

CASE OF THE PHYSICAL ASSAULT ON THE FORMER AUDITOR GENERAL

TRACE OF INFORMAL INFLUENCES IN THE GEORGIAN JUDICIARY



Legal analysis by Human Rights Center

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Three years have passed since the physical assault on the former auditor general Lasha Tordia. It is the first incident in the history of the independent Georgia, when the head of the state institution was attacked, beaten in connection to his official duties. The video-recording¹, which was disclosed to the society, showed that the auditor general had a conflict with the former chief prosecutor Otar Partskhaladze and the former deputy head of the investigative department of the Financial Police Mikheil Chokheli.

Considering the positions and influences of the incident participants, the case attracted wide public interest from the very first day. Human Rights Center has been defending the rights of Lasha Tordia since the first day.

Lack of political will to impartially and comprehensively investigate the case was observed even in the initial stage of the legal proceedings. Regardless many appeals of the Human Rights Center, the qualification of the criminal case was not changed. The sign of group attack is still neglected in the imposed charge that results into significant miscarriages of the investigation.

Nowadays, the Criminal Panel of the Tbilisi City Court examines the case, though the process is dragged out for various reasons.

¹ See the video of the incident at <https://www.youtube.com/watch?v=V1A7jEQt6FM&t=83s>

THE PROBLEM OF THE QUALIFICATION

On May 13, 2017, in the club *El Centro*, former chief auditor Otar Partskhaladze and Auditor General Lasha Tordia had a conflict; the victim and the defendant speak about different the reasons of the conflict. Lasha Tordia states that Otar Partskhaladze and his allies physically assaulted him because of the survey carried out by the State Audit Service in the activities of Otar Partskhaladze's company. On the contrary to that, Otar Partskhaladze does not connect the incident with the report of the Auditor General.

Ministry of Internal Affairs started investigation in the fact under the Article 126 of the Criminal Code of Georgia, which refers to beating.

Based on the factual circumstances and victim testimony, HRC believes the criminal proceedings are conducted in wrong qualification because the victim was public official and the reason of the conflict, as he stated, was his official duties. The Criminal Code of Georgia determines narrower, special responsibility for similar violent facts, which are defined in the Article 353¹ of the CCG, which refers to the assault on the representative of authority in connection with their official duties.

The subject of the legal defense of the Article 353¹ of the CCG is quite wide. Based on the 2011 legislative amendments into the Criminal Code of Georgia, the article was formulated as follows: "an assault on police officers or other representatives of the authorities or on their official or residential buildings." The first part of the formulation demonstrates that the law-maker wishes to specifically protect all representatives of the authority and their family members, as well as the official buildings from the assault in connection with their official duties.

If the resistance to the police officer or other representative of the authority is accompanied with the encroachment upon the health or beating, the action shall be qualified under the Article 353¹ of the CCG. The "violence" regulated under this article include both beating and minor injury of health.

Violence against police officer or other representative of the authority is not always regulated under the Article 353¹ of the CCG. The offence can fall under this particular article if the violence against the representative of the authority is connected with his/her official duties. Otherwise, the offender shall be punished only for the injury of health or in accordance to other relevant provisions of the criminal law.

First of all, it shall be noted that victim Lasha Tordia was representative of the authority when the crime was committed. He was Auditor General of Georgia. Consequently, it is indisputable that in this particular case (when there is the motive in connection with the official duties of the victim) he must be subject of the legal defense under the Article 353¹ of the CCG.

It is noteworthy that Lasha Tordia, before the incident, did not know the defendant Otar Partskhaladze and Mikheil Chokheli. Consequently, there was no controversy between them in the past, which could become the ground of their conflict in the club. The victim's testimony also

states that the only reason of the aggression was his official duties, namely the survey of the Audit Office into the legality of the transfer of the state property to the company owned by Otar Partskhaladze. The fact that the Audit Service had not yet released the audit report about the company cannot be ground to neglect the motive because by that time the information about the audit survey was available for everybody. At the same time, the investigation could not determine other concrete reasons of the conflict except those mentioned by the victim. Therefore, there are all pre-conditions to conduct the investigation under the Article 353¹ – Part 1 of the CCG, because all circumstances regulated under this particular article are observed in this criminal case.

Human Rights Center once again calls on the Office of the Prosecutor General of Georgia to conduct impartial and comprehensive investigation of the case and to change the qualification of the charge to ensure effectiveness of the criminal proceedings; more precisely Article 126 shall be replaced by the Article 353¹ of the CCG.

HRC believes the investigation conducted by the prosecutor's office does not meet the requirements of the law, because in the presence of more special norm, the case shall be processed based on this article. Relevance of the Article 126 Part I of the CCG is also problematic. There are two defendants in the case, who are charged for committing one and the same offence. In the initial stage, the prosecutor's office excluded the group character of the crime that contradicts the criminal law of Georgia.

In accordance to the acting criminal code of Georgia, Article 27 of the CCG clarifies the group character of the crime. A crime shall be considered to have been committed by a group if two or more offenders fully or partly commit the crime and act as co-offenders.

ATTEMPT TO USE THE INCIDENT OF THE PAM-CLUB AS “DEFAMATION”

Investigation over the incident in the club L Centro started on May 14, 2017. 10 days after the investigation started, on May 24, 2017, videos were released in social network and media, which were recorded by the surveillance camera in the P.A.M. Club. On the same day, MIA released a statement regarding these videos². The video showed the incident between Lasha Tordia and completely different people in the P.A.M. Club, which had happened on December 24, 2016. On May 26, 2017, ten human rights organizations released joint statement in response to the release of the abovementioned video³. According to the CSOs, the appearance of this video suspiciously coincides with the launched investigation into the incident between Chief Auditor Lasha Tordia and Ex-Chief Prosecutor Otar Partskhaladze, and may be an attempt to cover the incident. The CSOs stated that the incident between Chief Auditor Lasha Tordia and Ex-Chief Prosecutor Otar Partskhaladze has no connection with the leaked video; therefore, the two cases must be investigated independently.

² See the statement of the MIA at <https://police.ge/en/shinagan-saqmeta-saministros-gantskhdeba/10645>

³ See the joint statement of the CSOs <http://www.humanrights.ge/index.php?a=main&pid=19222&lang=eng>

Soon, it was reported that incident between Lasha Tordia and citizens was investigated by the MIA since December 24, 2016⁴. The leak of the video immediately raised questions how the video being under control of the investigation was leaked. Additional doubts were raised when Otar Partskhaladze released a statement on May 14⁵, in which he was speaking about improper behavior of Lasha Tordia. Partskhaladze's statement raised well-grounded suspicion that he already had information about the video, which was later leaked.

On May 23, 2017, after media reported about the leak of the videos from the P.A.M Club in Facebook and other websites, and based on the HRC address, the Personal Data Protection Inspector started examination of the legality of the procession of personal data through the video-surveillance by the Ltd P.A.M⁶.

As a result, the Personal Data State Inspector recognized the P.A.M Club to be administrative offender into Lasha Tordia's case⁷. The violation results in a warning or a fine of 500 GEL.

As a result of the examination, the Inspector's office found out that the company handed the video-recordings to the third person only once – on December 27, 2016. The video recordings were handed to the Ministry of Internal Affairs through violation of the Law of Georgia on Personal Data Protection.

On September 9, 2017, HRC, together with the partner CSOs, released a joint statement and called on the prosecutor's office to start investigation into illegally obtained and leaked video of the incident in the Club P.A.M by the MIA. CSOs also called on the MIA to publish information about the ongoing investigation into the assault on Lasha Tordia and the incident in P.A.M Club. The signatory organizations once again called on the Parliament to investigate the assault on the General Auditor through the investigative commission, especially in view of the ineffectiveness of the ongoing investigation. These requests of the CSOs were left without adequate response from relevant state bodies⁸.

THE PROBLEM OF THE DRAGGED OUT CRIMINAL PROCEEDINGS

On May 25, 2017, Human Rights Center held press-conference⁹ and with the public statement¹⁰ requested impartial and timely investigation of the violence against the head of the constitutional institution, which was connected with the official duties of the institution. In the statement, HRC underlined wrong qualification of the ongoing investigation that was not adequately responded by respective bodies.

⁴ See information at <https://netgazeti.ge/news/196333/>

⁵ See information of Netgazeti <https://netgazeti.ge/news/193947/>

⁶ See the statement of HRC <http://www.humanrights.ge/index.php?a=main&pid=19322&lang=eng>

⁷ Ibid

⁸ See full statement at <http://www.humanrights.ge/index.php?a=main&pid=20098&lang=eng>

⁹ See information about the press-conference <http://www.humanrights.ge/index.php?a=main&pid=19219&lang=eng>

¹⁰ See the statement of HRC <http://www.humanrights.ge/index.php?a=main&pid=19223&lang=eng>

On February 15, 2018, the State Audit Service published the Audit Report about the management and sale of the properties owned by the Tbilisi municipality in 2015-2016. The report reviewed two cases related with the company of the former chief prosecutor Otar Partskhaladze (Ltd BSR-CDG Development). Most probably, these cases became the reason of the assault on the auditor general in 2017 from the side of Otar Partskhaladze.

On February 28, 2018, HRC together with partner organizations called on the respective state institutions with the public statement¹¹ to start investigation into the case of the BSR-CDG Development based on the report of the State Audit Office. Also, based to the audit report, the CSOs called on the prosecutor's office to inform the society about the possible influence on the ongoing investigation of the violent attack against Lasha Tordia.

These circumstances and activities did not affect the ongoing investigation and qualification of criminal proceedings. The investigative bodies did not start any examination of the activities of the Ltd BSR-CDG Development.

All this time, regardless many appeals of the HRC and other CSOs, the investigative body permanently avoided to conduct necessary proceedings for impartial investigation of the physical assault on the former auditor general. As a result, until November 2018, no charges were brought against the defendants, neither former auditor general received the victim status in the case.

The prolonged investigation of the case from the side of the prosecutor's office raise well-grounded doubts and later on, before Presidential Elections of 2018, one and half year after the incident, all of suddenly, the prosecutor's office became very active. On November 5, 2018, during the presidential election campaign, the Chief Prosecutor's Office of Georgia brought charges against Otar Partskhaladze and Mikheil Chokheli under the Article 126 Part I of the CCG in one night; Lasha Tordia received the victim status. The prosecutor's office petitioned the court to impose a bail as a compulsory measure on the defendants. The trial on the compulsory measure was held on the same day and both Otar Partskhaladze and Mikheil Chokheli were released under the bail of 5 000-5 000 GEL from the court room.

With the December 27, 2018 decision, the Chief Prosecutor's Office of Georgia did not satisfy the claim of the Human Rights Center to change the qualification of the charge brought against the former chief prosecutor Otar Partskhaladze and senior official of the ministry of finances Mikheil Chokheli from Article 126 (beating) into the Article 3531 (assault on a representative of state authority in connection with his official duties) of the Criminal Code of Georgia¹².

HRC believes, the dragged out litigation over the criminal case, forced proceedings at a later stage and minor charges brought against the defendants, as well as irrelevance of the applied norms, may indicate at the political influence on the activities/inactivity of the investigative body that violates the principle of impartiality and independence of the investigation.

¹¹ See the joint statement of CSOs <http://humanrights.ge/index.php?a=main&pid=19501&lang=eng>

¹² See the December 27, 2018 statement of HRC <http://www.humanrights.ge/index.php?a=main&pid=19767&lang=eng>

ONGOING COURT PROCEEDINGS

Representatives of the HRC, who defend legal interests of the victim, monitor court hearings of the case to ensure publicity of the proceedings and to provide the society with impartial information. The miscarriages identified during the monitoring and artificial drag-out of the process reinforces the doubts over the impartiality of the entire process and indicates at the possible signs of selective justice against concrete individuals.

On February 7, 2019 the scheduled trial was postponed because defendant Otar Partskhaladze did not appear in the court; the trial was postponed until March 12, 2019.

On March 12 and April 11, 2019, the trials were postponed because Judge Giorgi Darakhvelidze was on business trips.

On May 23, 2019, the court heard the introduction speeches of the parties and the substantial examination of the case was postponed. The witnesses of the prosecutor's office were interrogated at the next hearings – On May 28 and 30.

On May 30, Otar Partskhaladze, again, did not appear in the court. His lawyer presented the notarized warrant to the court and requested permission that only he, the defense lawyer, will attend the hearings in the court without the presence of the defendant. It is important to note, that bail was used as compulsory measure against Otar Partskhaladze. The judge clarified that the procedural law does not recognize similar possibility for the defendant when a bail is used as a compulsory measure against him/her and informed the defense side that they could change the compulsory measure because of absence of the defendant. However, the prosecutor's office again inadequate and loyal response to the solicitation - the prosecutor refused to change the compulsory measure. As a result the judge, regardless his previous clarifications, continued the trial in absentia of the defendant.

The next hearing was scheduled on June 18, 2019 but it was postponed due to technical problem (there was no available courtroom in the court building) and it was postponed for unidentified period of time. Next day, on June 19, authority of Judge Darakhvelidze expired and on June 24, via electronic distribution system, the case was assigned to a new judge Khatuna Kharchilava.

On August 14, 2019 the trial was postponed because the parties did not appear in the court. The next hearing – on September 23 was postponed for the same reason until November 14.

On November 14, the trial was postponed because the judge was in the negotiation room. On December 24, 2019 defendant Otar Partskhaladze again did not appear in the court; his lawyer again presented the notarized warrant and requested to continue the hearings without his client. The judge, in accordance to the criminal procedural code of Georgia, did not satisfy the solicitation and clarified that the procedural legislation does not recognize similar possibility when bail is used as a compulsory measure. She considered absence of the defendant as pardonable and postponed the hearing.

On January 31, 2020, the next hearing was held in the Tbilisi City Court, and defendant Otar Partskhaladze again did not appear in the court. He did not inform the court about the reasons of absence officially. During the proceeding his lawyer stated that his client could not attend the trial because of professional duties. Considering the fact that there were not relevant circumstances in the case based on which absence of the defendant could be evaluated as pardonable the judge made decision and declared the absence of the defendant as avoidance of justice.

The next hearing was held on February 21, 2020 and the defendant again did not appear in the court. Although the judge again did not consider the absence of the defendant pardonable, in response to the request of the defense lawyer, the hearing continued and the witnesses were questioned. Prosecutor again did not request to change the compulsory measure against the defendant.

*Article 200 of the Criminal Procedure Code of Georgia defines that the person deposits bail based on written statement with the court claiming that he/she will have appropriate behavior and timely appear in the court. Consequently, **unpardonable absence of the defendant in the court shall be directly evaluated as violation of the assumed responsibility by the defendant and it shall become the ground to change the compulsory measure – bail into more severe measure – imprisonment.***

Although the former chief prosecutor does not follow the bail requirements during the ongoing court proceedings, the prosecutor's office and the court did not have adequate reaction to his behavior and it may be evaluated as an example of the selective justice.

INFLUENCE OF PARTSKHALADZE ON POLITICAL AND LEGAL PROCEEDINGS

It is not the only case where the state uses selective justice with Otar Partskhaladze and artificially hinders criminal prosecution against him or is not applied at all. Influences of Partskhaladze in the Georgian Dream government and scandals in which he was interfered for years, many times became topic of public discussions. Thus, in many high profile cases, the inactivity of the state institutions and the criminal law adjusted in favor of concrete individuals increases the questions.

While Otar Partskhaladze was the chief prosecutor, the former Prime Minister of Georgia Vano Merabishvili announced that according to Partskhaladze's order, on December 14, 2013 he was taken out of his prison cell. The former PM claimed that Otar Partskhaladze compelled him to make testimonies regarding the famous cases like the death of the late Prime-Minister of Georgia Zurab Zhvania and financial activities of the ex-president Saakashvili.

In response to Ivane Merabishvili's statement, on December 20, 2013, the General Inspection of the Ministry of Corrections and Probation started internal investigation which finished on January 14 2014. The internal examination did not confirm the statement of Ivane Merabishvili about his withdrawal from the prison cell; consequently the chief prosecutor's office did not start any investigation over the case.

The European Court of Human Rights, with its ruling, proved the insufficient political will to investigate and conduct transparent proceedings in the course of investigation of this case.

The Government of Georgia appealed the ECtHR ruling in the Grand Chamber of the Strasbourg Court because of one concrete paragraph in the court judgment. In its appeal the GoG referred to the so-called Partskhaladze's episode according which the former chief prosecutor allegedly withdrew Vano Merabishvili from the cell. However, with the November 28, 2017 ruling the Grand Chamber did not satisfy the claim of the GOG. With 9 against 8 votes, the Grand Chamber of the Strasbourg Court ruled that Article 18 5 § 1 of the European Convention on Human Rights was violated – episode of withdrawal of Merabishvili from the prison cell¹³.

The chief prosecutor's office of Georgia commenced investigation into the case of withdrawal of former PM Ivane Merabishvili from the prison cell only after the Strasbourg Court ruling was announced – on June 14, 2016¹⁴. The prosecutor's office finished the investigation on February 22, 2017 and stated that the investigation did not determine any fact of offence committed against the former PM¹⁵.

The investigation did not study the case of evidence falsification over Merabishvili's case, oppression on witnesses and issue of fake testimonies where Otar Partskhaladze was also connected.

Corruptive deals over the Batumi Port¹⁶, Georgian Manganese¹⁷ and cigarette business¹⁸ were not investigated either; the questions of the society about the so-called “basement episode” in the “Omega's case” were left without answers¹⁹; on September 9, 2018 TV-Company Rustavi 2 aired audio recording of the phone conversation between the founder of the Omega Group Zaza Okruashvili and former Minister of Sport and Youth Affairs Levan Kipiani; Otar Partskhaladze was affiliated with this case too²⁰.

HRC continues defense of the rights of victim Lasha Tordia and carefully monitors the ongoing legal proceedings over the case. The organization once again calls on the respective state bodies to act in due respect of the law and ensure legal and fair judgment on the case.

¹³ See the information about the ECtHR ruling <https://netgazeti.ge/news/236847/>

¹⁴ <https://bit.ly/2x1u48u>

¹⁵ See more details at <https://civil.ge/ka/archives/155144>

¹⁶ See more at <https://bit.ly/33q4A10>

¹⁷ See more at <https://bit.ly/2UbjTt>

¹⁸ See more at <https://transparency.ge/en/blog/smoke-corruption-grand-scheme-allocate-tobacco-market>

¹⁹ See more at <https://netgazeti.ge/news/317299/>

²⁰ See the video-recordings here <https://www.myvideo.ge/v/3669171>

HUMAN RIGHTS CENTER CALLS ON:

The Tbilisi prosecutor's office

- To change the qualification of the case from the Article 126 into the Article 3531 of the CCG. And with the respective investigative activities ensure impartial and unbiased investigation of the case;
- As Otar Partskhaladze many times avoided the judiciary proceedings and legal proceedings were artificially dragged out, to change the compulsory measure – bail into imprisonment to combat absence of the defendant during court hearings for unjustified reasons and not to hinder the ongoing litigation process in the court;

The Tbilisi City Court:

- Not to violate the rights of the victim Lasha Tordia by dragging out the case hearing and in due respect of the principle of fair trial to pass verdict within reasonable timeframe.