

THE ECHR AND

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GEORGIA

facts & figures



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

THE ECHR AND

GEOORGIA

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Council of Europe

Accession: 27 April 1999

European Convention on Human Rights

Signed: 27 April 1999

Ratified: 20 May 1999

ECHR judges

Lado Chanturia (since 2018)

Nona Tsotsoria (2008-2018)

Mindia Ugrekhelidze (1999-2008)

ECHR and Georgia at 1st January 2020

1st judgment: Assanidze v. Georgia (8 April 2004)

Total number of judgments: 104

Judgments finding a violation: 83

Judgments finding no violation: 17

Friendly settlements/strikeout: 1

Other judgments: 3

Applications pending: 600

Applications finished: 5,646

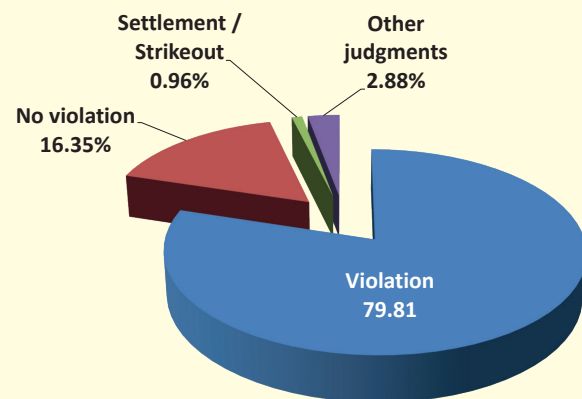
This document has been prepared by the Public Relations Unit and does not bind the Court. It is intended to provide basic general information about the way the Court works.

For more detailed information, please refer to documents issued by the Registry available on the Court's website www.echr.coe.int.

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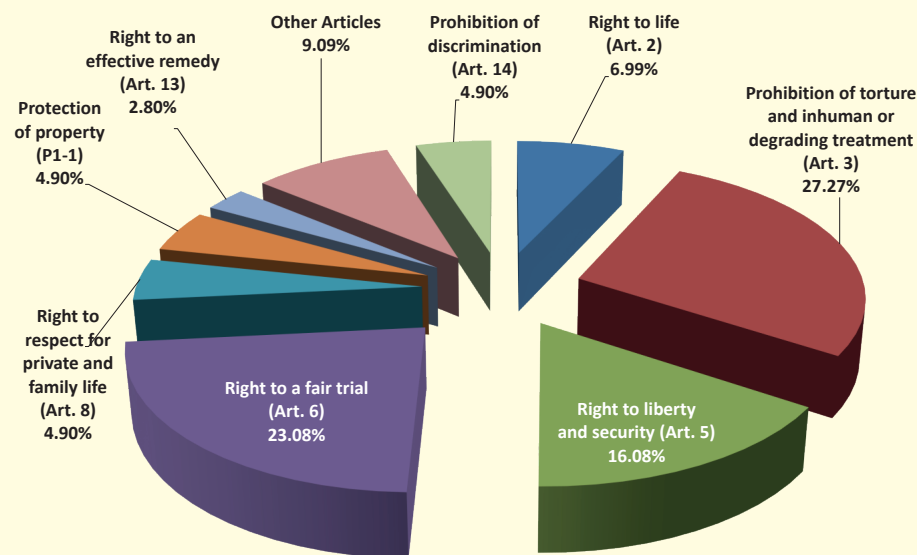
Types of judgments

In three-quarters of the judgments delivered concerning Georgia the Court gave a judgment against the State, finding at least one violation of the Convention.



Subject-matter of judgments finding a violation

The most frequent violations found by the Court concern Article 3, mainly for inhuman and degrading treatment, followed by Article 6, mostly in relation to unfair proceedings.



Impact of the Court's judgments

The Committee of Ministers, the Council of Europe's executive organ, supervises compliance with the Court's judgments and adoption of the remedial measures required in order to prevent similar violations of the Convention in the future.

The Court's judgments have led to various reforms and improvements in Georgia, relating in particular to:

Enhancing the fairness of judicial proceedings

Improvements have been made to procedural safeguards, with greater access to the courts and strengthening of the adversarial principle.

The enforcement machinery has been reformed and modernised in order to make the payment of compensation awarded by the courts effective. A National Bureau of Enforcement has been set up, as well as a "Government Fund", with the aim of ensuring that debts are discharged and that compensation is paid for the losses sustained.

A system allowing civil and criminal proceedings to be reopened has been introduced in order to give effect to the Court's judgments.

Compensation for victims of Soviet oppression

The victims of Soviet-era repression can now effectively assert their right to compensation, following clarification of the legislation and practical developments.

Improvements to conditions and review of detention

Conditions of detention have been improved, particularly as regards healthcare in prisons.

A system allowing prompt review of the lawfulness of detention has also been set up, and compensation can now be obtained for unlawful or unjustified detention.

Strengthening of freedom of expression

Amendments have been made to the Civil Code and to the Press and Media Act, with a clear distinction now made between factual statements and value judgments and between defamation of public figures and private individuals.

Selected cases

Case of Assanidze (8 April 2004)

Tengiz Assanidze was formerly the mayor of Batumi and a member of the Supreme Council of the Ajarian Autonomous Republic. He complained of his continued detention despite the presidential pardon granted to him in 1999 in relation to his first conviction and his acquittal following his second conviction. The Court found that the applicant had been arbitrarily detained, and held that the Georgian State was to secure his release at the earliest possible date.

Violation of Article 5 § 1 (right to liberty and security)

Violation of Article 6 § 1 (right to a fair trial)

Case of Shamayev and Others (12 April 2005)

The application, against Georgia and Russia, concerned the extradition and requested extradition to Russia of the thirteen applicants, suspected terrorists of Chechen origin. The Court found, in particular, that Georgia and Russia had hindered the right of individual petition. It also considered that by obstructing the Court's fact-finding visit and denying it access to the applicants detained in Russia, the Russian Government had unacceptably hindered the establishment of part of the facts.

Violation of Article 34 (right of individual petition) among other Articles

Case of Apostol (28 November 2006)

Leonid Tikhonovich Apostol complained of the authorities' refusal to enforce a judgment in his favour awarding him compensation.

Violation of Article 6 § 1 (right to a fair hearing)

Case of Gorelishvili (5 June 2007)

Ilna Gorelishvili, who was a journalist at the material time, was convicted of defamation in 2003 for writing an article in which she criticised several political figures and members of the government, in particular on the subject of their declared assets. The applicant alleged that the defamation proceedings against her had unjustifiably restricted her journalistic freedom.

Violation of Article 10 (freedom of expression)

Case of Patsuria (6 November 2007)

Gia Patsuria was found guilty of attempted fraud in 2005. He alleged that, when authorising his detention, the authorities had relied solely on the gravity of the charges and on a reasonable suspicion that he had committed a crime. The Court considered that the Georgian courts had failed to address the specific circumstances of the case or to consider alternative pre-trial measures.

Violation of Article 5 (right to liberty and security)

Case of Ramishvili and Kokhreidze (27 January 2009)

Shalva Ramishvili and Davit Kokhreidze were co-founders of and shareholders in a private media company which owned the television channel "TV 202". They were charged with extortion and remanded in custody. They complained, in particular, that at the hearing concerning their applications for release they had been placed in a barred dock, that members of the special police force had been present and that people had been constantly entering and leaving the courtroom or speaking on the telephone. The Court found that the imposition of such stringent and humiliating measures on the applicants could not be justified. It also found that a hearing conducted in such chaotic conditions was hardly conducive to a sober judicial examination, and noted the fact that the judge had been aiding the prosecutor during the hearing.

Violations of Article 3 (prohibition of inhuman or degrading treatment)

Violations of Article 5 (right to liberty and security)

Case of Poghosyan (24 February 2009)

Khvicha Poghosyan complained that he had not received the medical care necessitated by his state of health while serving a prison term for robbery. The Court noted the existence of a structural problem regarding the provision of adequate

medical care to prisoners suffering from viral hepatitis C or other conditions. The Court viewed this as an aggravating factor with regard to the State's responsibility, and called on Georgia to take the necessary legislative and administrative measures without delay in order to prevent the spread of viral hepatitis C in prisons, introduce a screening system and guarantee the prompt and effective treatment of the disease.

Violation of Article 3 (prohibition of inhuman or degrading treatment)

Case of Klaus and Iouri Kiladzé (2 February 2010)

Klaus Kiladzé and his brother Iouri, who were the children of victims of political repression in the 1930s and who had themselves been recognised by a court as victims of such repression, applied to the Georgian courts seeking pecuniary and non-pecuniary compensation on the basis of the 1997 Act on compensation for victims of Soviet oppression. In the proceedings before the Court they complained that their claims had not been allowed because the "laws" to which the relevant sections of the 1997 Act referred had not yet been enacted. The Court held that the authorities had a duty to introduce comprehensive provisions on the award of compensation, ten years after entitlement to such compensation had been established.

Violation of Article 1 of Protocol No. 1 (protection of property)

Case of Enukidze and Girgvliani (26 April 2011)

The case concerned the kidnapping of the applicants' son, Sandro Girgvliani, in 2006 and his murder by a group of senior officials from the Ministry of the Interior, and the failure to conduct an effective investigation and adequately punish the persons responsible.

The Court considered that the investigation had lacked integrity and effectiveness. It found that the punishment imposed on the four perpetrators, namely their prison sentences and the manner of implementation thereof, had been inadequate, as the perpetrators had been granted a presidential pardon in 2008. The Court noted with particular concern that different branches of State power – the Ministry of the Interior, the public prosecutor's office, the domestic courts and the President of Georgia – had all acted in concert in preventing justice from being done in this gruesome homicide case. It emphasised that, in order to combat the sense of impunity, States should be particularly stringent when punishing their own law enforcement officers found guilty of homicide.

Violation of Article 2 (lack of an effective investigation into the death of the applicants' son)

Violation of Article 38 (duty to cooperate with the Court)

Case of Natsvlishvili and Togonidze (29 April 2014)

In this case Amiran Natsvlishvili, a former mayor and managing director of an automobile factory, complained of having no choice but to accept a plea bargain in the proceedings brought against him for embezzlement, in order to avoid intolerable conditions of detention.

For the first time, the Court explored fully the compatibility of a plea-bargaining agreement with the right to a fair trial. It noted that the practice of plea-bargaining agreements between the prosecution and the defence was a common feature of European criminal-justice systems and was not in itself problematic. In the present case it found that the applicant had accepted the plea bargain knowingly and of his own free will, and that the agreement had been accompanied by sufficient safeguards against possible abuse.

No violation of Article 6 § 1 (right to a fair trial)

No violation of Article 2 of Protocol No. 7 (right of appeal in criminal matters)

No violation of Article 6 § 2 (presumption of innocence)

No violation of Article 1 of Protocol No. 1 (protection of property)

No violation of Article 34 (right of individual petition)

Case of Georgia v. Russia (I) (3 July 2014)

In this inter-State case the Court held that in the autumn of 2006 the Russian authorities had conducted a coordinated policy of arresting, detaining and expelling Georgian nationals, amounting to an administrative practice in breach of the Convention.

Violation of Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens)

Violation of Article 5 (right to liberty and security)

Violation of Article 3 (prohibition of inhuman or degrading treatment)

Violations of Article 13 (right to an effective remedy)

Violation of Article 38 (duty to cooperate with the Court)

No violation of Article 8 (right to respect for private and family life), of Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens) or of Articles 1 and 2 of Protocol No. 1 (protection of property and right to education)

Case of Identoba and Others (12 May 2015)

In May 2012 the applicant NGO organised and took part in a peaceful demonstration in Tbilisi to mark the International Day against Homophobia. It had informed the authorities in advance and requested protection against possible violence by people with homophobic views. The demonstration was disrupted by violence from counter-demonstrators, who outnumbered the demonstrators,

without the police intervening. The Court considered that the authorities should have provided adequate protection to the demonstrators, instead of which they had actually arrested some of the applicants, the very victims whom they had been called to protect. Furthermore, despite being aware of the risks and tensions, the authorities had not taken sufficient action to contain homophobic and violent counter-demonstrators.

Violation of Article 3 (prohibition of inhuman or degrading treatment) taken together with Article 14 (prohibition of discrimination)

Violation of Article 11 (freedom of assembly and association) taken together with Article 14

Case of N.Ts. and Others (2 February 2016)

The case concerned proceedings in which the courts had ordered the return to their father, against their wishes, of three young boys who had been living with their mother's family since her death.

The Court found that the decision-making process had been flawed and considered that the Georgian courts had made an inadequate assessment of the children's best interests, ignoring their state of mind.

Violation of Article 8 (right to respect for family life)

Case of Merabishvili (28 November 2017)

Ivane Merabishvili is a former Prime Minister of Georgia and was one of the leaders of the United National Movement (UNM), the party in power prior to the parliamentary elections of October 2012. At the time of the Court's judgment he was serving a prison term for several offences including vote-buying and misappropriation of property. The applicant had alleged several violations of the Convention linked to his arrest and detention.

The Court held that the applicant's detention had initially been justified but had subsequently been used improperly as a means of exerting pressure on him.

No violation of Article 5 § 1 (right to liberty and security)

No violation of Article 5 § 3 (right of a detained person to be tried within a reasonable time or released pending trial) with regard to the initial stage, and violation from September 2013 onwards

Violation of Article 18 (limitation on use of restrictions on rights) taken together with Article 5 § 1

Case of Tchokhnelidze (28 June 2018)

The case concerned the conviction for bribery of Eldar Tchokhnelidze, a senior official in the regional administration. He complained that he had been entrapped by the police and that this fact had not been taken into consideration by

the Georgian courts, and alleged that the other witnesses in the case had not been examined. After noting, in particular, the absence of a legislative framework governing undercover operations, the Court held that the criminal proceedings had been unfair.

Violation of Article 6 § 1 (right to a fair trial)

Case of Sarishvili-Bolkvadze (19 July 2018)

In this case Gulnara Sarishvili-Bolkvadze alleged that the authorities had failed in their duty to protect her son's life against medical negligence and that they had not provided an adequate response to her son's death in terms of an award for non-pecuniary damage.

The Court noted that some of the doctors treating the applicant's son had not had the appropriate licences and that the hospital itself had been carrying out unlicensed medical activities in several fields. These aspects pointed to shortcomings in the implementation by Georgia of the regulatory framework designed to ensure patient safety.

Violations of Article 2 (right to life)

Case of Jishkariani (20 September 2018)

The case concerned the defamation proceedings brought by Mariam Jishkariani, a psychiatrist and director of an NGO involved in the rehabilitation of prisoners, against the then Minister

of Justice. The Minister had accused her on live television, and later in a newspaper, of accepting payment in return for false medical certificates allowing healthy prisoners to be placed in the prison hospital. The applicant alleged that the Georgian courts had not protected her right to respect for her reputation. The Court held that the Convention could not be interpreted as requiring individuals to tolerate being publicly accused of criminal acts by Government officials without such statements being supported by facts.

Violation of Article 8 (right to respect for private life)

Case of Vazagashvili and Shanava (18 July 2019)

The case concerned the murder of the son of Yuri Vazagashvili and Tsiala Shanava, who was shot dead in 2006 during a police operation, and the investigation into the matter. The Court noted shortcomings in the investigation, which had lacked thoroughness, objectivity and integrity, and a lack of diligence on the part of the authorities investigating the case. It also noted that the first applicant himself had borne the burden of the investigation by interviewing witnesses and collecting evidence concerning his son's murder, and that he had been killed by a police officer because of his activity in the case. The first applicant's efforts to expose police crimes and

corruption had ultimately led to his being killed, thereby highlighting the consequences of the authorities' lack of diligence in pursuing the murderers of the applicants' son.

Violations of Article 2 (right to life)

Case of Rustavi 2 Broadcasting Company Ltd and Others (18 July 2019)

The applicants are the private Georgian television channel Rustavi 2 Broadcasting Company Ltd, its owners, TV Company Sakartvelo Ltd, and the individuals Levan and Giorgi Karamanishvili. In the proceedings before the Court they complained, in particular, of a lack of independence and impartiality on the part of the judges examining the dispute concerning the ownership of Rustavi 2 in the first-instance, appellate and cassation courts. The Court observed, in particular, that the owners of Rustavi 2 had systematically lodged ill-founded recusal requests against different judges at all three levels of jurisdiction, and that these requests could be regarded as an attempt to paralyse the legal system. Meanwhile, the Director General of Rustavi 2 had launched gratuitous and virulent attacks in the media against the domestic judges involved in examining the case and against the Georgian judiciary in general.

No violation of Article 6 (right to a fair hearing)

Selected measures to execute judgments

General measures

Case of IZA Ltd and Makrakhidze (27 September 2005)

Non-enforcement of final judicial decisions against State institutions.

Reform of the enforcement system with the creation in 2008 of a National Bureau of Enforcement and a Government fund designed to discharge debts and ensure the payment of compensation for the losses sustained.

Case of Donadze (7 March 2006)

Failure by the domestic courts to conduct a thorough and proper examination of the applicant's arguments.

Strengthening of the adversarial principle and of the obligation to give reasons for judicial decisions, in 2006 and 2007.

Case of Gorelishvili (5 June 2007)

Conviction of a journalist for defamation following publication of an article accusing a political figure of corruption.

Amendment of the Civil Code and of the Press and Media Act in 2004: distinction made between facts and opinion and between defamation of public figures and private individuals; abolition of the requirement for journalists to prove the truthfulness of the information they impart.

Case of Patsuria (6 November 2007)

Continued pre-trial detention of the applicant based mainly on the gravity of the charges against him.

Amendment of the Criminal Code, tightening the rules on review by the courts and the reasoning of orders for pre-trial detention, which may not exceed nine months.

Case of Georgian Labour Party (8 July 2008)

Disenfranchisement of voters in certain constituencies.

Electoral-law reforms in 2014 and 2015, laying down criteria governing the right of the Central Electoral Commission to invalidate elections and its obligations in that regard.

Case of Ghvtsadze (3 March 2009)

Structural inadequacy of medical care in prisons.

Improvements to prison health-care between 2011 and 2013: better infrastructure, better-qualified medical staff, regular medical check-ups and appropriate treatment for prisoners.

Case of Jgarkava (24 February 2009)

Unfair judgment based on grounds that were neither clear nor sufficient, in a criminal case in which the proceedings were discontinued and the applicant's claim for compensation in respect of pecuniary, physical and non-pecuniary damage was dismissed.

Since 2010 prisoners are entitled to State compensation for unlawful or unjustified detention, irrespective of whether they were convicted or acquitted and irrespective of any liability on the part of the prosecuting authorities in relation to their conviction.

Case of Klaus and Iouri Kiladzé (2 February 2010)

Refusal to award compensation to victims of Soviet oppression.

Improved right of compensation for victims of Soviet-era repression following changes to the legislation in 2011 and 2014.

Individual measures

Case of Assanidze (8 April 2004)

The case concerned the applicant's arbitrary detention.

The applicant was released the day after the Court's judgment.

Case of Shamayev and Others (12 April 2005)

The decision to extradite one of the applicants to Russia, where he ran the risk of ill-treatment, was set aside by the Georgian Supreme Court following the Court's judgment. (This case concerned Georgia and Russia.)



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