

To the Chairman of Tbilisi City Court
Mr. Vasil Mshvenieradze

Opinion of the Friend of the Court (Amicus Curiae Brief)

Dear Mr. Vasil,

On August 29, 2019, the Public Defender's Office of Georgia, on its own initiative, started to study the materials obtained within the framework of the criminal case and criminal prosecution against Nika Gvaramia, former Director General of Rustavi 2 Broadcasting Company Ltd.

The study of the materials¹ made it clear that charges against Nika Gvaramia are related to the key issues of both criminal and corporate laws. The content of indictment is based on the non-profitability of the business decision made by Nika Gvaramia when he was the Director of Rustavi 2 Broadcasting Company. Conclusion of a contract that is non-profitable for the enterprise and failure to receive the maximum amount of proceeds, according to the position of the Prosecutor's Office, constitutes illegal embezzlement of the property rights of the enterprise.

The personal liability of a director of an enterprise for a decision made by him is a matter well studied in corporate law, unlike criminal law. Accordingly, the present amicus curiae brief describes the nature of disputable action in the corporate-legal context and its relation to criminal liability.

The amicus curiae brief is being submitted within the scope of the authority under the Organic Law of Georgia on the Public Defender of Georgia and I hope that it will assist the court to make a fair assessment of the case and a just decision.

Factual circumstances

According to the indictment, Nika Gvaramia is charged with unlawful embezzlement of property rights committed under aggravating circumstances.²

According to the indictment and case materials, the crime is as follows:

Nika Gvaramia, Director General of Rustavi 2 Broadcasting Company Ltd, used to periodically sign contracts with companies selling the TV company's advertising time to stakeholders. According to the contract signed in 2013-2015, Inter Media LLC, in addition to a small fixed amount, would receive about 5% of the total income from the sale of advertising time, as a bonus, while the rest of the income would be received by the TV company.

¹ According to subparagraph „e” of Article 18 of the Organic Law of Georgia on the Public Defender of Georgia, the Public Defender of Georgia shall have access to the investigation materials upon the completion of the investigation. Accordingly, the mentioned materials were obtained through Nika Gvaramia's lawyer.

² Crime referred to in subparagraphs "a", "d" of part 2 and subparagraph „b” of part 3 of Article 182 of the Criminal Code of Georgia.

The above rule was changed by the contract signed with Inter Media Plus LLC on January 16, 2015. The parties agreed that the TV station would receive a specific amount of proceeds at the beginning of each month regardless of the total amount of proceeds from the sale of advertising time. With this change, the profit earned by the company in the calendar year decreased in the last four months of 2015, which represents the key episode in the present case.

According to the prosecution, the purpose of signing a different contract was to embezzle the property rights of the TV station. The property damage suffered by the company is indicated to be the difference between the amount received from advertising revenue in 2014 - GEL 43 230 509 and the amount received in 2015 - GEL 36 467 000. According to the prosecution, since the advertising market had not shrunk, the company should have received as much revenue as it received during the previous year.

According to the defence, the disputed contract was signed in 2015 for the benefit of the company, to insure against risks and to address expected financial difficulties. The party points out that in the first eight months of 2015, the company was earning about as much as during the previous year, but later, due to the litigation over the ownership of Rustavi 2, they expected a sharp drop in revenues, so they decided to ask for less but guaranteed revenue. In addition, since these risks did not materialize, the old settlement rule was brought back by the 2016 contract and Inter Media Plus returned part of the proceeds received in 2015.³

Thus, the indictment against Nika Gvaramia is based on the assessment of the legitimacy of the managerial decision made by the director of the enterprise. According to the Prosecutor's Office, Gvaramia should not have entered into a contract with a similar content or should have demanded more proceeds from Inter Media Plus LLC.

The director's liability for the managerial decision is one of the deeply studied areas of corporate law, which also has an impact on a person's criminal liability. Thus, we believe that for a thorough examination of the present case, the corporate-legal aspects of the charges filed against Nika Gvaramia should also be analyzed.

Fundamentals of the director's liability

The kind of positive corporate decision-making theory that would accurately dictate when and what decisions should be made by managers is still unknown to the economic and management sciences.⁴ Managers, shareholders and creditors of a corporation equally want the enterprise to be profitable, but they choose different optimal ways to achieve it. Some of them may be careful about the public image, while others may even consider criminal activities.⁵

Therefore, it is necessary to set the limits of liability of directors of corporations, so that they can, on the one hand, make risky but profitable decisions, and on the other hand - stay within the law. This is especially true for directors of limited liability companies, which often use informal contacts and flexibility of the legislative space to achieve their legitimate goal – make a profit.⁶

Limited liability companies exist because they benefit both the company and economy.⁷ If managers were not aware that they may be held responsible only in extreme cases, they would not make risky

³ See Nika Gvaramia's interview script of August 1, 2019

⁴ Brodowski, D., Espinoza de Los Monteros de La Parra, M., Vogel, J. (2014). *Regulating Corporate Criminal Liability*. Cham: Springer International Publishing, 47.

⁵ *Ibid.*, 48.

⁶ Ribstein, L., (1995). *The Emergence of the Limited Liability Company*. *The Business Lawyer*. 51(1).

⁷ Posner, R. (1975). *THE RIGHTS OF CREDITORS OF AFFILIATED CORPORATIONS*. *The University of Chicago Law Review*, 43, 501-502.

decisions that they deem profitable. The principle of limited liability promotes market growth, simplicity of investment and effective operation of the company.⁸

To ensure successful management of the company, the shareholders and directors of the company are protected by the "corporate veil", which excludes their personal property liability. Corporate veil is "immunity", which is related to the principles of a distinct legal entity of a corporation and limitation of liability.⁹

"Piercing the corporate veil",¹⁰ i.e. holding directors and shareholders personally liable, is allowed only in exceptional cases.¹¹

In the case of a director of a company, this is possible in the event of the breach of a fiduciary duty or commission of a crime.¹²

A) Corporate legal liability of the director

The company managers are obliged to conduct activities of the company in good faith and belief that their actions are in the best interests of the company. In corporate governance, the director has two main corporate legal (fiduciary) duties - duty of loyalty and duty of care.¹³ The latter obliges the director to act in the belief that he acts in the best interests of the corporation and with the diligence that an objective prudent third person would have.¹⁴ A lawsuit personally against the director or shareholder shall be granted if he breaches that duty. In addition, directors' liability extends to the entire company and not to any particular shareholder.¹⁵

When lifting the corporate liability veil, attention should be paid to a number of aspects, such as: improper capitalization, non-compliance with corporate governance rules, inaction of directors, lack of reporting records, etc.¹⁶ The principles of personal liability of the director vary in the laws and practices of different states, but only slightly:

The United States

Piercing the corporate veil is recognized as an exceptional mechanism in the United States¹⁷ and it has three cumulative preconditions: dominant position in the corporation, abuse of the corporate form and cause-and-effect relationship.¹⁸ Domination must involve not only advantageous position in terms of shareholding or control of finances, but also its extent must be such as to exclude the existence of a distinct legal entity of the company.¹⁹ The dominant position must be used for fraud,

⁸ Halpern, P., Trebilcock, M., & Turnbull, S. (1980). An Economic Analysis of Limited Liability in Corporation Law. The University of Toronto Law Journal, 30(2), 117-150, 118.

⁹ Hansmann, H., Kraakman, R., Squire, R., (2006). Law and the rise of the firm (asset partitioning and entity shielding). Harvard Law Review, 119(5), 1333-1403, 1337.

¹⁰ In England, along this term, "lifting the corporate veil" is also used, which has similar, albeit not identical meaning, see: *Prest v Petrodel Resources Ltd* [2013] UKSC 34; *Dadourian Group Internationa v Simms* [2006] EWHC 2973, at [686]

¹¹ Ribstein, L., Keatinge, R., (2010). LIMITED LIABILITY COMPANIES. WEST; 2nd edition (2010).

¹² For example, the English law norms on fraudulent and illegal trade, liability under the fraudulent transfers and environmental legislation of the United States, liability under German corporate law, etc.

¹³ Jugheli G., (2010). Capital Protection in a Joint Stock Company, Tbilisi, 249.

¹⁴ Chanturia L., (2006). Corporate **Management** and Managers' responsibilities in Corporate Law, Tbilisi, 319.

¹⁵ Rock, Edward B. (2013). Adapting to the new shareholder-centric reality. University of Pennsylvania Law Review, 161(7), 1907- 1988, 1956.

¹⁶ *Pepsi-Cola Metro. Bottling Co. v. Checkers, Inc.*, 754 F.2d 10 (1st Cir. 1985)

¹⁷ Strasser, Kurt A. (2005). Piercing the veil in corporate groups. (Symposium: The Changing Face of Parent and Subsidiary Corporations: Entity vs. Enterprise Liability). Connecticut Law Review, 37(3), 637-665. 650.

¹⁸ Smith, Douglas G. (2008). Piercing the corporate veil in regulated industries. Brigham Young University Law Review, 2008(4), 1165-1211, 1196-1182.

¹⁹ Ibid.

or to avoid legal or contractual obligations, or to commit other intentional unlawful acts,²⁰ which ultimately becomes the basis for imposing personal property liability.

The corporate veil should be pierced only if it is clear that the company is being used to achieve unjust and unlawful purposes, including to evade legal duties.²¹ The courts of the Delaware state use a two-part test to examine: (1) who was harmed by the action; and (2) who made a personal profit.²²

According to the judicial practice, the plaintiff must prove that the director or shareholder changed the form of the enterprise in such a way that the enterprise was already functioning to satisfy only his personal interests. In order to impose personal liability, it should be impossible to find a distinction between the corporation and its manager.²³ In addition, the director can defend himself if he proves that the action taken was deemed by him reasonable and that he acted for the benefit of the corporation.²⁴

Thus, it is not surprising that most of the derivative suits end in vain due to the complexity of the burden of proof.²⁵

England and Wales

In England and Wales, corporate veil piercing is only allowed when the corporation's independent legal entity is misused.²⁶ According to the practice of the House of Lords,²⁷ the only possible exception to this rule may be the commission of a crime, namely fraud,²⁸ or when creditors or shareholders are misled in any form.²⁹

There were attempts in the 1960-70s to expand the possibility of piercing corporate veil through the doctrine of economic realities, but this possibility was eventually rejected.³⁰

The director may be held personally responsible only in extreme cases – in case of fraud.³¹ Corporate legal liability is established when the director uses the control of the corporation to evade taxes.³²

Germany

The German Durchgriffshaftung doctrine is similar to the U.S. and British laws, which states that corporate veil can only be pierced when an organizational form is misused. This doctrine is typically

²⁰ Cox, J., Hazen, T. (2011). *Business Organizations Law*. West Publishing (3th ed). 127-128.

²¹ Wormser, I. (1927). *Disregard of the corporate fiction and allied corporation problems*. Reprinted in 2000, *Law Classics series*, 55- 56.

²² *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004).

²³ "Such a unity of interest and ownership that the separate personalities of the corporation and the individual, or other corporation, no longer exist." *Great Lakes Overseas, Inc., v. Wah Kwong Shipping Group, Ltd.*, 990 F.2d (7th Cir. 1993), at 996.

²⁴ Jugheli G., (2010). *Capital Protection in a Joint Stock Company*, Tbilisi, 164-166.

²⁵ Freedman, David Amiel. (2016). *Harpooning the corporate whale: A federal maritime treatise on veil-piercing*. *Transportation Law Journal*, 43(1), 27.

²⁶ McArdle, W., & Jones, G. (2013). *Prest v Petrodel resources and VTB Capital v Nutritek: A robust corporate veil*. *Business Law International*, 14(3), 295-297, 295.

²⁷ Until recently, the Supreme Court of the United Kingdom had been known by this very name.

²⁸ *R. v Dimsey and Allen* [1999] EWCA Crim 2261

²⁹ "No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever..." - *Lazarus Estates Ltd v Beasley* [1956] 1 Q.B. 702; [1956] 2 W.L.R. 502.

³⁰ *Adams v Cape Industries plc* [1990] Ch 433.

³¹ *Prest v Petrodel Resources Ltd & Ors* [2013] UKSC 34, 56339 ob.: *R v Sale* [2013] EWCA Crim 1306 605 *McDowell 605 Singh v R* [2015] EWCA Crim 173.

³² *HM Customs & Excise v Hare and Others* [1996] EWCA Civ 1351.

used in the cases of bankruptcy.³³

The German law differs from the legislation discussed above in the distribution of the burden of proof – in particular, directors have to convince the court that they acted in good faith, had proper information and served the welfare of the enterprise.³⁴ As a rule, the personal liability of the director is excluded if he acted in accordance with the lawful decision of the meeting of partners.³⁵

Georgia

According to Article 9 (1) of the Law of Georgia on Entrepreneurs, the persons with managerial rights of the company and members of the supervisory board must conduct the activities of the company in good faith; In particular, they shall take care as an ordinary person of sound mind in a similar capacity and under similar circumstances would, acting in the faith that their action is in the best interests of the company. If they fail to fulfil that obligation, they shall be jointly liable for the damages incurred by the company. The above persons must prove that they did not breach their duties.³⁶

At the same time, according to the case law of the Supreme Court, a majoritarian shareholder, who is represented by a sufficient shareholding, has the right to determine the main direction of a company and exercise the managerial function by holding a meeting of partners and making relevant decisions. This includes the right to make important decisions under Article 47 of the Law on Entrepreneurs, such as decisions on issuance of dividends, profit sharing and company's capital increase.³⁷ In addition, according to the practice of the Supreme Court of Georgia, decisions made by the majoritarian partner through a meeting of partners can only be revoked by the court if it is against law, or if there is abuse of the right.³⁸

Business judgment rule

The business judgment rule is crucial when assessing the breach of the fiduciary duty by the director. The director's personal liability should arise not when the enterprise fails to make a profit, but when the loss is specifically caused by a deliberate breach of the duty by the manager.³⁹

The business judgment rule prohibits the personal liability of directors even if the loss suffered by the company was caused by wrong, unprofitable decisions, but they did not involve gross negligence or intention.⁴⁰ This is a kind of "presumption of innocence"⁴¹ for directors, which protects their decisions from a substantive assessment, if they acted impartially and in good faith and if they had obtained sufficient information when making the decision.⁴² This rule, which is considered universal in Anglo-American law, has been firmly established in German law since the precedent of 21 April 1997.⁴³

A business decision is a managerial decision relating to a future assumption and directors enjoy wide

³³ Alting, C., (1995). Piercing the Corporate Veil, In American and German Law – Liability of Individuals and Entities: A Comparative View. *Tulsa Journal of Comparative and International Law*. 2(2). 187-198.

³⁴ Jugheli G., (2010). Capital Protection in a Joint Stock Company, Tbilisi, 114.

³⁵ *Ibid.*, 117.

³⁶ Judgment No. AS-471-450-2915 of the Supreme Court of Georgia of October 30, 2015.

³⁷ Judgment No. AS-863-813-2015 of the Supreme Court of Georgia of December 17, 2015.

³⁸ *Ibid.*, also see: Judgment No. AS-75-408-09 of the Supreme Court of Georgia of July 2, 2009

³⁹ Chanturia L., (2006). Corporate Management and Managers' responsibilities in Corporate Law, Tbilisi, 65.

⁴⁰ Andenæs, M., & Wooldridge, F. (2009). *European comparative company law*. Cambridge, UK; New York: Cambridge University Press. 486- 487.

⁴¹ Tsertsvadze L., (2013). Duties of directors, according to U.S. (State Delaware) corporate law and corporate law of Georgia. (Comparative Analysis), *Journal of Law*, 1. 266.

⁴² Cahn, A., & Donald, D. (2018). *Comparative company law: Text and cases on the laws governing corporations in Germany, the UK and the USA* (Second ed.). Cambridge: Cambridge University Press. 370-375.

⁴³ ARAG v. Garmenbeck, II ZR 175/95.

discretion in this direction. If, when making a business decision, the director could reasonably assume that, on the basis of the relevant information and for the benefit of the enterprise, he was guided by the necessity of taking reasonable risks, he shall not be held liable for the damage suffered by the company.⁴⁴

In addition, the post factum assessment of a business decision made in the light of specific circumstances of the past is related to difficulties.⁴⁵ Consequently, judges must assess the lawfulness and not the expediency of business decisions. Accordingly, when assessing reasonableness, factors such as directors' experience and qualifications, access to information, complexity of the issue and the need for a quick resolution should be taken into account.⁴⁶

When making a business decision, the director must not have a personal interest in the decision. He should make a decision with reasonable faith, on the basis of sufficient information, in the best interests of the enterprise.⁴⁷ However, even if any of the requirements is violated, the director's personal liability can only be considered in case of gross negligence.

"To allege that a corporation has suffered a loss as a result of a lawful transaction, within the corporation's powers, authorized by a corporate fiduciary acting in a good faith pursuit of corporate purposes, does not state a claim for relief against that fiduciary no matter how foolish the investment may appear in retrospect."⁴⁸

Thus, directors enjoy the business judgment rule when their actions do not go beyond the scope of ordinary negligence.⁴⁹ A similar approach is shared by the Georgian judicial practice. The Supreme Court of Georgia indicates that:

"The duty of care obliges directors to make decisions that will increase the company's profits. Those decisions can be both high-risk and erroneous, but due to the presumption of "business judgement rule", if the manager acts in the belief that his decision was made in the best interests of the company and if when making the decision he was informed to the extent that he deemed sufficient in the given circumstances, the director of the company shall be protected from being held personally liable for the consequences of that decision."⁵⁰

B) Criminal liability of the director

An issue that arises in corporate legal relationship is likely to become relevant in the context of criminal liability. As already mentioned, this happens when the director uses his authority to commit a crime.

The grounds for holding a director criminally liable are as follows: committing a crime in order to make a profit for himself or for the corporation, concluding a fictitious contract and being aware

⁴⁴ Jugheli G., (2010). Capital Protection in a Joint Stock Company, Tbilisi, 112.

⁴⁵ Ibid., 186.

⁴⁶ Gantler v. Stephens, 965 A.2d 695, 705–06 (Del. 2006); Cede & Co. v. Technicolor, Inc., 634 A.2d 345, 360 (Del. 1992).

⁴⁷ Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1983).

⁴⁸ "To allege that a corporation has suffered a loss as a result of a lawful transaction, within the corporation's powers, authorized by a corporate fiduciary acting in a good faith pursuit of corporate purposes, does not state a claim for relief against that fiduciary no matter how foolish the investment may appear in retrospect". - Gagliardi v. TriFoods Intern., Inc., 683 A.2d 1049, 1051. (Del. Ch., 1996).

⁴⁹ Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1983)

⁵⁰ See: Judgment No. AS-1158-1104-2014 of the Supreme Court of Georgia of May 6, 2015. Identical approach is reflected in Judgment No. AS-687-658-2016 of the Supreme Court of Georgia of November 6, 2018. In the recent practices of the common courts, this approach is also repeated in Judgment No. 2/27045-18 of the Civil Cases Panel of Tbilisi City of October 15, 2018.

that he is committing a crime.⁵¹ If the director believes that he is acting for the benefit of the corporation, he shall be subject to criminal liability only if the action committed by him is a crime *in itself*.⁵²

U.S. federal prosecutors enjoy wide discretion in launching an investigation against directors. The U.S. Department of Justice regularly publishes guidelines, according to which, the prosecutor, *inter alia*, must consider adequate alternatives to criminal prosecution.⁵³ Civil proceedings can be undoubtedly considered such an alternative, according to the Georgian judicial practice. For example, the practice of the Supreme Court of Georgia recognizes the creditor's right to demand directly from the director, on the basis of the breach of the fiduciary duty of care by the director.⁵⁴

The above guidelines advise U.S. federal prosecutors to launch criminal prosecution only when the action taken by the director is a crime in itself and there is no effective alternative to criminal prosecution.⁵⁵

The Georgian judicial practice is also noteworthy in this regard. The practice of the Supreme Court of Georgia includes cases where the director of the enterprise literally took home the property of the enterprise.⁵⁶ In this case, civil-legal liability was imposed on him, which is logical, as civil litigation is optimal option in such cases to satisfy creditors or shareholders.

Thus, it is advisable to distance criminal law from corporate actions, as the evaluation of the managerial decision should not, as a rule, be the prerogative of a prosecutor or a judge hearing criminal cases. If the director exceeds his authority or improperly performs his duty, the shareholders and creditors of the enterprise have the right to request satisfaction directly from the director through the mechanism of piercing the corporate veil, which is a common practice in the Georgian reality as well.

Analysis of the present case

The peculiarity of the present case is that the act under consideration (changing the terms of the contract, determining the receivable income) is considered a crime in itself. According to the indictment, the exercise of authority by the director was not a *precondition* for committing another crime (e.g. fraud). According to the Prosecutor's Office, the above was a crime *in itself*, because the director could have brought more revenue to the company, but he did not do so.

As noted, the business judgement rule protects directors from personal corporate-legal liabilities when the action taken by them (1) was not a sole action that had not been agreed with partners (use of a dominant position), or (2) was not aimed at making a personal profit through fraud and, at the same time, (3) notwithstanding the damage suffered, it served the best interests of the corporation in the director's reasonable opinion, as a result of analyzing short- or long-term risks.

Several of the above circumstances are also relevant for imposing criminal liability. In order to find a person guilty, it is necessary for the director to be aware that he was committing a crime, the act committed by him must be criminal in itself and it must be dictated by personal enrichment. However, it is also interesting to note that due to the substantive peculiarities of the corporate-legal decision, criminal prosecution is usually not launched at all if there is an optimal alternative to satisfy the creditor - a civil dispute.

⁵¹ R v Seager and Blatch [2009] EWCA Crim 1303.

⁵² Australian Growth Resources v. Van Reesma (1988) 13 ACLR 261, 272.

⁵³ U.S. Attorney's Manual. Principles of Federal Prosecution, §9-27.220.

⁵⁴ Jugheli, G., (2017). Directors' Liability to Creditors - Comparative Legal Review of the New Court Practice. Review of Georgian Business Law. 18.

⁵⁵ U.S. Attorney's Manual. Principles of Federal Prosecution, §9-27.230.

⁵⁶ Judgment No. AS-306-291-2016 of the Supreme Court of Georgia of May 18, 2016.

The analysis of various evidence in the present case⁵⁷ – disputable contracts, documents obtained, testimonies of witnesses, thematic examination-revision results and other materials makes it clear that a number of important issues remain unanswered, such as:

- whether due attention was paid to the corporate-legal significance of the disputed actions during investigation - including:
 - o the validity of the rule used by the prosecution in determining the amount of damages;
 - o whether the action taken by the director can be considered illegal if he was acting in accordance with the genuine will of the partners;
 - o whether the action taken to insure against future risks, when making a business decision, may constitute embezzlement of property rights and whether there are grounds for overcoming the preconditions set by the business judgment rule;
- whether legal alternatives to prosecution have been assessed (especially given that the investigation was launched on 20 July 2019, while Nika Gvaramia was indicted on 9 August);
- whether there is evidence in relation to the above-mentioned episode of the indictment, indicating that the director acted for his own enrichment,⁵⁸ or whether the non-fictitious and non-criminal nature of the disputed contracts meets the criteria established by international practice and guidelines for launching criminal prosecution.

Given the peculiarities of corporate-legal relationship, it is necessary to clearly answer these questions. The managerial decision made during the management of the company cannot be assessed by ignoring the specifics of the legal status of the director. The assessment of the above issues will significantly assist the court in making an objective and fully substantiated decision in such a complex case.

Conclusion

The analysis of legislation and practices reviewed makes it clear that even damaging decisions made by directors of corporations shall be subject to criminal and even corporate-legal liability only in exceptional cases. The decisions made by directors may even involve making less profit, but serve the best interests of the corporation and short- or long-term risk insurance.

Ultimately, the best interests of enterprises require directors to take business risks. Directors should not be afraid that a business decision made in the past can be considered a crime by the court solely on the basis of its negative consequences,⁵⁹ especially when the action does not show the existence of a dominant position or its abuse and when the decision made by the director can be reasonably explained.

The court should consider the above circumstances in the course of the review of the case and present a reasoned position on issues under consideration, as the resolution of circumstances relating to the indictment against Nika Gvaramia has a direct impact both on the protection of individual rights and freedoms and development of further judicial practice, which is why we are submitting

⁵⁷ About 5 volumes of criminal case materials, specifically relating to the property embezzlement episode of the indictment against Nika Gvaramia.

⁵⁸ This is particularly interesting given that the charges filed imply embezzlement of property rights and not misappropriation.

⁵⁹ Jugheli G., (2010). Capital Protection in a Joint Stock Company, Tbilisi, 186.

this amicus curiae brief.

When making this decision, I was guided by subparagraph „e” of Article 21 of the Organic Law of Georgia on the Public Defender of Georgia and Article 55 of the Criminal Procedure Code of Georgia.

I would like to additionally inform you that in accordance with Article 55 (5) of the Criminal Procedure Code of Georgia, we express our readiness to give oral explanations during the consideration of the case on its merits.

Sincerely,

Nino Lomjaria



Public Defender


