European Integration Studies, Volume 21, Number 2 (2025), pp. 543-582.
https://doi.org/10.46941/2025.2.14

SIMONI TAKASHVILI [*]

Protection of Human Rights in Georgia under the European Convention on Human Rights[**]

ABSTRACT: The present study analyses the stages of human rights development in Georgia. The introductory part of the work focuses on the legal environment after Georgia gained independence in the early 20th century, a period that was short-lived as Georgia soon lost its independence and became part of the Soviet Union.

After the Soviet Union established its regime in Georgia, the protection of human rights was virtually non-existent for nearly 70 years. The next component of the study involves a comprehensive analysis of the relationship between Georgia and the Council of Europe (CoE) from a human rights perspective. Additionally, it examines Georgia's participation as a state party to CoE human rights conventions and the impact of the European Convention on Human Rights (ECHR) on Georgia, based on legal literature.

The study also analyses the process and timeline of Georgia's accession, succession, and ratification of the ECHR, as well as the human rights protection obligations arising from the ECHR and their effect on the Constitution of Georgia. Furthermore, a significant portion of the work is dedicated to the major legislative developments in Georgia influenced by the ECHR, along with an examination of the most important cases in which Georgia was the respondent and that were adjudicated by the ECHR.

KEYWORDS: Human Rights, Constitution, Human Rights Convention, Protection of Human Rights, Georgia as a State Party to the Convention, European Convention on Human Rights, Case Law.

[*] Associate Professor of Sulkhan-Saba Orbeliani University, Georgia. https://orcid.org/0000-0001-8608-170X, s.takashvili@sabauni.edu.ge.

[**] **The research and preparation of this study was supported by the Central European Academy.**

1. Introduction

The preservation of human rights is the most pressing concern in modern law and the rule of law in general. Georgia's Constitution confirms fundamental human rights and freedoms. Individual laws and subordinate normative actions are tangible expressions of the rights and freedoms of the Constitution.

With respect to human rights and freedoms, the most important legal document, together with the Georgian Constitution, is the European Convention on Human Rights (ECHR), which went into effect in Georgia on 20 May 1999. The Convention, as one of the first actions to give binding effect to the rights enshrined in the Universal Declaration of Human Rights, is Georgia's most significant legal document for human rights protection.

This study examines the stages of development of human rights and freedoms in Georgia, the effect and implementation of the revised treaties of the Council of Europe (CoE) in Georgia, and the influence and impact of the ECHR on the development of Georgian law and the legal system. From this perspective, certain well-known and significant court rulings are examined, including critical concerns and issues concerning Georgia.

2. Historical Development of Human Rights in Georgia

2.1. Role of Georgia's First Constitution in the Protection of Human Rights

The recognition and development of human rights in Georgia over the last century can be conditionally divided into four parts or periods. The first part covers the Constitution of 1921 and the rights enshrined in the Constitution. The second part encompasses the period of Sovietisation of Georgia, during which it was futile to discuss human rights and freedoms. The third part covers the period after the independence of Georgia, when a new constitution was adopted in 1995 and basic human rights and freedoms were established. The fourth part covers the period from the amendments made to the Constitution related to the large-scale constitutional reform of 2018 to the present day.

Of these four conditional periods, the issue of rights established by the first constitution is of particular interest. For Georgia, in the early 20th

century, global and local political-economic events were developing interestingly on the one hand and dramatically on the other.

The first constitution of independent Georgia was adopted in 1921, but the constitution was not in force for a single day.[1] It was based on the principles of the Act of Independence of Georgia adopted on 26 May 1918. Owing to the Soviet occupation, the constitution could not actually come into force, as it was adopted under the conditions of war; in this war, Georgia was defeated, which led to total occupation of the territory of the Democratic Republic of Georgia.[2] Thus, it can be said that the first constitution was a highly significant and progressive legal document for the Georgian state at that time, which had, in addition to a legal effect, an ideological impact. The idea was freedom and independence of the country, but unfortunately, it could not be realised, because for the next 70 years, Georgia became part of the Soviet Union.

The Constitution of Georgia of 1921 reflects the most progressive legal and political views and trends, newly formed in Western Europe of that period, although still existing in theory: therein, the parliamentary system provided for the constitutional prohibition of the death penalty, freedom of speech, universal suffrage (including, at that time, the rare electoral equality of men and women), the constitutional legalisation of the jury institution, the so-called Corpus Hebea, and many other rights, which stood out for their progressiveness not only among the existing legal systems of the time but also among Western European countries.[3]

Importantly, the list of rights defined in the Constitution is not exhaustive and it is stated that the guarantees and rights enumerated in the Constitution do not override other guarantees and rights that are not mentioned there, but derive in themselves from the principles recognised by the Constitution.[4] Accordingly, as recognised in the legal literature, it can be said that the text of the Constitution of Georgia of 1921 and its general structure meet the requirements of a modern liberal-democratic constitution.[5]

[1] Kublashvili, 2019, p. 32.
[2] Matsaberidze, 2021, p. 75.
[3] Public Defender (Ombudsman) of Georgia, 2021.
[4] Article 45 of the 1921 Constitution of Georgia; Vardosanidze, 2021, p. 62.
[5] Arnold, 2021, p. 61.

2.2. The Constitution of Georgia of 1995 and Human Rights

Following the collapse of the Soviet Union and the restoration of Georgia's independence, Georgia adopted a constitution on 24 August 1995. For the second time in Georgia's history, fundamental rights were recognised and enacted by the 1995 constitution.[6] In the preamble, the 1995 Constitution of Georgia states that the Constitution was adopted on the basis of centuries-old traditions of statehood of the Georgian people and the historical and legal heritage of the 1921 Constitution of Georgia.

In 2018, the primary edition of the Constitution underwent a fundamental change. The second chapter of the old and current edition is a catalogue of fundamental rights.[7] According to the Constitution of Georgia, there are no grounds for restricting certain fundamental rights. Such a right is considered absolutely guaranteed and the state has no right to limit it in any case, even in cases established by law.[8] However, most fundamental rights can be limited by the state, and this limitation is embedded in the articles of the constitution itself.[9]

2.3. The 2018 Constitutional Reform in Georgia and the New Regulation of Human Rights

Constitutional reform, which took place in Georgia during 2017−2018, aimed to modify the whole concept of regulation of human rights in the basic law.[10] This reform renewed even the structure of the basic law, automatically changing the second chapter of the constitution related to human rights.[11] Several articles and human rights were displaced to other chapters and some new rights were added to the new text of the constitution.[12]

The order of rights in the second chapter of the Constitution does not suggest their hierarchy, although it is worth noting that after the constitutional reform of 2018, the chapter begins with the inviolability of human dignity, which once again emphasises the value system of the state.

---

[6] Kublashvili, 2019, p. 32.
[7] Ibid. pp. 32-33.
[8] Ibid. pp. 36-37.
[9] Ibid. p. 37.
[10] Gegenava, 2013, p. 113.
[11] Ibid.
[12] Ibid. p. 112.

Human dignity has become the starting point for the development of modern human rights and the main basis for the legitimacy of rights.[13]

The Constitution of Georgia provides for two general principles of ensuring fundamental human rights: 1. The exercise of fundamental human rights must not violate the rights of others and 2. The restriction of a fundamental human right must be consistent with the importance of the legitimate aim it serves to achieve.[14]

3. Relationship between Georgia and the CoE from a Human Rights Perspective (National Reports, Scholarly Discussions etc.)

Georgia is a signatory to numerous United Nations and CoE human rights treaties, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; and the Convention for the Protection of Human Rights and Fundamental Freedoms.[15]

Georgia joined the CoE as its 41st member on 27 April 1999. Consequently, it accepted and committed to meet certain obligations outlined in the Parliamentary Assembly of the CoE's opinion 209 (1999). Georgia has accepted the responsibility imposed by Article 3 of the Charter on all member states: to preserve the ideals of pluralistic democracy and the rule of law, as well as to safeguard the rights and fundamental freedoms of all individuals within its authority.[16] In one of its rulings, the European Court of Human Rights declared that incorporating the European Convention into national legislation is a particularly effective method of carrying out the requirements of the Convention.[17] Similar to the majority of other nations that have signed the ECHR, Georgia, has recognised the Convention as part of its legislation. In Georgia, the European Convention may establish obligations and rights for persons and legal entities. Any natural or legal person may use the provisions of the European Convention before a court or administrative authority to claim a violation of human rights.[18]

---

[13] Vardosanidze, 2021, p. 63.
[14] Ibid.
[15] Congress of Local and Regional Authorities of the CoE, 2021, p. 12.
[16] CoE, 2023, p. 6.
[17] *Case of Ireland v. the United Kingdom*, App. No. 5310/71, 18 January 1978.
[18] Korkelia, 2007, p. 26.

All member states bear primary responsibility for the successful execution of the ECHR and the case law of the European Court of Human Rights (ECoHR) on a national level. To be able to apply and monitor the Convention and other human rights standards in practice, stakeholders in the justice system, relevant state institutions (including law training institutions), and civil society must further improve their access and knowledge of the leading principles and standards of the Convention. Following the publication of a European Commission report on Georgia's application to join the European Union, which urged the country to 'adopt a law whereby Georgian courts proactively take into account the decisions of the European Court of Human Rights', the CoE backed the authorities in amending 11 national legislative acts. As a result of these developments, European Court case law was made obligatory and essential to court official training in state educational institutions (Higher School of Justice, Georgian Bar Association, and so on). This included modifications to Georgia's Criminal Procedure Code, which allowed for the re-opening of cases at the domestic level based on European Court of Justice decisions and rulings.[19]

At the meeting held on 13 June 2022, through the Democracy Reporting Group (GR-DEM), the Committee of Ministers discussed the report on the implementation of the CoE Action Plan 2020−2023 in Georgia (covering the period from January 2020 to March 2022). It welcomed the progress made in this direction in the country and encouraged the achievement of all tasks set out in the plan.[20]

The judgments of the ECoHR, which the Committee of Ministers reviews under the strengthened supervision procedure, concern several areas, including:[21]

- Inadequate investigation of allegations of violation of the right to life and mistreatment, mainly by state agents;
- Unlawful detention and use of restrictions on rights for unlawful purposes;
- Lack of state mechanisms to protect members of religious communities from attacks and ineffective investigation of such cases;
- Inadequate protection from attacks based on homophobic prejudice and ineffective investigation of such facts; failure to ensure freedom of assembly for LGBTI activists;

[19] CoE, 2023, p. 16.
[20] Ibid. p. 11.
[21] CoE, 2029.

- Failure to take preventive measures to protect victims from domestic violence and investigate law enforcement inaction on such complaints;
- Failure to ensure adequate procedures for legal gender recognition.

In February 2022, the Commissioner for Human Rights at the CoE paid a visit to Georgia with the aim of addressing discrimination against LGBTIQ individuals and religious minorities, as well as advancing labour rights, environmental human rights, and tolerance. The Commissioner highlighted the necessity of imposing criminal penalties on people or groups that encourage violence or promote hatred towards minorities. The Commissioner emphasised the necessity of adequate environmental protection measures as well as the significance of a safe environment for the enjoyment of human rights. Reactions to the creation of the Department of Human Rights Protection and Investigation Quality Monitoring of the Ministry of Internal Affairs (MIA) have been favourable. Nonetheless, there are suggestions for a dedicated police division to look into hate crimes.[22]

In March 2023, the Parliament of Georgia adopted the National Strategy for the Protection of Human Rights for 2022−2030. This is the second strategy for the protection of human rights in Georgia, which aims to improve the legislation regulating human rights and create suitable conditions for its implementation and realisation. The CoE continues to support Georgia in strengthening its national capacity to initiate and implement reforms in the field of human rights protection, including in the following ways: more effective implementation of the ECHR at the national level, environmental protection in the context of human rights protection, business and human rights, human rights in the field of biomedicine, promotion of freedom of expression and media freedom, gender equality, combating violence against women and domestic violence, children's rights, non-discrimination in the field of human rights, the protection of human rights, and the promotion of human rights and fundamental freedoms. These actions will help Georgia achieve the Sustainable Development Goals.[23]

In Georgia, local human rights advocacy and protection are greatly aided by the CoE's Congress of Local and Regional Authorities. It collaborates with different parties to evaluate the state of human rights and raise standards in local government. The legislative and institutional framework of human rights in Georgian local governance is subject to a rigorous evaluation by the Congress to ensure compliance with global

[22] CoE, 2023, Report of the CoE Commissioner for Human Rights, pp. 7; 10; 15; 27.
[23] CoE, 2023, p. 15.

obligations. It examines how civil society organisations (CSOs), municipalities, the Public Defender (Ombudsperson) of Georgia, and local and federal authorities collaborate to promote human rights. Furthermore, the National Association of Local Authorities of Georgia (NALAG) and local authorities' actions to raise local human rights standards are recognised by Congress.[24]

The evaluation emphasises fundamental values such as equality; non-discrimination; and safeguarding vulnerable populations including minorities, victims of violence, people with disabilities, older individuals, young people, children, and the homeless. A collaborative approach comprising stakeholders such as the Public Defender's Office of Georgia, NALAG, CSOs, and local government representatives serves as the foundation for the complete review. This cooperative strategy guarantees a comprehensive assessment of human rights activities. Furthermore, the Congress provides targeted recommendations and insights to bolster multilevel cooperation for sustainable human rights protection at the local level in Georgia. The assessment underscores various human rights principles, including equality, non-discrimination, gender equality, children's rights, and the rights of persons with disabilities, reflecting a broad and inclusive perspective on human rights governance.[25]

The Assessment Report on Human Rights at the Local Level in Georgia's recommendations highlights the necessity of a multipronged strategy to improve human rights governance and practices. The advocacy for proactive steps to improve citizen engagement and need-based programming, which emphasises the significance of inclusive and responsive local governance, is at the heart of these proposals.[26]

Additionally, the paper promotes Georgian local authorities' participation in state policy formation, which is thought to be crucial for improving their ability to carry out their ambitions for human rights. The creation of working groups to promote more efficient collaboration and the application of interagency coordination mechanisms are measures to assist this process. It is advised that local authorities participate in targeted training programs to raise knowledge and capacity, emphasising the value of ongoing education and skill development.[27]

---

[24] Congress of Local and Regional Authorities of the CoE, 2021, p. 5.
[25] Ibid. p. 5.
[26] Ibid. pp. 50-56.
[27] Ibid.

4. Georgia as a State Party of CoE Human Rights Acts

4.1. ECHR

The ECHR was opened for signature in Rome on 4 November 1950 and entered into force in 1953. Georgia ratified this convention on 20 May 1999. This is a unique document that has had a tremendous impact on the protection of human rights in Europe, because the drafters of the Convention did not only lay down a list of human rights but also designed an innovative system to monitor compliance.[28]

Most of the rights and obligations stipulated in the convention do not have an absolute nature.[29]

The main objective of the Convention system is to stipulate effective protection of the fundamental rights guaranteed in the convention and its protocols for everyone within the jurisdiction of the state parties.[30]

The rule of law has been described as one of the fundamental principles of a democratic society and it is one of the cornerstones of the convention.[31]

The right to a fair trial is an important principle, central to the existence of the rule of law principle. Accordingly, the rule of law, which is stipulated in the preamble of the convention, cannot exist if there is no fair trial.[32]

In recent Georgian court cases, the amount of citations and indications of the precedents and case law of ECtHR has increased. There are several cases[33] in which the court analyses the case materials and legal principles based on the ECtHR case law.

---

[28] Gerards, 2023, p. 1.
[29] Ibid. p. 286.
[30] Ibid. p. 10.
[31] Schabas, 2017, p. 71.
[32] Ibid. p. 265.
[33] The Decision of the Civil Chamber of the Supreme Court of Georgia dated 5 July 2024, No. as-871-2024; the Decision of the Civil Chamber of the Supreme Court of Georgia dated 27 June 2024, No. as-789-2024; the Decision of the Civil Chamber of the Supreme Court of Georgia dated 14 June 2024, No. as-460-2024; the Decision of the Administrative Chamber of the Supreme Court of Georgia dated 7 June 2024 No. bs-756(k-22); the Decision of the Criminal Chamber of the Supreme Court of Georgia dated 13 June No. 207ap-24, and other cases.

Georgia is a member of many CoE conventions; among them, the following are the most important conventions:

- Convention on Human Rights and Biomedicine entered into force in Georgia on 1 March 2001; this is the first convention of CoE that explicitly enshrines dignity.[34]
- CoE Convention on Action against Trafficking in Human Beings; according to this convention, trafficking constitutes a violation of human dignity[35]
- European Social Charter
- CoE Convention on Cinematographic Co-production (revised) (Rotterdam, 2017)
- CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)
- CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse
- CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
- Convention on the Transfer of Sentenced Persons
- Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows
- Convention on the Manipulation of Sports Competitions (the Macolin Convention)
- CoE Framework Convention on the Importance of Cultural Heritage for society, the so-called Faro Convention
- CoE Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events
- Framework Convention for the Protection of National Minorities
- European Convention on the Legal Status of Migrant Workers.

The ECHR, in a broader, functional sense, should be categorised as constitutional law for several reasons. These are substantive and institutional reasons: in content, the rights contained in the Convention, similar to those in other international treaties, are typologically constitutional in nature, as they concern the foundations of human existence

[34] Peers et al., 2021, p. 9.
[35] Ibid.

and are aimed at protecting individuals from encroachment by state authorities.[36]

Similar to most states party to the ECHR, the Convention is recognised as part of Georgian law. In Georgia, the European Convention can create rights and obligations for natural and legal persons. Any natural or legal person may invoke the provisions of the European Convention before a court or administrative body and claim human rights violations on the basis thereof.[37]

Georgia has also ratified protocols to the ECHR, including (but not limited to):

- Protocol No. 1 (Protection of Property, Right to Education, and Right to Free Elections) – This protocol extends the protection of property rights, the right to education, and the right to free elections.
- Protocol No. 4 (Prohibition of Imprisonment for Debt, Freedom of Movement, and Expulsion of Aliens) – This protocol prohibits imprisonment for debt, safeguards freedom of movement, and sets conditions for the expulsion of aliens.
- Protocol No. 6 (Abolition of the Death Penalty) – This protocol abolishes the death penalty in peacetime.
- Protocol No. 7 (Additional Rights in Criminal Proceedings) – This protocol includes additional rights in criminal proceedings, such as the right to appeal a conviction and the right to compensation for wrongful conviction.
- Protocol No. 12 (General Prohibition of Discrimination) – This protocol provides a general prohibition of discrimination in the enjoyment of any right set forth by law.
- Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms.
- Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms.
- Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms.
- Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

[36] Arnold, 2021, p. 22.
[37] Korkelia, 2007, p. 26.

- Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances.

5. National Implementation (Process and Time of Accession/Succession/Ratification) of the ECHR

Georgia's post-Soviet transition reached a turning point with its admission to the CoE in 27 April 1999. To become a member of the CoE, Georgia had to pledge allegiance to the democratic, human rights, and rule of law ideals included in the ECHR. This move was not just symbolic; to bring national laws and practices into compliance with European norms, extensive institutional and legislative reforms were required. On 20 May 1999, Georgia ratified the ECHR. Six months after approval, on 20 November 1999, the ECHR entered into force.[38]

Georgia's commitment to incorporating European human rights standards into its legal system was demonstrated by the country's ratification of the ECHR on 20 May 1999, and its subsequent coming into force on 20 November of the same year. Georgia was required by its ratification to make sure that its internal laws and judicial procedures upheld the liberties and rights protected by the ECHR. Georgia’s legal system has had to undergo significant constitutional and legislative changes to include the ECHR. Georgia's Constitution was amended to guarantee that international treaties − such as the ECHR − supersede domestic legislation. The immediate application of the ECHR inside the domestic legal system was made possible by this fundamental guarantee.[39]

The goal of further legislative changes was to bring national legislation into compliance with ECHR requirements. These changes covered a broad range of topics, such as freedom of speech, anti-discrimination, and criminal justice. For example, the mission of the ECHR for the protection of human rights was bolstered by changes made to the Criminal Code and the implementation of new anti-discrimination statutes.

One essential element of Georgia's attempts to implement the ECHR has been the creation of human rights institutions. The Human Rights and Civil Integration Committee of the Parliament and the Public Defender (Ombudsman) are two important organisations entrusted with upholding and

[38] Korkelia et al., 2004, pp. 2-10.
[39] Ibid.

advancing human rights in conformity with the ECHR. These organisations are crucial in resolving abuses of human rights and ensuring that administrative procedures respect ECHR tenets. Additionally, educational programs and public awareness campaigns are essential for promoting a human rights culture. The purpose of these initiatives is to educate the public about their rights under the ECHR and the safeguards in place to preserve those rights.

6. Human Rights Protection Obligations Deriving from the ECHR and Their Effect on the Constitution of Georgia

According to Article 4.2 of the Constitution of Georgia, 'The State acknowledges and protects universally recognised human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the State shall be bound by these rights and freedoms as directly applicable law. The Constitution shall not deny other universally recognised human rights and freedoms that are not explicitly referred to herein, but that inherently derive from the principles of the Constitution'. Further, According to Article 4.5, 'The legislation of Georgia shall comply with the universally recognised principles and norms of international law. An international treaty of Georgia shall take precedence over domestic normative acts unless it comes into conflict with the Constitution or the Constitutional Agreement of Georgia'.

After joining the ECHR, Georgia has gradually changed its Constitution and legal structure to reflect these duties, ensuring that fundamental rights such as freedom of expression, the right to a fair trial, the prohibition of torture, and protection against discrimination are safeguarded.

The second chapter of the Constitution is concerned with the preservation of human rights. Precisely, fundamental freedoms are a constitutive component of the Constitution, which is a legislative act with the greatest legal force, meaning that these rights are protected by the Constitution always and everywhere. According to Georgia's Constitution, fundamental freedoms are the guiding principles and foundation of the judicial system.[40]

The right to life is guaranteed by Article 10 of the Constitution, according to which:

'1. Human life shall be protected. The death penalty shall be prohibited.

[40] Kublashvili, 2019, p. 41.

2. The physical integrity of a person shall be protected'.

This article directly corresponds to Article 2 of the Convention.

The first clause of Article 10 of the Constitution acknowledges the fundamental right to life. Human life is protected, and the death penalty is prohibited. It is worth mentioning that the right to life was acknowledged by Article 15 of the previous version of the Constitution, which included a specific measure of punishment − the death sentence − that might be granted by organic legislation for extremely egregious offenses against life before being completely abolished. Only the Supreme Court of Georgia had the authority to impose this penalty. This provision reflected the situation in Georgia at the time of adoption of the Constitution; in 1995, the Criminal Code of Georgia still allowed for this type of punishment, but this norm was no longer valid since 1997, when the said form of punishment was completely abolished. There is no constitutional foundation for reintroducing the death penalty, as it fundamentally contradicts Georgia's Constitution and the European Convention on the Protection of Human Rights.[41]

According to Article 11.1 of the constitution, 'All persons are equal before the law. Any discrimination on the grounds of race, colour, sex, origin, ethnicity, language, religion, political or other views, social affiliation, property or titular status, place of residence, or on any other grounds shall be prohibited'. This corresponds to Article 14 of the Convention and protocol 12, which prohibit discrimination. The Georgian Constitution completely adheres to this obligation; it should be noted that in Georgia, there is also a special law, called the law of Georgia "on the elimination of all forms of discrimination". It can thus be said that the prohibition of discrimination is an essential component of both the ECHR and Georgia's domestic legal system, notably the Constitution. Georgia, as a signatory to the ECHR, is bound by Article 14, which forbids discrimination in the exercise of the rights and freedoms of the Convention. Furthermore, Georgia has adopted Protocol No. 12 to the ECHR, which broadens this ban to include discrimination in the exercise of any legally protected right.

Article 9 of the Georgian Constitution states that 'human dignity shall be inviolable and protected by the state'. This concept is fundamental and provides a thorough safeguard against any sort of abuse that might damage personal dignity, such as torture or cruel treatment. The right to human dignity is therefore inscribed as a core element of Georgia's constitutional

[41] Ibid. pp. 111-112.

structure, offering wide protections for people against state or private actor violations. Article 3 of the ECHR creates an absolute prohibition on torture, cruel or degrading treatment, or punishment, which has become one of the most important aspects of international human rights law. Georgia guarantees that the prohibition of torture is recognised as a key constitutional principle by linking Article 9 of its Constitution with Article 3 of the ECHR. This congruence indicates the state's commitment to upholding both national and international legal norms, as torture and other forms of inhumane treatment are not only illegal but also subject to strict inspection and legal penalties.

According to Article 12 of Georgia's Constitution, 'Everyone has the right to the free development of their personality'. This wide and fundamental right interacts with various other constitutional rights, demonstrating its comprehensive character and relationship to diverse facets of personal liberty. Several significant sections of the Georgian Constitution, including the Right to Privacy, Freedom of Religion, and Freedom of Opinion and Expression, strengthen and expand on this right. These constitutional safeguards relate to many provisions of the ECHR, therefore incorporating Georgia's international human rights commitments into its domestic legal system.

Article 15 of the Georgian Constitution establishes the Right to Personal and Family Privacy, declaring that 'Personal and family life shall be inviolable'. This right may be limited solely in conformity with the law to ensure national security or public safety, or to preserve the rights of others, as essential in a democratic society. This right is consistent with Article 8 of the ECHR, which provides the right to respect for private and family life, the home, and communication. Both sections seek to safeguard individuals against arbitrary or unlawful intrusion by the state or other bodies in their personal life.

Article 16 of Georgia's Constitution affirms that 'everyone has freedom of belief, religion, and conscience'. This is closely related to Article 9 of the ECHR, which also safeguards the right to freedom of thought, conscience, and religion. Both articles guarantee that people can freely exercise and profess their religious views without government intervention.

Article 17 of the Georgian Constitution ensures the right to freedom of thought, information, mass media, and the internet, guaranteeing that free expression of opinion is safeguarded. No one shall be harassed for holding

or expressing an opinion. Everyone has the freedom to freely receive and share information. Mass media must be free. Censorship should be prohibited. Everyone has the right to freely utilise the internet. This is consistent with Article 10 of the ECHR, which protects the right to freedom of speech, including the right to hold opinions and receive and impart information without interference from governmental authorities.

Article 21 of Georgia's Constitution, which provides freedom of assembly, closely conforms to Article 11 of the ECHR. Both sections respect individuals' basic right to peaceful assembly, which is a cornerstone of democratic society and assures citizens may express their opinions, advocate for their interests, and participate in public life without excessive official intervention. Article 22 of Georgia's Constitution, which provides freedom of association, relates to Article 11 of the ECHR. Both sections guarantee individuals' rights to freely create and join groups, such as political parties, labour unions, and other organisations, which are an essential component of democratic society.

Article 19 of Georgia's Constitution, which guarantees the right to property, corresponds to Article 1 of Protocol No. 1 to the ECHR. Both sections defend people's basic right to own, use, and dispose of their property, and they establish that property rights can only be deprived or interfered with under authorised conditions and for a valid public purpose.

Article 26 of the Constitution of Georgia guarantees several fundamental rights related to labour, trade unions, the right to strike, and freedom of enterprise. These rights correspond to various provisions of the ECHR and its associated case law, particularly relating to Article 11 of the ECHR (freedom of association) and additional protections concerning labour rights and economic freedoms.

Article 31 of Georgia's Constitution, which protects procedural rights, is closely related to Article 6 of the ECHR, which provides the right to a fair trial. Both sections promote the essential concepts of fairness, impartiality, and openness in judicial procedures, with an emphasis on the right to a public hearing before an independent and impartial tribunal within a reasonable time frame. This assures that persons facing criminal accusations or civil action are afforded due process rights, such as the presumption of innocence, the right to self-defence, and access to legal counsel.

Furthermore, both Articles 31 and 6 acknowledge particular procedural protections, such as the right to be promptly notified of criminal allegations, right to enough time and facilities to prepare a defence, and

right to cross-examine witnesses. These safeguards are critical for preserving the integrity of judicial procedures and preventing miscarriages of justice, as both frameworks require that legal processes be carried out in a manner that respects the rights and dignity of all parties concerned.

The human rights protection provisions imposed by the ECHR have had a considerable impact on Georgia's Constitution, assuring compliance with European legal norms. Georgia's constitutional structure clearly reflects key rights such as torture prohibition, freedom of assembly and association, property rights, and procedural safeguards in fair trials. Georgia has strengthened civil liberties protection by embracing ECHR principles, ensuring that individuals have rights that are commensurate with international norms, and judges frequently use ECoHR law for advice.

This alignment enhances Georgia's democratic institutions and the rule of law by incorporating the essential human rights safeguards of the ECHR into national legislation. The correlation between Georgia's Constitution and the ECHR, particularly in areas such as freedom of association, property protection, and procedural fairness, demonstrates the country's commitment to upholding human rights and ensuring that its legal system provides effective remedies and protections for its citizens.

7. Major Law-Making Processes that Transpired in Georgia Thanks to the ECHR

Court rulings are known to expose flaws in Georgian legislation as well as the activities of administrative, investigative, and judicial entities.[42] The state is required to carry out the decision by taking express or implicit actions. The State's position may alter over time in the direction of the change anticipated by the ECtHR ruling, or vice versa (e.g. owing to the relocation of executive or legislative powers).[43]

Certain decisions issued by the ECtHR against Georgia in recent years have established procedural breaches of Articles 2 and 3 of the Convention as a result of inadequacies discovered during the inquiry. Common issues have been noted in both legislation and investigative practice, including judicial bodies. One issue that emerges from all of the rulings in this category is the investigating agencies' independence and impartiality. In Garibashvili v. Georgia, the court underlined the importance of investigating

[42] Tsereteli, 2016, p. 163.
[43] Ibid. p. 166.

agencies' independence from those involved in the events under inquiry for the probe to be effective. This entails not just a lack of hierarchical or institutional links but also actual autonomy.[44]

In its decision in Khaindrava and Dzamashvili v. Georgia, the ECtHR stressed that the inquiry must be impartial and open to the victim's relatives. In Tsintsabadze v. Georgia, the European Court affirmed that the independence and impartiality of persons in charge of the inquiry are necessary elements for an efficient investigation. Although the participation of representatives from the MIA was stressed early in the inquiry, the MIA spearheaded the probe. The Court cited the institutional link and hierarchical subordination between the senior MIA officials involved in the case and investigators in charge of the case, concluding that during the MIA investigation, the investigation lacked significant independence and impartiality, which harmed its subsequent course. In Mikiashvili v. Georgia, a case involving an inquiry into alleged police mistreatment in prison, the Court pointed out a number of flaws, including a two-month delay in initiating the investigation and a late medical examination of the applicant.[45]

Although the Court did not provide particular direction on the actions to be taken by the state in these circumstances, the Committee of Ministers' monitoring procedure stressed the need for broad measures. Furthermore, the Court's identification of flaws has allowed national human rights groups to rely on rulings of the European Court of Justice. Several legislative amendments have occurred in this domain. For example, in April 2013, Article 74 of the Prison Code was changed to reflect the 2011 Enukidze and Girgvliani ruling. Based on the court's conclusions, the weaknesses of the legislation surrounding the victim's involvement in investigative actions were identified, and adjustments to the Criminal Procedural Code were adopted to assure the victim's participation throughout the inquiry. These modifications acknowledge the victim's right to obtain information on the progress of the investigation and become acquainted with the contents of the criminal case, provided that this does not conflict with the interests of the inquiry (subparagraph "h" of Part One of Article 57). There is also the right to appeal to a court against a prosecutor's decision to deny victim status and have such status revoked after appealing to a higher level prosecutor. It should be highlighted that this privilege only applies to situations involving especially serious crimes (Art. 56(5)(6)), severely limiting court review of

[44] Ibid. pp. 167-170.
[45] Ibid.

prosecutor judgments. The victim may also file an appeal against the prosecutor's decision to stop the inquiry or prosecution. Similarly, the right to appeal to the court is recognised only in circumstances of exceptionally serious crimes (Article 106(1)).[46]

Changes have been implemented in accordance with the directives of the European Court of Justice to safeguard the independence and impartiality of the investigating bodies. The Order of the Minister of Justice No. 178 of 29 September 2010 on investigative subordination was replaced by the Order of the Minister of Justice No. 34 of 7 July 2013, but the issue of an institutional link between the investigative bodies and those involved in the events under investigation remains.[47]

In 2023, as in previous years, the Human Rights Protection Department of the Georgia Prosecutor's Office monitored facts of unlawful treatment by an official or individuals equivalent to him/her, as well as criminal cases under investigation. [48]

To remove prejudice and prevent hate crimes, the state is constantly introducing comprehensive measures. On 5 September 2022, the Government of Georgia adopted the National Strategy for the Protection of Human Rights for 2022−2030, which was then submitted to Parliament for ratification. The Georgian parliament adopted the policy on 23 March 2023. The aforementioned plan was established in collaboration with the government administration, representatives of international and non-governmental organisations, and appropriate state entities. The comprehensive strategic document addresses all fundamental rights and freedoms, with an emphasis on protecting the rights of vulnerable groups, developing anti-discrimination measures, increasing institutional capacity, and so on. The Strategy has four key aims, the third of which is to reflect constitutional guarantees of equality in public policy and put them into effect, as well as to realise human rights and freedoms without discrimination. The Strategy seeks to put constitutional and international guarantees of equality into effect. Special emphasis is placed on promoting equality at all levels of the public and commercial sectors, removing situations that lead to inequality, and combatting intolerance, hate crimes, and other violations.[49]

[46] Ibid. p. 172.
[47] Ibid. p. 173.
[48] Ministry of Justice of Georgia, 2024, p. 50.
[49] Ibid. pp. 69-70.

The state continues to prioritise the protection of minority rights and growing minority participation in civic life and public administration. From this perspective, the policy strives to put in place suitable measures to enhance minority engagement in social, economic, cultural, and political life while also strengthening an equitable environment. The third focus of the plan is to increase the protection of minority rights and contribute to the creation of a more equitable environment. It should be mentioned that to achieve the aims and objectives of the strategy, the Action Plan for the Protection of Human Rights of Georgia for 2024−2026 was designed and adopted by the Georgian government in December 2023. The administration of the Government of Georgia managed the document's development, with assistance from foreign organisations. Improving institutional democracy; assuring equitable enjoyment of civil, political, social, cultural, and economic rights; and improving equality and care policies for citizens impacted by the occupation are all objectives that play essential roles in the action plan. By approving the aforementioned declaration, the Georgian government confirms its commitment to the preservation of human rights and basic freedoms, which involves the constant and ongoing execution of a systematic and long-term human rights protection policy.[50]

As a result of the reform carried out in the Prosecutor's Office of Georgia in 2022 and taking into account the recommendation of the Council of Prosecutors, the Department for the Protection of Human Rights was established by order of the Prosecutor General. The Department for the Protection of Human Rights closely cooperates with non-governmental and international organisations protecting human rights, as well as with the diplomatic corps and international organisations on issues within the competence of the Prosecutor's Office of Georgia. The Department of Human Rights Protection plays an important role in the process of reforming the Prosecutor's Office of Georgia as an institutionally independent, strong, and impartial human rights-oriented body.[51]

Combating hate crimes and ensuring victim-centred investigations are among the Special Investigation Service's top goals. In 2022, the Special Investigation Service established the Department for Monitoring and Analysing the Quality of Investigations to ensure high investigation quality,

[50] Ibid.
[51] Ibid.

conduct internal monitoring of the investigative process, develop a unified investigative policy, and implement practices of the ECtHR.[52]

On 23 March 2023, Georgia's Parliament passed the National Strategy for the Protection of Human Rights for 2022−2030, which was designed to improve the country's fundamental human rights and freedoms as well as institutional democracy. The key strategic direction identified in this paper is to improve the protection of minority and women's rights. The national plan aims to improve victim-centred responses to crimes motivated by intolerance based on discrimination, as well as to expand protection measures for victims of violence against women and/or domestic abuse. Various public-sector entities work to foster gender equality, safeguard women's rights, prevent domestic abuse, and contribute to the practical execution of legislative guarantees.[53]

The group responsible for establishing the status of victims of violence against women and/or domestic violence under the interdepartmental commission working on gender equality, violence against women, and domestic violence has been eliminated as a result of legislative changes. This reform makes it simpler for survivors of violence to access public services. Prior to the legislative change, it was necessary to obtain the status of victim/survivor for gaining access to public services, including shelter, which in many cases represented a significant barrier and risk of secondary victimisation for a person experiencing violence in need of this service. Thus, the state's will stated by ratification of the Istanbul Convention ensures that Georgian legislation is consistent with the Convention – granting simple and unfettered access to support services by victims (without obstacles).[54]

Extensive jail system changes were implemented between 2010 and 2014 to enhance medical treatment, and a new jail Code was enacted, which included the right to health in accordance with European prison rules. All prison establishments were equipped with doctors and psychiatrists to guarantee proper prevention and control of mental health disorders.[55]

The 2010 Code of Criminal Procedure codified rules to enable timely judicial management of detention, including when the prosecutor transfers the case file to the trial court. Furthermore, under the Organic Law on

[52] Ibid. p. 78.
[53] Ibid. p. 88.
[54] Ibid. p. 90.
[55] ECtHR, 2013; *Case of Jeladze v Georgia,* App. no. 1871/08, 18 March 2013

Common Courts of 2009, the ability of bailiffs to arrest persons was better constrained, and provisions were given for the conduct of a public hearing and the respect for equality of arms.[56]

A modification to the Criminal Procedure Code in 2010 made it possible to receive compensation for wrongful detention, regardless of whether convicted or acquitted.[57]

The adversarial concept was adopted into all criminal procedures, and the Criminal Procedure Code was amended in 2006 and 2007 to ensure the need for reasoned judicial rulings. The Code's 2010 modification expanded and strengthened one's right to be excluded from court costs where required to maintain one's ability to access court. The provision of restarting cases to give effect to the decisions of the ECtHR was added.[58]

The Code of Civil Procedure, as revised in 2008, and the new Code of Criminal Procedure of 2010 established tougher time limitations and procedures.[59]

Enforcement of judicial rulings was increased, in particular, by allocating a special budget in 2007 that allowed the state to fulfil past judgment debts and establishing a new enforcement organisation, the National Bureau of Enforcement. Enforcement was further improved in 2010 by amendments to the Civil Code, the Code of Civil Procedure, and the Enforcement Procedures Act, which allow for the forcible execution of cases in which the State is the debtor to be carried out by a special Department that requests the Finance Ministry to pay the amount owed by the Government Fund to the creditor. The Code of Civil Procedure allows compensation for damages and loss of income.[60]

The 2017 Environmental Assessment Code mandated the conduct of a Strategic Environmental Assessment and Transboundary Environmental Impact Assessment for hazardous economic operations of both commercial

---

[56] *Case of Patsuria v. Georgia,* App. No. 30779/04, 6 November 2007; *Case of Kakabadze and Others v. Georgia*, App. No. 1484/07, 2 October 2012.

[57] *Case of Jgarkava v. Georgia*, App No. 7932/03, 24 February, 2009.

[58] *Case of Donadze v. Georgia*, App. No. 74644/01, 7 March 2006; *Case of FC Mretebi v. Georgia*, App. No. 38736/04, 31 July 2007. Final on 31 January 2008. Rectified on 24 January 2008.; *Case of Gorgiladze v. Georgia*, App. No. 4313/04, 20 October 2009, Final on 20 January 2010.

[59] *Case of Kharitonashvili v. Georgia*, App No. 41957/04, 10 February 2009, Final on 10 May 2009.

[60] *Case of "Iza" Ltd and Makrakhidze v. Georgia*, App. No. 28537/02, final on 27 December 2005.

and governmental organisations. The code ensures that the public has access to important information, participates in decision-making, and receives frequent public evaluations. Operations without the necessary authorisation carry administrative and criminal penalties. The Criminal Code was updated appropriately in 2017. Furthermore, the 2017 Law on Environmental Responsibility established a legal framework to prevent and redress major environmental harm using the "polluter pays" approach. Furthermore, the technical Regulation on Ambient Air Quality norms of 2018 guaranteed air quality assessment in compliance with European norms.[61]

The Civil Code was changed in 2004 to distinguish between value judgments and facts, as well as to provide a right to respond in the media and seek compensation for non-financial and pecuniary damages for violations of honour, dignity, private life, personal security, and reputation. The 2004 Freedom of Speech and Expression Law superseded the previous Press and Media Law. It defines defamation and distinguishes between defamation against a private individual and public personality. It states that the defendant must establish that a fact is incorrect and that he or she incurred prejudice as a result of its publishing. Concerning defamation against a public personality, the defendant's legal obligation is engaged if the plaintiff establishes that the defendant was aware that the fact was incorrect.[62]

The challenged Law of 11 December 1997 and the Code of Administrative Procedure were changed in 2011 to allow victims of Soviet political persecution and their first-generation heirs to apply for monetary compensation. While the assessment of the appropriate amount of compensation was previously in the exclusive competence of the Tbilisi City Court, later amendments of 2014 enlarged the territorial jurisdiction.[63]

In 2014 and 2015, legislative amendments to the electoral laws established detailed criteria for the invalidation of election results by the Central Electoral Commission, as well as a new mechanism for dispute resolution in the event of complaints against Precinct Election Commission decisions. In 2011, the Constitution was changed to provide inmates convicted of "crimes of little gravity" the right to vote. The Electoral Code was updated appropriately. In 2017, a new constitutional change banned

[61] *Case of Jugheli and Others v. Georgia*, App. No. 38342/05, final on 13 October 2017.
[62] *Case of Gorelishvili v. Georgia*, App. No. 12979/04, 5 June 2007. Final on 5 September 2007.
[63] *Case of Klaus and Yuri Kiladze v. Georgia*, App. No. 7975/06, final on 2 May 2010.

from voting only those in jail on a conviction for especially serious criminal acts.[64]

8. Landmark Cases of Georgia before the ECtHR

8.1. Georgia v. Russia (I)[GC] (Just Satisfaction), 13255/07 31 January 2019

In the case Georgia v. Russia (I) (Application no. 13255/07),[65] the Georgian government accused Russia of carrying out a coordinated campaign of arrests, detentions, and expulsions of Georgian citizens living in Russia between September 2006 and January 2007. Following the September 2006 arrest of four Russian officers in Tbilisi on espionage charges − an act that Russia denounced as provocative − tensions between the two nations grew more intense. In retaliation, Russia allegedly started persecuting Georgian citizens on the basis of their nationality and race.

Thousands of Georgian citizens were held by Russian authorities at this time, frequently under terrible conditions, and many of them were later forced to leave the nation. According to reports, inmates endured filthy, cramped circumstances in addition to limited access to food and medical services. According to the Georgian government, these acts violated multiple articles of the ECHR, such as the right to liberty and security, the ban on torture and inhuman treatment, and the right to respect for one's private and family life. They also constituted a form of collective punishment and ethnic discrimination against Georgians.

According to its 2014 ruling in Cyprus v. Turkey (No. 25781/94, 12.05.14), which outlined three factors to be taken into account, the Court determined that Article 41 permits it to award reparations to State parties in inter-State cases. These factors include, '(1) the type of complaint made by the applicant Government, which must concern the violation of basic human rights of its nationals (or other victims), (2) whether the victims could be identified, and (3) the main purpose of bringing the proceedings'. The Court determined that Georgia's claim satisfied all three requirements as it addressed Russia's conduct of 'arresting, detaining, and collectively expelling Georgian nationals' in contravention of its ECHR responsibilities.

Georgia also submitted a claim for compensation for the victims who had been identified, not 'with a view to compensating the State', after being

[64] *Case of Ramishvili v. Georgia,* App. No. 48099/08, 31 May 2018.
[65] *Case of Georgia v. Russia (I),* App No. 13255/07, 31 January 2019.

able to produce a "detailed list" of the victims. The Court stated that separate petitions pertaining to an interstate matter might be distinguished from an interstate case for just satisfaction. The Court granted Georgia €10,000,000 in non-pecuniary damages (for trauma, distress, anxiety, and humiliation) based on a list of at least 1500 Georgian nationals who were victims of at least a violation of Article 4 of Protocol 4, as well as the principles derived from and Cyprus v Turkey and Varnava and others v Turkey [GC].

The Court mandated that Georgia establish an efficient system, overseen by the Committee of Ministers, for allocating the awards to the various victims. Judge Dedov criticised this in his dissenting opinion, stating that it was unfortunate that the Court did not permit the Russian Government to distribute the award directly in cooperation with the Georgian Government. He contended that this diminished the Russian Federation's standing as a member of the CoE.

The ruling upheld the fundamental rights outlined in the ECHR, namely vis-à-vis the treatment of non-citizens and ban on mass deportation. It emphasised the need for nations to treat people with respect and dignity, irrespective of their nationality, and to ensure that the law is obeyed when someone is detained or expelled. This case was noteworthy because it addressed the more general problems of collective punishment and ethnic discrimination, and it established a crucial precedent for the defence of human rights in comparable situations.

8.2. Enukidze and Girgvliani v. Georgia

The ECHR rendered a decision in the Enukidze and Girgvliani v. Georgia case on 26 April 2011. The decision had several crucial and noteworthy consequences for Georgia's investigating departments.[66]

The case dealt with the 2006 kidnapping, beating, and death of the applicants' son at the hands of many senior law enforcement officers, as well as the inadequate investigation and punishment that followed. The petitioners protested that the Government had only provided a portion of the evidence required for the application to be examined, and even that had been completed much later than expected.[67] Girgvliani and his friend Bukhaidze visited a café in Tbilisi on the evening of 27 January 2006,

[66] Georgian Young Lawyers' Association (GYLA), n.d.

[67] *Case of Enukidze and Girgvliani v. Georgia,* App. No. 25091/07, 26 April. Final on 26 July 2011.

where they got into a fight with several senior officers from the MIA. Later that evening, four Ministry officers wrestled Girgvliani and Bukhaidze into a vehicle. While Girgvliani was transported to a secluded location close to Tbilisi, severely assaulted, and left to die, Bukhaidze was able to escape. The next day, Girgvliani's corpse was discovered with numerous bruises that suggested he had been severely beaten and tortured. Protecting the high officials involved, the ensuing inquiry and trial were widely condemned for being prejudiced and shallow. Four lower-ranking officials were detained, put on trial, and given jail terms; nonetheless, the penalties were viewed as light, and the investigation was thought to have fallen short of holding the higher-ranking authorities responsible.

The case was brought before the ECtHR, which found multiple violations of the ECHR:

Article 2 (Right to Life): The Court concluded that there was insufficient inquiry carried out by Georgian authorities into the death of Sandro Girgvliani. Serious flaws in the inquiry included delays and omissions that betrayed a lack of sincere commitment to find the truth and hold all involved accountable. The participation of high-ranking officials in the incident and the actions taken to shield them from punishment thereafter showed a disregard for the right to life.

Article 3 (Prohibition of Inhuman or Degrading Treatment): Sandro Girgvliani was subjected to inhumane and degrading treatment. The evidence suggested that before his death, he had been severely physically and mentally abused and subjected to harsh beatings. The Court came to the conclusion that the government had neglected to shield Girgvliani from this kind of abuse as well as to appropriately investigate the crime and prosecute those responsible for it.

Article 13 (Right to an Effective Remedy): Regarding the breaches of Articles 2 and 3, the Court found that the applicants − Girgvliani's parents − were not provided with a meaningful remedy. It was determined that the domestic investigation and court processes were insufficient and unfair, and that the petitioners were not given a fair chance to seek compensation for their son's untimely death.

Article 38 (Examination of the Case): When the Court was reviewing the case, the Georgian government did not entirely comply. This included the government's unwillingness to turn over certain records and data that the court had asked for, which made it more difficult for the court to determine all the relevant facts and evaluate the infractions.

The ECtHR decided in favour of the petitioners after considering these conclusions and granted the following:

Non-Monetary Losses: The parents of Sandro Girgvliani were awarded EUR 50,000 by the court as compensation for non-pecuniary harm. The purpose of this recompense was to alleviate the anguish and sorrow brought about by their son's passing and the inadequacy of the authorities' inquiry.

Fees and Expenses: Additionally, the applicants' fees and expenditures in taking the action before the ECtHR were awarded by the Court in the sum of EUR 6,000. This sum was meant to pay for the related legal and other costs of the proceedings.

Enukidze and Girgvliani v. Georgia was an important case that brought to light structural problems in Georgia's legal and law enforcement institutions. It made the issue of the widespread lack of accountability and corruption of high-ranking officials more visible. The case demonstrated how far these officials will go to avoid accountability, eroding public confidence in the government's commitment to justice and the rule of law. Multiple breaches of the ECHR were established by the ECtHR, highlighting the inability of Georgian authorities to carry out a sincere and thorough investigation into the savage murder of Sandro Girgvliani. This case demonstrated how urgently Georgia's institutions need to be reformed to guarantee that justice is administered impartially, regardless of the position of those involved.

In addition, the case had a huge impact on Georgia's hopes for deeper links with European organisations, such as the European Union, as well as its standing internationally. The conclusions of the ECtHR and the attention that the case garnered thereafter brought to light the disparities between Georgia's declared human rights policies and its actual behaviour. It became imperative that Georgia's government take action on these concerns to show that it is committed to protecting human rights norms and re-establishing confidence with both its people and the international world. This case marked a turning point in Georgia's continuous attempts to fortify its democratic institutions and bring itself into compliance with European standards by galvanising public demand for accountability, transparency, and changes within the court and law enforcement forces.

8.3. Rustavi 2 Broadcasting Company Ltd v. Georgia

Rustavi 2 Broadcasting Company Ltd. and Others v. Georgia (Application no. 16812/17)[68] was a protracted court dispute over the ownership of Rustavi 2, a significant Georgian television network well known for its oppositional views against the state. The conflict started in 2006 when former owner Kibar Khalvashi stated that he was forced to sell his interests. Khalvashi claimed that the transaction had been coerced and illegal when he launched a lawsuit in 2015 to recover his shares. At every stage of the legal process, from the Tbilisi City Court to the Supreme Court of Georgia, rulings in support of Khalvashi resulted in the restoration of Khalvashi's ownership and the nullification of the transactions that had transferred the shares to the present owners.

Owing to their critical editorial position, Rustavi 2 and its directors claimed that the legal actions were politically motivated and unfair, with the intention of silencing the station. They filed an application with the ECtHR, claiming that their rights to property protection, freedom of speech, and a fair trial had been violated. The ECtHR first approved temporary restrictions to stop ownership transfer, but later removed them. On 18 July 2019, the ECtHR declared that there was no proof of political interference or judicial prejudice in the domestic proceedings and that the petitioners had been given a fair hearing.

The ECtHR examined the claims brought by Rustavi 2 Broadcasting Company and its directors, which included allegations of violations of:

Article 6 (Right to a Fair Trial): The applicants argued that the Georgian legal system was prejudiced and unjust, and they claimed that the government had swayed the judiciary's judgment against them. The Court looked at the legal system, the reasoning of Georgian courts, and the protections put in place for procedural justice. The ECtHR concluded that national courts followed procedure and gave thorough justification for their rulings. It was not demonstrated by any convincing evidence that the courts had behaved unfairly or with undue influence from the government. The ECtHR found that there was no infringement of the petitioners' right to a fair trial, as guaranteed by Article 6.

Article 10 (Freedom of Expression): The applicants claimed that Rustavi 2, which was renowned for its critical reporting on the government, was intended to be silenced, and that this was the political motivation for the

[68] *Case of Rustavi 2 Broadcasting Company Ltd v. Georgia*, App. No. 16812/17, 9 December 2019.

legal dispute and the eventual transfer of ownership. The Court deliberated over whether the decisions made in the domestic proceedings resulted in a restriction on the applicants' right to free speech. Although a media firm was engaged in the case, it was pointed out that the conflict was more about ownership and property rights than the outright repression of journalistic activity. The Court concluded that there was no clear connection between the ownership dispute and the state's intentional attempt to restrict the broadcaster's right to free speech. As the interference did not attempt to impede the applicants' right to free speech, the ECtHR found that Article 10 had not been violated.

Article 1 of Protocol No. 1 (Protection of Property): The applicants stated that their property rights had been violated by the arbitrary and unreasonable transfer of the shares to Khalvashi and the invalidation of their ownership rights. The Court looked at the legitimacy, proportionality, and legality of the applicants' interference with their property rights. The decisions made by domestic courts, according to the ECtHR, were grounded on a legal procedure that sought to rectify a forced sale and pursue the justifiable goal of regaining rightful ownership. The actions performed were thought to be appropriate for reaching this goal. The ECtHR determined that the interference with the applicants' property rights was appropriate and did not violate Article 1 of Protocol No. 1.

The outcome of the case was as follows: The Georgian courts' processes were deemed to be unbiased and fair by the ECtHR. The criteria of Article 6 of the Convention were satisfied by the thorough justification given by the domestic courts and the observance of procedural safeguards. There was no proof of judicial prejudice or improper influence. The Court came to the conclusion that there was no attempt to stifle the broadcaster's right to free speech in the midst of the ownership lawsuit. There was, therefore, no breach of Article 10. According to the ECtHR, the interference with the applicants' property rights was appropriate and reasonable and followed a justifiable goal. The transfer of ownership back to Khalvashi rectified a forced sale and complied with Article 1 of Protocol No. 1.

The case was significant for Georgia because it brought to light important questions about political interference, media freedom, and judicial independence. Rustavi 2, a major television network renowned for its scathing reporting on the administration, found itself at the heart of a court dispute that cast doubt on the independence of Georgia's judiciary. The legal system in Georgia was questioned for its impartiality due to claims of

political motive and prejudice throughout the court procedures. After carefully examining these allegations, the ECtHR concluded that there was no proof of prejudice or political meddling. This decision made clear how crucial it is to maintain fair trial standards and showed that the court is capable of withstanding criticism for its independence and commitment to the rule of law.

The case also had important ramifications for media freedom. The ownership dispute was especially contentious because of the critical position of Rustavi 2 towards the government, which also touched on more general concerns of press freedom and the function of independent media in a democratic society. The ECtHR reaffirmed the idea that property rights and legal disputes should be settled within the bounds of the law, without compromising journalistic freedoms, by analysing the legal aspects of the ownership dispute and concluding that there had been no breach of freedom of speech. This case added to the continuing discussion about media independence and the rule of law in Georgia by serving as a reminder of the difficult balance that must be struck between defending property rights and ensuring that media organisations may work freely without fear of political reprisal.

8.4. Vazagashvili and Shanava v. Georgia

The case of Vazagashvili and Shanava v. Georgia (Application number. 50375/07)[69] concerns the shooting death of 22-year-old Zurab Vazagashvili by Georgian law enforcement on 2 May 2006, during a special operation in Tbilisi. The purported goal of the operation was to capture accused criminals. When police opened fire on the car occupied by Vazagashvili and two other young men, he and one of his friends were killed. The police stated that the people inside the car were armed and had shot at them, and they were acting in self-defence. However, further evidence revealed that Vazagashvili and the others were unarmed and posed no threat, casting doubt on the police's use of fatal force.

After the shooting, Yuri Vazagashvili, Zurab Vazagashvili's father, fiercely pursued justice for his son, alleging that investigation into the shooting was biased and faulty. He asserted that the government was trying to hide the illegal killing. Despite his best efforts, no one was found guilty in the first probe, which increased suspicions of a law enforcement cover-up.

[69] *Case of Vazagashvili and Shanava v. Georgia*, App. No. 50375/07, 18 March 2013.

The case was brought before the ECtHR, which found multiple violations of the ECHR:

*Article 2 (Right to Life)**:*** The petitioners, Zurab Vazagashvili's parents, claimed that the Georgian government had infringed their son's right to life by using deadly force against him and then failing to carry out a thorough inquiry into his passing. After reviewing the details of the police action, the Court concluded that Zurab Vazagashvili was not entitled to be killed. Vazagashvili and the other occupants of the automobile were shown to be unarmed and did not immediately constitute a threat to the engaged police, according to evidence produced in court. The Court found that the police had violated Article 2 in its substantial sense by using disproportionate and illegal force. The Georgian authorities' investigation was also examined by the ECtHR. The inquiry was deemed by the Court to be seriously flawed and neither thorough nor timely. Most importantly, the investigation did not look into all the pertinent information and did not hold the murderers accountable. The Court came to the conclusion that the state had violated the procedural provisions of Article 2 by failing to carry out a thorough inquiry into Zurab Vazagashvili's death.

Georgia was found to have breached both the substantive (unlawful killing) and procedural (failure to undertake an adequate inquiry) aspects of Article 2 of the ECHR. The petitioners were granted EUR 50,000 in non-pecuniary damages by the ECtHR, which recognised the psychological anguish and suffering they had experienced as a result of their son's death and the state's subsequent inadequate investigation of the matter.

The ruling emphasised how crucial governmental responsibility is in the event of deadly force used by the police. It emphasised the importance of launching quick, in-depth, and unbiased investigations into these kinds of events to provide justice for the victims and their families. The case also emphasised the judiciary's responsibility for maintaining the rule of law and defending people' rights from abuse by the government. The case raised questions about Georgia's police procedures and the efficiency of the legal system in resolving allegations of wrongdoing by the police. It reaffirmed the necessity of changes to guarantee that acts of law enforcement adhere to human rights norms and that violations are swiftly and successfully dealt with by the courts.

8.5. Saakashvili v. Georgia

Former Georgian President Mikheil Saakashvili is the subject of the case Saakashvili v. Georgia (Applications nos. 6232/20 and 22394/20).[70] Saakashvili was found guilty in absentia of several crimes, including abuse of authority, and was given an incarceration term. When Saakashvili returned to Georgia in October 2021 after several years overseas, he was immediately detained and imprisoned. Saakashvili stated during his detention that he was mistreated and that his detention was politically motivated. He went on a hunger strike, claiming he was treated inhumanely by the Georgian government and that they had neglected his medical needs. Arguing that Saakashvili's imprisonment breached many sections of the ECHR, Saakashvili's legal team took the issue to the ECtHR.

The Court could not find sufficient evidence to draw the conclusion that Saakashvili's rights under Article 18 in combination with Article 5 were violated or that his incarceration was motivated by politics. The Court judged there was no evidence of a violation of these principles in the legal justification for his detention. Additionally, the Court found that Saakashvili's right to a fair trial under Article 6 had not been clearly violated because the evidence did not establish that Saakashvili's trial had been improperly affected by political factors.

8.6. Sarishvili-Bolkvadze v. Georgia

In 2004, the applicant's child was hospitalised for critical care due to a catastrophic injury and died a month later in the hospital. A panel of specialists determined that a medical mistake had occurred during his treatment. The applicant's refusal to allow an autopsy and an exhumation later resulted in the criminal inquiry being dropped in 2008, as the prosecutor was unable to demonstrate a direct relationship between the claimed medical malpractice and her son's death. Meanwhile, the civil courts determined that his death was the result of medical negligence, that the hospital engaged in illegal operations in different disciplines, and that part of the medical personnel lacked the authority to practice medicine independently. The petitioner was granted approximately EUR 2,700. Her claim for non-pecuniary damages was denied because domestic law did not provide for compensation for non-pecuniary loss caused by an infringement on a relative's right to life.[71]

---

[70] *Case of Saakashvili v. Georgia*, App. Nos. 6232/20 and 22394/20, 1 March 2022.
[71] *Case of Sarishvili-Bolkvadze v. Georgia*, App. Nos. 58240/08, 19 October, 2018.

In the case of claimed medical negligence, states' substantive positive responsibilities were confined to establishing an effective regulatory framework that required institutions to implement adequate steps to preserve patients' lives. In terms of whether the responding State had fulfilled its regulatory obligations, the hospital had been performing unlicensed medical activities in several fields, including cardiology and clinical transfusion in relation to the applicant's son, and several doctors involved in his treatment lacked the necessary licenses or qualifications, in violation of domestic law. While there was a legislative structure in place to oversee compliance with the applicable licensing requirements, the respondent Government had not specified how it was implemented in reality, if at all. Consequently, the State had violated its substantial affirmative commitment to create an adequate regulatory framework that would ensure compliance with applicable legislation aimed at protecting patients' lives.

The decision to end the criminal inquiry into the death of the applicant's son was not made quickly. Based on the conclusions of the appropriate forensic specialists, it was determined that it was impossible to prove a causal relationship between medical malpractice and death without performing an autopsy or exhumation, which the applicant had repeatedly refused to allow. Furthermore, the prosecutor exhibited extraordinary vigilance by writing to the appropriate ministry, indicating that a medical error made in the current instance necessitated ‘the implementation of adequate measures to prevent similar violations’. The termination of the criminal proceedings in respect of medical negligence did not violate the procedural requirements of Article 2 of the Convention.

The legal procedures against the hospital were successful in establishing the key facts surrounding the applicant's concerns. However, the domestic legal system did not allow a deceased victim's surviving next-of-kin to seek and recover non-pecuniary damages in circumstances of medical malpractice. In light of the applicant's psychological grief as a result of her young son's death, the whole and unconditional legislative restriction had unfairly denied her the right to seek an enforceable award of compensation for non-pecuniary damages.

8.7. Jugheli and Others v. Georgia

At the time, the applicants resided in a block of apartments in the city centre, approximately 4 m from a thermal power plant that supplied energy and heat to the surrounding residential districts. The plant had been in

operation since 1939, but owing to financial difficulties, it stopped producing power in part in 2001. According to the applicants, while the factory was active, its harmful operations were not subject to applicable rules, and as a result, different poisonous compounds were discharged into the environment, severely impacting their well-being.[72]

Even if the air pollution did not cause any demonstrable harm to the candidates' health, it might have rendered them more susceptible to various ailments. Furthermore, there was no denying that it had harmed their quality of life at home. Thus, there had been an interference with the applicants' rights that was severe enough to fall inside the meaning of Article 8 of the Convention. The core of the problem in this case was the virtual absence (until 2009) of a regulatory framework relevant to the plant's risky operations, as well as the inability to manage the resulting air pollution, which had a detrimental impact on the petitioners' rights under Article 8.

States, in particular, have a duty to implement rules tailored to the unique characteristics of the activity in issue, particularly in terms of the possible degree of risk. The complete dearth of any legal and administrative framework applicable to the plant's potentially hazardous operations in the present case allowed it to operate in close proximity of the applicants' residences without adequate protections to avoid or at least reduce air pollution and its negative impact on the applicants' well-being and health, as confirmed by a specialist testing ordered by the local courts. The situation was worsened by the fact that in spite of requesting the facility to install the necessary filtering and cleansing equipment to reduce the effect of pollutants on the building's residents, the competent authorities took no effective steps to carry out the request. In these circumstances, the respondent State failed to strike an equitable equilibrium between the community's interests in having an operable thermal power plant and the applicants' effective exercise of their right to respect for their home and private life.

8.8. Gloveli v. Georgia

The applicant was a practicing lawyer in Georgia with 22 years of experience. Between 1999 and 2005, she also served as a judge on the Tbilisi Court of Appeal. She then competed for three empty judge posts, the most recent of which was in October 2017. All of her applications were denied. The current case involves the procedure relating to her recent

[72] *Case of Jugheli and Others v. Georgia*, App. No. 38342/05, 13 October 2017.

attempt to secure the appointment. In 2016, the applicant and two failed candidates filed a constitutional lawsuit stating that the Act of 13 June 1997 on Courts of Ordinary Jurisdiction violated Articles 29 and 42 of the Constitution. The complaint claimed that they did not have access to a court to pursue their constitutional right to a fair process in admission to public service. In 2017, revisions to the Courts Act enhanced the ability of the Supreme Court to review judicial nominations. The Constitutional Court dismissed the suit, finding that the amendments had addressed the issue by establishing the Supreme Court's Chamber for the Review of Judicial Appointments. The candidate sought a vacant judge position but was denied based on her competence score. She appealed to the Qualifications Chamber, stating that the judgment was arbitrary and biased. The Chamber deemed the appeal inadmissible for lack of jurisdiction.

The applicant alleged a breach of her right to access a court because she was unable to secure a judicial review of a decision not to appoint her to a judicial position. The Government contended that Article 6 of the Convention was inapplicable in its civil aspect in the instant case because there was no "right" at issue recognised by domestic law, and there was no real and serious disagreement over a "right" that the applicant might claim under domestic law. The government also cited a Qualifications Chamber ruling that rendered another rejected judicial candidate's case inadmissible due to a lack of jurisdiction. The applicant disputed the Government's claims, stating that her "civil" right to equal access to public service and employment, as well as access to a court in connection with related problems, was recognised by applicable domestic legislation. She claimed that the relevant ruling of the High Court of Justice (HCJ) had effectively decided her civil right to compete on an equal basis in the judicial competition, and that she should thus have been entitled to a fair hearing in that determination.[73]

In the Baka case, the ECHR analysed the applicability of Article 6 of the Convention in disputes concerning the appointment, career, and dismissal of judges. The Court found that Article 29 of the Constitution provided for the right of equal access to public service, which was applicable to judicial competitions. The Court considered the dispute to be "genuine" and "serious" as it concerned the fairness of the judicial selection and appointment procedure and could lead to the annulment of the contested decision and reconsideration of the applicant's application for the post. The

[73] *Case of Gloveli v. Georgia*, App. No. 18952/18, 7 July 2022.

Court also noted that the amended sections 191 § 1, 354(1), and 365(1) of the Courts Act provided that an appeal could be lodged with the Qualifications Chamber against a decision of the HCJ refusing appointment to judicial office. However, the Qualifications Chamber had no jurisdiction to entertain the applicant's application, as it did not concern a final decision of the HCJ refusing appointment to a judicial post. The Court could not conclude that domestic law contained an explicit exclusion of access to a court for the type of dispute concerned. It must determine whether access to a court had been excluded under domestic law before, rather than at the time, the impugned measure concerning the applicant was adopted. The Court must also ensure that the exclusion was justified on objective grounds in the State's interest. The Court has stated that judicial independence is a prerequisite to the rule of law and that the manner of appointment of its members must be taken into account. The Court found that the exclusion of the applicant from a judicial competition in the absence of any judicial review of this decision cannot be regarded as being in the interest of a State governed by the rule of law. In conclusion, the Court found that Article 6 § 1 of the Convention under its civil head is applicable, and the Government's preliminary objection as to the applicability of Article 6 § 1 must be dismissed. The complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention.

The applicant argued that her right to challenge the arbitrary and discriminatory decision of the HCJ had been breached, citing the importance of the selection and appointment of judges for the proper functioning of the judiciary. The Government argued that the applicant's right of access to court had not been violated, as domestic legislation provided for judicial review of HCJ decisions. The Qualifications Chamber had full jurisdiction to review decisions concerning the selection and appointment of judges, and the decision was in line with domestic case-law. The right of access to a court is established as an aspect of the right to a fair hearing guaranteed by Article 6 § 1 of the Convention in Golder v. the United Kingdom. However, the Court acknowledged that the right of access to the courts is not absolute and may be subject to limitations that do not restrict or reduce access to the individual. The applicant's appeal against the rejection of her candidacy for a judicial post was not reviewed by the Qualifications Chamber, which declared her appeal inadmissible for lack of jurisdiction. The Court considered that the deprivation of jurisdiction of the Qualifications Chamber

to examine the applicant's appeal impaired her right to access to a court, as guaranteed by Article 6 § 1 of the Convention.

Bibliography

[1] Arnold, R. (2021) 'Modern Constitutionalism and the Anthropocentric Order of Values - On the Modernity of the 1921 Constitution of Georgia', *Journal of Constitutional Law, Special Issue, Constitution of the Democratic Republic of Georgia of 1921*, N1-2/2021, pp. 11-46.

[2] Badalyan, T., Vasilyan, S. (2020) 'The perceived rationale, variegated institutional take and impact of the EU's human rights policy in Armenia and Georgia', *Journal of Contemporary European Studies*, 2020/28, pp. 1-16.

[3] Gegenava, D. (2013) 'Changing Constitutional Identity: Constitutional Reform and New Concept of Human Rights in Georgia', *Bratislava Law Review*, 3(1), pp. 112-121; https://doi.org/10.46282/blr.2019.3.1.128.

[4] Gerards, J. (2023) *General Principles of the European Convention on Human Rights*, 2nd edn. Cambridge: Cambridge University Press.

[5] Korkelia, K. (2007) *Towards the Integration of European Standards: The European Convention on Human Rights and the Experience of Georgia*. Tbilisi: Tinatin Tsereteli State and Law Institute.

[6] Korkelia, K., Mchedlidze, N., Nalbandov, A. (2004) *Compatibility of Georgian Legislation with the Standards of the European Convention on Human Rights and Its Protocols*.

[7] Kublashvili, K. (2019) *Fundamental Human Rights and Freedoms, Legal Handbook,* Fifth edition, Tbilisi.

[8] Matsaberidze, M. (2021) 'Constitution of Georgia of 1921 - a symbol of Georgian independence', *Journal of Constitutional Law, Special Issue, Constitution of the Democratic Republic of Georgia of 1921*, N1-2/2021, pp. 61- 78.

[9] Peers, S., Hervey, T., Kenner, J., Ward, A. (eds.) (2021) *The EU Charter of Fundamental Rights: A Commentary*, 2nd edn. Oxford: Hart Publishing.

[10] Congress of Local and Regional Authorities of the Council of Europe (2021) *Human Rights at Local Level in Georgia: Follow-Up Report*, [Online]. Available at: http://rm.coe.int/0900001680a87cbf (Accessed: 29 July 2024).

[11] Council of Europe (2019) *Mid-Term Review of the Action Plan for Georgia 2016-2019*, [Online]. Available at: https://rm.coe.int/mi-georgia-eng/1680a23c8f (Accessed: 12 July 2024).

[12] Council of Europe (2023) *Report of the Council of Europe Commissioner for Human Rights Dunja Mijatović following her visit to Georgia from 26 to 29 September 2022*, [Online]. Available at: https://rm.coe.int/report-of-the-council-of-europe-commissioner-for-human-rights-dunja-mi/1680a740bf (Accessed: 01 July 2024).

[13] Council of Europe, (2023). *Action Plan for Georgia 2024-2027*, [Online]. Available at: https://rm.coe.int/prems-154423-gbr-1501-action-plan-georgie-2024-2027-web-2-/1680adf15c (Accessed 15 July 2024).

[14] Georgian Young Lawyers' Association (GYLA) (n.d.) Importance of the ECHR's Ruling in the Case of Enukidze and Girgvliani v. Georgia, [Online]. Available at: https://www.gyla.ge/en/post/importance-of-the-echrs-ruling-in-the-case-of-enukidze-and-girgvliani-v-georgia-162398 (Accessed: 14 July 2024).

[15] Ministry of Justice of Georgia (2024) *On the Enforcement of Judgments of the European Court of Human Rights against Georgia: Report for 2023 (Ongoing Cases)*.

[16] Public Defender (Ombudsman) of Georgia (2021) *Public Defender (Ombudsman) of Georgia*, [Online]. Available at: https://ombudsman.ge/geo/akhali-ambebi/sakartvelos-sakhalkho-damtsvelis-gantskhadeba-1921-tslis-21-tebervlis-konstitutsiis-100-tslistavtan-dakavshirebit (Accessed: 12 July 2024).

[17] Schabas, W. A. (2017) *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press.

[18] Tsereteli, N. (2016) 'The Impact of the Judgments of the European Court of Human Rights against Georgia on Legislation and Practice', in Korkelia, K. (ed.) *National and International Mechanisms for the Protection of Human Rights: Collection of Articles*. Tbilisi.

[19] Vardosanidze, K. (2021) 'Introduction to Constitutional Law of Georgia', in Gegenava D., Goradze, G. (eds) 2nd edn., Tbilisi.