
As Georgia reforms, judiciary under scrutiny

By Daria Vaisman

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The treason verdict of opposition leader Maia Topuria, now under appeal, is seen as a test of the ex-Soviet republic's efforts to improve its courts.

Since being arrested last year for plotting to overthrow the government, Maia Topuria and 11 other Georgian opposition members were tried in a closed courtroom for high treason. Accused of recruiting paid demonstrators to help stage a violent takeover of parliament, they were found guilty on Aug. 24.

Ms. Topuria, the niece of Igor Giorgadze - a Georgian living in Russia who is wanted on charges of attempting to assassinate then-president Eduard Shevardnadze in 1995 - and a leader of his party was sentenced to 8-1/2 years.

The case has played out against a backdrop of simmering tensions between a resurgent Russia and Georgia, with Topuria and her fellow defendants widely despised at home. But legal and human rights experts see the case, now under appeal, as a test of judicial reform in one of the most promising former Soviet states.

"Georgia has made strides that you simply won't find in other countries," says Christopher Walker, director of studies at Freedom House, a New York-based watchdog group. "But the judiciary stands as an exception that is a thorn in the side of the country's larger reform ambitions," he says.

Topuria's defense team alleges foul play by the prosecution, which denies such charges. Two key witness statements had nearly identical phrasing, the defense says, and surveillance footage shows a witness at work at the same time that the prosecution said he was giving his witness statement in a closed court.

Larry Barcella, one of the defense lawyers, who has experience in trials dealing with state secrets, adds that the court's reason for closing the case - protection of state secrets - was groundless. "During the entire trial, there was never one scrap of evidence presented that could be considered a state secret," says Mr. Barcella.

The prosecution wrote in a statement that the defendants' testimonies were "invented for the purpose of evading the responsibility" awaiting them and said the testimonies were "irrelevant" to the case.

When Georgian President Mikhail Saakashvili took over in 2004, he used a mixture of legislation and extended executive control to try to reform numerous corrupt sectors. But critics worry that those same methods, now applied to the judicial system, have weakened the country's checks and balances.

"We have a huge problem with the independence of the judiciary," says Giorgi Chkheidze, head of Georgian Young Lawyers Association, a legal watchdog group based in the Georgian capital, Tbilisi. "It's a crisis situation," he says.

A 2006 Freedom House report stated that the judiciary "rarely makes decisions that run counter to the will of the executive." Of almost 17,000 individuals taken to court last year, only 37 were acquitted - a conviction rate of nearly 99.8 percent. By comparison, the 2006 bench conviction rate in the US was 64 percent, according to the Administrative Office of the US Courts.

"How you deal with the judiciary in a post-repressive state is very complicated," says Brian Grodsky, a political science professor at the University of Maryland who specializes in post-communist democratization. "Certainly other states have handled the courts more cautiously, though."

Georgian officials defend the state's tough line. "There was a significant cleanup of the judiciary, and at the same time there is a move towards real judicial independence," says Giga Bokeria, deputy head of the Georgian parliament's legal committee, listing measures that have contributed to more independence: higher salaries for judges to discourage corruption; revocation of a law allowing the disciplinary body to sue judges for unpopular decisions; a new law prohibiting lawyer-judge contact outside the courtroom; and the introduction of a jury system next year.

In a bid to bolster the judiciary, Saakashvili was recently removed from the board of the High Council of Justice, which appoints and dismisses judges. Yet criticism of the judicial system has centered on executive control over the judiciary, such as subjective appointment and dismissal of judges, arrests without probable cause, and extended pretrial detention.

In 2005, for example, the government encouraged Supreme Court judges to resign for taking bribes or other reasons. Several of them, backed by advocacy and legal groups, said they'd been pushed out for political reasons.

Bokeria argues such measures were necessary to remove notorious judges. "There was hard-core evidence of bribe-taking," he says.

And others add that significant reforms over the past few months - spurred in part by the country's desire to join NATO, which has made judicial reform a requirement for Georgia's membership bid - have strengthened the judiciary by raising standards for judges and decreasing presidential control.

Exams for aspiring judges have become more competitive, with only 176 of 1,000 passing in 2005. And now the names of those who pass the written test will be posted online to dispel concerns that judges are chosen subjectively. Since 2006, judges have also been required to complete a 14-month training program, designed with help from the Council of Europe.

But many Georgians say they are wary of the courts. Only the mafia ranked lower in a February survey conducted by the International Republican Institute, an international NGO that promotes rule of law.

While Saakashvili admitted that the judicial system was Georgia's "most problematic sector" in April, his supporters say that criticism has been unfairly harsh.

"Nobody expects that the judiciary will be improved in a day or a year," says Giorgi Meladze, a program director at Liberty Institute, a local NGO in Tbilisi that works closely with the government.

Compared with its neighbors, which rank among the lowest worldwide on judicial independence and other markers of democracy, Georgia stands out as markedly improved. Yet others insist that if Georgia has more ambitious goals than its neighbors, then it deserves more scrutiny as well.

"Our main problem is that the West says that Georgia is doing well compared to its neighbors," says attorney Tinatin Khidasheli of the opposition Republican Party. "But since we have the ambition of joining NATO and the European community, it puts us in a different position."

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