HUMAN RIGHTS HOUSE
TBILISI

M A N U A L

About Political Prisoners in Georgia

Tbilisi, 2012

Manual

About Political Prisoners in Georgia

Tbilisi
2012

Members of the working group:

Ekaterine Popkhadze, Emil Adelkhanov, Mamuka Kuparadze, Gela Nikolaishvili, Zviad Koridze, Nika Legashvili, Nazi Janezashvili, Aleko Tskitishvili and Ucha Nanuashvili.

Translated by: Nino Tlashadze

English text edited by: William H. King

Donor

Open Society – Georgia Foundation

This publication was prepared within the framework of the project "Uniting Georgian Civil Society to Jointly Study the Issue of Political Prisoners" and implemented by Human Rights House Tbilisi with the financial support of *Open Society –Georgia Foundation.* The views, opinions and statements expressed by the authors and those providing comments are theirs only and do not necessarily reflect the position of Open Society Georgia Foundation. Therefore, the Open Society Georgia Foundation is not responsible for the content of the information material.

Table of Contents

1. Foreword

In accordance to the Constitution of Georgia, everyone has the right to express their political opinion and conduct political activities without being subjected to punishment. This right is guaranteed by various international bodies of law for which Georgia is a party. Despite that, Georgian opposition political parties, as well as national and international organizations have blamed the government of Georgia in the criminal persecution and punishment of individuals due to their political views.

The US State Department Human Rights Report (2011) also provides information about the presence of political prisoners in Georgia.[1] However, there is still no common view shared among Georgian civil society about politically motivated cases and political prisoners in the country.

As such, a working group was set up consisting of human rights defenders, media-experts and representatives of civil society. The main purpose of the working group is to spearhead a discussion on the issue of political prisoners in Georgian civil society and to promote dialogue between the parties interested in this issue.

The group is eager to start a discussion on the guideline principles and criteria and believes it is urgently important to launch an open discussion regarding politically motivated cases and support the mitigation of this problem. Additionally, the working group aims to create general views about politically motivated cases and political prisoners in civil society.

The group welcomes notes and proposals for the improvement of the guidelines listed below and for the launch of public discussion on this issue.

[1] http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper

2. Introduction

The term “political prisoner” first appeared in the second half of the 19th century among a circle of public-revolutionists in Russia and it was long used in the same circle. Since the 1960s the term was largely used in the public vocabulary of all countries, though it has not yet been reflected in international and national laws. The term “political prisoner” is not mentioned in the International Declaration of Human Rights, the International Covenant on Political and Civil Rights, the European Convention on Human Rights, nor are they mentioned in the protocols of either the Covenant or Convention or in the statute of the European Court of Human Rights. In 1998, a report[2] from the BBC from Northern Ireland read: “The phrase "political prisoners" though has little meaning in legal terms; there is no internationally recognized definition of a political prisoner.”[3] Since then, almost nothing has changed.

One opinion suggests that the term “political prisoner” belongs to a political category rather than a legal category. So because this term lies on the edge of politics and jurisprudence, rendering it ambiguous and undefined, it is often misused. As such, the authorities of various states take advantage of this ambiguity, stressing its lack of a clear legal definition and deny the presence of political prisoners in their countries.

Rather than defining the term “political prisoner” by determining which particular prisoners can be unified under this category, the UN and Council of Europe (CoE) have instead placed this responsibility on the influential non-governmental organization Amnesty International (AI). In 1964, AI received the status of UN consultant and in 1965 it became a consultant of the CoE.

According to the definition of Amnesty International, “a political prisoner is any prisoner whose case has a significant political element: whether the motivation of the prisoner's acts, the acts in themselves, or the motivation of the authorities.” [4]As we can see, this definition is larger than the definition from the Longman dictionary: “[a] political prisoner is someone who is in prison because they have opposed or criticized the government of their own country.”[5]

In practice, today international human rights organizations use different definitions for the term “political prisoner” , which do not exclude each other. Because of the high reputations of the authors of these criteria these definitions are often used as sources of case law.

The difficulty of the task for the authors in the report below is that on the one hand, the definition of a political prisoner should be clear for wider society to understand in order not to restrict cases that could not be put in a narrow frame; on the other hand it should provide a very concrete definition in order not to encourage an ambiguous interpretation. At the same time, we should remember that this definition must not differ from its “traditional” understanding because it should be recognized outside of Georgia too.

[2] Title – “When is a “criminal” a “political prisoner”?
[3] http://news.bbc.co.uk/2/hi/special_report/46095.stm
[4] http://www.amnesty-volunteer.org/aihandbook/ch3.html#Politicalprisoners
[5] „Someone who is in prison because they have opposed or criticized the government of their own country .

Additionally, it should be considered that in any case, greater society and civil activists constantly remain under the influence of two contradictory theses:

1. The political prisoner is always the innocent victim of the government;

2. A person who committed a crime based on political motives is not a political prisoner, but an ordinary criminal who was fairly punished for the crime they committed.

The purpose of our document is to define and clarify the real status of a political prisoner for the attorneys of this category, prisoners and society at large while considering international practice and Georgian specifics.

To achieve this purpose, we must solidify the criteria which provide the basis for studying political prisoners' cases– specifically the criteria worked out by independent experts of the CoE in 2001 while working on the report pertaining to political prisoners in Azerbaijan and Armenia and the criteria that were provided to the secretary general of the CoE. It is noteworthy that on June 26, 2012, the Council of Europe passed a resolution on political prisoners.[6]

3. Political prisoners in Georgia: a short history and the current situation

In the Soviet law (namely in the criminal code), there was a provision which directly indicated that a person who was busy with propaganda and agitation against the Soviet system, aiming at overthrowing or undermining the Soviet leadership, was a criminal offender. During Stalin's rule, according to Article 58 of the Criminal Code of the Soviet Union, not only anti-Soviet propaganda and activities were evaluated as criminal offences, but also the dissemination of anti-Soviet literature and others, as well as the demonstration of minimal political non-loyalty against the regime. So, every person convicted under this article was declared to be a political prisoner. A new criminal code was adopted after Stalin's death and this article was transformed,[7] but its spirit did not change. Every person imprisoned and convicted under this law was recognized as a political prisoner and the Soviet authorities did not deny this fact. Due to political advisability, this article gave rise to wide interpretation by law enforcement bodies – any action or propaganda could be evaluated as anti-Soviet or criminal in nature (including free expression and telling a joke).

There was a relative change in the system towards the end of the 1970s as a result of the Conference on European Security and Cooperation in Helsinki in August of 1975. Here, leaders of 35 states signed a universal document of mutual understanding and cooperation– the so-called Helsinki Pact. Its main idea was to recognize post-war borders in Europe, but alongside it every country took responsibility to protect human rights (including the freedom of expression, assembly, manifestation and transportation) in humanitarian issues.[8] It appeared that the

[6] http://assembly.coe.int/Communication/2012-06-26_ENpressajdoc21.pdf
[7] Article 70 of the Soviet Criminal Code
[8] OSCE was established based on this document later

aforementioned anti-Soviet article contradicted the spirit of the Helsinki Pact because the actions that were declared crimes by Soviet law and were severely punished in the Soviet Union were completely legitimate according to the Pact and obliged the signatory states to respect the freedom of expression, freedom of printed media, the right to assembly, manifestations and transportation. In the 1970s, the Soviet regime changed tactics and began imprisoning and passing judgments on individuals with different political opinions (so-called dissidents) under different articles of the criminal law. Politically "unacceptable" people were often arrested after planting narcotics or guns on them, for the inspiration of hooliganism or violation of public disorder, they were declared to be mentally disabled and they were forced into medical treatment in mental hospitals.

In independent Georgia, a similar article was removed from the Criminal Code. However, initially, during Zviad Gamsakhurdia's governance and then during Eduard Shevardnaze's authority, various forms of political persecution were observed (usually indirect forms). During the short presidency of Zviad Gamsakhurdia, leaders of the National-Democrat Party and Mkhedrioni were persecuted. However, formally they were arrested under different articles of the Criminal Code.

At the first stage of Shevardnadze's governance, politically motivated persecution and the imprisonment of former president Zviad Gamsakhurdia's supporters, occurred in a particularly frequent nature; at the second stage – the persecution of Mkhedrioni's leaders and members were persecuted because of their membership in an illegal paramilitary unit. However, from 2001, almost everyone who was convicted and was victim to political repression, were released from imprisonment (pardoned, early-released or released based on the Declaration of the National Consent).

In accordance with the report published by the International Federation for Human Rights, a new wave of political repression began during Mikheil Saakashvili's presidency starting in 2005. The first large group (13 persons) of so-called "Giorgadze supporters" was arrested on political grounds in September of 2006. After that, there was large-scale persecution against various groups participating in the protest demonstrations of November 7, 2007; April 9, 2009 and on May 26 of 2011.[9]

Working on the issue of political prisoners in Georgia began in 2006-2007. A commission was set up with at the initiative of the Georgian Conservative Party and with the participation of representatives of several NGOs, human rights defenders and lawyers. Its purpose was to study the cases of those prisoners who believed they were political prisoners because they participated in mass anti-governmental protest manifestations in 2007-2009. As a result of the study, the commission published a list of political prisoners and by the end of 2011, 87 people were declared to be arrested based on political motives.

[9] Of course it does not mean that everybody was innocent among the people arrested on political grounds during any president's governance and they had not committed crimes at all. However, we will not discuss this issue here because our purpose is to define and single out those characteristic signs which allow us to expose those main criteria, based on Georgian specifics and international standards, which will make identification of status of political imprisonment in our country.

Human Rights Center and the Georgian Young Lawyers' Association also published articles where they described cases of 26 political prisoners and 24 assumed political prisoners respectively. On February 19-25, 2009, the mission of the International Federation for Human Rights (FIDH) visited Georgia to study cases of possible political prisoners. The mission studied eight cases and concluded that partial or complete political motives did exist in the persecution and imprisonment of politically actively persons or their relatives.[10]

As the FIDH underscores, the multiple definitions for political prisoners severely complicates the ability to accurately estimate the exact number of political prisoners. Moreover, a number of prisoners in this category have systematically changed– some of them are released after their prison term expires, pardoned or given early-release and new people are imprisoned.

Georgian law does not contain a section specifically devoted to "political" crimes, although some crimes can be considered political in nature, such as certain violations of civil and political rights, crimes against constitutional and even terrorism-related crimes.

The definition of "political prisoner" also influences the possible number of political prisoners in Georgia. The number of political prisoners cited by civil society representatives varies; there is no common approach in granting political status to a case. The report below is the first attempt of civil society representatives jointly working to agree on common principles with regard to this issue. The report will assist any interested group in identifying which criteria needs to be met in order to designate a person as a political prisoner.

4. Case Law of the European Court of Human Rights

An analysis of the cases allows us to make an assumption based on which criteria the ECHR differentiates the treatment. One of the prohibiting criteria of different treatment is on the basis of political or other opinions.

4.1. Discrimination

As a rule, cases of politically persecuted victims are singled out by using a discriminative approach. It is a common characteristic feature that was discussed on the national level that finally reflects court judgments and other decisions. One of the first cases related to discrimination was the case of *Belgian Linguistics v. Belgium*, in which the ECHR listed the main principles and approaches with regard to Article 24.[11]

> "The equality principle is breached when the difference does not have impartial and reasonable justification. Justification shall be evaluated in relation with goals and results

[10] http://www.fidh.org/IMG/pdf/PolPrisGeorgia.pdf p. 4
[11] Non- Discrimination in International Law, A handbook for Practitioners. 2011 Edition. INTERIGHTS for additional information please visit: http://www.interights.org/document/153/index.html, p. 41

when the principles which are prevalered in democratic society, shall be considered. Differentiation of treatment when enjoying the rights guaranteed by the convention shall not only serve the lawful goal, Article 14 is breached when it is concluded that the principle of proportionality was breached between the achievement of the goal and the applied means."

Aside from Article 14 of the ECHR (which is not comprehensive), Georgia has also ratified protocol No 12 of the Convention, which generally prohibits discrimination including political and other views.

In the case of discrimination, the ECHR has adopted the main principles with regard to Article 14.

The equality principle is breached when unequal treatment does not have impartial and reasonable justification. Article 14 is breached when it is concluded that the principle of proportionality was breached between the achievement of the goal and the applied means.

In cases where a state carries out discriminative actions due to political or other opinions, the court relies on the following principles:[12]

1. Whether unequal treatment really occurred or not
2. Whether unequal treatment impacts the substantive rights guaranteed by the Convention
3. Whether unequal treatment serves a legitimate goal
4. Whether applied means are proportional to the legitimate goal to be achieved
5. Whether the level of ill-treatment exceeds the freedom which was granted to states when using the convention.

4.2. Freedom of Assembly and Association

A discriminative approach occurs mainly in cases where people have differing political views and opinions. Freedom of assembly and association, guaranteed by Article 11 of the European Convention, is significantly connected with political activities. As such, politically active people relatively often become victims of violations of the rights guaranteed to them by this article. The European Court believes that freedom of political opinions and political associations is one of the most significant pre-conditions for the existence and functioning of democratic society.

However, Article 11 protects the right to assemble when there is a real risk of this right being violated on account of counter-demonstrators and when assembly organizers cannot control the assembly because of expected violence.[13]

[12] Right to assembly and association in accordance to European Convention on Human Rights (Article 11) Organization Interights, manual for lawyers. Published with the support of Open Society Institute, 2011. For additional information please visit: http://www.interights.org/document/108/index.html p. 33

[13] Christians against Racism and Fascism v. the United Kingdom.

The first parts of Articles 9, 10 and 11 of the European Convention list those values. They consist of:

2. Freedom of thought, conscience and religion; this right includes the freedom to change his religion or belief; and freedom– either alone or within the community with others and in public or private– to manifest his religion or belief in worship, teaching, practice and observance;
3. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by a public authority and regardless of frontiers.
4. Everyone has the right to freedom of peaceful assembly and to freedom of association with others.

The aforementioned rights are not absolute and they might be restricted by the state;[14] "in the interest of national security or public safety, or for the prevention of disorder and crime, or for the protection of health and morals, or for the protection of the rights and freedoms of others."

According to the ECHR's clarification, the Convention views national laws and international agreements implemented in domestic law – both written and unwritten laws - in the sense of national legislation

The most vivid examples of unwritten laws are court judgments or precedents (the court has received this authority from the state). As such, precedents wield the same power as laws in some CoE member states. According to the Law of Georgia on Normative Acts, international conventions and agreements have superior legal authority on the territory of Georgia only after the Constitution of Georgia, Constitutional Law and Constitutional Agreements (Concordat).

"The European Court uses the phrase "estimated by the law" when referring to the word "law"; this includes the written (statutes) and unwritten laws[15] that are in existing practice in the country and are being implemented by state bodies.

The restriction of rights implemented by the state shall conform to convention requirements and several criteria shall be met for that purpose; namely:[16]

Restriction shall be envisaged by national law:

a) The law, which enacts restriction, shall be available;
b) The law, which enacts restriction, shall be clear (foreseeable); restriction shall not have one or several legitimate purposes. Restriction is necessary for democratic society;

[14] Right to assembly and association in accordance to European Convention on Human Rights (Article 11) Organization Interights, manual for lawyers. Published with the support of Open Society Institute, 2011. For additional information please visit: http://www.interights.org/document/108/index.html p.32
[15] Handyside v. the United Kingdom. for additional information please visit: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57499 (application # 5493/72) Judgment of December 7, 1976
[16] Malone v. the United kingdom for the additional information please visit: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57533 application #8691/79 judgment of August 2, 1984

a) It should exist as an urgent public necessity;
b) Restriction shall be proportional to the goal the state wants to achieve via this restriction.

However, regulation of the restriction by the law does not satisfy the requirements of the Convention. The Convention has the following requirements to the law, which restricts rights:

1. Law shall be fair;
2. Law shall be available;
3. Law shall be clear.

If a right is restricted due to incorrect or irrelevant convention practice and is implemented by irrelevant state bodies, not reflecting the legitimate goals in accordance to the Convention's requirements, it is also a violation of rights. Any action of state bodies shall be regulated by the law, and the decision shall be made by an authoritative person. Also, the law shall list the procedures that will allow a citizen to appeal against the actions and decisions of state institutions.

In accordance to the Convention, "availability" of the law in the context of rights restrictions, is defined as the ability of citizens to acknowledge and realize the essence of the law within a reasonable period of time after the law is adopted within the estimated frames; citizens must also be able to receive clarification of this law from competent persons.

"First of all, the law shall be adequately available: a citizen shall have the opportunity to receive law clarification in the case of necessity, which will be used with regard to a particular case in relevant conditions."

"On the other hand, this norm shall not be perceived as a law (in the notion of the Convention), unless it is clear enough for a citizen to be able to regulate (conform) his action to it."[17]

When evaluating the proportionality of a state's action, the European Court considers:

1. How proportional the restriction of human rights by the state was to urgent public necessity;
2. How legitimate the restriction of rights is with regard to the goal the state wants to achieve and whether it conforms to and meets convention requirements.[18]

This court has already rendered a judgment in the case of *Ramishvili and Kokhreidze v. Georgia* (No. 1704/06, 27.01.2009), which concerned the legality and conditions of the defendants' preliminary detention. The court found that there were violations of Article 3 of the European Convention on Human Rights on account of the applicants' detention conditions in the overcrowded cells of Tbilisi prison No. 5 and because the applicants– in the court's own words (par. 101) – were "well-known and apparently quite harmless persons." In addition, they were held in a

[17] Handyside v. the United Kingdom. For the additional information see: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57499 (application # 5493/72) Judgement of December 7, 1976
[18] Golder v. United Kingdom. For additional information see: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57496 (application #4451/70) Judgement of February 21, 1975

metal cage in the courtroom where the case against them was heard. The court also found a violation of Article 5 par. 1(c) of the Convention, citing the lack of a court order authorizing the detention of the applicants between November 27 of 2005 and January 13 of 2006, i.e. for more than six weeks.

The violation of Article 5 paragraph 4 of the Convention was found in the fact that the applicants' appeals against their detention orders were not considered in due time.

However, the applicants' allegations under Articles 10 (freedom of expression) and 18 (the limitations on the restrictions on rights) of the convention were dismissed in the court's admissibility decision of 27 June 2007. The court decided that the criminal prosecution against the applicants was not in violation of those convention provisions. For this reason, Georgia's authorities tend to diminish the importance of the decision and argue that the Article 3 issues no longer exist, since Tbilisi prison No. 5 has since been demolished.[19]

Further preliminary detention cases, including *Topuria v. Georgia* (no. 14694/07) and *Davitaia v. Georgia* (no. 14001/07), were communicated to the Government of Georgia on January 18 of 2008, and the case of *Talakhadze v. Georgia* (no. 40969/06) was communicated on January 22, 2008. All other cases already lodged with the court are pending at the pre-communication stage at the time of writing.

5. Criteria of international organizations – Council of Europe and Amnesty International

5.1. Criteria of the Council of Europe

On June 26, 2012, the Parliamentary Assembly of the Council of Europe (PACE) passed a resolution which enacted the below-listed criteria pertaining to political prisoners.[20]

PACE calls upon every member state to repeatedly study cases of alleged political prisoners under the criteria worked out by the Council of Europe and to release or repeatedly attempt to, adequately treat similar prisoners.

In 2000, when discussing the accession of Azerbaijan and Azerbaijan to the Council of Europe, the PACE became particularly active in discussing the issue of political prisoners.

In 2001, the Secretary General of the Council of Europe selected a group of experts and mandated them to work out the necessary criteria to identify the alleged political prisoners in Armenia and Azerbaijan. These criteria were adopted on May 3, 2001 and were used in 2001-2004.[21] Although

[19] FDIH's Interviews with Tamara Chergoleishvili, 23 February 2009, and Levan Gabunia, February 2009.
[20] http://assembly.coe.int/Communication/2012-06-26_ENpressajdoc21.pdf
[21] SG/Inf (2001)34 cases of political prisoners in Azerbaijan and Armenia (October 24, 2001)

the group of experts did not study the situation in Georgia, we can use their criteria with regard to cases in Georgia.

In accordance to the October 24, 2001 Document of the PACE (SG/Inf):[22]

A person deprived of his or her personal liberty is to be regarded as a "political prisoner":

> **a.** if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR)– in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;
> **b.** if the detention has been imposed for purely political reasons without connection to any offence;
> c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;
> **d.** if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,
> **e.** if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities.[23]

Burden of Allegation

The allegation that a person is a "political prisoner" must be supported by *prima facie* evidence; it is then for the detaining state to prove that the detention is in full conformity with the requirements of the ECHR as interpreted by the European Court of Human Rights in so far as the merits are concerned, that the requirements of proportionality and non-discrimination have been respected and that the deprivation of liberty is the result of fair proceedings.[24]

So, declaring a person to be a political prisoner does not discharge them from criminal liability and does not morally evaluate his action (unlike the prisoners of conscience). It means, declaring somebody a political prisoner does not give us a moral right to request his/her prompt and unconditional release. We separately categorize cases where there is a basis for alleged politically motivated persecution. With it, we want to underscore that these cases deserve particular attention because in cases of political motivation, the possibility of holding an unfair trial is much higher.

What the 2004 Resolution # 1359 of the Parliamentary Assembly of the Council of Europe states about the criteria of political prisoners for political prisoners in Azerbaijan:

- Before detention, a person was politically active and with his imprisonment the government received political benefit;

[22] Authors: Stefan Trechsel – former president of European Commission of Human Rights; Evert Alkema- member of state council of Netherlands, former member of the European Commission of Human Rights, Alexander Arabadjiev –former judge of the Constitutional Court of Bulgaria and former member of the European Commission of Human Rights.

[23] "and this appears to be connected with political motives of the authorities."

[24] SG/Inf (2001)34, Cases of alleged political prisoners in Armenia and Azerbaijan (24 October 2001).

- The person consciously or unconsciously insulted senior officials of the government;
- Inadequate and disputable arguments became the grounds for the individual's imprisonment and there is a well-grounded assumption that witness testimony is fake and was used as a basis for his/her detention;
- The prisoner is either a relative or friend of a person, who carries out active political activities and there is grounded suspicion that he/she was arrested on those grounds.[25]

The criteria set by the group of independent experts from the CoE were used in the report of the FIDH. Other experts used two more criteria– the political activity of a person and arbitrary criminal persecution (arbitrary detention).

These two criteria coincide with the criteria set by Amnesty International. Specifically, the case contains a "visible political element," or "the government does not ensure a fair trial compliant with international standards on the case."

The [alleged political prisoner's] relation with political activity is the first and most significant criteria where the "alleged political prisoner" is a person, whose "fundamental guarantees" were breached. These guarantees are reflected in the criteria (a); besides that, the presence of "only political reasons" is also a guarantee that is considered in criteria "b" and the presence of "political motives" from criteria "c", "d" and "e".

Large interpretation of the first criteria is needed with regard to cases where a person's detention might be related to the political activity of his/her close relative.[26] As a result of the interpretation of this criterion, this person might be evaluated as an example of being kept hostage.

The second criterion – unfair procedures – magnifies criteria (b), (c), (d) and (e) due to the motivation involved. For example, Georgia's public defender, while recognizing the existence of political prisoners, at the same time emphasizes the role of procedural violations as evidence of political motives. "Some had drugs planted on them, others arms. […] It is clear that all are political prisoners. Our investigation uncovered many procedural violations in the way cases were handled."[27]

The CoE's criteria cover virtually all aspects of politically motivated arrests:

The person did not commit any criminally punishable act whatsoever, and the case was entirely fabricated – **criterion (b).**
The person did commit a crime, but the punishment was disproportionately severe – **criterion (c).**
The charge is a mixture of real and fabricated crimes – **a blend of criteria (b) and (c).**
The charge is unfairly handled by investigators and courts – **criterion (e).**
The person is incarcerated under exceptionally difficult conditions in comparison with other

[25] https://wcd.coe.int/ViewDoc.jsp?id=232775&Site=COE
[26] Ex. Nora Kvitsiani, sister of former governor Kodori Gorge Emzar Kvitsiani.
[27] http://www.kavkaz-uzel.ru/articles/128590/

prisoners – **criterion (d).**[28]

There is therefore no fundamental distinction among the various criteria used to define the notion of "political prisoner;" the CoE's criteria, however, are more detailed, and they are well argued in the CoE panel's 2001 reports.

The criteria of the above organizations all have in common the importance of *prima facie* evidence of political motivation when it comes to defending a presumed political prisoner. If the defense has not presented proof of political motivation, then unsupported assertions – such as "this person was arrested at a political rally and therefore cannot be a drug user" or "this person belonged to an opposition party and thus cannot be a criminal" – will not be acceptable.

Such evidence does not necessarily have to be directly related to the official charge, since the political motivation may be hidden and not reflected in the indictment or verdict. Theoretically, such evidence can be presented as part of the defense during trial, so it has to meet the same standards as any other evidence presented in a criminal trial.

In particular, it must be plausible and not subject to concerns about its genuineness, its source or the circumstances under which it came into the defense's possession. Oral and/or written victim/witness/expert testimony and other such documents are acceptable.

Specifically, the FIDH found the following to be acceptable forms of evidence: interviews with the convicted parties' lawyers and family members; court decisions and translations of such decisions.

The task of compiling preliminary evidence is much easier if the political prisoner has a lawyer and has already applied to the ECHR, either through this lawyer or independently; such was the case in most of the eight cases we examined. This meant that evidence of alleged violations of fundamental freedoms and abuses of the law had already been compiled and systematized.[29]

5.2. Amnesty International

According to Amnesty International's definition, a political prisoner can be a person who committed criminal offences with political motives or within a clear political context. In addition, it is noteworthy that the political prisoner is not always a completely innocent person. In some cases, political prisoners are criminals but since they committed a criminal offence spurred on by political motives, punishment shall not be irrelatively severe due to the political goals of the government.

In order to recognize a person as a political prisoner, his imprisonment shall be completely or partly politically motivated. Amnesty International uses the term political prisoner with wide

[28] See: After the Rose, the Thorns: Political Prisoners in Post-Revolutionary Georgia," FIDH, Human Rights Center (HRIDC) p.6. http://humanrights.ge/admin/editor/uploads/pdf/georgie528a2009.pdf

[29] See: After the Rose, the Thorns: Political Prisoners in Post-Revolutionary Georgia," FIDH, Human Rights Center (HRIDC) p.6. and http://www.nplg.gov.ge/gwdict/index.php?a=term&d=6&t=5867 (15.03.2012)

interpretation in order to cover all cases with clear political context.

Supporters of Amnesty International's definition of the term political prisoner believe that being a political prisoner is not a privilege or outstanding status, so Amnesty International does not call for the release of all political prisoners within this definition, nor does it call on governments to provide political prisoners special treatment. Governments are, however, obliged to ensure that such prisoners receive a fair trial in line with international standards.

Amnesty International believes political prisoners are: [30]

1. A person arrested without being charged with a criminal offence during political turmoil, demonstrations or public disobedience and if: a) he is detained because of expressing his opinion, or opposing the government but did not use any form of violence, b) is arbitrarily arrested because he/she is associated with a particular group.

2. A person who belongs to the aforementioned criteria and who was later charged with a criminal offence based on clearly fabricated evidence. A person who belongs to both mentioned categories and is accused and judged without a fair trial and the relevant judiciary procedures.

3. A person who is arrested without being accused of participating in any violence, but is accused and/or suspected of being a member of any group that is known to exercise violence acts against the state.

Amnesty International's definition of a political prisoner:

"A political prisoner is any prisoner whose case has a significant political element: whether the motivation of the prisoner's acts, the acts in themselves, or the motivation of the authorities[31] is quite broad to accept as a basis for our definition. Namely, this definition unifies not only people busy with political activities, but those who have never been involved in politics. We can cite an example of the preventive repression of people during occurring during Soviet times of those who belonged to noble families or clergymen or specific nationalities (Chechens, Muslim Meskhs and so on). Although the aforementioned people halted all types of political activities due to the fear of repression, they could not escape repression.

Amnesty International's definition does not provide exceptions for those people who have committed politically motivated criminal offences. According to this definition, regardless of the severity of the committed crime, if a political context is mentioned in his crime, he is a political prisoner. Nothing is said about the justification of the punishment in this definition – human rights defenders are obliged to evaluate the compliance of the judiciary procedures conducted against the international requirement criteria for a fair trial and judgment with the committed criminal

[30] http://www.amnesty-volunteer.org/aihandbook/ch3.html#Politicalprisoners
[31] http://www.amnesty-volunteer.org/aihandbook/ch3.html#Politicalprisoners

offence. A prisoner who serves a prison term based on a lawful and fair verdict, according to this definition, is a political prisoner like an arbitrarily and unfairly convicted person. Another point is that in cases of lawful and fair judgment, there is no basis to revise the case.

In accordance to the Amnesty International definition, a prisoner of conscience is a person who is imprisoned because he peacefully demonstrated his political, religious or scientific affiliations, but did not use violence and did not popularize violence. As a rule, Amnesty International grants the status of "prisoner of conscience" to a person.

6. International and National Reports on Political Prisoners in Georgia

Recently, particularly since the protest demonstrations that took place in the fall of 2007, Georgian and international society have started active discussion on politically motivated persecution in Georgia. Several reports were prepared on this issue. In some reports, this issue was discussed alongside other problems of Georgian justice. In this chapter we will review several international and national reports.

We would like to underscore that reports and concrete cases mentioned in this chapter are not exhaustive. We can state that other documents also discuss politically motivated convictions and examples of those cases are mentioned. However, since we could not discuss all reports, we reviewed only the most important and recent reports, as well as the cases mentioned in them.

We would like to emphasize that there might be other cases with regard to which society has reasonable suspicions of politically motivated convictions or detentions, but we will only mention those cases which were discussed in the reports indicated in this chapter.

6.1. Report of Council of Europe Commissioner for Human Rights Thomas Hammarberg32

In this trend, we should underline the 2011 report of the CoE Commissioner for Human Rights Thomas Hammarberg about the human rights situation within the Georgian judiciary system.

A separate chapter is dedicated to the selective justice covered in the report. It states that the commissioner has received a number of communications from various persons in Georgia who claim that they have been prosecuted due to their (or their relatives') political beliefs and participation in opposition protests and similar activities. In addition, Georgian human rights defenders and lawyers provided the commissioner with lists of persons allegedly sentenced on political grounds– most of them participants in the opposition protests which took place in November 2007 and in the spring of 2009. During his visit, the commissioner personally visited

[32] Report of the Council of Europe Commissioner for Human Rights Thomas Hammarberg *Administration of justice and protection of human rights in the justice system in Georgia, Strasbourg, June 30, 2011*

three prisoners – Vladimer Vakhania[33], Merab Ratishvili[34] and Shalva Goginashvili[35], who believe they were arbitrarily convicted.

As a result of information collected on these and other cases, which were related to the violation of the right to a fair trial, the commissioner underscored the following significant problems in connection with the implementation of criminal justice in his report:

> Criminal proceedings were launched without securing the requisite minimum of incriminating evidence; the investigative authorities did not take all the reasonable steps available to establish all the relevant circumstances of the alleged crime; in cases related to the illegal possession of weapons and drugs, procedural violations were often observed during the search, in particular, the failure to ensure the attendance of witnesses, which call into question the lawfulness of the search and consequently, the legal admissibility of the seized evidence; during the trial, courts allegedly refused systematically the defense's motions to call witnesses to the court and sometimes based their decision solely on police testimony, etc.[36]

Finally, the commissioner worked out conclusions and recommendations and noted that: "The commissioner has received a considerable number of credible allegations and other information indicative of serious deficiencies marring the criminal investigation and judicial processes in a number of criminal cases against opposition activists. This casts doubt on the credibility of the charges retained and on the final convictions."[37]

Based on the aforementioned findings, the commissioner made significant recommendations to the Government of Georgia. First of all, he urged the government to respond in a clear and transparent manner to the legitimate concerns of society related to these cases. Vigorous measures are needed to ensure that legal safeguards are observed and that the procedural rights of the defendants are protected in all stages of the criminal proceedings.

It is noteworthy that the report underlines significant systemic problems with regard to criminal justice and for their solution; the commissioner urges to take urgent measures and provide an adequate response to the problems detected in the criminal cases listed by him.

---

[33] Founder of the opposition political party was sentenced to 3.5 years of prison under the charge of illegal storage of firearms and interference in journalistic activities.

[34] Businessman and opposition supporter Merab Ratishvili was arrested before November 2007 protest demonstrations and was sentenced to 8-year-imprisonment for illegal storage of narcotics.

[35] Was arrested during the incident between police officers and demonstrators in Purtseladze Street during protest demonstrations in spring of 2009. He was charged for the attempt of police officer's murder and hooliganism. He was sentenced to 15 years imprisonment.

[36] See **Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe "***Administration of justice and protection of human rights in the justice system in Georgia" June 30, 2011 Strasbourg. Chapter IV, Sub-Paragraph 1, Paragraph 82*

[37] See **Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe "***Administration of justice and protection of human rights in the justice system in Georgia" June 30, 2011 Strasbourg. Chapter IV, Sub-Paragraph 1, Paragraph 84*

6.2. Reports of US State Department on Human Rights

A special chapter is dedicated to the issue of political prisoners in the 2008,[38] 2009[39], 2010[40] and 2011[41] Reports on Human Rights Practices published by the US State Department. The 2010 Report singles out one significant trend – as different parties allege, activists of opposition political parties were arrested mostly under the charge of the illegal possession of firearms and narcotics and those detentions occurred during protest rallies in the spring of 2009.[42] The report also focuses on procedural violations related to the aforementioned cases.

According to the US State Department's Report, throughout 2007, two famous cases of high treason were discussed: the case of Irakli Batiashvili and the case of former security minister Igor Giorgadze and his 14 supporters, including Maya Topuria. The report also mentions the Georgian Public Defender's Report from the second half of 2008, where Maya Topuria was named as a political prisoner.[43]

The US State Department's 2009 Report reads: "During the year, law enforcement officers reportedly planted drugs or weapons in order to arrest and charge individuals in a number of criminal cases, many of which were considered politically motivated. The following common factors were present in many of these cases: charges were often only supported by the police officer's testimony; forensic or ballistic evidence to corroborate police testimony was typically not presented in these cases; and police commonly did not conduct searches with a warrant. While such additional evidence was not legally mandated, its absence, especially given allegations of political motivation, raised concerns among observers."[44]

As we see, the US State Department's reports single out some systemic problems in the criminal justice system. Those shortcomings are particularly obvious during the detention of activists of opposition political parties and during the criminal prosecution against them. It is noteworthy that Hammerberg's report also underscored these problems.

6.3. Report of the International Federation for Human Rights

The next report, where the issue of political prisoners in Georgia was discussed, was prepared by the International Federation for Human Rights (FIDH). The organization prepared a special report about political prisoners and political persecution in Georgia.[45] The report was prepared as a result of the FIDH representatives visit to Georgia on February 19-25, 2009. The report discusses cases of detainees from 2007-2008.[46]

---

[38] http://www.state.gov/j/drl/rls/hrrpt/2008/eur/119080.htm
[39] http://www.state.gov/j/drl/rls/hrrpt/2009/eur/136032.htm
[40] http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154425.htm
[41] http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper
[42] http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154425.htm
[43] See. Georgian Public Defender's Report of the second half of 2008. P. 2003

[44] See. US State Department's 2009 Human Rights Report, p. 17-18 http://www.state.gov/j/drl/rls/hrrpt/2009/eur/136032.htm
[45] See report of FIDH After the Rose, the Thorns: Political Prisoners in Post Revolutionary Georgia, 2009
[46] Working on the report, FIDC representatives met lawyers and family members of the alleged political prisoners, talked with human rights organizations and public defender, studied case materials and prepared conclusions on the selected cases according to the aforementioned circumstances. They also met representatives of state institutions.

The report states that the aim of the mission was not to establish a comprehensive list of political prisoners, but to examine key cases brought to the attention of the FIDH in order to answer the question of whether there are political prisoners in Georgia. Furthermore, similar cases were categorized according to their central feature:

1. So-called drug users, i.e. those accused of drug possession.
2. Relatives arrested to punish fugitive family members.
3. So-called conspirators accused of entering into plots to overthrow the government.
4. Businessmen accused of economic crimes.
5. Journalists.[47]

The mission selected eight cases[48] for analysis and they discussed each of them separately. The report provided information about the political and public activities of these people, as well as the law violations and gaps in the criminal cases against them. According to the mission's conclusion, law violations and factual circumstances in the cases provide us ground to evaluate these cases as politically motivated persecution. Specifically, the report states: "The FIDH investigation report concludes that political prisoners exist in Georgia. **Though the report does not provide a comprehensive list of political prisoners, it does aim to illustrate its assessment through eight pilot cases.** These cases mainly demonstrate how some political opponents, funders of the political opposition and the influential individuals linked to the opposition, are arrested and detained after being sentenced in totally- or partially-fabricated judicial cases. The most frequently used charges involve the illegal storage of weapons or drugs, extortion, and attempting to overthrow the government."[49] However, the FIDH report concludes that the aforementioned statement does not mean that every person is completely innocent. Simply, according to the conclusion, political motive was detected in their cases completely or partly.

6.4. Reports of the Georgian Public Defender

Issues of political persecution were discussed in several reports made by the Public Defender of Georgia. For example, the Public Defender's Report in the second half of 2007 states that after the protest demonstrations of opposition political parties, participants and their relatives were frequently arrested under criminal law.[50] The cases of Ioseb Jandieri[51] and Rostom Oniani[52] were

[47] See report of FIDH After the Rose, the Thorns: Political Prisoners in Post Revolutionary Georgia, 2009

[48] Nora Kvitsiani's case (Sister of Emzar Kvitsiani, former regional governor of Kodori Valley, wanted for attempting to overthrow government; court found her guilty for misappropriation other's property, leadership of illegal armed formation and weapon's purchase and possession); Joni Jikia's case (member of the Georgian Conservative Party; court sentenced him for illegal possession of weapon and drugs); Revaz Kldiashvili's case (member of the party for United Georgia, court found him guilty for illegal possession of firearms and use of fake official documents); Shalva Ramishvili's case (court found journalist Shalva Ramishvili guilty for the extortion of money); Maya Topuria's case (relative of Igor Giorgadze and member of the political party Justice; court found her guilty for attempting to overthrow government and illegal purchase-possession of weapon); Demur Antia's case (head of Conservative Party's Zugdidi regional office; court found him guilty for illegally carrying a weapon); Omar Kutsnashvili's case (businessman; court found him guilty for illegal misappropriation of large amount of other's movable property and for production-usage of faked credit cards and tax documents) and Merab Ratishvili's case (businessman, court found him guilty for illegal possession and use of large amounts of narcotics).

[49] See report of FIDH After the Rose, the Thorns:Political Prisoners in PostRevolutionary Georgia, 2009

[50] See, Georgian Public Defender's Report of the second half of 2007, p. 17-18

[51] Accused of illegal preparation, production, purchase, storage, transportation, sending or realization of narcotic substances, its analogue or precursors.

presented in the report to illustrate this general tendency. Both persons participated in the protest demonstrations in the fall of 2007. The report also discusses administrative detentions of opposition party representatives. Moreover, the report emphasizes that representatives of opposition political parties have been frequently detained and fined under administrative law; this usually occurred when protest demonstrations were presumably planned and the political situation was escalating.[53] Two cases – on Merab Gogoberidze[54] and member of the united opposition parties Malkhaz Khizanishvili[55] were discussed in the report. According to the document, both persons were arrested for their political activities.

Cases of political persecution were reflected in the report in the first half of 2008 as well. The criminal case launched against former defense minister of Georgia Irakli Okruashvili occupies a large part in the report. The Public Defender reviewed the 2004 Parliamentary Assembly of the Council of Europe Resolution # 1359 about political prisoners in Azerbaijan. The ombudsman wrote that concrete criteria[56] for political imprisonment were estimated in the document and Irakli Orkuashvili's case meets those criteria.[57]

The report also mentions the cases of Merab Ratishvili and Ioseb Jandieri. Their political activities are discussed and the assumed political motivation behind their conviction is also discussed. The report reads: "In exchange for freedom, Merab Ratishvili was asked to provide [the authorities] with information pertaining to leaders of opposition political parties. Ioseb Jandieri, an active participant of the protest demonstration of November 7, 2007, was very close to senior officials in the government. Despite that, he made a speech at the protest assembly that was perceived as a betrayal and he was revenged on that ground.[58]

The report states that most typical political crime is the offence punishable under Article 353 of the Criminal Code of Georgia. According to this provision, a person is punished for "resisting a police officer or any other representative of governmental institutions, preventing him/her from the protection of public order, to hinder or change his/her activities, also compelling him/her to commit clearly illegal action by violence or threat of violence.[59] The report states that only police officers provided criminal evidence in these cases and other witnesses interrogated by the Public Defender denied all allegation of detainees' having been physically or verbally assaulted by police officers.

The report also speaks about the detention of political opponents under the charge of unlawful possession of weapons and drugs. The cases of three former law enforcement officers were

[52] Resistance, threatening or violence against public security officer or other representative of state institution and hooliganism
[53] See Georgian Public Defender's Report of the second half of 2007, p.12
[54] Arrested for hooliganism
[55] Arrested for disobedience to lawful request or orders of law enforcement officers
[56] See Public Defender's Report of the first half of 2008, p.14
[57] See Public Defender's Report of the first half of 2008, p.12
[58] See Public Defender's Report of the first half of 2008, p.15
[59] Cases of five people were discussed in this context – Zaal Kochladze, Levan Barabadze, Levan Minashvili, Ilia Tsurtsumia, Rostom Oniani who were on the list of political prisoners published by United National Council on February 13, 2008. All of them participated in the November 2007 protest assemblies.

discussed as an example in this context.[60] The report states: "it is very easy to fabricate evidence when conducting operative-investigative and investigative procedures based on the abovementioned articles. This is caused by the fact that a high standard of evidence was not produced for charging a person for this crime."[61]

The aforementioned three cases were evaluated as examples of similar fabrications in the report.

The case of Archil Benidze, a member of the Georgian Labor Party, was also highlighted in the PD report in the second half of 2008. He was accused of legalization of illegal income and receiving a large amount of income. According to the report, there are many gaps in the case that gives ground that Archil Benidze was subject to political persecution as a member of the Labor Party. In Archil Bemnidze's case, inadequate and disputable evidence became the basis for his arrest.[62]

The Public Defender also studied Nora Kvitsiani-Argvliani's case. She was convicted in the creation of an illegal armed group, the unlawful purchase and storage of firearms and military weapons; and the unlawful misappropriation of a large amount of others' goods that were under her legal ownership and supervision.

As a result of the case-study, the report states that the investigator, prosecutor and court did not calculate in a trustworthy manner, Nora Kvitsiani-Argvliani's culpability in the crime. A thorough, impartial and complete investigation was not carried out in the case, the defense side's solicitations on interrogating witnesses were not satisfied and no investigational procedure to determine the circumstances justifying the accused person was conducted. The report states that the chronology of the above circumstances naturally creates suspicion that a purposeful criminal persecution was actually launched against Nora Kvitsiani-Argvliani because of her brother, Emzar Kvitsiani's actions.[63]

The Public Defender also studied the criminal cases of Maya Topuria and Temur Zhorzholiani and others.[64] Topuria was charged with high treason and plotting to overthrow state authority and Zhorzholiani was charged with high treason to overthrow state authority by way of rebellion.) The Public Defender concludes that political motivation is also detected in these cases.

According to the report, the case study revealed many gaps. Guilty judgments on Maya Topuria and others mostly relied on invalid evidence. The court could not prove the guilt of members of Igor Giorgadze's political party Justice and his supporters based on valid evidence.[65]

It is notable that all of the aforementioned cases were discussed in accordance with the 2004 PACE

[60] Revaz Kldiashvili (deputy head of the military police department of the Defense Ministry of Georgia), Davit Tatishvili (head of Tbilisi Isani-Samgori District Department of MIA) and Mikheil Giorgadze (head of Tbilisi Mtatsminda-Krtsanisi District Department of MIA).
[61] See Public Defender's Report of the first half of 2008, p.17
[62] See Public Defender's Report of the first half of 2008, p.15 p/ 197-198
[63] See Public Defender's Report of the second half of 2008, p.201-202
[64] Members of Igor Giorgadze's political party Justice.
[65] See Public Defender's Report of the second half of 2008, p.203

Resolution 1359 (concerning political prisoners in Azerbaijan). After analyzing the case materials, studying the political background and concrete circumstances and based on the criteria from the resolution, the Public Defender concluded that the aforementioned people were politically persecuted.

Finally, we should declare that the Public Defender clearly wrote in his reports about the mass detentions of opposition parties' representatives during the protest assemblies. Every case, discussed in the reports was studied in two directions. On the one hand, it lists those problems reflected in the cases – the lack and untrustworthiness of the evidence, the procedural violations and so on. On the other hand, political context and the political activity of the detainee or his/her family member were also analyzed. After, an analysis was made based on these two factors to evaluate the political conviction of theperson.

6.5. Report of the Georgian Young Lawyers' Association – Legal Analysis of Cases of Criminal and Administrative Offences with Alleged Political Motive

In 2011, the Georgian Young Lawyers' Association (GYLA) carried out the **legal analysis of cases of criminal and administrative offences that contained alleged political motive**. The purpose of the research is to study a specific case and to establish the extent to which political motives could have influenced the pre-trial and court proceedings. This was done by evaluating whether or not the applicable laws and regulations were followed.[66]

The report mainly entails the legal analysis of persons detained/arrested during and following the spring 2009 protest rallies. The report reads that:

"24 cases were selected for the research, including 6 cases involving administrative violation and 18 criminal cases. The cases have been picked from several different regions. Eleven cases involved charges of illegal possession of firearms and drugs, as the number of arrests of protest rally participants and opposition activists on the noted charges was increased during the period. The rest of the cases were selected according to the publicity they had received due to the widely recognized nature of the persons arrested within society and their political activities or due to the political activities of the detained person's friends and family."[67]

According to the research, regardless of the individuality of each case,[68] on the unlawful possession of firearms and narcotic substances, each case had a common tendency. More precisely: operative information was the basis of the launch of the investigation and the search that was never verified. The search was conducted in every case in the regime of "urgent necessity" and without the relevant verification envisaged by the law. During the research, in most cases, witnesses were not invited and only police officers proved the existence of firearms or narcotic substances in these

[66] See research of the Georgian Young Lawyers' Association "legal analysis of cases of criminaL and administrative offences with alleged political motive" 2011

[67] See research of the GYLA: legal analysis of cases of criminal and administrative offences with alleged political motive; 2011. P. 3-4

[68] Following persons were discussed in the research: Merab Katamadze, Mamuka Tsintsadze, Vladimer Vakhania, Gocha Jikia, Tamaz Tlashadze, Davit Gudadze, Roman Kakashvili, Mamuka Shengelia, Edisher Jobava, Zuriko (Mamuka) Chkhvimiani and Merab Ratishvili

cases. During the investigation procedures, the expert examination of crime instruments (firearms, drugs) was not carried out in most cases in the pursuit of proving their possession. Material evidence was not examined by experts during the court procedures either.[69]

In the majority of cases related to firearm crimes, people were found guilty for the purchase of guns although charge-sheets, as well as guilty verdicts, did not provide the time and circumstances of when (if at all) the accused had purchased the firearm, so people were convicted without any evidence.

In other criminal cases[70] discussed in the report, the qualification of action under established articles of the Criminal Code of Georgia raises serious questions. According to the conclusions, "the court did not consider those necessary circumstances, whose estimation was their imperative obligation when qualifying actions under the established articles: intention, motive and purpose. The qualification of the action by a more severe article than it was envisaged by the law was observed, as well as the tendency when action punishable under criminal law was not clearly marked off civil delict."[71]

The research discusses the cases of people arrested under administrative law by police officers during the protest assemblies of June 15, 2009 and August 14, 2010.[72] During the analysis of these cases, the general problems of administrative imprisonment and the Administrative Code were underlined. The report concludes that the discussion of similar cases has a formal character and does not aim at the essential investigation into the facts. For example, the court did not investigate what particular minor hooliganism or disobedience was observed in those cases. The court relied only on police officers' reports and did not clarify why the testimonies of the detainees were not considered. According to the report, detainees were subjected to ill-treatment by police officers during and after detention but those facts were not effectively investigated.

The report comes to the conclusion that legal analysis of cases exposed serious shortcomings in the implementation of criminal liability against individuals who might be considered as opponents of the government due to their or their family members' political and public activities.[73]

Finally, we should note the following in order to summarize this chapter and underline main tendencies:

The main trend is that representatives of opposition political parties were arrested en masse during the politically tense period in the country which saw large-scale protest assemblies of opposition

[69] See research of the GYLA: legal analysis of cases of criminaL and administrative offences with alleged political motive; 2011 p. 4-5

[70] Cases on Levan Gogichaishvili, Melor Vachnadze, Sergo Beselia and Rati Milorava, criminal cases on Neli Naveriani, Davit Zhorzholiani, Kote Kapanadze and Shalva Goginashvili were discussed in the report.

[71] See research of the GYLA: legal analysis of cases of criminal and administrative offences with alleged political motive; 2011 p. 5-6

[72] During protest assembly of June 15, 2009 police officers arrested Dachi Tsaguria, Merab Chikashvili, Mikheil Meskhi, Giorgi Sabanadze and Giorgi Chitarishvili for hooliganism and disobedience to lawful demand of law enforcement officers and were sentenced to 30-day administrative imprisonment. On August 14, 2009 Irakli Kakabadze, Shota Digmelashvili and Aleksi Chigvinadze were arrested and then fined by the court during peaceful assembly at the corner of George Bush and Lech Kachinski streets.

[73] See research of the GYLA: legal analysis of cases of criminal and administrative offences with alleged political motive; 2011p.7

political parties (2007 and 2009). The number of detentions of opposition parties' representatives has significantly increased.

The second trend is that activists of opposition political parties are mostly arrested for the illegal possession of firearms and narcotics. Those cases resemble each other very much and violations are equal in all of them. Additionally, law enforcement bodies and courts use low standards of verification in these cases. As a result, only police officers are used to prove the facts in the majority of cases, search and evidence withdrawal is carried out based on operative information, no additional expertise is provided in the cases, nor does the court request additional valid proof in cases and only police officers' testimonies are enough for the judiciary to pass guilty verdicts whilst other facts prove the opposite.

All three organizations[74] that studied concrete cases exposed blatant violations of material and procedural norms in each case, then analyzed political environment and political activities of the convicted or their relatives/family members and then concluded alleged political motivation of criminal persecution against them.

Finally, it should be noted that the aforementioned tendencies will be considered and it is necessary to adequately respond to the indicated facts[75]. Some of those prisoners, whose cases were discussed in the aforementioned reports, are still in prison. While there are many gaps, violations of material or procedural norms were uncovered in their criminal cases.

7. Georgian Legislation and Political Prisoners

In the chapter bellow we will shortly summarize the acting legal regulations in Georgia that may be related to the issue of political prisoners. Legal regulations mean those crimes/offences under the criminal and administrative codes, which are most urgent because of their frequent usage against alleged political prisoners in the country.

Since there is a common definition of the term political prisoner and Georgian legislation does not contain its definition, the term political prisoner is perceived as an unofficial status that might be used with regard to a person who is under criminal persecution due to his/her political affiliation/activities.

7.1. Criminal Litigation

As for legal norms, Georgian law does not contain a section specifically devoted to "political" crimes, although some crimes can be considered political in nature,[76] such as certain violations of

[74] Public Defender's Office, GYLA and FIDH
[75] Thomas Hammarberg also urged government to have clear and transparent respond to mentioned cases in his report.see. chapter 6.1
[76] See: After the Rose, the Thorns: Political Prisoners in Post Revolutionary Georgia," FIDH, Human Rights Center (HRIDC).p. 6

civil and political rights (Chapter XXIII of the criminal code [CC])[77], certain crimes against public safety and order (Chapter XXX of the CC)[78], certain crimes against constitutional order (Chapter XXXVII of the CC)[79] and even terrorism-related crimes (Chapter XXXVIII of the CC).[80] It is notable that crimes related to drugs or weapons are not political crimes, though reports of international and local organizations prove that during political persecution, criminal prosecution starts under this article.

If in concrete circumstances, the prosecutor's office and court evaluates the action of demonstrators as, for example, blocking an object of special importance (article 222 of the CC)[81], a conspiracy or uprising to alter the constitutional structure by violence (article 315)[82] or a terrorist act (article 323 CC),[83] it might be used with regard to any political manifestations and demonstration (including the Rose Revolution)[84]. We should underline Article 314 of the Criminal Code of Georgia: "Collecting, keeping of the object, document, information or any other data containing the state secret of Georgia or transferring thereof to a foreign country, foreign organization or their representative, or extortion or transference of other information by commission of the surveillance of a foreign state or a foreign organization to the detriment of the interests of Georgia, shall be punishable by prison sentences ranging from eight to twelve years in length."

In similar circumstances, states will label any behavior a political crime that is perceived as a threat to the state's authority and/or continued survival, regardless of whether the threat is real or imaginary. In addition, the threat can be both violent and non-violent. In a similar situation, criminalization of action will result into the violation of human rights and freedoms. The action, which could not ordinarily be evaluated as a crime (for example, committed by other people and in different circumstances), might be considered a crime by the ruling authority.[85]

In Georgian, crimes punishable under the articles of the Criminal Code connected with narcotics and weapons are mostly referred to in the cases of alleged political prisoners. Namely, the illicit purchase, keeping, carrying, production, shipment, transfer or sale of fire-arms, ammunition, explosive material or explosive devices[86], illicit purchase, keeping, of narcotics[87]; purchase of narcotics in large quantity[88] and its attempt[89], purchase-keeping of narcotic substances in

[77] Example: Illegal Interference into Professional Activity of Journalists (article 154); Encroachment upon Right to Freedom of Speech (article 153); Interference into Works of Election or Referendum Commission (article 163); voter-buying (article 164^1).
[78] Example: Storming and Blocking of Television and Radio Broadcasting Establishment or Object of Strategic or Special importance (article 222); blocking of transport communications (article 222); Formation or Leading of or Participating in or funding Paramilitary Units (article 223).
[79] Disclosure of State Secret (article 313); espionage (article 314); Conspiracy or Uprising to Alter Constitutional Structure of Georgia by Violence (article 315); . Sedition to Alter Constitutional Structure under Violence or Overthrow State Authority of Georgia (article 317); Disclosure of State Secret (article 320).
[80] Terrorist Act (article 323); public sedition for terrorist act (article 330^1); funding of terrorist act (article 331^1).
[81] Storming and blocking of television and radio broadcasting establishments or object of strategic or special importance that has disrupted or could have disrupted a normal pace of functioning of such establishment or object, shall be punishable by fine or by corrective labor.
[82] Conspiracy to alter the constitutional structure of Georgia by violence to overthrow the government or grab power,- shall bear legal consequences of imprisonment.
[83] Terrorist act, i.e. explosion, arson, application of arms or any other action giving rise to threat of a person's death, substantial property damage or any other grave consequence and undermines public security, strategic, political or economic interests of the state, perpetrated to put pressure upon a governmental body.
[84] See: After the Rose, the Thorns: Political Prisoners in Post Revolutionary Georgia," FIDH, Human Rights Center (HRIDC). P. 4
[85] http://www.lectlaw.com/mjl/cl024.htm (15.03.2012).
[86] Article 236 Part I and II of the Criminal Code of Georgia
[87] Article 260 Part I of the CC
[88] Article 19, Article 260 Part II-a of the CC
[89]

particularly large quantity[90], illicit possession of narcotics[91] [92]. Presumably, this is due to the fact that arranging crimes under these articles is easier than other crimes and presumably police officers can plant narcotics or firearms in the pockets, houses or cars of the accused.[93]

Crimes punishable under other articles of the Criminal Code of Georgia are also used in the cases of alleged political prisoners. Namely, illegally preventing a journalists from carrying out his/her professional activities, i.e. his/her coercion into spreading or not spreading information[94]; extortion, i.e. claiming other's object or property right or property[95], hooliganism[96], resistance, threat or violence against the protector of public order or other government representatives[97], attempted crime or premeditated murder related to the official activities or discharging of public obligations of the victim or his/her close relative;[98] the neglect of official duty[99], forgery, i.e. taking possession of another's object that has caused substantial damage[100]; the intentional damage to health committed by a hooligan[101] subconscious[102]; misappropriation or embezzlement[103]; leading of a paramilitary unit[104]; the use of a forged documents;[105] misappropriation[106]; conspiracy to overthrow the government;[107] the illegal appropriation or embezzlement of another's movable object in large quantities;[108] forging in order to use or the use of the credit or settlement card[109] [110].

7.2 Administrative Imprisonment

The influential international organization Human Rights Watch (HRW) published the article "Administrative Error: Georgia's Flawed System for Administrative Detention," on January 4, 2012. The 41-page report reflects those acute problems, which, according to the organization's researchers, breaches "the right of the accused to adequate legal procedures." It is noteworthy that administrative liability was opposed on almost every respondent for having participated in protest assemblies of opposition political parties.

Nodari N., 34, who, according to HRW is a Georgian opposition activist, has twice learned from personal experience, in 2009 and in 2011, how flawed the system of administrative detention or imprisonment is in his home country is. In neither instance was Nodari informed of his rights or allowed to call his family. A judge ignored his request to retain a lawyer of his choosing and did not

[90]Legal analysis of cases of criminal and administrative offences with alleged political motive; GYLA, Tbilisi 2011
[91] Article 260 Part III –a of the CC; Article 260 Part II
[92] : After the Rose, the Thorns: Political Prisoners in Post Revolutionary Georgia," FIDH, Human Rights Center (HRIDC).
[93] : After the Rose, the Thorns: Political Prisoners in Post Revolutionary Georgia," FIDH, Human Rights Center (HRIDC).p. 9-10
[94] Article 154 Part II of the CC
[95] Article 181 Part II a and b of the CC
[96] Article 239
[97] Article 353
[98] Article 19 and Article 109 Part I a;
[99] Article 342
[100] Article 180 Part II - b
[101] Article 117 Part II - b
[102] Legal analysis of cases of criminal and administrative offences with alleged political motive; GYLA, Tbilisi 2011
[103] Article 182 Part III of the CC
[104] Article 223 Part I
[105] Article 362
[106] Article 181
[107] Article 315 Part I and II
[108] Article 182 Part II a and d and Article III -b
[109] Article 201
[110] After the Rose, the Thorns: Political Prisoners in Post Revolutionary Georgia," FIDH, Human Rights Center (HRIDC).

inquire about the conditions of the detainee. "My head was cut in two places and it was bleeding. A policeman sitting next to me was helping to stop the bleeding. I felt really bad. My face was all in bruises. The judge never inquired how I sustained those injuries." According to the new report of the HRW, rights of detainees during protest assemblies in Georgia were breached in the cases of a dozen people.[111]

The HRW report highlights some other violations – for example, trials frequently were formality – "trials were perfunctory, rarely lasted more than 15 minutes, and judicial decisions relied almost exclusively on police testimonies. Another problem is that people arrested under administrative law have to serve their terms in temporary detention isolators (TDI) where even minimal hygiene norms are not protected."

HRW believes that 90 day imprisonment is an extremely severe punishment and the state, in the process of the system of reform should consider completely abolishing it. The report underlines that the length of administrative imprisonment increased from a maximum of 30 days, to up to 90 days following large-scale political protests in 2009. HRW also finds it is problem when a person convicted under Georgia's administrative code has less legal rights than one convicted under the criminal code.

According to the recommendation in the HRW report, immediate measures should be taken in order to enable the detainee under administrative law to enjoy his/her basic rights and freedoms.

Georgia's Code of Administrative Offenses, adopted in 1984, is outdated and does not guarantee the rights of detainees.

In July 2011, the parliament of Georgia passed a new administrative code through first hearing where a set of problematic issues and some other issues still remain and which still require revision.

In the political section, administrative imprisonment is mostly used during the protest assemblies held by opposition political parties against activists. In Georgia, cases of alleged political prisoners mostly deal with the following administrative offences – disobedience to the legal demand of law enforcement officers (article 173 of the Administrative Code of Georgia) and minor hooliganism (article 166 of the Administrative Code of Georgia).[112] Citizens, trying to freely demonstrate their discontent to the government or their support for any opposition political party have frequently been arrested for these charges.

The frequency of the usage of administrative imprisonment against demonstrators is alarming. In similar cases, administrative imprisonment is used premeditatedly and purposefully. When minor violations are observed and there is no necessity to charge a person under administrative law, law

[111] After the Rose, the Thorns: Political Prisoners in Post Revolutionary Georgia," FIDH, Human Rights Center (HRIDC).
[112] Legal analysis of cases of criminal and administrative offences with alleged political motive; GYLA, Tbilisi 2011

enforcement officers still apply this law after a detainee is placed in cruel or inhuman conditions.[113]

A similar practice of using administrative imprisonment might create a situation when activists' desires – to freely demonstrate their opinions, will be subdued out of the fear of being severely punished. Presumably, the usage of administrative imprisonment aims to punish activities and the spread of fear, rather than the dispersal of the demonstration. The use of disproportionate power during the dispersal of demonstrations breeds well-grounded doubts and imposing administrative imprisonment on demonstrators when no signs of administrative offences are detected in their action or are detected but administrative imprisonment is not relevant with the offence.[114]

Since incidents of administrative errors go mostly undetected in cases of alleged political prisoners or these errors are not significant, we have doubt that convictions under administrative law really have a purposeful character and only aim to punish demonstrators because of their different political affiliations. So, we can highly assume that those people are political prisoners.

8. Criteria

Political prisoner can be a person who:

a) Was detained, imprisoned or had his/her freedom restricted [115] through the violation of fundamental rights guaranteed by the Constitution of Georgia and/or the European Convention on Human Rights, like freedom of belief, freedom of expression and information, right to assembly and manifestation;
b) Was detained, imprisoned or had his/her freedom restricted only on political grounds and not for committing any particular crime;
c) Was detained, imprisoned or had his/her freedom restricted because of the political activities of his family member, relative or close person;
d) Was found to be an offender, accused due to political motives and whose length of detention, imprisonment and/or restriction of freedom was disproportionate to the committed crime;
e) Due to political motives consisting of more discriminative conditions than other detained, imprisoned or freedom-restricted persons;
f) Was detained, imprisoned or had his/her freedom restricted as a result of an obviously unfair trial that is allegedly linked with political motives of the government.
g) Was detained, imprisoned or had his/her freedom restricted for law a violation or offence that was provoked by political motivation, by the government or/and other interested people.

[113] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11816&LangID=E (08.05.2012)
[114] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11816&LangID=E (08.05.2012)
[115] Detention, arrest of restriction of freedom envisage both criminal and administrative cases. According to Georgian practice, working group concluded it is significant to mention detention, imprisonment and restriction of freedom of a person because both criminal and administrative liabilities are used in practice.