe-Javakheti about developments in Samtskhe-Javakheti, also of the representatives of diplomatic corps about the problems of the region. Stepanian was warned not to bring to Tbilisi some of the leaders having special opinion, so called “radicals”. Despite of the attempts to hamper implementation of the project, PMMG managed to conduct it successfully that led to the re-closure of the market operated by one person enterprise “Arnold Stepanian”.

According to Stepanian, he was also warned not to implement any activities in Samtskhe-Javakheti, particularly not to monitor elections in this region. Otherwise it was made clear that discrediting campaign would be launched against the organization led by him.

In 2009 Stepanian’s some of family members, relatives and friends were also subjected to selective approach by tax inspection authorities. He also reported to be informed through informal sources that during certain period of time in 2009 he was under intensive surveillance, and the Customs Department had received informal notification to arrest any goods related to him or business organizations owned and managed by his relatives and friends, as well as check emails coming to private or organizational email addresses, and block and examine parcels.

### **The Case of “November 7”<sup>154</sup> Activists (2009)**

On the evening of November 23, 2009, Tbilisi patrol police arrested the leaders of “7 November” movement, Dachi Tsaguria, Jaba Jishkariani and Irakli Kordzaia in front of the Parliament building. The leaders were sitting in front of the Parliament building, at the sidewalk, with photos of Amiran Robakidze and Sandro Girgvliani, the young people killed by the policemen, and a poster – “Public TV for People.” They expressed their protest against state policy by a silent action. The patrol police arrived at the Parliament shortly after the action began and arrested the young people. As the chief of Tbilisi patrol police, Giorgi Gegechkori stated, the young people breached the Law on Assembly and Association that as he said, restricts any action within a 50m radius of administrative building. He was present at the time of the arrest.

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<sup>151</sup> The regions in Georgia populated with ethnic minorities.

<sup>152</sup> At that time the two were the break-away regions of Georgia, currently they are recognized by Russia and few states as independent. The European Union and the USA continue the active policy of non-recognition.

<sup>153</sup> Akhalkalaki is a small city in Georgia’s southern region of Samtske-Jakakheti 90 percent of the city’s population are ethnic Armenians.

<sup>154</sup> The Youth movement was founded in 2007 after the government severely clamped down on thousands-strong demonstrations in Tbilisi on November 7, 2007. “November 7” aims to protect human rights and promote democratic and liberal values in Georgia mostly through peaceful street actions, production o investigate films, video materials on human rights topics, etc.

A trial was held against Dachi Tsaguria, Jaba Jishkariani and Irakli Kordzaia shortly after their detention and a fine in the amount of 500GEL imposed on each of them under administrative law.

The judge applied the law incorrectly, since he specified in the Court decision that the activists were fined because they were sitting at a distance of 25-30m from the Parliament building and thus violated the law; while the Law on Assembly and Manifestations prohibits an action to be held only within the radius of 20m.

The Court decision also states that the activists restricted citizens' movement that they did not disperse when called so by police and resisted them. It is worth mentioning that the Judge's decision was primarily based on testimony provided by the police. The Judge refused to watch video-material that would annul the above-mentioned accusations.

This incident is one of the first precedents of putting into practice the recent amendments to the Law on Assembly and Manifestations. This incident made it clearer that the mentioned law poses a threat to protection and implementation of fundamental rights - the right of assembly and freedom of expression.<sup>155</sup>

### **The Case of youth movements “Ratom” (WHY) and “Egalitarian Institute”<sup>156</sup>**

In 2009 youth activist groups *Ratom* (WHY) and *Egalitarian Institute* reported numerous attacks and harassment against their members, beating up by unidentified men in masks, attempted abduction, etc. None of which has been investigated. Why has also been ousted from the office, reportedly as a result of Ministry of Interior pressuring the landlord;

Their members and activists were detained and fined several times in the course of spring-summer protest actions,

### **The Human Rights Center (HRIDC)**

In September 2009 the office of HRIDC and the home of the director were searched by police, who also demanded addresses, telephone numbers, numbers of car plates of the employees as well as visitors, they were also interested in the issues related to international and national partners and different projects of the organization. Police officers had to quit after they failed to present any warrant or legal document authorizing their demands.

The searches coincided in time with the activities of the HRDIC to expose pressure by law enforcement authorities on a prisoner - Vakhtang Maisaia, a military expert, who was unsuccessfully pressured to give testimonies against around 20 people, including high ranking officials from the government and representatives of diplomatic missions to Georgia, and accuse them with the crime of high treason. (HRIDC had declared Maisaia to be political prisoner earlier that year.)

<sup>155</sup> <http://www.caucasusnetwork.org/index.php?a=main&pid=109&lang=eng>

<sup>156</sup> The youth group aims is to protect freedom of expression and media, freedom of assembly mainly through peaceful street actions.



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