

REPORT ON MONITORING COURT CASES CONCERNING THE VIOLENT ATTACKS OF 5 JULY 2021

(SHORT VERSION)



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EXECUTIVE SUMMARY OF THE REPORT

This report presents the results of the observation of court proceedings concerning the criminal cases against the individuals involved in the organised violence of 5 July 2021. For the past four years, the Democracy Research Institute (hereinafter the “DRI”) has been researching the propaganda narratives of far-right groups¹ operating in Georgia. Even before the events of 5-6 July 2021, the organisation had made a number of statements and published documents and reports about the activities of far-right groups in Georgia.

This report incorporates the main trends that were identified in the process of observing five pending criminal cases related to organised violence on 5 July 2021. It is worth mentioning in the introduction that the document does not aim at conducting a legal analysis of the merits of the criminal cases or sentences imposed concerning the mass violence of 5 July 2021 since the DRI was neither a party nor a victim in the cases concerned. This report was prepared after the court proceedings were over and, therefore, we had the opportunity to evaluate the judgments and the proportionality of the sentences imposed by the judges on the accused persons.

At this moment, the trial of the cases of the individuals charged with mass violence on 5 July 2021 in the first-instance court has been completed.² The Prosecutor's Office of Georgia instituted the investigation into all five cases under Article 225.2 of the Criminal Code of Georgia (organisation, leadership or participation in-group violence), but did not ensure that pertaining pieces of evidence were adduced to the court. The first-instance court found participation in organised crime only in one case in relation to violence against Lexo Lashkarava, Miranda Baghaturia and other persons (with regard to the attack on the office of the Shame Movement). In the remaining four cases, the judges recategorised the participation in organised group violence to a lesser crime, viz., violence.

Due to the failure of the law-enforcement bodies to act, many individuals who took part in the mass violence escaped responsibility. Although there were a number of publicly available sources detailing the raid of 5 July 2021, the state prosecution was unable to prosecute, indict and obtain evidence against the “unidentified persons.”

More than a year has passed since the pre-organised group violence. However, the organisers of the violent raid have not been brought to justice to this day. It is the opinion of the DRI that public appeals voiced by the members of violent groups before the 5 July 2021 violent raid prove that preparations for the mobilisation of violent groups began long before the attacks,³ and the Ministry of Internal Affairs was informed about it in advance. The names of Zurab Makharadze, Konstantine (Koka) Morgoshia and other persons as the organisers of the raid were mentioned several times before the court during the examination of evidence. Trials and adopted judgments have solidified the opinion that the authorities are protecting the leaders of the violent groups responsible for the raid of 5 July 2021, namely, the Alt-Info team, Guram Palavandishvili, Levan Vasadze and other organisers, including clergymen.

¹ “Groups that stir up antiliberal and anti-western sentiments. Their rhetoric is also expressly homophobic, xenophobic and nationalistic. DRI, 2020, *Understanding and Combating Far-Right Extremism and Ultra-Nationalism in Georgia*”, p. 5, available at: <https://www.democracyresearch.org/files/46dri%20report%20far%20right%20geo.pdf>.

² As of July 2022, according to the information at the disposal of the DRI, parties plan to appeal the judgment.

³ DRI, “*The authorities should not allow violence against pride march by far-right groups*”, 26 June 2020, available at: <https://www.democracyresearch.org/geo/650/>.

The DRI developed the report on monitoring the court proceedings on the cases of 5 July 2021 violence based on information obtained from court hearings, public and media organisations as well as desk research. The report includes the results of observation of five cases pending before the Section of Criminal Cases of the Tbilisi City Court:

	CASES	WERE CHARGED
1	Concerning the charges of violence against journalists and camerapersons of Formula, TV Pirveli and Mtavari TV channels.	Zaza Mchedlidze, Ushangi Datunashvili, Giorgi Kakhiani, Ilia Keadze, Romeo Kekutia, Temur Kharauli and Giorgi Naskidashvili
2	Concerning the charges of violence against Lexo Lashkarava and Miranda Baghaturia, as well as violence near the office of the Shame Movement	Davit Kutaladze, Tornike Davlasheridze, Akaki Nakashidze, Otar Gelashvili, Gia Giguashvili and Tsotne Chikhladze
3	Concerning the charges of violence against the journalists of Tabula and Public Broadcaster and the violence near the Parliament	Zaza Chaava, Murad Delvarishvili, Giorgi Tsaruaishvili, Giorgi Khechuashvili, Giorgi Maghradze, Tedo Burduli and Genadi Germanishvili
4	Concerning the charges of violence carried out in the 9 April Park and its adjacent areas	Davit Kochiashvili, Tornike Gabliani, Bakar Maisuradze, Mukhran Davvani, Nikoloz Guledani, Vano Burduli and Irakli Tsignadze
5	Concerning the charge of breaking into the Office of Tbilisi Pride	Alika Alazovi, Giorgi Odzelashvili and Giorgi Elizbarashvili

* * *

On all five counts of the charges brought with regard to the violence of 5 July 2021, the Prosecutor's Office of Georgia charged the accused persons under Article 225.2 of the Criminal Code of Georgia (organisation or leadership of group action accompanied by violence, rioting, damage or destruction of others' property, use of weapons and resisting or attacking authorities with weapons).

In order to find out whether the investigation to prosecute the organisers of the violent events of 5-6 July was ongoing, the DRI addressed a question to the General Prosecutor's Office of Georgia.⁴ According to

⁴ Letter no. 13/29616 of the Office of the General Prosecutor of Georgia, dated 16 May 2022.

the response received from the prosecutor's office,⁵ an investigation is pending with the Prosecutor's Office of Georgia in relation to the violent events that took place on Rustaveli Avenue and the surrounding area on 5 July 2021 under Article 225.1 and Article 225.2 of the Criminal Code of Georgia (organising and participating in a group crime), Article 239¹.1 (publicly inciting violent actions), and Articles 156 and 154 (persecution and illegally obstructing a journalist in his/her professional activities).

According to the observations made by the DRI, during the court hearings and at the stage of evidence examination, a number of pieces of evidence confirmed the existence of an organiser/leader in the cases. Witnesses examined before the court also confirmed the existence of the alleged organisers of the violent events of 5 July 2021.

According to the testimony of Public Broadcaster's journalist A.F., he witnessed a conversation between the members of a violent group on Ingorokva Street, near the Parliament of Georgia, where they were discussing whom to attack and how and whether to break into the building (the witness probably meant the office of the Shame Movement).⁶ Tabula journalist M.J. stated that the rally participants moved towards the parliament after Zura Makharadze called on them to do so. The area near the Kashveti Church was peaceful, although the clergymen were calling for violence by the people who had already crossed Rustaveli Avenue.⁷ The injured journalist of Mtavari TV noted that the rally participants threw eggs, which they had kept hidden in advance. Therefore, the witness believed that rally participants had been preparing for violence in advance. Neither the prosecution nor the defence asked additional or clarifying questions in this regard.⁸

During the court hearings, the prosecution adduced two TV reports in evidence. The TV reports had been prepared by the online media entity Publika and concerned the organisation of the 5 July violence⁹ and the chronology of the attack on the office of the Shame Movement and Lexo Lashkarava.¹⁰ The prosecution adduced the above-mentioned TV reports in order to confirm the accused persons' alleged participation in organised crime; however, the said evidence also allowed identification of the persons who organised the crime.

During the court monitoring, at the stage of evidence examination, several pieces of evidence confirmed the participation of clergymen of the Orthodox Church in the violence.

The victim S.B., a Rustavi 2 journalist, stated during the questioning that he witnessed the violence against the camera operators and heard the phrase: "What are you doing, father?" To the question asked by the prosecutor – "Did you hear any kind of appeal?" the journalist answered that he had heard Father Shalva Kekelia's appeal that they [the assailants] would "resist everywhere" so that the Pride people could not pass there. According to the journalist, the participants of the rally knew Shalva Kekelia and remembered the TV report about him at the Ninotsminda children's boarding school.

The prosecution, similar to the cases of Zura Makharadze, Konstantine Morgoshia and others, did not express a position on the clergymen organising, leading or participating in the crime.

⁵ Letter no. 20220704-321 of the DRI, dated 7 April 2022.

⁶ Court hearing of 11 February 2022 (Judge Nino Elieshvili).

⁷ Court hearing of 25 January 2022 (Judge Nino Chakhnashvili).

⁸ Court hearing of 11 February 2022 (Judge Nino Elieshvili).

⁹ Available at: <https://publika.ge/video/5-ivlisis-organizeba/> [accessed 16 August 2022].

¹⁰ Available at: <https://publika.ge/video/sirckhvili-as-ofissa-da-leqso-lashqaravaze-tavdaskhmis-gronologia/> [accessed 16 August 2022].

It is noteworthy that, among the judgments adopted in the 5 July 2021 cases, only in relation to Lashkarava and Baghaturia, participation in organised group crime was established against all six offenders. The judge adjudicating this case, Nino Elieshvili, despite the fact that it was possible to identify the persons shown in the TV report based on the testimonies of the victims and witnesses and other evidence, only indicated the existence of the organisers.

In the 5 July 2021 cases, the courts' approaches to the motive for the violence and mitigating and aggravating circumstances were mixed. In the episodes of violence against journalists and camera operators of Formula TV, TV Pirveli and Mtavari TV, in which there were seven accused persons, judge Nino Chakhnashvili took into account mitigating circumstances (age and health of an accused person) only for Ushangi Datunashvili. Datunashvili's sentence was reduced considering the term of his detention as a preventive measure and the fine of 7,000 GEL was reduced to 5,000 GEL accordingly. The rest of the accused persons were sentenced to imprisonment based on their ethical behaviour in the proceedings, danger to the public and the nature of their actions and the type and manner of the acts committed by them. However, it is not clear from the judgment whether Judge Chakhnashvili considered these circumstances as mitigating or aggravating. The judge did not impose the maximum sentence (2 and/or 3 years) on any of the offenders.

Judge Konstantine Kopaliani considered the partial confession by Zaza Chaava and Murad Devlarishvili as mitigating circumstances.

Judge Davit Mgeliashvili did not mention the hate motive when announcing the judgment adopted with regard to the incident of breaking into the office of Tbilisi Pride.

Only Judge Nino Elieshvili referred to Article 53¹ of the Criminal Code with regard to all accused persons. This provision deems racial, religious, national, ethnic, homophobic or transphobic intolerance as an aggravating circumstance.

Judge Valerian Bugianishvili did not establish or took into account any aggravating or mitigating circumstances for the following accused persons in relation to violence that occurred in the 9 April Park and its adjacent area: Tornike Gabliani, Bakar Maisuradze, Mukhran Dadvani, Nikoloz Guledani, Vano Burduli, and Irakli Tsignadze. He established a hate motive only with regard to one accused person, namely, Davit Kochiashvili.

It should be noted that none of the judges imposed the maximum sentence. Moreover, in the majority of the sentences imposed, the sentence does not exceed 1 year and 6 months. According to the information available to us, both parties have appealed to the Tbilisi Court of Appeal.

During the court monitoring, it was once again revealed that the violence of 5 July 2021 had been organised in advance. The existence of the organisers of group violence is confirmed both by the witnesses questioned before the court and by the video evidence examined at the hearing. Furthermore, both the publicly distributed and the video recordings obtained by the investigative bodies reveal that there had been many more assailants than the number of convicted persons in the cases of 5 July 2021. Due to the inactivity of the law-enforcement authorities, many individuals involved in mass violence escaped responsibility, since the state prosecution, apart from failing to gather evidence, did not ensure that they were identified, prosecuted and charged.

The failure of the prosecutor's office to adduce relevant evidence to the court allowed the latter to recategorise the charges brought against the accused persons from heavy to types that are more lenient. It is the opinion of the DRI that sentences imposed on some offenders are disproportionate to the acts committed by them. This can be a factor that may encourage hate crimes in future.

The judges were not engaged in court sessions with proper attention. The court did not provide a reasonable opportunity for publicity and attendance at hearings for all interested parties. When a participant in the process used hate speech, the court did not have an appropriate response on many occasions. In many cases, the judges did not respond appropriately so that a hostile and tense atmosphere would not be created in the courtroom during the examination of the victims, experts and witnesses. Four out of five judges reached judgments that had been apparently agreed with each other.

Despite many pieces of evidence in the case-files, the Prosecutor's Office of Georgia did not charge the individuals who organised the mass violence of 5 July 2021. Many individuals who took part in the violence escaped responsibility. While dozens of video recordings released by media outlets allowed for the identification of many more assailants, investigative authorities failed to conduct a comprehensive, thorough and impartial investigation.

The identity of the alleged offenders, voiced by the witnesses/victims in the courtroom, escaped the attention of the prosecutors. The state prosecution failed to ensure that evidence was obtained, and charges were brought. When a participant in the process used hate speech, the prosecution did not respond accordingly on many occasions. In many cases, the prosecution did not respond appropriately to prevent a hostile and tense atmosphere in the courtroom during the examination of the victims, experts and witnesses. Most of the time, prosecutors failed to object to questions unrelated to the cases concerned. The prosecution could have obtained more evidence during the investigation. For example, the failure to present the medical examination of Ilia Tvaliashvili led to the imposition of a less severe sentence on the offender.

During the proceedings, the lawyers of the accused persons did not demonstrate that they were qualified in the issues of respect for human rights and the right to equality. The lawyers openly expressed xenophobic and homophobic attitudes during the court proceedings.