

**Legal Brief on
Nika Gvaramia's case**

Following the resolution of the prosecutor of the General Prosecutor's Office of Georgia on charges dated November 1, 2019, the prosecution claims that Nika Gvaramia committed:

1. The crime provided for in Article 182 of the Criminal Code of Georgia, subparagraphs "a" and "d" of the second part and subparagraph "b" of the third part - Unlawful embezzlement of lawfully managed property rights in large quantities with a preliminary agreement by a group using the official position (the so-called 2015 Episode);
2. The crime provided for in the third part of Article 221, the second part of Article 362, subparagraph "b" of the second part of Article 362 and subparagraph "c" of the third part of Article 194 of the Criminal Code of Georgia - Requesting or acceptance of property directly for his/her benefit, by a person holding managerial and representative powers in an enterprise so that he/she refrains from taking a certain action, in violation of his/her official obligations, for the interests of the briber, by making a forged document for the purpose of usage and using, as well as the legalization of illegal income, which is followed by receiving a particularly large amount of income (the so-called Money Laundering Episode);
3. The crime provided for in Article 220 of the Criminal Code of Georgia - Abuse of managerial and representative powers in an enterprise against the lawful interests of this organization for acquiring benefits or advantages for oneself, which has resulted in considerable damage (the so-called Car Episode);

According to the judgment of Tbilisi City Court judge Lasha Chkhikvadze on May 16, 2022:

1. Nika Gvaramia was fully acquitted in the so-called Money Laundering Episode;
2. Nika Gvaramia's action in the so-called 2015 Episode was reclassified from the second and third parts of Article 182 of the Criminal Code of Georgia to Article 220 of the Criminal Code of Georgia and a fine in the amount of 50,000 GEL was defined as the type and size of the punishment;
3. Nika Gvaramia was found guilty of the so-called Car Episode (Article 220 of the Criminal Code) and was sentenced to 3 years and 6 months of imprisonment.

The decision of the judge, in the part of finding Nika Gvaramia guilty and imposing the sentence, has been appealed in the Tbilisi Court of Appeal. The defense believes that the decision is illegal and unjustified, which is why it should be annulled and an acquittal should be issued instead, since:

- a) Judge Lasha Chkhikvadze did not take into account the **political persecution** against Nika Gvaramia;
- b) The judge was biased and not objective, both during the hearing of the case and the sentencing, in favor of Rustavi 2. Judge had a conflict of interest with Rustavi2's senior management and the witness to the case who turned out to be a close friend of the Judge. The Judge did not disclose this fact when he was assigned to the case. The Judge even attended the parties with the person during the period when he was hearing Gvaramia's case. After learning the friendship ties and presenting photo evidence of partying together, the Judge had to admit the fact of friendship but rejected the Gvaramia's motion on recusal and did not recuse himself from the case.
- c) In the process of examining the evidence, the right to equality of the parties was violated, as approximately 2 years (from January 24, 2020, to December 8, 2021) and 40 sessions were devoted to the examination of the evidence of the prosecution so that the court did not define a "reasonable period" for the prosecution, nor did it have any complaints about the pace of the examination of the evidence. However, the court required the defense side to complete the presentation of evidence in the remaining 20 days, in gross

violation of the law, excluding at least two-thirds of the evidence from the defense side's list of evidence. Moreover, unlike for the prosecution, who was asked by the judge whether they had finished examining the evidence and only after receiving a positive answer from them, moved on to the evidence of the defense, the judge himself announced that the examination of the evidence of the defense side was completed and did not allow us to present to the court the witness Kibar Khalvashi and Giorgi Tkebuchava, as well as other written evidence.

- d) The guilty verdict was issued for actions that do not constitute a crime, and the judge's reasoning in the part of finding Nika Gvaramia guilty in the so-called 2015 Episode and the so-called Car Episode is completely unjustified;
- e) The type and size of the punishment used by the judge are disproportionate, since taking into account the identical personal characteristics and the size of the punishment, the difference between these two Episodes is only the amount of damages (6,763,609 GEL in the first case, and a hundred times less in the second Episode - 66,272 GEL). The court, completely unjustified, in the first case, determined a fine in the amount of 50,000 GEL, and in the second case imprisonment for 3 years and 6 months. All the more so that in 2017-2021 the first instance courts did not impose a prison sentence on any person when convicted under Article 220 of the Criminal Code.

The decision was also appealed by the prosecution, which requested that Nika Gvaramia be found guilty in the so-called Money Laundering Episode and for his actions to be reclassified from Article 220 to the second and third parts of Article 182 in the so-called 2015 Episode.

Under the decision November 2, 2022 Tbilisi Court of Appeals (Judges - Merab Jorbenadze, Davit Mamiseishvili, Lavrenti Maghlakelidze) did not satisfy the appeals of Nika Gvaramia's lawyers and partially satisfied prosecutor's appeals and ordered the following against Nika Gvaramia:

1. Nika Gvaramia was again, fully acquitted in the so-called Money Laundering Episode;
2. Nika Gvaramia's action in the so-called 2015 Episode was confirmed to be reclassified from the second and third parts of Article 182 of the Criminal Code of Georgia to Article 220 of the Criminal Code of Georgia and the measure of imprisonment for 3 years and 6 months was applied.
3. Nika Gvaramia was found guilty of the so-called Car Episode (Article 220 of the Criminal Code) and was sentenced to 3 years and 6 months of imprisonment.

Since the applied sentences by the Court of Appeals under both convictions are the same term (3 years and 6 months), it is of an overlapping nature and under law, de facto, Nika Gvaramia shall spend 3 years and 6 months in prison. Serving time started on the day of Nika Gvaramia's imprisonment, on 16 May, 2022 and it will end on 15 November, 2025.

Summary of difference between the decision of First and Second Instances of Georgian courts:

The Tbilisi Court of Appeals formally worsened charges and applied another imprisonment of 3.6 years for another episode of the case, to which the First Instance Court [Tbilisi City Court] applied fine (50.000 GEL). Thus, the Court of Appeals applied imprisonment against Nika Gvaramia in two episodes, contrary to the decision of the Tbilisi City Court, which applied imprisonment in one episode of the case. According to law, since terms of both sentences overlap, the actual measure (3.6 years), de facto, remains unchanged. According to the decision, Nika Gvaramia shall be imprisoned until 16 November, 2025.