

## Results of Public Defender's Examination of the Court of Appeal's Ruling against Nika Gvaramia

As the public is aware Nika Gvaramia was acquitted of some of the charges by Tbilisi City Court,<sup>1</sup> while he was found guilty in two episodes on the basis of Article 220 of the Civil Code<sup>2</sup> and was sentenced to:

- In the so-called advertisement episode (2015)<sup>3</sup> - for the failure of the company to receive more revenue as a result of changing the terms of the contract related to the advertising sales during the management of the Rustavi 2 TV company, for which he was fined GEL 50,000;
- In the so-called vehicle episode (2019) - for the sale of the advertising airtime of Rustavi 2 TV company for an amount less than the market price, for 3 months, due to personal interest, in order to get a car from the advertising company for his wife. He was sentenced to 3 years and 6 months in prison for the above.

In connection with the so-called advertisement episode, back in 2019, the Public Defender of Georgia filed an amicus curiae brief<sup>4</sup> with Tbilisi City Court, in which, as a result of the detailed review of the relevant national and international norms, she noted that a similar business decision could not lead to criminal or even corporate liability. The decision made by the director may bring less profit, but serve the best interests of the corporation and insure against short and long term risks.

As for the so-called vehicle episode, the Public Defender published the results of the case examination on June 8, 2022 and indicated that, on the one hand, the corporate-legal content was similar to the so-called advertisement episode, which did not contain elements of crime, and on the other hand, there remained key factual circumstances in the so-called vehicle episode without a properly reasoned evaluation.<sup>5</sup>

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<sup>1</sup> According to the ruling of Tbilisi City Court of May 16, 2022, Nika Gvaramia was acquitted of charges filed under Article 362, paragraph 2, subparagraph "b", Article 221, part 3, and Article 194, paragraph 3, subparagraph "c" of the Civil Code.

<sup>2</sup> Using managerial, representative or other special authority in an enterprise or other organization against the legal interest of that organization, in order to gain benefits or advantage for oneself or others, which caused significant damage, -

<sup>3</sup> The charges provided for in subparagraphs "a" and "d" of paragraph 2 of Article 182 and subparagraph "b" of paragraph 3 of the Civil Code were reclassified.

<sup>4</sup> Amicus curiae brief of the Public Defender of Georgia 04.11.2019 N15-11/11857, see:

<<https://www.ombudsman.ge/res/docs/2019110416234655074.pdf>> last accessed: 22.11.2022.

<sup>5</sup> See: <<https://www.ombudsman.ge/res/docs/2022060723090639604.pdf>>

In addition, the Public Defender pointed out that the penalty used by Tbilisi City Court was unjustified and that contradictory positions were presented relating to the use of a fine in one part and imprisonment in another part.

Due to the substantial deficiencies in the administration of justice, the Public Defender applied to the President of Georgia with a request to use the pardon power.<sup>6</sup>

The Public Defender's Office has now examined the ruling of the Tbilisi Court of Appeal and is presenting the results of the examination.

**According to the ruling of the Tbilisi Court of Appeal**, the decision of the court of first instance was changed only in the part of the punishment, and on the basis of Article 220 of the Civil Code (the so-called advertisement episode), instead of a fine, the person was sentenced to 3 years and 6 months in prison. It is true that the actual sentence has not changed as a result of the application of the principle of absorption of penalties, but the above still represents the tightening of penalty from the legal point of view.

The Court of Appeal agreed with the provisions in the ruling of the court of first instance in terms of classifying the action as an offence; in addition, pointing to the difficulties in separating corporate and criminal liabilities was considered groundless by referring to the identification of elements of criminal law in both episodes: intention and personal motive - the purpose of harming the best interests of the company. However, it is not explained what specific evidence helped the court come to that conclusion. The court tried to prove the existence of crime with a more detailed description of the financial data, which, of course, does not automatically mean that the decisions of the manager of the company contained elements of crime under Article 220 of the Criminal Code.

According to the court's explanation, if not the real intention to make the new owner of Rustavi 2 take over a financially damaged company, the company's revenue would have been several millions more. Therefore, the court considered that the crisis management plan did not actually serve to insure against the risks of Rustavi 2.

Regarding this conclusion, it should be said that it was impossible for the director of the company to foresee in 2015 the content of the decisions of common courts (later of the European Court of Human Rights) concerning the replacement of the owner of Rustavi 2. Therefore, only the presence of intention, due to the impossibility of knowing in advance the probable change of the situation in the future, cannot meet the standard of reasoned judgement.

The Court of Appeal, regarding the so-called vehicle episode, points out Nika Gvaramia's interest in receiving a car in exchange for circulating advertisements on Rustavi 2 and considers that offering a low price to Tegeta Motors LLC and receiving much less than the amount indicated in the contract

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<sup>6</sup> Letter No. 15-11/5908 of the Public Defender of Georgia of June 8, 2022.

unmistakably proves his intention to receive a car through financially damaging Rustavi 2. In response to the defence, the court notes that although Nika Gvaramia could receive a bonus and did receive it during the mentioned period, receiving an additional bonus to buy a car would lead to the reduction in cashier's expenses, while the action carried out (at the expense of the company's advertising airtime) would not cause questions among the employees.

It is significant that the court recognizes the possibility that the director of the private company could receive a vehicle as a bonus. Moreover, the issues related to the salary/bonus/supplements of persons employed in legal entities under private law, including directors, is significantly different from the direct and imperative restrictive regulations applied to the public service. Therefore, it remains unclear why the director decided to criminally obtain a car by entering into multilateral contracts instead of getting it as a bonus. In addition, the court indicates that the car was returned to Fresco Media after documents were seized by the investigation. Accordingly, Nika Gvaramia or his wife have not taken the mentioned vehicle into ownership. Thus, despite the extensive presentation of the financial calculation data, the conviction of Nika Gvaramia by the court cannot be considered justified.

Accordingly, the ruling of the Court of Appeal could not give a reasoned answer to the problematic and key issues relating to the conviction, which were indicated in the report and amicus curiae brief of the Public Defender of Georgia.

### **Component in Article 18 of the Convention**

Nika Gvaramia was convicted of making a managerial decision. The use of imprisonment for an action representing a civil legal action in its content is contrary to the principle of legality.

In addition, in the appeal, the defence argued relating to Article 18 of the European Convention on Human Rights (restrictions on the right for political or other purposes that are not permitted under the Convention).

The Court of Appeal (in response to the position of the defence) indicated that the sentencing had nothing to do with the Government's political motive, the criminal wrongdoing was proved by the totality of the evidence obtained in accordance with law and as a result of a fair trial; It also ruled out the goal of interfering with the editorial policy of the opposition media outlet Mtavari Arkhi (Main Channel), neutralizing media manager Nika Gvaramia, and removing him from public and political activities. The court explained the above by the circumstances that the investigation was initiated not by law enforcement agencies, officials or on the basis of statements made by politicians, but on the basis of a statement made by the owner of the Rustavi 2 shares on July 17, 2019 (which was then followed by the statement of the then management), the charges did not stem from political or journalistic activity and 3 people were charged with alleged financial crimes, Nika Gvaramia was not arrested but released on bail, from July-August 2019 to May 16, 2022 (sentencing) there had been no attempt to isolate him from society. According to the court, the defence failed to provide not only the proof of political persecution (despite the fact that the appeal included a number of publicly available

information), but also reasoning or argument to prove that the prosecution's evidence was obtained by illegal means or methods.

The circumstances preceding the investigation, the conviction of the director of a TV company for an action covered by corporate law, the use of imprisonment, the media environment in the country and the content of the statements made by officials indicate the probability of the launch of criminal prosecution for illegal - political or other ulterior motives.

Nika Gvaramia's conviction and imprisonment should be evaluated according to the test introduced by the European Court regarding the violation of Article 18:

- Was there any political or other illegal ulterior motive in the case, which guided the Government? In addition, the above does not mean that there must be only political motive and that there may not be legitimate grounds in the case. When there are several alleged motives, the court should evaluate which - legitimate or illegitimate - motive was decisive in carrying out a specific action;<sup>7</sup>
- Can the political or other illegal motive outweigh the alleged legitimate motive? In this regard, it is necessary to establish that the political component was the predominant motive for the Government's actions.<sup>8</sup> It should be noted that, apart from political ones, the European Court of Human Rights prohibits the arrest or detention of a person on any grounds not permitted by the Convention.<sup>9</sup> Similar ulterior motives can be, for example, obtaining information from a person about an unrelated matter,<sup>10</sup> interfering with person's activities,<sup>11</sup> economic interests,<sup>12</sup> etc.

### *Existence of the political motive*

To prove a political motive, the European Court considers a wide range of evidence. The practice of the European Court allows absolute freedom in terms of establishing a political component (or other ulterior purpose), as well as its predominance, based on any relevant circumstances, direct and circumstantial evidence - be it legislative reforms directed against specific persons or the selectivity of

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<sup>7</sup> Merabishvili v. Georgia [GC], 72508/13, 2017, § 309.

<sup>8</sup> Ibid. § 292.

<sup>9</sup> Ibid. § 288.

<sup>10</sup> See: Gusinskiy v. Russia, 70276/01, 2004, §76; Cebotari v. Moldova, 35615/06, 2007, §53; Merabishvili v. Georgia [GC], 72508/13, 2017, §353; Dochnal v. Poland, 31622/07, 2012, §116.

<sup>11</sup> See: Ilgar Mammadov v. Azerbaijan, 15172/13, 2019, §143; Rasul Jafarov v. Azerbaijan, 69981/14, 2016, §162; Mammadli v. Azerbaijan, 47145/14, 2018, §104; Rashad Hasanov and Others v. Azerbaijan, 7268/10, 2019, §125.

<sup>12</sup> OAO Neftyanaya Kompaniya Yukos v. Russia, 14902/04, 2011, §665; Khodorkovskiy and Lebedev v. Russia, 11082/06 13772/05, 2013, §889.

their practical application,<sup>13</sup> or information provided by human rights organizations regarding the rights situation in the country.<sup>14</sup> Circumstantial evidence implies any information that points to the main facts and suggests the possibility of drawing a single conclusion,<sup>15</sup> for example: the wider political context within which the judicial proceedings took place;<sup>16</sup> evidence indicating that the Prosecutor's Office or court officials had an alleged ulterior motive;<sup>17</sup> evidence that the courts are not sufficiently independent of the executive government;<sup>18</sup> reports of international observers, non-governmental organizations, other persons (even courts of other states);<sup>19</sup> fairness of court proceedings;<sup>20</sup> reasoning of court rulings.<sup>21</sup> For example, in the cases against Azerbaijan, the court drew attention to the apparent correlation between the applicant's blogs and statements made against him by the authorities, and his subsequent arrest.<sup>22</sup> In other cases, the court considered the context in which government officials had branded foreign-funded NGOs as treasonous and then prosecuted activists, including specifically relating to the grants allocated for those NGOs.<sup>23</sup> Statements made by officials are relevant for exposing the ulterior motive only if the judiciary is not sufficiently independent from the executive government.<sup>24</sup>

According to the practice of the European Court, one of the most important proofs of the political motive is the circumstances of the investigation and prosecution.<sup>25</sup>

Accordingly, in order to expose a political motive in the present case, the Public Defender will evaluate several key circumstances of conviction, such as - the circumstances preceding the criminal prosecution, the media environment in the country, the character and content of conviction, and the alleged interest of high officials.

- **Situation before the investigation**

In 2003-2009, when the United National Movement was in power, Nika Gvaramia held high state and political positions (Member of Parliament of Georgia, Deputy Prosecutor General, Minister of Justice,

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<sup>13</sup> *Navalnyy v. Russia* 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14, para. 172.

<sup>14</sup> *Merabishvili v. Georgia* [GC], 72508/13, para 317; *Baka v. Hungary* [GC], 20261/12, para. 143.

<sup>15</sup> *Ilgar Mammadov v. Azerbaijan*, § 142; *Rasul Jafarov v. Azerbaijan*, § 158.

<sup>16</sup> *Merabishvili v. Georgia* [GC], § 322; *Khodorkovskiy v. Russia*, § 257; *Khodorkovskiy and Lebedev v. Russia*, § 901; *Nastase v. Romania* (dec.), § 107.

<sup>17</sup> *Merabishvili v. Georgia* [GC], § 323.

<sup>18</sup> *Merabishvili v. Georgia* [GC], § 324.

<sup>19</sup> *Baka v. Hungary* [GC], § 148; *Merabishvili v. Georgia* [GC], § 317; *Mammadli v. Azerbaijan*, § 95; *Rashad Hasanov and Others v. Azerbaijan*, § 118.

<sup>20</sup> *Merabishvili v. Georgia* [GC], § 325.

<sup>21</sup> *Nastase v. Romania* (dec.), § 107.

<sup>22</sup> *Ilgar Mammadov v. Azerbaijan*, 141-143.

<sup>23</sup> *Rasul Jafarov v. Azerbaijan* §§ 156-162; *Mammadli v. Azerbaijan* §§ 98-104.

<sup>24</sup> *Tchankotadze v. Georgia*, § 114.

<sup>25</sup> *Merabishvili v. Georgia* [GC], 72508/13, para. 333; *El-Masri v. The Former Yugoslav Republic of Macedonia*, 39630/09, para. 151.

Minister of Education and Science),<sup>26</sup> while after the change of government and during the rule of the Georgian Dream, from November 2012 – he was the director of Rustavi 2 TV company (since 2014 - director general). Shortly after that Nika Gvaramia was arrested,<sup>27</sup> then he was released on bail, and finally he was acquitted in 2013.<sup>28</sup> In 2014, information and records were spread about alleged secret surveillance in Nika Gvaramia's office<sup>29</sup> and an investigation was launched.<sup>30</sup> In 2015, the former owner of Rustavi 2, Kibar Khalvashi, reclaimed the company's shares through a lawsuit, the court seized the company's shares and restricted Nika Gvaramia from exercising his authority, referring to the editorial policy of the TV company.<sup>31</sup> The Public Defender assessed the above as interference with the freedom of speech and expression by the court and termed it as completely unacceptable.<sup>32</sup> In 2017, the common courts of Georgia assigned Rustavi 2 to Kibar Khalvashi.<sup>33</sup> The European Court of Human Rights temporarily suspended the enforcement of the decision.<sup>34</sup> According to the decision of July 18, 2019,<sup>35</sup> the European Court of Human Rights did not find a violation of Article 6 of the Convention in the Rustavi 2 case, after which Nika Gvaramia was dismissed from the director's position.<sup>36</sup>

- **Launch of the investigation and creation of a new TV station**

On July 20, 2019, an investigation was launched based on the statement made on July 17, 2019 by Nino Nizharadze, the owner of 9% of shares of Rustavi 2.<sup>37</sup> On July 26, 2019, Nika Gvaramia announced the creation of a new TV station,<sup>38</sup> which was followed by charges<sup>39</sup> filed against him on August 9, 2019. **It is significant that, on the basis of the statement of the owner of 9% of shares of Rustavi 2, within 20**

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<sup>26</sup> See: <<http://www.nplg.gov.ge/bios/ka/00004596/>> last accessed: 01.12.2022

<sup>27</sup> See: 19.12.2012 . <<https://tabula.ge/ge/news/550799-nika-gvaramia-aleko-khetaguri-krtamis-aghebis>> last accessed: 01.12.2022.

<sup>28</sup> See: 14.11.2013 . <<https://www.radiotavisupleba.ge/a/25168417.html>> last accessed: 01.12.2022.

<sup>29</sup> See: 06.05.2014 . <<https://old.civil.ge/geo/article.php?id=28151>> last accessed: 01.12.2022.

<sup>30</sup> See: 09.05.2014 . <https://pog.gov.ge/news/prokuratura-rusTavi-2-is-saqmeze-shualedur-shedegebs-aqveynebs-bedd686d> last accessed: 01.12.2022.

<sup>31</sup> See: 08.08.2015. <<https://old.civil.ge/geo/article.php?id=29605>> last accessed: 01.12.2022. 06.11.2015. <https://netgazeti.ge/news/73039/> last accessed: 01.12.2022 . 06.11.2015. <https://netgazeti.ge/news/73072/> last accessed: 01.12.2022 .

<sup>32</sup> See: 06.11.2015. < <https://www.ombudsman.ge/geo/akhali-ambebi/saxalxo-damcvelis-sagangebo-gancxadeba-telekompania-rustavi-2shi-droebiti-mmartvelebis-danishvnastan-dakavshirebit>> last accessed: 05.12.2022.

<sup>33</sup> See: <<https://www.supremecourt.ge/files/upload-file/other/gadawyvetileba-+news.PDF>> last accessed: 01.12.2022.

<sup>34</sup> See: 07.03.2017. <<https://netgazeti.ge/news/178424/>> last accessed: 01.12.2022.

<sup>35</sup> See 18.07.2019. <<https://hudoc.echr.coe.int/eng#f%22fulltext%22:%22rusTavi%20%22,%22itemid%22:%22001-194445%22>> last accessed: 01.12.2022.

<sup>36</sup> See: 18.07.2019. <<https://netgazeti.ge/news/381589/>> last accessed: 01.12.2022.

<sup>37</sup> See: the judgment of the Tbilisi Court of Appeal of November 2, 2022 p. 184.

<sup>38</sup> See: 26.07.2019. <<https://tabula.ge/ge/news/628444-gvaramia-male-kveqnis-mtavar-televizias-gavaketeb>> last accessed: 01.12.2022.

<sup>39</sup> See: 09.08.2019.< <https://pog.gov.ge/news/brifingi-saqarTvelos-generalur-prokuraturashi-1-1-1>> last accessed: 01.12.2022.

days after the launch of the investigation, criminal prosecution was initiated against Nika Gvaramia against the background that the investigation into the alleged forced transfer of the property rights of the founders of the same company - Davit Dvali and Jarji Akimidze had been unsuccessful since 2012.<sup>40</sup> The mentioned circumstances can be considered as a probable manifestation of the Government's interest in Rustavi 2 TV station. Mtavari Arkhi started broadcasting on September 9, 2019<sup>41</sup> and is one of the top-rated critical channels, which, according to the lawyer, is proved by the increase in advertising revenues.<sup>42</sup>

The mentioned circumstances should be considered and evaluated in the light of the fact that the conviction of Nika Gvaramia and the use of the harshest form of punishment - imprisonment - occurred despite the absence of a reasoned answer to the most important and crucial question in the case (criminal responsibility of the manager of an enterprise due to the managerial decision in the field of corporate law).

- **Public statements by representatives of the Government and the ruling party:**<sup>43</sup>

Statements made by the representatives of the Government and leaders of the ruling party before the start of the civil dispute by Kibar Khalvashi against Rustavi 2 and during the civil proceedings, as well as from the beginning of the broadcasting of Mtavari Arkhi up to now, both during the investigation and after conviction of Nika Gvaramia, unequivocally prove the interest in the activity and content of broadcasting of the TV company, and existence of a political motive towards its founder, director and presenter:

**Bidzina Ivanishvili, the founder of the Georgian Dream ruling party:** *"We want to change the agenda, which is set by Rustavi 2 today",<sup>44</sup> "If you turn off Rustavi 2 today, you won't see anything but growth and reconstruction."<sup>45</sup> "We will not stop trying to introduce a different opinion into Rustavi 2."<sup>46</sup> One can hear only unsubstantiated facts without arguments on Rustavi 2. It would be good to mention the National Movement often instead of Rustavi 2. It is organized by the National Movement, the National Movement is managing all this."<sup>47</sup> "There is no problem, if Rustavi 2 announces and the public already*

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<sup>40</sup> See: <18.06.2019. <https://pog.gov.ge/news/-rusTavi-2-is-damfuZneblebis-qonebrivi-uflebis-iZulebiT-gadacemis-saqmeze-gamoZieba-grZeldeba-da-a-82cbcce2>> last accessed: 01.12.2022.

<sup>41</sup> See: <<https://mtavari.tv/about>> last accessed: 01.12.2022.

<sup>42</sup> See the appeal of the lawyer <<https://www.comcom.ge/ge/yvela-siaxle/televiziebis-sareklamo-shemosavlebi-2022-wlis-pirvel-kvartalshi-113-it-gaizarda.page>>

<sup>43</sup> It is significant that the public statements are referenced in the appeal of the defence, which was studied by the Office and some of them are reflected in the present document.

<sup>44</sup> See: 16.02.2015. <<https://tabula.ge/ge/news/571775-ivanishvili-gvinda-shevtvalot-dghis-cesrigi>> last accessed: 01.12.2022.

<sup>45</sup> See: 23.10.2018. <<https://netgazeti.ge/news/313653/>> last accessed: 01.12.2022.

<sup>46</sup> See: 24.10.2018. <https://netgazeti.ge/news/313688/> last accessed: 01.12.2022.

<sup>47</sup> See: 24.10.2015.< <https://tabula.ge/ge/news/579573-ivanishvili-kargi-ikneboda-rustavi-2-natsvlad-enm>> last accessed: 01.12.2022.

knows that it is a television of a political party, it is not a problem at all, but it should stop lying. It should not deliberately discredit the Government that serves this country and it should not be focused on lies."<sup>48</sup>

**Irakli Kobakhidze, chairman of the ruling party and leader of the parliamentary majority:** *"Nika Gvaramia is a person who specifically framed the November 7 case and specifically framed the murder of Girgvliani for the then Government. This is one of the dirtiest leaders of the National Movement, who is directly responsible for the bloody crimes committed by the National Movement. This person, other representatives of the National Movement and Rustavi 2 can be directly seen as a PR machine of the National Movement."*<sup>49</sup> *"This is a pre-election period, we all know that these TV stations [Formula, TV Pirveli, Mtavari Arkhi] are partisan stations, they have partisan tasks, they are completely oriented to spreading lies, disinformation, this was the plan of your Bolshevik prosecutor director, which will naturally be properly exposed when necessary. It was the plan of perverted Nika Gvaramia, ... etc. The plan of these perverted people";*<sup>50</sup> **"Tell your Prosecutor General, Nika Gvaramia, to leave the Georgian media and Georgian politics."**<sup>51</sup> *"Chuta, Nodar and Gvaramia are not the media. Organizers of yesterday's rally are the leaders of the radical, anti-Christian groups";*<sup>52</sup> *"Since 2012, hundreds of millions have been invested and spent in these three TV stations [Formula, Mtavari, TV Pirveli] belonging to the National Movement... This is black money... I agree with you that it should be investigated. Black money is circulating in these three televisions ... I can assure public with full responsibility that there is black money in these televisions, tens of millions are spent every year on these three partisan televisions."*<sup>53</sup> *"During the period of being in power, the National Movement seized Rustavi 2 before the eyes of the whole society, this party and its partners and lobbyists brazenly and shamelessly claimed that the court unjustly returned the TV station to its rightful owner. .... Everyone is very well aware of the events that had been taking place around Rustavi 2 TV station during the past years. The TV company was first taken away from the rightful owner, and then, when they realized that the court would definitely return it to the rightful owner, they robbed it, and after the publication of the decision of the Strasbourg Court, they "threw it back" to the rightful owner."*<sup>54</sup> *"As soon as Georgian politics is freed from criminals: Saakashvili, Gvaramia and others, we will immediately become a European country. It is organically unacceptable for us that Saakashvili, Gvaramia and others*

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<sup>48</sup> See: 26.04.2015. <<https://tabula.ge/ge/news/574527-ivanishvili-rustavi-2-tabula-tsruoben> > last accessed: 01.12.2022.

<sup>49</sup> See: 31.05.2018. <<https://www.interpressnews.ge/ka/article/496223-irakli-kobaxize-nika-gvaramia-sazogadoebas-radikalizmisken-moucodebs> > last accessed: 01.12.2022.

<sup>50</sup> See: 14.09.202. <<https://mtavari.tv/news/56468-es-iqo-tkveni-bolsheviki-genprokurori-direktoris>> last accessed: 01.12.2022.

<sup>51</sup> See: 29.10.2020. <<https://netgazeti.ge/news/492674/> > last accessed: 01.12.2022.

<sup>52</sup> See: 12.07.2021. <<https://bit.ly/3AvqQWK> > last accessed: 01.12.2022.

<sup>53</sup> See: 15.07.2021. <https://publika.ge/formulashi-mtavarsa-da-tv-pirvelshi-shavi-fuli-trialebs-gamosadziebelia-kobakhidze/> last accessed: 01.12.2022.

<sup>54</sup> See: 17.05.2022. < <https://www.radiotavisupleba.ge/a/31854293.html> > last accessed: 01.12.2022.



are part of Georgian politics today, this is a very sad event".<sup>55</sup> "It can be said that the European Union may not grant candidate status to Georgia because of one criminal who is fighting against the State and who is cursing the Church, who was one of the main creators and ideologues of the 9-year criminal regime, who plays a key role in the polarization of Georgian politics, and who robbed Rustavi 2 of 7 million. This is just laughable and this version is not subject to serious consideration."<sup>56</sup> "Gvaramia has done much heavier things. He, among others, played a big role in the robbery and other calamities that happened between 2004 and 2012... The charge against Gvaramia is much more serious than against Dodon. Both cases involve corruption. As for the period of 2004-2012, Dodon can't even dream of a tenth of the crimes committed by Gvaramia during that period."<sup>57</sup> "Gvaramia was especially distinguished by profanity towards the President, not insults, but profanity. When Gvaramia curses the President, it is not profanity against Salome Zurbishvili, it is profanity against the presidential institution. ... The one who curses the presidential institution, naturally, cannot be pardoned."<sup>58</sup> "This man did a lot of heinous things when he was the Prosecutor General and now he has robbed Rustavi 2."<sup>59</sup>

**The Prime Minister of Georgia, Irakli Gharibashvili:** "Turn on their TV channels, I haven't watched them for two years, and it's really unthinkable to watch these channels - Mtavari Arkhi, TV Pirveli and Formula. ... this is one handwriting, and with these methods they are fighting against the Georgian people... When you watch the propaganda of this depravity, Gvaramia TV, you get the feeling that everything has collapsed, that it is the end of the world, the last day, the day of the fall of the world".<sup>60</sup> For 8-9 years they have been trying to bring chaos, hysteria and anxiety, their TV channels are involved in 24-hour demagogy, circulate lies."<sup>61</sup> "I don't call journalists Putinists, I called the Mtavari Arkhi, Formula and National Movement Putinists. You conditioned Putin's entry into Georgia."<sup>62</sup> "We have to compare the scientific man, Mikheil Chkhenkeli, with Nika Gvaramia, who is the main propagandist of depravity in the country and who was the Minister of Education. ... Of course, these people that I

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<sup>55</sup> See: 27.05.2022. < <https://mtavari.tv/news/86797-rogorsts-ki-kartuli-politika-gatavisupldeba> > last accessed: 01.12.2022.

<sup>56</sup> See: 30.05.2022. <https://www.interpressnews.ge/ka/article/712848-irakli-kobaxize-radikaluri-opoziciis-gegmit-ivnisis-bolos-sakartvelom-ar-unda-miigos-evrokavshiris-cevrobis-kandidatis-statusi-rasac-mohqveba-mgelvareba-nacmozraobis-mier-xelisuplebis-gadatrialeba-da-omshi-chartva> > last accessed: 01.12.2022.

<sup>57</sup> See: 25.05.2022. <<https://mtavari.tv/news/86538-nika-gvaramias-ra-danashaulebits-akvs-chadenili> > last accessed: 01.12.2022.

<sup>58</sup> See: 17.05.2022. <<https://tabula.ge/ge/news/686163-kobakhidze-ar-sheidzleba-misi-shecqaleba-vints> > last accessed: 01.12.2022.

<sup>59</sup> See: 20.05.2022. <<https://tabula.ge/ge/news/686330-kobakhidze-viola-pon-kramoni-aris-kriminalebis> > last accessed: 01.12.2022.

<sup>60</sup> See: 01.09.202. <<https://www.interpressnews.ge/ka/article/672081-irakli-garibashvili-roca-uqureb-am-martlac-garqvnilebis-propagandas-gvaramias-televizias-gichndeba-gancda-rom-qvelaperi-daingra-samqaros-agsasrulia-da-bolo-dgea-msoplios-dacemis-dge/> > last accessed: 01.12.2022.

<sup>61</sup> See: 11.09.2021. < <https://bit.ly/39l7OXn> > last accessed: 01.12.2022.

<sup>62</sup> See: 08.08.2020. <[https://formulanews.ge/News/34849?fbclid=IwAROF-huoTO7Kug\\_zc12Ja6Npext7kdCF4S00N3Rh15eNHg0zw6WnBo1QaBE](https://formulanews.ge/News/34849?fbclid=IwAROF-huoTO7Kug_zc12Ja6Npext7kdCF4S00N3Rh15eNHg0zw6WnBo1QaBE) > last accessed: 01.12.2022.

have named, under the leadership of Saakashvili, have once already destroyed the country and lost our territories. We will not allow them to do this again."<sup>63</sup> "I am the Prime Minister of Georgia. Gvaramia was the director of a private company, who, as far as I know, stole money or bankrupted the company. Why do you now compare him with me and my family members, and why are you surprised that the Prime Minister's family is using a state car?"<sup>64</sup>

**The Former Minister of Energy and former Vice-Prime Minister, incumbent Mayor of Tbilisi Kakha Kaladze:** "Rustavi 2 continues its 9-year shameful work and propaganda of filth. This must end once and for all in the country, and I promise population that it will definitely end and all criminals involved in this filth will be held accountable."<sup>65</sup> "Rustavi 2 is deliberately propagating lies, it is a machine that has been based on lies over the years, which was used by the previous Government very well for its own purpose."<sup>66</sup> "I would like to call on all state agencies not to leave any lies of this channel without reaction. The public hears these lies and many people think they are true. There must be a response to all these lies... These attitude and approach are categorically unacceptable and you will always be hit in the nose for that."<sup>67</sup>

**Former Minister of Justice and incumbent Minister of Culture Tea Tsulukiani:** "The Ministry of Justice, under my leadership, defeated Nika Gvaramia in the European Court and he was expelled from Rustavi 2 after this very successful dispute";<sup>68</sup> "When I was litigating in the Strasbourg Court, I saw that his main goal was to hurry up and, at best, to bankrupt Rustavi 2 so that to make it pointless to return this company to its rightful owner. He did not quite manage to do it, but he managed to embezzle property rights worth up to GEL 7 million for the benefit of the company that he has founded and for his own personal interests. If this is not a crime, then I don't know what can be called a crime. Therefore, all kinds of complaining that we have lost such a good boy is pointless, legally baseless."<sup>69</sup> "The destructive role is played not by Bidzina Ivanishvili, but by your already imprisoned leader. Of course, he will not be released until everyone has served the sentence that they should serve. Let the President decide, and then everyone will be held accountable for the decision, of course. ... If she makes an unjust

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<sup>63</sup> See: 01.09.2021. <<https://mtavari.tv/news/55071-nika-gvaramia-aris-garqvnilebis-mtavari>> last accessed: 01.12.2022.

<sup>64</sup> See: 21.05.2022. <<https://mtavari.tv/news/86105-me-premieri-var-gvaramia-kompaniis-direktori-me>> last accessed: 01.12.2022.

<sup>65</sup> See: 11.05.2014. <<https://tabula.ge/ge/news/563188-kaladze-rustavi-2-isev-agrdzelebs-sibindzuris>> last accessed: 01.12.2022.

<sup>66</sup> See: 16.07.2014. <<https://netgazeti.ge/news/33522/>> last accessed: 01.12.2022.

<sup>67</sup> See: 12.12.2018. <[https://rustavi2.ge/ka/news/120946?fbclid=IwAR19WFiWd3m-P9uNs4f7LIJ69sZZjZpVuuuxyOkCduJg1KuBwyA\\_6ZRgnVY](https://rustavi2.ge/ka/news/120946?fbclid=IwAR19WFiWd3m-P9uNs4f7LIJ69sZZjZpVuuuxyOkCduJg1KuBwyA_6ZRgnVY)> last accessed: 01.12.2022.

<sup>68</sup> See: 18.12.2020. <<https://mtavari.tv/news/26572-chemi-khelmdzghvanelobit-davamartskhet-nika>> last accessed: 01.12.2022.

<sup>69</sup> See: 18.05.2022. <<https://mtavari.tv/news/85741-qvelanairi-tavshi-tsema-rom-es-ra-kargi-bichi>> last accessed: 01.12.2022.

*decision called pardoning criminals, of course, she should not be surprised if the Georgian nation will have a reaction to this".<sup>70</sup>*

#### **Members of the parliamentary majority:**

**Archil Talakvadze:** *"Gvaramia, who was a political functionary, who is politically responsible for the heaviest crimes, gross violations of human rights, who, while working as Prosecutor, directly justified raids on TV stations. In fact, he is not a free journalist, or the manager of free media, but the criminal leader of the National Movement that is using journalism as cover."<sup>71</sup>*

**Sopio Kiladze, former Chairwoman of the Human Rights and Civil Integration Committee:** *"Brainwashing people has nothing to do with journalism ... Now Nika Gvaramia is trying to repeat the same thing. Neither Gvaramia nor Saakashvili can understand that their attempts will end in the same collapse as the regimes of those they imitate."<sup>72</sup>*

**Giorgi Volski:** *"Rustavi 2 was and the new channel will also be a partisan TV channel, which is a constituent part of the National Movement;"<sup>73</sup> Irakli Kadagishvili:* *"After the seizure, when they saw that it was real to lose control over Rustavi 2, because the seizure was real, they started to bankrupt the company. That is, transferring money from there to the company founded by them, namely 7 million was transferred, and the car worth GEL 300 thousand as well. The TV company, which was profitable before the litigation, became a bankrupt company";<sup>74</sup> Irakli Zarkua:* *"It was proved by arguments that a person stole or embezzled 7 million from the company he was the head of, he was exposed of this and all this had its consequences."<sup>75</sup>*

- **Media environment in the country**

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<sup>70</sup> See: 11.06.2022. < <https://tabula.ge/ge/news/687458-culukiani-tu-prezidenti-kriminalrebs-sheicqalebs> > last accessed: 01.12.2022.

<sup>71</sup> See: 08.06.2022. < <https://mtavari.tv/news/88070-nika-gvaramia-zhurnalistikas-amoparebuli> > last accessed: 01.12.2022.

<sup>72</sup> See: 24.10.2018. < <https://www.interpressnews.ge/ka/article/517804-sopo-kilaze-ver-xvdebian-verc-gvaramia-da-verc-saakashvili-rom-isetive-kraxit-dasruldeba-mati-maoxrebeli-gziroba-rogorc-is-rezhimebi-visac-bazaven> > last accessed: 01.12.2022.

<sup>73</sup> See: 06.09.2019. < <https://www.interpressnews.ge/ka/article/562679-gia-volski-rustavi-2-iqo-da-axali-televiziak-ikneba-partiuli-televizia-rac-nacionaluri-mozraobis-shemadgeneli-nacilia> > last accessed: 01.12.2022

<sup>74</sup> See: 16.05.2022. < <https://imedineews.ge/ge/politika/249756/irakli-qadagishvili-rom-dainakhes-realuri-iko-daekargat-kontroli-rustavi-2ze-daitskes-misi-gakotreba--telekompania-romelits-sasamartlo-davis-datskebamde-iko-momgebiani-gakhda-gakotrebuli-kompania> > last accessed: 01.12.2022.

<sup>75</sup> See: 16.05.2022. < <https://imedineews.ge/ge/politika/249744/irakli-zarqua-gvaramiaze-argumentebit-dadasturda-rom-7-milioni-mopara-tu-gauplanga-kompanias-romlis-khelmdzgvanelits-iko-amashi-iqna-mkhilebuli-dadga-is-shedegi-rats-dadga> > last accessed: 01.12.2022.

The Public Defender pointed out<sup>76</sup> that in 2021, the threatening and hostile environment created in the country towards the representatives of the media became a worrying trend. A number of criminal acts committed against journalists and other media representatives, as well as other cases of interference with their activities, including by government officials, are worth noting.

In particular, during 2021, the Office recorded dozens of cases of alleged criminal acts or violations committed against media representatives, which involved assaults and illegal interference with their professional activities, preparation of deliberate murder, threats and/or damage to property, abuse of official authority and verbal abuse.<sup>77</sup> In some cases, the Public Defender responded to similar facts with public statements and called on the investigative agencies to conduct a timely and effective investigation.<sup>78</sup>

The seriousness and scale of the said problem were clearly demonstrated by the violent events that took place on Rustaveli Avenue on July 5, 2021, during which more than 40 media representatives were injured.<sup>79</sup> It is significant that among the injured media representatives was a TV Pirveli cameraman, Aleksandre Lashkarava, who died a few days later.<sup>80</sup> He was enlisted by UNESCO as a killed journalist.<sup>81</sup>

In addition, the sad trend of not allowing and/or not inviting critical media representatives to the briefings held by the ministries,<sup>82</sup> as well as politicians' cynical attitude towards critical journalists and statements discrediting or insulting them, has been repeatedly observed.<sup>83</sup>

In addition, unjustified control of the content of the broadcaster's programmes and discussions on legislative initiatives aimed at restricting freedom of expression continued.<sup>84</sup>

From this point of view, it is worth noting that the National Communications Commission enacted the prohibitive norm relating to the programmes containing obscenity in order to monitor the content of the broadcaster's programmes, and by declaring the Mtavari Arkhi as a violator, it established a

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<sup>76</sup> See: <<https://www.ombudsman.ge/res/docs/2022040413242699860.pdf>> last accessed: 25.11.2022.

<sup>77</sup> For more information, see the Public Defender's 2021 Parliamentary Report, p. 172-175.

<sup>78</sup> Statements of the Public Defender of Georgia are available on the website: < <https://bit.ly/3CDI58Z> >, < <https://bit.ly/3AAGtMN> > ; < <https://bit.ly/3lLqiWG> > ; < <https://bit.ly/3CAWtik> > ; < <https://bit.ly/2W3lIOX> > ; < <https://bit.ly/3sn3H6i> >, < <https://bit.ly/3GESyaR> >, < <https://bit.ly/3AVug6a> > [05.12.2022].

<sup>79</sup> See the Public Defender's 2021 Parliamentary Report, p. 183-185.

<sup>80</sup> The statement by the Public Defender of Georgia regarding the death of the cameramen is available on the website: < <https://bit.ly/3uHZoFs> > [05.12.2022].

<sup>81</sup> Information is available on the website: < <https://bit.ly/3suWmRX> > [05.12.2022]; Nevertheless, it is significant that according to the report of the Levan Samkharauli National Forensic Bureau, the cause of Lashkarava's death was acute cardiovascular and respiratory failure as a result of drug intoxication, the information is available on the website: < <https://bit.ly/36anjCS> > [05.12.2022].

<sup>82</sup> Information is available at: < <https://bit.ly/33g0SLl> > ; < <https://bit.ly/3dCjTJU> > ; < <https://bit.ly/3pGDspR> > [05.12.2022].

<sup>83</sup> Information is available at: < <https://bit.ly/3yajvM8> > ; < <https://bit.ly/3EwXSHX> > ; < <https://bit.ly/3lCyQzZ> > ; < <https://netgazeti.ge/news/555767/> > ; < <https://bit.ly/3oy0qQw> > [05.12.2022].

<sup>84</sup> Public Defender's 2021 Parliamentary Report, p. 180-181.

precedent of implementation of the supervisory function in this direction. The Public Defender considered that this was the result of misinterpretation of legislation, which had a chilling effect on the realization of freedom of expression by broadcasters.<sup>85</sup>

In addition, similar to the previous period, in 2021, the National Communications Commission again imposed responsibility on broadcasters in the non-election period, due to the placement of political advertisements, including on the basis of the Law of Georgia on Advertising, which does not apply to advertisements of political content.<sup>86</sup> The Public Defender pointed out that the legislation of Georgia did not contain rules regulating non-election advertising and, therefore, did not directly prohibit the placement of political advertisements during the non-election period. Thus, the prohibition used by the Commission and its justification did not meet the requirements defined by national or international standards of expediency of interference with freedom of expression.<sup>87</sup>

- **Local and international reactions and evaluations**

According to 35 civil society organizations operating in Georgia, "Imprisonment of Nika Gvaramia is perceived as a warning and threat to other independent media outlets to stop critical coverage of the Government's activities, not to fulfill the function of controlling the Government and not to inform people of the facts that are undesirable to the Government. Convicting the director general of the critical media outlet due to making a managerial decision is another example of selective investigation, criminal prosecution and conviction."<sup>88</sup> According to the **Coalition for Independent and Transparent Judiciary**, "The ruling in the Nika Gvaramia case is another dangerous precedent of pressure on critical media, which raises questions regarding the legality of the decision and contains signs of selective and politicized justice."<sup>89</sup> According to **Transparency International Georgia**, "The mentioned case is politically motivated, the purpose of which is to punish Nika Gvaramia and hamper the activities of the critical TV company."<sup>90</sup> According to the **Georgian Young Lawyers Association**, the ruling in Nika Gvaramia's case is unfounded, illegal and politically motivated.<sup>91</sup> According to the assessment of the **Social Justice Center**, "The given ruling raises not only legitimate questions regarding the reasoning of

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<sup>85</sup> Public Defender's 2020 Parliamentary Report, p. 229-233.

<sup>86</sup> Public Defender's 2021 Parliamentary Report, p. 178.

<sup>87</sup> Ibid.

<sup>88</sup> See: 17.05.2022 < <https://www.radiotavisupleba.ge/a/31855186.html> > last accessed: 01.12.2022.

<sup>89</sup> See 20.05.2022 < [http://coalition.ge/index.php?article\\_id=269&clang=0](http://coalition.ge/index.php?article_id=269&clang=0) > last accessed: 01.12.2022. 17.05.2022 < <https://www.qartia.ge/ka/siakhleebi/article/91927> > last accessed: 01.12.2022.

<sup>90</sup> See: 16.05.2022. < [https://transparency.ge/ge/post/kritikuli-televiziis-xelmzgvanelis-nika-gvaramias-dasjit-sasamartlom-politikuri-dakveta/?custom\\_searched\\_keyword=%E1%83%92%E1%83%95%E1%83%90%E1%83%A0%E1%83%90%E1%83%9B%E1%83%98%E1%83%90](https://transparency.ge/ge/post/kritikuli-televiziis-xelmzgvanelis-nika-gvaramias-dasjit-sasamartlom-politikuri-dakveta/?custom_searched_keyword=%E1%83%92%E1%83%95%E1%83%90%E1%83%A0%E1%83%90%E1%83%9B%E1%83%98%E1%83%90) > last accessed: 05.12.2022.

<sup>91</sup> See: 16.05.2022 < <https://gyla.ge/ge/post/nika-gvaramias-mimart-gamotanili-ganacheni-ukanono-dapolitikurad-motivirebulia#sthash.BuPC7v4d.dpbs> > last accessed: 05.12.2022. 06.03.2022. < <https://gyla.ge/ge/post/nika-gvaramias-saqmeze-gamotanil-ganacheni-saias-shefasebit-dausabutebelia#sthash.YUa1V7HY.dpbs> > last accessed: 05.12.2022

the decision, but also fundamental doubts about the instrumentalization of the court for political purposes."<sup>92</sup>

Several non-governmental organizations also responded to the decision of the Court of Appeal, some of which said that "the decision was dictated by political motives";<sup>93</sup> Some organizations believe that "the Court of Appeal left Nika Gvaramia in prison for a politically motivated case".<sup>94</sup>

International organization **Reporters Without Borders called for a review of the opposition TV channel director Nika Gvaramia's unprecedented and probably politically motivated conviction.**<sup>95</sup> According to **Amnesty International**, the sentencing of pro-opposition media owner Nika Gvaramia is a political motivated silencing of dissenting voice.<sup>96</sup>

**According to the US Embassy to Georgia**, "Today's ruling, in the cases of Gvaramia... calls into question Georgia's commitment to rule of law, and further demonstrates the fundamental importance of having an independent, impartial judiciary in Georgia. From its inception, this case has raised questions, including about the timing and the charges. The disturbing pattern of selective investigations and prosecutions targeting those in opposition to the current government undermines the public's confidence in the police, prosecution, the courts, and the government itself. Particularly at this time, when Georgia has an unprecedented opportunity to advance its Euro-Atlantic integration, even the perception of politicized prosecution is detrimental."<sup>97</sup> Following the Court of Appeal's ruling, the Embassy once again expressed its deep concern.<sup>98</sup>

**According to EU Ambassador Carl Hartzell**, "This verdict comes against the backdrop of repeated calls by the EU to reform the judiciary, in order to instill trust and increase its independence."<sup>99</sup> The **Resolution of the European Parliament of June 9, 2022** condemns the sentencing of Nika Gvaramia,

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<sup>92</sup> See: 16.05.2022 <https://socialjustice.org.ge/ka/products/nika-gvaramias-sakmeze-gadatsqvetileba-kritikul-mediaze-zetsolis-kidev-erti-pretседentia> last accessed: 05.12.2022

<sup>93</sup> See: 03.11.2022. <<https://gyla.ge/ge/post/ganckhadeba-nika-gvaramias-saqmeze-saapelacio-sasamartlos-gadatsyvetilebastian-dakavshirebit#sthash.GFjv9Wk3.dpbs>>

<https://socialjustice.org.ge/ka/products/gantskhadeba-nika-gvaramias-sakmeze-saapelatsio-sasamartlos-gadatsqvetilebastian-dakavshirebit> last accessed: 05.12.2022. Signatory organizations: Georgian Young Lawyers Association, International Society for Fair Elections and Democracy, Social Justice Center, Rights Georgia.

<sup>94</sup> See: 02.11.2022.< <https://bit.ly/3F39CDJ> > Last accessed: 05.12.2022. Signatory organizations: Transparency International - Georgia, Georgian Democratic Initiative, Open Society Foundation, Human Rights Center, Economic Policy Research Center (EPRC), Society and Banks, Media Development Fund, Atlantic Council of Georgia.

<sup>95</sup> See: 24.05.2022. < <https://rsf.org/en/georgia-rsf-seeks-review-opposition-tv-chief-s-conviction-jail-sentence> > last accessed: 05.12.2022.

<sup>96</sup> See: <<https://www.radiotavisupleba.ge/a/31855069.html> > last accessed: 01.12.2022.

<sup>97</sup> See: 16.05.2022. < <https://ge.usembassy.gov/ka/u-s-embassy-statement-on-the-ruling-in-the-cases-of-gvaramia-iashvili-and-damenia/> > last accessed: 05.12.2022.

<sup>98</sup> See: 02.11.2022. <https://ge.usembassy.gov/ka/u-s-embassy-statement-on-the-continued-imprisonment-of-nika-gvaramia/> last accessed: 05.12.2022.

<sup>99</sup> See: < <https://bit.ly/3Y0svzE> > last accessed: 01.12.2022.

the director of the main pro-opposition TV channel Mtavari, which has highlighted the persistent mistrust in Georgia's judiciary system; endorses the call for a review of Nika Gvaramia's conviction.<sup>100</sup> Following the decision of the Court of Appeal, **the EU Delegation to Georgia** issued a statement saying that the EU was closely monitoring the case and "recalls that stronger efforts to guarantee a free, professional, pluralistic and independent media environment, notably by ensuring that criminal procedures brought against media owners fulfil the highest legal standards represents one of the priorities identified by the European Commission."<sup>101</sup>

- **Use of imprisonment**

The Court of Appeal used prison sentence in 2 episodes. It is significant that the charge for the so-called advertisement episode was filed under Article 182 of the Criminal Code, which the City Court reclassified to Article 220 of the Criminal Code and applied a fine. Despite the fact that the Prosecutor's Office had appealed to find Nika Gvaramia guilty in the mentioned episode under Article 182 of the Criminal Code and had not requested the use of another type of penalty - imprisonment under Article 220 of the Criminal Code, the Court of Appeal still used the harsher/harshest form of punishment on the basis of Article 220 of the Criminal Code.

In relation to this episode, the Public Defender has already presented a detailed reasoning about why the use of imprisonment and even a fine was problematic. The Court of Appeal additionally pointed out that Nika Gvaramia was in a much higher position than another convict in the given episode - the financial director of the company, K. D. However, it did not explain why other measures could not be used and why only imprisonment was proportionate. In addition, this reasoning of the court cannot change the fact that the mentioned episode, according to the Public Defender's assessment, does not represent an offence at all. Therefore, the use of any form of punishment is problematic.

As for the application of imprisonment in the so-called vehicle episode (2019), the Court of Appeal pointed to a complex criminal scheme (which actually involves holding various negotiations and signing agreements while running an enterprise) and focused on the repetition of the crime after 2015. The court mentioned with only one sentence that other types of punishment: fine, correctional work or house arrest could not ensure the goals of prevention and punishment, prevention of new crimes. However, no reasoning was presented. Accordingly, the use of the harshest type of punishment - imprisonment – against Nika Gvaramia in two episodes is not substantiated in the Court of Appeal ruling.

### **Predominance of the political motive**

Clearly, the mere fact that the Government or a person's political opponents may directly or indirectly benefit from the person's arrest is not sufficient to prove the predominance of a political motive over a

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<sup>100</sup> See 09.06.2022. N2022/2702(RSP) < [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0239\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0239_EN.html)> last accessed: 05.12.2022.

<sup>101</sup> See 02.11.2022. [https://www.eeas.europa.eu/eeas/georgia-statement-spokesperson-verdict-tbilisi-court-appeal-case-mr-gvaramia\\_en?s=221&page\\_lang=ka](https://www.eeas.europa.eu/eeas/georgia-statement-spokesperson-verdict-tbilisi-court-appeal-case-mr-gvaramia_en?s=221&page_lang=ka) last accessed: 05.12.2022.

legitimate one.<sup>102</sup> The European Court states that Article 18 is violated if there is no legitimate interest on the part of the Government to perform a specific action, or if the political or other ulterior purpose of the action is predominant and outweighs the legitimate interest of the action.<sup>103</sup>

In addition, the aforementioned can be checked based on circumstantial evidence, such as an overview of the general situation in the State, reports of non-governmental and international organizations, etc.<sup>104</sup>

A similar approach is shared by the Council of Europe<sup>105</sup> and Amnesty International,<sup>106</sup> the definitions of which say that a political prisoner is a person who is being prosecuted for his political (or other) non-violent activities and who has not committed an offence at all, or who may have committed an offence, although proceedings or sentence against him were clearly unfair.

Thus, in order to decide whether there was a violation of Article 18 of the Convention, it must be considered whether the prosecution of the accused and the interest in his conviction were predominantly motivated by legal or political/other prohibited motives. During the comparison, the main factor that the court should take into account is to guarantee the principle of legality and the right to a fair trial. Clearly, proving the predominance of an unlawful motive becomes difficult when these conditions are met and when charges against a person meet the relevant procedural evidentiary standard.<sup>107</sup>

Regarding Nika Gvaramia's conviction, it should be said that the main factor that proves the predominance of the political motive is precisely the circumstances of the case. More specifically, on the one hand, in this case, the manager of a private company, television station, was found guilty of an offence that is not a criminal act, but a matter of corporate law. On the other hand, the second charge in the same case is not substantiated. Conviction of a person contrary to the principle of fundamental legality of criminal law, assessment of the managerial decision of the head of the enterprise as a crime, as well as the lack of substantiation of imprisonment in the court rulings, especially in the light of the fact that the public statements by high-ranking officials clearly show their desire and interest to isolate the founder, manager and presenter of the critical TV station from society unequivocally prove the predominance of the political motive over the interest of justice.

It is significant that after being dismissed as the director general of Rustavi 2, Nika Gvaramia continued to work in the field of telemedia, and a few days after the announcement of his plan to create a new

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<sup>102</sup> Khodorkovskiy and Lebedev v. Russia, 11082/06 13772/05, 2013, §903.

<sup>103</sup> Merabishvili v. Georgia, 72508/13, 2017, §305.

<sup>104</sup> Ibid. §310, 316-317.

<sup>105</sup> See <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19150&lang=en> > [last accessed: 01.12.2022]

<sup>106</sup> See < <https://bit.ly/2TOh5ji> > last accessed: 01.12.2022.

<sup>107</sup> Dochnal v. Poland, 2012, §115-116; 31622/07; OAO Neftyanaya Kompaniya Yukos v. Russia, 4902/04, 2011, §665; Khodorkovskiy and Lebedev v. Russia, 11082/06 13772/05, 2013, §908.



television station, criminal prosecution was launched against him. In addition, the media environment in the country should be taken into account, which includes numerous examples of mass media restrictions in various ways and clearly shows the unfavorable and hostile attitude of the Government towards representatives of the critical media.

At the same time, we would like to draw attention to the issues that served as basis for the Court of Appeal to rule out a political motive in relation to Nika Gvaramia. Contrary to the reasoning of the court, it should be said that the examination of the case not only did not prove the commission of a criminal act, but the court of two instances failed to give a reasoned answer to the main question (criminal liability imposed on the company manager due to his managerial decision). As for the reference in the ruling that the charge did not stem from political and/or journalistic activities and represented a financial crime, it is significant that journalistic, political, public activity has not been an act criminalized by the Criminal Code after the restoration of the state independence of Georgia, and on the contrary, according to Article 156 of the Civil Code, interference with journalistic activities represents a crime. Accordingly, criminal liability for journalistic and/or political activities should have been excluded, however, Nika Gvaramia was convicted not of a financial crime, but for the decision made by him as the director general of Rustavi 2, which the State classified as a crime, which represents a violation of the aforementioned principle of legality.

In relation to another argument mentioned in the ruling - naming the statement of one of the shareholders of the company and not the law enforcement officers as the initiator of the investigation, - it is necessary to say that although any type of source is sufficient to launch an investigation, including the mere filing of a statement by an individual about signs of crime, and although in this part the legal standard is low, the initiation of criminal prosecution requires the presence of evidence under the standard of probable cause.<sup>108</sup> Moreover, in order to find a person guilty, a sum of agreed evidence beyond a reasonable doubt shall be necessary,<sup>109</sup> which would convince an objective person of the culpability of the person.<sup>110</sup> Thus, the key point here is that the initiation of the investigation and the subsequent trial revealed an issue regulated by corporate law, as well as other key factual circumstances, which showed a situation against Gvaramia's guilt, but nevertheless Nika Gvaramia was prosecuted and sentenced to prison. The mentioned was carried out by the very state bodies, which were responsible for the protection of the principle of legality. Accordingly, the existence of a formal statement of the company's shareholder does not in itself exclude the political motive.

According to the court, Nika Gvaramia was not detained, bail (not detention) was used as a pre-trial measure, and there had been no attempt to isolate him from society until his conviction. In addition, apart from Nika Gvaramia, there were other defendants in the case, who were also prosecuted, which

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<sup>108</sup> Article 169 of the Criminal Procedure Code of Georgia.

<sup>109</sup> Paragraph 3 of Article 82 of the Criminal Procedure Code of Georgia.

<sup>110</sup> Paragraph 13 of Article 3 of the Criminal Procedure Code of Georgia.

excludes any political motive against Gvaramia. However, it should be noted that one of the defendants was fully acquitted by the City Court and the Court of Appeal, a fine was applied against another defendant, and only Nika Gvaramia was sentenced to imprisonment in both episodes. The mentioned circumstance not only fails to rule out, but on the contrary, it clearly proves the interest in placing and leaving Nika Gvaramia in the penitentiary institution.

### **Conclusion**

The principle of legality cannot be considered protected in the present case. The imposition of criminal liability on the media manager for an action belonging to the field of corporate law, the lack of reasoning in the rulings of the courts of two instances relating to the classification of an action as a crime and conviction of a person, as well as relating to the application of the harshest type of punishment – imprisonment against the founder, director and presenter of the critical TV company, indicates that the process initiated against him did not serve the interest of justice, but had another purpose. The events preceding the criminal prosecution against Nika Gvaramia are also worth noting, namely the filing of charges after the announcement of the plan to create a new television station, creation of a critical telemedia company, which has been accompanied by negative statements from high-ranking officials personally against Nika Gvaramia during the court proceedings and even after his conviction. However, the main thing that proves the predominance of the political motive is the circumstances of the criminal case, in particular, the conviction of a person against the principle of legality based on an unreasoned ruling.

This issue is particularly noteworthy in light of the current environment in the country - various illegal actions against journalists, media owners and their family members.

At the same time, the statements made by high officials unambiguously prove their interest in placing Nika Gvaramia in prison and removing him from the activities of Mtavari Arkhi.

Therefore, in the present case, the political motive is clearly predominant over the legitimate one.