

Retribution and the Rule of Law: The Politics of Justice in Georgia

Johanna Popjanevski

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Abbreviations

| | |
|---------|---|
| CiDA | Civil Development Agency |
| EPRC | Economic Policy Research Center |
| EU | European Union |
| GD | Georgian Dream |
| GEL | Georgian Lari |
| GYLA | Georgian Young Lawyer's Association |
| IDFI | Institute for the Development of the Freedom of Information |
| IMF | International Monetary Fund |
| MoA | Ministry of Agriculture |
| MoD | Ministry of Defense |
| NATO | North Atlantic Treaty Organization |
| NGO | Non-governmental organization |
| NSC | National Security Council |
| OSCE | Organization for Security and Co-operation in Europe |
| — ODIHR | Office for Democratic Institutions and Human Rights |
| PACE | Parliamentary Assembly of the Council of Europe |
| TI | Transparency International |
| UNM | United National Movement |

Executive Summary

Over the last several years a gradual politicization of justice in Georgia has put into question the country's democratization progress. Most attention has centered on the judicial campaign launched beginning in late 2012 against a number of former government officials, including former President Mikheil Saakashvili, who has been ordered to pre-trial detention in absentia. This policy of selective justice has resulted in domestic as well as international criticism and raises important questions with regard to the independence of the judicial structures and, overall, the current state of the rule of law in Georgia.

This paper highlights that the lack of judicial independence is a long-standing problem in Georgia, dating back to Soviet times. While the post-revolutionary government that came to power in 2004 in Georgia undertook a number of measures to restore the judicial structures, including constitutional amendments aimed at strengthening the independence of the judiciary and a new Criminal Procedure Code deemed largely in line with international standards, many of the traditional problems of the judiciary persisted. Judges continued to systematically rule in favor of the prosecution, and public trust in the judiciary remained alarmingly low. Property rights violations were frequent and often neglected by the prosecution, and appeared to accelerate in the last years of the Saakashvili administration. Poor prison conditions also remained an issue of strong international concern.

Since the democratic transfer of power in 2012, Georgia continues to grapple with these long-standing issues relating to the state of the judiciary. In addition, the judiciary increasingly appears to be used as a tool for political retribution. The ruling Georgian Dream (GD) coalition, which came to power largely based on a common agenda of ousting President Saakashvili and his team from power, has had notable difficulties in uniting in reform efforts in other spheres and de-

livering on its promises of improved socio-economic conditions for the Georgian public. Similarly, it has struggled to attract foreign investments. Instead, the government has focused on bringing justice to past deeds.

The Prosecutor's Office has launched a judicial campaign against a number of former government officials, including the former minister of internal affairs, Bacho Akhalaia, the former prime minister, Vano Merabishvili, the former Mayor of Tbilisi, Gigi Ugulava, and, most recently, former President Mikheil Saakashvili.

Along with former high-level officials, the prosecution has targeted thousands of individuals, many of them opposition activists, and subjected them to questioning or investigation. The campaign, notably, has also targeted political rivals within the GD coalition itself. In May 2013, a number of officials from the Ministry of Agriculture were arrested on embezzlement charges, in an apparent attempt to discredit then-Minister Davit Kirvalidze and remove him from office. The events resulted in Kirvalidze's resignation; however, months later the charges against his team were dropped due to a lack of evidence. Similarly, in October 2014 high-ranking officials within the Ministry of Defense were arrested on charges of budgetary misspending, resulting in the dismissal of the defense minister, Irakli Alasania, from office. Alasania had established himself as the most popular politician in Georgia; the deepening rift between him and the Georgian Dream leadership was well known, and it was widely expected that his party would run separately in the 2016 elections.

This paper examines the question of the politicization of justice in light of two key issues: first, the degree to which the prosecution is under the influence of the executive; and second, whether the arrests are purely punitive, or seek to weaken political opponents. The study finds that several factors suggest that the prosecution lacks independence from the executive. The prime minister's exclusive control over the appointment and dismissal of the prosecutor general testify to the potential control exercised by the elite over the prosecution. While the independence of judges has reportedly improved somewhat in recent years, for example through the introduction of lifetime appointments for judges, they may still be dismissed within a three-year probation period.

Concerning the motives behind the arrests, the current practices differ markedly from the Saakashvili era. After coming to power, Saakashvili's team, too, launched a campaign against members of the previous elite who were accused of corruption. High-level officials were arrested in public, and in many cases the individuals were never charged but released in exchange for compensation for financial damage to the state. However, the political context to the events in 2004 and the present-day situation are different. A decade ago, the former authorities were not an opposition force capable of challenging the new government. The post-revolutionary campaign was therefore mainly punitive, and did not serve to weaken or eliminate the opposition. Moreover, when a new opposition emerged in the years following the revolution, breaking off from Saakashvili's team, they were not directly targeted by the prosecution. Thus, the judiciary appears presently to be used for political purposes to a larger extent than before. The timing of some of the recent arrests is a further indication of their political nature. At the time of Merabishvili's arrest, the former prime minister was widely expected to be the UNM candidate in the 2013 presidential election. Ugulava, who served as UNM's campaign manager, was arrested shortly before the second round of local elections in July 2015, with damaging consequences for UNM's election campaign. The arrest of the five Ministry of Defense officers in October 2014 took place while Alasania was in France to sign an agreement on a new air defense system. While the decision to conclude the agreement was anchored at the highest political level, Alasania reportedly received a last-minute phone call from Tbilisi with orders not to sign—suggesting that the arrests of his staff, and his subsequent dismissal, were politically motivated.

The emerging practice of selective and political justice in Georgia should be of concern to domestic and Western policymakers for several reasons. First, a continuously polarized political scene is damaging to Georgian interests as it hampers cooperation in fields where the government and opposition have common objectives. Political instability not only delays reform work, but also makes the country vulnerable to various threats. Domestically, it risks leading to national unrest, and even external manipulation. In light of the continuous threat that Georgia is exposed to, it is more crucial than ever that Georgia's political forces

unite to address issues relating to national security. This is particularly relevant given Russia's actions in Ukraine, and its recent policy of concluding partnership agreements with the separatist authorities in Abkhazia and South Ossetia, which amounts to further annexation of the two regions. Finally, it is damaging to the country's Euro-Atlantic integration processes. Both the U.S. and the EU have repeatedly warned against actions amounting to political retribution, but the judicial campaign against political rivals of the government has continued apace. If the judiciary continues to be exploited for political purposes, it will therefore impede Georgia's democratization process, its stability and Euro-Atlantic integration, and ultimately its national security.

Introduction

During 2012-2014, a series of arrests and prosecutions of high-profile political figures in Georgia has further fragmented the country's already polarized political scene and put in question the state of its rule of law. Since the transfer of power in 2012, through which the GD coalition headed by influential business tycoon Bidzina Ivanishvili came to power, the Georgian Prosecutor's Office has set out to investigate and prosecute representatives of the former ruling party, the UNM, including leading members of the former government. However, the prosecution campaign has also targeted individuals within the GD coalition itself, including high-ranking officials within the Ministries of Agriculture and Defense, resulting in the resignation of the former agriculture minister Davit Kirvalidze and the dismissal of the pro-Western defense minister Irakli Alasania from office. As Alasania allegedly had become a rival to Ivanishvili and his closest allies within the government, speculation has flourished regarding the potential punitive motives behind the judicial targeting of his team.

The prosecution's specific targeting of political opponents to the ruling elite has given rise to suspicions of selective and revanchist justice and caused Georgia's Western allies to react with concern. It is therefore relevant to assess the state of the Georgian justice system, as well as the motives and rationale behind the ongoing processes. This study examines the judicial system in Georgia before and after the transfer of power in 2012, particularly the effectiveness of reforms aimed at strengthening the rule of law and judicial independence. It studies some of the high-profile cases over the last two years and discusses the issue of the potential politicization of justice in Georgia and the implications thereof.

Reform and Justice after the Rose Revolution

The post-revolutionary period in Georgia called for immediate reforms in virtually all sectors of society. The state inherited by the young and Western-oriented government, led by Saakashvili and his United National Movement party, was highly dysfunctional, marked by rampant corruption, weak state institutions, and a near collapsed economy. Tax collection represented merely 14 percent of GDP, leaving Georgia heavily dependent on international aid. The official unemployment rate stood at more than 24 percent, and more than half of the population lived under the poverty line. In 2003 Georgia was ranked by Transparency International as one of the most corrupt countries in the world, with a score of 1.8 out of 10.¹ The judiciary was also in a poor state: as a result of the financial crisis of the late 1990s, judges' salaries had continuously gone unpaid, sometimes for as long as six months, creating a favorable climate for bribery. The judicial authorities often found themselves under strong pressure to rule according to the interests of political and business elites, and incidents of fabricated evidence and forced confessions were common. This was largely facilitated through the existence of an unchallenged procuracy, which maintained significant influence over the outcome of rulings; judges rarely challenged the investigation process or the validity of evidence presented by prosecutors. While World Bank-funded projects in 1999-2002 sought to reform the judiciary, the law enforcement sector had been largely neglected during the Shevardnadze era, with the result that criminality and impunity were widespread.

Thus by 2003, Georgia was de facto a failing state in urgent need of restoration. The EU, whose financial support had constituted an indispensable source of income for the survival of the Georgian economy, had almost completely halted its

¹ See e.g. Dov Lynch, "Why Georgia Matters," Chaillot Paper No. 86, February 2006.

assistance due to continuous irregularities in government handling of development funds. As such, the newly installed government was faced with the challenge of finding rapid solutions to what constituted pressing challenges to Georgian statehood, through designing and implementing a wide reform agenda. Moreover, it needed to achieve notable progress while it still enjoyed the public's unchallenged support.

Paradoxically, however, the new Western-trained leadership did not view rapid democratic reforms as achievable within the existing constitutional framework. The government understood that corruption and bureaucracy had developed into cancers that would cause troublesome delays to the transformation Georgia needed in order to achieve its domestic and international goals.² According to this view, the new leaders saw it necessary to concentrate power in their own hands to ensure unchallenged reform work, even if it came at the cost of democracy building, at least in the short term. Thus, from 2004 constitutional amendments were introduced that created a system that considerably strengthened the powers of the president, including the authority to appoint ministers, to initiate and abolish legislation, and to head the judiciary through chairmanship of the High Council of Justice.³ This policy became a source of domestic controversy, not least leading the Republican Party to leave the ruling UNM coalition.

Displaying its determination to bring justice to past misdeeds, starting from December 2003 the newly installed government launched a forceful campaign against the former administration. Members of former President Eduard Shevardnadze's elite circle were arrested, often in front of TV cameras, on allegations of corruption and embezzlement. In many of those cases, formal charges were never made; instead the officials were asked to reimburse the state for financial damage caused by corrupt acts in exchange for freedom. This policy, albeit premature at the time, was formalized through the introduction of a controversial plea bargaining system in February 2004; this was officially motivated by the need to

² Author's interviews with senior UNM officials.

³ See e.g. "Georgia: Securing a Stable Future," International Crisis Group Briefing Report No. 58, <http://www.crisisgroup.org/~media/Files/europe/B58%20Georgia%20--%20Securing%20a%20Stable%20Future.ashx>.

speed up judicial processes and to regain resources lost to corruption during the Shevardnadze era.⁴

President Saakashvili, himself a Western-trained lawyer who had briefly served as justice minister under Shevardnadze, was highly familiar with both the errors committed by his predecessors and the specific shortcomings of the judiciary. And, indeed, the reforms rapidly achieved notable results. Within a year, the government had replaced two thirds of Georgia's judges and law enforcement officials, while significantly raising salaries to prevent temptations to accept bribes. Supreme Court judges were offered a lifetime pension to resign before the end of 2005; simultaneously, salaries for Supreme Court judges were raised by 400 percent, and by 300 percent for lower court judges.⁵ Court budgets tripled over the years following the revolution, poorly equipped court buildings were renovated, and new technological equipment was installed to improve working conditions. A state-financed High School of Justice was introduced, replacing the Shevardnadze-era Judicial Training Center, which was essentially a corrupt and malfunctioning NGO relying in large part on funding from international sources. In 2005, a state Strategy and Action Plan for reforming Georgia's criminal legislation was adopted to render the judiciary more effective in several spheres, envisaging for instance the introduction of legal aid institutions.

However, as reforms progressed, the government was faced with a new set of challenges. Human rights organizations increasingly voiced concerns about violations by law enforcement authorities. Pre-trial detentions were common and poorly justified and the low acquittal rate, on average below one percent, led to questions being raised regarding the prosecution's continuously strong influence over court hearings.⁶ The president's significant influence over the judiciary caused local NGOs, including the Georgian Young Lawyer's Association (GYLA), to question the independent standing of lawyers and judges as well as of the High

⁴ See e.g. "Plea Bargaining in Georgia," Transparency International Georgia report, February 23, 2010, <http://transparency.ge/en/node/581>.

⁵ Author's interviews with senior UNM officials.

⁶ See e.g. "European Neighbourhood Policy: Monitoring Georgia's Anti-corruption Commitments," Transparency International, 2010, http://transparency.ge/sites/default/files/post_attachments/ENP_TI_Georgia.pdf.

Council of Justice.⁷ In spite of reforms to increase professionalism among judges, the public defender warned in several reports of continuous self-censorship among judges, especially the tendency to rule in favor of the prosecution and to offer vague justifications for verdicts.

Violations of property rights were an issue of strong concern, especially in the first years after the revolution, but the problem also persisted throughout the Saakashvili era. While seeking to improve the business environment and redevelop cities, including Tbilisi and Signakhi, the government's policy of redistributing private property, in some cases including the demolition of buildings, shops, and restaurants with little or no right for the owners to appeal, led to strong domestic and international criticism. In 2006 the International Monetary Fund (IMF) urged the government to ensure the protection of property rights in its strive to achieve economic development.⁸ Opposition leaders accused the financial police of pursuing an informal plea bargaining policy against corrupt members of the former administration, through seizing property to make up for past financial damages to the state.⁹ Initially the government admitted to this policy; however, in response to international criticism the situation improved somewhat and the system became more regulated. Nonetheless, property rights violations remained a problem, especially in areas where large-scale development projects took place and property owners were ordered to hand over their houses and land. Often such cases were not reported to the police.¹⁰

Moreover, public distrust in the judiciary persisted. Indeed, the post-revolutionary government had a troublesome legacy to break in this regard. Throughout the Soviet era, the Georgian judiciary had fallen under the Soviet constitution and Supreme Court and, as such, had been largely controlled by the communist party, offering little in terms of transparency. After gaining independence in 1991, Tbilisi restored its 1921 constitution, which offered a legal basis for judicial independence, but President Shevardnadze, coming to power in 1992, failed to address the

⁷ Interview with senior GYLA representative, January 2015.

⁸ "Georgia: Selected Issues," IMF Country Report No. 06/170, May 2006.

⁹ See e.g. Molly Corso, "Georgia Moves to Defend Property Rights," *Eurasianet*, February 8, 2007.

¹⁰ See e.g. Freedom House's Georgia 2013 report.

most pressing inadequacies of the Soviet-tailored system, including the significant influence wielded by the prosecutor general and the presence of a corrupt, Soviet-trained, corps of judges. As such, the system introduced by the Saakashvili administration, in which the president had assumed significant control over the country's judicial structures, did little to break public perceptions of a weak and controlled judiciary.

The lack of checks and balances in the country soon also caused weariness among Georgia's international partners. Already in 2004, the European Commission for Democracy through Law (Venice Commission) criticized the Georgian constitution for failing to guarantee the independence of the judiciary from the executive branch. It particularly objected to provisions in the constitution that secured the president's control over the High Council of Justice, and thereby power to appoint and dismiss judges.¹¹ In 2006 Freedom House also expressed concern about the lack of independence of the judiciary and its continuous exposure to pressure from the executive branch.¹²

As a result, through constitutional amendments made in 2006, the president's power to appoint and dismiss judges was removed. Instead it was established that the High Council of Justice was to be chaired by the Head of the Supreme Court, with neither the president nor the justice minister allowed to remain as members. Instead the Council was made up of 15 judges and parliamentarians and needed to include at least one Member of Parliament from the opposition.¹³ Requirements regarding formal training for judges were introduced, and judges were appointed for fixed terms; the High Council nevertheless retained the right to order dismissals. To further avoid politicization of the judiciary a self-governing body of judges (the Conference of Judges) elected half of the members of the High Council upon nomination by the Head of the Supreme Court. Moreover, the responsibility for investigating misconduct by judges and applying disciplinary

¹¹ The European Commission for Democracy through Law (the Venice Commission), *Opinion No. 281/2004*, March 15, 2004.

¹² "Freedom in the World Georgia 2006 report," Freedom House, <https://freedomhouse.org/report/freedom-world/2006/georgia#.VJA-qsnyKUQ>.

¹³ See e.g. International Crisis Group Briefing Report No 58.

measures was transferred to an independent Disciplinary College, elected from the High Council.

While the government achieved notable results in combating corruption within the judiciary, judges and prosecutors remained largely dependent on the executive branch in the years following the 2003 revolution. Judges continuously ruled in favor of the prosecution, which, in turn, was directly under the control of the Ministry of Justice. Virtually all requests presented by the prosecution, regarding for example bail or pre-trial detentions, were approved by the courts, often with insufficient explanation or justification.¹⁴ Paradoxically, while seeking to establish the malfunctioning judiciary as an independent institution, the executive's strive to accomplish quick results and its distrust of the existing system led it to regularly interfere in court decisions. In 2006 President Saakashvili openly admitted that reform of the judiciary had not been a complete success and that it "remain[ed] the most problematic sector," underlining the need to improve the independence and quality of the courts.¹⁵

Georgia's inclusion in the European Neighborhood Policy put pressure on the government to step up its work to reform the judiciary and ensure the separation of powers. However, democratic reforms suffered a serious setback in 2007, when Georgia plunged into a deep domestic crisis following a forceful government crackdown on street protesters.¹⁶ The events caused President Saakashvili to resign and hold snap elections. Following Saakashvili's reelection in early 2008, he promised a new wave of democratic reforms. The reform process resulted in the adoption of a new Criminal Procedure Code in 2009, deemed as largely in line with international standards. Noteworthy was the introduction of jury trials in relation to capital offenses. The new Code also introduced closer monitoring of police behavior, prohibiting for instance the use of evidence seized through unlawful means. A law on *ex-parte* communication¹⁷ was also adopted, prohibiting

¹⁴ Author's interview with senior GYLA representative, January 2015.

¹⁵ "Saakashvili Speaks of Issues Topping Political Agenda," *Civil.ge*, April 17, 2006, <http://www.civil.ge/eng/article.php?id=12362&search=>

¹⁶ Svante E. Cornell, Johanna Popjanevski, Niklas Nilsson, *Learning from Georgia's Crisis*, CACI & SRSP Policy Paper, December 2007, http://www.silkroadstudies.org/resources/pdf/SilkRoadPapers/2007_12_PP_CornellPopjanevskiNilsson_Georgia-Crisis.pdf.

¹⁷ "Law on Communication Rule with the General Court Judges"; "Organic Law on General Courts."

parties to a case from communicating with judges during an ongoing investigation and trial. Indeed, so-called telephone justice had been a common Soviet practice.

The U.S. State Department noted in 2010 that the new Criminal Procedure Code had provided more rights to the accused, and listed as further achievements the strengthening of the Office of the Public Defender and construction of new prisons in accordance with international standards.¹⁸ However, it equally expressed concern regarding occurrences of selective justice, especially as regards impunity for government officials; governmental pressure on the judiciary; pressure on businesses to support the ruling party; and restrictions on freedom of speech and media. It noted that NGOs and observers continued to criticize the lack of transparency in the selection, appointment, and disciplining of judges. The Organization for Security and Co-operation in Europe (OSCE) noted in a 2010 anti-corruption monitoring report on Georgia that red tape remained a problem, resulting in lengthy procedures and costly court fees.¹⁹ While the 2009 Code imposed a time limit of 60 days on investigative procedures, pre-trial detentions remained lengthy. The plea bargaining system, while serving to avoid an overload of the penitentiary system and the courts, remained widely criticized, especially the vague definition of “unavoidable circumstances” in the application of the system.²⁰

In 2010, Transparency International (TI) reported that insufficient independence of the judiciary constituted the weakest link in the Georgian governance system, noting that its 2009 Global Corruption Barometer survey showed that Georgian citizens identified the judiciary as the least trusted state institution. TI noted however that the rating was significantly higher when assessing the legal framework than its de facto implementation, which to date has remained problematic in re-

¹⁸ U.S. Department of State *2010 Human Rights Report: Georgia*, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154425.htm>.

¹⁹ “Istanbul Anti-Corruption Action Plan,” OECD Anti-Corruption Network for Eastern Europe and Central Asia, March 31, 2010.

²⁰ See “Plea Bargaining in Georgia,” Transparency International Georgia, February 2010, <http://transparency.ge/en/post/report/plea-bargaining-georgia>.

lation to the judiciary. It also expressed concern about the impartiality of the Prosecutor's Office and of the courts, especially with regard to appeals filed by opposition parties and election monitors.²¹

Urged by an increasing demand for stronger checks and balances, the Saakashvili government in 2010 initiated constitutional amendments aimed at transferring powers back from the executive branch to the legislature, introducing a semi-parliamentary system with the government as the executive branch accountable to Parliament. The amendments entered into force after the 2013 presidential election. According to the new Constitution, the president remains the Head of State and Commander-in-Chief of the Armed Forces, but no longer has the right to propose laws or the state budget. The prime minister, as head of government, is now the chief executive of domestic and foreign policy, and is nominated by Parliament (as opposed to the president).²² Through changes to the "Law on Common Courts" the amendments further introduced lifetime appointment for judges (except for Supreme Court judges), following a three-year probation period.²³ Following criticism, among others by Human Rights Watch in early 2010, regarding continuous overcrowding in Georgian prisons, amendments were again made to the Criminal Procedure Code, raising the minimum age for criminal responsibility from 12 to 14 and introducing a practice of concurrent, as opposed to consecutive, sentencing. According to the new regulations, a defendant that faces multiple charges will receive the longest of the sentences in full for the gravest offense, and half of the sentences for other offenses. The judge has the right to impose the sentencing in full depending on the gravity of other offenses but may also halve

²¹ See "European Neighbourhood Policy: Monitoring Georgia's Anti-Corruption Commitments," Transparency International Georgia, http://transparency.ge/sites/default/files/post_attachments/ENP_TI_Georgia.pdf.

²² See e.g. Neil MacFarlane, "Post-Revolutionary Georgia on the edge?," Chatham House Briefing Paper, March 2011, http://www.chathamhouse.org.uk/files/18919_bp0311_macfarlane.pdf.

²³ While aimed at securing independence of the judiciary, the possibility to dismiss judges during the probation period has raised concern among civil society organizations, including Transparency International, as it challenged the intended purpose of the amendments to strengthen judicial independence. See e.g. "Overview of the Second Part of the Judiciary Reform," Transparency International Georgia, November 2013.

sentences for offenses taking into account mitigating circumstances.²⁴ Amendments to the “Law on Imprisonment” introduced alternative sentences such as community service, and provided prisoners with the possibility of temporary home leave. In order to tackle the controversial plea bargaining system, amendments to the Criminal Procedure Code were again introduced in 2011 that required judges to assess both the legality and fairness of plea bargain agreements. However, problems persisted. Reports of forced confiscation of land and properties were frequent, and the conditions in the penitentiary system remained a source of strong criticism. The public defender repeatedly voiced concerns about inadequate prison conditions, especially the lack of access to healthcare for inmates which, in many cases, resulted in deaths. Largely due to a lack of resources, the implementation of the prison reforms remained slow. In spite of the reformation of the High Council of Justice, the Council continued to lack transparency. The absence of clear rules with regard to the appointment of judges led to continued concern regarding the independence of the courts.²⁵ All in all, while significant legal amendments had been achieved in the post-revolutionary era to strengthen the judiciary, the clear discrepancy between the *de jure* mechanisms put in place and their *de facto* implementation left the judiciary in a poor state.

²⁴ “Parliament Passes Amendments to Criminal Procedure Code,” *Civil.ge*, February 9, 2010, <http://www.civil.ge/eng/article.php?id=21967&search=procedure>.

²⁴ See e.g. “Georgia: Making Cohabitation Work,” International Crisis Group Policy Briefing Report No. 69, December 2012, <http://www.crisisgroup.org/~media/Files/europe/caucasus/georgia/b069-georgia-making-cohabitation-work.pdf>.

²⁵ See e.g. “Project: Promoting Judicial impartiality and Independence,” Georgian Young Lawyers’ Association, http://gyla.ge/eng/effective_governance/monitoring_of_trials/gvaramadze?info=877#sthash.NLcUmkHq.dpuf.

The Judiciary after 2012

In September 2012, a mere month before the parliamentary election, the Saakashvili government endured a major crisis when videos of severe torture and abuse in Tbilisi's Gldani prison emerged, resulting in public outrage and large-scale demonstrations and contributing to the government's defeat to the newly established Georgian Dream coalition. A further contributor to the UNM's defeat was the widespread disregard for property rights, and the government's failure to hold officials accountable for such crimes. As such, weaknesses in the government's reform agenda had created an environment that led to the first transfer of power through elections ever to take place in Georgia.

The accession to power of the GD government considerably changed the political climate in Georgia. The coalition, comprising political parties with very different ideologies and centered on the leadership of multi-billionaire business tycoon Bidzina Ivanishvili, largely based its election campaign on the objective of bringing an end to the increasingly controversial rule of the United National Movement. It ambitiously pledged, moreover, to undertake a number of tasks as follows: to remedy a number of errors of the former administration; to de-politicize the judiciary; to release inmates who had been unfairly imprisoned; to punish officials responsible for abuse of power; to work towards ensuring political pluralism; and to achieve improvements to the economy.

However, with the parliamentary and presidential elections scheduled one year apart, Saakashvili remained in power for GD's first year in government. This led to a difficult co-habitation phase between the two blocs, marked by continuous falling-outs between the political front figures. The arrest of the former interior minister, Bacho Akhalaia, in November 2012, together with a number of officials from his ministry, significantly worsened the situation, leading to an almost com-

plete halt in the government-opposition dialogue. The UNM early on voiced concern about the launch of what it referred to as a witch hunt that risked undermining Georgia's credibility in the West.²⁶ The government, for its part, dismissed the allegations, accusing the UNM of distorting information in its communications with Georgia's Western partners.

The heavily polarized political climate that followed the election complicated and delayed much needed reform work in several spheres. As previously noted, the GD government inherited a persistently weak judicial system marked by high conviction rates, public distrust, and continuous instances of political influence over court decisions. Moreover, the prison scandal in the early fall of 2012 had revealed an urgent need for reform of the penitentiary system. Beginning in January 2013, up to 10,000 inmates were released through a parliamentary amnesty and the government took actions to improve prison conditions generally, including access to health care to reduce prison deaths. However, mechanisms for public monitoring of prison facilities remained absent, and the release of almost half of the country's prison population became widely criticized as it raised fears of an increase in crime.

An urgent issue for the new government to address was the separation of the Prosecutor's Office from the Ministry of Justice as envisaged by the 2013 constitutional amendments, and to reform the controversial High Council of Justice. To this end, Parliament in the spring of 2013 amended the "Law on Prosecutor's Office," thereby limiting the ability of the minister of justice to intervene in criminal proceedings. To increase the transparency of the judicial system, the new government in May 2013 introduced amendments to the "Law on Common Courts," allowing for media coverage of court proceedings. Steps were also taken to tackle the high conviction rates: Freedom House reported in 2014 that the number of approved requests for imprisonment by the prosecution decreased by 25 percent in 2013 compared to 2012.²⁷ This indicates that the courts to a lesser extent than

²⁶ Author's interviews with senior UNM officials, 2012-2013.

²⁷ See "Freedom in the World Georgia 2014 report," Freedom House, <https://freedomhouse.org/report/freedom-world/2014/georgia-0#.VKkOomSUcTU>.

before were influenced by the Prosecutor's Office. Illegal surveillance of individuals, a widely criticized policy of the former administration, was addressed through the appointment of an Inspector on Personal Data Protection.²⁸ The establishment of an independent Union of Judges, consisting of 50 members, allowed the judge corps to have a stronger voice in the national debate on judicial reform. Moreover, civil society became more involved in the judicial sphere: the Coalition for an Independent and Transparent Judiciary, comprising more than 30 civil society organizations, provides research and recommendations to the Ministry of Justice as regards the judiciary. Reforms of the High Council of Justice entailed the enforcement of rules enabling any judge (as opposed to only the Head of the Supreme Court) to nominate Council members, and that voting in the Conference of Justice be secret. Moreover, six of the seats are now open to civil society members; five of those members are elected by Parliament through a simple majority vote, the sixth nominee requires a two-thirds majority to be elected. However, as the parliamentary majority and minority have failed to reach an agreement in this regard, the sixth seat in the Council remains vacant, challenging the effectiveness of its work.²⁹

Indeed, by carrying out a number of noteworthy reforms, the GD-led authorities demonstrated their commitment to strengthening the judiciary and, more generally, to consolidating Georgian democracy. However, since the transfer of power, local and international observers have reported on continuous shortcomings, especially with regard to the de facto implementation of existing legislation, which, as noted before, remains a troublesome issue with regard to the rule of law in Georgia.

Since the GD government came to power, the Prosecutor's Office in particular has been surrounded by controversy, and continues to lack transparency and accountability. While now separated from the Ministry of Justice, the power to nominate the prosecutor general remains in the hands of the justice minister, and the

²⁸ See e.g. Thomas Hammarberg, "Recommendations to the Government of Georgia By Special Advisor to Georgia on Human Rights, Constitutional and Legal Reforms," June 2014, http://eeas.europa.eu/delegations/georgia/documents/human_rights_2012/th_recommendations_to_the_government_of_georgia_en.pdf.

²⁹ Author's interview with senior GYLA representative, January 2015.

prime minister has the exclusive right to appoint and dismiss the nominee. As such, with the justice minister being accountable to the prime minister, the latter has the *de facto* power to select a preferred candidate for the post. Notably, with regard to the appointment of the last two prosecutors general, Otar Partskhaladze and Giorgi Badashvili, the Georgian justice minister openly stated that she had no role in the nomination procedure, suggesting that the prime minister alone had selected the two candidates.³⁰ Notably, after the 2012 election Parliament adopted a resolution introducing changes to the legislation, giving instead the president the authority to nominate a candidate and Parliament the power to appoint the nominee. To further secure the independence of the Prosecutor's Office, Parliament also proposed a five-year minimum term for the prosecutor general (according to existing regulations the prime minister can dismiss the prosecutor general at any time), and clearly defined rules for impeachment (at present no such regulations exist). However, the reforms were never implemented, apparently due to unwillingness by the executive to transfer the power of nomination to the president.³¹ Giorgi Margvelashvili, elected president in late 2013, was the nominee of the Georgian Dream coalition, but has established an autonomous position with regard to the government since taking office, and relations between the president and prime minister (as well as with Ivanishvili) have become increasingly tense.

The appointment of Ivanishvili's own legal adviser, Archil Kbilashvili, as the first chief prosecutor after the 2012 election was also a source of concern among civil society representatives, because it suggested that the executive would maintain informal power over the Prosecutor's Office. Moreover, in 2013 the Office dismissed and replaced up to a hundred prosecutors and investigators, in many cases with no explanation. Allegedly as a result of controversies with hawkish Deputy Prosecutor General Lasha Natsvlishvili (who had served in various positions, including as a deputy minister of state security in the Shevardnadze era), Kbilashvili unexpectedly resigned from his post in November 2013. His succes-

³⁰ Author's interview with senior GYLA representative, January 2015.

³¹ *Ibid.*

sor, Otar Partskhaladze, resigned after just six weeks on December 30, 2013, following allegations of a criminal record in Germany; he was succeeded by Giorgi Badashvili. The frequent change of chief prosecutors and the replacement of a large number of prosecutors since the transfer of power has fueled perceptions of political affiliation of the procuracy, and attempts by the executive to influence processes.³²

In his 2014 report on Georgia, EU Special Advisor Thomas Hammarberg praised the adoption of a National Human Rights Strategy and Action Plan and the establishment of the Human Rights Council and secretariat in the Prime Minister's Office.³³ He also noted with satisfaction the adoption of new anti-discrimination legislation improving the rights for women and sexual minorities, especially in light of a forceful attack on anti-homophobia demonstrators in May 2013 by counter-protestors. However, while recognizing that judicial independence had improved over recent years, he emphasized the need to improve the rules regarding the selection and appointment of judges, and for monitoring their performance to avoid subjective and unfair judgments. Hammarberg noted serious problems regarding the right of defense, including the granting the defense full access to case materials. He nevertheless recognized that the Prosecutor's Office had decreased the number of requests for imprisonment, proposing detention as a restrictive measure in nine percent fewer cases compared to 2012. Moreover, judges' approval of restrictive measures requested by prosecutors had also decreased, from 100 percent in 2012 to 76 percent in 2013.³⁴

Freedom House reported in 2014 that the media environment in Georgia had become less polarized and more transparent since 2012. It moreover noted improvement with regard to access to information through the new legislation requiring media outlets to disclose their ownership structures, as well a permanent "must carry, must offer" rule for broadcasters to secure voters' access to information. However, troublesome shortcomings were noted as well. While it was acknowledged that Georgia had achieved significant success in combating petty and mid-

³² See e.g. "Trial Monitoring Report," OSCE /ODIHR, December 2014, <http://www.osce.org/odihr/130676?download=true>.

³³ Hammarberg, 2014 report.

³⁴ Hammarberg, 2013 report.

level corruption, the new government had failed to address the continuous problem of high-level corruption. Indeed, companies with connections to government officials continue to receive benefits, including tax reductions and exclusive licenses and rights.³⁵

The UNM has strongly criticized the interior ministry, especially the practice of appointing relatives of the prime minister, Irakli Garibashvili, and the former interior minister, Alexander Chikaidze, to high-level posts. While the notorious Constitutional Security and Special Operative Departments, previously in charge of organized crime, human trafficking, smuggling and terrorism issues, were abolished by the new administration,³⁶ staff linked to the two departments have instead been promoted to key positions within the ministry. The former ruling party, as well as representatives of the Free Democrat Party that left the Georgian Dream coalition in November 2014, also allege that counter-intelligence operations have been severely curtailed since the transfer of power, posing a risk to Georgian national security.³⁷

While the judiciary claimed to seek to improve public access to court hearings of the public, the U.S. State Department noted in 2013 that criminal courts were limiting monitoring of court proceedings, including those concerning high-profile cases, by failing to publish the schedule and by selecting inappropriately small courtrooms for the hearings. Overly complicated procedures for filing appeals were also reported, including delays in providing court records to defense attorneys, thus limiting the defense's time to prepare appeals. The report moreover stated that unsubstantiated arrests were a systematic problem relating to most courts. At the same time, it noted that courts displayed more independence vis-à-vis the prosecution than before, for example in dismissing charges against UNM

³⁵ Freedom House 2014 report.

³⁶ The functions of the two departments have been delegated to other departments, including the counter-intelligence unit, a criminal police agency in charge of investigating serious crimes and a newly established anti-corruption agency.

³⁷ Author's interviews with senior UNM officials, 2014.

officials, most notably a case against the former interior minister, Bacho Akhalaia.³⁸

³⁸ U.S. Department of State's 2013 *Human Rights Report: Georgia*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220280#wrapper>.

The Politicization of Justice

As previously noted, the six-party Georgian Dream coalition, established in 2011 by multi-billionaire businessman Ivanishvili, came to power on a relatively weak common political agenda, centered on the objective of removing Saakashvili and his team from power. A number of factors contributed to its success in the 2012 election. First, discontent with the Saakashvili-led government had been growing for some time, culminating with the September 2012 prison scandal that caused public outrage and inflicted severe damage regarding public perception of the ruling government. Second, while Ivanishvili himself had no previous political experience, he successfully recruited to the coalition individuals who did. This included the pro-Western leader of the Our Georgia - Free Democrats party, Irakli Alasania, Republican Party leader Davit Usupashvili, and Alasania's closest ally and former diplomat Alexi Petriashvili. Within the new government, Alasania assumed the position of deputy prime minister and defense minister, Usupashvili the role as Speaker of Parliament, and Petriashvili as Georgian state minister on European and Euro-Atlantic integration. As such, Ivanishvili had secured an incoming leadership who enjoyed a sufficient level of trust among the Georgian population and, importantly, also among Georgia's Western allies, displaying that Georgia would not derail from its Western path. The rest of the leadership, although many of them were prominent citizens, had little or no political experience, and most of them represented the old, rather than new and reformed, Georgia. Third, the size of Ivanishvili's personal wealth, equaling half of Georgia's GDP, coupled with promises of improved socio-economic conditions for the populace, prompted a significant level of optimism regarding the prospect of economic progress, especially in light of the losses felt after the 2008 Russian-Georgian war.

Given its fast rise to power, the new government found itself in a predicament following the election. On the one hand, it was faced with the challenge of living

up to the newly raised expectations of the Georgian public, while on the other, it faced the task of uniting the diverse coalition in reform efforts. This proved difficult: the inexperience of the new administration, especially with regard to coordination between governmental agencies, soon became apparent. With the common goal of ousting Saakashvili's team out of the way, the coalition had visible troubles uniting around a reform agenda that would lead to the fulfillment of its election promises, especially with regard to improving the economy. Over the first months after the election, GDP growth dropped rapidly from an average of 6.1 percent to just 1.7 percent;³⁹ although it should be noted that this is by no means an unusual occurrence in the context of a political transition. Furthermore, the official unemployment rate, albeit having decreased somewhat, still remained alarmingly high,⁴⁰ and foreign investors appeared to increasingly adopt a wait-and-see attitude to doing business in the country.

Meanwhile, controversies emerged between the leading personalities within the coalition. In particular, Alasania's independent standing within the government, and apparent aspiration to run as GD's presidential candidate in the 2013 election, did not rhyme well with Ivanishvili's desire to control the decision-making of the new leadership. Already in early 2013, Ivanishvili made derogative allegations (which were televised) about the defense minister's personal life and subsequently dismissed him from the post of deputy prime minister. (The Constitution at the time provided that only the president, that is Saakashvili, had the power to dismiss the defense minister.) The increasing polarization within the coalition that followed, with alliances emerging between leading personalities, did little to provide a basis for effective reform work.

Moreover, the discontent following the September 2012 prison scandal, coupled with promises of bringing justice to previous wrongdoings, meant that the Prosecutor's Office was faced with thousands of complaints from individuals who claimed to have been exposed to unjust treatment under the previous administra-

³⁹ "Georgia Overview," The World Bank, February 2014, <http://www.worldbank.org/en/country/georgia/overview>.

⁴⁰ Official and unofficial numbers differ; but ranges from 15 percent.

tion. Such complaints largely involved violations of property rights, but also included misuse of the plea bargaining system, deprivation of freedoms, and misconduct by the police and prosecutors. Thus, failing to achieve progress in other spheres, and seemingly inspired by the public outrage against the UNM, the government largely focused its efforts on living up to the promise of enacting justice for past misdeeds. The Prosecutor's Office embarked on an aggressive mission to prosecute a number of high officials in the former administration. Within a year more than 6,000 persons, the majority being UNM party activists, had been summoned for questioning by the prosecution; however, it was clear that the targets for arrests and prosecutions were those who had held leading roles in the former elite, while lower level officials would either serve as witnesses or be acquitted through amnesties. Notably, in its campaign the prosecution largely neglected the majority of claims that it had promised to bring justice to, including property rights violations, focusing largely instead on issues relating to budgetary mispending.

The first high-level arrest was that of Akhalaia in November 2012, immediately following the election. Akhalaia had served as both as defense and later interior minister in Saakashvili's government. And the campaign did not stop there: within two years, more than a hundred members of the previous administration had been either prosecuted or investigated by the authorities, including the former prime minister, Vano Merabishvili, the former Mayor of Tbilisi, Gigi Ugulava, and former President Saakashvili, on charges of abuse of power, money laundering, and bribery. As part of the dismantling of the controversial Special Operations and Constitutional Security Departments, a number of interior ministry officials were charged with illegal surveillance of Georgian Dream representatives. However, the judicial campaign did not solely target UNM representatives. In an apparent attempt to oust David Kirvalidze, the minister of agriculture in the GD government, the Prosecutor's Office in May 2013 launched charges against a number of representatives from the ministry concerning budgetary mispending. The case led the then-minister to resign; however, in February 2014 the charges against the involved officials were dropped due to a lack of evidence. In October 2014, a number of officials from the Ministry of Defense and the armed

forces were arrested in two separate cases, leading up to the dismissal of Alasania as defense minister and, as a consequence, the subsequent resignation of Petriashvili and the foreign minister Maia Panjikidze. The controversies surrounding the cases will be discussed in further detail below.

The Cases

BACHANA (BACHO) AKHALAIA

Bacho Akhalaia, who held the posts as minister of defense in 2009-2012 and briefly as minister of internal affairs in 2012, was the first high-level UNM official to be arrested in November 2012, immediately following the parliamentary election, and sentenced to pre-trial detention. He has since stood trial in several different cases. The initial charges included exceeding official power in connection with the abuse of interior ministry and army personnel and illegal deprivation of freedom and assault of an individual, Zviad Abegadze, who had allegedly insulted Akhalaia's co-defendant Giorgi Kalandadze.⁴¹ Later, additional charges were added to the initial ones, including inhumane treatment of prisoners in 2006⁴² resulting in a prison riot in Tbilisi's prison no. 5 that caused the death of seven inmates. In the first two trials, Akhalaia was acquitted. The UNM has argued that the acquittals only constituted means of attempting to prove that Akhalaia's arrest was not politically motivated, and that the trials were carried out in a fair manner.⁴³

In October 2012, Akhalaia was charged with abuse of power through providing privileged prison treatment to interior ministry officials convicted for the murder of Sandro Girgvliani in 2006, a case that also implicated other high-level UNM officials, including Merabishvili and Akhalaia's brother Davit (Data) Akhalaia.⁴⁴ The charges were brought shortly before the court was to present its verdict on the prison case, in which he was found guilty and sentenced to three years and

⁴¹ See e.g. OSCE/ODIHR 2014 Trial Monitoring report, and "Charges Brought Against Akhalaia and Two Army Commanders," *Civil.ge*, November 8, 2012, <http://www.civil.ge/eng/article.php?id=25429>.

⁴² During his time as Head of the Penitentiary Department of the Ministry of Justice in 2005-2008.

⁴³ Author's interviews with UNM officials, 2012-2013.

⁴⁴ "New Charges Brought Against Akhalaia," *Civil.ge*, October 25, 2013, <http://www.civil.ge/eng/article.php?id=26603>.

nine months⁴⁵ in prison and a temporary ban from serving in office.⁴⁶ The UNM had persistently denied Akhalaia's guilt and the former government's responsibility for the riot, claiming instead that it constituted an organized attempt at a massive jailbreak and that an intervention by Special Forces was initiated only after the riot had begun.⁴⁷ In November 2013, outgoing President Saakashvili pardoned Akhalaia for his responsibility for the events.⁴⁸

In July 2014, Akhalaia was charged again for organizing the torture of detainees while serving as defense minister in 2011. Akhalaia's defense lawyer has claimed that the repeated addition of charges against his client only serves to extend his pre-trial detention sentence.⁴⁹

In October 2014, the Tbilisi City Court found Akhalaia guilty on charges of abuse of power in connection with the Girgvliani case and of torture/inhumane treatment of six prisoners in 2006. He was subsequently sentenced to seven years and six months in prison.⁵⁰ In connection with the Girgvliani case, the court ruled in favor of the prosecution's claims that Akhalaia, who then served as chief of the prison system, provided favorable prison conditions for convicted representatives from the Ministry of Internal Affairs, in exchange for them keeping silent over events surrounding the case.

On December 23, 2013, Akhalaia's defense attorney Giorgi Oniani was arrested on the basis of abuse of power in 2011. Oniani had won two trials against the former defense minister and announced his intention of running as UNM's candidate in the June 2014 mayoral election in Tbilisi. The UNM claims that a key motive behind Oniani's arrest was his disclosure of the unlawful detention of and

⁴⁵ Reduced through the "Law on Amnesty" from five years, see OSCE/ODIHR 2014 Trial Monitoring report.

⁴⁶ OSCE/ODIHR 2014 Trial Monitoring report, and "Akhalaia Found Guilty in Trial Over Prison Riot Case," *Civil.ge*, October 28, 2013, <http://www.civil.ge/eng/article.php?id=26628>.

⁴⁷ See "'Lack of Clarity' in Prison Incident," *Civil.ge*, April 2, 2006, <http://www.civil.ge/eng/article.php?id=12244>.

⁴⁸ "Saakashvili Pardons Akhalaia," *Civil.ge*, November 3, 2013, <http://www.civil.ge/eng/article.php?id=26655>.

⁴⁹ "Additional Charges Filed Against Akhalaia," *Civil.ge*, July 2, 2014, <http://civil.ge/eng/article.php?id=27435>.

⁵⁰ "Akhalaia sentenced to 7.5 years in prison," *Civil.ge*, October 22, 2014, <http://civil.ge/eng/article.php?id=27735>.

pressure on two key witnesses in the Akhalaia case, as well as a link between the minister of justice, Tea Tsulukiani, and Irma Inashvili, a leader of an extreme anti-Western group who allegedly organized a meeting between a witness in the Akhalaia case and the justice minister. It also claims that Oniani and his colleagues were under strong pressure from the Prosecutor's Office in the months prior to the arrest.⁵¹

IVANE (VANO) MERABISHVILI

Vano Merabishvili, who served first as interior minister and later prime minister under Saakashvili, was arrested in May 2013 and ordered to pre-trial detention. At the time of his arrest, he held the post as Secretary General of the UNM and was widely tipped to be the party's frontrunner in the 2013 presidential election. He has since been prosecuted on several separate charges. One case, which also implicated former health minister Zurab Tchiaberashvili, concerned the alleged transfer of over GEL 5,000,000 in public funds to the UNM's 2012 election campaign. The prosecution argued that the former prime minister had hired 22,000 social workers to compile a database of the unemployed, while in reality they were working for UNM's election campaign.⁵² As such, he was charged with embezzlement of state funds with the intention of bribing voters. Another case concerned the misappropriation of a seaside villa and misspending interior ministry funds (amounting to GEL 157,000) to refurbish it. Merabishvili allegedly confiscated the villa in 2009 from Zurab Lobzhanidze, a businessman who was accused by the government of tax fraud.⁵³

Merabishvili was also accused of abuse of power in two cases. One case concerned his involvement in a forceful breakup of an opposition rally in connection with an annual military parade in Tbilisi in May 2011, which resulted in four deaths

⁵¹ See "Lawyer For Former Georgian Defense Minister Arrested," *Radio Free Europe/Radio Liberty*, February 24, 2014, <http://www.rferl.org/content/georgia-lawyer-defense-minister-arrested/25275279.html>.

⁵² See e.g. Giorgi Menabde, "Vano Merabishvili's Arrest: The New Style of Presidential Elections in Georgia?," *Eurasia Daily Monitor Volume: 10 Issue: 98*, May 23, 2013, http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=40920&no_cache=1#.VK_r9mSUcTU; and "Ex-PM Merabishvili, Ex-Healthcare Minister Tchiaberashvili Arrested," *Civil.ge*, May 21, 2013, <http://www.civil.ge/eng/article.php?id=26090>.

⁵³ *Ibid.*

and several injuries.⁵⁴ Another case concerned his involvement in the controversial death of 28-year-old banker Sandro Girgvliani in 2006, and for using his office in covering up evidence against his employees in connection with the case. The case also implicated other high-level officials from the interior ministry, as well as Merabishvili's wife Tako Salakaia.⁵⁵

On February 17, 2014, a Kutaisi court found him guilty of embezzlement of public funds during the election campaign and sentenced him to five years in prison⁵⁶ with a ban from serving in public office for one year and six months.⁵⁷ He was also convicted of electoral fraud and sentenced to two years in prison and an 18-month ban from serving in office. The court dismissed charges of abuse of official powers in relation to the case.⁵⁸ Tchiaberashvili was found guilty for neglect of official duty and fined GEL 50,000, but was acquitted of charges of budgetary misspending and voter bribing. In regard to the property case, the court convicted Merabishvili for encroachment on inviolability of property and possessions, sentencing him to two years and three months in prison⁵⁹ and a ban of one year and fifteen days⁶⁰ from serving in office. The court also sentenced him to four years and six months⁶¹ for misappropriation/embezzlement, but dismissed charges of abuse of official authority.⁶²

Later that month, on February 28, Merabishvili was also convicted for exceeding official powers and using punitive and excessive force against anti-government demonstrators on May 25-26, 2011, led by opposition leader Nino Burjanadze.⁶³

⁵⁴ "Calls for Probe into May 26 Events," *Civil.ge*, May 29, 2011, <http://www.civil.ge/eng/article.php?id=23553>.

⁵⁵ See e.g. "Another witness questioned in Girgvliani case: minister's wife," *Democracy & Freedom Watch*, December 30, 2013, <http://dfwatch.net/another-witness-questioned-in-girgvliani-case-ministers-wife-88078>.

⁵⁶ The initial sentence was 10 years' imprisonment; however, under the "Law on Amnesty," adopted by Parliament in December 2012, it was reduced to 5 years, OSCE/ODIHR 2014 Trial Monitoring report and "Ex-PM Merabishvili sentenced to five years in prison," *Civil.ge*, February 17, 2014, <http://civil.ge/eng/article.php?id=26949>.

⁵⁷ Reduced through the "Law on Amnesty" from three years.

⁵⁸ OSCE/ODIHR 2014 Trial Monitoring report.

⁵⁹ Reduced through the "Law on Amnesty" from three years.

⁶⁰ Reduced through the "Law on Amnesty" from 18 months.

⁶¹ Reduced through the "Law on Amnesty" from nine years.

⁶² OSCE/ODIHR 2014 Trial Monitoring report.

⁶³ "Girgvliani Murder Case-Related Charges Filed Against Merabishvili," *Civil.ge*, June 24, 2013, <http://civil.ge/eng/article.php?id=26207>.

He was sentenced to four years and six months in prison.⁶⁴ The court dismissed charges of insulting the dignity of a victim in connection with the case.

In October 2014 Merabishvili was found guilty on two additional charges: abuse of power and fraudulent actions in relation to the Girgvliani case.⁶⁵ With regard to the Girgvliani case, the charges concerned infringement of physical and personal rights and the use of office to cover up evidence against his employees in connection with the homicide. He was sentenced to three years in prison⁶⁶ and a two year-ban from serving in office. While the previous sentences run concurrently, meaning that the former prime minister is currently serving the longest of the sentences, five years for the election case, the issue of whether the February 2014 and the October 2014 sentences will be concurrent or consecutive, especially as regards the bans from serving in office, is pending. Additional charges against Merabishvili are also pending, including, alongside Saakashvili, his involvement and responsibility for the violent crack-down on street protests in Tbilisi in 2007 and the raid against Imedi TV,⁶⁷ as well as the beating of Member of Parliament Valeri Gelashvili in 2005.⁶⁸ Gelashvili accuses Merabishvili of organizing, on orders from Saakashvili, a severe assault against him carried out by a group of masked and armed men.⁶⁹

In a court hearing in December 2013, Merabishvili claimed that he had been illegally taken from his detention cell, driven blindfolded to the office of the then-chief prosecutor, Otar Partskhaladze, and exposed to intimidation and attempts

⁶⁴ Reduced through the "Law on Amnesty from 6 years," OSCE/ODIHR 2014 Trial Monitoring report and "Merabishvili Sentenced in Case over Break Up of 2011 Protest," *Civil.ge*, February 27, 2014, <http://civil.ge/eng/article.php?id=26984>.

⁶⁵ For more information about the Girgliviani case, see e.g. "Another Guilty Verdict for Ex-Interior minister Merabishvili," *Tamada Tales - Eurasianet*, October 20, 2014, <http://www.eurasianet.org/node/70521>.

⁶⁶ The original sentence for the two charges was four years and one-and-a-half years respectively; however, the total sentence was reduced through the "Law on Amnesty" to three years. See "Merabishvili Sentenced in Girgvliani Case-Related Trial," *Civil.ge*, October 20, 2014, <http://www.civil.ge/eng/article.php?id=27730>.

⁶⁷ For more information regarding the 2007 crisis, see Cornell, Popjanevski, Nilsson, *Learning from Georgia's Crisis: Implications and Recommendations*, Silk Road Paper, December 2007.

⁶⁸ See e.g. "Prosecutor's Office Files New Charges Against Saakashvili and Merabishvili," *Tabula Magazine*, August 5, 2014, <http://www.tabula.ge/en/story/86512-prosecutors-office-files-new-charges-against-saakashvili-and-merabishvili>.

⁶⁹ "Criminal Charges Filed Against Saakashvili," *Civil.ge*, July 28, 2014, <http://civil.ge/eng/article.php?id=27527>.

at blackmail by Partskhaladze personally. According to Merabishvili, Partskhaladze demanded his cooperation in relation to the investigation into the death of the former prime minister, Zurab Zhvania, in 2005, as well as to provide former President Saakashvili's bank account information.⁷⁰ Partskhaladze allegedly threatened Merabishvili with worsened prison conditions, an extended sentence, and prosecution of his allies and friends in case of non-compliance. The accusations led the UNM, along with the local civil society organizations Georgian Democracy Initiative and Georgian Young Lawyers' Association, to call for an immediate investigation into the events, including the release of CCTV recordings from the detention center. Then-EU Ambassador to Georgia Philip Dmitrov echoed the call for an independent investigation to dispel questions. The government, for its part, refused to launch an investigation into the matter. The day after the allegations were presented prison minister and former human rights ombudsman Sozar Subari denied that Merabishvili had been taken out of the detention center and referred to internal regulations as obstacles for releasing the relevant video footage.

Shortly after Merabishvili's arrest in May 2013, his defense lawyer, Giorgi Chivashvili, was charged with exceeding official powers during his time as a Gurjaani municipality officer and with extorting witness testimonies while serving as prosecutor.

GIORGI (GIGI) UGULAVA

Former Tbilisi mayor and leading UNM representative Gigi Ugulava was first charged in February 2013 on two cases of embezzlement of public funds. The charges included the misspending of approximately GEL 10,000,000 in relation to the sale and repurchasing of a four-hectare plot of land in Tbilisi. The former mayor is accused of selling the land for GEL 7,000,000 only to have repurchased it two years later for GEL 17,000,000; allegedly to compensate the Georgian-American business man Joseph Kay for taking over the Imedi TV station and effectively

⁷⁰ "Merabishvili Claims Personal Pressure from Chief Prosecutor, Relaunch of Retribution Feared," *Civil.ge*, December 18, 2013; and U.S. Department of State's *2013 Human Rights Report: Georgia*.

putting it back under the government's control.⁷¹ The second charge concerned the misappropriation of budget funds from a student work program to fund UNM youth activists.

In December 2013, additional charges were added, including the misspending of GEL 48,180,000 in public funds between 2011 and 2012. The court then ruled out a motion by the prosecutor for pre-trial detention; however, it ruled in favor of suspending him from his post as mayor. Upon appeal the Constitutional Court found in May 2014 that the suspension verdict was unconstitutional on the basis that a court does not have the authority to remove an elected official.⁷² Further charges against Ugulava were added in late June 2014, this time concerning preferential treatment given to the parking management firm C.T. Park in relation to the distribution of revenues received from fines, amounting to GEL 1,086,718.⁷³

On July 3, 2014, Ugulava was arrested at Tbilisi airport as he was about to board a flight to Kiev. The ex-mayor was due to appear before the Ministry of Finance's investigation service the next day for questioning on budgetary misspending during his time in office, including the alleged transfer of USD 760,000 from an off-shore company to UNM's local election campaign. The alleged scheme also implicated Ugulava's brother-in-law, Giorgi Goniashvili, and the former minister of defense, Davit Kezerashvili. Twelve hours prior to the arrest, a Tbilisi court had ruled against a motion by the prosecutor to seize Ugulava's passport to prevent him from traveling abroad. On July 4, he was sentenced to two months of pre-trial detention. Ugulava claims that he intended to return to Tbilisi on the evening of July 3, in time for his questioning the next day.⁷⁴ He maintains that he was only informed about the summoning the night before the third, and that he originally

⁷¹ "Georgia: Criminal Charges against Tbilisi Mayor Spark Conflict," *Tamada Tales – Eurasianet*, February 23, 2013, <http://www.eurasianet.org/node/66595>.

⁷² "Constitutional Court Rules in Favor of Ugulava's Lawsuit over Suspension from Office," *Civil.ge*, May 24, 2014, <http://www.civil.ge/eng/article.php?id=27261>.

⁷³ "New Criminal Charges Filed Against Ugulava," *Civil.ge*, June 30, 2014, <http://www.civil.ge/eng/article.php?id=27426>.

⁷⁴ "Press Statement: UNM Campaign Chief Sentenced to Pre-trial Detention, Opposition MP and Activists Arrested Ahead of Run-off Elections," United National Movement, July 5, 2014, http://www.unm.ge/?m=6&news_id=364.

planned to attend the Council of Europe Congress of Regions meeting in Moldova; however, that part of the trip was cancelled due to the scheduled questioning. Ugulava traveled abroad on several occasions following his initial charges in 2013.

The UNM has strongly contested Ugulava's arrest, especially as it took place during the 2014 local election campaign during which the former mayor served as the party's campaign manager. As such, UNM argues, his arrest was a direct means of damaging UNM's campaign, especially in Tbilisi. Notably, in April 2014 the prime minister, Irakli Garibashvili, had called for a moratorium on legal proceedings against individuals involved in the election campaign, urging maximum restraint in the pre-election period from "legal restriction of rights and detention of those persons, who are actively engaged in the election campaign."⁷⁵ GYLA too has objected to the prosecution's motivation for Ugulava's arrest, arguing that neither the prosecution nor its investigators have the authority to limit an individual's right to travel, especially in light of the court's decision not to seize the ex-mayor's passport.⁷⁶

MINISTRY OF AGRICULTURE (MoA)

In May 2013, a number of officials⁷⁷ from the Ministry of Agriculture were arrested on embezzlement charges in relation to what became referred to as the "Tractor Case." The case concerned budgetary misspending in relation to the purchasing of agricultural equipment. While GEL 54 million was allocated from the state budget, the prosecution argued that considerably more (approximately EUR 10,000 per machine) was spent, amounting to a misallocation of GEL 2.5 million. The individuals were also charged with falsifying evidence and pressuring experts. Seven of the arrested individuals were sentenced to two months pre-trial

⁷⁵ "PM Calls for 'Moratorium' on Legal Proceedings Against Political Activists During Election Campaign," *Civil.ge*, April 14, 2014, <http://www.civil.ge/eng/article.php?id=27133>.

⁷⁶ Author's interview with senior GYLA representative, January 2015.

⁷⁷ Including the director of the company Mekanizatori Ltd, Vaja Nakhutsrishvili; deputy ministers Besik Tetvadze and Mamuka Ivaniadze; the Head of the Ministry of the Agriculture's Unit of Technologies, Omar Tedoradze; and technical specialists Otar Karchava, Zaza Makharoblidze, Teo Urushadze, and Givi Kaikhosroshvili.

detention; three of them were later released on bail. One of those arrested, Mamuka Ivanidze, claimed that he had been exposed to pressure by the prosecutor to give evidence that led to the arrest of another arrested individual, Konstantine Kutsaidze, and to testify against the then-minister of agriculture, David Kirvalidze.

The circumstances surrounding the case led Transparency International to question the motives behind the arrests. In a statement in July 2013, TI noted that the charges against the arrested officials were unfounded and that the prosecution had failed to prove that the working group in charge of the purchasing of the equipment had any illegitimate interests. TI also concluded that the price paid for the tractors was not unnecessarily high, and it questioned the prosecution's methods for its calculations in this regard. It brought attention to the issue that witnesses claimed to have been pressurized by the prosecution and that the prosecution had postponed the date of the hearings to examine evidence that was crucial for the arrests in the first place.⁷⁸

Shortly after the arrests, Kirvalidze resigned, stating that he assumed political responsibility for the case against the officials. Kirvalidze, who also served as agricultural minister under Shevardnadze (2001-2003), had served six months as minister in the GD government. While there are different theories regarding the potential political motives behind the case— including failings in the distribution of agricultural vouchers during his time in office— Kirvalidze held a rather autonomous role within the leadership with no particular loyalties to any of the leading personalities within the executive.⁷⁹ Later in the year it was found that there was insufficient evidence against the arrested officials and they were subsequently released from the charges.

MIKHEIL SAAKASHVILI

A month after sentencing Merabishvili to prison, the Prosecutor's Office summoned in March 2014 former President Saakashvili for questioning in connection

⁷⁸ "The 'Tractors Case' Raises Questions," Transparency International, July 22, 2013, <http://transparency.ge/en/node/3232>.

⁷⁹ Author's interviews in Tbilisi, 2015.

to multiple cases under current investigation, including the circumstances surrounding the death of Zurab Zhvania who had been prime minister between 2004-2005. In July 2014, criminal charges against the former president were filed. The main charge concerns the use of excessive force against street protesters during the 2007 crisis (also implicating Merabishvili; Ugulava; the then-chief prosecutor, Zurab Adeishvili, and the former minister of defense, Davit Kezerashvili) and his responsibility for the raid against Imedi TV station.⁸⁰ The offense falls under article 333 of the Georgian Criminal Code and can result in an eight-year-long prison sentence.⁸¹ In August 2014, the prosecutor added the Gelashvili case to the existing charges. Former MP Valeri Gelashvili accuses the former president of first seizing his property and then, following a newspaper interview where Gelashvili talked about the issue, of ordering Merabishvili to organize a physical assault against him.⁸² The charge relies heavily on a witness testimony by Irakli Okruashvili, a former member of Saakashvili's administration who later went into opposition and became a political rival to the UNM government.

Further charges against Saakashvili include the misspending of GEL 8,830,000 (approximately USD 5,100,000) of public funds between September 2009 and February 2013, mainly on funding the Special State Protection Agency which provides personal security to high-ranking officials, including the former president's own family. Based on formerly classified spending records the allegations also involve personal expenses including spa resorts, hotel stays, and shopping.⁸³ The embezzlement charges fall under article 182 of the Georgia Criminal Code that envisages imprisonment for 7-11 years.

Saakashvili, who went into exile shortly after the presidential election in 2013, was summoned to questioning at the Prosecutor's Office but refused to appear either in person or through a proposed video link. Days later, on August 3, the

⁸⁰ "Criminal Charges Filed Against Saakashvili," *Civil.ge*, July 28, 2014, <http://civil.ge/eng/article.php?id=27527>.

⁸¹ Article 333 §3 of the Criminal Code of Georgia envisages imprisonment for 3-8 years for abuse of official powers.

⁸² "Saakashvili Faces New Criminal Charges," *Civil.ge*, August 5, 2014, <http://civil.ge/eng/article.php?id=27557>.

⁸³ "Accused of Misspending, Saakashvili Faces New Charges," *Civil.ge*, August 13, 2014, <http://www.civil.ge/eng/article.php?id=27577>.

Prosecutor's Office ordered the former president to two months pre-trial detention in absentia. The hearing has been contested by the UNM as it took place with only three hours' notice. The UNM further claims that the judge sentencing Saakashvili to detention, Spartak Pavliashvili, was transferred to the Tbilisi Court only days before the hearing, indicating he was hand-picked for the case. The UNM has also linked the prosecution of Saakashvili to his support to the Ukrainian government and Russia's explicit criticism of his role. The party specifically points at a press statement on July 29 in which Deputy Speaker of Parliament Kobakhidze stated that the charges against the former president aimed to curb Saakashvili's ability to travel, which "poses a risk to peace."⁸⁴

In September 2014, the court ruled in favor of impounding Saakashvili's property in Georgia, including 1.9 hectares of land in the Kvareli/Kakheti district, a 97 sqm house located on the land, as well as a Honda Accord car. Notably, the seized property also includes a Tbilisi apartment owned by Saakashvili's wife Sandra Roelofs, an apartment and a 1,900 sqm plot of land in Batumi owned by his mother, a plot of land in Eastern Georgia, as well as a car owned by his grandmother and a Toyota Cruiser owned by his father.⁸⁵

While concluding that the sentencing of Saakashvili to pre-trial detention in absentia did not violate national legislation, GYLA has objected to the legality of the freezing of the former president's and his family's assets, claiming the court lacks legal grounds for doing so.⁸⁶ According to the Georgian Criminal Code, seizing of assets is only a legal possibility when the assets in question have been acquired illegally. Since the assets that were seized did not relate to the embezzlement charges against the former president, the court decision violated Georgian law.

⁸⁴ Statement on the Sentencing of President Mikheil Saakashvili to Pretrial Detention, provided by the United National Movement on February 8, 2014.

⁸⁵ "Saakashvili's Property Impounded," *Civil.ge*, September 19, 2014, <http://civil.ge/eng/article.php?id=27673>.

⁸⁶ Author's interview with senior GYLA representative, January 2011.

UNITED NATIONAL MOVEMENT (UNM)

In the fall of 2014 the Georgian government announced its plans to launch a collective criminal charge against the UNM as a whole under article 315 of the Georgian Criminal Code, for attempting to instigate a coup d'état aimed at forcefully changing the constitutional order in the country. The plans were first announced by the then-minister of internal affairs, Bacho Chikaidze, in an interview to the controversial and anti-Western tabloid paper *Alia* on September 15, during which he openly accused the former ruling party and Saakashvili of attempting to destabilize Georgia. The plans to charge UNM were confirmed by the deputy minister of internal affairs, Levan Izoria, during a talk show aired on Rustavi-2 on October 15.⁸⁷

Moreover, two additional members of the UNM leadership have been called for questioning during 2014: UNM's International Secretary and former Head of the National Security Council (NSC) Giorgi (Giga) Bokeria; and Head of the UNM Parliamentary Minority and UNM's 2013 presidential candidate Davit Bakradze. This indicates that further arrests may take place. Bokeria is being investigated for alleged misspending of public funds on international lobbying managed by the NSC. In June 2013, Ivanishvili suggested in an interview to Resume TV that NSC funds spent on international lobbying had sought to influence international newspapers, including the *Washington Post*, to post articles in favor of the former government.⁸⁸ Bakradze has been questioned for tax fraud in relation to property registered to his wife.⁸⁹

MINISTRY OF DEFENSE (MoD)

In late October 2014, five members⁹⁰ of the general staff from the Ministry of Defense of the GD-government were arrested on charges of embezzlement of public

⁸⁷ Statement: "Georgia: Criminal Case Launched Against UNM as a Whole," provided by the United National Movement on October 20, 2014.

⁸⁸ "Ivanishvili: Questions will Necessarily be Put to Bokeria," *Tabula Magazine*, June 4, 2013, <http://www.tabula.ge/en/story/71828-ivanishvili-questions-will-necessarily-be-put-to-bokeria>.

⁸⁹ Author's interviews with senior UNM officials, 2014.

⁹⁰ Gizo Ghlonti - Head of the MoD State Procurement Department; Nugzar Kaishauri - Head of the Communications and Information Technologies Department (J-6) of the Georgian Armed Forces; Giorgi Lobzhanidze - Head of Unit at the MoD State Procurements Department; Archil Alavidze - Chief specialist of

funds amounting to GEL 4,102,872. The prosecution claims that a 2013 tender on the laying of fiber optic cables was arranged to give advantage to Silknet, one of the largest telecom operators in the country, which was awarded GEL 6,700,000 million while the alleged market value for the services stood at approximately GEL 2,600,000. Days later, additional charges related to food poisoning of army servicemen were filed against three army medical officers and three employees at a food-provider company.

The arrests took place as then-minister Alasania was traveling to Paris to sign a memorandum of intention to purchase an advanced air defense system that would serve to protect Georgian air space from threats similar to those faced in 2008. Independent sources have reported that Alasania before signing the agreement received a phone call from Tbilisi, allegedly from the prime minister's close ally and crisis management council secretary Mindia Janelidze, urging him not to sign the agreement.⁹¹ Following a press statement⁹² upon his return to Tbilisi, in which he referred to the arrests as an "attack against Georgia's Euro-Atlantic choice," Alasania, together with his team of deputies,⁹³ was dismissed from his post. Janelidze was appointed as his successor.

In November, GYLA together with six other civil society organizations—Transparency International Georgia, Institute of the Development of the Freedom of Information (IDFI), Civil Development Agency (CiDA), Economic Policy Research Center (EPRC), Article 42 of the Constitution, and the Human Rights Centre—issued a joint statement⁹⁴ on the arrests, noting that the prosecution had refused to present the full evidence to the defense with reference to state secrecy. Thus, the prosecution had violated article 83 of the Georgian Criminal Code, which states that evidence must be presented to the defense at any stage. They

the MoD State Procurement Department and Davit Tsipuria - Head of the Unit at the Communications and Information Technologies Department (J-6), Joint Staff, Georgian Armed Forces. See website of the Prosecutor's Office of Georgia, http://pog.gov.ge/eng/news?info_id=567.

⁹¹ Author's interviews in Tbilisi, October-November 2014.

⁹² "Alasania: MoD-Related Probe is 'Attack on Georgia's Euro-Atlantic Choice,'" *Civil.ge*, November 4, 2014, <http://www.civil.ge/eng/article.php?id=27775>.

⁹³ Deputies Mikheil Darchiashvili, Irakli Gegechkori, Alexi Batiashvili, and Tamar Karosanidze.

⁹⁴ "News NGOs Respond to the Detention of the Defense Ministry Employees," Georgian Young Lawyers' Association, November 4, 2014, <http://gyla.ge/eng/news?info=2332>.

also expressed concern about the lack of acknowledgement of the violation by the Court, which is required under the Code to recognize such breaches. As such, they argued, the defendants were denied their constitutional right to a fair trial. The MoD for its part argued that the evidence was classified information under the law of Georgia on State Secrecy, and in accordance with articles 17 and 18 of the law, had applied to the Prosecutor's Office to submit parts of the evidence to the counterintelligence office of the Ministry of Internal Affairs for declassification. In late November 2014, the Prosecutor's Office announced that 93 percent of the case materials had been declassified, and that the defense lawyers would be able to access the remaining part of the material at the Office, without bringing copies outside its premises.⁹⁵ GYLA, whose lawyers have represented one of the defendants, Giorgi Lobzhanidze, has also criticized the prosecution for not providing the defendants with the opportunity to meet with legal counsels on the day of the arrests.⁹⁶

The MoD case has also given rise to speculation regarding the true motives behind the arrests, especially as it resulted in the dismissal of Alasania and his team. Alasania's problematic relationship with Ivanishvili in particular, which will be discussed in more detail below, has been described as an underlying factor for the case against the MoD, and a possible attempt to build charges against him personally.⁹⁷

⁹⁵ "Case of Arrested MoD Officials Largely Declassified," *Civil.ge*, November 25, 2014, <http://www.civil.ge/eng/article.php?id=27853>.

⁹⁶ Author's interview with senior GYLA representative, January 2015.

⁹⁷ Author's interviews in Tbilisi, November-December 2014.

Reactions and Implications

The prosecution campaign was met with concern and criticism among Georgia's Western allies. Already in November 2012, the EU High Representative for Foreign Affairs and Security Policy Catherine Ashton declared that "there should be no selective justice; no retribution against political rivals. Investigations into past wrongdoings must be, and must be seen to be, impartial, transparent and in compliance with due process."⁹⁸ In its October 2, 2014 resolution on "the Functioning of Democratic Institutions in Georgia," the Council of Europe Parliamentary Assembly (PACE) took note of Georgia's progress in its democratic processes over recent years, but stated that it has been "overshadowed by the arrest and prosecution of almost the entire leadership of the former government party and former high officials, which raises questions about the eventual use of the justice system for political purposes" and expressed its serious concern over "allegations that the arrests and prosecution of a number of former government officials are politically motivated and amount to selective and revanchist justice."⁹⁹ The Assembly called on the Georgian government to ensure that investigations and prosecutions of former officials are carried out in accordance with the principle of a fair trial, and that politically motivated justice should neither occur, nor be seen as taking place. It particularly warned against politically motivated actions against Saakashvili given the inflamed political situation in the country, and expressed concern about the extended pre-trial detention of Akhalaia. It advocated the introduction of jury trials for high-profile cases, and expressed support for the government's idea of offering amnesty to former officials for all but serious crimes.

⁹⁸ See e.g. "The Perception of Selective Justice," *Georgia Online*, January 27, 2013, <http://georgiaonline.ge/articles/1359316127.php>.

⁹⁹ Council of Europe PACE Resolution 2015, October 1, 2014, <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21275&lang=en>.

The U.S. government has also on a number of occasions expressed its concerns about selective justice in Georgia. Referring to the decision by Georgian authorities to call Saakashvili in for questioning, the U.S. State Department issued in March 2014 a statement that points towards the problems in the Georgian judiciary: “No one is above the law, but launching multiple simultaneous investigations involving a former President raises legitimate concerns about political retribution, particularly when legal and judicial institutions are still fragile.”¹⁰⁰ During her nomination hearing in July 2014, U.S. Assistant Secretary of State for European and Eurasian Affairs Victoria Nuland expressed concern about Georgia’s potential political backsliding, underlining the importance of applying transparency and the rule of law in redressing past abuses to avoid the perception of selective justice. Following the firing of Alasania in October 2014, the U.S. State Department again issued a written statement, noting with regret the prime minister’s decision to dismiss the defense minister and the subsequent resignation of two other key government officials. It emphasized the need for domestic stability and unity during a time of regional turmoil and domestic economic challenges.¹⁰¹ U.S. Ambassador to Georgia Richard Norland also expressed concern about the arrest of the MoD officials, stating that “it would not be appropriate for the U.S. to take a position on specific investigations, but the number and scope of prosecutions of former and current officials raises legitimate concern that the judicial system is being used in a politicized way, or for political purposes.”¹⁰²

Over the course of the prosecution campaign international monitors have noted troublesome irregularities relating to the high-level trials. In the case of Akhalaia, in three of the initial hearings judges were transferred from other courts to the Tbilisi City Court, suggesting that the judges were specifically selected and appointed for the case. While the High Council of Justice has the legal right to make such transfers, no public explanation for the three transfers was provided, something that has been identified as a common problem with regard to decisions by

¹⁰⁰ Press statement: In Support of Accountability and Justice in Georgia, U.S. Department of State, March 23, 2014, <http://www.state.gov/r/pa/prs/ps/2014/03/223836.htm>.

¹⁰¹ “U.S. ‘Notes with Concern’ Firing of Alasania,” *Civil.ge*, November 6, 2014, <http://www.civil.ge/eng/article.php?id=27790>.

¹⁰² “U.S. Ambassador Speaks of ‘Legitimate Concern that Judiciary is being Used for Political Purposes,’” *Civil.ge*, November 5, 2014, <http://www.civil.ge/eng/article.php?id=27781>.

the Council.¹⁰³ According to internationally recognized standards, case assignments should be based on pre-determined criteria to avoid practices of administrative justice.¹⁰⁴ With regard to the hearings that were open to the public, the courts failed in several cases to provide advance notice, or selected inappropriately small courtrooms for the hearings, thus limiting monitoring of court proceedings.¹⁰⁵ Alternative means of providing the public access to hearings, such as video or audio links, were not made available. In several cases the public was also refused access to the hearings for reasons of national security, and monitors were not provided access to court materials due to state secrecy; but such decisions were reportedly poorly reasoned, in violation of article 182 of the Criminal Procedure Code.¹⁰⁶

Statements by Georgian Dream representatives regarding the prosecutions have further fueled suspicion about political motives. In an interview with *Alia Gazette* in December 2013, Deputy Speaker of Parliament Manana Kobakhidze stated that “the new top officials have already gained people’s trust, and we soon will present them with the arguments vindicating our claim as per which Merabishvili is a sheer liar ... I assure you that at this point our Prosecutor’s office is strongly determined to give all criminals their due.”¹⁰⁷ Similarly, the prime minister has made a number of controversial statements indicating that the government exercises influence over the Prosecutor’s Office in relation to the high-profile cases. For instance, ahead of the summoning of Saakashvili to questioning in March 2014, Garibashvili stated that “if Mikheil Saakashvili doesn’t arrive, [the] Prosecutor’s Office will act according to the law and he will be declared wanted.”¹⁰⁸

¹⁰³ “The High Council of Justice Monitoring Report No 2,” Georgian Young Lawyers Association and Transparency International Georgia, Tbilisi, 2014.

¹⁰⁴ See e.g. “Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia” of June 2010, para 12, OSCE/ODIHR, <http://www.osce.org/odihr/KyivRec?download=true>.

¹⁰⁵ OSCE/ODIHR 2014 Trial Monitoring report.

¹⁰⁶ *Ibid.*

¹⁰⁷ In “Russia wants to set visa-free travel with Georgia sooner than Europe,” *Interpressnews*, December 24, 2013, <http://www.interpressnews.ge/en/press-digest/53201-press-digest-04112013.html>.

¹⁰⁸ “Irakli Gharibashvili – If Saakashvili doesn’t arrive, prosecutor’s office will act in accordance with law and declare him wanted,” *Interpressnews*, March 23, 2014, <http://www.interpressnews.ge/en/politics/55925-irakli-gharibashvili--if-saakashvili-doesnt-arrive-prosecutors-office-will-act-in-accordance-with-law-and-declare-him-wanted.html?ar=A>.

In an interview with the French newspaper *Le Monde* in April 2013, Ivanishvili stated that “if the opposition insists on lying and ignore the people, the queues at the prosecutor’s office will get longer.”¹⁰⁹

Moreover, the courts have been criticized for the excessive use of pre-trial detention as a preventive measure in high-profile cases and for failing to provide sufficient explanation for doing so. While the detention orders have complied with national Georgian legislation, defense appeals for revoking detentions have been continuously dismissed, while prosecutors have been largely successful in requests for extensions, with the courts providing insufficient justification for approving such requests.¹¹⁰ Moreover, especially in the Akhalaia and Merabishvili cases, the defense has complained about insufficient time to prepare for the case, especially the cross-examination of witnesses. Finally, numerous delays in holding court hearings have been reported, leading to questioning about the courts’ respect for the defendants’ right to trial within a reasonable time period.¹¹¹ The postponement of certain hearings has also given rise to suspicions about deliberate scheduling of trials for political purposes; for instance to interfere with election processes and to avoid possible pardoning of defendants by Saakashvili while he remained in power.

In December 2014, the OSCE’s Office for Democratic Institutions and Human Rights (OSCE/ODIHR) noted in a monitoring report on selected trials against former government officials (the report focused on 14 criminal cases against senior officials of Saakashvili’s administration) a number of violations of the right to a fair trial, including the presumption of innocence; inequality of arms; the right to be tried before an independent court and the right to a trial within a reasonable time. It moreover expressed concern regarding shortcomings in the current legislation on, for instance, evidence and trials in absentia.¹¹² It highlighted that the

¹⁰⁹ The French wording was “si l’opposition s’obstine à mentir et à ne pas tenir compte du peuple, les queues devant le parquet général s’allongeront.” En Géorgie, “Saakachvili disposait du budget comme de son portefeuille,” *Le Monde*, April 27, 2013, http://www.lemonde.fr/international/article/2013/04/27/en-georgie-saakachvili-disposait-du-budget-comme-de-son-portefeuille_3167664_3210.html?xtmc=georgie&xtcr=1.

¹¹⁰ OSCE/ODIHR 2014 Trial Monitoring report.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

problems stemmed mainly from shortcomings in court practices, as opposed to the legislative framework, and that combined these shortcomings jeopardize the right to a fair trial in accordance with recognized international principles.

Conclusion

Events in recent years suggest that Georgia is still grappling with long-standing problems regarding politicized justice. The specific targeting of high-level UNM officials, while simultaneously neglecting lower-level claims such as property rights violations, has erased any doubts that the Prosecutor's Office is pursuing a practice of selective justice. The targeting of Kirvalidze's and Alasania's teams have further fueled the notion that the judiciary is being used as a tool for political retribution, also within the increasingly fractious ruling elite itself.

In determining the extent to which the GD's prosecution campaign is politically motivated, a first key question is to what extent the judiciary remains under influence by the political elite. Indeed, several factors suggest that the prosecutor general at the very least maintains links to the executive. The frequent change of chief prosecutors in recent years, combined with the prime minister's influence over the selection of candidates, are both indicators of the continued politicization of the office. As the prosecutor general may be dismissed at any time, there is a clear opportunity for political interference. The same is true for the courts, even though the independence of judges has improved somewhat in recent years, largely as a result of the reformation of the High Council of Justice and lifetime appointments for judges. Nonetheless, the three-year probation period enables judges to be dismissed by the High Council at its discretion, which, just like in the case of the prosecution, may lead judges to rule in favor of the political elite. This raises another issue, namely whether decisions by the prosecution and courts, especially with regard to politically sensitive cases, are products of actual political interference or mainly self-censorship, a problematic legacy from the Soviet era. Given the continuous opportunity for political influence over the judiciary, it is likely that the procuracy and courts at the very least feel obliged to act in a way as to attempt to please the political leadership, through initiating prosecutions that are in the interest of the government and to rule in favor thereof. As the Prosecutor's Office has so far failed to clarify the criteria for determining the prosecutions, perceptions of selective or revanchist justice are only exacerbated. The reported irregularities by the courts in connection with the trials, especially with

regard to the assignment of cases to specific judges, further suggests that the courts have acted subjectively in some of the high-profile cases.

A second issue to address is the nature of these motives. In other words, are they strictly punitive, or do they also serve the purpose of weakening, or even eliminating, opponents to the elite? Indeed, political rivalry is not a new phenomenon in Georgia. Just like the current government, Saakashvili's administration embarked on an ambitious mission to arrest and prosecute its predecessors in 2004. However, since the Rose Revolution, a stated goal has been to de-politicize the judiciary, leaving errors of the past as a poor justification for current practices. As such, they constitute a troublesome setback in Georgia's reform progress. Moreover, an important difference lies in the political context of the 2004-2005 campaign and the 2012-2014 events. The post-revolutionary era in Georgia saw an uncontested political scene: the ex-officials targeted by Saakashvili's administration did not belong to an opposition capable of challenging the new government in any credible way. On the contrary, Shevardnadze's government had been ousted through a revolution with nation-wide support and Saakashvili had secured power with more than 97 percent of the vote. As such, the judicial actions in 2004-2005 had strong punitive elements, but they were hardly attempts to weaken political opponents. Thus, while there were serious errors in the policies of the former administration, including serious violations of property rights, impunity of state officials, and influence over the judiciary, the judicial system was not used to the same extent to persecute political rivals.

In order to assess the true motives behind the campaign, it is relevant to look at the relationships between the key different personalities involved. Three personalities are particularly central in this regard: GD founder Ivanishvili, former President Saakashvili, and the former defense minister Irakli Alasania. Ivanishvili, who made his fortune in Russia but returned to Georgia at the time of the Rose Revolution, was initially a supporter of Saakashvili and his team, financially backing many of the projects initiated by the new government. However, the businessman announced in 2011 his intention to form the Georgian Dream party and to enter into opposition. The initial response by the Saakashvili-government was aggressive; in October 2011, it stripped the business tycoon of his Georgian passport, motivated by the fact that he had acquired French citizenship *after* being granted Georgian citizenship (he was previously a Russian citizen), thus in violation of Georgian legislation. In order to retain his Georgian citizenship, Ivanishvili was urged to apply to President Saakashvili for a presidential waiver, which he

refused to do. The controversies surrounding the passport issue led both sides to significantly harshen their rhetoric in 2012, including numerous instances of public insults. After defeating the UNM in the 2012 election, Ivanishvili assumed the role as prime minister; however, in late 2013 he left his post, appointing instead his protégé Garibashvili as his successor. Ever since, he has been widely perceived as running the country from behind the scenes, facilitated through his influence over Garibashvili and the former interior minister, Alexander Chikaidze. Garibashvili, whose loyalty to Ivanishvili is unquestionable, has not been shy of publicly expressing his repugnance toward the former administration, openly stating that he does not regard the UNM as being a legitimate opposition party.

Alasania, for his part, served as a loyal member first of Shevardnadze's government as deputy minister of state security, then of Saakashvili's government as head of the Abkhazian government-in-exile and chief negotiator, and later as Georgia's ambassador to the United Nations. However, starting from the November 2007 crisis Alasania grew increasingly alienated from President Saakashvili and his team; in December 2008, he resigned from the government and formed his own party, Our Georgia – Free Democrats. In 2011, Alasania, in alliance with Usupashvili's Republican Party, joined the GD coalition in the effort to put an end to Saakashvili's rule. However, as previously noted, disagreements between Ivanishvili and Alasania soon emerged, leading him to be dismissed from his post as deputy prime minister and excluded from consideration as the coalition's presidential candidate. Alasania, who retained his autonomy within the government and his independent connections in the West, increasingly emerged as a political rival to Ivanishvili and his closest team. He pursued what was perceived as an independent agenda in terms of NATO integration, for instance by signing an agreement on a NATO training center in Georgia, and remained vocal with regard to Russia's actions in Abkhazia and South Ossetia. He also belonged to the faction of the government that was critical of the Russian infiltration into Georgian politics and society through the establishment of a large number of pro-Russian NGOs nationwide after the election. What was more, while Garibashvili's and Ivanishvili's ratings gradually went down, opinion polls conducted among others by the National Democratic Institute (NDI) showed that Alasania had emerged as the most popular politician in Georgia. However, dismissing Alasania as defense minister was initially not an option; as noted, the dismissal of the defense minister before the 2013 presidential election remained the exclusive prerogative of the president. Allegedly, Ivanishvili sought on a number of occasions

to conclude a deal with Saakashvili to remove Alasania from office, which Saakashvili refused to agree to.

Given the controversial relationships between key individuals within the current and former administration, it is reasonable to pose the question whether the prosecutions have constituted a tool for personal vendettas against leading members of Saakashvili's team, and/or political rivals within the coalition itself, including Kirvalidze and Alasania. The controversies surrounding the appointment of the Head of the Supreme Court, with different political leaders battling for influence over the judiciary, serves as further evidence of the judiciary being used as a political tool.

Recent events have inevitably also, whether purposely or not, served to considerably weaken the leading opposition, the UNM, whose domestic standing already suffered a damaging blow with the prison scandal in 2013. The timing of the arrest of Ugulava is noteworthy in this regard, as it took place at a crucial phase of the local election campaign in 2014. The same is true for Merabishvili's arrest, as he was widely discussed as UNM's next presidential candidate and played an important leading role in the party leadership. As such, the arrests have resulted in further polarization of the Georgian political scene—itsself a problematic and long-standing challenge to Georgia's political development. In light of the removal of key personalities within the UNM leadership, the party's future is now in question, especially should additional arrests take place.

A third factor to consider in determining the nature of the judicial campaign is the political context after the 2012 election. While the GD leadership in its election campaign raised public expectations through promises of socio-economic improvements, the government has failed to tackle pressing issues for Georgian society, including unemployment and economic growth. In this light, displaying power against political rivals is a way to overshadow the lack of progress in other spheres.

The above throw up problematic implications for Georgia. First, the political nature of the arrests and prosecutions strongly suggest that the Georgian judiciary continues to lack independence as well as impartiality, a troublesome impediment to Georgia's democratic development. While no one should be considered being above the law, and while wrongdoings should indeed be investigated, it is crucial that justice is established in a transparent manner. Selective targeting of individuals, especially when coupled with hostile rhetoric by leading politicians, will only further feed suspicions of selective and revanchist justice.

Second, the continuously fractured and polarized political scene in Georgia constitutes a troublesome impediment to its democratic progress. Lack of political dialogue in Georgia has been a problem since independence, and continues to hamper cooperation in fields where the political parties have common interests. The events surrounding Alasania's dismissal revealed the presence of problematic dynamics not only between the political camps but also within the Georgian Dream coalition itself. Continued political instability not only delays much-needed reforms, but makes the country vulnerable to both traditional and asymmetrical security threats. Domestically, it risks opening up to national unrest, a rise in extremism, and even external manipulation. In light of the continuous threat that Georgia is exposed to, it is more crucial than ever that Georgia's political forces find common ground to tackle issues relating to national security. This is particularly relevant given Russia's actions in Ukraine, and the recent policy of concluding partnership agreements with the secessionist authorities in Abkhazia and South Ossetia, which amounts to the further de facto annexation of the two regions.

Finally, it may also cause delays in the country's Euro-Atlantic processes. While both the U.S. and the EU early on warned the Georgian government against political retribution, the Prosecutor's Office has displayed its commitment to implement its agenda in spite of negative response and pressure from the West. Moreover, the Alasania case resulted in the removal of the most pronounced pro-Western faction of the GD coalition, leaving individuals with significantly less experience in international affairs in charge of Georgia's Western integration efforts. Following Alasania's dismissal, the GD leadership has made numerous statements to assure both its domestic and international audience that it will stay firm to the country's Western ambitions; however, it is questionable whether the remaining leadership will succeed in maintaining the same level of international legitimacy as before. In this regard, the case against the MoD and Alasania's dismissal is highly unfortunate, as the ministry has received positive international feedback for its efforts to increase transparency and prevent internal corruption. Needless to say, in light of Georgia's continuous quest to integrate closer with NATO, and the continuous threat posed by Russia, the reputation of Georgia's MoD and Armed Forces is of high relevance.

Equally, however, the controversies surrounding the use of the judiciary for political purposes may attract increased international attention to the weakness of the judiciary and encourage reforms in this field. The divisions in the leadership

that have emerged as a result of the specific targeting of key political personalities could also lead to new political alliances forming and a more pluralistic political scene. It is therefore crucial that Georgia's Western partners continue to pay close attention to Georgia's democratic processes, that they highlight wrongdoings, and, overall, support the country in countering the potential threats recent events may have caused to Georgia's Euro-Atlantic integration.

Author Bio

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