

Deeper Look

Amendments to Criminal Code's Article 187: Government's Tool to Punish its Opponents

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After two months of mass rallies against the Foreign Agents Law, the Georgian Dream government began what many observers and watchdogs describe as an exemplary prosecution of its participants. One of the most talked about cases in this process is that of the 22 and 19 year old young men who are facing 3-6 years in prison for damaging the GEL 400 (USD 150) worth of the iron protective barrier placed near the Parliament building. Such harsh sentences became a regular occurrence after the March 2023 protests, which erupted when the government first attempted to pass the same law. In the months following the protests, the government quickly and quietly adapted a virtually undiscussed amendment to the Criminal Code of Georgia, adding a part to Article 187 (Damage to Property) that makes all people accused of a group act to damage someone's property liable to prison without any other alternative.

How was the law passed?

The online media platform *Publika* **described** the hushed out process of the amendment being passed in June last year. The

legislative changes to different parts of the Criminal Code in a package were introduced by GD members Anri Okhanashvili, Davit Matikashvili, Tengiz Sharmanashvili and Maia Bitadze on June 26. One of these amendments concerned Article 259 – animal torture.

Due to the high public interest in the amendments to Article 259, all the attention of the media and parliamentary opposition was focused on it, while the amendments to Article 187 flew under the radar, with very little discussion about this particular amendment. *Publika* found the few seconds of fragments during the committee and plenary hearings. In all cases, the amendments were mentioned only briefly.

The amendments were adopted in the third hearing on June 30 without any questions being asked at any of the discussion levels, neither about the fact that the GD left no possibility for the person accused of acting in a group when damaging property to be subjected to a fine or community service while serving the sentence, nor about the fact that the sentence was increased from 3-5 years to 3-6 years in aggravated circumstances and from 1-3 years to 1-5 years in the ordinary circumstance of damaging property.

Considering that all the rallies against the Foreign Agents Law or any other GD initiatives have been declared by GD members as "organized" or "staged", it is no surprise that the exemplary convictions following the rallies would happen exactly under Article 187, Part Two, Subsection "c".

The fact that the amendments serve the GD's interest in prosecuting its opponents is also proven by the fact that the new *Amnesty Law*, which the GD positioned as one of its good

deeds before the elections, does not apply to people convicted under Article 187.

“Disproportionate Severity”

The amendments came to light after full month after they were passed. On July 31, 2023 the civil society organization “Social Justice Center” **issued** a statement on them, emphasizing that the amendments had been rushed through without “proper deliberation” and could create a situation where “participants in rallies and demonstrations could be punished with disproportionate severity”.

The SJC noted that in the explanation of the amendments, the entire text was devoted to explaining why the adoption of changes to the Article 259 was important, while not providing any justification for the amendments to Article 187.

The organization emphasized: “The amendments made to the Criminal Code do not comply with the principles of transparency, accountability and public participation in the legislative process. The implementation of legislative changes requires a detailed review of the content of the bill and an assessment of the expected results, especially when the changes concern the aggravation of criminal penalties” The watchdog called upon the Georgian Parliament to ensure a transparent review of draft laws and “to use the accelerated review mechanism only under conditions of objective necessity”.

Who has been arrested under Article 187?

The first victims of these amendments were Giorgi Khasaia and Akaki Chikobava, members of the “Khma (Voice)” movement,

who were accused of damaging the car of the National Bureau of Enforcement during the **Kekelidze eviction** in January 2024. They were convicted of damaging the car to the tune of GEL 3,380 (USD 1,250). In this case, however the Prosecutor was forthcoming, announcing in an interview with the Rustavi 2 TV channel that "if the defendants admit their guilt and compensate for the damage, the prosecution is ready to change the prison sentence to a less severe preventive measure." The deal was struck and he appealed to the Court with a request to let the defendants go with a fine. The two were **released** after the payment of GEL 3,000 (USD 1,100) each. Even though they were released, they decided to file a complaint with the Constitutional Court about the harshness of the law, which will be discussed below.

The situation is different with those arrested for participating in 2024 **anti-Foreign Agents law protests**. According to the information received by *Publika* from the Georgian Prosecutor General's Office, 10 people were arrested during the 2024 rallies against the law, and 7 of them were accused of violating Article 187. *Civil.ge* appealed to the Prosecutor General to provide more details about who was arrested under Article 187, this article will be updated accordingly.

One of the cases is that of Giorgi Shanidze (Shano). He is charged under the first part of Article 187 of the Criminal Code for damaging surveillance cameras during the protest. However, he is also charged under the second part of Article 265 of the Criminal Code of Georgia, which provides for punishment for the illegal cultivating of plants containing narcotics. This article provides for a more severe punishment, so if the defendant is found guilty of both charges, he will be sentenced to 4 to 7 years imprisonment under Article 265. So far, he has been

remanded in custody and the court has rejected his appeal to be released on bail.

Another person is 20-year-old Pridon Bubuteishvili, who was arrested for allegedly causing GEL 500 (USD 185) worth of damage to the iron decoration piece on the gate of the Parliament building and throwing a stone at a firefighter, injuring his shoulder. Notably, after examining the injured, it was concluded that the rock did not cause serious health concerns, leaving only a slight bruise on the shoulder. There is no evidence that Bubuteishvili was the one who threw the rock or that, if he threw the rock, it was the one that landed on the firefighter's shoulder. If he is found guilty under Articles 187 and 353 Prima (assaulting a police officer or other government official or public institution), he will be sentenced to a minimum of 5 and a maximum of 7 years in prison.

The case of Omar Okribelashvili (19 years old) and Saba Meparishvili (23 years old) also illustrates the severity of Article 187. They were convicted on May 14 for allegedly "deliberately damaging" the iron barrier placed near the Parliament building during the rallies. Although the damage did not exceed GEL 400 (USD 150), they face the harshest punishment of spending their youth in prison to serve as an example of what happens to opponents of the Georgian Dream government.

Both Okribelashvili's and Meparishvili's families have appealed to the court, asking it to take into account the age of the defendants and the minor nature of the damages, promising to pay them back in full and to install a completely new iron barrier. Meparishvili's family spoke to *Publika* about what this case means to them, as all family members are elderly, have multiple health problems, live in poverty in one of the villages

of Vani municipality in Western Georgia, and depend on the financial support of their only son, who works as a construction worker in Tbilisi.

Opposition MPs and citizens **initiated** a petition supporting the release of Okribelashvili and Meparishvili and vouching for both individuals, but the Tbilisi City Court has nevertheless **remanded** them in custody with no hope of mercy.

Lawsuit in the Constitutional Court

As for the **lawsuit** against the Georgian Parliament regarding the changes in Article 187 filed on April 24, 2024 on behalf of Giorgi Khasaia and Akaki Chikobava by the representatives of the CSO "Democracy Research Institute", it notes that the normative content of the sanction in Article 187 Part 2 of the Criminal Code of Georgia is inconsistent with the Constitution of Georgia, in particular in relation to paragraph 2 of Article 9, which prohibits human torture, inhuman or degrading treatment and punishment.

The complaint stresses that the Constitutional Court of Georgia has emphasized that fundamental human rights are absolute and cannot be violated under any circumstances, including for the sake of state security or other important public interests. Measures of criminal liability should be proportionate and effective, taking into account the individual circumstances of each case. The complaint argues that the court should be able to impose alternative non-custodial sanctions where appropriate. The current standard, by not providing an alternative to imprisonment, limits the ability of the court to deliver fair and proportionate justice. This inflexibility can lead to sentences that are not only unnecessary but also offensive to human dignity.

The complaint also notes that damage or destruction of property during a public protest may be driven by social or political motivations rather than criminal intent. In such cases, the prescribed penalty of 3 to 6 years' imprisonment is overly harsh and does not take into account the context and motives behind the actions. The Article 187, part 1 allows for alternative punishments for individual damage/destruction of property, while the disputed norm imposes a prison sentence of 3 to 6 years for group actions without prior coordination. This creates a difference in treatment between individuals and groups acting without prior coordination, despite similar actions and motives. The State must justify any differentiation with a legitimate aim and proportionate means, the complaint states.

