

No grounds for doubting fairness of criminal proceedings against former Georgian President Saakashvili

The case [Saakashvili v. Georgia](#) (application nos. 6232/20 and 22394/20) concerned two separate sets of criminal proceedings brought against Mikheil Saakashvili, former President of Georgia. The first set of proceedings concerned an attack in 2005 on a member of parliament, while the second set concerned his granting a pardon in 2008 to four former high-ranking officers of the Ministry of the Interior who had been convicted of murder. Both sets of proceedings took place after the newly-formed government in 2012 officially declared that investigating the wrongdoings of the past would be a key priority.

In today's **Chamber judgment**¹ in the case the European Court of Human Rights held:

unanimously, that there had been **no violations of Article 6 §§ 1 and 3 (d) (right to a fair trial / right to obtain attendance and examination of witnesses)** of the European Convention on Human Rights as concerned either the way in which the national courts had dealt with the evidence against Mr Saakashvili or the alleged lack of independence or impartiality of the judge who had examined the second criminal case against him; and

by 5 votes to 2, that there had been **no violation of Article 7 (no punishment without law)** of the European Convention. Mr Saakashvili could reasonably have foreseen, in the particular circumstances of the case, that using his power of clemency to pervert the course of justice in a murder case would render him criminally liable under Georgian law.

The Court also **rejected as inadmissible** Mr Saakashvili's complaints under **Article 18 (limitation on use of restrictions on rights)** of the Convention. It found that he had not substantiated his allegation that there had been an ulterior motive – hindering his participation in Georgian politics – behind his prosecution. The Court took into account in this respect that the charges brought against Mr Saakashvili had been serious and well-founded, that there had been a significant body of both direct and concordant circumstantial evidence against him in the case file, that the national courts had conducted fully adversarial proceedings during which his lawyer had been able to confront all the major witnesses and otherwise contest the evidence against him and that, above all, the court decisions had been duly reasoned.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicant, Mikheil Saakashvili, born in 1967, was President of Georgia from 2004 to 2013. He surrendered his Georgian nationality in 2013 to become a naturalised Ukrainian national. He went back to Georgia in 2021 and was arrested as he had in the meantime been convicted *in absentia* in two separate sets of criminal proceedings against him and given a combined prison sentence of six years. As he had been living in Ukraine at the time, he had chosen not to appear and had mandated a lawyer to represent his interests in the Georgian courts. He is currently still in prison.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The two sets of proceedings took place following a change of Government in Georgia in 2012, when it was decided that investigating the alleged wrongdoings of the past would be a key priority. In particular Mr Saakashvili's political party, the United National Movement ("the UNM"), had lost power. The prosecuting authorities had subsequently received 20,000 complaints by people claiming to have been victims of serious human-rights violations during the UNM's rule and Mr Saakashvili's presidency. Criminal investigations were initiated into the complaints, including against former high-ranking officials. The process was dubbed "the restoration of justice".

The first case against Mr Saakashvili concerned an attack in July 2005 on a member of parliament. The MP was forced out of his car at a traffic light by six armed men, who beat him with their rifle butts. He was left permanently disfigured, with almost all of his facial bones having been fractured. The MP accused Mr Saakashvili of ordering the riot police to carry out the attack in reprisal for an offensive interview he had given to a newspaper about the then President Saakashvili and his wife. The investigation, discontinued at the time, was reopened in November 2012 after the change of Government.

The case went to trial, with Mr Saakashvili being found guilty at first instance of complicity in criminal battery and misuse of authority in June 2018. The conviction was based on key witness statements by a former minister, I.O., and a former president of the Georgian Parliament, N.B.. I.O. stated that he had refused to carry out the President's order to "exemplarily punish" the MP for insulting his wife, while N.B. recalled having a conversation with Mr Saakashvili after the attack when he had said "Doesn't he [the MP] deserve to be duffed up?". Another key witness, the head of the riot police at the time, said that the President had warmly thanked him at an official event for the "successful" operation against the MP. Other evidence included more witness statements – the MP himself, his driver and bodyguard, eight former secret service officers and the six riot police officers who had participated in the attack – and relevant data retrieved from mobile phone operators. All Mr Saakashvili's appeals were unsuccessful.

The second set of proceedings concerned Mr Saakashvili's granting a pardon in 2008 to four former high-ranking officers of the Ministry of the Interior who had been convicted of murder. The four officers had abducted and killed a young man, Sandro Girgvliani, in 2006 for insulting some of their colleagues in a Tbilisi café. The repeat investigation in 2012 into the murder revealed that their director had ordered them to carry out and confess to the crime and, in exchange for their silence about his involvement, promised that they would have comfortable conditions of detention and that their sentences would be reduced by a presidential pardon.

A separate investigation was thus opened in 2014, with Mr Saakashvili being charged with abuse of power. He was tried and convicted at first instance in January 2018, based on witness statements confirming that he had promised to pardon the officers. Those witnesses included, among others, N.B. and I.O. again. I.O. stated in particular that Mr Saakashvili had repeatedly confided in him that he had promised and fully intended to pardon the convicted officers. The court also found that he had granted the pardon because he had been anxious about the damage full disclosure of all the details on the murder could do to his political team. He had thus exercised his presidential power "in bad faith" and contributed to perverting the course of justice in the murder case. These findings were confirmed on appeal.

Throughout both sets of proceedings Mr Saakashvili challenged I.O.'s and N.B.'s testimony, alleging that it was hearsay evidence and unreliable as they had in the meantime become his political opponents. The courts rejected his argument, finding that they had assessed those witness statements in combination with all the other evidence in the case file, which was consistent and complementary. Nor did they find political rivalry alone sufficient grounds for declaring I.O.'s and N.B.'s statements inadmissible.

In the second set of proceedings Mr Saakashvili also argued that the first-instance judge who had decided his case was not independent or impartial because he had served as an assistant to judges in

the original Girgvliani murder case. His challenge was rejected because that function was purely technical and could not have had any effect on the outcome of the case. His argument that the presidential power of clemency was unlimited was also rejected; the courts found that such an interpretation of the law could be dangerous and encourage corruption.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial/right to obtain attendance and examination of witnesses), the applicant complained that there had been a breach of his defence rights in the proceedings against him. He argued in particular that his convictions in 2018 had been based on untested hearsay evidence from two witnesses for the prosecution, I.O. and N.B., and that their statements had not been reliable because they were his political opponents. He additionally complained that the judge who had examined the second case against him had been involved in the Girgvliani murder case and had therefore been neither impartial nor independent.

The applicant also complained under Article 7 (no punishment without law) that he could not have possibly foreseen that he would have been held criminally liable for exercising the power of presidential clemency, which was absolute under domestic law.

Lastly, he alleged that there had been an ulterior motive – political persecution – behind the criminal cases against him, in breach of Article 18 (limitation on use of restrictions on rights).

The application was lodged with the European Court of Human Rights on 27 January 2020 and 25 May, respectively.

Judgment was given by a Chamber of seven judges, composed as follows:

Georges Ravarani (Luxembourg), *President*,
Arnfinn Bårdsen (Norway),
Carlo Ranzoni (Liechtenstein),
Mārtiņš Mits (Latvia),
Stéphanie Mourou-Vikström (Monaco),
Mattias Guyomar (France),
Kateřina Šimáčková (the Czech Republic),

and also Victor Soloveytchik, *Section Registrar*.

Decision of the Court

[Article 6 §§ 1 and 3 \(d\) \(right to a fair trial\)](#)

The Court found that Mr Saakashvili's defence rights had not been breached as concerned the way in which the national courts had dealt with the evidence in the two criminal cases against him. In the first case I.O. and N.B. and the former head of the riot police had given accounts of their personal conversations with Mr Saakashvili. That constituted first-hand testimony, not hearsay. Similarly, in the second case I.O. had stated how Mr Saakashvili had repeatedly confided in him concerning his intention to pardon the convicted officers.

In addition to that direct evidence, there had also been a significant body of concordant circumstantial evidence in the case file, which had helped to establish the motive behind Mr Saakashvili committing the offence.

Lastly, the Court considered that personal animosity was not sufficient to contradict the national courts' assessment of the reliability of I.O. and N.B.'s witness statements. Furthermore, the courts

had addressed any such concerns in reasoned rulings. Moreover, those witnesses had made their statements on pain of committing perjury, which constituted a sufficient guarantee.

There had therefore been no violation of Article 6 §§ 1 and 3 (d).

Nor did the Court find that the judge who had examined the criminal case in the second set of proceedings and convicted Mr Saakashvili of abuse of official authority had lacked either independence or impartiality. It would be an overstatement to suggest that that judge, who had purely provided clerical and technical assistance in his previous professional role of a judicial assistant in 2006, had been involved “in the determination of the criminal charges” in the Girgvliani murder case. Besides, Mr Saakashvili had not been a party to the proceedings in that case and the link between those proceedings and the charge of abuse of official authority against him had therefore been tenuous. Moreover, the judge was a professional, trained judge – not a lay judge or juror – and had thus been better equipped to distance himself from previous personal or professional experiences when dealing with high-profile cases.

There had therefore been no violation of Article 6 § 1 of the Convention.

Article 7 (no punishment without law)

The Court noted, at the outset, that Article 332 of the Criminal Code made it perfectly clear that even the highest-ranking State officials – including the President of the country – could be prosecuted for abuse of official authority. In the same vein, the Law on Impeachment clearly provided, at the time, for the possibility to hold a former President criminally liable for an offence committed during his or her tenure of office.

The Court also examined the complementary legal content referred to in Article 332 of the Criminal Code, namely the extended constitutional framework governing the exercise of the presidential power of clemency. It found that that framework did not give the applicant a legitimate expectation that he could enjoy immunity from criminal jurisdiction for acts committed while in office in the exercise of his discretionary powers, including the power of presidential clemency.

The Court found it important to note that, in their examination of the case, the national courts had addressed the question of the absolute nature of the presidential power of clemency and the possibility that that could become the object of abuse.

It was moreover significant that the applicant’s conviction had not been based only on his having performed the act of pardon; rather, the courts had also established through the evidence that he had promised to pardon the four former high-ranking officers of the Ministry of the Interior in exchange for them remaining silent about certain facts related to the Girgvliani murder. The courts had thus explored the applicant’s state of mind during the commission of the act in question and had found that his decision to grant a pardon had been prompted by his intention to pervert the investigation and otherwise obstruct the administration of justice in the Girgvliani murder case.

The Court therefore found that the Georgian courts’ conclusions as regards the scope of those domestic provisions and their application to Mr Saakashvili’s conduct in the second set of criminal proceedings against him fell well within their remit to interpret and apply national law, and Mr Saakashvili could reasonably have foreseen that his conduct would render him criminally liable.

Indeed, if nothing else, it should have been a matter of common sense for Mr Saakashvili, a leading politician with an extensive legal background, to expect that his decision to collude with people who had either committed a murder or conspired to cover it up would have serious consequences.

It followed that there had been no violation of Article 7.

[Article 18 \(limitation on use of restrictions on rights\) read in conjunction with Articles 6 and 7](#)

The Court rejected as inadmissible Mr Saakashvili's complaints under Article 18. His fear that there had been an ulterior motive behind his prosecution was unsubstantiated. The backdrop of bitter political antagonism between Mr Saakashvili's political party and the new ruling forces could not on its own prove that the predominant purpose of the opening of the criminal cases against him had been to hinder his participation in Georgian politics.

To the contrary, and bearing in mind in particular the duly reasoned court decisions, the Court found that the authorities' honest desire had been to bring Mr Saakashvili to justice for his wrongdoings. Even the highest-ranking State official was not, as a matter of principle, immune from prosecution.

Separate opinion

Judges Ravarani and Šimáčková expressed a joint dissenting opinion.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.