



PRISONER'S RIGHT TO HEALTHCARE:

Analysis of the Trial against
Mikheil Saakashvili and Accompanying Events

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Human Rights Center



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GENERAL OVERVIEW

In 2021, the return to Georgia and the subsequent detention of the third President of Georgia came into the limelight. On October 1, 2021, since being brought to penitentiary facility N12, defendant/convicted Mikheil Saakashvili announced the hunger strike (not to receive food) - the form of protest envisaged by the law - demanding a fair and speedy trial. On November 8, 2021, after holding a long hunger strike, the Ministry of Justice / Special Penitentiary Service transferred Mikheil Saakashvili to detainees medical facility N18¹.

According to order N157 by the Public Defender of Georgia from November 16, 2021, a group of specialists / experts has been created for assessing the adequacy and promptness of medical services provided to accused/convict Mikheil Saakashvili². After visiting medical facility N18 on November 17, 2021, due to the critical condition of the patient, the group of experts set up by the Public Defender issued a recommendation the patient's treatment to be immediately carried on in a well operating and experienced multiprofile hospital namely in the intensive care department - the conditions for which could not be provided by facility N18. The same recommendation was reiterated as a result of the visit from 18, 2021, when the health condition of Mikheil Saakashvili became serious (syncope caused by Wernicke's encephalopathy³)⁴.

Following the opinion by the group of experts, and based on the ECtHR interim decision, with a purpose to manage the serious health condition and post-hunger-strike condition, on November 19, 2021, the Ministry of Justice/Penitentiary Service finally transferred Mikheil Saakashvili from facility N18 to Gori Abramishvili Military Hospital under the Ministry of Defense⁵.

In parallel to Mikheil Saakashvili's hunger strike, degrading treatment against the convict was observed on the part of the Ministry of Justice of Georgia / Special Penitentiary Service⁶. On November 12, 2021, the appeal of Georgian human rights organizations to the Committee for the Prevention of Torture (CPT) of the Council of Europe was disseminated stating as follows: *"Mikheil Saakashvili was subjected to various forms of degrading treatment, psychological pressure while in prison and, during his transfer to Prison No. 18, he was subjected to psychological torture as well as physical torture. The attempted involuntary medical intervention made the patient refuse the medical service thus posing risk to his life and giving rise to the necessity for immediate action, i.e., transferring the patient to a civilian clinic. At the same time, due to the intensity and duration of the pressure, which is reflected in the duration of the hunger strike and the refusal of medical assistance, which amounts to political revenge, discrimination against Mikheil Saakashvili, and misinforming the public, we believe that violations and the methods of violence used should be considered as torture of the detained politician."*⁷

Mikheil Saakashvili stated himself about the fact of ill-treatment / physical violence exerted on him by penitentiary officers. Further, in parallel to this, he was denied the possibility to exercise the procedural

¹ Statement of the Special Penitentiary Service: For the prevention reasons of deteriorating health condition and due to the increased risks, convict Mikheil Saakashvili is taken from penitentiary facility N12 to detainees medical facility N18. <https://bit.ly/3RmOmxA>, 8.11.2021.

² Opinion N 6 on the results of monitoring the medical condition of Mikheil Saakashvili by the group of specialists / experts created by the Public Defender <https://bit.ly/3TKvnPf>, 17.11.2021.

³ **Note:** *Wernicke's encephalopathy (F51.2) is an acute neuropsychiatric syndrome associated with significant morbidity and mortality and characterized with mental confusion, apathy, delirium, vision problems, nystagmus, lack of muscle coordination and ataxia.* <https://bit.ly/3CX03qw>

⁴ The group of practitioners/experts revisited facility N18 as the condition of Mikheil Saakashvili severely deteriorated. <https://bit.ly/3KNOaa6>, 19.11.2021.

⁵Formulanews.ge, Mikheil Saakashvili is transferred to Gori Military Hospital, <https://bit.ly/3ffzTic>

⁶Regifo.ge, Mikheil Saakashvili's transfer to Gldani prison hospital, <https://bit.ly/3BPIJTj>.

⁷NGOs' Address to the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 12.11.2021. <https://bit.ly/3Crukpk>

rights (right to defence), namely, on November 10, 15, and 16, he was denied the right to appear before the court for the various criminal proceedings. In all three cases, the Penitentiary Service refused to bring Mikheil Saakashvili to the court. The Penitentiary Service named the discontinuation to receive medical treatment by Saakashvili and the investigation ongoing in the State Security Service as the reasons for the refusal to bring the defendant to the court which was accepted by the court without any critical judgment and justification.

The mentioned both grounds were unjustified: the refusal to transfer the prisoner due to the hunger strike contradicts the protocols established by the law; further, the protocol does not envisage at all the refusal to transfer the prisoner because of the security reasons. A reference to the case investigation ongoing in the State Security Service, taking into account 10-year limitation period for the investigation, creates the possibility to illegally, arbitrarily, and permanently restrict to the accused the right to defense which in turn vastly violates the right to a fair trial⁸.

The group of experts visited Mikheil Saakashvili several times. Among them, the visits were made on November 16-18, 2021, to medical facility N18 of the Special Penitentiary Service, on November 23 and December 12, 2021, to the Giorgi Abramishvili Military Hospital under the Ministry of Defense, and on January 11 and April 22, 2022, to penitentiary facility N12. Consequently, the Public Defender's Practitioners / Expert Group has developed six opinions, namely from: 17.11.2021, 18.11.2021, 25.11.2021, 14.12.2021, 19.01.2022 and - 27.04.2021.

According to the report released on April 27, 2022, by the multi-profile group of experts created by the Public Defender of Georgia to monitor the medical services rendered to the former President Mikheil Saakashvili under the custody, the health condition of the Ex-President has "significantly deteriorated" compared to the visit from January 11, 2022. According to the experts, Mikheil Saakashvili is in a negative catabolic state meaning that his body consumes the proteins released through the breakdown of its own organs leading to weight loss at the expense of muscle mass. Further, there are persistent symptoms of post-traumatic stress disorder – depression and anorexia; Reduction of food intake; Selective rejection of protein products due to intolerance and significant reduction in quality of life and efficiency of functionalities. Considering the health condition of Mikheil Saakashvili, the group of experts emphasizes the need for "timely and complex neuro-psychological and physical rehabilitation." Otherwise, the experts talk about the significant loss of muscle and organic weight, the elevated risk of infections and the risk of disruption of the functioning of internal organ systems⁹.

In April 2022, during the court hearing in Tbilisi City Court of the case of illegal border crossing by Mikheil Saakashvili, Saakashvili requested to be removed from the courtroom and asked for medical help. After having returned to the courtroom, when speaking about his health, Saakashvili mentioned that his "alleged treatment was a complete bluff" [the wording is maintained] at the Gori Military Hospital, because after the 50-day hunger strike, his so-called refeeding program "completely failed"¹⁰. At the same hearing, Judge Nino Chakhnashvili of Tbilisi City Court partially granted the motion of the defense counsel of Mikheil Saakashvili and instructed the director of the Special Penitentiary Service to "provide proper and medical care" to the detained Saakashvili. However, the judge rejected the motion in the part to instruct the director of the Special Penitentiary Service to allow the members of Concilium of the Empathy center to see Saakashvili¹¹. In accordance with Article 191¹(2) of the Criminal Procedure Code of Georgia, where the life or health of a person in a penitentiary facility is endangered, and / or

⁸ Office of Public Defender of Georgia, 2021 Report of the Criminal Justice Department, 2022 P. 54.

⁹ Opinion N 6 on the results of monitoring the medical condition of Mikheil Saakashvili by the group of specialists / experts created by the Public Defender <https://bit.ly/3x73Cpo>, 27.04.2022

¹⁰ Monitoring reports prepared by HRC on the judicial proceedings of Mikheil Saakashvili's criminal cases; further see: Mtavari.tv, Mikheil Saakashvili felt sick in the court room: <https://bit.ly/3aolbK9>, 20.04.2022.

¹¹ Monitoring reports prepared by HRC on judicial proceedings of Mikheil Saakashvili's criminal cases.

where the judge has reasonable doubts that the accused / convict has been subjected to torture, humiliation or / and inhuman treatment, the judge is empowered to order by ruling the Director-General of the Special Penitentiary Service to take special measures necessary for the safety of the inmate¹².

On May 10, 2022, the Ministry of Justice of Georgia offered Mikheil Saakashvili to be transferred to the Vivamedi Clinic¹³. On the same day, the defense counsels of the Ex-President stated that Saakashvili agreed to this but with a condition that his family members, personal doctors, and alternative experts from the Empathy Center would be allowed to see him on a regular basis. Further, the defense counsel and MPs must be allowed to see Saakashvili during the working hours. Among the conditions was that Empathy and, in case the inmate gives a consent, the members of the Council created by the Public Defender shall take part in all examinations, diagnostics prescribing and determining the next stages of treatment or recovery for Mikheil Saakashvili on a parity basis¹⁴.

On May 12, 2022, Mikheil Saakashvili was transferred to Clinic Vivamedi from Rustavi penitentiary facility N12¹⁵, where he is under monitoring by the physicians undergoing long-term treatment. At the time being, American and Swiss doctors are studying his health condition¹⁶. Since, according to the experts, the right to health care is not properly exercised in Georgia vis-à-vis the third President and the State fails deliberately or not to fulfil the duties imposed on it in this regard, and in order to avoid the risks the immediate transfer of the third President for medical purposes abroad would be of real significance¹⁷.

Noteworthy, Minister of Justice Rati Bregadze stated when referring to involvement of foreign experts in the treatment process of Mikheil Saakashvili that "there are many highly qualified physicians in Georgia too."¹⁸ As what the actions by the defense in relation to the involvement of experts concerns, on February 18, 2022, Mariam Jishkariani, the director of Empathy Center formally addressed Director of the Medical and Pharmaceutical Activities Regulation Agency Zaal Kapanadze to grant 6- month temporary license to the invited British psychiatrist, professor Cornelius Catona to be able to participate in the expert examination to be conducted on Ex-President under custody. The Agency granted the request on June 24, 2022. In connection to the opinion of foreign experts, which has not yet been published, the Minister of Justice stated that "whatever the conclusion is, it is the court that shall make a decision on the postponement of the sentence." Furthermore, according to him, they are going to apply to the Samkharauli Forensic Bureau to request a complex expert examination for Mikheil Saakashvili¹⁹.

On October 3, 2022, forensic expert James Kobe arrived in Georgia to study Mikheil Saakashvili's health condition. The Ministry of Labor, Health and Social Affairs of Georgia stated that initially documents confirming the occupation of James Kobe were not fully submitted, and the professional Development Council rejected his request to be involved in the case. However, lawyers and Empathy center were referring to the contrary that the delay was purposeful²⁰. Later, Empathy center submitted additional

¹²Paragraph 2 of Article 191 of the Criminal Procedure Code of Georgia.

¹³ Interpressnews.ge, the Ministry of Justice offers Mikheil Saakashvili to move to Clinic Vivamedi <https://bit.ly/3zd70lm>, 10.05.2022.

¹⁴ Radiotavisupleba.ge, Mikheil Saakashvili was transferred to the medical center Vivamedi, <https://bit.ly/3zggCFg>, 12.05.2022.

¹⁵ Formulanews.ge, Mikheil Saakashvili was moved to Clinic Vivamedi, <https://bit.ly/3m8gl0z>, 12.05.2022.

¹⁶ Interpressnews.ge, an American expert saw Mikheil Saakashvili in clinic Vivamedi, 29.08.2022. <https://bit.ly/3BejObU>

¹⁷ On.ge, doctors from center Empathy center visited Saakashvili in clinic Vivamedi, <https://bit.ly/3C2HRJV> 01.06.2022.

¹⁸ Mtavari.tv, "We have got a lot of highly qualified doctors", Bregadze speaks about Mikheil Saakashvili's transfer abroad, <https://bit.ly/3D1Xa7Z>, 10.05.2022.

¹⁹ Tvpirveli.ge, statement of the Minister of Justice, HTTPs, 29.08.2022.

²⁰ Radiotavisupleba.ge, "The situation is getting worse daily" - two theoretical ways of temporarily releasing Saakashvili, <https://bit.ly/3CXbcY9>, 07.10.2022.

documents about James Kobe's occupation and a 5-month temporary license was granted to Professor Kobe and 6-month license was granted to another American expert who would be remotely participating in the examination²¹.

On October 8, 2022, forensic expert examined Mikheil Saakashvili. According to the expert, many tests are required which would bring results only in case they are conducted according to the requirements. Kobe says that Saakashvili needs a high-level medical service and there is no reason for which he should feel as bad as it is now. Further, the expert pointed out that in the first place it should be specified which tests are needed and later where the tests should be done²².

HRC actively monitors the judicial hearings of the criminal cases against the third President of Georgia in Tbilisi City Court since the day of detention of Mikheil Saakashvili.

INTERNATIONAL STANDARDS FOR THE PROTECTION OF HEALTH CARE IN THE PENITENTIARY SYSTEM AND NATIONAL REGULATIONS

The rights to access health care for persons deprived of their liberty are regulated in the international standards²³, as well as under the national law. Regardless of a social and legal status, a person enjoys the right to health" which is a fundamental human right creating a significant momentum for the development of adequate health care standards²⁴. The right deals not only with the provision of medical services, but also includes Providing adequate sanitary and hygienic conditions, safe water, safe and adequate food. The right to health includes certain protection of the individual: From medical treatment without consent, participation in medical experiments and studies, from torture and other cruel, inhuman, or degrading treatment or punishment.

In terms of the right to health, a person shall enjoy the following rights: The right to disease prevention, treatment, and control; Equal and timely access to basic medicines and basic health care services; The right to be informed about personal health and health issues²⁵.

Taking into account with practice of the European Convention on Human Rights and that of the European Court of Human Rights, as well as following the standards developed in the work undertaken by the European Committee for the Prevention of Torture (CPT), the Council of Europe approved the European version of the United Nations Standard Minimum Rules of Treatment of Prisoners - the new edition of European Prison Rules²⁶.

The third part of EPR defines the issues of providing and organizing health care in the penitentiary system (paragraphs 39-40, 46-48) and the duties of medical staff (paragraphs 41-44).

EPR underline the obligation of the prison administration to ensure the health of all prisoners (paragraph 39) and access to prison medical care. Medical services in prison shall be organized in close

²¹ Interpressnews.ge, American physician James Kobe entered clinic Vivamedi to examine Mikheil Saakashvili, <https://bit.ly/3fZzCHh>, 08.10.2022.

²² On.ge, James Kobe was allowed to see Mikheil Saakashvili: what the doctor said, <https://bit.ly/3MqxFzF>, 08.10.2022.

²³ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) Rules 65 and 66. <https://bit.ly/3awhphD>

²⁴ UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 31, The Right to Health, June 2008, No. 31, a. <https://bit.ly/3PT4iaN>

²⁵ UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175. <https://bit.ly/3awhphD>

²⁶ Council of Europe: Committee of Ministers, Recommendation Rec (2006)2 of the Committee of Ministers to Member States on the European Prison Rules, 11 January 2006, Rec (2006). <https://bit.ly/3x6h6BL>

relation with the general health administration of the community or nation. Health policy in prisons shall be integrated into, and compatible with, national health policy. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation (paragraph 40). Every prison shall have the services of at least one qualified general medical practitioner and shall have personnel suitably trained in health care (paragraph 41). The medical services shall be available to every prisoner. Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals, when such treatment is not available in prison (paragraph 46).

Although numerous international human rights treaties and standards define the right to health, the national legislative and normative documents are crucial for the implementation of this right.

The regulations of the health care in the penitentiary system in Georgia is based on international human rights norms and standards. The rights of persons placed in the penitentiary system are defined in the following national health documents: The Law of Georgia on Health Care²⁷, the Law of Georgian on Patient Rights²⁸, the Law of Georgia on Medical Practice²⁹, further, the Imprisonment Code of Georgia³⁰ and other normative acts.

The case law of the European Court of Human Rights considers detainees to be in a vulnerable position and obliges governments to protect the health and well-being of persons deprived of their liberty³¹. The protection of the lives of persons in prison also includes the obligation of the State to provide the necessary medical care for the protection of the lives of this category of persons. In addition, the obligation to treat persons deprived of their liberty rests with the State³². A sharp deterioration in a person's health in places of detention necessarily and by default creates serious grounds for doubts - whether it was due to inadequate medical treatment in the facility³³.

The positive obligations under Article 2 of the Convention call for the development of state regulations. These regulations oblige national and prison hospitals to take appropriate measures to protect the lives of patients in accordance with the above requirements³⁴.

IMPROPER MEDICAL SERVICES AND ALLEGED ILL-TREATMENT

On November 8, 2021, after having been moved to Gldani facility N18, the prisoner stated that his incarceration in facility N18 took place by use of force against him³⁵. At the meeting, Mikheil Saakashvili told the Public Defender that he had no information about being transferred to facility N18 as he was told in facility N12 that following the decision of the Concilium he was to be taken to a multifunctional, civil clinic on which he expressed a consent. The prisoner further stated that despite his refusal he was incarcerated into facility N18. In connection with this fact, the Public Defender's Office immediately informed the State Inspector Service who launched an investigation on the possible inhuman treatment against Mikheil Saakashvili.

²⁷ Georgian Law on Health Care. December 10, 1997.

²⁸ Georgian Law on Patient Rights. May 05, 2000.

²⁹ Law of Georgia on Medical Practice. June 08, 2001.

³⁰ Law of Georgia the Imprisonment Code, 2010. March 09, 2010.

³¹ Naumenko v. Ukraine, no. 42023/98, § 112, 10 February 2004; and Dzieciak v. Poland, no. 77766/01, § 91, 9 December 2008.

³² Taïs v. France, no. 39922/03, § 98, 1 June 2006; and Huylu v. Turkey, no. 52955/99, § 58, 16 November 2006).

³³ Farbtuhs v. Latvia, no. 4672/02, § 57, 2 December 2004; and Khudobin v. Russia, no. 59696/00, § 84, ECHR 2006-XII.

³⁴ Tarariyeva v. Russia, no. 4353/03, § 74, 85 and 87, ECHR 2006-XV.

³⁵ Tvpireveli.ge, footage of using force when transferring Mikheil Saakashvili to Gldani prison, <https://bit.ly/3RHDKJJ>, 11.11.2021.

Mikheil Saakashvili was placed for medicinal purposes in the institution where the right to use adequate medical services was not ensured. When inspecting facility N18, the Public Defender's Office found that situation and settings in the institution in terms of medical care did not comply with the opinions and recommendations issued by the multifunctional group of physicians on October 28, and November 3, 2021, about the health condition of Saakashvili. Under the legislation, medical treatment rendered in prison facilities should be of the level that the State provides for the general population. Yet, the right has been blatantly violated against Saakashvili.

Mikheil Saakashvili could not receive appropriate medical care, despite a number of Concilium opinions and call of doctors for medical examination and treatment (including brain MRI examination) for managing the health of the patient. Furthermore, it is noteworthy that Empathy center issued a special opinion regarding the risks of the food intake resumption period and respective recommendations which were submitted to the ministries of Justice and Health on 12/11/2021, however, the patient was not still taken to the relevant clinic, which caused continuation of his hunger strike in protest. Such treatment violates the right of the convict / accused to be provided with the medical care necessary for protecting the person's life and health as prescribed by the practice established by the national law and ECtHR.

According to the case-law of the ECtHR, a person in the prison facility should be timely provided with the medical care, reasonably possible medical examinations, and treatment as necessary for his/her life and health. Medical treatment rendered in prison facilities should be relevant to the level that the state provides for the general population. This is not to say that all imprisoned persons must be placed in the best medical facilities outside the prison. However, in case of necessity, unjustified refusal to take the patient to a civil hospital for the proper treatment, could create the risks for violating Article 3 of the European Convention of Human Rights (ECHR). The fact of deterioration of the health condition of imprisoned persons, if taken apart, certainly does not serve for the reasons to assess the treatment provided there as inadequate, however, the serious deterioration of the health condition of the individual in prison facilities could create doubts with regard the adequacy of the treatment rendered there.

Particular attention should be paid to the setting Mikheil Saakashvili was placed vastly violating the human right to dignity. In particular, he was exposed to pressures and became a victim of a defamation campaign on the part of representatives of the authorities. Video recording was planned and released publicly as he takes some food supplements in the medical room and also as he packs personal items in his cell. He was transferred to prison medical facility N18 where he was exposed to physical and psychological violence, insults, orchestrated attacks with creating noise and shouting vulgar words against him on the part of other inmates and the prison administration which was also continued during his stay in facility N18. According to the prisoner, he was given a neuroleptic medication with an antipsychotic agent as a sleep pill the work mechanism of which was unknown to him. Saakashvili was taking the above medication since 02/10/2021, also during the whole period of the hunger strike and afterwards in the Gori military hospital until 27/11/2021. The side effects of the drug were unknown to him.

Moreover, the prisoner in facility N18 was deprived the possibility for natural sleep because as soon as he was turning off the TV or opening the window the same moment noise was created and vulgar words were shouted in his address from other inmates. After the video footage was taken and released in deceit, Saakashvili stopped to take food supplements, tightened the hunger strike causing the deterioration of his health condition.

We have to emphasize the fact that the content of the information provided to the public by the Ministry of Justice of Georgia and the Special Penitentiary Service (that Mikheil Saakashvili was taking

food not serving the medical purposes), created wrong assumptions in some of the public that Saakashvili imitated the hunger strike, whereas the opposite is proved by the medical documents: by that time Saakashvili had not abandoned the hunger strike and following the recommendations issued by the members of the Concilium he was taking some juice and purees in the medical room in order to prevent aggravation of the health condition. Consequently, releasing the information to the public regarding the food supplements taken by the prisoner without providing the details that this was according to the recommendations issued by the Concilium could not be regarded as a lawful act. Moreover, taking into consideration the foreseeable outcome caused by the dissemination of inaccurate information - the release of the misinterpretation of the given situation by the Minister - led to radical measures from the prisoner's side and the prisoner stopped taking supplements and medicines assigned by medical personnel, which created the threat of deterioration of his health condition.

It should be noted that such actions on the part of the State must be assessed as detrimental not only for a particular prisoner but for all other prisoners as it significantly undermines the prisoners' trust in medical personnel and pushes prisoners not to follow medical prescriptions, which would further aggravate their health condition.

At the same time, the prisoner stated that when he was taken to facility N18, he was subjected to extremely severe harassment in the form of deception, psychological and physical violence, and attempted forced medical manipulation, followed by a harsher hunger strike in protest. Saakashvili periodically refused to take medicines, minerals, and medical services aggravating his condition. On November 18, 2021, this was followed by an episode of syncope and losing consciousness creating a life-threatening condition for him. He suffered no less from the lack of security and the hostile environment toward him³⁶.

It should be noted that according to the decision of the State Inspector, administrative measures were imposed on the Ministry of Justice of Georgia and the Special Penitentiary Service for several episodes of the administrative offense under Article 44 of the Law of Georgia on Personal Data Protection of Georgia in relation with the issue of studying the legality of obtaining personal data of the third President of Georgia Mikheil Saakashvili and releasing them to the public³⁷.

The State Inspector Service found that the Ministry of Justice of Georgia have released the personal data of Mikheil Saakashvili - namely the information regarding the food products bought in the store of the penitentiary facility and consumed by him, as well as about his diet, further, the video footage depicting the facts of him taking food and some of the video footage of the food supplements, further, the video footage showing Mikheil Saakashvili leaving penitentiary facility N12 and being incarcerated into penitentiary facility N18, further, the video footage showing the events taking place in the reanimobile used to transfer Mikheil Saakashvili from penitentiary facility N12 to penitentiary facility N18 - with making this publicly available in violation of Article 4(a) of the Law of Georgia on Personal Data Protection (the data must be processed in a fair and legal manner without prejudicing the dignity of the subject), Article 4(b) (the data may be processed only for particular legal purposes), and Article 4(d) (the data must be authentic and accurate and must be updated as needed).

Significantly, on December 30, 2021, the Parliament of Georgia passed the draft law on the cancellation of the State Inspector Service with a third hearing based on which the Service seized operations on March 1, 2022. The Parliament of Georgia has created two new agencies instead of the State Inspector Service.

³⁶ See Aggression of Gldani prison inmates against Mikheil Saakashvili [video], Mtavari Arkhi. <https://bit.ly/3GFiy5x>, 08.11.2021.

³⁷ The decision of the State Inspector on the lawfulness of obtaining personal data of the third President of Georgia Mikheil Saakashvili and making them publicly available, <https://bit.ly/3eqn7DT>, 07.12.2021.

The bill was prepared in a non-transparent manner, in conspiracy without consulting the stakeholders. Drafting and initiating process was unknown to both the State Inspector Service, as well as international organizations and other practitioners of the field. The argument for abolishing the State Inspector Service was that the accumulation of two functions in one service - namely the functions of personal data protection and investigation - was creating a conflict of interest and put data protection under risks. Another argument for the reform was that by this decision the recommendation of the NGO sector from 2018 to create an independent investigative agency was fulfilled.

It is interesting that the Parliament of Georgia did not see the problem of incompatibility in 2018. Consequently, despite many requests from NGOs, none of the recommendations were considered as reasonable by the Parliament. Whereas the recommendations proposed by NGOs only became relevant when decisions were taken on the background of acute political processes and especially with regard Mikheil Saakashvili, when the State Inspector Service, as an independent state institution, carried out activities only in accordance with the law and international obligations³⁸.

When entering the penitentiary facility, the Public Defender and her representatives also marked the appearing sounds of insults. Such a situation continued during the whole period of stay of the prisoner and to the same verbal aggression were subjected the lawyers of Mikheil Saakashvili, the Public Defender and other visitors³⁹. The Public Defender repeatedly noted in her statements that the transfer of the prisoner from prison facility N12 to facility N18 would cause disorganization of facilities N8 and N18 due to the significant risks of verbal aggression, noise, and insults. Further, the Office of the Public Defender examined the documents on receiving prisoners to facility N18, from which the Office concluded that since January 18, 2021, to the date of transfer of the Ex-President to facility N18, no other inmates were moved to the same facility from facility N12 except Mikheil Saakashvili⁴⁰.

The right to dignity is to serve strengthening the order in which the main value is the individual, unique, free, and equal to other persons. The protection of human dignity is what all individuals are unconditionally entitled from the State. Dignity involves social demand for the State to respect a human being. The conflict between the good protected by the right to dignity and other valued interests to be protected by the Constitution must be unconditionally resolved in favor of human dignity⁴¹. The video footage showing the episode of incarceration of Mikheil Saakashvili against his will and by use of force disseminated by the Ministry of Justice was not fully and continuously reflecting the relevant episode, while some of the episodes in the compilation were showing the prisoner half-naked in a humiliating position. According to the Minister of Justice, the dissemination of the video footage carried a purpose to repudiate the allegations by the defense counsel that Saakashvili was allegedly ill-treated. All the same, it would be significant to give some evaluations to the fact that by referring to abstract legitimate purpose and by disseminating the footage of prisoner Mikheil Saakashvili in a disproportional and abusive manner, the right of Saakashvili to dignity and privacy was violated. To react to the high public interest, it could be possible to opt for other means that would be less restrictive of the rights.

Mikheil Saakashvili has developed following diseases during the prolonged hunger strike and due to the inadequate health care provision: Wernicke's encephalopathy, posttraumatic stress disorder, unspecified protein-energy insufficiency etc. The diagnosis is mentioned in the opinion and recommendations N 03-12/21 on mental and physical health condition issued by Empathy Center.

The inadequate medical services provided to Saakashvili contradict the standards established by the

³⁸ Statement by NGOs regarding possible abolition of the State Inspector Service, <https://bit.ly/3y6cs87>, 26.12.2021.

³⁹see: more information at: <https://bit.ly/3IY9WVA>, 10.11.2021.

⁴⁰ The Public Defender visited Mikheil Saakashvili at prison medical facility N18. <https://bit.ly/3wYDD4s>, 09.11.2021.

⁴¹Judgment # 2 / 2-389 by the Constitutional Court of Georgia from October 26, 2007, on the case *Maya Natadze and Others versus the Parliament of Georgia and the President of Georgia* <https://bit.ly/3AVgRvz>.

local and international law, as well as the decision rendered on the Saakashvili case about the "interim measures"⁴² underlining that Saakashvili must be provided with proper medical services during the post-hunger-strike period.

Mikheil Saakashvili's right as a patient has been violated. In particular: Following the advice by the head of medical department of penitentiary facility N12, Saakashvili took some food supplements in the room of the medical unit of the facility where he was recorded through cameras the footage of which was later released by the Ministry of Justice as a fact of food consumption. Furthermore, in order to be tested on glucose tolerance and following the recommendation by the endocrinologist, Saakashvili took some lemonade in little quantity that was later, on October 30, released by ruling party leader Irakli Kobakhidze in misinformation as a fact proving the simulative and imitative character of Saakashvili's hunger strike⁴³. Under Article 27 of the Law of Georgia on Patient's Rights, the provider of medical services shall be obliged to protect the confidentiality of the information available to him/her about the patient. According to Article 21 of the same Law, the patient has the right to decide whether or not someone must receive information about his/her health condition. This right was also violated against Mikheil Saakashvili.

After January 2022, the prison administration does not allow Nikoloz Kipshidze, the personal doctor of Mikheil Saakashvili to see him. Especially against the background that Mikheil Saakashvili was treated at the Gori military hospital due to the severe deterioration of health conditions, while currently he is placed in clinic Vivamedi and still needs intensive rehabilitation, it would be significant for Saakashvili to have the doctors chosen by him to see him and provide medical services. Such treatment exercised against Saakashvili violates the requirements of the Law of Georgia on Patient's Rights granting the patient the right to choose and change the provider of medical service at any time⁴⁴. It is further noteworthy that Empathy center was also denied the possibility to consult Mikheil Saakashvili within the from 30/12/2021 to 17/01/2022, which is indicated in the prescription from 17.01.2022.

REGARDING THE ACTUALITY OF THE NEED OF MIKHEIL SAKASHVILI TO BE TREATED ABROAD

Mikheil Saakashvili needs complex neuro-psychological and physical rehabilitation. According to the Concilium experts, in order to undergo proper rehabilitation, it is necessary to transfer Saakashvili to multi-profile hospital with appropriate medical equipments. None of the potential institutions existing in Georgia meets the above requirements which is proved by the opinions of the group of practitioners/experts created by the Public Defender from 18.11.2021; 25.11.2021; 14.12.2021, further by the opinions and recommendations N02-11/2021 and N03-12/21 of the experts of Empathy Center, and also by prescription 17.01.2022 and assessments by the Public Defender about the situation in Gldani facility N18.

It is known to the public that medical services were provided to Saakashvili in Rustavi penitentiary facility, Gldani facility N18 and Gori military hospital, but the health condition of the prisoner gets worser day by day. Further, the experience showed that the government is not motivated to provide treatment for Mikheil Saakashvili, and every action taken by the authorities, including the creation of a multi-functional group of doctors, was a mere formality. The authorities are trying not to agree to the dissenting opinion regarding the health condition of Mikheil Saakashvili and not to give the defense and family of the prisoner the possibility to ensure the provision of adequate medical services to Mikheil Saakashvili.

⁴² Radiotavisupleba.ge, about the interim measures ruled by the European Court of Human Rights: <https://bit.ly/3RBj2ek>, 10.11.2021.

⁴³ Rustavi2.ge; This is an imitative chronicles of the hunger strike: the man is not on a hunger strike and how could things get worse?!, Irakli Kobakhidze about Mikheil Saakashvili, <https://bit.ly/3KR1AjZ>, October 27, 2021.

⁴⁴ Article 8 of the Law of Georgia on Patients' Rights

Further to the above, the visit of the Concilium, created by the Ombudswoman identified that the patient's condition was significantly deteriorated. The Concilium issued a recommendation to have Saakashvili undergo a complex neuro-psychological and physical rehabilitation. Otherwise, there is a great danger that the protein hunger of the organism will inevitably lead to a significant loss of musculoskeletal and organic weight, to an elevated risk of infections and disruption of the internal organs systems.

The last months have shown that the State fails deliberately or not to fulfill the recommendations issued by the Public Defender's group of experts in December-January on facilitating the psychotherapy and physical rehabilitation. The last opinion by the Concilium reads that the drug treatment that was assigned to the patient during this period failed to bring some results and the condition aggravated. Consequently, only the drug treatment, in the same conditions, without complying to the mentioned recommendations, would be ineffective and would not bring positive results and would cause the serious aggravation of the patient's condition in this regard which may cause irreversible consequences.

Since according to the experts, the right to health care is not properly exercised in Georgia vis-à-vis Mikheil Saakashvili and the State fails deliberately or not to fulfil the duties imposed on it in this regard, in order to avoid the risks, the immediate transfer of Mikheil Saakashvili for medical purposes abroad would be of real significance.

There is also a practice of HRC when the sentence was postponed, and the released person was treated abroad. *In particular: T.R. spent 12 years in prison. During these years, he has been subjected to torture and inhumane treatment developing a variety of severe diseases. Notwithstanding many attempts by HRC, the Ministry for Penitentiary refused to release the victim of torture even though his diagnosis was among the list of serious and incurable diseases approved by the order of the Minister of Labor, Health and Social Affairs of Georgia making the grounds to be exempt from serving the sentence. Finally, in addition to the complication of other serious diseases, eyesight of T.R. has been sharply impaired, and he was exposed to the risk to become completely blind in both eyes. He required urgent surgery, which, according to a certificate issued by his attending physician, could not be possibly carried out within the penitentiary system. Therefore, his sentence was adjourned, and he was given a possibility to continue his treatment in France according to the needs of his health condition.*

LEGAL REGULATIONS FOR DEFERRING A SENTENCE, RELEASE OF A CONVICTED PERSON FROM FURTHER SERVING THE SENTENCE DUE TO ILLNESS OR OLD AGE

On April 27, 2022, the Public Defender of Georgia talked about the recommendation to create a group of doctors who would discuss where and in what manner would be best and needed to treat Mikheil Saakashvili with the subsequent decisions to be taken accordingly. Furthermore, according to Nino Lomjaria, where the state fails to fulfill the recommendations issued by the group, this would amount to inhuman treatment and violation of Article 3 of the Convention⁴⁵. According to the Public Defender, it is possible to adjourn the sentence of Mikheil Saakashvili due to health conditions, further, it is possible to surrender Saakashvili to another country to serve the sentence there, or the penitentiary facility ensure his treatment and the State offer him the treatment in a respective setting⁴⁶.

Articles 283 and 284 of the Criminal Procedure Code of Georgia regulate the postponement of the remaining sentence due to illness or old age, as well as the issues arising during the enforcement of a judgment rendered against a convicted person subject to extradition to Georgia. All three of these situations include the issue of postponing the sentence to this or that extent. Article 283 of the Criminal

⁴⁵ Palitraneews.ge, statement of the Public Defender, <https://bit.ly/3RjDvVp>, 27.04.2022.

⁴⁶ Interpressnews.ge, statement of the Public Defender, <https://bit.ly/3Bjifj2>, 27.04.2022.

Procedure Code directly refers to the adjournment of the sentence⁴⁷, but unlike the Criminal Code, provides that not only for pregnant convicted persons the sentence should be deferred with a period of a year, but also for all convicted persons who according to the opinion of the forensic expert examination are ill with a serious illness that prevents them from serving the sentence.

The court rendering the decision to adjourn the sentence due to serious illness shall under the same judgment (ruling) determine the periodicity of the conduct of an expert examination (at least once in a year) at the expense of the convicted person in order to establish the convicted person's health status, and the periodicity of the submission of an expert opinion by the convicted person. If the convicted person fails to submit the report of examination, with specified periodicity, to the court, the court shall, without an oral hearing and by issuing a ruling, make a decision to return the convicted person to the respective facility to serve the outstanding sentence⁴⁸.

Where a convicted person submits a report of examination, the court that makes the decision to defer the enforcement of the judgment shall, without an oral hearing, make a decision, by issuing a ruling, to uphold the decision of the court to defer the enforcement of the judgment, or to return the convicted person to the respective facility to serve the outstanding sentence⁴⁹.

It is noteworthy that in this case, the term of postponement of the sentence is defined by the change of the situation, meaning that no specific term or timeframe is provided. The adjournment of the sentence shall be continued until the recovery of the convict or the significant improvement of his health condition⁵⁰.

In its essence and legal nature, the exemption from the sentence due to illness resembles Article 75 of the Criminal Code. However, it differs from the institution of exemption from the penalty due to old age. When deferring the sentence due to serious illness, in the case the person is recovered, the person may once again be imposed with a criminal liability provided the circumstances under Article 71 and 76 of the Criminal Code have not exhausted. The court and in the case of convicting a person with imprisonment the Joint Standing Commission of the Ministry of Justice of Georgia and the Ministry of IDPs from the Occupied Territories of Georgia, Labor and Healthcare of Georgia may release the convicted person placed in a penitentiary facility provided he/she has a disease or combination of diseases and on the background of treatment it is difficult to maintain the basic life indicators. Furthermore, the decision of the Commission in favor of release depends on the high probability of lethal outcome provided the convict is not serving a life sentence or the convict has served half of the sentence term⁵¹. The court may release a person that has attained an elderly age during his/her service of sentence (women – from 65 years of age, men – from 70 years of age) from further serving the sentence if life imprisonment is not imposed on him/her as a sentence and he/she has served at least half of the sentence⁵².

In such cases, the law leaves to the relevant body the right in view of the given circumstances *ex officio* to decide the issue of exempting the convict from serving the remaining part of the sentence. However, beside the old age of the person, the act committed by him/her, the nature of the crime and the consequent outcomes shall be taken into account⁵³.

⁴⁷The Criminal Code of Georgia, Article 283.

⁴⁸The Criminal Code of Georgia, Article 283(3).

⁴⁹The Criminal Code of Georgia, Article 283(4).

⁵⁰The Criminal Procedure Code of Georgia, Article 283(1)(a).

⁵¹The Criminal Code of Georgia, Article 284(2).

⁵²The Criminal Code of Georgia, Article 284(3).

⁵³ Arsoshvili G., Mikanadze G., Shalikashvili M., Probation Law, Tbilisi., 2015. 33 Tkesheliadze G., Lekveishvili M., Nachkebia G., Todua N., Mchedlishvili-Hedrich K., Mamulashvili G., Ivanidze M., Kherkeulidze I., Criminal Law (textbook), General Part, Tbilisi, 2016, p. 593.

The list of severe and incurable diseases that provide the grounds for nominating the convict to be released from sentence is determined by Order of №01-6/N of the Minister of Labor, Health, and Social Affairs of Georgia⁵⁴. This may be as follows: Tuberculosis, malignant tumors, ray diseases, endocrine system diseases, mental disorders, diseases of the nervous system, vision impairment and blindness, cardiovascular, respiratory tract diseases, digestive system, kidney diseases, etc. As a rule, such petitions are raised by the convict or his/her defence counsel. The same may also be requested by the director of the Special Penitentiary Service provided he/she acknowledges the seriousness of the situation of the convict.

As it is known, Mikheil Saakashvili's human rights advocates / lawyers have already started working on the petition for postponing the sentence. According to Saakashvili's lawyer Shalva Khachapuridze: *"The motion will be written in a different standard, and the process will involve quite interesting practice of criminal, civil law, administrative and international law that exists around the globe."*⁵⁵ It is noteworthy that since the date of the detention, the lawyers never addressed the authorities with such a petition.

Moreover, on September 1, 2022, HRC addressed the Supreme Court of Georgia and the Tbilisi City Court requesting information on the number of convicts for whom the sentences were deferred and / or who were released from sentence prematurely due to the health conditions during 2012-2021. No response was delivered from Tbilisi City Court.

As for the Supreme Court of Georgia, in response to the application N OL-6308 by HRC from September 1, 2022, we were informed that in the maintained statistics of the district (city) courts of Georgia no data is registered separately for deferring sentences and/or prematurely releasing the convicts due to health conditions. Therefore, according to them, the courts are unable to supply the data requested by us.

THE PROBLEM OF VISITING CONVICTED / ACCUSED MIKHEIL SAKASHVILI IN THE PRISON FACILITY

On December 28, 2021, Giorgi Mshvenieradze the defence counsel was not allowed to meet with Saakashvili. The lawyer presented all the documents required to be allowed to see the accused (warrant and lawyer's authorisation document), however, Gori military hospital representatives did not wish to explain him when the lawyer would be allowed to see the client. Should be mentioned the fact that when the lawyer was waiting for the entry near the hospital, no other visitor was in there seeing Saakashvili.

Formal statements about such hindrances were filed with the Public Defender of Georgia, Chairperson of the Georgian Bar Association, Director General of the Special Penitentiary Service of Georgia, and Minister of Justice of Georgia. In response to the formal statement, the Public Defender's Office addressed the General Inspection of the Ministry of Defense of Georgia, which later invited the lawyer for an interview. The lawyer provided statements to the General Inspection regarding the case and presented video footage depicting him in the Gori hospital.

On November 9, 2021, the problem emerged with issuing a pass for the defense counsels. According to attorney Beka Basilaia, the representatives of Gldani facility N18 were not issuing a pass for a certain period of time. It is noteworthy that the problem of issuing passes to the attorneys has arisen after the

⁵⁴ Order №01-6/N of the Minister of Labor, Health, and Social Affairs of Georgia from February 15, 2013. Tbilisi. <https://bit.ly/3CXTHHq>

⁵⁵ Publika.ge, We the lawyers of Saakashvili have started to work on the petition for postponing the sentence, Khachapuridze, <https://bit.ly/3RZGpyT>, 22.08.2022.

evening of November 8, when Mikheil Saakashvili was transferred from Rustavi penitentiary facility to Gldani medical facility N18 in deceit and by using force.

On October 2, 2021, the President's lawyers Dimitri Sadzaglishvili and Nika Gvaramia were not allowed to visit Saakashvili.

During the period of the visits, the lawyers were restricted in the means of communication with the client. In particular:

1. Based on the order of the director of Gldani facility N18, Saakashvili was imposed with a disciplinary measure and restricted in the right to telephone conversations for 2 months.
2. In the meeting room, the glass barrier was built, which restricted direct communication with Mikheil Saakashvili, and it was impossible to exchange letters / documentation between the lawyer and the client. The Agency named Covid pandemic as the reason for this.

MONITORING RESULTS BY HRC

In June 2022, the failure by Mikheil Saakashvili to appear before the court hearing the case of illegal border crossing and his refusal to hear the case in his absence became a reason for adjourning the hearing for a week. In general, Saakashvili's health condition caused his nonappearance before the court and adjourning the hearings. The judge scheduled a hearing for once a week, despite the defense requesting to extend the periods for scheduling the hearings, as the Saakashvili's recovery prospects would not be visible in a short term. After several times of adjourning the sessions, the judge asked the parties about their positions to hold field hearing to which the prosecution agreed. However, the defence counsel disagreed with the position of the prosecution stating that it would be hard for the defendant to give testimony considering his health condition.

At the next session, the judge stated that a certificate is submitted from clinic Vivamedia reading that Saakashvili is unable to attend the hearings due to the health condition and at the same time he rejects the position his case to be heard without his participation. After reading the certificate, the prosecution stated that: "Taking into account the health condition of the defendant, he was not fit for transportation, while fit for participating in the hearing." According to the prosecution, the lawyers failed to provide any documents proving that Saakashvili could not participate in the hearing of the case and since already four hearings were adjourned - the prosecution argued - this served the procrastination means of the proceedings.

After the statement, the prosecution motioned to have field hearings of the court in clinic Vivamedia. As the lawyer informed us, the previous day he was contacted by the assistant of the judge informing him that a field hearing would be held in Vivamedia. *It should be noted that the judge denied this information, the same was denied by the prosecution stating that they are filing the motion at the time being and they had no information the previous day about the field hearing. The judge disagreed with the position of the defense to adjourn the hearing, for due to the health condition Saakashvili would not be able to fully take part in the hearing. The field hearing was announced, and the judge left the court room. However, the session was postponed also in clinic Vivamedia. The court listened to doctors who noted that under the influence of medication, Saakashvili quite possibly could fall asleep, could not recall facts, and might feel sick. Further, the court received information that at the end of the month doctors would lift one of the medicines for Saakashvili and his condition in terms of consciousness would improve.*

The HRC monitor learned about the field hearing in Vivamedia from the lawyer and journalists when she arrived at the court just in time to monitor the hearing. However, it was unknown to the lawyer what

were the grounds used by the court to make such a decision. As it became known at the hearing, the prosecution initiated the field hearing which was granted by the court.

On June 16, 2022, despite the written formal request, the HRC monitor was not allowed to attend and monitor the hearing in Vivamed. HRC believes it is important to observe the principle of publicity in the process, even more in such high-profile cases where the public interest is high. This principle is completely neglected at the field hearings held in Vivamed.

As a result of court monitoring conducted by HRC, another problem was identified: At the time when the defence was filing a motion to have the expert group of Empathy see Saakashvili, the court without any substantiation was adjourning the hearings creating an impression that the action of the judge was serving the procrastination means of the process. Furthermore, the judge postponed 2 hearings on the grounds - that no response was received from the representatives of the Special Penitentiary Service explaining why the group of experts were not allowed to see Saakashvili - which was unreasonable and unsubstantiated adjournment as, according to the law, in such cases the court decides themselves to grant or not the access.

At the field hearing held in Vivamed on June 27, 2022, the prosecution once again filed a motion to have another field hearing arguing that according to the information obtained from the physicians, Saakashvili must have seized receiving the medication and he would be able to give testimony, so the health condition would not cause him any problem. However, the judge noted that she wanted to get information from Vivamed's attending physicians whether Saakashvili could give a testimony, even though the certificate was reporting that it was possible to hold a hearing in clinic Vivamed. The judge assumed that the content of the certificate must be specified, so the judge was addressing the doctors with a particular question to have their response and afterwards the judge would announce the date of the next session and decide whether the field hearing is possible.

After this, all the court hearings scheduled were adjourned referring to the certificate provided from Vivamed stating that it is not recommended to have Saakashvili attend the court hearings due to his health condition.

Regarding this problem, one should note that in general there is a different approach to the proceedings in hearing the November 7, 2007, case against Saakashvili with presiding judge Nino Elieshvili from the Criminal Panel of Tbilisi City Court. In scheduling the hearings, the judge considers the health condition of Saakashvili and schedules next hearings with 2-month intervals.

RECOMMENDATIONS

To the Judiciary:

- *Judges should ensure a fair trial and increase the trust of the public towards the justice system by justifying the decisions by high standard of proof, adhering to the Bangalore Principles of Judicial Conduct.*
- *To ensure the principle of publicity of the process, even more for such high-profile cases where the public interest is high, because at the field hearings in Vivamed the principle is completely neglected.*

Recommendation to the Ministry of Justice and the Special Penitentiary Service:

- *To be guided by the opinion of the multi-profile group of physicians and to be committed to providing an environment conducive to human dignity, and to select an alternative medical facility for the prisoner when there is an urgent need for it.*
- *Taking into consideration the serious health condition of the prisoner, elaborate the issue of adjourning the sentence and allowing him to receive treatment abroad.*