



**ASSESSMENT OF THE RIGHT  
TO BE TRIED WITHIN A REASONABLE TIME  
IN THE CASES ONGOING AGAINST  
MIKHEIL SAKASHVILI**

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## INTRODUCTION

In 2012, after the change of the government, criminal prosecutions against former high ranking officials have begun in an intensive manner. Such prosecutions have attracted the attention of the international community from the very beginning and raised questions in terms of independence and impartiality of the judiciary in the country.

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Since February 2020, Human Rights Center (HRC) has been carrying out the process of monitoring the criminal cases with alleged political motives. Among them are also the cases ongoing against former President, Mikheil Saakashvili<sup>1</sup>. Within a year of monitoring, HRC monitors attended only 4 court sessions. No more sessions were held involving Mikheil Saakashvili. All the court sessions were suspended due to technical deficiencies following the motion from the defence claiming that no voice could be heard on the sessions.

Notwithstanding the fact that the period of court monitoring coincided with the COVID-19 pandemic actually hindering the court proceedings, we may still state that there was a significant problem: the legal proceedings initiated against Mikheil Saakashvili have been procrastinated and the right of the accused to rapid justice and to a public hearing within reasonable time has been violated in contradiction to the principle of rule of law and commitments undertaken by the State in accordance with the Constitution and international agreements.

Legal assessments provided in the current document are based on some part of the files of the criminal cases instituted against the accused persons as made accessible to us by defence counsels of the accused. The aim of the document is not to establish a guilt or innocence of the accused in the cases, but rather it is limited with identifying and assessing the problems related to the issues of a fair trial and hearing within a reasonable time.

The document offers a legal comparative analysis based on the juxtaposition of the national law and international standards with relevant judgments of the European Court of Human Rights (ECtHR).

## GENERAL OVERVIEW OF THE CASES

Several criminal cases have been instituted and are still going on against former President, Mikheil Saakashvili and persons connected to him.

**Regarding the criminal case of battery of MP, Valeri Gelashvili,** Tbilisi City Court released information stating that because of assaulting language used against Saakashvili and his family members by Valeri Gelashvili interviewed by Newspaper Rezonansi, Mikheil Saakashvili assigned then Minister of Defence, Irakli Okruashvili to physically punish Gelashvili, but received a refusal from Okruashvili. Afterwards, Mikheil Saakashvili assigned with the same task then Minister of Interior, Ivane Merabishvili who managed to accomplish the task with a help of Special Operative Department operable under Merabishvili<sup>2</sup>.

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<sup>1</sup>see.: Monitoring the Court Proceedings of the Cases with Alleged Political Motives - Final Report, Human Rights Center, 2020. <https://bit.ly/3eeR2v9>.

<sup>2</sup>See: Statement by Tbilisi City Court: <https://bit.ly/3dcwt2P>.

On June 28, 2018, Tbilisi City Court rendered a judgment of conviction against Mikheil Saakashvili, and as a form and measure of punishment sentenced him to 8 years of imprisonment. Moreover, Saakashvili was deprived the right to be appointed to any public office and local self-government body for 3 years. However, through the Law on Amnesty from December 28, 2012<sup>3</sup>, the ordered punishment has been reduced by a quarter and the accused was sentenced to 6 years of imprisonment as a cumulative punishment, and was deprived the right to be appointed to any public office and local self-government body for 2 years and 3 months<sup>4</sup>.

Another case in which Tbilisi City Court rendered a judgment of conviction against Mikheil Saakashvili concerned **Sandro Girgvliani case and the charges of abuse of authority by a state-political official**. According to the allegations, the offense committed against Sandro Girgvliani was concealed, the investigation files were fabricated, the high ranking officials involved were covered up and escaped responsibility due to the plan coordinated and mutually agreed with Mikheil Saakashvili. Tbilisi City Court sentenced Mikheil Saakashvili to 4 years of imprisonment for this case, but based on the Law on Amnesty the punishment for Saakashvili was also reduced here and finally he was ordered to 3 years of imprisonment. Furthermore, according to the court judgment, Mikheil Saakashvili was deprived the right to be appointed to any public office and local self-government body for 2 years which was reduced under the Law on Amnesty and finally set to one year and 6 months<sup>5</sup>.

There are several criminal cases pending against Mikheil Saakashvili where the court has not yet rendered a judgment (either of acquittal or conviction). In particular:

- ✓ The criminal case uniting the allegations on the episodes of the dispersal of the protest demonstration on November 7, 2007, raid on TV Company Imedi, seizure of Mtatsminda Park and Rustavi Metallurgical Plant from Patarkatsishvili family.
- ✓ The case of embezzlement of a state owned property where the accused persons are Mikheil Saakashvili (former President of Georgia) and Teimuraz Janashia (former Head of Special State Protection Service). The Prosecutor’s Office accused them of misappropriation of budgetary funds in large amounts.

<sup>3</sup>see.: Law of Georgia on Amnesty: <https://bit.ly/3uGFGX8>.  
<sup>4</sup>see.: Statement by Tbilisi City Court: <https://bit.ly/3dcwt2P>.  
<sup>5</sup>see.: More information: <https://bit.ly/3mGHhto>.

## CHARGES BASED ON THE DISPERSAL OF THE PROTEST DEMONSTRATION OF NOVEMBER 7, 2007 AND OTHER EPISODES

First charges were brought against Mikheil Saakashvili on July 28, 2014 based on the episodes of the dispersal of the protest demonstration on November 7, 2007, raid on TV Company Imedi, seizure of Mtatsminda Park and Rustavi Metallurgical Plant from Patarkatsishvili family. He was found guilty in exceeding the official powers by state political official resulting in substantive violations of lawful interests of a natural or legal person, the public or the State, committed through violence or use of weapons, with grave consequences for the personal dignity of the victims<sup>6</sup>. Based on the latter charges the former President was remanded in custody as a measure of restraint on August 2, 2014<sup>7</sup>.

According to the indictment, following a direct order from Mikheil Saakashvili, in violations of the Constitution of Georgia and applicable laws, the troops of military forces of the Ministry of Defence were brought to adjacent areas of Rustaveli Avenue in order to show the power aiming at establishing a control on the territory, to frighten the protesters and prevent them from gathering again. Moreover, the Prosecutor's Office of Georgia accused Saakashvili of blocking the broadcasts of TV Company Imedi, shutting the TV Company off the air, and invading and blocking with special police forces the territory of Linx LLC (Mtatsminda Park) owned by Arkady Patarkatsishvili, and seizing from him Rustavi Metallurgical Plant.

During the HRC monitoring, the hearings on the merits of the case had begun, however following the petitions from the defence the court sessions were constantly suspended. The defence referred to the fact that due to the Covid-19 pandemic, holding the court sessions remotely was associated with technical problems, for example, they could not hear the voices of participants of the proceedings.

## CHARGES DELIVERED BASED ON EMBEZZLEMENT OF THE STATE OWNED PROPERTY

The above charges were brought against Mikheil Saakashvili on August 13, 2014. According to the indictment, after having spent public funds for personal purposes, in particular for the services of a massage therapist, and after the information was released to the public, Mikheil Saakashvili decided in April 2009 that in order to avoid the dissemination of such information in the future to spend the funds for personal purposes in a classified manner. Mikheil Saakashvili was allocating the funds from the budget to the Special State Protection Service under his immediate supervision from where the expenses for his personal purposes were covered in a classified mode.

The indictment reads that the execution of the criminal intention was assigned to Head of the Special State Protection Service, Teimuraz Janashia, through the help of whom the spending of the Budget for the personal purposes of Mikheil Saakashvili was concealed under "Secret Expenses" in violation of the Law of Georgia *on State Secrets*. Furthermore, under a "confidential" order issued by Mikheil Saakashvili, the Special State Protection Service was unlawfully assigned to fund the costs of travel and accommodations for the President and his

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<sup>6</sup>see.: Criminal Code of Georgia, article 333(3). <https://bit.ly/3tm4UtS>.

<sup>7</sup>see.: More information: <https://bit.ly/328E9wO>.

family members, their guests within the country and abroad, the cost of aesthetic services, meals, education, gifts and souvenirs and other costs of daily living needs. According to the prosecution, in total GEL 8,837,461 of the State Budget were misappropriated.

#### *Important facts and circumstances*

**In the case of embezzlement of the state property**, on August 29, 2014, the court of first instance ordered a seizure of the property of Mikheil Saakashvili. Initially, the Prosecutor's Office of Georgia requested to seize the property and bank accounts of the accused and his related persons (spouse, children, mother, father and grandmother). Tbilisi City Court rejected the motion in the part of seizing the accounts stating that the Prosecutor's Office failed to submit documents proving that the accused had in fact monetary resources or other assets in the named banks. Therefore, the court could not seize abstract bank accounts.

However, the Court of Appeals did not agree with the argument and on September 3, 2019, without oral hearing, reversed the ruling of the first-instance court from August 29 and seized the property and bank accounts not only of the accused but also the persons related to him.

Tbilisi City Court found the arguments of the Prosecutor's Office of Georgia to seize the property of the persons connected to the accused unsubstantiated and did not agree with it. The court noted that only the fact of existence of connected persons and their property could serve as a sufficient ground to seize the property. Specific evidence were necessary for this. Property seizing is a procedural coercive measure carried out in order to ensure the possible deprivation of the property. The measure may be applied where there is an information that the property could be: a) concealed, b) spent, c) obtained through criminal activity<sup>8</sup>. According to international legal standards, in seizure of property a fundamental human right, the right to property is prejudiced. Therefore, the motion of the prosecution must be substantiated, while the court has to determine whether the motion meets the basic requirements in terms of a fact and form and shall deliver the decision based on them.

However, the motion of the prosecution was not granted in full by the Court of Appeals either. Moreover, none of the instances of courts agreed with the motion of the prosecution in the part requesting the seizure of the property received through inheritance or obtained before 2009, as the prosecution brought charges against the accused based on the acts committed from September 2009 to February 25, 2013.

Since February 2020, during the process of HRC monitoring, the hearings on the merits have begun for the charges of the episodes of the dispersal of the protest demonstration on November 7, 2007, the raid on TV Company Imedi, the seizure of Mtatsminda Park and Rustavi Metallurgical Plant from Patarkatsishvili family. Four court hearings were held in remote sessions, however following the motions from the defence the court hearings were suspended. In particular, at all four court sessions, the defence approached the court with a motion to suspend the hearing. The defence clarified that because of the technical deficiencies they could not hear anything. Furthermore, the court was not limited with a timeframe for hearing the case, as the proceedings were on the stage of examining the written evidence and examination or non-examination of 1 or 2 volumes from 100 volumes could not affect the hearings on the merit of the case. Moreover, according to the assessment by the defence, there was an established practice that only those cases were

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<sup>8</sup>see.: Criminal Procedure Code of Georgia, article 190. <https://bit.ly/3mKZCFF>.

*heard remotely which were limited with a timeframe. Therefore, it would be better if the court proceedings were resumed after the pandemic.*

## RIGHT TO A FAIR TRIAL

Article 6 of the European Convention of Human Rights provides for the human right to a fair trial for civil and criminal legal proceedings. The great importance and fundamental nature of the right is evidenced by the fact that the majority of the judgments of the ECtHR concerns exactly the violations of the right to a fair trial. The guarantees ensured by Article 6 of the ECHR are more comprehensive in terms of criminal proceedings than civil proceedings. Moreover, of the above speaks the fact that the general right to a fair trial enshrined in Article 6(1) of the ECHR is further confirmed by certain guarantees provided for in paragraphs 2 and 3 of Article 6.

According to the case law of the ECtHR, the right guaranteed by Article 6 of the ECHR is applied not only to court hearings and to the stages preceding the hearings, but also to the stages coming after the hearings such as enforcement of the Judgement rendered following the court hearings. The same approach was shown by the Grand Chamber of the ECtHR in the case *Assanidze v. Georgia* concerning a non-enforcement for almost 3 years of the judgment of acquittal in the criminal proceedings by the Supreme Court of Georgia<sup>9</sup>

Notwithstanding the fact that Article 6 of the ECHR refers specifically to a fair trial, it is applied not only to the hearings, but also to the stages preceding and following the court hearings. ***With regard to criminal cases, the ECtHR held that the scope of Article 6 of the ECHR includes the process of investigation carried out by the competent authorities on the pretrial stage***<sup>10</sup>.

As the Constitutional Court pointed out in its judgment in the case *Vakhtang Masurashvili and Onise Mebonia v. the Parliament of Georgia*, the right to a fair trial implies not only the possibility to apply to the court (to lodge a claim), but ensures a full scale legal protection of human beings. The right to a fair trial means first of all the possibility to appeal against and legally assess all the decisions by the state authorities that violate human rights. Further, in order a fair hearing of a certain case to be held and an objective decision on the case to be delivered, the right includes the following minimum of possibilities: The right of a person to apply to the court requesting a fair and public hearing of his/her case, to express his/her opinion and defend him/herself in person or through a defence counsel. ***The court hearing must be held within a reasonable time, limited period and the case must be heard by an independent, impartial tribunal***<sup>11</sup>. Further, the practice of the Constitutional Court also outlined the link between a fair trial with a rule of law<sup>12</sup> and the supremacy of the law<sup>13</sup>.

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<sup>9</sup>see.: Case Wettstein v. Georgia, ECHR. 8 April, 2004.

<sup>10</sup>see.: Case Wettstein v. Switzerland, ECtHR. November 24, 1993.

<sup>11</sup> see.: Judgment N --- of December 15, 2006 of the Constitutional Court of Georgia in the case *Vakhtang Masurashvili v. the Parliament of Georgia*. II, Para 1.

<sup>12</sup> see.: Judgment N 1/3/393,397 of December 15, 2006 of the Constitutional Court of Georgia. II, Para 1.

<sup>13</sup> see.: Judgment N 1/3/421,422 of November 10, 2009 of the Constitutional Court of Georgia in the case *Georgian Citizens Giorgi Kipiani and Avtandil Ungiadze against the Parliament of Georgia*.



## THE RIGHT TO A HEARING WITHIN A REASONABLE TIME

In the criminal proceedings ongoing for almost 7 years against former President, Mikheil Saakashvili and other persons along him, the procrastination of the court hearings remains a problem affecting the reputation of the court system, the efficiency of the justice, and the trust of the public in the judiciary in general.

The rapid and effective justice is one of the components of a fair trial guaranteed both by the national law and international standards, the International Covenant for Civil and Political Rights and the ECHR<sup>14</sup>.

In accordance with Article 31 of the Constitution of Georgia, every person may apply to the court to protect his/her rights. A fair and timely hearing shall be ensured. The right to a fair trial includes the right to be heard within a reasonable time affecting in turn the accessibility of the court and feasibly rapid justice.

The Criminal Procedure Code of Georgia provides for the right of the accused to rapid justice, however the right may be waived in order to have the defence properly prepared<sup>15</sup>. The Criminal Procedure Code further obliges the court to give priority to the cases where defendants are in custody<sup>16</sup>.

At the time being the accused in the case, Mikheil Saakashvili and Teimuraz Janashia are not in custody. Teimuraz Janashia has been elected as an MP of the Georgian Parliament of the 10th convocation following 2020 Parliamentary Elections under the party list (Electoral Block: "United National Movement - United Opposition "Strength in Unity")<sup>17</sup>. Against former President, Mikheil Saakashvili court applied remand in custody as a measure of restraint, but due to the fact he resides in Ukraine he could not be arrested.

On February 17, 2015, the Office of the Chief Prosecutor of Georgia released information regarding the extradition of Mikheil Saakashvili and Zurab Adeishvili from Ukraine, reading as follows: "since Mikheil Saakashvili and Zurab Adeishvili are charged with offenses and they are accused persons in Georgia and are wanted, and moreover, Zurab Adeishvili is wanted under a red notice, and since according to the obtained information the named persons are residing in Ukraine, the Office of the Chief Prosecutor of Georgia applied to the Office of Prosecutor General of Ukraine with a request to identify and arrest the named persons and extradite them to Georgia."<sup>18</sup>

According to the Office of Prosecutors, the extradition of the wanted persons between Georgia and Ukraine shall be carried out in accordance with the European Convention on Extradition from 1957<sup>19</sup>, further in accordance with 1993 Minsk Convention on Legal Aid and

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<sup>14</sup>See: Article 9(3) of the ICCPR and Article 5(3) of the ECHR ensure the right of each accused under custody "to be tried in reasonable time or to be released." Article 14(3) of the ICCPR ensures the right "to be tried without undue delay" for all the persons against whom charges are brought and further Article 6(1) of the ECHR ensures that "everyone is entitled to a fair and public hearing within a reasonable time."

<sup>15</sup>See.: Article 8(2) of the Criminal Procedure Code of Georgia. <https://bit.ly/37q4M2e>.

<sup>16</sup>See.: Article 8(3) of the Criminal Procedure Code of Georgia. <https://bit.ly/37q4M2e>.

<sup>17</sup>See: More information: <https://bit.ly/3dl7QeB>.

<sup>18</sup>See: information in detail at: <https://bit.ly/2Po3obH>.

<sup>19</sup>See: European Convention on Mutual Assistance in Criminal Matters, April 20, 1959. <https://bit.ly/2PeudPt>.



Legal Relations in Civil, Family and Criminal Cases and in accordance with the Bilateral Agreement concluded between Georgia and Ukraine in 1995 on Legal Aid and Legal Relations. Under the above international agreements, the parties undertake the obligation to review the applications and hand over wanted persons to each other in accordance with the provisions of the agreements. In 2015, the Office of the Chief Prosecutor of Georgia applied to the Office of the Prosecutor General of Ukraine with a petition to arrest and extradite Mikheil Saakashvili and Zurab Adeishvili. Despite the obligations existing among the States, Ukrainian Side has not cooperated with the Office of Chief Prosecutor of Georgia on the issues of extradition of Mikheil Saakashvili and Zurab Adeishvili and refuses up to the date to extradite the wanted persons<sup>20</sup>. For the grounds of refusal, Ukrainian side referred to Article 3(1) of the European Convention on Extradition according to which “[e]xtradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.”

Currently, Mikheil Saakashvili is a citizen of Ukraine. From May 7, 2020, he heads the Executive Committee of Ukraine's National Reform Council.

The right to a fair trial guaranteed by Article 6 of the ECHR providing for that in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The right to a hearing within a reasonable time releases the persons awaiting trial from prolonged uncertainty. Moreover, this right helps to minimize the measures restraining the freedom of the accused used for the purposes of court hearings.

The failure by the court to hear the case within a reasonable time would cause in turn the violation of the right to a fair trial. As the ECtHR pointed out in the case *Zimmermann and Steiner v. Switzerland*, the State has a duty to organise the legal system so as to allow the courts to comply with the requirements of Article 6(1) including that of trial within a "reasonable time"<sup>21</sup>. At the national level, the Criminal Procedure Code of Georgia provides for the right of the accused to a rapid justice, however the right may be waived in order to have the defence properly prepared.

In accordance with the standard established by the ECtHR, in order to find out whether the case was heard within a reasonable time, it is important to determine the following factors, such as: 1) **Complexity of the case** may be linked with both the facts and the law<sup>22</sup>; with involvement of several parties into the case<sup>23</sup>; with examination of the evidence etc. Furthermore, the length of the proceedings may be extended where albeit the case in itself is not a particularly complex one, but the lack of clarity in the domestic law renders its examination difficult<sup>24</sup>. 2) **Behavior of the parties** includes frequent changes of lawyers<sup>25</sup>, the

<sup>21</sup>see.: Case *Zimmermann and Steiner v. Switzerland*, ECHR. July 13, 1983. <https://bit.ly/3uL0hcU>.

<sup>22</sup>see.: Case *Katte Klitsche de la Grande v. Italy*, §55, ECHR. 20 October, 1975.

<sup>23</sup>see.: Case *Handyside v. United Kingdom*, §72, ECHR. 1985.

<sup>24</sup>see.: Case *Lupeni Greek Catholic Parish and others v. Romania*, §150, ECHR. November 29, 2016.

<sup>25</sup>see.: Case *König v. Germany*, §103, ECHR. 28 June, 1978.

motions aimed at prolonging the proceedings or simply linked to certain time frames<sup>26</sup>; further, any kind of behavior contributing to the prolongation of the proceedings. 3) **Acts on the part of the trial judge** - one has to pay particular attention to the failure of the court to carry out procedural actions for a long period<sup>27</sup>.

However, we have to admit that according to the ECtHR, the issue whether the time of hearing was reasonable must be assessed per individual case with taking into account the particular facts of the case<sup>28</sup> and in the result of taking into consideration all the procedural actions<sup>29</sup>.

## PROCEDURAL DELAYS AND ADJOURNMENT

In the criminal case ongoing against Mikheil Saakashvili significant problems stem from the procedural delays. During the reporting period the hearings of the case were suspended on several occasions. Specifically, the monitoring was carried out on 4 court hearings of the episodes of the dispersal of the protest demonstration on November 7, 2007, raid on TV Company Imedi, seizure of Mtatsminda Park and Rustavi Metallurgical Plant from Patarkatsishvili family. Moreover, all the court hearings, conducted in a remote mode, were suspended due to technical deficiencies following the motion from the defence claiming that no voice could be heard on the sessions.

Following the pandemic caused by COVID-19, conducting the hearings remotely through the means of electronic communication created number of repeated technical problems. Where more than two or more persons were speaking simultaneously the voice could be heard and the participants of the process, including the judges had to repeat the questions they put delaying and making impossible to continue the hearings. Several times, the cases were reported when the voice of the participants are doubled and/or is heard unclearly. Further, there have emerged the problems related to the publicity of the court hearings, the confidential communication with defence counsels and questioning the witnesses. Evidently, the judiciary was not ready for such challenges<sup>30</sup>.

The delays in the hearings on the merits of the criminal cases ongoing against Mikheil Saakashvili and others contribute to prolonging the proceedings and potentially negatively affects the right to a rapid justice.

## MANAGING THE COURT PROCEEDINGS

The effective management of the court proceedings in terms of the right of the accused to be tried within a reasonable time entirely falls within the responsibility of the court. The discretion of the parties to the criminal proceedings to determine the sequence and volume of the evidence as provided for by the Criminal Procedure Code of Georgia, shall not absolve the court from the obligation to ensure the administration of a rapid justice.

<sup>26</sup>see.: Case Acquaviva v. France, §61, ECHR. November 21, 1995.

<sup>27</sup>see.: Cases Pafitis and others v. Greece; §93; Tiece v. San Marino; §31; Sorme- li v. Germany, §129. ECHR.

<sup>28</sup>see.: Case Frydlender v. France, §43, ECHR. 27 June, 2000.

<sup>29</sup>see.: Case Konig v. Germany, §98, ECHR. 28 June, 1978.

<sup>30</sup>see.: Problems Related to Remote Proceedings under the Coronavirus Pandemic and State of Emergency, Human Rights Center, 2020. <https://bit.ly/3sxj9ux>.

As we learn in the result of monitoring the court hearings and examining the case files, the court often ignores the applicable provisions thus hindering the management of the proceedings and its proper implementation. Furthermore, judges are not able to control the schedule and observe the right of the accused to a rapid justice; instead, they depend on the schedule more convenient to the prosecution and defence. Stemming from the above, wrong management of the proceedings causes and has caused delays negatively affecting the right of the accused to be tried in a reasonable time.

### RECOMMENDATIONS:

- *The court must thoroughly assess the decisions on suspending or postponing the hearings against the right of the accused to be tried within a reasonable time;*
- *The court has to evaluate in depth the motion from the prosecution and defence regarding the suspension or adjournment of the hearings and must not grant them without existence of a proper substantiation and necessity;*
- *The courts must grant the substantiated motion from the defence to allow them an adequate time to study the files only once not giving them the right would consequently affect the right of the accused to be tried within a reasonable time.*
- *The courts must be provided with technical means and effective software for electronic proceedings.*