JUDICIARY OF ENGLAND AND WALES

Judge Howard Riddle, Senior District Judge (Chief Magistrate)

In the Westminster Magistrates' Court

The Government of Georgia

v

Davit Kezerashvili

Findings of fact and reasons

Application

The Government of Georgia (represented by Mr John Jones QC and Mr Lloyd) has made a number of requests for the extradition of Davit Kezerashvili (represented by Mr Keith QC and Mr Kern). I am asked to send this case to the Secretary of State for a decision as to whether the defendant is to be extradited. Georgia is a category 2 territory for the purposes of the 2003 Extradition Act and this hearing is considered under Part 2 of the Act. The application is opposed.

The hearing started in October 2015, was then adjourned until December for Professor Bowring to complete his evidence and then until February to enable two witnesses, Sir Geoffrey Nice QC and Paul Coffey, to be called by the requesting authority. In the event those witnesses were not called, and I will return to that later.

Background to these proceedings

Georgia is an ethnically and linguistically diverse country in the South Caucasus, with a population of about 5 million people. There has been a troubled history since independence from the Soviet Union. Abkhazia and Ossetia separated from Georgia in 1991, causing a significant refugee crisis. Civil war broke out in 1992, after which Eduard Shevardnadze, the former Soviet foreign minister, governed as leader of the Citizens Union of Georgia (CUG). In October 2000 Mikhail Saakashvili became minister of justice in President Shevardnadze's government and initiated major reforms in the Georgian criminal justice and prisons system. The CUG lost support and in November 2003, as President Shevardnadze was formally opening parliament, he was removed from power by the "Rose Revolution" as a result of which Mr Saakashvili became president, as head of the United National Movement (UNM) party.

After the Rose Revolution, Mr Kezerashvili was appointed Head of the Financial Police. In November 2006 he became minister of defence. In December 2007 Human Rights Watch described a violent dispersal of protesters and a raid on Imedi Television, which is the background to one of the allegations in the current request. In August 2008, while Mr Kezerashvili was minister of defence, there was a five-day war with Russia that, among other things, led to Mr Kezerashvili's resignation.

In October 2012 the Georgian Dream Coalition (GDC) won parliamentary elections. The prime minister was Mr Ivanishvili and the Minister of Internal Affairs was Mr Garibashvili.

It appears that while the UNM party was in power, substantial concerns developed about corruption and offending by party officials, including senior politicians, as well as a concern of a culture of impunity, that meant that these allegations were not pursued through the courts. Immediately after the 2012 election, the new government made public statements about the importance of correcting wrongdoings committed by the previous authorities. It is said that there were a large number of complaints. This led some international commentators to express concern about political revenge.

In due course investigations began into serious allegations against Mr Kezerashvili and others. By September 2013 it was being reported that after the elections of the previous October, 35 former central officials had been charged with different suspected crimes, including misuse of state funds and money laundering. Prosecutors had questioned over 6000 people, most of them UNM party activists, as witnesses. One of those charged and held in pre-trial detention was Mr Merabishvili, a former prime minister and secretary-general of UNM at the time of arrest. Also prosecuted were former president Mikhail Saakashvili, Mr Kodua (former director of the Special Operative Department), Mr Akhalaia (a former UNM minister of defence, minister of interior, and head of the penitentiary department), Mr Adeishvili (former prosecutor general, and minister of justice) and Mr Ugulava (former UNM mayor of Tblisi).

A number of indictments have been brought against Mr Kezerashvili in Georgia. Most of these have at some stage been included in the extradition requests to this country. One was also the subject of an extradition request to France that was refused by the Court of Appeal in Aix-en-Provence on 27th February 2014. He was subsequently acquitted of that matter in Georgia in September 2015.

In this country a warrant for Mr Kezerashvili's arrest was issued on 14th October 2014, based on the first request. The defendant surrendered on 25th November 2014, and proceedings have been continuing at this court since then. In total four requests have been made, the most recent of which was certified on 4th August 2015.

The defendant has been on bail throughout.

Davit Kezerashvili

As stated above, the defendant, Davit Kezerashvili, is or has been, a prominent Georgian politician. He is described as a close colleague of Mikhail Saakashvili, the former president of Georgia and founder of the United National Movement (UNM). Mr Kezerashvili held a number of important positions under Mr Saakashvili, including that of minister of defence. On 2nd October 2012 the UNM were defeated in parliamentary elections by the Georgian Dream Coalition, led by Bidzina Ivanishvili until November 2013, when he resigned and was succeeded as prime minister by Mr Garibashvili. Shortly

after the election a number of leading ministers and officials from the UNM party were arrested on allegations involving abuse of office, illegal detention and torture. The arrests and prosecutions were controversial. Mr Ivanishvili said there was a public demand for justice. Others suggested the prosecutions were politically motivated.

On 30th January 2013 Mr Kezerashvili was indicted in his absence on an allegation of accepting a bribe and facilitating the smuggling of ethanol into Georgia, for which he was later acquitted. On 23rd February 2013 he was indicted for criminal involvement in acquiring ownership of a television station, Imedi. A further indictment was issued on 7th May 2014 and alleges embezzlement relating to a contract to supply military services in 2008. On 28th July 2014 there was an indictment for acting in excess of judicial authority by the wrongful appropriation of TV Imedi. On 30th March 2015 there was a further charge in relation to Imedi. On 2nd July 2015 he was charged with extortion relating to a Mr Nizharadze, a businessman, in 2010. He was acquitted of the first Imedi matter by a court in Georgia on 18th September 2015.

When these indictments were preferred, Mr Kezerashvili was outside Georgia. There were failed extradition proceedings against him in France in 2014. Four separate requests were made here between June 2014 and July 2015. The second request, and part of the first request, have been withdrawn.

Formalities

The Secretary of State has issued a certificate and sent the request and the certificate. My first task as the appropriate judge at the extradition hearing is to determine that the documents sent to me by the Secretary of State include the documents and information required by section 78(2), namely the documents referred to in section 70(9) (that is the request and the section 70 certificate; particulars of the person whose extradition is requested; particulars of the offence specified in the request; and in the case of a person accused of an offence (as here), a warrant for his arrest issued in the Category 2 territory).

As I am satisfied that the paperwork is in order, and this is not in dispute, I must go on to decide the three questions specified in section 78(4).

The first question is whether, on a balance of probabilities, the person appearing or brought before me is the person whose extradition is requested. This is not in dispute, and I am satisfied he is.

The second question is whether the offences specified in the requests are extradition offences. This is in dispute. I set out my decision below.

The third question is whether copies of the documents sent to me by the Secretary of State have been served on the person, namely the defendant. They have.

Having decided the three statutory questions in section 78 affirmatively I must go on to decide whether any of the bars to extradition in section 79 are applicable. If one or more of them is applicable then the defendant must be discharged

Extradition offences

The first extradition request has been withdrawn in relation to Imedi 1 as Mr Kezerashvili was acquitted at first instance. The Girwood allegation remains.

The second extradition request has been withdrawn.

The third extradition request relates to Imedi 2, "Badri's estate" and Rustavi. The proceedings relating to Imedi 2 are at the trial stage, and the defendant is standing trial with Giorgi Ugulava as a co-defendant. The Rustavi case is currently at the pre-trial stage. Supplementary information from Georgia dated 5th February 2016 makes it clear that the defendant is being prosecuted only in relation to the assets part of the Imedi 2 case. He is not prosecuted in relation to the alleged clampdown on protesters.

The fourth extradition request relates to the assets belonging to Mr Nizharadze and his son.

The requests provide the relevant indictments. The skeleton argument on behalf of the government of Georgia dated 16th October 2015 provides a summary of the details of the indictments.

As for the Girwood indictment the essential conduct is that Mr Kezerashvili is said to have caused the ministry of defence to pay out just over €5 million to Girwood Business Corporation in the knowledge that the latter was receiving the money fraudulently for services that have not been rendered, and on the basis of a false quarterly report. It is said that Mr Kezerashvili conspired with his co-defendant Alexandre Ninua to cause a huge loss to the budget of the Ministry of Defence.

This conduct is charged in Georgia as "embezzlement of others property", contrary to article 182 of the Criminal Code of Georgia, and is punishable there with more than 12 months' imprisonment.

The defence assert that the conduct would not amount to an extradition offence. They rely on alleged inconsistencies and the evidence of witnesses from whom I heard. It is said that the conduct set out in the Girwood request falls far short of identifying extraditable conduct.

> "Properly analysed, what is alleged is that the defendant is alleged to have ordered A Ninua to sign a contract with Girwood Business Corp. Now that the government concedes that it is not actually alleged that the defendant was affiliated with Girwood... or that he received any benefit, let alone that there was any embezzlement, the mere acts of allegedly authorizing "misspending" by virtue of:
>
> - Instructing MoD officials to sign a contract bypassing the requisite scrutiny...
> - Instructing MoD officials to make advance payments after unperformed obligations...
> - Failure to seek recovery of unperformed obligations
>
> give rise to no offence..."

However, I accept the government's submissions that these factors and arguments (albeit possibly relevant for another purpose) do not bear on the issue of whether this is an extradition offence. It is inappropriate to deconstruct the allegation as set out by the government.

I accept that the conduct set out on the previous page, if it occurred in the United Kingdom, would constitute the following three offences, all of which are punishable with imprisonment for a term of 12 months or greater: conspiracy to defraud; fraud; being

concerned in a money laundering arrangement. For extradition purposes, only one offence needs to be shown.

The essential conduct in Imedi 2 is that Mr Kezerashvili is said to have abused his official position in a scheme unlawfully to expropriate the estate of a Mr Badri Patarkatsishvili of its shares in Teleimedia and Radioimedi. The allegations are summarized as follows:

> "Thus, the acts committed by Mr Kezerashvili with common aim and sole intention which implied the illegal acquisition of property right over Teleimedia and radio media and further disguising it through registering in the name of various individuals, were aimed at concealing the actual owner of the TV company, so that the fact of controlling the editorial policy of the TV channel by the government representatives would not be exposed."

I am satisfied that this conduct, if it occurred in the United Kingdom, would constitute the offences of misconduct in public office and conspiracy to defraud. I also accept the government's assertion that the question of whether or not this amounts to an extradition offence is to be decided by reference to the documents constituting the request, and not to other information provided by the defence (albeit that this further information may be significant in another way). The fact that the alleged beatings in paragraph 4 below do not form part of the criminal allegation against Mr Kezerashvili does not alter the position for these purposes.

Because of the general significance it is relevant to set out the facts as alleged in the Imedi 2 indictment, as summarized at paragraph 3.69 of the government's opening skeleton:

1. Telemedi incurred the displeasure of President Saakashvili because it was critical of the government, including by airing critical reports covering, inter-alia, the death of Sandro Girgvliani. It is worth noting that the Girgvliani case is one in which the European Court of Human Rights strongly condemned the Saakashvili Government, including Saakashvili himself, and there is no question that the case was a scandal for the government.

2. Saakashvili's response to critical media coverage matter of public interest was to seek to take control of the TV station – an authoritarian and undemocratic response.

3. AP was then threatened with criminal prosecution and confiscation of his assets if he did not surrender the TV station.

4. In November 2007, popular protests led to instructions by the Minister of Interior to use unlawful means to beat protesters, in order to suppress their protests (it is accepted that the description of the conduct in relation to the beating of protesters does not disclose an allegation of criminal conduct on the part of the defendant).

5. Against that background, the defendant's complicity in President Saakashvili's criminal scheme to divest AP's estate of its shares in Telemedia in order to control the TV channel's editorial policy and to conceal from the public the fact that this control by the government, using his public office, constitutes misconduct in public office of the utmost gravity.

The conduct alleged against the defendant in the fourth extradition request is summarized in the government's skeleton. The allegations concern assets that belonged to Mr T Nizharadze and his son Mr Z. Nizharadze. It is said that in August 2010 the defendant personally demanded, under the threat of violence, that Mr T Nizharadze assign his shares in Bimedia Investments Ltd, Mission Investment Limited and Metlex Ltd (to which see later) to the defendant. The shares were ultimately assigned to three companies controlled by Mr Kezerashvili.

I accept that if this conduct occurred in this jurisdiction it would amount to an offence of blackmail. For these purposes the civil judgment relating to a trial on similar facts is not something this court can take into account in applying section 137 of the Act. It may be relevant in another context.

Evidence

There are almost 40 lever-arch files of evidence and authorities. I heard live evidence over several days. I do not purport to summarize the written evidence, and merely touch on the oral evidence here to a greater or lesser extent, before setting out my findings of fact later.

The witnesses all referred to their statements, and to a large extent confirmed what they had said in those statements.

Mr Giorgi Ugulava gave evidence from detention in Tbilisi. He is a prominent member of UNM and was the elected mayor of Tblisi. He continued in that post until forced to stand down by a court as part of criminal investigations. He spoke good English but used

the Georgian interpreter from time to time. He was difficult to follow because despite repeated requests he gave long and sometimes discursive replies and occasionally political arguments. He made the point that it was difficult for him as he had been in custody in solitary confinement for a very long time. It is fair to say that the witness confirmed key parts of his 30-page witness statement. The combined effect of his oral and written evidence, and other evidence, is to show that various proceedings against him were commenced sequentially. The prosecution made repeated attempts to have him dismissed as mayor. In relation to the CT – Park allegation, he received a summons on 28th June 2014 to attend for questioning on 30th June, but was then charged the same day. On 2nd July 2014, the court declined to remand him or to order the surrender of his passport (as he had informed the prosecution and the court of a planned business trip). At 3am on 2nd July, he received a further summons requiring him to attend questioning on 4th July. He was, notwithstanding the absence of any restrictions on his movement, arrested at the airport in the early morning of 3rd July. The following day he was charged with two new matters and refused bail. He believes the judge was selected for this particular purpose. He was charged with abuse of power in late July 2014 and those charges were then aggravated on 13th March 2015, so as to permit his continued detention. In summary his evidence suggests, but does not prove, that processes were manipulated to ensure that he remained in custody.

Mikhael Benimini gave evidence through a Georgian interpreter. He is a relative and very close friend of the requested person. He told me about meetings he attended with Mr Kezerashvili, and in particular a meeting in September 2013 in Turkey. This was a meeting, described in full in his witness statement, arranged through intermediaries who he does not wish to name. The meeting was with Ucha Mamachashvili and took place with a guarantee that they would be safe in Istanbul. The guarantee that they could enter and leave the country came from an intermediary. Despite the guarantee, Mr Kezerashvili was stopped at the airport and taken aside by officials. As a result Mr Benimini phoned the intermediary and informed him of the situation. He was assured that Mr Kezerashvili should not have been stopped and would be released. Mr Benimini referred to a SMS message set out in the bundle. Names have been Tippexed out but the text says that Interpol will be taking down after the elections if everything goes well. "I am giving you a guarantee." It was the witness's understanding that the intermediaries had linked with Ucha Mamachashvili who had in turn liaised with the interior minister of Georgia. The

inference was that these people had secured the release of Kezerashvili, who was indeed free to go after about 45 to 60 minutes. The meeting with Ucha Mamachashvili then took place. Mr Benimini was sitting nearby during the meeting but only heard a small part of the conversation. He remembers a reference to the "Ethanol matter" in the context of a criminal process. The meeting lasted between 20 and 30 minutes.

The witness was credible and I believed him, although obviously the inferences that can be drawn from his evidence are limited.

Mr Kakha Ninua is a long-standing friend of Mr Kezerashvili. Their wives are close friends and together ran a business called Olive Design. His brother Alexandre also knows the requested person. His brother was sentenced to a term of imprisonment in relation to possession of a firearm (and I heard from this witness from detention later). After the 2012 election employees of Olive Design were summoned to the prosecutor's office and questioned in particular about the requested person's interest in the company and the connections between Mr Ninua and Mr Kezerashvili. In fact Mr Kezerashvili had no direct financial interest in the company. Mr Ninua sold his shares in early 2014 after warnings that he would lose everything if he kept them. Although he was not a member of the UNM party he did openly support that party.

There was a separate investigation into an interior business design company run by his wife and Mr Kezerashvili's wife. There had been a tragic incident in 2009 when two people died. Following a criminal investigation one person was found guilty and jailed. The investigation resumed after the election and seven people were summoned to the prosecutor's office for interrogation. This case had been famous because of the connection with Mr Kezerashvili and consequent TV and newspaper coverage. Mr Ninua believes that the reason for the investigations was to put pressure on employees which in turn would put pressure on Mr Kezerashvili and other supporters of UNM to surrender their position in the party.

Again the witness was impressive and credible.

Mr Alexandre Ninua is serving three years in prison for possession of a firearm. He gave evidence through an interpreter and was much shorter in his responses. I found his

evidence to be compelling on the question as to why he chose to get himself arrested and detained on a firearms charge. On the face of it his evidence provides strong support for the contention that witnesses are being interrogated persistently to persuade them to give evidence against others involved in UNM. Also his evidence of the timing of the indictments to prevent his release, of further judgments in the Constitutional Court and the decision on his parole (as well as the excessive length of his sentence in the circumstances) support the defence case.

The evidence of ***Professor Bowring*** is central to these proceedings. He prepared two reports and gave evidence in chief and in cross-examination. His expertise and impartiality are criticized in the Georgian response, I will return to that. I do not propose to summarize here the professor's written evidence, and will deal only briefly with his oral evidence, insofar as it modifies the emphasis in his reports.

The professor accepts he can be mistaken (and gives an example from an earlier Georgian case before this court, when extradition was ordered despite his evidence of article 6 non-compliance). He considers himself to be a friend of Georgia, and has many friends from his visits to that country, some of whom are active on each side of the political divide. In oral evidence he said he had great hopes of the UNM government, but they were to some extent disappointed. He also had real expectations of the new GDC government. Indeed that government made many strides to improve human rights, particularly in the early days. There have been real improvements in the independence of the judiciary. However further improvements are necessary and the overall impression from the accumulation of events and decisions is that the current government is bent on vengeance on its political opponents, rather than on justice. He acknowledges that there were serious failings before 2012 that merited a proper and independent investigation, and also probable prosecutions. However, a pattern has emerged of investigations, arrests, further investigations and further proceedings that follow pronouncements from prominent government politicians and appear aimed at incapacitating the UNM leadership.

Giga Bokeria told me that he was elected to the Georgian parliament after the Rose Revolution. He was deputy chair of legal issues and then deputy foreign minister. He was

appointed head of the National Security Council in 2010 and resigned in November 2013 at the end of the presidency, a few days after the inauguration of the new president.

At the end of 2012 he met the new prime minister intending to discuss how the UNM would work with the incoming GDC government. This was the first time in history that there had been a peaceful transfer of power following a democratic election. He wanted a smooth transition, but was surprised by the aggressive response he received. Having briefed the new prime minister on security concerns he turned to the UNM vision of working as an opposition, but was told that his party had no moral right to be political challengers of the new government. "He told me the more active we would be the more it would disturb him, the more people will go to jail from our team." The PM made it clear that both the president and the elected mayor of Tblisi should stand down. There was no chance of Mr Ugulava finishing his term as mayor. In fact, the first investigation into Mr Ugulava was launched a few months after this. The new PM mentioned the former PM and the former defence minister as examples of people who should not stay active. "We should not challenge and if we do there would be prosecutions." Mr Bokeria said this was unacceptable but was told that the response would be calibrated and named prominent people in the UNM. The decision was taken not to publicize this conversation because it was a very fragile moment in the country's history and the UNM hoped the attitude could be reversed. In fact the new PM publicly announced his policy. He made no secret of the proposal to initiate prosecutions and said that the "scale of them depended on how we behaved." It was clear that the aim was to destroy the opposition rather than to obtain justice or due investigation. So far the investigations have involved several thousand people being questioned and over 100 UNM members being charged. This has had an overwhelming impact on UNM because it has touched the whole leadership of the party as well as prominent regional leaders and ordinary activists.

The witness then went through various aspects of his statement. In particular he referred to an MP who made the allegation that the UNM government was directly involved in assisting terrorist activities, which was a false claim made by the Russian Federation to justify its aggression against Georgia.

Mr Bokeria is himself under investigation. Three days before he gave his evidence he was questioned as a suspect in an alleged plot to overthrow the government. This

investigation was based on the publication in a Russian website of a transcript of an alleged conversation between the witness and the former president at an airport in Istanbul. The claim was that they were plotting a murder of a Georgian citizen which they would then blame on the government. So far he has not been charged but thinks this is because the government has "calibrated" that others are a bigger priority, and he has contacts in the international community.

Recent opinion polls show the UNM as leading the GDC for the first time since the last elections. Immediately following the polls a video was aired in public streets showing horrible abuse of detainees in custody (from the UNM time in government). Among other details he referred to the former prime minister commenting publicly on the case against ministry of defence employees in some detail. "What was remarkable was that he discussed details of the case which were unavailable to the public and even defence attorneys at the time because it was classified". He then referred to witnesses who have disappeared prior to testimony and to witnesses making statements that they had been under pressure. The pattern of threatening witnesses is widely publicized. "I know it from witnesses themselves and from exposure in the media".

Mr Bokeria then described to me numerous attacks on UNM offices, including as recently as a few days ago. Some are more brutal than others. They take place in front of cameras and you can see local government officials taking part.

Mr Bokeria is a close friend of Mr Kezerashvili. He made no notes of the 2012 conversation with the incoming prime minister. While he accepts that some prosecutions would be legitimate, the problem is the way they have been pursued. There has been no political interest in pursuing the prosecution of those abusing the prison inmates. There is no evidence that he is aware of linking these to senior politicians at the time. He accepts that there are serious allegations in the Girgvliani case, but is not aware of evidence linking that to individuals in the state and the security service at the time. The problem is that high-ranking figures were prejudged in the court of public opinion without any evidence to prove that they had criminal involvement. He accepts that thousands of complaints have been made to the prosecutors by the public, but closer scrutiny reveals that most of those are connected with commercial disputes. His view of the allegation that Mr Merabishvili was taken out of prison is that the government

account, that the CCTV cameras were wiped, flies against common sense. Witnesses who cooperate with the government have their cases dropped, whereas those who do not support the government are prosecuted.

On 26th October and 27th October I heard evidence about the contracts at the heart of the Girwood allegation. The allegation in the indictment is that very significant sums of money were paid to Girwood (a company) for military contracts that were not fulfilled (or alternatively were fulfilled and paid for under another contract) so that Mr Kezerashvili benefited from embezzlement. I heard firstly from ***Mr Oded Shachnai***. He is one of the owners of Defensive Shield Israel and Defensive Shield Georgia. He is the sole owner of Girwood. He signed the Girwood contract, contract 38, as did the procurement department of the Ministry of Defence. ***Mr Yaniv Adam*** gave evidence on 27th October. He was a special forces' officer with the Israeli Defence Force before joining Defensive Shield working in the delivery and supervision in the field of military contracts.

Both witnesses gave evidence in English with the assistance, where required, of a Hebrew interpreter. They gave evidence over several hours. Between them they gave detailed and compelling (even at times moving) evidence that the combat training in contract 38 was provided in 2007 and 2008. They have been thanked for their work, and believe that the training they provided saved lives during the war with Russia in 2008. Their evidence was reinforced by a significant volume of documentary evidence. Mr Shachnai explained why it was necessary to establish Girwood, rather than provide the services under the name of Defensive Shield Israel or Defensive Shield Georgia. The pressure to do so came as much from people in Israel as from indirect pressure from Russia.

Both witnesses were adamant that the training provided under earlier contracts was limited, and that the far more comprehensive training provided under contract 38 was separate and that both sets of training were delivered in full. Battalions 41 and 43 were fully trained. There was a problem training Battalion 42, as during the relevant time this battalion was deployed elsewhere. However instead training was offered to, and provided to, the logistic battalion. Training the fourth brigade took several months, probably four or five months. Those providing the training came under fire as the war with Russia

began, and at that stage arrangements were made to withdraw, through Turkey, those providing the training.

Both witnesses were approached by the Georgian prosecutor in 2013 and invited for an interview. Both responded that they are prepared to co-operate from Israel, but have not heard anything more recently.

The evidence given by these two witnesses was impressive and detailed. I am conscious that this is not a trial of the issues, and that it is not the task of this court to decide whether the allegations in the request are true or not. That would be an impossible and unnecessary task, and I do not purport to undertake it. It is sufficient to say that the evidence I heard was persuasive that the services covered by contract 38 were provided and were separate from the services provided earlier under other contracts.

NGO reports, international reports and other secondary material

The court was provided with a very substantial quantity of written reports. The task of reading them and assessing their weight was overwhelming. Material on this scale is as likely to confuse as to enlighten. I was therefore most grateful to Mr Drury, the defence solicitor, for providing a four-page summary of the key findings of the reports, from the defence point of view. For reasons given below, the court does not place significant weight on any single report where the authors have not given evidence, or are not well known to this tribunal. There is much reference to perceptions as opposed to findings of fact. However, the summary of the reports, taken together, provides corroborative evidence of the following:

1. A hostile climate for UNM suspects. There have been strong statements by government officials and other public officials violating the presumption of innocence. For example, the Minister of Justice has publicly declared the destruction of the UNM as her aim, and she and other leading figures of the Georgian Dream have called prominent opponents "criminals and guilty", even "monsters", before they were detained, let alone convicted. This has left the impression that detentions of senior officials of the previous government are part of a bitter campaign by the current authorities against their predecessors. Public officials have made public statements attributing guilt to a defendant prior to conviction, influencing public opinion. There is serious concern about allegations that the arrest and prosecution of a number of former government officials are

politically motivated and amount to selective and revanchist justice.

2. Misuse of pre-trial detention. In some instances, prosecution requests for pre-trial detention gave the impression of being politically motivated. Particularly troublesome was the use of detention on several occasions against Giorgi Ugulava. Actions by the prosecutor's office created the impression that their sole objective was to leave Ugulava in pre-trial detention. Abusive grounds for pre-trial detention had been observed, namely to discredit or otherwise neutralize political competitors in certain cases of UNM leaders. The PACE rapporteur (although note Professor Bowring's reservations) recorded "an astonishing number of individual examples of selective and presumably abusive use of pre-trial detention against political opponents". The Commissioner for Human Rights of the Council of Europe was concerned about allegations of politically motivated measures targeting members of the opposition, especially with regard to the use of pre-trial detention measures against them.

3. Doubts about independence of the judiciary. The current system of case allocation is faulty and leaves room for manipulation, in particular the possibility of determining in advance which judge will try which case. Judge Tulava's explanations for his failure to discharge his duties (concerning the Constitutional Court judgment about Ugulava) were unconvincing, and aimed at protracting the process, which was impermissible. The possibility of forum shopping by the prosecution was raised, as a way of ensuring that requests for pre-trial detention in certain cases are decided by a judge who is expected to be "accommodating". Concerns about judicial practices have included transferring judges between courts and allocating cases among judges without a fully transparent procedure, in a manner that leaves room for manipulation and interference; and exchanging judges midway through ongoing proceedings without explanation. The persistence of allegations and other information indicative of deficiencies marring the criminal investigation and judicial processes in cases involving political opponents are a cause for concern, as this can cast doubt on the outcome of the cases concerned even when there have been solid grounds for the charges. Concerns remain about the allocation of cases – notably in high profile trials – to judges perceived to be loyal to the executive. There have been allegations of threats and intimidation targeting judges of the Constitutional Court. There still remain numerous challenges to be overcome to increase the trust towards the judiciary.

The comments mentioned above come from the following sources: Third Transparency International – Georgia Trial Monitoring Report of High – Profile Criminal Cases October 2015; PACE Report and Resolution 7th September 2015; the OSCE Office for Democratic Institutions and Human Rights Trial Monitoring Report 9th December 2014; the Commissioner for Human Rights of the Council of Europe January 2014; PACE Report September 2014; and the Public Defender of Georgia (Ombudsman) 29th May 2015. It is right to note that Professor Bowring cautioned against placing too much weight on Mr Agramunt's PACE report.

Similarly, the government of Georgia has provided a very helpful annex to the government's evidence that in summary show:

1. Concern by, among others, the Georgian Young Lawyers Association (GYLA) in relation to alleged criminal conduct of high state officials from the former government. A number of human rights NGOs noted that various human rights violations were committed under the previous regime and support the prosecution of high-ranking officials of the former regime for these abuses. Before 2012 public trust in the judiciary was extremely low.

2. In the three years from 2012 to 2014 GYLA and Transparency International Georgia have found that Georgian courts are significantly improving. There are improvements in the use of pre-trial detention and bail. The report of the EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia shows improvements in the Georgian judiciary and the use of preventive measures. Since the 2012 elections the situation has improved drastically. Fewer cases have been decided in favour of the state. Judges no longer mechanically grant prosecution motions on pre-trial detention. Trials are more open and transparent. Acquittals, including the acquittal of a UNM lawmaker, have taken place. In many cases that have been monitored, no irregularities have been reported. In particular no rights violations were noted in the trial of Davit Kezerashvili for laundering money and appropriation of Imedi. The World Justice Project Rule of Law Index 2015 ranked Georgia as the first in Eastern Europe and Central Asia regions and 29th among 102 countries globally.

3. Nevertheless, some of the reports remain critical of many aspects of the judiciary. Systemic weaknesses exist that have the potential of making judges susceptible to pressure from other branches of government. The objectivity of the trial of Bacho Akhalaia was in doubt after criminal court trials were transferred to the Tbilisi city court a short period of time before the examination began. The trial of Ivane Merabishvili did not show a violation of fair trial rights. But the fact that the prosecutor did not intend to open an investigation into his allegation that he had been removed from prison was described as particularly alarming.

Overall the many reports show that the position was bad under the previous government, has significantly improved, but that concern continues, particularly in high profile cases.

The government called no live evidence, and a significant tranche of material was served after the defence case had been put before the court, during a long adjournment for live government evidence that in the event was not called. This was unfortunate.

Admissibility and weight

In their closing submissions, Mr Jones QC and Mr Lloyd provide a very persuasive critique of the nature of the evidence provided on behalf of the defendant. I will not comment on each point raised, save to say that I agree with most but not all of the comments raised.

It is right that the court should approach NGO and secondary source material with a degree of caution. As pointed out by the High Court of Justiciary in *Kapri* (and I paraphrase) it would not be hard for a review by a foreign court of UK practices and procedures to find apparently well placed criticism of deficiencies here. (These might include institutional racism in the police service, unacceptable prison conditions, and allegations of bias, particularly made on social media). In addition, as the court observed, it is often not at all clear what status ought to be afforded to the work of organizations cited in the "mass of material" lodged with the court. In this case the authors of the reports have not been called and the government of Georgia does not accept many of the conclusions in those reports. I agree that it would be unwise in this case to base a decision on disputed facts asserted in reports where the provenance is unclear and the status of the report writer is not known.

The government of Georgia asks this court not to accept the evidence of Professor Bowring. The government criticizes his methodology which it is said fatally undermines the utility of his evidence and the weight that ought to be afforded to it. He has not monitored any proceedings in Georgia himself. He has not interviewed or spoken to prosecutors, defendants or judges. He has not analysed any of the evidence against any defendants and is not a lawyer or academic practicing in Georgia. He has no up-to-date first-hand experience of Georgia as his last direct experience was his involvement in training prosecutors over 10 years ago. The government says his reports are based entirely on NGO material and secondary source information, and add very little to the ability of this tribunal to read the materials itself.

There are specific criticisms of the evidence, as follows. The professor stated that there is a real risk that the defendant will be convicted whatever the evidence against him, which is not based on evidence and overlooks the defendant's acquittal in the Ethanol case and

the Imedi case. It is suggested that there is a contradiction in initially putting weight on the PACE report of 7th September 2015, but then distancing himself from the Rapporteur, Mr Agramunt, as being someone who may well have an axe to grind. The professor had stated in his first report that Thomas Hammarberg had described the prosecutions in Georgia as a "witch-hunt", which was wrong and, says the government, undermines his reliability. There are criticisms about perceptions. The professor makes assertions about the factual allegations against the defendant appearing "somewhat unlikely" when there is no proper basis for that conclusion.

It is pointed out that Professor Bowring accepted that in an earlier case "I was wrong and the judge was right. I was pessimistic about the reforms. They really do appear to have got better." [I say here that the acceptance by the professor that he was wrong, in my view enhances his position rather than diminishes it. At best, from the government point of view, it is a reminder that we all make mistakes and that no expert is infallible.]

To these points I would add my own comment that in evidence, and in particular in cross-examination, the professor can sometimes give an impression of advocacy for his cause in the way he answers questions. I would also have been more comfortable had his original report given more prominence to the undoubtedly real concerns about the UNM government, including allegations of criminal behaviour and impunity. It appears that while the UNM party was in power, substantial concerns developed about corruption and offending by party officials, including senior politicians, as well as a concern of a culture of impunity, that meant that these allegations were not pursued through the courts. Professor Bowring touches on these in his initial reports, but does not give the weight to them that he did later in oral evidence. Similarly his report did not give the same prominence to the fact that the GDC government made many strides to improve human rights, particularly in the early days. There have been real improvements in the independence of the judiciary. The professor's oral evidence was lengthy, and unfortunately he also gave lengthy and complicated answers to apparently straightforward questions. I suspect this tendency is borne out of a wish to ensure that the court has all relevant information, and the fact that he has considerable and detailed knowledge of his subject matter. Particularly in cross-examination, the failure to answer a question directly and concisely can give the impression of partiality. Again I think this is as a result of his very great knowledge of the topic, and a preference not to give simple

answers in a complicated situation. In addition he tends to anticipate what the follow-up question may be, and to answer that as well. In fact I have no doubt about Professor Bowring's scholarship and expertise, but make the point that the court would find his evidence even more helpful if he concentrates only on the question asked and answers that as directly and concisely as possible. This might avoid the impression of partiality.

Despite the points that have been made, I do not disregard the evidence of Professor Bowring. He is a scholar of repute. Although he has not visited Georgia for a decade (as I understand it) he does have first-hand knowledge of the country and many of the senior lawyers currently operating in that system. Moreover, he has clearly followed events in Georgia with some care and is able to place current events in a historical perspective. Perhaps most importantly, he is in a position to assess the reliability of many of the reports from NGOs or second-hand accounts. For example, he tells me that Boriss Civellics, one of the PACE rapporteurs "is one of the most highly regarded people in the Council of Europe and is in the same group as the GDC." He tells me that the OSCE report provides a high level of detailed scrutiny that is not the product of an individual worker, but a team effort "many times over". He describes the author of the Georgian Democracy Initiative as formerly the public defender of Georgia who is considered to be a "pretty scrupulous human rights defender". The 2014 US State Department Report on Georgia is treated as authoritative and is "extraordinarily scrupulous". Nils Muiznieks is an extremely highly regarded individual. There are other assessments of those who have written the reports, and this gives some assistance to the court in assessing the weight to be attached to those reports. In collating the evidence from a vast number of sources he has placed, in a comparatively short document (although I would have preferred it to be shorter), the key facts and source materials on which this court must base its decision.

In that context, I do place weight on the facts provided by the professor. I am wary of the assertions made that are not based on clearly established fact. I am helped by his assessment of the weight that can be provided to particular reports. In particular I bear in mind that he has offered himself for cross-examination during the course of which the government lawyers had the opportunity, which they took, to cast doubt on some aspects of his evidence. I attach no weight to those opinions that are properly matters for the court.

As for the other witnesses called to give live evidence, in person or by video link, again the government is correct to advise that their evidence should be looked at critically. Some of those witnesses are close friends or political allies of the defendant. One or two of them may have their own motives for giving evidence. Some of the witnesses give hearsay evidence that can be disregarded (in particular where first-hand evidence could have been given by the defendant), although to some extent inferences can nevertheless be drawn from their evidence. I have been able to see and assess these witnesses, and to note their evidence in response to cross examination.

I am asked to disregard the evidence that a number of courts in other jurisdictions have refused requests for extradition made by the government of Georgia in relation to this defendant and two other former government officials. These include decisions from Austria, Greece and France, and the related position with Interpol. It is right that those decisions are not binding on this court. Each court must make its own decision based on the evidence it has heard. However, where the facts and issues are recent and similar, the approach taken by another European Union country, although far from decisive, has persuasive authority.

Against these criticisms the government of Georgia invites this court to consider the report from an international panel of impartial prosecutors – the International Prosecution Advisory Panel. This panel reported that the evidence provided by the Chief Prosecutor was legally and factually sufficient to justify prosecution in cases against this defendant and others in one of the cases for which there is a request. Two of the authors of the report were to give evidence to this court. A hearing was fixed, convenient for them. In the event they did not attend. Therefore, although I will not disregard their report, its weight is substantially diminished as I proceed on the basis that two of the authors were willing and able to attend court, but a deliberate decision was taken by the government not to call them.

Georgia is a Council of Europe country, to be afforded the level of mutual trust and confidence that (being subject to article 6 of the Convention) they are assumed capable of protecting an accused against an unjust trial.

The government has provided substantial background material. It is clear, and I accept, that positive reforms have taken place in Georgia since 2012. In particular, there is an awareness of shortcomings in the criminal justice system and the need to address those shortcomings. Trial monitors are in place. Reforms to the independence of the judiciary have been welcomed by the Venice Commission. There are other reforms of significance including the fact that since May 2013 the Prosecutor's Office in Georgia has been formally independent of government. Georgia complies with decisions of the European Court of Human Rights, and applications to that court in relation to Georgia have been decreasing steadily. There is a recognition that corruption was previously a problem, but is being responded to by the current government.

This court has been provided with information and detailed comments from officials of the government of Georgia. Those officials are entitled to respect, and this court recognizes the trouble and effort they have taken to provide information. That said, there has been no live evidence and no opportunity for the defence to cross-examine. Generally, that is not necessary, and indeed may not be desirable in some cases. However, it is central to the defence case that the current prosecutions are politically motivated and that by implication (and indeed by direct allegation) the submissions from the Georgian authorities cannot be accepted at face value. Without making such a finding, it is nevertheless necessary for this court to make its decision based on evidence put before it. Evidence that is given live and with an opportunity for cross-examination will, if credible, often outweigh other evidence and information put before the court.

Findings of fact

Mr Kezerashvili is a leading member of the UNM, the party forming the previous government. He held high office. He has had, and probably still has, a close association with former president Saakashvili. He is or has recently been in charge of fundraising.

The current government of Georgia, under the GDC, has expressed hostility to the UNM. These are summarized in the defence skeleton, especially at pages 40-41, and in the closing submissions at pages 26-27. Professor Bowring commented on repeated public statements made by ministers about UNM and Mr Kezerashvili, and said it is reflective of a campaign of revenge and retribution. In October 2015 Prime Minister

Garibashvili called UNM a criminal organization that has no right to remain in politics. There have been a number of serious extra-judicial comments about Mr Kezerashvili linking him with alleged plots that are not the subject of criminal charges.

Mr Kezerashvili is one of a very large number of former government and UM officials who have been the subject of investigation and prosecution in Georgia. The 2014 US State Department Report on Georgia noted that as of December 2014, 15 high-level former officials (president, prime minister, minister, deputy minister, mayor, governor, or member of parliament) had been indicted for crimes committed while in office. An estimated 30 mid-level former government officials had been charged with crimes committed while in office. Other evidence, from the EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, reported that as of September 2013 6156 people, most of them UNM party activists, had been questioned and 35 former central officials had been charged.

The fact that so many members of the former governing party are being investigated and/or prosecuted is an advantage for the current government in remaining in power.

None of this means of itself that the prosecutions are politically motivated. There is a widespread belief that members of the former UNM government committed serious criminal offences. There can be no impunity. It is proper and appropriate that allegations of criminality be investigated. In particular the cases of Girgvliani, Gelashvili and prisoner abuse all call for proper investigation. These are not the cases in these requests. I also note that an international panel has reported sufficient evidence to justify a prosecution in Imedi 2.

I have heard evidence, about which I cannot be sure but think is likely correct, that pressure has been applied by the prosecutor's office on witnesses to leave UNM and/or to give false testimony. For example, Mr Ugulava describes a pattern whereby UNM members are investigated in criminal cases, and those who switch allegiance have charges against them dropped while those that do not are prosecuted. Mr Ugulava gave evidence that he was told by former prime minister Garibashvili, who was also relaying the views of former Prime Minister Ivanishvili, that if he helped to locate Saakashvili's bank accounts "it would help relieve the situation of Davit Kezerashvili as well and that all the

charges against him will be dropped." The same witness suggested that if returned, illegal methods would be used to force him (Mr Kezerashvili) to give evidence against Saakashvili. Mr Bokeria describes pressure on defendants in order that they testify against UNM leaders and that prosecutions are dropped once political affiliation is changed. The evidence of Alexandre Ninua, corroborated by other material and evidence, suggests that there is pressure by investigators on suspects to incriminate colleagues from UNM. This point was also noted by the French court. There is inferential evidence from Mr Ninua and Mr Benimini that pressure has been put on this defendant to incriminate Mr Saakashvili. Both Mr Alexandre Ninua and Kakha Ninua gave evidence that the purpose of questioning and repeat summonses was to provide evidence against Mr Kezerashvili or put pressure on employees of the company. The Georgian Democracy Initiative (GDI) (on 24th March 2015) refers to statements from politicians conveying a message that those who leave the UNM would not be questioned as witnesses at the investigation stage of criminal proceedings; whereas others, equally linked with the same cases, who refused to leave the party, would not only be questioned as witnesses but prosecuted as well.

GDI also report that in the case of Mr Akhalaia, in addition to pressure exerted on witnesses, there were attempts by the prosecutor's office to delay proceedings and unjustified detention applied by the court. The same organization suggests that in the case of Mr Ugulava the prosecution kept bringing new charges against him until they managed to have him remanded in custody. He was prosecuted in relation to more than 10 criminal cases. There is further reference to abuse of pre-trial detention as summarized on page 42 of the defence opening skeleton.

This defendant's extradition has already been refused by the court of appeal in Aix-en-Provence. The court concluded that there were serious reasons for thinking that the defendant's position could be jeopardized because of his political opinions if he were to be extradited. The Vienna Regional Criminal Court refused the extradition to Georgia of Davit Chakua, the former head of the prison service in Georgia. The Supreme Court of Greece refused the extradition of Davit Akhalaia, the former head of Constitutional Security in the Ministry of Interior. Ukraine and Hungary have refused to return former President Saakashvili and Mr Adeisvili. On 23rd July 2015 Interpol stated that it would in future refuse to provide police cooperation to Georgia in relation to Mr Kezerashvili (or

the former president) on account of the fact that such cooperation would not conform with article 3 of its constitution, which prohibits it from engaging in matters of a political character. There were concerns over the political motivation of prosecutions, and an alleged lack of due process in the context of pre-trial detention. On the other hand, the Netherlands has upheld the extradition of a former senior official.

The Georgian authorities, in their initial request to this court, failed to disclose the decision of the Court of Appeal in Aix-en-Provence and did not disclose, in relation to the fourth extradition request, that similar matters had already resulted in a civil judgment in favour of the defendant (although they may not have known this).

The way in which the allegations have unfolded in Georgia raises concern. The position is summarized at pages 17 and 18 of the first skeleton argument on behalf of the defendant. Although the table form used in the skeleton may be clearer, I will set out the position here. The first indictment, Imedi 1, was preferred on 23rd February 2013. It was the subject of an extradition request to France that was refused by the French court on 27th February 2014. The second indictment, Girwood, was preferred on 7th May 2014. Both these indictments formed the basis of the first request to this country dated 20th June 2014. On 23rd July 2015 Interpol deleted all data relating to the Imedi 1 and Girwood indictments. The defendant was acquitted in Georgia of Imedi 1 on 18th September 2015.

Meanwhile, a second indictment relating to Imedi (Imedi 2) was preferred on 28th July 2014, the subject of a second request to this country dated 8th December 2014, and withdrawn on 31st August 2015.

Another request related to Imedi 2 was based on an indictment dated 30th March 2015 and again Interpol deleted all the data relating to this request. A fourth request was made on 24th July 2015, relating to an indictment preferred on 2nd July 2015.

It is not unknown for indictments to be preferred in a sequential way, and for further requests to be received during the currency of extradition proceedings. It is far from necessarily a sign of manipulating the proceedings. However, there is force in the defence

submissions that question marks are raised by the number of allegations of criminal conduct, and the unexplained delays in the way in which the charges have been brought.

In addition, the defence has cast some doubt on the proper nature of the cases brought against Mr Kezerashvili. There is inconsistency in the Girwood allegations and the way they have apparently changed. These are set out on page 19 of the defence skeleton argument. Moreover, the defence has provided live and credible evidence that casts considerable doubt over the basis of the case against Mr Kezerashvili.

As for Imedi 2, there is force in the defence submissions about the apparent unreliability of a key witness, the acquittal in Imedi 1, the amendment of the charges and in particular the withdrawal of that part of the indictment that relates to the alleged clampdown on protesters.

As for the fourth and final request, the defence make a number of points at pages 28 and 29 of their first skeleton argument. Between them these do indeed raise question marks about the validity of the prosecution. In particular, there is the finding of the Tblisi City Court in a related civil case that it had not been proved that "the plaintiff (Mr Nizharadze) had been forced to conclude the contract". After I retired and prepared the first draft of these reasons, I was informed that: "the prosecutors no longer allege that Mr Kezerashvili extorted Metalex LLC. The prosecution's case now is that he forced Mr Nizharadze to concede the shares in Bimedia Investments Ltd and Mission Investment Ltd only. Nevertheless the charges of extortion remain the same [because of a single conduct threat aimed at the misappropriation]..." It appears there was insufficient evidence to proceed on the Metalex allegation.

I do not find from the evidence and information brought to my attention by Mr Kezerashvili that the sequential nature of the prosecutions, and the doubts about the validity of those prosecutions, necessarily mean that the prosecutions in Georgia are politically motivated. Although no live evidence has been called by Georgia, there may be good explanations for the questions raised by the defence. Nevertheless, the questions raised about the nature of the prosecutions are an important part of the overall picture, and one factor on which this court bases its decision.

The evidence of Giorgi Ugulava raises concern about the manner in which various proceedings against him were commenced sequentially and raises a doubt as to whether political influences were at play during the proceedings against him. Overall there was a strong flavour that procedures governing pre-trial detention were abused in his case. This is corroborated by other evidence and material that suggests that there is a real problem in Georgia with prolonged sequential detention. There is weak evidence from Mr Ugulava that there was pressure on the judge in his case from a named Chief Inspector General of the Ministry of Interior. The evidence I heard from Mr Ugulava and Mr Ninua, corroborated by GYLA and TI–Georgia, raised concern about delays to proceedings that give rise to the possibility of political motivations at play. This is not a finding that the proceedings against him were politically motivated, merely that the way proceedings developed are surprising and raise the question. This concern gains added importance in view of the timing of the indictments against Mr Kezerashvili.

Strong questions are raised about pressure placed on the courts, either by way of direct influence or by way of a climate of public and governmental pressure. I heard evidence about events at the Constitutional Court. For example, there is strong reason to believe that one of the three judges currently hearing the Imedi 2 case declined to recuse herself voluntarily after it came to light that she had published articles blaming the previous administration for exercising undue influence over the judiciary, and had blamed it for fabricating a criminal case against her husband. She was forced to stand down by her colleagues. Another judge, Merab Turava, declined (it is said improperly) to give judgment when it became clear Mr Ugulava's constitutional claim was to be upheld. On the other hand, the judiciary in Georgia generally appear to be robust, and this defendant has been acquitted of two of the allegations against him, and successful in a civil action relating to another of the allegations. The judges of the Constitutional Court have been prepared to express their concerns publicly, showing a motivation to resist unwarranted pressure. The defence has been successful ultimately in a number of cases involving this defendant and Mr Ugulava, for example. Positive reforms have been introduced recently. The reforms have been welcomed by the Venice Commission. Reforms are continuing for the judiciary (and for the prosecutor's office). Those are set out in the government's final submissions at pages19-23. Although it is too early to say whether the reforms go far enough, and remove the earlier abuses, I do not accept that Mr Kezerashvili will be convicted whatever the evidence against him (and Professor Bowring talks only of a real

risk). On the contrary, I think it is likely that an independent judiciary in Georgia will, at first instance or on appeal, acquit him if the evidence does not justify a conviction.

There is evidence from for example Mr Ugulava and Mr Bokeria, reinforced by intergovernmental and NGO material, and given added weight by what has happened in this case and other cases, that suggests that the public prosecutor's office is susceptible to pressure, and indeed to bringing pressure itself for extraneous reasons, as opposed to the pursuit of justice. Those concerns are added to by evidence of prosecution attempts to delay trial proceedings and the suggestion that Mr Merabishivili was removed from detention in an irregular way that was not properly investigated as to this concern.

Overall the evidence points strongly to examples in the past of sequential and prolonged pre-trial detention. There is real reason to believe that this is improving, but events of the recent past suggest strongly that it has not so far been eradicated.

Summary of main conclusions on findings of fact

1. Mr Kezerashvili is a prominent member of UNM.
2. There is a strong political desire to eliminate UNM.
3. UNM members have been linked to some serious crimes, that should be investigated.
4. A very large number of UNM members have been investigated.
5. In the recent past sequential prosecutions have been brought against UNM members that at least in some cases have led to prolonged pre-trial detention, giving the appearance of unfairness.
6. In the recent past, improper pressure has been exerted on witnesses by the prosecutor's office.
7. There has been recent direct or indirect inappropriate pressure on the judiciary.
8. Several prosecutions brought against Mr Kezerashvili have failed, in whole or in part. There is reason to doubt the legal or factual basis of those that remain.
9. The Georgian judiciary has shown itself to be increasingly robust and independent.

10. It is too early to say whether the concerns about pre-trial detention have been removed – there is reason to believe that pressure is still exerted on first instance judges.

Extraneous considerations (Section 81 Extradition Act 2003)

A person's extradition to a Category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that

(a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions or

(b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

The defence argues that both subsections apply. To succeed under section 81(a) the burden is on the defendant to the civil standard. Under s81(b) the defendant must establish that (in this case) he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his political opinions. In other words, he is required to establish a reasonable chance or serious possibility of the prohibited consequences. This test involves a prediction as to the future rather than a finding of fact.

Before considering the questions posed by section 81 I must first consider, on the facts of this case, whether there is an interest in prosecuting Mr Kezetashvili on account of his political opinions and whether he might be punished, detained or restricted in his personal liberty by reason of those opinions. There is such an interest. Mr Kezerashvili is a central opposition politician. The current government has shown, among other things from clear public statements, a strong interest in the prosecution of former UNM politicians. The number of UNM officials prosecuted or detained has been very significant.

Georgia is a European Convention country. There is a genuine motivation to remove the former culture of impunity, and prosecute those in the previous administration who committed criminal offences while their party was in power. There have been significant

advances in recent years in the independence of the judiciary. Indeed, some of the evidence suggests to me that the senior judiciary in Georgia has displayed courage and independence of mind in reaching its decisions.

Considering and assessing risk is difficult. A key risk factor is what has happened in the recent past. There is evidence that some prominent UNM politicians have been detained by processes that suggest that influence has been brought to bear on the judiciary and the prosecutors.

On the facts as found above (pages 22-29) I am not sure that the request for Mr Kezerashvili's extradition is for the purpose of prosecuting or punishing him on account of his political opinions. I am aware that the requests may have been made for entirely proper purposes. The evidence may be there to sustain one or more convictions. However that is not the test. On balance I consider it more likely than not that the desire to prosecute former UNM politicians is a purpose behind these requests. It may not be the only purpose, but without that factor I do not believe, on balance, that these requests would have been made and pursued in the way they have been.

As for the future, I have considerable respect for the judiciary of Georgia. I believe it is likely that the judiciary will successfully resist pressure on them from the administration, through the public prosecutors. However, looking at what has happened to others, I am satisfied that there is a reasonable chance, a serious possibility, that this defendant's liberty will be restricted (and in particular that he may be detained in pre-trial detention) because of a flawed prosecution process motivated by a desire to obtain a conviction of a UNM politician, or by a desire to obtain evidence from Mr Kezerashvili that can be used against senior former colleagues. This decision is supported by, but not dependent on, the decisions of other European courts, and Interpol.

Both limbs of the section are made out.

Section 21 Human Rights

I am asked to decide whether extradition would be compatible with the defendant's Convention rights within the meaning of the Human Rights Act 1998. If it would not be so compatible, the defendant must be discharged. Articles 5 and 18 ECHR are raised. In

fact, in view of my finding under s81 above a formal finding is not necessary, but the findings of fact relied on for s81 apply equally here.

Abuse of Process

An allegation of abuse of process is made by the defendant. Abuse of process is a residual implied power. It is not necessary to consider it when I am not, in any event, sending to the Secretary of State.

Decision

The defendant is discharged under s81(a) and s81(b).

Howard Riddle
Senior District Judge (Chief Magistrate)

21st March 2016