



## Psychiatrist's right to reputation breached by Georgian Minister of Justice

In today's **Chamber judgment**<sup>1</sup> in the case of [Jishkariani v. Georgia](#) (application no. 18925/09) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

The case concerned defamation proceedings brought in 2005 by a psychiatrist, who is also a civil society activist, against the Minister of Justice at the time. The Minister had accused her on live television and in a newspaper of issuing medical reports to prisoners in exchange for money.

The Court could not accept the national courts' assessment of the defamation case, which had found that the Minister had been voicing his opinion, which was therefore protected by his right to freedom of expression under Article 10 of the European Convention.

The Convention could not be interpreted as obliging an individual to tolerate very serious public accusations of criminal behaviour by a Government official, without them being supported by facts, which the Minister had not done in the applicant's case.

The courts had therefore failed to strike a fair balance between the Minister's right to freedom of expression and the applicant's right to have her reputation safeguarded, in breach of Article 8.

### Principal facts

The applicant, Mariam Jishkariani, is a Georgian national who was born in 1965 and lives in Tbilisi. She is a psychiatrist and director of a non-governmental organisation working on the rehabilitation of victims of torture. In 2003 she created a rehabilitation project for inmates in a Tbilisi Prison. She also later became a member of a prison monitoring council set up by the Ministry of Justice.

In 2005 the Minister of Justice accused Ms Jishkariani of issuing medical reports so that healthy inmates could be placed in prison hospitals, in exchange for money. The Minister made the statements on live television and as part of his interview to a newspaper amidst a debate on alleged corruption and mismanagement in the medical administration of the penal system.

Ms Jishkariani instituted civil-law defamation proceedings against the Minister. The courts accepted that no criminal investigation had ever been instigated against her and that the Minister's accusation "may have contained erroneous facts". However, in 2006 the courts found against her, concluding that the Minister had been voicing his opinion on an important public discussion and that his statements had therefore fallen within the limits of acceptable criticism allowed under Article 10 of the European Convention. Ms Jishkariani had to accept that those limits were wider for her, because she was a public figure. Furthermore, they also considered that the Minister had made an effort to verify his statements by commissioning an internal investigation on the matter.

Ultimately, in 2008 the Supreme Court declared Ms Jishkariani's appeal on points of law inadmissible.

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](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Ms Jishkariani complained that the domestic courts had failed to protect her right to reputation against the Minister's defamatory statements.

The application was lodged with the European Court of Human Rights on 9 January 2009.

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

Angelika **Nußberger** (Germany), *President*,  
Yonko **Grozev** (Bulgaria),  
André **Potocki** (France),  
Mārtiņš **Mits** (Latvia),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Lətif **Hüseynov** (Azerbaijan),  
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

The Court agreed with the domestic courts that the Minister's statements had been part of an important debate of general interest at the time, namely whether prisons and prison medical services were being managed properly. Given Ms Jishkariani's position and activities in prison, it further accepted the courts' assessment of her as a public figure acting in an official capacity and that, as such, she had to tolerate a higher level of criticism than a private individual.

Even assuming that the Court also accepted the classification of the Minister's statements as opinions or "value judgments", which are not susceptible of proof under the Court's case-law, there had to be a sufficient factual basis to support them.

That basis had been lacking. While the Minister had commissioned an internal investigation into the matter, he had not waited for its completion before making his accusations. Nor was he in possession of other verified information against Ms Jishkariani. Yet the courts had considered that he had made an effort to verify his statements, despite pointing out in their decisions that Ms Jishkariani had never been investigated over any crime and that the Minister's statements "may have contained erroneous facts".

The European Convention could not be interpreted as obliging an individual to tolerate very serious public accusations of criminal behaviour by Government officials, without them being supported by facts.

In sum, the Court was not convinced that the reasons given by the domestic courts for protecting the Minister's freedom of expression had outweighed Ms Jishkariani's right to reputation.

There had therefore been a violation of Article 8.

### Article 41 (just satisfaction)

The Court held that Georgia was to pay Ms Jishkariani 1,500 euros (EUR) in respect of non-pecuniary damage and EUR 1,833 in respect of costs and expenses.

*The judgment is available only in English.*

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