

# MEMORY OF NATIONS

## Democratic Transition Guide

[ The Georgian Experience ]



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# TRANSFORMATION OF THE POLITICAL SYSTEM

GHIA NODIA

## INTRODUCTION / THE DEFAULT POSITION

During 1989–95, Georgia underwent a transition from a Soviet-style autocracy (or totalitarianism) to a hybrid, semi-democratic (or semi-authoritarian) regime. Notably, though, at the starting point of political transformation, Georgia was not an independent polity: it was one of the fifteen member-states within a quasi-federal structure of the Soviet Union. The two processes of creating an independent nation and of transformation of the political system ran parallel to each other, with one often complicating the other.

The Soviet structure should be called *quasi-federal*, rather than a genuine federation, because of the discrepancy between the formal institutional set-up and actual functioning of power. The Soviet Constitution suggested a model of a parliamentary republic, whereby an elected legislature (the Supreme Soviet) created an executive branch (Council of Ministers). This structure was replicated in each of fifteen union republics that supposedly had quite broad rights of self-rule, including a right to secession not qualified by any preconditions (Article 72 of the 1977 Constitution).<sup>1</sup>

In practice, however, the monopoly of power belonged to the Communist Party with no other party allowed to function. The Party was built on the principles of “democratic centralism” implying full control exercised by its Central Committee, and a small Politburo on its top, over all regional branches. The party (represented by its vast bureaucracy) was the principal policy-making body responsible for hiring and firing personnel for all important offices. The General Secretary of the Communist Party was the effective political leader of the country. The cabinet of ministers including the military and the security apparatus, was only responsible for technical implementation of decisions made by the Communist Party. Elections to the Supreme Soviets of every level were a formality, because only candidates approved by the Communist Party could run, and there was a single candidate in each constituency.

The list of important offices where appointments were to be made by the Communist Party bodies were called “nomenklatura”; party ruling bodies of every level had its own such lists. Therefore, the power elite of the communist societies was informally called “nomenklatura”.

The Communist Party of Georgia was a regional branch of the Soviet Communist Party, responsible for implementing its decisions on Georgia’s territory. However, within the Soviet “nationality policy”, local nomenklatura almost exclusively consisted of ethnic Georgians (as was the case in all other union republics). Conversely, ethnic Georgian party leaders had only miniscule chances to pursue their careers on the all-Union level. Moreover, there was a universal system of education in the Georgian language, which most of the ethnic Georgian population used, as well as mass media in the Georgian language. This contributed to the creation of a national elite that came to consider its own and its country’s interests somewhat separate from that of the all-Union identity and interests.

Soviet nationality policies also implied existence of ethnically-defined autonomous regions for some (though not all) ethnic minorities residing within Union Republics. Georgia, thirty per cent of whose population was comprised of ethnic minorities (according to the 1989 census<sup>2</sup>), had three such units: the Abkhazian and Adjarian autonomous republics, and the South Ossetian autonomous Oblast (*oblast* had somewhat lower rank than *republic*). This was the second largest number of autonomous units within a union republic after the Russian Federation; it is also notable that Adjaria was the only region in the Soviet Union that had autonomous status based on religion rather than ethnicity; Adjarans consider themselves ethnic Georgians, but many of them are Muslims, therefore a minority within a traditionally Orthodox Christian country.

## THE PROCESS OF CHANGE

The process was initiated by a gradual liberalization of the Soviet communist regime launched by Mikhail Gorbachev, known as *Perestroika* (restructuring) and *Glasnost* (openness). This implied loosening control rather than substantive institutional change: political prisoners were released, censorship of the media gradually weakened, criticism of the government tolerated, etc.

In Georgia, this led to the creation of independent political and civic movements and groups that were referred to as *arapornmalebi* (“the informals”). These groups had nationalist agenda, guided by the idea that Georgia had to restore its independence that it had lost after the Russian Bolshevik invasion in 1921. It was also presumed that independent Georgia would be a European-style democracy. Between 1987 and 1989, this developed into a large-scale pro-independence movement. However, in parallel to these developments, similar movements also developed in Abkhazia and South Ossetia that looked either for further strengthening of autonomous rights, or, preferably, secession from Georgia and joining the Russian Federation (in Abkhazia’s case, full independence was also considered as an option).

The violent crackdown of the Soviet army against pro-independence demonstration on April 9, 1989 (21 people were killed, mostly teenage girls) led to a radical discrediting of the communist regime. The nationalist movement gained the moral high ground and got nearly full freedom of action without any changes to the institutional structure of power. The Abkhazian and South Ossetian nationalist movements became more active in their demands as well, which led to some skirmishes, and the creation of armed militias on all sides, which the weak and demoralized regime did not try to disarm. Moreover, there were sharp divisions and occasional violence between different

1 Constitution of the Soviet Union (1977, Unamended), Article 72, [https://en.wikisource.org/wiki/Constitution\\_of\\_the\\_Soviet\\_Union\\_\(1977,\\_Unamended\)#Chapter\\_1.\\_The\\_Political\\_System](https://en.wikisource.org/wiki/Constitution_of_the_Soviet_Union_(1977,_Unamended)#Chapter_1._The_Political_System)

2 “Ethnic Groups of Georgia: Census 1989”, European Centre for Minority Issues, <http://www.ecmcaucasus.org/upload/stats/Census%201989.pdf>

Georgian nationalist groups that could not agree on issues of tactics and leadership.<sup>3</sup>

In October and November 1990, the first multi-party elections were held in Georgia based on a mixed proportional and majoritarian system. The Round Table coalition, led by Zviad Gamsakhurdia, a veteran dissident and the most charismatic of the nationalist leaders, carried the election getting 124 mandates out of 250 (with 54 percent of the vote in the proportional system), with the Communist Party coming second with 61 MPs. No other party cleared the five percent threshold.<sup>4</sup>

At this moment, Georgia was still formally part of the Soviet Union, even though the center had largely lost control over its domestic political life. The new government abstained from proclaiming independence outright, opting instead for declaring a transitional period towards independence. It also did not go for substantive institutional transformation and made only a handful of changes to the Constitution, such as removing provisions regarding the leading role of the Communist Party, taking out the words “Soviet” and “Socialist” from the name of the country, etc. Zviad Gamsakhurdia was elected the chairman of Parliament (Supreme Council), but it was understood that he was the leader of the country, with the prime minister being the technical executive. The new law on local government was adopted that provided for locally elected municipal councils, but also centrally appointed prefects that held the most important powers on the municipal level.

In December 1990, the Supreme Council abolished the autonomy of South Ossetia in response to the latter’s Supreme Council declaring sovereignty.<sup>5</sup> This led to armed hostilities for actual control of the region that continued until July 1993.

In March 1991, a referendum was carried out on Georgia’s independence, followed by the Supreme Council proclaiming independence of April 9 the same year.<sup>6</sup> A new position of a strong executive president was introduced, and on May 26, Zviad Gamsakhurdia won the elections with 86 percent of the vote, setting a precedent for overwhelming majorities for popular leaders.<sup>7</sup>

However, the new system did not prove stable. In September the same year, a group of Gamsakhurdia’s chief lieutenants defected from him and joined vocal opposition. Part of the newly created National Guard followed Tengiz Kitovani, its creator and leader, to the opposition. In the end of December (this coincided with formal break-up of the Soviet Union), a military stand-off between the insurgents and the government forces ensued, which led to Gamsakhurdia fleeing the country in January 1992. A two member Military Council took responsibility for the governance and soon invited Eduard Shevardnadze, a veteran communist leader who had earlier served as the foreign minister of the Soviet Union.

A period of turmoil and virtual implosion of state institutions ensued. A provisional State Council proclaimed restoration of the 1921 Constitution (that of the short-lived independent Georgian Republic that existed in 1918–21), but this was a symbolic gesture, which did not have any relevance for the actual distribution of power that effectively depended on resources of different warlords and power clans. In October 1992, a multi-party parliamentary election led to the creation of a fragmented Parliament; in a separate vote, Eduard Shevardnadze was elected the chairman of Parliament and Head of State (with 96 percent of the vote). However, the actual powers of these bodies were rather limited. The country was immersed in ethnic wars for separation in Abkhazia and South Ossetia, and a standoff between the new

government and supporters of Zviad Gamsakhurdia who controlled part of western Georgia. Adjara, while not having ambitions for full separation, demonstrated its effective independence from central power as well.

Through a series of Machiavellian moves, Shevardnadze gradually consolidated power. Both territorial conflicts were lost and ceasefire agreements signed that became the ground for a lengthy period of the so-called “frozen conflicts”. The pro-Gamsakhurdia insurgents, on the other hand, were defeated. Later, major warlords were neutralized and put in jail, and their followers disarmed. The status of Adjara, ruled by a local strongman, Aslan Abashidze, remained ambiguous.

The process of consolidation of a new system came to completion in 1995: in August, a new Constitution was enacted and in November, Eduard Shevardnadze was elected the president with 74.3 percent of the vote. His party, Citizens Union of Georgia, gained effective majority in Parliament.<sup>8</sup>

## GENERAL CHARACTER OF THE NEW SYSTEM

The newly consolidated system, however, cannot be considered democratic; it is usually referred to as a hybrid regime that combines features of democracy and autocracy. Despite changes in power and of the Constitutional design since, this general assessment has been quite stable throughout the period if 1995–2017. For instance, during this period Georgia’s scores in the *Freedom of the World* ratings have been oscillating between 3 and 4, with 1 standing for a fully free or fully democratic regime, and 7 – for a fully autocratic one.<sup>9</sup> The discrepancy between recognition of liberal democratic values and norms in the formal Constitutional system, and the semi-autocratic character of established political practices, may be the most important characteristic of such a regime.<sup>10</sup>

Apart from assessing Georgia’s political system along the scale of democracy-autocracy, there is an important dimension of stability and efficacy of the system. Being born out of ethnic and political conflict, throughout the 1990s Georgia was often described as a “failing” or “failed” state, unable to ensure territorial control, enforce monopoly of the legitimate use of power, collect public revenues and provide for public goods. Despite ending armed conflicts and getting rid of illegal militias, under Eduard Shevardnadze’s rule Georgia was an especially corrupt country unable to pay anything close to reasonable salaries to its public servants

3 Stephen F. Jones, *Georgia: A Political History Since Independence*, London: I.B. Tauris, 2012.

4 The elections were conducted according to a mixed, proportional and majoritarian system. See “Georgia – History of Elections 1990–2010s”, [http://infocenter.gov.ge/elections2017/history\\_en.pdf](http://infocenter.gov.ge/elections2017/history_en.pdf)

5 Law of the Republic of Georgia on Abolition of the Autonomous Oblast of the South Ossetia, [http://www.parliament.ge/files/426\\_5649\\_580559\\_10.pdf](http://www.parliament.ge/files/426_5649_580559_10.pdf)

6 “Secession Decreed by Soviet Georgia”, in *New York Times*, 10 April 1991.

7 “Georgia – History of Elections 1990–2010s”, [http://infocenter.gov.ge/elections2017/history\\_en.pdf](http://infocenter.gov.ge/elections2017/history_en.pdf)

8 Ibid.

9 See “About Freedom in the World: An annual study of political rights and civil liberties”, Freedom House, <https://freedomhouse.org/report-types/freedom-world>

10 David Aprasidze, 25 Years of Georgia’s Democratization: Still Work in Progress, in Ghia Nodia (ed.), *25 Years of Independent Georgia: Achievements and Unfinished Projects*, Tbilisi: Ilia State University, 2016, 91–129.

and provide for most basic public services or social benefits.<sup>11</sup> The government of the United National Movement (UNM) that came to power after the so-called “Rose Revolution” achieved a breakthrough in that regard: Georgia became the least corrupt country in its neighborhood, and the effectiveness of public services increased manifold.<sup>12</sup> This period of reforms, carried out mostly in 2004–2007, may be called a second transition in Georgia; however, their success in establishing modern public institutions in Georgia did not bring about genuine democratization of the political system.

## CHANGING LEGAL FRAMEWORK

Starting from 1995, Georgia’s Constitutional framework changed several times. However, these changes did not lead to substantive changes in the nature of the political system. Frequent changes, however, indicate the disaffection of the political elites with the functioning of the political system. The division of power between the legislative and executive, national and local governments, and the electoral system, constituted the principal dividing issues. When it came to defining civil and political rights and freedoms, the Constitutional provisions were generally deemed corresponding to accepted international standards and usually did not become a point of contention.

The 1995 Constitution<sup>13</sup> was loosely based on an American system: It provided for relatively strict separation between the legislative and executive powers, and this allowed parliament to be a relatively independent political actor. The electoral system was mixed, with 150 out of 234 MPs elected through a proportional system of national party lists, and the rest through single-mandate constituencies. However, the Constitution left open the issue of territorial arrangement of the country due to political sensitivity of the problem and a failure to achieve consensus in Parliament. The system as defined by a separate law was rather centralized, with leaders on the municipal and regional level (*gamgebelis* and *governors*) being directly appointed by the president; weak locally elected municipal councils (*sakrebulo*s) could not balance the power of central appointees.<sup>14</sup>

In 2004, the Constitutional system was switched to a mixed one whereby a position of prime minister was introduced, nominated by the president and confirmed by a parliamentary majority; the president could dissolve Parliament in the case of disagreement on the composition of the Cabinet, or the budget. This was done in the name of increased flexibility and effectiveness of the executive, but in practice further increased the power of the presidency and weakened the legislative. The issues of sub-national power were still left out of the Constitution, but a new local government legislation provided for local *gamgebelis* and mayors elected by municipal *sakrebulo*s rather than centrally appointed.<sup>15</sup> Based on a referendum decision, the number of MPs was reduced to 150 with a balance between MPs elected through proportional rather than majoritarian system changed in favor of the latter (73 MPs were elected through single-mandate constituencies).

In 2010, still another overhaul made the system closer to parliamentary one, with the president’s powers significantly reduced and these powers moved to the cabinet, and the prime minister turning into the principal political leader (this and most other provisions were supposed to come into force after the next presidential elections in 2013). This was done in response to

the criticism of too strong a presidency encouraging autocratic tendencies, but suspicions were widely spread that this was a way for then president Mikheil Saakashvili to remain in power after the end of his last term. For the first time, the issue of territorial distribution of power came to be spelt out in the Constitution, though without changing the existent system (with the exception of local mayors and *gamgebelis* now elected directly).

In 2017, the Georgian Dream majority in parliament carried out one more overhaul of the Constitutional system. The President’s powers were further curtailed making this a ceremonial position, and direct elections of the president abolished (the 2018 presidential elections are supposed to be the last direct elections of the president). Georgia thus moved to a fully parliamentary model. The electoral system was changed to fully proportional, but it will not be enacted until after the next parliamentary elections; this means that if the current and next parliament serve their full terms, the new system will only come into force in 2024.

## GEORGIA’S DOMINANT POWER SYSTEM

As said, however, thus far these series of constitutional changes did not affect the basics of the hybrid political system that had been consolidated in the middle of 1990s. Its nature can be defined, using a term proposed by Thomas Carothers, as a dominant power system.<sup>16</sup> This means that while at most times there exists an opposition that genuinely challenges the government, truly independent and critical media, vibrant and combative civil society, there is no level playing field between the party in government and the opposition. The former fully dominates all branches of power: It has a strong (often constitutional) majority in parliament, controls all (or almost all) municipal governments, has an influence over most popular media, as well as most powerful business organizations, etc. The opposition is typically weak, divided, irresponsible, and fully focused on discrediting powers that be instead of proposing alternative policies.

Moreover, in the Georgian case the dominant political powers have not been represented by institutionalized political parties, but by organizations existing around strong political personalities, such as Zviad Gamsakhurdia, Eduard Shevardnadze, Mikheil Saakashvili, and Bidzina Ivanishvili. In the latter case, between October 2013 and May 2018, Bidzina Ivanishvili did not even hold any political position at all, but he was widely recognized to be the real guiding force behind the power of the Georgian Dream party. In May 2018, Ivanishvili took the formal position of the party chairman.

11 Ghia Nodia, Trying to Build (Democratic) State Institutions in Independent Georgia, in Gerhard Mangott (Hrsg.), *Brennpunkt Südkaukasus: Aufbruch trotz Krieg, Vertreibung und Willkürherrschaft*, Wien: Braumüller, 1999.

12 *Fighting Corruption in Public Services: Chronicling Georgia’s Reforms*, Washington: The World Bank, 2012.

13 For 1995 Constitution and different amendments to it see Legislative Herald of Georgia, Constitution of Georgia, <https://matsne.gov.ge/en/document/view/30346>

14 *Adgilobrivi vitmmartveloba sakartveloshi 1991–2014* (in Georgian; “Local Self-Government in Georgia 1991–2014”), Tbilisi: International Center for Civic Culture, 2015.

15 Ibid.

16 Thomas Carothers, “The End of Transition Paradigm”, in *Journal of Democracy*, 13 (1), 2002, 5–21.

In the absence of internal party democracy, the domination of the party in power translated into an exceedingly centralized system. Therefore, some increase in the formal powers of municipal authorities described in the previous section did not have any effect because the overcentralized nature of the dominant party ensured full compliance of municipal bodies to national authorities.

Despite such unipolarity, the system allows for occasional changes of power: since 1990, there have been four different governments in Georgia; such rate of rotation of power may in itself be acceptable for a fully consolidated democracy as well. However, in two cases (1992 and 2003) the power changed hands through unconstitutional means. Each of the mentioned changes was celebrated as a democratic opening supposed to replace the hitherto existent autocratic system with a more democratic one. However, in each of the cases, the dominant power system soon fully reproduced itself.

This allows to speak of an essentially cyclical character or the Georgian political system: a democratic opening with radical opposition replacing the incumbent power (October 1990, January 1992, November 2003, October 2012) led to genuine public enthusiasm translating itself into extremely high electoral scores for the incoming leader and his party. This then led to a consolidation of a new dominant power system, followed by a gradual process of public disaffection with it. The period of political apathy continued for several years until popular discontent reached a critical point and a new popular leader emerged that could mobilize the masses towards a non-constitutional or electoral change of power. This cannot be understood as a prediction for the future development of the Georgian political development, but summarizes its nature and path of development so far.

## LESSONS LEARNT, PROSPECTS AND RECOMMENDATIONS

Why was it that so many democratic openings based on genuine expressions of people's power all ended up in repeated frustrations? Can we pin down some typical mistakes of democratic reformers and the democracy-promoting community?

One such mistake may be overestimating the importance of formal institutional reforms. Over years, Georgia has made a lot of progress in this direction. While legislation is always open to debate, it can be argued that the Georgian Constitution and other legislation generally conform to recognized international standards. However, different legislative changes promoted by

pro-democracy activists, such as moving to parliamentary system from the presidential one, disconnecting politicians from the process of appointment of judges, introducing full formal independence of local government, adopting extremely liberal media law, and many others, have failed to substantively democratize the system. This does not imply saying that the mentioned institutional reforms were not worth the effort; but other factors may be more important.

The second is exaggerated reliance on specific political players. At different times, international democratic community, as well as a large part of domestic actors, obviously overestimated the capacity and commitment of specific new leaders and parties to advance democratic norms: Eduard Shevardnadze (due to his role in Mikhail Gorbachev's government, and his readiness to invite young reformers to his government), Mikheil Saakashvili (who was a western-educated reformer and appointed leading NGO activists to key government positions), and Bidzina Ivanishvili (who included into his initial coalition political parties that had most consistently promoted democratic norms before). Conversely, failures of democratic consolidation were later blamed on alleged defects of the same personalities, who in different ways displayed propensity for monopolizing power instead of sharing it.

Having said that, the same experience may be summarized from the positive angle as well: Georgia is by far the most successful democratic reformer in its region, which is an important achievement in its own right. While all its governments have displayed leanings to fully monopolize power and marginalize its opponents, none of them fully succeeded in these efforts. This may be explained by two main factors: (1) resistance of the Georgian civil society – including opposition parties, media, NGOs, as well as different informal groups, and Georgian public at large; (2) strong leverage and linkage of/to the western democratic community<sup>17</sup> that in its own turn may be explained by the centrality of the objective of European and Euro-Atlantic integration in the country's policies.

The last two factors are the most important grounds for optimism in the future: If Georgia is going to succeed on its way to democratic consolidation, the way to this lies in the empowerment of its civil society, and close involvement of the democratic international community. Political society represented by political parties has probably been the weakest link so far and are in an especially great need of further development.

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17 Stephen S. Levitsky, Lucan A. Way, "Linkage versus Leverage. Rethinking the International Dimension of Regime Change", in *Comparative Politics*, 2006, 38 (4), 379–400.

## SOURCES USED AND FURTHER READING

Literature on the period of Georgia's post-Communist transformation in 1989–95, as opposed to later developments, such as Rose Revolution, is fairly scarce. Some sources used for this chapter are indicated in footnotes. The following may be recommended for further reading:

- Aprasidze, David, "25 Years of Georgia's Democratization: Still Work in Progress", in Nodia, Ghia (ed.), *25 Years of Independent Georgia: Achievements and Unfinished Projects*, Ilia State University Press: Tbilisi, 2016, 91–129
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[http://www.parliament.ge/files/426\\_5649\\_580559\\_10.pdf](http://www.parliament.ge/files/426_5649_580559_10.pdf)

# DISMANTLING THE STATE SECURITY APPARATUS

IRAKLI KHVADAGIANI

## INTRODUCTION

After the collapse of Soviet rule in Georgia and along the way of several phases of failed transitions, breakdowns, stagnation, revolutions and regime changes, there was never any call for civil initiatives for the investigation of the crimes of the communist state security, scientific research of the structure, or the everyday activities and history of the special operations of the KGB of the Georgian SSR.<sup>1</sup> Due to a lack of information of the history of the communist state security organs in Georgia, their behavior during last years of Soviet regime, and short transition time, the history is still totally forgotten. During last year of Soviet rule, there were attempts from protest movement representatives and political parties to block KGB buildings and compel them to break away from the central organs, at the same time the Georgian KGB had internal fragmentation towards the nationalistic agenda of the protest movement and separating from the central organs. All of this was behind the walls of KGB and was staying private, in the same way, the final step of the transformation from the Georgian SSR KGB to state security of independent Georgian state was also private.

Since 1991, especially after 2004–2005, when the former archive of Georgian SSR KGB began to be accessible to society and researchers, state officials have always claimed that all the documents and funds, related to operative activities of the KGB, personal cases, and the database of secret informers were destroyed<sup>2</sup> during fire in KGB building in December of 1991. At the same time, after the 1990's Central archives of the former KGB of USSR was closed to Georgian researchers as well as for Russians. As a result, due to the lack of information, it is impossible to understand the situation based on the few, unverified sources from Russian media-platforms and research papers.

## POSITION AND STRUCTURE OF THE STATE SECURITY APPARATUS PRIOR TO THE TRANSFORMATION

After “Perestroika”, the structure of the Georgian KGB seemed like the standard Republican KGB in the USSR:

- Directorate – Chief of staff, Deputy of chief, Head of party committee
- Secretariat
- I division – Foreign intelligence
- II division – Counterintelligence
- IV division – Counterintelligence responsible for transport and communications
- VI division – Economic counterintelligence
- VII division – Surveillance
- VII division – Coding and encoding
- IX division – Security of Party and state leaders

- X division – Archive
- Division Z – Security of constitutional order (former V division – against “ideological diversions”)
- Division OP – Organized crime issues (former III division – counterintelligence assistance of MVD)
- Operative-technical division
- Investigative division
- Inspection division
- HR
- Division of mobilisation
- Assistance division<sup>3</sup>

Besides the Central organs of the KGB in the Georgian SSR, there was the KGB of Autonomous republics of Abkhazia and Adjara, and the Division of the KGB of South-Ossetian autonomous district.

As far as we know<sup>4</sup> all the republican systems of the Georgian KGB was structured like this:

- Regional (“Raion”) divisions:
  - “Gareubani” (suburban, Tbilisi)
  - Gardabani
  - Mtskheta
  - Sighnaghi
  - Lagodekhi
  - Kvareli
  - Tianeti
  - Akhmeta
  - Tetrtskaro
  - Tsalka
  - Gori
  - Aspindza
  - Tskhakaia (Khoni)
  - Samtredia
  - Tsageri
  - Mestia
  - Makharadze (Ozurgeti)
- City “Apparatus”:
  - Zugdidi
  - Poti
- City Divisions:
  - Rustavi
  - Chiatura
  - Kutaisi (?)
- “Special representative”:
  - Akhalkalaki
- Railway station office:
  - Khashuri

1 Committee for State Security of the Georgian Soviet Socialist Republic

2 See a list of funds of the Georgian KGB archive at the old official web-page of the MIA archive, [http://archive.security.gov.ge/OLD\\_SITE\\_TEMP/saarqivo\\_fondebi.php](http://archive.security.gov.ge/OLD_SITE_TEMP/saarqivo_fondebi.php)

3 See the structure and personnel of the KGB of the Georgian SSR, [http://shieldandsword.mozohin.ru/kgb5491/terr\\_org/respublik/georgia.htm](http://shieldandsword.mozohin.ru/kgb5491/terr_org/respublik/georgia.htm).

4 Based on sources of the Georgian MIA archive; according to analyses of the KGB party organizations’ structures.



■ In the capital – Tbilisi, as far as we know, there were two city district divisions:

- Stalin Raion division
- Kalinin Raion division

As official version claims, all the sources on personnel of the Georgian SSR KGB central and their regional structures were destroyed. According to this disposition, we can't calculate the number of official members of Soviet Georgians state security system. Also, it is almost impossible to determine the number of secret informers in central and regional levels. As some secondary sources claim, in the 1980's, the number of secret informers was around 22,000 persons.

Between 1953–1955, which were the most crucial times of the internal war in the Communist Party of USSR, and after the death of Stalin, when Lavrenti Beria lost his positions, and life, the state security apparatus was cleaned up. In the Georgian SSR the state security system lived in peace and prosperity under the rule of the former military officer, Aleks Iauri, who was the chief of the Georgian KGB until 1988. The Georgian SSR was a border country with NATO (Turkey) and a strategic area for the Soviet Union's Near East policy, the everyday life of the Georgian KGB was not stressful, and the routine of special operations was hunting citizens trying to escape over Turkey's border, hunting "contrabandists" and underground businessman (so-called "Delets"), surveillance of foreign state officials and tourists. There were very few (generally known) facts when a situation went out of control and citizens were witnesses of "excesses": for example, terrorist attacks (Vladimer Zhvania's case), split and robbery in Georgian orthodox church (Kerashvili's case), torture and humiliation in prison (Tsirekidze's case), countermeasures for blocking Jews repatriation in Israel (Goldstein brothers' case), the famous hijacking of a plane (so-called Airplane boys' case).

In the internal battles in Georgian Communist Party, during 1970–1980's, the KGB was not active and until 1988–1990, it was strictly loyal to the center apparatus and their directors. There are some stories remaining on the level of folktales of how the Georgian KGB chief was keeping its power based on holding incriminating evidence over Georgian Communist Party leaders, and at the same time staying neutral in the political battles of the Georgian SSR.

At the same time, the majority of citizens did not feel the "Iron hand" of the KGB in everyday life, and they were loyal and peaceful Soviet citizens. The Georgian KGB, as all Soviet state security systems, strictly observed the "Dissident movement", but in Georgian's case, the number of such groups and individuals was not high enough to create a wide sense of oppression in society.

## TRANSITION PERIOD

The changes in Georgian SSR KGB began in 1989. On April 9, 1989, Soviet internal troops and Special Forces suppressed an Anti-Soviet demonstration in Tbilisi.<sup>5</sup> 21 citizens were killed, hundreds were injured, and there were a variety of physical traumas by chemical gas. This tragedy deeply affected society and initiated the radical change and the rise of loathing against Soviet rule. Many citizens demonstratively left the Communist Party. Accompanied by the general crisis in Soviet Union and the liberalization of the media, due to Gorbachev's "Perestroika" and "glasnost" (publicity), during 1989 and at the beginning of 1990 the first cracks started to be visible in Georgian KGB system. The first stage, at the beginning of 1990, a hint of upcoming changes was

noticed in an open appeal to the Georgian KGB in the communist press about consultations and the strategic planning in the KGB around the difficult political challenges in the republic. KGB officials were announcing that they understood the Communist Party agenda, and the peaceful coexistence of different nationalities in Georgia, ensuring them the sovereignty of the Georgian republic. At the same time the KGB was promising to be very sensitive and was responding to ethnic tensions in regions. It also expressed a deep concern that some groups of society were slandering the KGB and promised to have direct contact with society and be open to honest dialogue.<sup>6</sup>

At a later time, anonymous officers of the KGB were claiming, that in reality, in late 1988 there were protest in central apparatus of Georgian KGB, demanding liberation from the dictate of the center (Moscow central KGB), de-politicization, and liberation from the Communist Party dictate, and transformation of the KGB to a standard state security service. The same kinds of petitions were made internally in April and May of 1989, but with no success. At the same time, after 9 of April 1989, some officers of the KGB left the system as a sign of protest. Some KGB officers expressed indignation regarding the suppression of the demonstration, Georgian KGB involvement in the "disinformation" of the central authority, leading them to use extreme measures against the demonstrators and stopping the Georgian KGB from acting before the 9th of April demonstration became a tragedy, and finally, their wish not to be involved in the operations of suppression against the demonstrations, which was perceived as a sign of mistrust from political center.

In September 1990, close to the first multiparty elections of the supreme council of the Georgian SSR, a group of KGB employees openly expressed their protest against Soviet rule, sending a declaration to the opposition press edition,<sup>7</sup> blaming the center KGB of a destructive agenda, insisting on depoliticization and asking the support of the future supreme council of Georgia for a peaceful transition of the Georgian KGB to the state security service of an independent republic of Georgia. This action was based on the common sense of the upcoming changes, and at the same time it was a signal from the center government for the depoliticization of the state defense and internal security organs;<sup>8</sup> the editor of the newspaper preferred not to publish the names of protester officers' group.

At the same time, in September, during demonstrations on Rustaveli avenue (in front of governments house), close to KGB headquarter, a group of protesters rushed into the KGB building trying to occupy it. The KGB guards quickly neutralized the action. As former officers claimed, this fact was used by high-ranking KGB officials to illustrate the danger against the security of the KGB information bases and began evacuation of the archive sources to the Smolensk repository of the KGB.<sup>9</sup>

5 The demonstrations started as a protest against movement for separation from the Georgian SSR in Abkhazian ASSR, but very soon it transformed into an anti-Soviet protest, demanding the independence of the Georgian state.

6 "In Georgian KGB", in *Communist* #20 (20657), 13. 1. 1990, 2.

7 "Declaration of One Group of Employees of the KGB of the Georgian SSR", in *Tbilisi* #217 (11336), 22. 9. 1990, 4.

8 Order of President of USSR, about reforming of political organs of armed forces of USSR, armed forces of KGB of USSR, armed forces of MVD of USSR and armed forces of railway, Moscow, Kremlin, 3. 9. 1990. M. Gorbachev, in *Communist* #205 (20951), 6. 9. 1990.

9 Documentary "Lost History" [*Dakarguli Istorია*], 2014, <https://www.youtube.com/watch?v=5vYIBOxhBJ4>

Before the election and after, when the main opposition alliance won election and the new supreme council declared a transitional process leading to the restoration of independence, such changes naturally reflected the situation in the KGB. Officers who were neutralized as pro-nationalists came back into leading positions. The Georgian KGB started a media campaign to demonstrate the nature of the changes and opened communication with society,<sup>10</sup> promising transparency of the historical KGB archives. High-ranking officials started discussions with journalists for the future plans of the transformation. According to the content-analysis of the interviews, we can see obvious tension between the Georgian KGB and the Central USSR KGB around subordination; Georgian officers, were trying to persuade society that a strong state security system was necessary for any kind of state, and at the same time were trying to split from the central USSR KGB, and that Georgian state security would be able to be successful in the foreign intelligence field.

After the 9th of April 1991, re-establishing independence in Georgia, in the short difficult failed transition was marred by the radicalization of political life and open confrontation between the radical opposition and the Government of Zviad Gamsakhurdia. Reform of state security system was forgotten. Furthermore, during escalation of conflict, the newborn Georgian Ministry of State Security (based on the Georgian KGB) started to be a self-isolated and out of control body, refusing to give information to the president of republic about secret informers of the KGB and blocking lustration attempts. Later, former high rank officials were proudly remembering this experience, as sign of professional ethic.<sup>11</sup>

After the coup d'état in Tbilisi (December 1991, January 1992), in May 1992, the Ministry of State Security of Georgia (formally renamed KGB) was formally abandoned, and the new state security office, "Informative-intelligence service" was founded, but, very soon, in October 1993 the Ministry of State Security was re-established.

It is an interesting fact that until 1998–1999 there was not any law, regulating the activities of state security and establishing basic principles of its work.<sup>12</sup>

## CURRENT STATUS AND LESSONS LEARNT

After the 2003 "Rose revolution", until now, the Georgian state security system has experienced several restructurations and revitalizations, but it has always stayed non-transparent and an immune from strong civil and parliamentary control.<sup>13</sup>

Looking back to the crucial times of the changes in Soviet Georgia – 1990–1991, the analyses of how the state security system tried to react to political transformation, how society considered the importance of the transformation of the state security service, and the responsibility of the KGB, as a guard of the communist regime, it gives us a chance to see bitter lessons, which shows a real degree of readiness for changes in our society.

**Non-transparency** – In the transition time, the KGB system was a "black box" for society. The lack of information about the activism of officers who were trying to transform the KGB from inside, the fragmented focus of the media on KGB transformation challenges, the one-side communication (the media was covering KGB life, when they were invited by the system to talk, not asking painful questions from the outside), and the absolute unprofessional attitude of journalists around state security issues,

all gave the KGB apparatus the opportunity to be a leading actor, giving input to media, not having their structure in the spotlight, and not responding painful questions.

**Empty rhetoric in society** – In the late 1980's, and especially in 1990–1991, being a member of the KGB was a stigma in society, and worst kind of ostracism was to be accused of being a "spy of KGB". However, open questions and demonization of the KGB and its crimes always stayed at the level of rhetoric. There was no real incentive, during the mass protest movement against Soviet rule, to be focused on blocking the KGB network, occupying their archive infrastructure, and the reconfiguration of the personnel of KGB. The complex political and social crises in 1990–1991 always distracted the focus of society from essential, but very specific issues such as dismantling of the communist type state security system and rise of questions of responsibilities of officers.

**Nationalistic sentiments** – As in 1989–1990 the Communist Party realized that one of the main engines of the protest movement in Georgia was the nationalistic agenda, they started to try to implement its own surrogate of a nationalist project, talking about "national sovereignty" etc. Based on the problem of non-transparency, there is a strong suspicion that the Georgian KGB started to use the same tactic, trying to transform tension in society against them, from a system level to a nationalistic level, blaming the Russian deputy chief of the KGB and his group of being "governors from center" and designing responsibilities of the Georgian KGB as a problem of the Center-Republic conflict, and domination of Moscow rule. Later, after a short peaceful transition time, 1990–1991, after being transformed to the Ministry of State Security of Georgia, former high-ranking officials of the KGB were positioning themselves as "Georgian patriots" trying to argue against lustration based on "national stability", and protecting the prestige of national heroes and famous historical figures of XX century Georgian history.

Now, after 27 years since the end of Soviet rule in Georgia, society is informed about the everyday life and actions of state security service, almost as it was in Soviet times; there is absolute zero knowledge and memory about the processes which took place in the Georgian KGB system during the transition time of 1989–1991. Question about legal responsibilities regarding Soviet crimes against KGB officers has never risen up, attempts of lustration has been blocked several times during the 1990–2000's, and it is always focused on "KGB spies". Officers of Soviet state security were always in the background. Moreover, the last surrogate of lustration the "Freedom Charter", adopted in 2011, was strictly against those employees of the KGB, who had not continued to working in system after the re-establishment of Georgian independence on the 9th of April 1991. Because of the non-transparency of the former KGB archive, and the current state security

10 Kote Gurgenidze, "Georgian KGB is changing its agenda; is KGB anyway - KGB?!", Interview with Tamaz Adamia, in *Republic* #31, 11. 12. 1990, 4.

11 Sandro Aleksidze, "Those, what happened secretly", in *Sakartvelos Respublika* #163 (7808), 2. 9. 2015, 7.

12 Georgian law on Operative-Investigative Activities, #1933, 30. 04. 1999. Order of President of Georgia #14 - Status of Ministry of State Security of Georgia, 12. 1. 2002. Blocking order #660, 25. 11. 1998, www.matsne.gov.ge

13 Vakhtang Menabde, Tamar Papashvili, Nino Kashakashvili, Giorgi Kekenadze, Ana Beridze, *Twenty years without parliamentary control, supervision from side of supreme representative power to services of state security, internal affairs and foreign intelligence of Georgia*, Tbilisi: OSGE, 2017.

service archives, there is no chance to identify all personnel of the Georgian KGB system and no one has a chance to even think about the possibilities, how currently former officers of Soviet KGB are still defining state security issues.

## RECOMMENDATIONS

Based on best experience of Central and Eastern Europe mixed with the local character of events in the Georgian SSR in 1990–1991, we can make several recommendations about the transition period in state security system of totalitarian states:

**Sustainable focus of media on state security apparatus** – Active input from different kinds of media, asking essential and painful question about the system of security and individuals, around the responsibilities for crimes of the regime, the fortune of the victims, and the transparency of sources, should be part of main agenda of a protest movement and society should always be the initiator of communication, and not depend on a reverence about the state security's side.

**Mobilization of speakers familiar with issues of state security institution** – It's absolutely necessary to have a resource of people who are familiar of behind the scene activity of the state security organs of everyday life, who have fundamental knowledge about structure, attitudes and the personnel of state security institutions, and can be a generator of the main questions and accents to the media, who can identify counter-propaganda and disinformation from state security or actors planning policies for infiltration from state security officers, ensuring that they be

more active and transparent and an ally to changes in structures of power.

**Transparency** – It's crucial to keep all processes completely transparent, and not to give representatives of the state security institution the power, or the chance, to plan a long-term manipulative agenda, and play the card of loyalty, and of positioning themselves as patriots and internal oppositionists.

**Blocking archives** – As the history of Georgia proves, in transitional time, state security officers try to destroy archive documents, which illustrate their crimes against political parties and the movement in order to win the battle for power and ensure the safety of their positions, and avoid legal responsibilities.<sup>14</sup> It's strategically important to block any activities of the state security service to either destroy, or hide documents, or using disinformation to society about the amount and meaning of the archive data, and as soon as it is possible to hand the processing and administration of the former security archives to a civil, representative body.

**Complex agenda towards responsibility of state security institutions of totalitarian state** – And finally, it's necessary to include all important activities to a general, wide political agenda towards the transition of a political system, and to strengthen the line of reform and restructuring of the state security service, with a clear political will for change, and combine these activities with the process of lustration, and a real legal framework of the investigation of crimes of the totalitarian state.

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<sup>14</sup> For example, in the 1917 February revolution in the Russian empire, the Tsarist state security - "Okhranka"s and Gendarmerie officers started to burn archive files in Kutaisi and Tbilisi.

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# REGIME ARCHIVES

ANTON VACHARADZE

## INTRODUCTION

Access to the Soviet archives and archival documents remains a contentious topic among many post-Soviet countries. The transition to democracy, de-sovietisation and rethinking of the Soviet past proceeded at a different pace and took various paths in the former Soviet republics. These differences determined state policies toward archives. In many countries, Soviet era documents remain classified, and archives are not accessible to scholars and historians; other countries, only partially. On a legislative level Georgia, together with the Baltic States, may seem like a good example of a post-Soviet country with an open, available, and accessible Soviet archive for researchers and visitors. However, on a practical level, there are problems in transparency and free access that some researchers have faced during their work at the reading rooms of the National Archive.

During the 70 years of the Soviet rule, history was used as an ideological weapon devoid of any real facts; truth was full of falsifications, misinterpretations, communist postulates and clichés. The only space where communists were truthful and honest was with “Secret” and “Top Secret” documents that Soviet bureaucrats circulated among the top level of government and ruling elite. Without archival work, no genuine and accurate scientific and historical research is possible regarding the Soviet era.

Modern day progressive society has agreed that totalitarian regimes, with its political repressions and prosecutions, must not be repeated. In order to ensure this core value, a crucial task and necessity is a proper analysis and study of history. In particular, the study of archival documents, which are often the only accurate sources of information about the tragic events of the past. The democratization of the intelligence agencies and polices can't occur properly if they continue to guard the archives containing information on mass human rights violations and continue to use the same methods of their predecessors. It is possible to construct new state institutes, including, breaking off the continuity chain with the organs of the retaliatory body, which had implemented the repressive actions. Open access to the archives of the totalitarian intelligence agencies, not only gives the chance to restore the violated rights, but also shows that information on all crimes will become known to the public, sooner or later. In order to avoid repeating the totalitarian practices of the past, it is important to inform society how the repressive modes had worked.

Only a full opening of the archives of the intelligence and security agencies can give answers, both to private matters of citizens, as well questions that have enormous value for the entire society. It is impossible to have a valid written history of the 20th century of any former Soviet country without studying these archives. The issue is also important in regards to freedom of information, as access to such documents is one of the components of an open government, especially in post-Soviet states, where openness should start from the archives. Moreover, the issue is relevant in terms of transitional justice as well. Soviet repressions remain one of the main traumatic points in the collective memory of post-Soviet countries. Publishing authentic documented data

on the repressed, as well as the individual stories, will support the process of the rehabilitation of the victims, deliver the truth to the families of the victims, and help restore justice and promote reconciliation within the entire society.

## DESCRIPTION OF THE DEFAULT SITUATION

The most important communist secret service archive in Georgian SSR was the archive of the Georgian territorial organ of the Committee for the State Security (KGB) in Tbilisi.

According to official information of the Ministry of Internal Affairs (MIA) of Georgia, the history of the KGB archive follows: in March of 1921, according to a resolution passed by the Presidium of the Special Emergency Committee, or “Cheka”, the registration archive department was formed. Its task was to gather and preserve incriminating materials about numerous “enemies” and “dangerous elements” of the state that the Cheka had identified. Thirty staff units were selected for the registration archive department.

Between 1921 and 1992, 230,000 archival files were created. In the beginning of the 1990's the files were stored in the cellar of the 10th department of the Committee for State Security (KGB) of the former Georgian SSR. In 1990, mass anti-Soviet demonstrations took place in the center of Tbilisi, on Rustaveli Avenue right next to the MIA-KGB building. The demonstrators broke into the building and tried to seize the secret documents. The guards quickly dispersed the protesters. Shortly thereafter, the former KGB's central building caught fire in the Tbilisi Civil War of 1991–1992. As a result, 210,000 archival files were destroyed – about 80 % of the entire collection. The Documents that survived were soggy; most of them suffered water damage from the efforts to put out the fire. War and fire affected MIA archives and a large portion of the collection was destroyed as well. The remaining archival files from the former archives (approximately 20,000 units), most of them in poor condition, were provisionally stored in the cellar of the building of the state Archive. The files suffered even more damage from being stored in the cellar, and their rescue became an urgent matter.<sup>1</sup>

Naturally, one can suppose that the complete content and capacity of this archive will remain unclear and the actual number of documents may differ from the official number. In general, this archive is subject to speculations and mystifications. According to the alleged witnesses and participants of the process: some of the important documents from the archive were transferred to a special KGB depository in Smolensk, Russia. A group of Georgian KGB employees escorted the documents, probably in order to sort and then to destroy them. The above sources claim they were the documents about intelligence developments, accounts and reports.<sup>2</sup> Some of the documents that were not destroyed,

1 The Archival Bulletin, N1, 2008, 6–8.

2 Documentary “Lost History” [*Dakarguli Istoria*], 2014, <https://www.youtube.com/watch?v=5vYIBOxhBj4>

were sent back, but the condition and legal environment of the remaining part of the documents in the Smolensk archive are unclear. Since 2003, there have been talks about the return of the documents (originals or scanned), but without any consequences. After the 2008 war, Georgia broke diplomatic relations with Russia and the archival institutions no longer have any contact.

Besides the KGB archives, the Ministry of Internal Affairs of Georgia is also a repository of the archive of Central Committee of the Communist Party of the Georgian SSR: a resolution passed by the presidium of the Central Committee of the Communist Party (Bolshevik) of Georgia on June 24, 1922, created the *IstPart Commission* (Commission on Party History). *IstPart's* primary mission was to collect, academically process and publish materials on the history of Georgia's Communist organs. In late 1929, under the instructions of the Lenin Institute, the Party History Institute established the Party Archive. On the basis of a resolution passed by the Central Committee of the Communist Party of Georgia on February 23, 1932, the Historical-Revolutionary and Scientific-Research Institute of Stalin was formed in Tbilisi. In June 1934, the Institute became a branch of the Marx-Engels-Lenin Institute of the All-Union Central Committee of the Communist Party, and later, the two merged completely. The *IstPart* archive, as well as the documents from the Central Committee local divisions, was transferred there. Between 1933 and 1937, the so-called IMELI (*IstPart Marx-Engels-Lenin Institute*) building was constructed on Rustaveli Avenue, Tbilisi, where the Party Archive was placed, and where it functioned until 2007.

The predecessor of the modern National Archives of Georgia was established in April 23, 1920, according to the law "About the establishment of Republic's Central Scientific Archive", issued by the Democratic Republic of Georgia. On July 1, 1921 the Revolutionary Committee of Georgia issued a decree "About the reorganization of the Archival Affair". After this, the archival field of the Georgian SSR was ruled according to Soviet legislation almost for seven decades.<sup>3</sup> After Georgia regained independence, the National Archives was a subdivision of the Ministry of the Justice. The 29th December, 2006 law, "On the National Archival Fund and the national Archives" was adopted and the National Archives gained the status of a legal entity of public law, still supervised by the Ministry of Justice.<sup>4</sup> During the Soviet Era, the predecessor of the National Archives had secret materials that were regulated differently and annually only a few people with the permission of the higher Party and KGB organs were granted access to the reading room of the secret materials.<sup>5</sup> Lack of a suitable finding aid was an obstacle for getting the necessary document too: many titles in the finding aid, books and catalogues, were censored and hidden because of their not very "desired" historical background.<sup>6</sup> Today the National Archives of Georgia doesn't contain any secret documents, and all their records are available for everyone, if it does not contradict with the state law on personally identifiable information.

Some of the researchers noted, that in order to restrict access to documents the archives tend to find loopholes in current legislation. One such loophole is the concept of "personal information". The National Archive network refer to the Law on the National Archives and Archive Fund, which prohibits third parties accessing documents containing "personal information" without the consent of the person or his/her heirs before the expiration of the 75-year period from their issuing. Referring to this clause, the archive arbitrary blocks all information after 1943,

often making it difficult to access materials from earlier years as well. The law does not consider that the legal concept of "personal information" implies any information that allows identifying the person (including the name and surname). As a rule, that part of the information that requires special control is often called "sensitive" or "personal", as it covers information about the private life, finances and health of an individual. The law does not consider these differences in terms and concepts, and blocks access to all information about all persons, regardless of who the person is – an individual or a civil servant. The situation is even aggravated by the indifferent attitude of the supreme authority towards the problems of collective memory, Soviet totalitarianism legacy and problems in the archival space.<sup>7</sup>

## DESCRIPTION OF THE TRANSITION AND CURRENT STATUS

To preserve the remaining part of the KGB Archive from the repeated danger of fire, in April and May of 1995 the governing body of the Ministry of State Security provided space for the materials in the so-called "Moduli" scientific technical center. Preparation work for accommodating the archive materials was carried out in this emergency situation. After the "Rose Revolution" in 2003, attention to the KGB archives in Georgia increased again. As mentioned in the official statement of MIA, after 2004, the conditions of the archive depository started to improve. The merging of the Archive Department with the Ministry of Internal Affairs in 2005, and the combining of the archival materials was especially important. After this, the restoration and systematization of the documents began according to the archival rules and regulations. As it was stated in the "Archival Bulletin", the MIA official magazine, one of the priorities conducted by the Archive Department of the MIA, is searching for key information, and providing certificates for persons, who were subject to unjustified repression. These certificates help in getting court decisions, which assign the victims or their heirs some small pensions and other benefits.<sup>8</sup>

In 2002, the future winning politicians raised the issue of lustration in their pre-election promises and wanted to implement the so-called "10 steps to freedom" – a project offered by several NGO's, but later, when they got into the Government, they quit all discussions about the issue. Their decision, not to develop the idea, was later criticized several times by the Georgian media.<sup>9</sup> After time, discussions about the issue faded away from Georgian discourse, and no wider discussions took place, only few mentions in media. After the 2008 war between Georgia and Russia, the authorities began a new policy in the field of collective

3 See National Archives of Georgia, "Historical Background of National Archives of Georgia", <http://archives.gov.ge/en/history>

4 Law "On the National Archival Fund and the National Archives", Date of issue: 29. 12. 2006, <https://matsne.gov.ge/ka/document/view/22420>

5 Interview with the Deputy Director of the Central Historical Archive, Ketevan Kobiashvili, 2015.

6 Anton Vacharadze, "Problems of Archival Descriptions in Post-Soviet Countries", Case study according to the Central Historical Archive of Georgia, International Conference Proceedings, Radenci, 2016, 46.

7 Irakli Khvadagiani, "Guide-book – Open Access to the KGB Archives in the Eastern Partnership ('Georgia')", Kyiv, 2017, 29.

8 The Archival Bulletin, N1, 2008, 8–10.

9 See Tea Gularidze, "Deficienes of ruling Party were visable from day one", in *Civil.ge*, 28 February, 2004, [http://www.civil.ge/geo/\\_print.php?id=6139](http://www.civil.ge/geo/_print.php?id=6139)

memory; the Soviet past, terror, and political repressions became a central issue for this project. The authorities decided to restructure and modernize the former Georgian SSR KGB archive. Resolution no. 150, passed by the President of Georgia on April 5, 2007, moved the collection to the KGB Archive Administration of the Ministry of Internal Affairs of Georgia.<sup>10</sup>

Noteworthy documents still preserved in the KGB Archive include those on the 1922–1924 Anti-Soviet uprising, the Civil War, the dissident movement, the events of March 9, 1956 in Tbilisi, the so-called “Mingrelian Case” and many others. After the inventory and digitalization of the KGB Archive, it became possible to tell the actual number of documents. According to the official guide-book issued by the archive management, the situation is as follows:

**Fonds no. 1 Normative acts** – consists of 1,134 the former “Top Secret”, “Secret” and “Non-Secret” volumes, which range in date from 1920 to 1990 (excluding normative acts from 1921). The following themes appear in the acts: personnel; operations against espionage, “hooliganism”, robbery, speculation, smuggling and hard drinking; secret services; transportation; weapons storage and security; internal affairs; internal discipline; the implementation of orders and resolutions; cases brought before the military tribunal; confiscations and requisitions; border security; censorship in state and private theatres; travel abroad; diplomatic property and mail; courier service; secret business correspondence; published journals; employment; association with foreigners; activities of the State Political Directorate (GPU); issuance of credit; secret correspondence; application reviews; prisoners statistics; issuance of diplomatic and transit visas; the organization of sport institutions; concentration/labour camps; rules against photographing/filming military units; military service law; literature storage and security; the rights of consulate representatives; regulation of sanitary inspections; sale of horses; storage of special construction materials; regulations concerning arrival and departure of foreigners to/from the USSR; dactylography (fingerprinting) of criminals; rules concerning human filtration; keeping of state secrets; operations execution; etc.

**Fonds no. 6 Criminal Cases** – The Archive of the State Security Committee of the Georgian SSR (KGB Archive) combines criminal cases of the Special Committee (Cheka), State Political Directorate (GPU), Joint State Political Directorate (OGPU), People’s Commissariat for Internal Affairs (NKVD), State Security Committee (KGB) and Ministry of Internal Affairs (MVD). These documents range in date from 1919 to 1989. The Archive holds 20,000 criminal cases, most of which are of persons tried under the articles on political crimes: Article 58-10 (anti-Soviet agitation/propaganda) and 58-11 (organizing anti-Soviet activities). The remaining cases are of persons tried under the articles on treason, espionage, terrorist acts, border violation, smuggling, illegal currency operations, drawing up illegal files, organizing mass disturbances, speculation and ordinary crimes under various articles of the criminal code.

These fonds also hold the criminal cases of the 9th and 11th Red Army in pre-Soviet Georgia. These unique cases include photographs, documents and personal correspondence. This fond also contains exclusive materials about the 1924 Anti-Soviet Uprising. These materials (4,100 cases) are dispersed throughout the files from 1925 up to 1927.

Fonds no. 6 contains 4,180 criminal cases of the 1937–1938 Great Purge.

Fonds no. 6 also includes criminal cases from the World War II and after (1939–1950). These cases were built on the basis of Article 58-1 (treason), and those convicted were sentenced to 25 years in prison. Family members of the “traitors” were also tried.

From the later decades, cases of note include those of the 1970s dissident movement in Georgia and Helsinki Group, and the twenty-two volume Hijackers Case (no. 8309) of the 1980s.

**Fonds no. 8 Meeting Protocols** – combines protocols of the board, presidium, special advisory and so-called “Troika” of the Special Committee (Cheka), State Political Directorate (GPU), Joint State Political Directorate (OGPU), People’s Commissariat for Internal Affairs (NKVD) and Ministry of Internal Affairs (MVD). This fonds consists of 491 cases created between 1921 and 1955.

**Fonds no. 9 Filtration Materials** – this fond collects state checking and filtration control materials from 1946–1951. After World War II, many combatants were checked and sent to the so called “Filtration Camps”, where they were subject to forced labour. They were charged with cooperation with the German Army.

A considerable part of this 45,000-case fonds was destroyed during the 1991–1992 Tbilisi Civil War. Only 1,300 cases remain.

**Fonds no. 12 Executions** – holds documents concerning death-penalty sentences from the Special Committee (Cheka), State Political Directorate (GPU) People’s Commissariat for Internal Affairs (NKVD) and Ministry of Internal Affairs (MVD) between 1921 and 1952. This fonds consists of 92 cases; 16,693 persons were executed.

**Fonds no. 13 Special Exiles** – this fonds collects the “Echelon Lists” of exiled persons and cases of “special exile” from 1941 to 1951.

The “Echelon Lists” provide the following information: number of family members exiled; names of adult exiles; number of underage persons; echelon numbers and railcars used for transport. People sent to exile from Georgian SSR included émigrés, so called “traitors of homeland and people”, former prisoners of the German army (prisoners of the WW II and civilians deported to Germany for forced labour), citizens and families suspected of cooperating with the Turkish secret services, and people of Greek, Iranian, Turkish, German, Kurdish and Armenian, Assyrian nationality / ethnicity. Minors and disabled people were also subject to exile.

On the basis of Resolution no. 744, passed by the USSR Defense Committee on October 8th, 1941, all ethnic Germans were sent to exile.

On the basis of Resolution no. 6279, passed by the USSR Defense Committee on July 31st, 1944, Meskhetian Turks, Azerbaijanis, Kurds, Iezids, Khemshil Armenians,<sup>11</sup> Adjarans, Lazs, Iranians and Turks were re-settled.

On the basis of Resolution no. 2214-856, passed by the USSR Council of Ministers on May 29th, 1949, Armenian, Greek, Assyrian and Turkish families were exiled from Georgia.

On the basis of Resolution no. 4893-21136, passed by the USSR Council of Ministers on November 29th, 1951, Georgians

<sup>10</sup> Ministry of Internal Affairs of Georgia, “MIA Archive. History”, <http://police.ge/en/useful-information/mia-archive?sub=428>

<sup>11</sup> *Meskhetian Turks and Khemshil Armenians* – Sunni Muslim population of Georgian and Armenian ethnicity from Meskhet-Javakheti and Adjara region of Georgia.

(primarily from the Adjara region), Azerbaijanis (primarily relatives of émigrés) and former prisoners of war and their families were sent to exile.

**Fonds no. 14 Missing in Action** – This fond collects lists of those missing in action, captured or killed during World War II. There are 105 volumes, preserving information on 120,000 persons. Each volume deals with approximately 1,200–1,800 individuals.

These lists include valuable information including soldiers' military ranks, the names of persons injured, captured or killed, and the whereabouts of the deceased.

Example: Grigol Grigorevich Avalishvili, date of birth – 1902; place of birth – Poti region; summoned by the Poti Regional Commissariat; title – Red Army Soldier; position – rifleman; military unit – 800th Rifle Regiment; mobilized – 5. 7. 1941; cause of death – died of injuries; location of grave – Orel Oblast, Dolgorukov Region, village of Stepanovka.

These documents are preserved in Podolsk, Russian Federation and MIA archives preserve its copies.

**Fonds no. 21 Rehabilitations** – Lists of people rehabilitated by the Supreme Court Board of Criminal Cases: The Prosecutor's Office of the Georgian SSR issued rehabilitation notices for citizens oppressed by the state political administration and the NKVD.

On January 16th, 1989, the USSR Supreme Council passed a resolution declaring all repressed persons rehabilitated.

The 60-volume fonds provides information on approximately 18,000 victims of repression.

These fonds also hold the lists of those rehabilitated by the Supreme Court Board of Criminal Cases. These lists were transferred from the National Archive.

Between 1955 and 1960, victims of politically-motivated repressions by Soviet authorities were rehabilitated by the Supreme Court Council of the Georgian SSR.

There are six volumes and 10,768 rehabilitations.<sup>12</sup>

The Archive of the Communist Party of Georgian SSR is one of the biggest archives in Georgia, preserving about 8,300 fonds, currently preserved at the MIA Archive. Archival fonds and materials are crucial to the study of the Party history, as well as the history of the Young Communist League (Komsomol). In recent years, interest in the Archive has grown daily and many important projects have been accomplished. An electronic database was created, interesting new data was found and made accessible to society. And over 8,000 photos were digitized. Documentary films, TV programs, publications in newspapers and magazines have incorporated Archive materials. Both Georgian and foreign researchers visit the Archive frequently, and the bilingual magazine *Archival Bulletin* is published on the basis of its holdings.<sup>13</sup>

The National Archives of Georgia is the largest holder of archival materials in the country. It is significant, not only for the local population, but for scholars worldwide, who study the history of Caucasus, Russian Empire, the First Democratic Republic of Georgia, the Establishment of Bolshevik State, the Georgian Soviet Republic, and the Period of transition from Soviet State to Democracy. The Archives registers about 1000 researchers a year, more than 100 of which are from foreign countries.

As I have mentioned, the MIA and the National Archives of Georgia do not keep classified and secret materials. The law "On the National Archival Fund and the National Archives"<sup>14</sup> oversees the openness of the materials of the national archival fonds,

according to the principles declared in the "Law of Georgia on Personal Data Protection";<sup>15</sup> except those materials containing state secret documents, documents that contain personally identifiable information, criminal trial materials, and in some cases, if 75 years from its creation haven't passed, or in other legislative cases that do not extend to it.

According to its official magazine, the Georgian MIA Archive Administration's web site is a perfect model of how the information can be accessed by anyone. Georgia, along with the Baltic States, was a pioneer in opening the archive of special-services. That was a result of the authority's political will. The web site of the Archive Administration was highly praised, as there should be many official documents and data available, which are still secret in neighboring countries. That web site can be, according to the magazine, a model for other countries.<sup>16</sup> However, in criticism of the version that the official magazine offers, we can simply compare the web site with role-model archives, and we'll see that the search tool of the MIA archives web page isn't a successful example of digitization and transparency, and has a minimal degree of digital access.<sup>17</sup> The same may be said of the website of the National Archives: the website is multilingual, with better design, but also has a minimal degree of digital access and more relevant for PR/marketing issues than towards researcher's needs.<sup>18</sup>

Also, some questions have emerged about the Archives and some problems are still unresolved. These questions were indicated in the analytical report "Open Access to the KGB Archives in the Eastern Partnership" issued in Kyiv in 2017:

- 1/ What has happened to personal records and personal files of the employees of repressive organs? Whether the archive and the file cabinet of the secret KGB officers were preserved or were burnt?
- 2/ What has happened to the KGB district departments of the Georgian SSR archives?
- 3/ Where is the archive and documentation of the frontier and internal troops?

In the process of writing this article, the author addressed these questions to MIA Archives' officials and received the following answers:

- 1/ The major parts of the records were burnt during the events. The officials suppose that one copy of every created document was sent to Moscow because this was the common practice. After independence, some officials continued to work in Security Service of Georgia and restored their own documents via service record books. Also, according to state law, increased social benefits and pension were provided for officials, who

12 Archive of the State Security Committee of the Georgian SSR, [http://archive.security.gov.ge/security\\_fond.html](http://archive.security.gov.ge/security_fond.html)

13 Ministry of Internal Affairs, "MIA Archive. History", <http://police.ge/en/useful-information/mia-archive?sub=428>

14 Law "On the National Archival Fund and the National Archives", Date of issue: 29. 12. 2006, <https://matsne.gov.ge/ka/document/view/22420>

15 Law of Georgia on Personal Data Protection, Date of issue: 28. 12. 2011, <https://matsne.gov.ge/ka/document/view/1561437>

16 The Archival Bulletin, N5, 2009, 112–114.

17 See The Archive of the Ministry of Internal Affairs of Georgia, <http://archive.security.gov.ge/>

18 See National Archives of Georgia, <http://archives.gov.ge/en/home>

19 Law "On Social Security of Persons Transferred to the Reserve from Military Bodies, Internal Affairs Bodies and the Special State Protection Service, and Their Family Members", Date of issue: 16. 10. 1996.

worked for the Security Service<sup>19</sup> and because of this some of people requested and received the relevant notices from Moscow.

- 2/ All the materials from the district departments of the KGB were sent to Tbilisi for centralized registration and record keeping.
- 3/ These files are not kept in the MIA Archives. They suppose, that these materials were under supervision of the administration of the border district of South Caucasus, and thus were fully under the supervision of Moscow.

The other major problem is that although there is law that regulates the basic principles of archive business and archival institutions – already mentioned “On the National Archival Fund and the National Archives”; the MIA and other state archives, except for the National Archives, led by their own regulations, establish separate regulations or charters of internal order. Therefore, different archives have different working conditions and there is no unified strategy of physically storing documents, keeping records, processing search queries, and the usage of documents on scientific issues. Since 2009, there were no incidents of refusal to provide documents from the MIA archive. Internal order and prices of services are regulated by separate rules:

- 1/ The Decree of the President of Georgia No. 494 from 6. 9. 2011 “On the creation of the Ministry of Internal Affairs Archives” defines the functions and structure of the archives and its offices;
- 2/ The Decree of the Government of Georgia No. 428 from 16. 10. 2012 “On payment for services provided by the Ministry of Internal Affairs Archives”.

Both Georgian and foreign citizens are allowed to access the documents – the law does not provide any restrictions on the basis of nationality. But it also does not give any privileges to scientists, students, etc. Even individuals, who are the subjects of the records themselves, or their heirs, do not have any advantages in accessing documents. They pay very high prices to copy documents that relate personally to them or their family members. Usually the archive issues copies with “watermarks”, which according to scholars, practically excludes the full use of the “product”.<sup>20</sup>

Currently the MIA Academy Archives is moving to a new building, which gives hope for better working conditions with the documents. Before moving the MIA Archives to a new building, the first MIA Academy Archives department (MIA-KGB Archive) was located in the State Security building, and the second department (Communist Party of Georgian SSR archive) was stored in former communications office building. Working conditions in the reading room are rather uncomfortable. There is not enough space, the hall is located next to the working rooms, and there are no stationary computers or the Internet.

## LESSONS LEARNT

The fire in the KGB Archives, the wars and overall chaos in Georgia in the 90’s, strongly influenced the public’s attention to the comprehension of the Soviet past. There has been several wars in the country and there was no initiatives or discussions about the archives and the sensitive problems of Soviet history.

Only in late 90’s, and the beginning of 2000’s, did public initiatives about lustration, rehabilitation of victims of Soviet repressions, rethinking the Soviet past and the Red terror, start to

emerge. Even with the new era, and westernization of the country, these questions still remain.

After the Ministry of Internal Affairs Archives was reformed and opened in the late 2000s, the issue of transparency and access to the data became significant, and since then, the Archive and the authorities have always stressed that the Archive be absolutely transparent and provides modern services. Transparency of the MIA Archives is important and, besides the scholars, who work on various topics, the organization itself publishes a scientific popular magazine – *The Archival Bulletin*,<sup>21</sup> as well as its online version. The topics in the magazine respond to Soviet repressions, the Soviet regime and the overall crimes committed by the state security apparatus.

During the 1990s, there was only one organization from civil society in Georgia – the Georgian “Memorial”, which tried to unite the members of repressed families, systematize information about the victims, collect family archives and disseminate information among general public by publishing them online. The organization still exists, but does not actively work anymore, and the online archive is not available. The Georgian society “Memorial” started one of the public initiatives about KGB Archive materials. It was engaged in the systematization of archival data regarding repressed persons, who were shot in the Georgian SSR in 1924 and 1937–1938. The Georgian society “Memorial” published this data in its own newspaper, but due to lack of resources and other reasons, the process soon stopped.

Since 2010, the non-governmental organization “Soviet Past Research Laboratory – SovLab” has carried out a number of researches and educational projects in the archives aimed at understanding the Soviet past: “Topography of Red Terror” – a historical and educational tour; a map with stories of the sites, places, houses of the old cities and of the people living there. In 2011–2012, the publications “Topography of Red Terror – Old Tbilisi”, “Comprehension of the Soviet Past – a Collection of Discussions”, “Lost History – the Memory of Repressed Women”, were issued. Two documentaries were also produced: “Great Soviet Terror – People’s Stories”, “Stories Told Live – the Memory of Repressed Women”. Within the framework of this project, exhibitions were organized in various cities of Georgia. That same year, the organization launched the “Public Archive” project (archive.ge) – it is an open web-archive that collects oral stories and digitized versions of unique historical documents – personal archives of Georgian citizens (including those documents that are stored in the families of the repressed persons). In 2013–2017, the organization carried out such projects as: “Memorial Collection of the Constituent Assembly of the Democratic Republic of Georgia”, “Project on the Identification of Places of Mass Executions in 1920–1940s Years in Tbilisi, Telavi and Gori”, “History of the Political Red Cross of Georgia” and “History of the Local Governments Reform in the First Republic of Georgia in 1918”.<sup>22</sup> In addition, “SovLab” initiated a draft bill that implies a possibility for the researcher to access the archives’ reading hall with his / her own camera and inadmissibility of interpretation of the Law

20 Irakli Khvadagiani, “Guide-book - Open Access to the KGB Archives in the Eastern Partnership (‘Georgia’); Kyiv, 2017, 29.

21 See The Archive of the Ministry of Internal Affairs of Georgia, “The Archival Bulletin”, [http://archive.security.gov.ge/archival\\_bulletin.html](http://archive.security.gov.ge/archival_bulletin.html)

22 Irakli Khvadagiani, “Guide-book – Open Access to the KGB Archives in the Eastern Partnership (‘Georgia’); Kyiv, 2017, 31–32.



on Personal Data by an archive towards its benefit. This draft bill, being introduced by two members of the Parliament minority, is still in the pending process.<sup>23</sup>

Since 2009, the NGO Institute for Development of Freedom of Information (IDFI) launched several ideas with cooperation with the MIA Archives and the National Archives of Georgia. IDFI has valuable experience in collecting, analyzing, digitalizing and publishing archival documents. From 2011–2013, the organization was engaged in the launching of an electronic database of documents related to the events of March 9, 1956 – the massacre of citizens in Tbilisi during a demonstration, by Soviet Militia and troops. The next big project implemented with the MIA Archives was “Stalin Lists from Georgia”. In this database, information about more than 3.600 persons convicted during so-called Great Terror in 1937–1938 was digitized and put online. IDFI has a rich experience of hosting international conferences on archives. IDFI hosted several international conferences in Georgia, in cooperation with the MIA Archive, the National Security Archive at the George Washington University, and the US and International Society “Memorial”. The international conferences are aimed at establishing professional links between high specialist scholars, archivists, archive openness advocates across the post-Soviet space, sharing their experiences working in Soviet Archives, developing archival research, and dealing with state bureaucratic obstacles to information access. For several years, the IDFI has been advocating ideas of openness of archives in political and public circles. One of the steps was advocating for openness of the archives and advocating to the Ministry of Justice of Georgia, and the National Archives of Georgia, to abolish fees for getting original archival document, or digital copies in the reading room. In the framework of the Open Government Partnership (OGP), the IDFI advocated for the digitization of the catalogue of documents of the former KGB Archive of Georgia. The OGP committee positively assessed these novelties and the government officials always note the positive effort towards overall openness of the archives and freedom of information in general. In November 2017, the IDFI launched the project – “Enhancing Openness of State Archives in Former Soviet Republics”. The overarching goal of the project is to ensure the openness of Soviet archives in the post-Soviet era, and to create a network of scholars/NGOs in the post-Soviet era to work on issues of Soviet Archive openness.<sup>24</sup> On April 27–28, 2018, the IDFI hosted an international conference titled: Enhancing the Openness of State Archives. The event enabled more than 30 archivists (including directors of state archives, researchers, civil society representatives) from over 20 countries to share their experiences on the accessibility of archival documents to the public.<sup>25</sup>

Many of these initiatives were supported by the Georgian archives and the organizations were granted free access to the archives. For the creation of the “Stalin’s Lists from Georgia” Project, the MIA Archive gave all the necessary data to the IDFI (several thousands scanned records) to analyse, process, and input into the Archive’s database. The National Parliament Library of Georgia put the database on its website;<sup>26</sup> it is now available online. IDFI started litigation proceedings against the National Archives because the institution didn’t provide publicly available information IDFI asked. Sovlab also started similar process because of the misinterpretation of the law about personally identified information. The results of the processes will be clear in the nearest future.

Public initiatives with the support of public institutions are priceless in the overall openness of archives, and have a primary impact on the promotion of archival openness and archival research. Archival openness and research can have a substantial impact on the transition in any post-soviet state. Georgia’s example, and the work done by the IDFI on openness of the KGB Archive, publishing archival catalogs of documents, as well as international research projects on Soviet Studies implemented in Georgia can be taken as one of the best practices, whereby certain type of documents are accessible to any interested individual. Such efforts not only promote openness on matters of the past, but of the present as well.

## RECOMMENDATIONS

It is necessary to keep the fonds and documents of the regime archives physically safe: compromising the security and relying only on bureaucracy functionaries is inadmissible. There must be frequent social control mechanisms over archives, especially during the period of transition. Unfortunately, Georgia couldn’t avoid the tragic turnover of the situation during the period of transition and the majority of the archives were destroyed. Allegedly copies of the documents fell into the hands of the successor of the USSR, the Russian Federation, and according to today’s political conjuncture couldn’t be transferred to Georgia in near future.

Concerning the few archival materials that survived: the official standpoint of the MIA Archive is that there are no files that researchers cannot see. Since society cannot independently audit the archive’s repository and does not even undertake such attempts, no one can officially question this statement. The society has to trust the MIA Archive fonds inventory posted on the Archive website. We can clearly say that there is no publicly announced information request that the MIA Archive has rejected to access the records from its fonds.

Also, many independent scholars stress that a fee for using the archival materials, e.g. making copies, is very expensive. The IDFI thinks that allowing researchers to use their own cameras in the reading halls of the archives might solve this problem. But up to this day, neither the National Archives, nor the MIA Archives have made this option available.

For future development, revision and digitalization of documents preserved in the Russian KGB Archives is the most important issue for the Georgian society, but as of now, this task is impossible due to the lack of diplomatic relations between the countries and inaccessibility of the KGB Archive in Smolensk, Russia. Without these archives, there will always be controversy about the activity and history of the Soviet state retaliatory institutions. But this mission seems impossible for now, at least from the year 2018, and because of this, many questions in Georgian society will still remain unanswered.

23 See Soviet Past Research Laboratory, <http://sovlab.ge/en>

24 See “Enhancing Openness of State Archives in Former Soviet Republics, project of the IDFI Georgia”, [https://idfi.ge/en/archival\\_studies\\_post\\_soviet\\_space](https://idfi.ge/en/archival_studies_post_soviet_space)

25 See “Access to State Archives Discussed by International Researchers in Georgia”, 1 May 2018, [https://idfi.ge/en/access\\_to\\_state\\_archives\\_discussed\\_by\\_international\\_researchers\\_in\\_georgia](https://idfi.ge/en/access_to_state_archives_discussed_by_international_researchers_in_georgia)

26 See “Stalins’ lists from Georgia”, 26 March 2018, <http://www.nplg.gov.ge/gwdict/index.php?a=index&d=26>

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# LUSTRATION

GIORGI KLDIASHVILI

## INTRODUCTION

In the 20th century, the administration of lustration started from the denazification of Germany after World War II by the decision of the Potsdam Conference. Lustration was carried out in the 90s in the states belonging to Central and Eastern Europe after the fall of the Soviet regime. In other words, lustration is carried out in order to make a switch from an antidemocratic regime to a political system with democratic political order and principles of rule-of-law.

Many of the post-communist states of Eastern Europe have chosen to enact a vetting procedure known as lustration to ban former secret police agents and their informants from holding public office. This practice is part of a global trend toward increasing accountability for human rights violations.<sup>1</sup>

In some countries different laws on Lustration were adopted immediately or soon after the fall of the Eastern Block (Czech Republic – 1991, Baltic States – 1990–1995, Hungary – 1992); in some of them, this was done only after years of transformational change (Poland – 1997, Georgia – 2010, Ukraine – 2014). And in some countries, lustration was not adopted at all, like in the Russian Federation, Central Asian countries, etc. Lustration, the vetting of public officials in Central Europe for links to the communist-era security services, has been pursued most systematically in the Czech Republic, Hungary and Poland. Prior attempts to explain the pursuit or avoidance of lustration focused on the differing experiences of communist rule or transition to democracy. A closer examination finds that although the three countries in question had very different histories, there were identical demands for lustration in the early 1990s. These demands were translated into legislation at different times and varied considerably in the range of offices affected and the sanctions imposed.<sup>2</sup>

This article will try to review the lustration policy that was implemented in Georgia and analyze the implications of lustration for democratization and transitional justice.

First of all, the main reasons for lustration according to general principles and practical decisions in various countries similar to Georgia are:

- To disclose information with regard to secret officers, ones who assisted in the communist regime;
- Possibility to establish the principle of individual responsibility (mainly political);
- Removal from holding public posts of employees pertaining to former criminal regime;
- Initiation of criminal cases and criminal prosecution of persons guilty of mass killings and other crimes against humanity;
- To reveal and eliminate fascist/totalitarian symbols;
- Social and information functions.

Secondly, it has to be emphasized that the Parliamentary Assembly of Council of Europe, in its Resolution N1096 (1996) “On Measures to dismantle the heritage of former communist totalitarian systems” dated June, 27, 1996, grants the following:

- Firstly, guilt, being individual, rather than collective, must be proven in each individual case – this emphasizes the need for an individual, and not collective, application of lustration laws;
- Secondly, the right of defense, the presumption of innocence until proven guilty, and the right to appeal to a court of law must be guaranteed;
- Revenge may never be a goal of such measures, nor should political or social misuse of the resulting lustration process be allowed;
- The aim of lustration is not to punish people presumed guilty (this is the task of prosecutors using criminal law), but to protect the newly emerged democracy.<sup>3</sup>

Georgia is obligated to fulfill the requirements and resolutions of the above resolution within the scope of the Association Agreement between EU and Georgia.

There are two major challenges in terms of lustration in Georgia. First, the lustration process in Georgia started too late, more than 20 years after the fall of the Soviet Union. Second, relevant documents about the staff, officers and former KGB related persons in Georgia are only partially available, making it difficult to find materials needed to ensure that the lustration process is carried out adequately. Unfortunately, the partial destruction of the former state security archive during the Tbilisi War of 1991–1992, as well as the reasonable suspicion that Moscow has taken the appropriate archival materials from Georgia, makes the full-scale lustration difficult. However, the Law of Georgia on Lustration (Law of Georgia Freedom Charter)<sup>4</sup> is primarily aimed at dismantling of the totalitarian ideology and the recognition of the Soviet Union as a criminal regime, which is a necessary step towards reevaluating the past and recent history of Georgia.

## DESCRIPTION OF THE TRANSITION AND CURRENT STATUS

The transition process varied in different states. The Latvian electoral law from 1992 required from all Parliamentary candidates to issue a written statement on the existence of, or lack of, their ties with the Soviet or other secret services. Since 1995, the law on elections of the Latvian Sejm prohibits the election of persons who were active in the Communist Party as well as a range of its partner organizations. Lithuanians created a special

1 Ryan Moltz, “Dealing with communist legacies: the politics of lustration in Eastern Europe”, University of Minnesota Ph.D. dissertation, 2014, <https://conservancy.umn.edu/handle/11299/162684>

2 Kieran Williams, Brigid Fowler, Aleks Szczerbiak, “Explaining Lustration in Central Europe: a ‘post-communist politics’ approach”, in *Democratization*, 2005, 12 (1), 22–43, [https://www.researchgate.net/publication/248950483\\_Explaining\\_lustration\\_in\\_Central\\_Europe\\_A\\_'post-communist\\_politics'\\_approach](https://www.researchgate.net/publication/248950483_Explaining_lustration_in_Central_Europe_A_'post-communist_politics'_approach)

3 Paragraphs 12, 13 of the mentioned resolution.

4 Law of Georgia No. 1867, 25. 12. 2013, <https://matsne.gov.ge/ru/document/download/1381526/8/en/pdf>

parliamentary commission. Finally, in both abovementioned states former employees of foreign (Soviet or other) intelligence services may not stand for parliamentary elections.

In Hungary, according to the 1992 so-called “Zétényi-Takács law”, after fairly lengthy proceedings the Constitutional Court of Hungary arrived at a decision, the essence of which was as follows: the list of agents can be opened to society, if there is public interest in disclosing the past of the agents.

In Poland, when power changed from the communists to the opposition – “Solidarity” – the government guaranteed inviolability to former communists. The newly elected government announced that a “Thick Line” would be drawn between the past and present.<sup>5</sup> But in 1997 the first Law “On Lustration” was adopted in order to check the connection of top executives with the security agencies from the communist period, and a fairly rigid model of lustration procedure has started. Since then, Poland checks all persons entering the civil service in terms of their involvement in the former communist regime in the country. The functions pertaining to such examination are entrusted to the Lustration Office of the Institute of National Memory. The corresponding procedure is applied to everyone starting from the President to the vice-principal of a higher educational establishment.<sup>6</sup>

Georgia was not able to adopt a law on lustration immediately after regaining independence. Although, in late 1980’s, and especially in early 1990’s, being a member of the KGB was a stigma in the society; and being accused of being an “agent of KGB” was the worst kind of insult. Open questions about the KGB and the persecution of its crimes have always stayed only on the level of rhetoric.

On April 9, 1991, after the re-establishment of independence by Georgia, during the short time of peaceful development and failed transition, which was due to the radicalization of political life and open confrontation between the radical opposition and the government of the elected president Zviad Gamsakhurdia, the reform of the state security system was forgotten. Moreover, during the escalation of the conflict, the new Georgian Ministry of State Security (based on the Georgian KGB) became a self-isolated and out of control body, refusing to comply with the President’s requests to provide information about secret informers of the KGB and blocking Lustration attempts, which later former high-ranking officials proudly remembered as a sign of professional ethic.<sup>7</sup>

Furthermore, members of the USSR intelligence service took a considerable part of the Archive of the Former Intelligence Committee to Moscow, and most of the remaining Archive was destroyed by a fire during the Tbilisi War. The former KGB’s central building caught fire during the Tbilisi Civil War of 1991–1992. According to the official version from the MIA, as a result of the fire, 210,000 archival files were destroyed – about 80% of the entire collection. The documents that survived were soggy, most of them suffered water damage from the efforts to put out the fire. War and fire affected MIA archives and a large portion of the collection was destroyed as well.<sup>8</sup>

Naturally, one can suppose that the complete content and capacity of these archives will remain unclear and may exceed official approximate numbers. In general, these archives give many reasons for speculation. According to alleged witnesses and participants of the process, some of the important documents from the archive were transferred to the special KGB depository in Smolensk, Russia. A group of Georgian KGB employees escorted the documents, probably in order to sort and then destroy them.

Witnesses claim that those were the documents on the line of intelligence developments, accounts and reports.<sup>9</sup>

After all of the failed attempts to initiate a law on lustration since Georgia regained independence in the 90s, public discourse about lustration law was relaunched in early 2000,<sup>10</sup> after the country’s westernization process started following the “Rose Revolution” of 2003. Although officially the ruling political party the United National Movement supported the process, the draft law on lustration was presented to the Georgian Parliament on November 30, 2005 by the opposition. According to the draft, those who worked in the former Soviet special services, or held high positions in the Soviet Communist Party, or were serving as KGB agents would be banned from holding key positions in the Government, the President’s Administration, or the Defense and Interior Ministries. The list also included the Chair of the Soviet Georgian Television and Radio Broadcasting Committee.

Those wishing to run for elective office would have to disclose a full record of their past links with the Soviet authorities. Even if a candidate appeared to have collaborated with the ex-Soviet secret services, it would be up to the voters to decide whether to elect them.

But even the authors of the draft law admitted that it would be difficult to enforce this proposal, since documentation about those persons who were KGB agents, or collaborated with the secret services was not available in Georgia.<sup>11</sup>

Although the law was not enacted in the Parliament, lustration became an active topic in political and public discussions.<sup>12</sup> Finally, a tangible lustration started in Georgia in October 2010, when a law on lustration (Freedom Charter) was initiated by Gia Tortladze, a minority MP, and was unanimously supported by the ruling United National Movement party.<sup>13</sup> The Georgian Parliament adopted the law – Freedom Charter – in May 31, 2011. The Freedom Charter has three main tenets: strengthening national security, prohibiting Soviet and Fascist ideologies and removing any associated symbols, and creating a special commission to maintain a black-list for anyone suspected of collusion with foreign special forces. The law prohibits persons who were employed within the KGB of the USSR or were at the senior management level in the Communist Party of the Soviet Union from

5 Kieran Williams, Brigid Fowler, Aleks Szczerbiak, “Explaining Lustration in Central Europe: a ‘post-communist politics’ approach”, in *Democratization*, 2005, 12 (1), 22–43, [https://www.researchgate.net/publication/248950483\\_Explaining\\_lustration\\_in\\_Central\\_Europe\\_A\\_'post-communist\\_politics'\\_approach](https://www.researchgate.net/publication/248950483_Explaining_lustration_in_Central_Europe_A_'post-communist_politics'_approach)

6 Volodymyr Goshovskiy, “The genesis of lustration in the world and its significance for the development of law-based society”, in *Leges Si Viata*, January 2017, 33.

7 Sandro Aleksidze, “Those, what happened secretly”, in *Sakartvelos Respublika* N163 (7808), 2. 9. 2015, 7.

8 The Archival Bulletin, N1, 2008, 6–8.

9 Documentary film “Lost History” [*Dakarguli Istoria*], 2014, <https://www.youtube.com/watch?v=5vYlBOxhBj4>.

10 David Paichadze, “Possibility of Lustration in Georgia”, in *RFE/RL*, 27. 9. 2012 <https://www.radiotavisupleba.ge/a/1523602.html>

11 Nino Khutsidze, “Opposition Pushes Law on Lustration”, in *Civil.ge*, 1. 10. 2005, <https://old.civil.ge/eng/article.php?id=11248>

12 “Georgia: ‘Architect Of German Lustration’ Discusses Georgian Archive”, in *Radio Free Europe / Radio Liberty*, 27. 3. 2007, <https://www.rferl.org/a/1075535.html>

13 George Topouria, “Georgia’s not so Freedom Charter”, Transparency International Georgia, 12. 7. 2011, <http://www.transparency.ge/en/blog/georgias-not-so-freedom-charter>

holding key positions in the state. The commission on lustration, established in accordance with this law, dealt with the issues of the eradication of communist symbols in Georgia, including the names of streets and squares, as well as the elimination of monuments, symbolizing the totalitarian past.

In 2011, the Parliament of Georgia unanimously adopted a law on lustration, which also forbade totalitarian socialist and Nazi symbols in public places. This law established work-related restrictions for the former employees of the intelligence agencies of the Soviet Union, as well as former public officials of the Communist Party and Komsomol (All-Union Leninist Young Communist League (AULYCL), or Komsomol). These people couldn't work in executive bodies and in judicial authorities. In addition, the above citizens were unable to hold positions as heads of higher education institutions.

According to Article 9 of the Freedom Charter, positional restrictions apply to those persons, who, from April 25, 1921 until April 9, 1991, served as:

- a/** Secret officials of the former Soviet Union's special services, from the day of Georgia's declaration of independence (April 9, 1991):
  - a/** Have refused to cooperate secretly with the special services of independent Georgia;
  - b/** Were dismissed from the office of secret officials for state security reasons;
  - c/** Broke off their relations with the special services of independent Georgia for unidentified reasons;
- b/** Officers of the former USSR State Security Committee, who, since the day of Georgia's declaration of independence (April 9, 1991), have refused to continue working with the special services of independent Georgia or who, for state security reasons, were refused work at the special services of independent Georgia;
- c/** Members of the Communist Party Central Committees of the former USSR and the Georgian SSR, as well as secretaries of district and city committees;
- d/** Members of the former USSR's and the Georgian SSR's Lenin Communist Youth Union Central
- e/** Committee Bureaus;
- f/** Chairman of the Georgian State Committee on Television and Radio Broadcasting.

The Freedom Charter restricts persons, listed in Article 9, from being elected or appointed to the following state positions:

- a/** "Members of the Georgian government, deputy ministers and ministry department heads, members of the National Security Council, members of Emergency Management Agency, members of Central Election Commission, government members of the Autonomous Republics of Abkhazia and Adjara, general auditor of the State Audit Office and his/her deputies, director of the National Archives and his/her deputies (Legal Entity of Public Law (LEPL) under the Ministry of Justice), head and deputy heads of the President's Administration, head and deputy heads of the Government Administration, head of the State Security Service, his/her deputies and department heads, extraordinary and plenipotentiary ambassadors, envoys, consuls, president and vice-president of the Georgian National Bank, representatives of executive authorities in administrative-territorial units (state trustee – governor), members of national regulatory bodies, executive director of LEPL National Statistics Office and his/her deputies.

- b/** Operational unit employees of the territorial bodies of Ministries of Defense and Internal Affairs, and the State Security Service.
- c/** Judges of the Constitutional and Common Courts of Georgia.
- d/** Rectors of higher education institutions, vice-rectors, deans and department managers; General Director of the Georgian Public Broadcaster, his/her deputies and board members."<sup>14</sup>

The list is quite long. The legislator tries to cover the entire political and educational field, which could affect the safety of the state and the future generation. This list partly draws from the experience of former socialist countries; however, it can be extended further to cover more unregulated areas, such as the prosecutor's office, public schools, and so forth. For example, Poland's lustration law also applies to prosecutors.

At the same time, the Charter guarantees the privacy of those persons who admit that they have secretly cooperated or had covert ties with the former Soviet special services. A similar approach is used in Lithuania, where, according to the lustration law, special service employees, who admit their connection with secret services, will be guaranteed confidentiality, but be prohibited from holding state positions.<sup>15</sup>

The belated adoption of the law was criticized by some scholars: As doctor of law science, Volodymyr Goshovskiy mentions in his article, as of 2010 neither revanche of communist regime nor influence of anti-democratic ideas associated with it constituted a significant threat. Instead, Georgia encountered a problem of direct armed aggression on the part of the Russian Federation. Why there was no focus on the removal from office of individuals who were involved in the promotion of carrying out actions against the territorial integrity and independence of Georgia by intelligent services of aggressor state on the basis of individual punishment and why the interim measures with regard to the removal of persons suspected of such actions were not introduced – is a rhetorical question.<sup>16</sup>

The implementation of the law was criticized by a local NGO, the Institute for Development of Freedom of Information (IDFI). In its article – "Failed Lustration Process in Georgia", authors underlined why the process had stayed "on paper".<sup>17</sup> In order to realize the law's objectives, the Charter of Freedom entailed the creation of a special Commission. According to Article 7 of the law, a commission was to be created at the State Security Service of Georgia (which used to be under the Ministry of Internal Affairs at the time of the adoption of the law) that would collect data on people, who secretly collaborated with the special agencies of the Soviet Union, or on people who are believed to have collaborated with the Soviet agencies through information obtained by legal means. The composition of the Commission (except for members proposed by factions represented in the Parliament of Georgia) and its Code of Conduct shall be set out in regulations developed and approved by the head of the State Security Service of Georgia. The Charter promotes the participation of Members

14 Law of Georgia No. 4717, 31. 5. 2017, <https://matsne.gov.ge/en/document/view/1381526>

15 David Kosař, "Lustration and Lapse of Time: 'Dealing with the Past' in Czech Republic", Eric Stein Working paper No. 3/2008.

16 Volodymyr Goshovskiy, "The genesis of lustration in the world and its significance for the development of law-based society", in *Leges Si Viata*, January 2017, 34–45.

17 "Failed Lustration Process in Georgia", Institute for Development of Freedom of Information, 25. 1. 2016, <https://idfi.ge/en/failed-lustration-in-georgia>

of Parliament in the commission. It is not a legally binding provision for Parliament; however, it is clearly noted that MPs (one member per faction) have the opportunity.

Unfortunately, publicly available information suggests that factions in the existing Parliament (elected in 2016) have not used the opportunity to send their representatives to the Commission under the State Security Service. The composition of the Commission was most recently updated on May 25, 2018; new members included high-ranking officials from the State Security Service and the Ministry of Internal Affairs, with no mention of MPs as members.

On December 2, 2015, the IDFI contacted the Ministry of Internal Affairs and requested information about the creation of the commission and its activities prescribed by the Charter of Freedom. The IDFI wanted to collect data about the following: how many meetings the commission conducted, whether or not a register was created on secret collaborators and employees of the Soviet intelligence agencies (the ones who voluntarily revealed themselves), and how many people are registered there, etc. The Ministry of Internal Affairs forwarded the request to the State Security Service. On December 30, 2015, the IDFI received a response from the latter institution. According to the letter, the commission, based upon the demands of Charter of Freedom, has only met once on May 28, 2014, and the meeting discussed the mechanisms of creating the register required by the Charter. According to Order N167 (Adopted on February 28, 2014), Article 3, section 1, the commission was obligated to meet at least once every three months. The letter also noted that Order N167 that orders the creation of a commission and defines its provisions was annulled by Order N561 of the same Ministry on July 30, 2015. Therefore, taking into account the fact that the commission was created approximately 3 years after the Charter of Freedom entered into force, this means that the commission only existed for a year and 5 months and convened only once.

According to the Legislative Herald of Georgia, on December 21, 2015, the Head of the State Security Service adopted a new order (Order N115) on the creation of the Commission. On December 30, 2015, a new order was adopted (N122) that set May 1, 2016 as the date of the beginning of the work for the Commission. The regulation of minimal mandatory commission gatherings was also changed; this regulation no longer exists.

In January 2018, the IDFI received information<sup>18</sup> from the State Security Service of Georgia indicating that in 2016–2017, the Commission had considered an unspecified number of appeals to look into candidates for high-level positions regarding their connection with Soviet authorities; the Commission did not find any violations of the law. In addition, in 2016, the Commission asked two entities to stop displaying communist totalitarian symbols, and provided requested information to three entities in 2017.

In order to conduct a real lustration process in Georgia, as it was conducted in other former Socialist countries, the IDFI believes it is necessary to recruit an effective commission, which will be interested in implementing the principles of the Charter of Freedom. As of today, the commission implemented on the basis of the law is not functioning and the State Security Service as well as the Parliament of Georgia cannot ensure the Charter's translation into practice.<sup>19</sup>

As it was indicated above, one of the main goals of the law is “to provide preventive measures against the principles of communist totalitarian and national socialist (Nazi) ideologies;

remove the symbols and names of cult buildings, memorials, monument, bas-reliefs, inscriptions, streets, squares, villages and settlements of the communist totalitarian regime, as well as prohibit the propaganda instruments and other means of communist totalitarian and national socialist (Nazi) ideologies.” Starting from 2013, Stalin monuments were erected in violation of the law in several places in Georgia by local citizens and soon afterwards many of them were vandalized using red paint.<sup>20</sup> Because of numerous similar cases and the division of public opinion towards the personality of Stalin, MPs Levan Berdzenishvili and Tamar Kordzaia initiated amendments. According to MP Berdzenishvili, there were several instances of the restoration of Stalin monuments and the need for such a process to be under the regulation of one particular commission.<sup>21</sup> To make the law more practically effective, in late 2013, the Charter was amended, mainly with the following changes:

- 1/ Definitions of “Communist Totalitarian Ideology” and “Communist Totalitarian Symbols” were adopted.
- 2/ The following functions: “to ensure security and democratic development of the country, the secret employees of former USSR special services, registration of officials appointed by this Law, voluntary recognition and registry production, as well as prohibit communist totalitarian and fascist ideologies and propaganda, and other aims defined by the Law” were transferred from the State Security Agency to the Ministry of Internal Affairs.
- 3/ If, after a warning from the state commission, the provision banning the public display of totalitarian symbols is still violated, the action will carry a financial penalty of GEL 1,000.

In practice, there have been several cases in recent years when the State Security Service of Georgia warned both leftist (Non-commercial Legal Entity – Public Union Socialist Georgia)<sup>22</sup> and neo-fascist groups (Georgia's National Unity)<sup>23</sup> in using totalitarian symbols in public places, there is no information if these organizations were fined according to the law.<sup>24</sup> One thing is certain; the work of the commission is far from effective. The commission assembled only once, and to this day there are streets in Georgia named, not only after Stalin but also, after numerous communist leaders and public figures that is contrary to the law.

18 Information received by IDFI on January 17, 2018 in response to the FoI request submitted to the State Security Service of Georgia.

19 “Failed Lustration Process in Georgia”, Institute for Development of Freedom of Information, 25. 1. 2016, <https://idfi.ge/en/failed-lustration-in-georgia>

20 Zaza Tsuladze, “50 Statuts of Stalin one needs to pay while alive”, in VOA, 11 February, 2013, <https://www.amerikiskhama.com/a/georgia-stalin-vandalism/1600958.html>

21 “Amendments Approved at Freedom Charter”, in RFE/RL, 25 December, 2013, <https://www.radiotavisupleba.ge/a/25212436.html>

22 Misha Meparishvili, “SSS warned ‘Socialist Georgia’ not to use Soviet Symbols on 9th of May”, in *NetGazeti*, 8 May, 2018, <http://netgazeti.ge/news/274696/>; Givi Avaliani, “SSS addresses MIA not to allow use of Soviet Symbols in Kakheti”, in *NetGazeti*, 3 August, 2016, <http://netgazeti.ge/news/132500/>

23 Misha Meparishvili, “SSS warned ‘National Unity’ not to use Fascist Symbols”, in *NetGazeti*, 18 May, 2018, <http://netgazeti.ge/news/278145/>; Thea Morrison, “Interior Minister: We Will Act against Fascist Groups”, in *Georgia Today*, 21. 5. 2018, <http://georgiatoday.ge/news/10348/Interior-Minister%3A-We-Will-Act-against-Fascist-Groups>

24 Thea Morrison, “The Banning of Soviet Symbols in Georgia”, in *Georgia Today*, 10. 5. 2018, <http://georgiatoday.ge/news/10215/The-Banning-of-Soviet-Symbols-in-Georgia>

## CONSTITUTIONAL COMPLAINT – GEORGIAN CITIZEN NODAR MUMLAURI AGAINST THE GEORGIAN PARLIAMENT

On July 24, 2013, Georgian citizen Nodar Mumlauri filed a complaint with the Constitutional Court, stating that Article 9, Paragraph 1, Subparagraphs c) and d) of the Freedom Charter were contrary to the rights guaranteed by the Constitution. A Lawyer of the Institute for Development of Freedom of Information (IDFI), Davit Maisuradze, examined the decision and wrote an article in order to better understand the restrictions made by the Freedom Charter and the resolution part of the Constitutional Court ruling.

The Constitutional Court complaint was filed by Nodar Mumlauri against the Parliament of Georgia. In the constitutional claim, the applicant pointed out that on June 17, 2013, he participated in the competition for the vacancy of Governor of Telavi municipality, but was unjustifiably removed from the competition, and told that he would be unable to participate based on the above mentioned Article 1, Paragraph c) and d) of the Freedom Charter. The plaintiff indicated in the constitutional claim that he had been a member of the Central Committee Bureau of the Lenin Communist Youth Union of the Georgian SSR, and later worked as secretary of Telavi district committee of the Communist Party. In his constitutional claim the plaintiff pointed out that:

- The restriction on holding state positions prescribed by the disputed norms constituted an act of political retribution, which could be used repeatedly after any parliamentary elections.
- Persons who were restricted from holding state positions listed in the Freedom Charter held important state positions and made decisions prior to the adoption of the Freedom Charter (May 31, 2015).
- The disputed provisions impose the above restriction on persons based solely on the fact that they lived during the Soviet regime – a one-party state that did not leave individuals any alternatives.
- Instead of an absolute prohibition, persons applying for state positions should be examined in terms of their cooperation with Soviet secret services.
- The Freedom Charter did not specify a limitation period, and introduced a permanent ban on holding state positions.
- The Communist Party has not been banned by independent Georgia.
- The above restrictions could have been justified for a period immediately after the collapse of the Soviet Union.
- The disputed norms are contrary to Article 17, Paragraph 1 of the Constitution (the inviolability of a person's honor and dignity), since they do not differentiate between high and low level positions of Soviet Union secret services. Article 17 of the Constitution guarantees a person's right to be treated ethically and with dignity, which was being violated by the disputed norms.
- The disputed provisions contradict Article 14 of the Constitution (all people are born free and equal before the law regardless of race, color, language, sex, religion, political or other opinion, national, ethnic or social origin, property and title, place of residence) by treating individuals differently based on their political views and place of work, depriving them of the opportunity to hold specific state positions based on

their past political activities and the ability to contribute to the country's development. In other words, the disputed provisions were of a discriminatory nature.

- The disputed provisions created an unjustifiable barrier and violated Article 29, Paragraph 1 of the Constitution, according to which, every Georgian citizen has the right to hold any public office, if they meet the requirements set by the law.

The defendant, a representative of the Georgian Parliament, based their argumentation on Georgia's transition period after Soviet collapse, and stated that former party officials had a strong impact on domestic policy.

The respondent also pointed out that the contested provisions intended to prevent negative consequences rather than hold someone responsible, since state positions mentioned in the Freedom Charter are positions of the highest authority that are responsible for important decisions related to the country's internal and foreign policy.

The respondent argued that the plaintiff and other persons in similar circumstances held positions (described in the disputed provision) during the period of the former USSR and, therefore, were creators or supporters of the communist totalitarian regime. The actions or inactions of such persons made possible a regime that is unacceptable for everyone and deserves to be condemned.

The respondent also indicated that the archive data was artificially changed or destroyed, so there was no accurate list of persons who secretly collaborated with the special services of the Soviet totalitarian regime. Consequently, it was impossible to find out what additional work these people performed. According to the respondent, "in the fight against the Soviet totalitarian regime, it's important to take into consideration the whole system and not just individual".

The respondent noted that the disputed provisions were not contrary to Article 14 of the Constitution, since it differentiated between persons of different status. Persons mentioned by the disputed norms are subjects with a distinctive status that are connected to the communist regime and held state positions in the former Soviet Union. The defendant pointed out that the plaintiff had incorrectly understood the content of the first paragraph of Article 17 of the Constitution, since "the public opinion related to an individual is not protected by Article 17". The respondent pointed out that the disputed provisions are not contrary to Article 29 of the Constitution, since the right to hold a state position is not absolute, and must meet the requirements established by law.

The Constitutional Court ruling states that the defendant also referred to the legislation of the former Socialist Republics, which imposed restrictions on certain state positions.

The Constitutional Court ruled the following:

- 1/ The Constitutional Court was going to rule on whether the disputed provisions indefinitely banning certain individuals from holding state positions contradicted Article 17 of the Constitution.
- 2/ "The standing constitutional and legal order is established on diametrically opposed values of the communist system. The principle of the constitutional state, the rule of law, respect for human rights and equality are fundamental values of the Georgian state and its constitutional system."
- 3/ In view of recent history, the state may have a legitimate interest not to allow the recovery of the totalitarian regime in the country. However, this must be carried out by legal mechanisms that are based on rule of law and human rights.

If such mechanisms do not meet constitutional requirements, “the state itself will become like the regime that it is trying to suppress.”

- 4/ Article 17, Paragraph 1 of the Constitution guarantees basic human honor and dignity as essential attributes of social identity and natural rights. “Respect for human dignity means recognizing each human person, and its deprivation or restrictions is unacceptable.” However, the existence of regulations limiting rights protected by the Constitution does not lead to the violation of this right. In each individual case, the Constitutional Court, establishes the compliance of disputed provisions with rights guaranteed by the Constitution by considering the content, goal and intensity of restriction of a right.
- 5/ According to the plaintiff’s position, banning the ability to hold certain positions is a violation of one’s honor and dignity, since this equates the plaintiff to those Soviet intelligence officials, who refused to work for the security services of independent Georgia.
- 6/ It is possible that not all people holding managerial positions were directly involved in the activities of the Communist Party of the Soviet regime, and could have even fought against it, as was made evident in 1991–1992, when some of these officials fought for Georgian national interests and not for narrow party ideology. However, “the disputed norms restrict such persons’ right to occupy state positions.”
- 7/ “The disputed provisions establish a blanket ban without considering the scope of activities/authority/competence of those persons who set the internal/external ideological policies of the Communist Party, as well as on those individuals, who did not have the authority to change the situation and influence the decision-making process granted to them by law or practice.”
- 8/ The ban was also applied to persons who formally held the positions (for a short period of time) and did not have time to start performing their duties. Also, according to the disputed provisions, the decision to restrict a person from holding a state position does not have to be based on individual reviews of each person’s activities and functions. The restriction to hold state positions automatically applies to all persons who had previously held a party position.
- 9/ As time passes, the risks and challenges that served as the basis for adopting the disputed provisions, lose relevance. The disputed provisions prevent the plaintiff to hold a number of state positions without an assessment of how realistic the above threats are today, and to what extent is the plaintiff still the same threat to state security.
- 10/ The Court also considered it necessary to consider the social consequences of the disputed norms. The court stated that the disputed norms may lead to social exclusion of certain individuals or groups, therefore, the implementation of these regulations holds a risk of stigmatization.
- 11/ The permanent restriction to hold state positions was clearly conceived as a punitive rather than a resocialization measure. In addition, these measures could not serve as an effective means of preventing threats. The Law on Public Service provides for the possibility even for persons that have committed grave crimes to hold public service positions after serving their sentence.
- 12/ For certain individuals who had occupied high positions in the Communist Party, there may be legitimate public interest in prohibiting them to hold high state positions. However,

the risks coming from these few people cannot serve as constitutional-legislative grounds for a blanket ban.

- 13/ Through the disputed provisions the state has used individuals as a means of achieving its specific goal, and treated them as objects rather than subjects of law. “The state is using these people as the means for protecting national security and achieving the objective of overcoming the communist totalitarian ideology. Such treatment is not consistent with the constitutionally guaranteed right to dignity.”
- 14/ On the basis of all of the above, the Constitutional Court ruled that the disputed norms were contrary to Article 17 of the Convention.

The Constitutional Court also examined the compliance of the disputed norms with Paragraph 1 of Article 29 (“Every citizen has the right to hold any public office, if it meets the conditions established by law”) and Article 14 (all people are born free and equal before the law regardless of race, color, language, sex, religion, political or other opinion, national, ethnic or social origin, property and title condition, place of residence) of the Constitution.

Regarding Article 29, Paragraph 1 of the Constitution, the Constitutional Court noted that the article guarantees every Georgian citizen the right to hold an elected as well as appointed position. At the same time, the court pointed out that this right was not absolute, and that the Constitution provided for the possibility of introducing legislative restrictions on the basis of legitimate goals. The legislator may introduce special requirements for state positions. However, when restricting the right to hold state positions, the legislator is obligated to maintain the balance between the legitimate purpose and employed means.

The Constitutional Court noted in its decision that the “primary requirement of Article 29 of the Constitution is to determine reasonable, fair and non-discriminatory terms for holding any state position. At the same time, the legislation may determine different conditions for holding each specific position based on the nature of the position, its functions, and importance, since these positions are of special importance in terms of the country’s independence, stability and security.” Since the Freedom Charter aims to ensure national security and safety by overcoming communist totalitarian ideology, in certain cases, due to increased public interest, it is possible to limit Article 29 of the Constitution, which guarantees the right to hold state positions, and create a legal order, which will be conducive to achieving the legitimate aim by avoiding potential risks.

Due to the above-mentioned circumstances, the Constitutional Court found that the disputed provisions are not in contradiction with the requirements of Article 29 of the Constitution.

The Constitutional Court also reviewed compliance of the disputed norms with Article 14 of the Constitution (all people are born free and equal before the law regardless of race, color, language, sex, religion, political or other opinion, national, ethnic or social origin, property, title condition and birth, place of residence).

In particular, it is noted in the decision of the Constitutional Court that the Constitutional Court considers it important to separate political views and political activity. “Individuals have private political views whether or not they hold positions in a political party and/or are members of political unions. A person may have political views without joining any political organization as well. Political activity is considered to be a person’s involvement



in political unions, and/or agreeing with the ideology/worldview of a political union and being involved in trying to achieve its goals.”

The Constitutional Court noted that the disputed provisions do not provide different treatment on political grounds. The restriction set by the disputed norms applied to holding political leadership positions in the Communist Party mentioned in Article 8 of the Freedom Charter. Therefore, the Constitutional Court stated that the disputed provisions do not contradict Article 29 of the Constitution.

The Constitutional Court ruled invalid Article 8, Paragraph 1, Sub-paragraph c) and d) of the Freedom Charter, which the Court considered as contrary to Article 17, Paragraph 1 of the Constitution.

Therefore, positional restrictions were removed from those persons who were members of the Communist Party Central Committees of the former USSR and the Georgian SSR, secretaries of district and city committees, and members of the Lenin Communist Youth Union Central Committee Bureaus from February 25, 1921 until April 9, 1991.

The Constitutional Court ruling discussed above can have an important impact on contemporary Georgia.<sup>25</sup>

## LESSONS LEARNT

The Constitutional Court judges made the correct decision to impose a permanent restriction of holding state positions on certain individuals (listed in Article 9 of the Freedom Charter) without examining their functions and activities during the Soviet regime. A parallel can be drawn with Poland, where after adopting the lustration law people related to Soviet special services were prohibited from public service for a period of 10 years.

Also, it is important to differentiate working with the Communist Party, and cooperation with special services. All former Soviet Socialist Republics or socialist countries impose stricter regulations for those individuals who collaborated with security services. In several countries (e.g. Czech Republic, Poland, etc.) the list of these people is public and available to any interested person.

It is important that the Court did not consider these provisions incompatible with Article 29 and Article 14 of the Constitution. The court exhibited a positive position that restrictions made under the Charter do not lead to discrimination on political grounds, but rather is based on the activities or inactivity of certain individuals during the totalitarian regime, and that the right to hold state positions listed in the Charter cannot be more important than national security.

The Constitutional Court ruling discussed above also contains important recommendations that should be taken into account by Parliament. Specifically, changes should be made to the Freedom Charter so that persons listed in Article 9 are being examined in terms of their past work activities and functions prior to applying the prohibitions. Even though the Constitutional Court declared invalid Article 9, Sub-paragraphs c) and d) of the Freedom Charter, the basis for the decision was the blanket nature of the ban that prohibits members of the Communist Party Central Committees of the former USSR and the Georgian SSR, secretaries of district and city committees, and members of the Lenin Communist Youth Union Central Committee Bureaus

from February 25, 1921 until April 9, 1991 to hold state positions listed in Article 8 without individual evaluation. Moreover, the above restriction is permanent. Therefore, if the legislator introduces individual examination of the activities of these people, and makes the restriction temporary (e.g., a 10-year term, as it is in Poland), it will be possible to modify the invalidated norms and reintroduce them in the Freedom Charter. The blanket prohibition can still apply to former employees of Soviet special services that meet the requirements of Article 9 (the plaintiff stated that his low level position was being equated to an employee of special services, which was violating his dignity, since he was trying to distance himself from them), however, other officials should be subjected to individual examinations and the limitation period.

The Freedom Charter includes many other regulations that, for example, aim to combat fascist and Soviet symbols. This issue is extremely important due to the increased frequency of recent attempts to return Soviet monuments (e.g., statues of Stalin). There are many places remaining in Georgia that have streets named after totalitarian leaders (e.g., Stalin Street).

In addition, Article 11 of the Charter provides for the openness of information of those persons, who apply to the election commission to be registered as a candidate. If the election commission determines that the candidate is a person who has collaborated with former Soviet special services, it will address the election administration. If the electoral administration registers the candidate anyway, and the person does not withdraw their candidacy, the commission will publish the secret information about this person. The lustration laws of former socialist countries (for example, Hungary) also apply to persons who wish to hold electoral positions.

The Freedom Charter provides for setting up a Commission inside the State Security Service of Georgia, which also includes members nominated by parliamentary factions. Essentially, the charter implements its regulations through this Commission.

Having a fairly rigid model of lustration procedure can harm the interests of certain citizens and it will overshadow the full process of lustration. The process should be fully harmonized with Resolution 1096 (1996) “On Measures to Dismantle the Heritage of Former Communist Totalitarian Systems” of the Parliamentary Assembly of Council of Europe and its principles.

The biggest challenge facing Georgia is that the former KGB archives are still held by a country that is hostile towards it. It is not proven that these documents will be used as part of a political agenda and against Georgian politicians or public figures, but in the future, there is the risk that the Russian KGB, that according to recent research is a state retaliatory body, can use it for its own political reasons.

## RECOMMENDATIONS

In case of Georgia, the following progress was made on the principles of lustration:

- To disclose information with regard to secret officers, ones who assisted in the communist regime – isn’t/can’t be fulfilled;

<sup>25</sup> Davit Maisuradze, “The Effects of the Constitutional Court Ruling of October 28, 2015 on the Freedom Charter of Georgia”, Institute for Development of Freedom of Information, December 2015, <https://idfi.ge/public/upload/Davit/court-ruling%20ENG.pdf>

- Possibility to establish the principle of individual responsibility (mainly political) – isn't/ can't be fulfilled;
- Removal from holding public posts of employees pertaining to former criminal regime – isn't/ can't be fulfilled;
- Initiation of criminal cases and criminal prosecution of persons guilty of mass killings and other crimes against humanity – isn't/ can't be fulfilled;
- To reveal and eliminate fascist/totalitarian symbols – is fulfilled;
- Social and information functions – is fulfilled partially.

The “Thick Line” policy that failed during the early 90’s in Poland will fail in other countries as well because there will always be people who will consider it as a lenient approach towards communist regime and an excuse for state criminals. Despite attempts to “forgive and forget” by the first two Polish governments, the issue of dealing with the communist past did not go away. Even though it was not officially declared, Eduard Shevardnadze’s government (1995–2003) in Georgia was following the same principle and the subsequent government delayed the process for 7 years.

Time is crucial in the process of restoring transitional justice. Delays only show the unwillingness of political actors and strengthen rumors that the process is being deliberately postponed.

The best way is to adopt best practices and success stories. Practical guidelines for the implementation of lustration should be implemented and strict principles should be approved.

In our point of view, the establishment of a proper institute for studying this issue is also very important. Examples include the Institute for the Study of Totalitarian Regimes and the Security Service Archives in the Czech Republic and Lustration Office of the Institute of National Memory in Poland.

Widespread access to previously secret documents about secret service agents is the most important point of the lustration process. Even though there was no possibility to adopt a law on lustration and fully examine crimes against citizens in Georgia immediately after regaining independence due to war and the burning of archives, the willingness to declare the Soviet State as a criminal regime is nonetheless crucial for Georgia’s road towards westernization democratic values.

The lustration process in Georgia generally failed and there are objective and subjective reasons: the lack of relevant documents, the delay in time, and the lack of a strong political will. Despite this, the law on lustration is still a very important step forward and a statement the country made in favor of eradicating totalitarian values and the recognition of the Soviet Union as a criminal regime. All of this is clearly necessary to re-evaluate modern history and the recent past.

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# INVESTIGATION AND PROSECUTION OF THE CRIMES OF THE REGIME

IRAKLI KHVADAGIANI

## INTRODUCTION

During the last years of Soviet rule in Georgia and the short painful transition, the crimes of the communist totalitarian rule were always a topic of public discussions (after 1989). However, anti-Soviet rhetoric, questions of responsibility, and the need for prosecution never transformed into any real action, and were never implemented at the legislative level. Symbolic attempts to investigate any concrete “cases” of crimes were not sufficient and were always combined with issues of lustration and the dismantling of the Soviet state security apparatus. Finally, after failing the “projects”, the attempt to persecute Soviet crimes was left without real changes.

## SYSTEM CHALLENGES BLOCKING INVESTIGATION AND PROSECUTION IN SOVIET GEORGIA

Today it's difficult to identify the character and the level of sensibility of citizens regarding Soviet crimes at late 1980's. They are perhaps ambivalent about the issue, since the active phase of Soviet mass terror (1920–1950's) has long since passed. There are no documentary sources or new researches attempting to illustrate the real numbers and the horrors of mass terror in Stalin's time. Information about these crimes are based on underground, collective knowledge and personal family experiences. The gaps in memory lead citizens to only imagine the Soviet terror, without concrete personalities and direct responsibilities for crimes.

After the death of Joseph Stalin and Laverty Beria in 1953, there was a mass purge of “Beria's guards” in the state security system. As a result of this, in 1955–1956 some former officers of NKVD-MGB<sup>1</sup> faced an open trial for “mass violation of socialistic orders in 1937–1938”. It was a minor prosecution for crimes in 1937, but generally rather symbolic. The trial was organized as part of Nikita Khrushchev's agenda to explain Soviet mass terror in 1937 as the personal crimes of Stalin and Beria and “their” people in state institutions, but not as systemic violence. In 1980's, after many decades, no matter how difficult it is to imagine, people with direct responsibility for the mass terror of 1920–1950 were still alive.

Soviet mass terror of the late 1930s may seem like the deep past, but there have been examples of human rights violations, political terror and mass crimes in the recent past as well. Some have been linked with the suppression of dissident movements, some of them with internal battles in the Georgian Communist Party, and “mafia wars” kinds of reprisals, or with the violations against the protest movement in 1989. In the following text we outline some of them, emphasizing that in transitional times, there were enough “hot” and painful cases in Georgian society, which became part of public discussion. These cases might be examples for new investigation and prosecution:

## THE GAIOS KERATISHVILI'S CASE

Gaios Keratishvili was bishop (metropolitan) of the Georgian Orthodox Church in 1970's. In 1977 he was considered for the future patriarch of Georgian Orthodox Church, but another bishop, Ilia Shiolashvili (patriarch Ilia II), was elected. A struggle for power from the Keratishvili side was obvious, and there were also several other scandals in Georgian church during 1977–1978. On 25th May 1978, Keratishvili was arrested, and accused of the robbery of historical icons from the Georgian church and sentenced by the court to 15 years in prison. At the time, there were a variety of versions and conspiracies around his arrest, splitting the church and creating an internal battle in the Communist Party of Georgia as a new secretary of the Georgian Communist Party, Eduard Shevardnadze, was cleaning up the circle of former secretary, Vasil Mzhavanadze, who was deeply involved in corruption, and Keratishvili was considered to be close to him. In spite of plenty of questions and versions surrounding Keratishvili's arrest, there was not any attempt to investigate his case again when he was released from prison after an amnesty in 1989.

## THE NAZI SHAMANAURI'S CASE

Nazi Shamanauri was freelancer journalist of the communist newspapers from the Dusheti region (north-north east part of Georgia) in 1970–1980s. She was living in the countryside and witnessed complex problems in the collective farm system resulting from the total corruption of Party structures and state institutions. When she began to print articles in the press about the problems, she was blackmailed and ignored. Later, when she tried to express her protest in a national celebration openly to crowd in 1983, she and her mother were arrested and sent to a psychiatric hospital. There she went on a hunger strike and became the victim of violent pressure and torture. As result of this, Nazi Shamanauri finally died in the hospital. Although her case was widely known in the 1980's as an illustration of the corruption and brutality of the Soviet regime, there was no initiative to investigate and persecute the culprits.

## THE “AIRPLANE'S BOYS”

In 1983, a group of young artists hijacked an airplane flying from Tbilisi to Batumi, trying to force the pilots to cross the border with Turkey. The airplane's crew managed to subdue them; however, during the clash there were casualties on both sides as well as among passengers. The airplane returned to Tbilisi airport, where Special Forces confronted it and freed the hostages; during the operation some of the hijackers and passengers were injured. The court sentenced to death a majority of the hijackers,

1 NKVD (НКВД) – Peoples Commissariat of Internal Affairs, MGB (МГБ) – Ministry of State Security

including their friend, the priest Teimuraz Chikhladze, who was not participating in the terrorist attack. He, however, was designated by prosecutors as the “ideological organizer” of the hijacking. This case is well-known and shocked the country, since there were many questions about the necessity of the death penalty and the fate of an innocent priest. Later, after collapse of the Soviet Union, the new Georgian government (with president Zviad Gamsakhurdia) promised to begin a new investigation, but has not been done in any real sense.

### **THE SOLIKO KHABEISHVILI CASE**

Soliko Khabeishvili was a high ranking official of the Georgian Communist Party (member of Central Committee) and close friend of the secretary of the Georgian Communist Party, Eduard Shevardnadze. In 1985, after Shevardnadze left Georgia and became minister of foreign affairs of the Soviet Union, Khabeishvili was considered as his successor in Georgia. However, Jumber Patiashvili was chosen by the “center” (Moscow) as first secretary of the Georgian Communist Party. In an internal battle for power, Patiashvili started to push for arrests of former high rank officials accused of corruption. In the same year (1985), Khabeishvili was released from the Central Committee and was arrested soon after. The court sentenced him to 15 years in prison. He was released in 1989, but until his murder in 1995, there were no attempts to re-investigate his criminal case.

### **COMMISSION OF INVESTIGATION OF TRAGEDY OF 9 OF APRIL 1989 IN TBILISI**

The only precedent for the investigation of Soviet state crimes in Georgia is linked with the investigation of the suppression of an anti-Soviet demonstration in the center of Tbilisi, 9 April of 1989, when 21 people died and hundreds were injured with chemical weapons and variety of physical attacks. After the tragedy, the Communist Party and state tried to hide information about the actual casualties and details of the operation of the dissolution of demonstration. Due to extensive protests, counter reaction in society, and international pressure, a special Commission of Investigation of the Tragedy was created in Supreme Council of USSR (Soviet Union). The Commission published a conclusion on December of 1989. Based on documents, interrogation of representatives of the civil and military authorities (who participated in the suppression of demonstration), eyewitnesses, injured victims etc., the conclusion stated that malfeasant decisions against peaceful demonstration were made by the Communist Party highest officials and heads of Transcaucasian military district. However, despite the conclusion, there was no legal continuity in identifying individuals who were responsible for the tragedy; not even after declaring the independence of Georgia in 1991. The state has never announced any kind of judgment and court decision against the Soviet Communist Party officials (including Georgian Communist Party high ranking officials), military commanders and state security officials, who share responsibility for the tragedy of 9th April 1989.

Besides the Supreme Council Commission, there have been several, official, individual, and journalist investigations of the tragedy of 9 of April, as well as civil initiatives to support a fair investigation.

### **“COMMISSION OF THE SUPREME COUNCIL OF GEORGIAN SSR FOR RE-ESTABLISHING JUSTICE FOR VICTIMS OF REPRESSIONS WHICH TOOK PLACE IN THE 1930–40 AND 1950’S”**

In last phase of its existence, the Georgian Communist Party began to try to coordinate its agenda with the agenda of protest movement against Soviet rule. Specifically, the Party presented its new demands as part of a “new policy” of the communist state and transferred critical political and social demands from a revolutionary street environment into “cabinet” style resolutions on the state bureaucratic level. This was an attempt to reform the Soviet state and Communist Party within Gorbachev’s “Perestroika”.

As in Moscow, in Soviet Georgia, on 29 March of 1989, a special “Commission of the Supreme Council of the Georgian SSR for re-establishing justice for victims of repressions that took place in 1930–40 and 1950’s” was founded to revise cases and to rehabilitate the victims of Soviet repressions, to assist with the social protection of the victims and to work on issues of compensation.

The Commission was comprised of state officials (executive branch, prosecutor office and state security and ministry of internal affairs representatives) and a few representatives of civil (Soviet) organizations.

However, in practice, its work showed that the Commission was focused only on one category of victims, members of the Communist Party. From the very beginning there was a sub-commission of a “Party control group” which showed itself as the main active group between 1989–1990 and most of the revised cases were prepared by the group.

Up to the end of 1990, the Commission revised 1 110 cases concerning 1 391 persons. Demands for the re-investigation of the cases, the so-called Protests, concerning 1 022 persons were sent to the Supreme Court of Georgian SSR and 84 to the Supreme Court of USSR. Generally, until the end of 1990, the Supreme Court of Georgian SSR rehabilitated around 633 persons. 387 persons were rehabilitated towards the Party line. The Georgian SSR KGB investigation division prepared conclusions for 11 203 persons for the rehabilitation process.

The results of re-investigation were published as short summaries – statistics of revised cases and personalities of people who were rehabilitated by the Commission. However, the questions of the criminal dimension of the repressions and of individual responsibilities of people who participated in mass crimes have never been raised at the legal level. There were only a few talks about the inhumanity of the system and a few press-interviews with the head of the Commission.

Besides the Commission, there were no other initiatives attempting to revise the cases of victims of Soviet terror from 1921–1991 who were members of other parties, or non-party people. Also, questions about the prosecution of the participants of the mass violation of human rights have never been raised. Demands for the prosecution of crimes from former dissidents and their supporters did not lead to any general changes in this field.

### **LESSONS LEARNT**

Georgia has mostly a symbolic experience concerning the investigation and prosecution of Soviet state crimes. Therefore, we can make only a few conclusions:

- The Investigation of Soviet crimes for Georgian society is unclear. Decades of Soviet rule marked by mass terror, massive state propaganda and censorship have eliminated collective memory and the understanding of the Soviet-Stalinist time crimes are a current challenge of responsibility. As a result of this, at the end of the 1980's, society considered the Soviet mass terror of 1921–1953 as a very old story, and re-establishing justice could only be imagined through the publishing of information about Soviet repressions and victims.
- Soviet Georgian and independent Georgian judiciary and prosecutors were not successful in prosecuting individuals, and state officials, accused of violations of law and human rights abuses, with legal investigations and trials, even on symbolic level, without the presence of suspects. There simply was not enough continuity in the prosecution of mass crimes of Soviet regime, like the tragedy of 9 April of 1989.
- Because of the complex political and social crisis during the time of transition, questions about the prosecution of the crimes of the regime were not part of the main political (anti-Soviet) agenda. It always stayed at a verbal-symbolic level.

## RECOMMENDATIONS

Recommendations based on poor experiences and critical analysis of the Georgian case of investigation and prosecution of crimes of the Soviet regime can only be reviewed on a general level:

- It is necessary to have a protest or resistance movement with a group of individuals, who can collect sources, testimonies and information about the crimes of the regime, emphasizing concrete individuals who have committed violations of laws and human rights, in order to raise questions of responsibility, and to be able to start the legal process at the time of changes and transition.
- On a system level, the real face of the regime should be published based on non-arguable facts and documents. Questions of responsibility and prosecution should be combined with a discussion of the inhumanity of state institutions and state security activities of the totalitarian regime. They should be investigated and described. On a personal level, all individuals, state officials, members of Party organizations, state security systems, informers of state security, officials of the court and state prosecutors' office investigated should draw special attention.

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# REHABILITATION OF VICTIMS

LEVAN AVALISHVILI

## INTRODUCTION

Soviet repression has become a popular theme of research among scholars, after the fall of the Soviet Union in almost every former Soviet state, including Georgia. The scale of repression and the approximate number of victims is still unclear in Georgia.

There were several stages of Soviet repression in Georgia: In February–March of 1921, Bolshevik Russia invaded the country, overthrew the democratically elected government and took control over whole territory. The members of the government and the parliament of the Democratic Republic of Georgia (1918–21) immediately became victims of repression. Only some members of the government, and people affiliated it, emigrated to Europe and survived.<sup>1</sup>

After the occupation of Georgia, the most extensive attempt to restore independence was the August Uprising of 1924. Members of the Committee for the Independence of Georgia, which was established in Europe, initiated the uprising, but the badly planned operation didn't succeed. This failure caused the imprisonment and mass executions of members of the uprising. Estimates of the numbers of deaths, of both rebels and their opponents (including executions), range from 630 to 4,000. Some members of the Georgian government in exile were among the repressed that had emigrated to Europe in 1921, but had later returned to Georgia to take part in the uprising.<sup>2</sup>

The years 1937 and 1938, the period of the Great Terror, was the time of the largest repressions in the whole of the Soviet Union, and Georgia, with no exception. In Georgian the SSR convicted more than 29,000 people, almost half executed by the so-called "Troikas". Among them, 3621 people were convicted by direct order, sent straight from Moscow, with the signature of Joseph Stalin, and other members of Political Bureau (so called "Stalin's Lists").<sup>3</sup>

The repression continued between 1941–1951. In this period representatives of various national, ethnic and religious minorities also became subjects to the mass repression.<sup>4</sup>

Two Separate events, which have deeply affected the Georgian memory, and still leave scars for Georgian society, are the events of the 9th of March 1956, and the 9th of April 1989. On both occasions, Soviet authorities rapidly dismantled peaceful demonstrators in the center of the capital city, Tbilisi.<sup>5</sup>

## DESCRIPTION OF THE CURRENT SITUATION

The analysis of the dynamics and specifics of the rehabilitation process, of the victims of Soviet repression, in the Georgian SSR is hindered by complex problems in the archival sphere of Georgia. On the one hand, the fragmentation of the archives of the former KGB, and the Ministry of Internal Affairs of the Georgian SSR (now – the first section of the Archive of the Ministry of Internal Affairs of Georgia), is linked with the loss of a significant part of the archival documents during the Tbilisi Civil War of 1991. Due to this, it makes it impossible to determine the number of victims of the repressions in the territory of Georgia from 1921,

up to the collapse of the USSR. Due to the low research activity, there is no information yet on what has become of the documents partially reflecting the activities of the repressive apparatus of the security agencies (annual reports, reports on specific issues, "cases" of anti-Soviet political organizations, correspondence on the issues, communication with subordinate structures), which would restore the overall picture.

On the other hand, the main documentary evidence for studying the rehabilitation process has been preserved in the National Archive in the fonds of the Prosecutor's Office and the Supreme Court. Researchers have access to these documents in cases where 75 years have passed from the moment of their creation. The Laws of Georgia "On the National Archives and Archive Fonds" and "On Personal Data Protection" protect "personal information" does not allow "third parties" to access documents related to criminal cases and containing personal information. The rehabilitation materials of the mid-1950s will be available for study from 2030 (unless fundamental changes occur in legislation). As the researchers note in their analytical reports, currently, it is impossible to obtain some declassified documents, since, according to this law, the researchers are not allowed to get access, with the search aid of the fonds (list of cases), because they contain declassified documents, for which the period of secrecy has not yet expired. Thus, the researchers do not have the ability, either to receive records on rehabilitation of a particular person, or to process a complete list of existing cases to recreate an overall picture.<sup>6</sup>

Today we have more or less clear information about the NKVDs (People's Commissariat of Internal Affairs of the Georgian SSR) operations on the central and regional levels, and how they were managed by Moscow. In 2015, the Ministry of Internal Affairs of Georgia released a two-volume edition "Bolshevik Order in Georgia", which gives a portrayal of the Bolshevik repression. According to this publication, the NKVD's so-called "Kulak" Operation (order N00447) is one of the most researched, repressive operations in the former Soviet countries. The assumption is that the repressive organs worked only to implement the will of the Centre and only according to orders from Moscow, which has not been confirmed.

- 1 Saqartvelos Damphudznebeli Kreba – 1919 [Constituent Assembly of Georgia – 1919], SovLab, Tbilisi, 2016.
- 2 Stephen F. Jones, "The Establishment of Soviet Power in Transcaucasia: The Case of Georgia 1921–1928", in *Soviet Studies*, October 1988, 40, No. 4 (4), 616–639.
- 3 Mark Junge, Omar Tushurashvili, Bernd Bonvec, *Bolshevikuri Tsesrigi Saqartveloshi* [Bolshevik Order in Georgia], Tbilisi: Intellect Publishing House, 2015.
- 4 See Mark Junge, *Ethnosi da Terori Saqartveloshi* [Ethnos and Terror in Georgia], Tbilisi: Intellect Publishing House, 2015.
- 5 See Levan Avalishvili, The March 1956 Events in Georgia: based on oral history interviews and archival documents and Jesse Paul Lehrke, The Transition to National Armies in the Former Soviet Republics, 1988–2005, in *Georgia After Stalin: Nationalism and Soviet power*, Edited by Timothy K. Blauvelt and Jeremy Smith, Oxfordshire, UK: Routledge, 2013.
- 6 See Alexander Daniel, Larisa Eremova and others, *Rehabilitation and Memory: Treatment of the Victims of Soviet Political Repression in Former Soviet Union Countries*, Moscow: Memorial, 2016, <https://www.memo.ru/media/uploads/2017/03/02/reabilitacia.pdf>

Moreover, the so-called “limits” for arrests and executions were defined before the mass operations, but only upon offers made by the local party leaders, according demands from the Center. The system worked in a way that the Center had the ability to control the number of operations, but also, according to the archival materials, we can see numerous cases, when the regional “nomenklatura” asked the center to increase the “limits” of repression.<sup>8</sup>

## DESCRIPTION OF THE TRANSITION AND CURRENT STATUS

Prior to the collapse of the Soviet state, a significant, and most pertinent part of the archives remained inaccessible for studying the process and scope of Soviet terror, and for the identification of its victims. In addition, most of the interested persons and researchers lacked the competence to determine where the relevant materials could be found. For instance, from 1989 to the end of 1991, only a few researchers succeeded in gaining access to materials of the former KGB Archives, and in December 1991, during the Civil War in Tbilisi, a significant part of the archive that was at the epicenter of the fighting, was destroyed as a result of a fire. Naturally, one can suppose that the complete content and extent of this archive will remain unclear, and may exceed the official estimates. In general, the KGB archives give numerous reasons for speculations and interpretations. Alleged witnesses, and participants, of the process claim that some of the most important documents from the archives were later transferred to the special KGB depository in Smolensk. Some claim that a group of Georgian KGB employees escorted the documents in order to sort and destroy them. The above-mentioned sources claim that the documents concerned intelligence developments, accounts and reports. The numbers of the documents destroyed, or sent back, about the state, and the legal environment of the remaining documents in the Smolensk Archive, are also unclear. Since 2003, there have been talks about the return of the documents (originals or scanned) but without any consequences. In 2008, Georgia broke diplomatic relations with Russia, and the archival institutions no longer have contact with each other.<sup>9</sup>

Only a few non-governmental organizations in Georgia are interested in the matters of Soviet repression and rehabilitation, including the Institute for Development of Freedom of Information (IDFI), the Georgian society “Memorial”, the Soviet Past Research Laboratory (SovLab) and the Georgian Young Lawyers’ Association (GYLA). With the help of the Ministry of Internal Affairs of Georgia, the financial aid from the Heinrich Boell Foundation, and the Embassy of Switzerland in Georgia, the IDFI and “Memorial” implemented the project “Stalin’s Lists from Georgia”. A large database with search tools was created for this project. It contains more than 3600 short biographies of the victims of the “Great Terror” of 1937–1938, who were convicted based on the decisions of Stalin, and the members the Politbureau.<sup>10</sup>

The Georgian society “Memorial” has been working on this issue since it was founded in 1992. Since then, the society has advocated for quick enactment and implementation of the laws fostering the repressed persons. Also, they have advocated for fulfilling the compensation nominated by the European Court of Human Rights, as a result of the case against Georgia, and for granting the repressed people at least the same social benefits as was granted to former law enforcement officers. The law of Georgia N430 from 16. 10. 1996 “On Social Security of Persons

Transferred to the Reserve from Military Bodies, Internal Affairs Bodies and the Special State Protection Service, and Their Family Members”,<sup>11</sup> granted persons transferred to the reserve from military bodies, internal affairs bodies, and the Special State Protection Service, who have permanent residence in Georgia and Georgian citizenship, with state compensation. As a member of Georgian society “Memorial”, Guram Soselia told us it was an irony of fate that some former KGB and other workers of the system of retaliatory bodies during USSR, who were involved in the executions, were granted much more benefits than the heirs of the executed people themselves.<sup>12</sup>

## LAW AND THE PRACTICE OF ACKNOWLEDGEMENT OF CITIZENS OF GEORGIA AS VICTIMS OF POLITICAL REPRESSIONS AND SOCIAL PROTECTION

The first relevant law on rehabilitation was passed in Georgia in 1997; it was titled “On the Acknowledgment of Citizens of Georgia as Victims of Political Repression and Social Protection of Repressed Persons”.<sup>13</sup> According to the Article 2 of this Law, “different forms of coercion shall be construed as political repression, such as deprivation of life, damage to health, imprisonment, exile, expulsion, deportation from the state, forcible placement in psychiatric institutions, deprivation of citizenship, forced labor, confiscation and destruction of property, illegal dismissal from office or from other work places, movement to special settlements by force, eviction from a dwelling house, as well as other restrictions of human rights and freedoms guaranteed by the legislation of Georgia, which were conducted by the State for political reasons based on the decision of a court or other state authorities, and which were related to false accusations of committing a crime, to a person’s political opinion, or to the acts of contradiction by peaceful means against illegal actions of the current political regime, to social or religious affiliation or a social class status, as well as forms of coercion committed by the State as provided for by the Article 4 of this Law”. Nevertheless, despite the adoption of this Law, the issue of compensation to the victims of repression remained a serious challenge for

7 “The Soviet secret police worked according to quotas. Just as Soviet economic planners set targets for industrial growth, so too did state security organs set their own ‘limits’ for arrests and executions”. Paul R. Gregory, *Terror by Quota: State Security from Lenin to Stalin*, New Haven: Yale University Press, 2009, <https://www.h-net.org/reviews/showrev.php?id=23648>

8 Mark Junge, Omar Tushurashvili, Bernd Bonvec, *Bolshevikuri Tsesrigi Saqartveloshi* [Bolshevik Order in Georgia], Tbilisi: Intellect Publishing House, 2015.

9 Documentary “Lost History” [*Dakarguli Istoria*], 2014, <https://www.youtube.com/watch?v=5vYlBOxhBj4>

10 See “Stalin’s Lists from Georgia”, e-data base, 26 March 2018, <http://www.nplg.gov.ge/gwdict/index.php?a=index&d=26>

11 Law of Georgia “On Social Security of Persons Transferred to the Reserve from Military Bodies, Internal Affairs Bodies and the Special State Protection Service, and Their Family Members”, Consolidated publications, 7. 12. 2017.

12 The interview with the Georgian society “Memorial” member - Guram Soselia, 2018.

13 Law of Georgia “On the Acknowledgment of Citizens of Georgia as Victims of Political Repression and Social Protection of Repressed Persons”, (N1160; 11. 12. 1997/ Consolidated Publications, 31. 10. 2014), <https://matsne.gov.ge/en/document/download/31408/11/en/pdf>



Georgia. Although article 8 of the Law mentions a separate law that determine the procedures for the revival of property rights of the rehabilitated person, this law has not been enacted, until now... In 1997, when the Law on recognition of the victims was being passed, the Parliament of Georgia postponed the discussion of this issue. In 2009, the Public Defender of Georgia asked the Government to adopt this law,<sup>14</sup> but his request has not been satisfied. The turning point that changed the situation was the decision of the European Court of Human Rights, against Georgia, which was related to citizens Klaus and Yuri Kiladzes

## **EUROPEAN COURT OF HUMAN RIGHTS CASE: KLAUS AND YURI KILADZE VS. GEORGIA**

A court case about the recognition of two Georgian nationals, who were victims of Soviet repressions, to receive the compensation they were entitled to, become a precedent for the other similar cases in Georgia. The case began when the appeal wasn't satisfied by the Georgian Court system, and the case was sent to the European Court of Human Rights.

This case against Georgia originated from application no. 7975/06, lodged to the ECHR under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms, by two Georgian nationals, Klaus Kiladze and Yuri Kiladze, on the 22nd of February 2006, in order to assert their rights for compensation resulting from their status as victims of political repression. The applicants, two brothers, were born in 1926 and 1928 respectively and live in Tbilisi. Their father was convicted on October 2, 1937 for "sabotage and terrorism" and executed. On November 7, 1938, their mother was condemned to eight years of imprisonment for "propaganda and agitation expressed in a call to the overthrow the Soviet regime" and was sent to the labour camp in the Far North of the USSR. Then aged 12 and 10 respectively, the applicants at first remained alone in their parents' apartment in Tbilisi, with no neighbors, friends or family daring to go near them because of the fear of being arrested. They were then held for one and a half months at a detention center in Tbilisi. They were malnourished, and subsequently contracted typhoid due to unhygienic conditions. They were then sent away from Georgia to the Stavropol region of Russia, and placed in an orphanage, and spent two years there. Both applicants were constantly humiliated and beaten by the staff and by the other orphan children.

Immediately after the arrest of the applicants' mother, the family apartment of 90 m<sup>2</sup> in Tbilisi was confiscated together with all the furniture and personal and family items.

In 1940, the grandmother of the applicants managed to obtain guardianship over them. After returning to Georgia, while still children, Klaus and Yuri had to work hard in order to earn money to live. Subsequently, they faced strong social and political pressure as the children of a "traitor of the Motherland" their entire life working in the USSR.

In 1945, the applicants' mother was freed. On May 4, 1956, the South Caucasus Military Court annulled the decision of November 7, 1938 that condemned her, due to the absence of an offence, and pronounced her rehabilitation. On 30 August 1957, the Panel on Military affairs of the Supreme Court of the USSR annulled the decision of October 2, 1937, for the same reasons, and pronounced the rehabilitation of their father.

On March 16, 1998, the applicants applied to the court of primary jurisdiction in Tbilisi requesting that their parents, as well as

they themselves, be declared victims of political repressions. On August 19, 1998, their request was granted in full. On the grounds of this decision, the brothers Kiladze applied on March 15, 2005 to the court of primary jurisdiction for compensation for the material and moral damages based on Article 9 of the Law "On the Recognition of Status as a Victim of Political Repression for Georgian Citizens and Social Protection for the Repressed Persons." Emphasizing the killing of their father, the separation from their mother, their conditions of detention, first at the detention center then at the orphanage, the damage caused to their health, the humiliation and repression suffered from the time of their parents' arrest to an elderly age, as well as the confiscation of property after their mother's arrest, the applicants asked to be granted compensation of 515,000 GEL (approximately 208,000 EUR) each for the total material and moral damages they suffered.

The representative of the Georgian President, the defending party, alleged that the applicants' claim should not be admitted, given the fact that their right to compensation had not been recognized prior to 1997, and that the law that was referred to in the Article 8 of the Law of December 11, 1997 had not yet been adopted. On June 9, 2005, the court of primary jurisdiction Tbilisi Regional Court considered the facts related to the applicants' past to be established, save for the confiscation of possessions. On the latter point, the court cited against the applicants on the grounds of the Article 102 § 3 of the Civil Procedure Code – lack of documentary proof attesting to the confiscation, judging that the submitted written statements of eye-witnesses were not sufficient. The court also considered the applicants' claim to be beyond the period of limitation altogether, without indicating what period of limitation they were referring to and when this period had commenced. Finally, the court concluded that the request of the applicants could not be admitted in any event since the laws the Articles 8 and 9 of the law of December 11, 1997 referred to had not yet been adopted.

The applicants brought a cassation appeal asserting that, by virtue of the Order of August 15, 1937, the spouse of any person condemned as a "traitor of the Motherland" would automatically be condemned to a term of imprisonment from five to eight years, that their minor children would then be placed in an orphanage outside of the Georgian territory, and that their movable and immovable property would automatically be confiscated. The conviction of their father obligatorily led to these measures and, given the context in which these events took place, they could not be blamed for the fact that they were unable to present the documentary proof of the confiscation of property. As to the period of limitation, the applicants asserted that their claim for compensation was based on the Law of December 11, 1997, and could not therefore be beyond the period of limitation at the time, when their requests were decided. The applicants also alleged that nearly eight years had already passed since the Law of December 11, 1997 had entered into force, in which the State had not taken the necessary measures in order to legislate and compensate the victims of political repressions, in accordance with the Articles 8 § 3 and 9 of this Law. They maintained that the number of the victims, all elderly, was falling, and in their opinion, the State was waiting for their death to resolve the problem of compensating them. According

14 See "Ombudsman Demands Concrete Steps for the Social Protection of Political Repression Victims", 5 April 2010, <http://www.interpressnews.ge/ge/politika/130412-ombudsmeni-politikuri-represiebis-mskhverplthasocialuri-dacvishvis-konkretuli-nabijebis-gadadgmas-ithkhovs.html?ar=A>

to the explanatory memorandum of the draft of the law submitted (without any results) to the Parliament in 2001 by the Georgian society “Memorial”, to remedy the legal void in question, the number of victims of political repression affected by the abovementioned Article 9 varied, according to the categories, from 600 to 16,000.

The applicants’ appeal was dismissed on November 2, 2005 by the Supreme Court of Georgia, which, upholding the reasoning of the regional court relating to insufficient documentary proof of the confiscation of property, dismissed their request for compensation for material damages.

The applicants continued to seek proof of the confiscation of their parents’ possessions. In a letter of December 4, 2006, the Registry of Real Estate Property informed them that the apartment in question had only appeared in the archives for the first time in 1940, as a property of the State. Since then, no information has become available on the subject.

The applicants alleged that in delaying in giving substance to their rights guaranteed under Articles 8 and 9 of the law of 11 December 1997, the State was keeping them in a tormenting situation of uncertainty and distress which amounted to degrading treatment.

After about 4 years of examination, the ECHR declared by six votes to one, that there has been a violation of the Article 1 of the Protocol no. 1, and by six votes to one, that it is not necessary to also examine the application from the point of view of Article 13 of the European Convention on Human Rights. Also, the ECHR declared that, if the necessary (legislative and other), measures of the judgment are still lacking, the Respondent State will have to pay each of the applicants 4.000 EUR (four thousand euros) in moral damages and the sum of costs and expenses. The ECHR dismissed by six votes to one, the remainder of the demand for just satisfaction.<sup>15</sup>

The abovementioned case, arguments provided by the Georgian state, and decision of the European court of Human Rights became a showcase for other similar court appeals. The lack of support for appropriate documents that wasn’t provided to the court and article 8 § 3 of Georgian law “on the Acknowledgment of Citizens of Georgia as Victims of Political Repression and Social Protection of Repressed Persons” where we read – The procedures for the revival of property rights of rehabilitated persons shall be determined by a separate law that was not adopted till nowadays played a major role in the assessment of the court – partial satisfaction of appealing party.

One of the main points was indicated in the Paragraph 85 of the court decision where we read: Under these conditions, the Court believes that general measures at a national level are without doubt called for within the framework of the execution of the present judgment. The necessary legislative, administrative and budgetary measures must therefore be rapidly taken in order for the people envisaged in Article 9 of the law of December 11, 1997 to effectively benefit from the right, which they are guaranteed in this provision.<sup>16</sup>

## **REHABILITATION AND COMPENSATION TO THE VICTIMS OF REPRESSIONS AFTER THE ECHR DECISION**

Executing the decision of the ECHR, the Georgian authorities passed a certain amendment to the Law “On the Acknowledgment

of Citizens of Georgia as Victims of Political Repression and Social Protection of Repressed Persons” according to which the repressed person, or his /her first immediate heir, or their representative, should directly apply to Tbilisi City Court in order to get the pecuniary compensation. The total number of victims of Georgia’s political repression and their heirs was about 20,000 people before the amendment, but later, the numbers increased. The number of applicants also increased.

According to the Georgian Young Lawyers Association, more than 2,500 suits were filed in Tbilisi City Court within three months after the legislative amendments took effect. Due to the large number of suits, the court established a compensation limit of minimum 200 GEL (about \$ 100) and a maximum of 500 GEL (about \$ 250). It is noteworthy that these suits could be examined only by Tbilisi City Court, which caused additional expenses for people living in province.

The Georgian Parliament made several changes to the law on 31 October 2014 by. Thus, the definition of a victim of political repressions, and the rules of acknowledgement the victims of political repressions and guarantees of their social protections were elaborated. According to the law, the victims of political repressions are people, who have suffered political repression in the territory of the former USSR from February 1921 until 28 October 1990, from the intervention of the Soviet Red Army until the first free and multi-party elections in the Soviet Socialist Republic of Georgia and later on the territory of independent Georgia. As usual, in all countries, where the similar law exists, not only the persons, who suffered the repressions, but also a spouse, child (adopted child), parent and any other lineal relative, who stayed with such persons in penitentiary establishments, has been in exile and expulsion, and in special settlements with such persons were also acknowledged as the victims of the political repressions. Georgia was not an exception and similar record appears in Georgian law as well.<sup>17</sup>

According to the Law, persons, who have been acknowledged as victims of political repression shall have all of their political, civil and other rights and freedoms that have been violated as a consequence of political repression restored, and shall regain all military and special rank and government awards that have been seized as a consequence of political repression, and shall be granted the allowances as provided for by this Law.

According to the changes in the Law made in 2014, victims of repression were granted with an indemnity: no less than GEL 1.000 and no more than GEL 2.000 (approximately 600–1200\$ with regard to the official exchange rates in Georgia). If the person is already dead, the nearest heir can claim the indemnity.<sup>18</sup>

In parallel to the adoption of the amendments to the Law on repressed, an amendment was made to the concomitant law – “The Administrative Procedures Code of Georgia”. The repressed person, or his /her first immediate heir or their representative should directly apply to Tbilisi or Kutaisi Court in order to get the pecuniary compensation. The claim had to be submitted by 1st of January 2018. In addition, a person, who had already received compensation, but a sum that was less than

15 See European Court of Human Rights, Second Section, CASE OF KLAUS AND YURI KILADZE V. GEORGIA, (Application no. 7975/06) , Judgment, 2 February 2010, [http://ehrc.org.uk/wp-content/uploads/2010/06/Kiladze-v-Georgia\\_ENG.pdf](http://ehrc.org.uk/wp-content/uploads/2010/06/Kiladze-v-Georgia_ENG.pdf)

16 Ibid., paragraph 85.

17 Ibid.

18 Ibid.

the minimum set by the new amendments, could have applied to the court again.

It is also important to note that the Law applied to Georgian citizens, who suffered political repression in former Soviet Union from the 25th of February 1921 to the 28th of October 1990 and later, on the territory of independent Georgia. But this law does not apply to the persons, who belong to ethnic or religious groups deported from Georgia in the Soviet period; the procedure for their rehabilitation should have been determined separately.

The IDFI requested information from Tbilisi and Kutaisi City Courts about the number of people, who were declared victims of the political repressions. From January 2011 to May 2017, Tbilisi City Court received 13.525 appeals in total, reviewed 11.539, affirmed 11.511 and declined only 28 appeals. Kutaisi City Court from January 2015 to May 2017 received 5.517 appeals and affirmed 4.957 of them. The IDFI requested the information on the total amount of compensation that was granted to people, whose appeals were affirmed, but they received the answer that the Courts did not possess this information. Then, on the 5th of July 2017, the IDFI made a similar request to the Ministry of Finance of Georgia, and asked for the total quantity of compensations (one by one for every year) for the defined list of persons from the national budget. The Ministry of Finance of Georgia answered that the National Bureau of Enforcement satisfied these demands by forced fulfillment, and they have no authority to reveal this information. Thus, the IDFI was unable to get information about the average amount of compensation.<sup>19</sup>

## ABOUT THE CATEGORY OF VICTIMS

Ethnic or religious groups deported from Georgia in the Soviet period can be analyzed by looking at the issue of “Meskhetian Turks” – the ethnic group deported from Georgian SSR to Uzbek SSR in 1944 an estimated 90,000–120,000 people. Many of the deportees died *en route*, or as an indirect consequence of the resettlement. There is no consensus on the reasons for the deportation. Unlike other deported people, who were rehabilitated in the 1950s and 1960s (or the Crimean Tatars who have been allowed to return since the late 1980s), the Meskhetian Turks have neither been rehabilitated, or allowed to return to their land of origin, nor has their property been returned.<sup>20</sup>

Programs and attacks on the Meskhetian Turks, in the Ferghana Region of Uzbek SSR, in early June 1989 became the one of the first ethnic conflicts in the disintegrating USSR, and ended with the second forced exile of about 70.000 Meshkhetian Turks who were spread through various countries and never reunited.<sup>21</sup>

The efforts to return the Meskhetian Turks to Georgia first emerged in 1970, but southwest Georgia’s special status as a border-region, effectively blocked the start of the process. Since the 1989 events have been noted, repatriation of “Meskhetian Turks” has been on Georgia’s agenda, but during Zviad Gamsakhurdia’s and Eduard Shevardnadzes’ presidency, only several hundred Meskhetian Turk families have returned to various regions of Georgia (though not to their historic homeland), mainly with their own initiative and wages. The official number of repatriates by the end of 2001 was 644 persons.<sup>22</sup>

After high-level meetings in The Hague and Vienna in 1998–1999, hosted by various organizations<sup>23</sup> with the involvement of governments, Georgia’s delegation pledged to solve the question of citizenship for returnees by the end of 1999 and

announced the establishment of a State Committee, or Repatriation Service, in the near future to address issues relating to the repatriation of Meskhetian Turks.

In 2007, Georgia issued the law – “On the Repatriation of Persons Involuntarily Displaced by the Former USSR from the Georgian SSR (The Soviet Socialist Republic of Georgia) in the 1940’s”. According to the law, the application for obtaining the status of repatriate in accordance with Article 4 of this Law was no later than July 1, 2009.

After the implementations of the law, the official statistics are as follows: a total of 5.841 individuals applied to Georgia for reintegration status over the past few years. Of these, 1.998 have been granted this status, and 494 people have received “conditional citizenship” that implies that Georgian citizenship will take its effect immediately after they renounce the citizenship of another country.

As officials explain, people are usually refused to be granted citizenship due to a lack of relevant documentation. The implementation of the law has been criticized numerous times; being stateless people, they are not eligible for the public healthcare program. “They don’t have social and economic guarantees and property-related issues still remain a problem”, reads the Georgian Public Defender’s report for 2015.<sup>24</sup>

As we see from the following, the problem still exists; the percentage of people who repatriate is very low and even people who received the status are still waiting for justice to be fully restored.

## LESSONS LEARNT AND RECOMMENDATIONS

As the Georgian case shows, there are positive, as well as negative, examples of cases on how Georgia has dealt with the rehabilitation of the victims of Soviet repressions.

The main positive issue is that not only the persons, who suffered the repressions, but also members of their families, close relatives, who were with him/her in the imprisonment and deportation, were acknowledged as the victims of political repression, and if the person is already dead, the nearest heir can claim the indemnity.

The constant conflicts between groups in society, the atmosphere of violence, and the economic crisis, have all distracted society from comprehending the consequences of Soviet terror, and identifying and dismantling the driving mechanisms of the totalitarian system, as well as rehabilitating the victims of repression.w

19 Official correspondence of IDFI with Tbilisi and Kutaisi City Courts and Ministry of Finance of Georgia.

20 See Oskari Pentikäinen, Tom Trier, *Between Integration and Resettlement: the Meskhetian Turks*, ECMI Working Paper # 21, September 2004, [https://www.files.ethz.ch/isn/19696/working\\_paper\\_21b.pdf](https://www.files.ethz.ch/isn/19696/working_paper_21b.pdf)

21 See Alexander Osipov, “Ferghana Events: 20 years later. History without a lesson?”, in *FerganaNews*, 10 June 2009, <http://enews.fergananews.com/articles/2545>

22 See Oskari Pentikäinen, Tom Trier, *Between Integration and Resettlement: the Meskhetian Turks*, ECMI Working Paper # 21, September 2004, [https://www.files.ethz.ch/isn/19696/working\\_paper\\_21b.pdf](https://www.files.ethz.ch/isn/19696/working_paper_21b.pdf)

23 In Hague, OSCE High Commissioner on National Minorities (OSCE-HC-NM), Max van der Stoep, in cooperation with UNHCR and the Forced Migration Projects of the Open Society Institute (FMP-OSI) hosted consultations on issues relating to Meskhetian Turks. The same organizations – OSCE, UNHCR and FMP OSI hosted second meeting in Vienna.

24 See Nino Narimanishvili, Otari Atskureli, “Return from exile: Muslim Meskhetians from Georgia”, in *JamNews*, 21 June 2017, <https://jam-news.net/?p=45365>

The corresponding law on restoring property rights of the rehabilitated persons, which would regulate the process of restoring justice for the victims, has not been elaborated for more than 20 years, which makes the victims, and other stakeholders, think that the state authorities don't have the political will to fulfill it.

Only complete opening of the archives of intelligence agencies and security agencies can give answers, both to the private matters of citizens, as well as to the questions that have enormous value for all society. It is impossible to have a valid written history of the XX century, of any Soviet country, without studying the archives. Soviet repression remains one of the main traumatic points in the collective memory of post-Soviet countries. Publishing authentic documented data on the repressed, as well as individual stories, will support the process of the rehabilitation of the victims, deliver the truth to families of the victims, help to restore justice and promote reconciliation within the entire society.

The tragic events of 1991–1992, when historical documents of the former KGB Archives were lost, and together with them, the chances for rehabilitation of the victims within the country vanished. Thus, the key for restoring the truth through documents only remains in the Russian archives, which are practically

inaccessible at the moment, neither to Georgian historians, nor to ordinary Georgian citizens, due to the absence of the diplomatic relations and contacts between the archival institutions of the two countries. In the regard to the situation, as the member of society “Memorial”, Guram Soselia told us, some retired KGB officers have addressed the corresponding archives in Moscow and received reference letters, but he did not know of any ordinary repressed person from Georgia, who had done the same. In theory, it is unclear, whether a repressed citizen of Georgia can receive any probative approval documents by addressing the Russian archives or not.<sup>25</sup>

The main recommendations for Georgian authorities are to finalize working on a corresponding law about restoring the property rights of the rehabilitated persons. Also, the prolonged lustration process of former KGB and other workers of the system of retaliatory bodies during USSR is a sensitive topic for Georgian society and needs to be resolved once and for all, as well as repatriation of Persons Involuntarily Displaced from the Georgian SSR.

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25 The interview with the Georgian society “Memorial” member – Guram Soselia, 2018.

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# EDUCATION AND PRESERVATION OF SITES OF CONSCIENCE

IRAKLI KHVADAGIANI

## INTRODUCTION

During the last stage of “Perestroika”, especially after the tragedy of the 9th of April 1989 in Tbilisi, which was due to rise of mass protests and a sense of system crisis, it came time for public discussions on a variety of formerly forbidden issues, including Soviet crimes and mass terror. As communist state censorship was weakened, enough testimonies and memories of the victims of Soviet repressions began to be published and a few formerly forbidden books were published for the first time. The last years of Soviet rule in Georgia were accompanied with the humiliation and the destroying of Soviet symbols – monuments of Soviet leaders and architectural details of Soviet ideology. During the transition time – 1989–1991, there were demands for marking memory about the victims and preserving sites of conscience, but the complex problems of political and social life after the re-establishment of the independence of Georgia created an unfriendly environment for developing such ideas and projects.

## THE NEED FOR THE PRESERVATION OF WITNESS MEMORY

The first initiatives concerning identification and preservation of sites of conscience began in Georgia in 1989. In March 1989 the “Commission of Supreme Council of Georgian SSR for the re-establishing of justice for the victims of repressions, which took place in 1930–40 and 1950’s” was founded. One of the aims of the Commission was the identification of mass gravesites of the victims of Soviet repressions. However, the Commission has yet to find such places, and public society started to organize a campaign of identification based on appeals in the press, but without definite success.

At the same time, a movement to create symbolic sites of conscience started to appear; one of the first initiatives was from Tamaz Kvachantiradze’s article published in the “Literaturuli Sakartvelo” (Literary Georgia). The basic idea of the article was to construct a symbolic grave in memory of repressed Georgian public figures on the Mtatsminda Mountain pantheon. This idea gained active resonance and even led to the beginnings of specific projects, but none of them has been realized.<sup>1</sup>

The same kind of initiative was expressed by a group of Georgian writers and poets who published an open appeal to the minister of culture of the Georgian SSR in July 1989, asking to order a network of Georgian museums to prepare and open new expositions about the tragedy of 9 of April. The group further demanded the creation of “Museum of National Tragedy”, which should focus on tragic dates of Georgian modern history – 1921, 1924, 1936–37 (*sic*), 1956 and 1989<sup>2</sup> and should be placed in national art gallery on Rustaveli avenue, the former “Temple of military glory of Russian Empire”. However, the initiative was neglected and only existed on press papers.

Besides a few examples of initiatives by civic activists, who were trying to localize places linked with the Soviet state security apparatus, and preserve them as sites of memory, there was no common understanding of the meaning of such activism, as well as there being a lack of readiness in political circles and society for making the first step. On one hand, topographic dimension of Soviet terror was possible to explore based on the interrogation of eyewitnesses; however, it needed to be linked with the necessity of having a wide network of researchers and modern methodology. Deep historical research based on original documentary sources seemed another solution, however, such research demanded the transparency of KGB archives and was problematic until 1990. Moreover, many of the former offices of state security and prisons were already destroyed, or were still used as state structures.

Consequently, there were no successful examples of identification and preservation of sites of memory in Georgia, neither during the transition time 1989 – 1991, nor during the 1990s.

After the 1990’s, only a few examples of establishing memorial sites linked with 20th centuries mass tragedies exist. Some of them resulted from an alternative public initiative; others were developed with assistance of central or local governments. Here is a list of those examples of symbolic memorials of mass graves of victims of Soviet repressions:

**The Kutaisi memorial of the victims of the Anti-Soviet uprising in August of 1924** – A symbolic memorial sign is installed in the Mukhnari forest, South-East of Kutaisi city, at the supposed area of a mass shooting during the August uprising of 1924.

**The Telavi memorial of the victims of Anti-Soviet uprising in August of 1924** – A symbolic memorial sign is installed at “Gigog Gora” little hill, South-East of Telavi city, at the supposed area of a mass shooting during August uprising of 1924.

**The Shorapani memorial of the victims of the Anti-Soviet uprising in August of 1924** – A symbolic memorial sign is installed in Shorapani village, close to Zestafoni city, at supposed place of mass shooting of victims during August uprising of 1924, the victims were captured in Railway carriages and shot with a machine guns.

**The Chiatura memorial of the victims of the Anti-Soviet uprising in August of 1924** – A symbolic memorial sign was installed in the year 2014, in Chiatura city center, where on 28 August 1924 an Anti-Soviet uprising started.

**The Zugdidi memorial of the victims of the Anti-Soviet uprising in August of 1924** – A symbolic memorial sign was installed in 2017, in Zugdidi city center, in the Dadiani palace yard, the supposed place where the victims of 1924 August Anti-Soviet uprising were shot.

1 Only a small memorial wall with a few names of repressed writers and artists was constructed there in 2010’s.

2 Occupation of Georgian Democratic Republic by Soviet Russia; Anti-Soviet uprising; Big Soviet terror; Suppression of Stalinist demonstration in Tbilisi – 9 of March; Suppression of Anti-Soviet demonstration in Tbilisi – 9 of April.

Also, only small part of GULAG network in Georgia is marked due to the German prisoner of war's (POW) traces; During 1990–2000's German War Graves Commission (Volksbund Deutsche Kriegsgräberfürsorge in German) memorialized 24 places in Georgia. The majority of the memorial signs are not installed in the correct location of the POWs camps or cemeteries, but generally mark the areas. Here is a list of those memorial places:

- **Tbilisi, Sairme hill**
- **Tbilisi, "Veli"**
- **Rustavi, Zedgenidze Street**
- **Gardabani, close to Gardabani Electrical station**
- **Ksani**
- **Gori**
- **Bulachauri**
- **Khrami Hydroelectric station**
- **Jvari pass**
- **Stepantsminda**
- **Chitakhevi (2)**
- **Kvabiskhevi (2)**
- **Surami**
- **Sagarejo**
- **Telavi**
- **Zugdidi**
- **Bolnisi**
- **Chiatura.**
- **Sairme**
- **Tkibuli**
- **Makhinjauri**
- **Kutaisi**

The Rose revolution in 2003 brought a new perspective to the memory policy in Georgia. Within a few years, the state managed to realize its agenda concerning modern history issues, illustrated by the founding of the Museum of Soviet occupation in Tbilisi, renaming streets with the names of victims of Soviet terror etc. The state became even more active in this field after the Russian–Georgian war in August 2008, as the rethinking of the Soviet legacy was included into the state-lead anti-Russian propaganda campaign. Up until 2012, there were several activities attempting to create memorial signs in public spaces – for example building a memorial wall of repressed writers and artists in Mtatsminda pantheon, founding “Commission of Historical Truth”, creating the memorial desk of Kote Abkhazi.<sup>3</sup> However, all those efforts were characterized as superficial and slightly propagandistic. For example, in the inscription at the memorial desk of Kote Abkhazi, there is a factual mistake about his rank. Moreover, he is named as a victim of the Russian occupation, not as a victim of the communist regime.

Since 2010, new civil organizations such as the Soviet Past Research Laboratory (SovLab) and the Institute for Development of Freedom of Information (IDFI), started to create an alternative agenda in the culture of remembrance and memory policy, including memorialization of places of conscience.

In 2011, SovLab created a city tour “Topography of Red Terror”, about Soviet terror in Tbilisi in 1921–1950's.

In 2015–2016, the IDFI began installing memorial desks in houses of so called “military center” members, who were executed by the Soviet regime in 1923. The IDFI was also advocating for the creation of their memorial, but due to a lack of will and proper understanding of the importance of the installation of memorial, it is still in progress.

Since 2011, SovLab is trying to raise attention and sensibility about the most valuable historical building of the 20th century and place of memory, the house of “Cheka”<sup>4</sup> of the Georgian SSR, which is still standing in the center of Tbilisi city, on #22 Ingorokva street. There is not any real feedback from the state regarding the form of preservation and memorialization of the building.

In 2014, the Soviet Past Research Laboratory identified another former POWs camp and cemetery in Kutaisi city, near a former auto mechanical plant. Further, with the assistance of the south Caucasus and Turkey office of the DVV international, a cemetery of POWs in Rustavi city was identified in 2016–2017, close to Zedgenidze street (see list of memorials up). In 2017, the first test excavations confirmed the findings. A new stage of excavations is planned in 2018.

In 2017, SovLab participated in the founding of the initiative, the “Last Address – Georgia”, which is a partner project of the post-Soviet network of remembrance – “Последний адрес”. It aims to install metal memorial signs on houses of victims of Soviet repressions. “Last address – Georgia” is still in the process of getting permission from Tbilisi city hall for installing the first memorial signs.

## TYPES AND ROLES OF MEMORY INSTITUTIONS

The last years of Soviet rule in Georgia were a time of an “explosion” of the founding of a variety of civic and political organizations, parties etc. However, similar activities were not observed regarding groups of the victims of Soviet repression and the successors of their families; during the 1990's only two memorial organizations were founded.

The first of them was, **Einung**, the Association of Germans in Georgia was founded in August 1991. The association collected successors of German settlers in Georgia. The association started a variety of activities for the research and preservation of material and the cultural heritage of Germans in Georgia. It aims at understanding the memory of mass deportation of Germans to the Soviet Union in 1941.

Another and very important society was “**Memoriali**”, the Georgian society of victims of Soviet repressions. “Memoriali” was established in 1992. The organization was founded by the successors of families of victims of Soviet political repressions. The society began with archival research for the identification of the fates of victims, collecting documentary sources and information from families. During the 1990's the society was publishing its own newspaper “Memoriali”. The society organized several public exhibitions about Soviet repressions.

Throughout the 1990's “Memoriali” was actively trying to influence state policies towards guaranteeing social protection to the victims of Soviet terror and the successors of their families. The society started to collect information about the victims of Soviet terror based on sources from the KGB archives and published them in the newspaper. Memoriali led a civic campaign to prompt the government to create a memorial complex on Tbilisi–Rustavi road. The memorial complex was supposed to

<sup>3</sup> Former military commander, one of founders of Georgian National Democratic party, member of committee of independence after Soviet occupation in 1922–1923. He was arrested by Cheka and was shot on 20th May 1923.

<sup>4</sup> ЧК (Чрезвычайная Комиссия) – Extraordinary Commission – Soviet State security service in 1917–1922.

stand on the place of mass graves of the victims of Soviet terror, which was marked<sup>5</sup> by historian Giorgi Tsitsihvili in 1990. However, the initiative was neglected by state and mobilization of society has also failed.

During the 1990's, as a result of the collapse of economic and social life of the Georgian state, permanent political crisis, and the restoration of the communist political elite in state structures, there was an extremely unfriendly environment for developing strong movements of research into the Soviet totalitarian state's mass crimes, and the memorializing of sites of memory. All groups and institutions founded at beginning of 1990's were facing complex problems and challenges and until 2010's there were no new initiatives for the rethinking of the Soviet past.

## LESSONS LEARNT

It can be concluded that the failure of the process of the preservation of sites of conscience in Georgia after the end of Soviet rule, as well as a minimal degree of development of memorial institutions, the low impact on state policy and low mobilization of society can be considered a result of the crisis among historians, who were not ready to give input to society in order to understand the importance of sites of memory. At the same time, a disastrous breakdown of the economy, a political crisis, and war at the beginning of the 1990's almost destroyed the field for

the development of a proper civic activism towards the rethinking of the Soviet past. The state itself began to be passive about the prosecution of Soviet crimes, as it was partly dominated by former communist elite. The deadlock of this combination almost closed the door for any kind of progress in this field until 2010's.

## RECOMMENDATIONS

- It is necessary to lead a wide civic campaign, record testimonies of victims and witnesses of mass crimes. Moreover, physical traces of the regime's inhumanity, mass graves of the victims, prisons, offices of state security units should be identified. These places have ethical meaning as places of conscience and memory, and are educational resources guaranteeing the keeping of a collective memory for future generations. This is all necessary for the resolution of the legacy of the totalitarian state and supporting prosecution of its crimes
- Civil society should initiate the preserving of sites of memory as a part of complex agenda towards dealing with the legacy of the former regime. However, at the same time, civil society should actively push state institutions to create a friendly environment for developing such activities and initiatives.

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<sup>5</sup> Till today there are no evidences about validity of this conclusion.

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# TIMELINE OF THE MAJOR EVENTS

**DAVID JISHKARIANI**

- 1953** Lavrenti Beria was arrested in Moscow. It was followed by a mass cleaning of the state security system from “Beria’s guard”. In 1955–1956 some former officers of the NKVD-MGB were sent under a partly open trial for “mass violation of socialistic orders in 1937–1938”. Some of these trials were held in Tbilisi
- March 1956** Large-scale demonstrations took place in Georgia, following Khrushchev’s criticism of Stalin at the 20th Party Congress. These were the first significant expressions of public protest and civil disobedience in the Soviet Union for decades, and they also bore a clearly nationalistic character
- 1956** The rehabilitation process started. The party apparatus tries to show the brutality of Beria and his Gung
- 1983** A group of young artists hijacked an airplane flying from Tbilisi to Batumi, trying to force the pilots cross the border into Turkey. The airplane’s crew managed to stop them and during the clash there were casualties from both sides, also among the passengers. The airplane returned to Tbilisi airport, where Special Forces attacked it and freed the hostages; during the operation some hijackers and passengers were injured
- April 1989** Soviet internal troops and Special Forces suppressed an Anti-Soviet demonstration in Tbilisi. The demonstrations started as a protest against a movement for separation from the Georgian SSR in Abkhazian ASSR, but very soon it transformed into an Anti-Soviet protest, demanding the independence of the Georgian state. 21 citizens were killed
- September 1990** Close to the first multiparty elections of the supreme council of the Georgian SSR, a group of KGB employees openly expressed their protest against Soviet rule, sending a declaration to the opposition press edition, blaming the center KGB of a destructive agenda, insisting on depoliticization and asking for the support of the future Supreme council of Georgia for a peaceful transition of the Georgian KGB to the State security service of an independent republic of Georgia
- March 31, 1991** An independence referendum was held in the Georgian Soviet Socialist Republic. It was approved by 99.5 % of voters
- December 1991** A fire in the KGB building destroyed many archival documents, the exact number is still not known
- May 1992** The Ministry of State security of Georgia (formally renamed KGB) was formally abandoned, and the new state security office, “Informative-intelligence service” was founded, but, very soon after, in October 1993, the Ministry of State security was re-established
- 1997** Law “On the Acknowledgment of Citizens of Georgia as Victims of Political Repression and Social Protection of Repressed Persons”
- 2006** Law “On the National Archival Fund and the National Archives”
- 2006** The case against Georgia originating from application no. 7975/06 lodged to the ECHR under the Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms by Klaus Kiladze and Yuri Kiladze on the 22nd of February 2006 in order to assert their rights for compensation resulting from their status as victims of political repression
- 2007** Public discussion about Lustration organized by Heinrich Böll foundation in Tbilisi, key speaker was Joachim Gauck
- 2011** Freedom Charter adopted
- 2012** Law of Georgia on Personal Data Protection
- 2012** Payment for services provided by the Ministry of Internal Affairs Archives’. Prices became extremely expensive; one-page copy costs 3 GEL (approx. 1 EURO)
- 2013** Definitions of “Communist Totalitarian Ideology” and “Communist Totalitarian Symbols” adopted
- 2013** Georgian citizen Nodar Mumlauri filed a complaint with the Constitutional Court, stating that Article 9, Paragraph 1, Subparagraphs c) and d) of the Freedom Charter were contrary to the rights guaranteed by the Constitution



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