



No judge bias or other breach of fair trial guarantees in television channel ownership row

The case [Rustavi 2 Broadcasting Company Ltd and Others v. Georgia](#) (application no. 16812/17) concerned an ownership row over a privately owned television channel, Rustavi 2, the first applicant in the case. The dispute led to a ruling in March 2017 by the Supreme Court of Georgia finding that a former owner of Rustavi 2 had been coerced into giving up the television channel and that the current owners, the second to fourth applicants in the case, were not therefore *bona fide* third-party acquirers. Pending those proceedings, Rustavi 2's corporate assets and all of the owners' shares in the company were frozen.

In the case before the European Court of Human Rights, the current owners of Rustavi 2 alleged in particular that the judges examining the ownership row had lacked independence and impartiality.

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

by six votes to one, that there had been **no violation of Article 6 § 1 (right to a fair trial by an independent and impartial tribunal)** of the European Convention on Human Rights as concerned the judge deciding the case at first-instance;

unanimously, that there had been **no violation of Article 6 § 1** of the European Convention as concerned the court deciding the case on appeal;

by six votes to one, that there had been **no violation of Article 6 § 1** as concerned the composition of the bench deciding the case during the cassation proceedings before the Supreme Court.

The Court found in particular that all but one of the allegations of bias had either been unsubstantiated or unconvincing. The involvement of Rustavi 2's Director General in disciplinary proceedings against the President of the Supreme Court some years previously, leading to her dismissal from her judicial post at the time, had raised an arguable claim of a lack of impartiality. However, the Supreme Court had extensively assessed any fears in that regard and had convincingly dissipated them in a thoroughly reasoned ruling.

In coming to those conclusions, the Court bore in mind in particular that Rustavi 2's owners had systematically introduced ill-founded recusal requests against many different judges at all three levels of jurisdiction in a probable attempt to paralyse the administration of justice, while Rustavi 2's Director General had made gratuitous and virulent attacks in the media against the domestic judges involved in examining the ownership row and against the Georgian judiciary in general.

The Court, unanimously, **rejected as inadmissible the remaining complaints brought by Rustavi 2's owners (the second to fourth applicants) as well as all those brought by Rustavi 2 (the first applicant) itself**, including in particular their allegations that the proceedings had been a State-led campaign to silence the television channel.

Given those inadmissibility findings, the Court decided, unanimously, to **lift the interim measure under Rule 39** of its Rules of Court indicating to the Georgian Government that it should among other things suspend enforcement of the decision of March 2017.

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.

Principal facts

The applicants are Rustavi 2 Broadcasting Company Ltd, a television channel in Georgia, and its current owners, TV Company Sakartvelo Ltd and Levan and Giorgi Karamanishvili, two brothers who are Georgian nationals living in Tbilisi. There were numerous transfers of Rustavi 2 shares from one private party to another from 1996, when the television channel was founded, until 2011, when the second to fourth applicants took over.

In August 2015 a former owner of Rustavi 2, K.K., brought civil proceedings against the applicants alleging that he had been coerced into selling his shares in the company in 2005 and 2006 by the then leaders of the governing party, the United National Movement. He submitted in particular that President Saakashvili, who was dissatisfied with Rustavi 2's editorial policy, and high-ranking State officials had threatened him and his family if he refused to sell his shares. He had then had to leave the country for fear of further persecution, and was granted political asylum in Germany. In his claim, he also requested that he be acknowledged as the creator of the channel's logo and three entertainment shows.

In November 2015 the first-instance court found in K.K.'s favour regarding most of his claims, apart from those regarding his intellectual property, which it dismissed as unsubstantiated. In particular it found that there had been no coercion under Article 85 of the Civil Code, but that there had been a "manifest discrepancy" between the actual value of Rustavi 2 in 2005-2006 and the payment K.K. had received in exchange. It therefore considered that the agreement which he had entered into was void under Article 54 of the Civil Code. The current owners of Rustavi 2 had to have been aware that the property they were acquiring had been misappropriated and they could not therefore be considered *bona fide* third-party acquirers. In June 2016 the appeal court upheld that decision in full.

In March 2017, following an appeal on points of law lodged by the second to fourth applicants, the Grand Chamber of the Supreme Court confirmed the lower courts' findings about Rustavi 2's current owners not being *bona fide* third-party acquirers. However, it considered that Article 85 of the Civil Code, under which it was possible to void a contract made under duress, should have been applied instead of Article 54. It found that K.K. had been coerced into selling his shares, which had been proven, among other things, by the fact that he had been granted political asylum in Germany in 2009 and the status of a person persecuted for political reasons by the previous regime in 2012. It also took into account the fact that K.K. had voiced his grievances about the coercion before the relevant domestic authorities as early as December 2009.

Pending a decision in those proceedings, the judge assigned to the case at first instance, Judge T.U., granted K.K.'s application for a preliminary injunction to freeze both Rustavi 2's corporate assets and all of the owners' shares in the company. Appeals against that ruling were all dismissed in November 2015.

Throughout the proceedings, the applicants made a series of unsuccessful recusal requests, complaining that judges examining their case lacked independence and impartiality. The Supreme Court found in particular that the judges had been right not to withdraw from the case. It referred, among many other arguments, to various public interviews by Rustavi 2's Director General between September 2015 and March 2017, finding that he had made unacceptable insults against the judges of the first and appellate instances and had even confirmed that he had intentionally attacked Judge T.U. to provoke his recusal.

According to the applicants, the proceedings against them were a disguised attempt to silence Rustavi 2, an independent television channel, and were part of a wider orchestrated campaign against them from 2012 when the new ruling party, the Georgian Dream Coalition ("the GDC"), came to power. They alleged that the campaign included among other things: criminal proceedings being brought against the Director General of Rustavi 2 for corruption; alleged Government wiretapping of Rustavi 2's premises; a national audit of so-called "people-meters", devices used to monitor people's

viewing behaviour by private television channels such as Rustavi 2; numerous interviews given to the media by the GDC and its leaders concerning the ownership row; and the suicide of another former owner of Rustavi 2 who had publicly declared that he also intended to claim back the channel.

The Government contested the applicants' allegations, arguing that the way in which they presented the incidents was deliberately misleading, incomplete or unrelated to the dispute before the European Court of Human Rights.

Following the decision by the Supreme Court, Rustavi 2 (the first applicant) requested that the European Court grant an interim measure under Rule 39 of its Rules of Court, based on fears of irreparable harm to the television channel's rights under Article 10 (freedom of expression). The Court granted the interim measure, indicating to the Georgian Government that the enforcement of the final domestic decision of March 2017 should be suspended, and that the authorities should abstain from interfering with the first applicant company's editorial policy. The Court subsequently decided to extend that measure until further notice.

Complaints, procedure and composition of the Court

The applicants brought a number of complaints about the injunction and main proceedings concerning the ownership dispute over Rustavi 2, alleging that they had interfered with their rights under Article 6 § 1 (right to a fair trial), Article 10 (freedom of expression), Article 18 (limitation on use of restrictions on rights) and Article 1 of Protocol No. 1 (protection of property).

They all complained that those proceedings had not been fair because the judges examining their case had lacked independence and impartiality and had been a disguised attempt to silence the only independent television channel in the country.

Rustavi 2's (the first applicant) complaints focussed on the injunction proceedings, while its owners (the second to fourth applicants) specifically alleged unfairness in the main proceedings because of an unwarranted change in the judicial approach to the examination of the ownership dispute by the Supreme Court and because the reasons given by that court in its decision of March 2017 had been insufficient and/or arbitrary.

The application was lodged with the European Court of Human Rights on 3 March 2017.

The Public Defender of Georgia and the Georgian Young Lawyers' Association were granted leave to intervene in the proceedings as third parties.

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

Angelika **Nußberger** (Germany), *President*,
Yonko **Grozev** (Bulgaria),
Vincent A. **De Gaetano** (Malta),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Complaints brought by Rustavi 2

The Court declared inadmissible all the complaints brought by the first applicant, Rustavi 2, under Article 6 § 1, Article 10, Article 18 and Article 1 of Protocol No. 1.

The part of the application concerning the injunction proceedings had been submitted out of time. In particular, for an application to be admissible it had to be lodged within six months of the last judicial decision in the case; Rustavi 2 had submitted its complaints about the injunction proceedings in March 2017, more than six months after the final decision had been taken by the domestic courts upholding the injunction measures, namely in November 2015.

Furthermore, it found that the television channel did not have standing to bring a complaint about the main proceedings, namely the ownership row over Rustavi 2 shares. A person or company could not complain of a violation of the Convention in proceedings to which he or she had not been a party. Rustavi 2 was the object rather than the subject of the ownership dispute and it could not therefore claim to possess an interest.

Complaints brought by Rustavi 2's owners

The Court also declared inadmissible most of the complaints brought by Rustavi 2's owners, the second to fourth applicants, under Article 6 § 1, Article 18 and Article 1 of Protocol No. 1, finding them to be manifestly ill-founded.

It considered that the Supreme Court applying Article 85 instead of Article 54 of the Civil Code in the case had not been a change in approach at cassation level but a clarification of a point of law. Indeed, it had simply accepted the argument of duress that had been made by K.K. and contested by Rustavi's owners from the beginning to end of the proceedings. Moreover, both sides had been given equal opportunity to make written submissions and, on that basis, the Supreme Court had been fully capable of properly reviewing the lower courts' interpretation of the relevant legal provisions. The principles of a fair hearing under Article 6 § 1, including equality of arms and adversarial nature of the proceedings, had not therefore been infringed.

Nor could the Court find, contrary to what was alleged by Rustavi 2's owners, any "manifest errors of assessment" in the reasons given by the Supreme Court for its judgment of March 2017.

The relevant applicants' complaints calling into question the outcome of the ownership dispute did not raise a *prima facie* issue under Article 1 Protocol No. 1 because that provision did not guarantee the right to a particular outcome in civil litigation. The ownership dispute could not therefore amount to an interference with their property rights.

Because Article 1 Protocol No. 1 was manifestly ill-founded and Article 18 could never be relied on alone, it followed that the second to fourth applicants' complaint about a State-led campaign against Rustavi 2 brought under Article 18 in conjunction with Article 1 Protocol No. 1 was also manifestly ill-founded.

The Court found, however, that the complaints about the judges deciding the ownership dispute had raised serious issues of facts and law which required an examination of the merits.

It addressed each of the levels of jurisdiction separately and found that none of the judges had lacked either independence or impartiality.

First, it examined the second to fourth applicants' challenge to T.U., the judge appointed to examine the case at first instance. It found no substantiation for the allegation that K.K. had decided to include a copyright claim in his action that had clearly lacked merit so that he would be sure to have Judge T.U., who was specialised in intellectual property disputes, sitting in his case. The Court found that there had been two other judges specialising in intellectual property law at that judicial level and, in any case, Judge T.U. had been assigned according to the usual procedure, namely in alphabetical order.

The allegation that criminal proceedings against the Judge T.U.'s mother for attacking her son-in-law had been revived to influence the judge was likewise unsubstantiated. The Court found that any delay in the proceedings against his mother could be explained by the fact that it was the

prosecuting authorities' practice in such cases, involving a senior citizen in poor health accused of an offence which was not of a serious nature, to only bring charges after all attempts at reconciliation had failed.

As concerned Facebook posts published by Judge T.U.'s wife about Rustavi 2 and its director, they had been negative but they did not comment on the eventual outcome of the ownership dispute, nor did they give the impression that his wife, who was the author of the posts, had been attempting to influence her husband or exploit his judicial position. Moreover, there was no evidence to show that the judge had actually approved of his wife's personal opinions. On the contrary, the case file showed that Judge T.U. had sufficiently distanced himself from the opinions expressed by his wife, an everyday citizen who had every right to be politically and socially active, while adjudicating the case.

Furthermore, the Court did not see anything to suggest that Judge T.U. had been unduly close to N.G., one of three judges who had adjudicated the case on appeal. There was nothing improper about both of those judges being founding members of the Union of Judges of Georgia, an association representing acting judges' interests, or about the fact that they were still members of the association, together with some 50 other judges, at the time of the ownership dispute.

Nor did the Court find anything untoward about the association's statements in October 2015 in defence of the judiciary in general and Judge T.U. in particular following what it considered to be abusive public attacks by Rustavi 2's Director General. In televised statements the Director General had notably referred to Judge T.U. as a "*Sonder-judge*" (which has a Nazi connotation) and had used such expressions as "soil will burn under the judge", "illiterate", "corrupt", "puppet", "pseudo-servant of Themis", "armed with an axe", "for hire" and "scoundrel". The Director General had not chosen to voice his criticism in a courtroom, although he had every possibility to do so, but via Rustavi 2's powerful media, without even hiding his intention to provoke the judge and artificially create conditions for his recusal.

Lastly, as concerned the cassation proceedings, the Court looked at allegations of partiality against one of the judges, M.T., sitting on the bench of the Grand Chamber of the Supreme Court and against that court's President.

It noted that M.T. had made financial contributions to the new ruling party, the GDC, but found that that was not sufficient to disqualify her. It would normally be preferable for a judge to refrain from contributing to political parties or campaigns, however, she had contributed to the political party in question some years previously, at a time when she had been employed in the private sector. Furthermore, the ownership dispute over Rustavi 2 shares had concerned two private parties. Neither the GDC as a political party nor any State authority had been a party to the proceedings or had been related to the substance of the ownership dispute.

The Court considered that the involvement of Rustavi 2's Director General, when he had been a member of the High Council of Justice, in disciplinary proceedings against the President of the Supreme Court, which had resulted in her dismissal from her judicial office some years previously, was a serious matter which could raise an arguable claim about lack of impartiality. However, the Supreme Court had extensively addressed the relevant arguments of Rustavi 2's owners, giving a thoroughly reasoned ruling which convincingly dissipated any fears in that regard. Furthermore, there was no evidence in the case file to show that the President of the Supreme Court had ever expressed any views at all about Rustavi 2, its director or the latter's role in the disciplinary proceedings conducted against her a decade ago. In any event, it was difficult to see any long-lasting effects of her dismissal from her judicial post, given that she had subsequently risen to the position of the President of the highest judicial body in the country.

When examining the challenges against those two Supreme Court judges, the Court bore in mind in particular that Rustavi 2's owners had systematically introduced ill-founded recusal requests against

many different judges at all three levels of jurisdiction. Such actions could be considered an attempt to paralyse the administration of justice, and could even be indicative of the abusive nature of the motion for bias.

The Court therefore found that there had been no violation of Article 6 § 1 as concerned the independence and impartiality of the judges who decided on the ownership dispute over the Rustavi 2 television channel.

Separate opinion

Judge De Gaetano expressed a partly dissenting opinion, which is annexed to the judgment.

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.