

Tbilisi, 16 August 2018

**HE Ambassador Miroslav PAPA  
Chair of the Ministers' Deputies  
of the Council of Europe  
Permanent Representative of  
Croatia to the Council of Europe  
Strasbourg, France**

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Your Excellency,


With this letter, we the undersigned, applying to you as the Chairman of the Committee of Ministers' Deputies regarding the execution of the ECHR Grand Chamber judgment in the case of Merabishvili v. Georgia, which is pending at the Human Rights meetings of the Committee of Ministers' Deputies.

We would highly appreciate your support in providing the members of the Committee of Ministers' Deputies with the attached information about the details of the case in question.

Attachment: 7 pages.

Yours faithfully,

Roman Gotsiridze  
Member of Parliament of Georgia  
Chair of the Faction "United National Movement"



Nick Melia  
Member of the Parliament of Georgia  
Chair of the United National Movement Political Council



Salome Samadashvili  
Member of the Parliament of Georgia  
Deputy Chair of the Committee on Foreign Relations  
Head of Mission of Georgia to the European Union (2005-2013)



Tinatina Bokuchava  
Member of the Parliament of Georgia  
Deputy Ambassador to the Swiss Confederation, Deputy Chief of Georgia's Mission to  
the United Nations Office at Geneva (2010-2012)

Koba Nakopia  
Member of the Parliament of Georgia

Azer Suleimanov  
Member of the Parliament of Georgia

Giorgi Baramidze  
Vice Prime Minister, State Minister of the European and Euro-Atlantic Integration of  
Georgia (2005-2012)

Grigol Vashadze  
Minister of Foreign Affairs of Georgia (2008-2012)

Petre Tsiskarishvili  
Head of Georgia's Delegation to the Parliamentary Assembly of the Council of Europe  
(2008-2012)

Levan Bezhashvili  
Auditor General of Georgia (2008-2012)

Akaki Minashvili  
Chair of the Foreign Relations Committee of the Parliament of Georgia (2008-2012)

Irakli Kavtaradze  
Deputy Chair of the Foreign Relations Committee of the Parliament of Georgia (2008-  
2012)

Dimitri Shashkini  
Minister of Corrections and Legal Assistance of Georgia (2009)  
Minister of Education and Science of Georgia (2009-2012)  
Minister of Defence of Georgia (2012)

Khatia Dekanoidze  
Director of the Police Academy of Georgia (2007-2012)  
Minister of Education and Science of Georgia (2012)

Eka Tkeshelashvili  
Former Minister for foreign  
affairs of Georgia



Levan Duchidze  
Former Ambassador of Georgia  
to Germany





## Government of Georgia refusing to execute the decision of the Grand Chamber of the ECHR

13.08.18

On November 28, 2017, the Grand Chamber of the European Court of Human Rights (ECHR), by a majority, found violations of Articles 5§3 and 18 of the European Convention of Human Rights in the case of former Prime-Minister of Georgia, Ivane Merabishvili. This Decision of the Grand Chamber upholds the unanimous decision of the Fourth Section of the ECHR adopted in June of 2016.

In almost 60-year history of the ECHR there are only seven cases, including that of Ivane Merabishvili, in which breach of Article 18 of the European Convention of Human Rights was established by the section of the ECHR and the first one by the Grand Chamber. Ivane Merabishvili is only third politician in relation to whom this breach was established by the Court and first case of this kind in the history of Georgia. **As of today, Mr Merabishvili remains the only person remaining in custody after winning Article 18 of the European Convention of Human Rights.**

Article 18 of the Convention is essentially an article prohibiting governments to use restrictive measures (such as arrest and/or prosecution) for reasons other than those considered legitimate by the Convention - for instance, political motivation. In other words, in addition to declaring Ivane Merabishvili's continued detention in breach of article 5§3 of the Convention, the Fourth Section unanimously and the Grand Chamber by majority established that the reasons of restrictive measures applied to Merabishvili (arrest and detention) were not those declared by the Government of Georgia, but rather the Government was politically motivated in those actions. Thus, while the Court does not use definition of "political prisoner" in any of its cases, this decision, virtually declares Mr Merabishvili to be a political prisoner just like Mr Lutsenko, Ms Timoshenko and others were.

The basis of the Article 18 finding in Mr Merabishvili's case was his covert removal from his prison cell on December 14, 2013, when he was taken to meet the Chief Prosecutor of Georgia and the Head of the Georgian Prison Service, who attempted to blackmail him into giving information about former President Saakashvili, and about the death of former Prime Minister Zurab Zhvania. The Government of Georgia has always denied that this ever occurred, and continued to do so throughout the litigation of the case, including at the Grand Chamber. However, the Grand Chamber explicitly found that the covert removal did happen (as the Fourth Section had found earlier). There was unanimity on this point – in other words, the dissenting judges did not dissent on the basis of any factual dispute about the covert removal. Despite this finding, in the light of statements made by Ministers after the Grand Chamber judgment was handed down, the Georgian Government appears to continue to deny that Mr Merabishvili's covert removal and questioning ever took place.

In all but one of the other cases in which the ECHR has found a violation of Article 18, the complainants were subsequently released – and in none of the cases did the Court expressly call for the complainant's release. The only exception until August 13, 2018, was the case of *Ilgar Mammadov v Azerbaijan* who, similar to Mr Merabishvili, was detained and subsequently convicted to 7 years. As a consequence of the failure of the Azerbaijani authorities to release Mr Mammadov, the Committee of Ministers of the Council of Europe, responsible for the Supervision of execution of judgments of the ECHR, decided on 5 December 2017 to instigate infringement proceedings and as a consequence, the Azerbaijani Government was taken back before the ECHR, charged with failing to implement the judgment in that case. On August 13, 2018, Mr Mammadov was released by Appeal Court, changing his conviction to conditional sentence.



In previous cases in which the Court has found violations of both Articles 5 and 18 in the course of criminal proceedings, the question of the re-opening of the domestic proceedings, or other alternative means of ensuring the rehabilitation of the applicants, was central to the supervision process pursued by the Committee of Ministers.

Mr Merabishvili submits that any finding of a violation of Article 18 is so serious that, in effect, it taints the criminal justice process, as one which simply cannot be relied on. It is emphasized that, in his case, the Grand Chamber's finding was based on the applicant's covert removal involving both the Chief Prosecutor of Georgia and the Head of the Georgian Prison Service. The Court also took account of the 'bitter political antagonism between [political parties] UNM and Georgian Dream' (para. 329), noting that courts in France, Greece and the United Kingdom had turned down requests by the Georgian authorities for the extradition of two high-ranking former officials from UNM on the basis, *inter alia*, that the criminal prosecutions against them were politically motivated (para. 330). The findings of the Grand Chamber demonstrate the Court's view that the improper motives which led to its finding of a violation of Article 18 extended beyond the date of Mr Merabishvili's covert removal and have continued to influence his treatment by the authorities to the present day. For example, the Grand Chamber drew attention to the authorities' subsequent comments on and investigation into his removal. In particular, it noted that the inquiry conducted by the General Inspection of the Ministry of Corrections in December 2013, as well as an investigation carried out by the Chief Prosecutor's Office in June 2016 – February 2017, into his removal were "marred by a series of omissions from which it can be inferred that the authorities were eager that the matter should not come to light" including the fact that "crucial evidence" such as the footage from prison surveillance cameras were never recovered. Further, the Grand Chamber highlighted as "particularly telling" the Government's submissions during the hearing itself that there was still a "huge question" for Mr Merabishvili in relation to Mr Zhvania's death (para. 352).

Yet another important fact, putting under question an inquiry into covert removal of Mr Merabishvili from his prison cell conducted by the General Inspection of the Ministry of Corrections in December 2013, is participation of then Head of General Inspection, Mirza Subeliani, into cover up of another crime. In December 2017, two teenagers were killed by peers, among whom were son of Mr Subeliani and his close relative. Mr Subeliani, who worked at the Prosecutor's Office of Georgia at that time, allegedly participated in concealing of their crime and later influenced the investigation. The decision of the court on this case stirred a mass protests in Georgia and caused a political crisis in May-June of 2018. As a result of this crisis, the Chief Prosecutor of Georgia has resigned, Mirza Subeliani was detained and Parliamentary Investigative Commission for this case was set up. Despite this, the protest rallies continued and unofficially this crisis served as a reason for the resignation of the Prime-Minister of Georgia a few days later. Number of opposition politicians, including former President and representatives of different parties and organizations claim that Mirza Subeliani remained untouchable for six months until mass protests, because he owns video footage of covert removal of Mr Merabishvili from his prison cell in December 2013, when he was the Head of General Inspection of the Ministry of Corrections and headed the inquiry. According to them, Mr Subeliani has been blackmailing the representatives of the government using these recordings to ensure that his son remains clear in this case.<sup>1</sup>

The attention should also be drawn to the 2015 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on Georgia, in which the CPT states that current condition of detention of Mr Merabishvili "could be considered as amounting to inhuman and degrading treatment."

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<sup>1</sup> See Annex 1



In the latest annual report, the Public Defender of Georgia refers to Mr Merabishvili's case, noting that "the Government of Georgia has yet to conduct effective measures to ensure restoration of [Mr Merabishvili's rights]" (para. 6.3). The Public Defender "believes that in order to execute the decision of the European Court regarding Ivane Merabishvili, the Government of Georgia, under the supervision of the Committee of Ministers of the Council of Europe, must conduct every necessary individual and general measures to execute the decision of the Court fully and in timely manner, as required by Article 46 of the European Convention."

The report goes on to make two recommendations – (1) to the Government of Georgia - to conduct individual, as well as general, measures to fully restore the rights violated against Ivane Merabishvili and (2) to the Prosecutor's Office of Georgia - to conduct a new, effective, thorough and detailed investigation regarding the fact of removal of Ivane Merabishvili from the prison cell and prosecute every possible offender.

On June 15, 2018, Public Defender of Georgia, Nino Lomjaria made a statement underlining that ECHR has confirmed covert removal of Mr Merabishvili from his prison cell and called to investigate, identify and punish everyone involved in it.

On June 4, 2018, the Government of Georgia has submitted before the Committee of Ministers the Action Plan and comments of the Government with respect to the execution of the case - Merabishvili v. Georgia. Government states that there is no need of any urgent individual measures, e.g. release of the applicant, because he serves his sentence on the basis of several criminal judgements and not all of them have been subjected to the Court's adjudication in its Grand Chamber judgement.

This argument is typical response coming from Governments' when violation of Article 18 is being found together with Article 5. That is what Governments of Ukraine and Azerbaijan brought to react on pressure regarding Applicants' release – as were the cases of Tymoshenko, Lutsenko and Mammadov. It is noteworthy, that Government of Georgia has launched numerous criminal cases against applicant and some of them are still pending, so that justification presented cannot be considered as a valid argument in this case, because violation of Article 18 together with Article 5 is so serious that, in effect, it taints the criminal justice process, as one which simply cannot be relied on.

In the cases in which the European Court has found a violation of Article 18, the complainants were subsequently released – that is emphasized in the letter of Committee of Ministers of December 5, 2017, to instigate infringement proceedings in the case of *Mammadov v. Azerbaijan* and as a consequence, Azerbaijan was taken back before the European Court, charged with failing to implement the judgment in that case. Committee of Ministers called for immediate release of the Applicant, despite the fact that Mr Mammadov was also convicted in 2014 for 7 years, like Mr Merabishvili and he also served his sentence in Prison.

As for Mr Merabishvili's convictions – Government of Georgia in 2013 has officially invited OSCE-ODIHR for Monitoring the trials of former high level officials. Monitoring group stated, that "Based on the above observations regarding specific fair trial rights difficulties – often of a systemic nature – it can be concluded that the respect of fair trial rights in the monitored cases was not fully guaranteed by the Georgian criminal justice system". And particularly about the case against Mr Merabishvili has emphasized, that "In a case where the defendant was convicted of exceeding official powers, the court failed to say what the limits of the defendant's powers were, and how the defendant exceeded those limits, aside from noting that the defendant did not have the authority to commit illegal acts. In order to assess whether and how a defendant exceeded official powers, the limits of those powers must first be established". Therefore, even the minimum standards for substantiation of Judicial Decisions were not met.

The Government of Georgia declare their readiness to conduct additional investigative and legislative



measures in order to address specific deficiencies found by the Court in relation to alleged covert removal of the applicant from his prison cell on 14 December 2013. It should be noted, that On 3 September 2017, MP Otar Kakhidze requested that the Parliament of Georgia set up an independent inquiry commission to investigate Mr Merabishvili's removal from prison. This request is still pending before the Parliament.

Following Mr Merabishvili becoming eligible for parole, having served 4 years and 6 months (i.e. two thirds of his sentence), in December of 2017, the Parole Board considered his application for early conditional release as required by domestic law. According to Criminal Code of Georgia and Imprisonment Code of Georgia, a convict is eligible for early conditional release after serving two thirds of the sentence if the crime falls in the category of "grave crimes" or after serving three quarters if the is falls in "especially grave crimes". According to the judgements of the courts, the most severe sentences of Mr Merabishvili fall in the category of "grave" crimes. Although the Parole Board is an independent body, a number of high ranking politicians, including Ministers and Members of Parliament, made statements advocating that Mr Merabishvili should not be released from custody, in an apparent attempt to influence the outcome of Mr Merabishvili's application for release.<sup>2</sup> On December 25, 2017, the Board refused Mr Merabishvili's early conditional release on the grounds of the gravity of the crimes for which he was sentenced, as well as due to new verdict (for 2 years and 3 months) adopted by the court in May of 2017.

The decision of the Parole Board was disputed by attorneys of Mr Merabishvili at the Appeal Court in March 2018, but the case is still pending.

Later, on June 25, 2018, by the decision of the court, the new verdict was absorbed by the previous, most severe sentence (6 years and 9 months), three quarters of which Mr Merabishvili has already served in prison. Therefore, no grounds were left for the Board to refuse Mr Merabishvili's early release. Despite this, on July 4, 2018, the Parole Board again refused to release Mr Merabishvili on the grounds of gravity of the verdicts against him. He therefore remains in prison.

On 16 January 2018, Zhenia Merabishvili, Mr Merabishvili's mother, submitted an application for a Presidential Pardon. On March 28-29, the Pardon Commission under the Administration of the President, dismissed this request.

Thus, as mentioned in the beginning, **as of today, Mr Merabishvili remains the only person remaining in custody after winning Article 18 of the European Convention of Human Rights.**

The response of the Georgian Government to the Grand Chamber judgment should fully recognize the gravity of the European Court's acknowledgment of the misuse of power in the course of criminal proceedings against a leading opposition politician. In view of the severity of a finding of a violation of Article 18, Mr Merabishvili submits that the appropriate approach of the Georgian authorities to implementing the Grand Chamber's judgment should be as follows:

1. to instigate a rigorous, independent investigation into Mr Merabishvili's covert removal on 14 December 2013 to ensure the accountability of those responsible;
2. to re-open the criminal proceedings against him in order to achieve full *restitutio in integrum*, a process which might justify the quashing of his conviction; and
3. pending the outcome of the re-opening of the criminal proceedings, to order Mr Merabishvili's release.

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<sup>2</sup> See Annex 2

**Statements of the representatives of opposition and different organizations regarding the role of Mirza Subeliani in Ivane Merabishvili's case**

27.05.18 – Former President of Georgia, Mikheil Saakashvili – Mirza Subeliani was a Head of the General Inspection of the Ministry of Corrections... [he] participated in the removal of Vano Merabishvili from the prison cell. Since Vano Merabishvili's case is in the Strasburg court and this was a crime, they cannot touch this person. It seems that he owns certain documents. Thus, they covered up Mirza Subeliani's family.

19.04.18 – Head of Law Enforcement Reform Center, Zviad Kuprava – I have the information that Mirza Subeliani has Vano Meraboshvili's footage. When it happened he was the head of the General Inspection at the Ministry of Corrections and had exclusive access to the video footage. Today, Subeliani blackmails the prosecutor's office.

31.05.18 – Secretary General of the European Georgia, Giorgi Ugulava – there is a high probability that this is connected to the removal of Vano Merabishvili from the prison cell. Mirza Subeliani was a Head of the General Inspection at that time. In this case they cover not only him, but [Chief Prosecutor] Shotadze and [former Chief Prosecutor] Partskhaladze.

31.05.18 – Member of the UNM, Levan Khabeishvili – high ranking officials are involved in this. Discussion regarding the fact that Mirza Subeliani owns footages of the removal of Vano Merabishvili has been ongoing for months and this does not make this case to see the end.

12.06.18 – Member of the Republican Party, Tamar Kordzaia – Mirza Subeliani has video footage of the removal of Vano Merabishvili from his prison cell... Case of Vano Merabishvili's removal is destroying this government and maybe this caused their infighting, because this case may pull others as well...

15.06.18 – Public Defender of Georgia, Nino Lomjaria - I have repeatedly noted that the investigation should be revised and it should be found out who and why was involved in this process. The investigation and the government should take this step as it is related to other systemic problems that lead to informal governance in the law enforcement systems. For example, we know that Mr. Mirza Subeliani was arrested, he pleaded guilty, but this does not change anything. We had repeatedly heard that he was a former high-ranking official of the Ministry of Corrections and his influences were connected to Vano Merabishvili's removal from prison. This was in fact confirmed by the Strasbourg Court.



**Statements of Government officials and MPs regarding the decision of the ECHR and possible release of Ivane Merabishvili**

02.11.17 – Minister of Justice, Tea Tsulukiani – no matter what the Strasbourg Court's decision is, it will not cause Vano Merabishvili's release.

28.11.17 – It is impossible, he was already found guilty, - was an answer of the Mayor of Tbilisi, Kakha Kaladze, to the demands of the Parliamentary Minority of releasing former Prime Minister Vano Merabishvili based on the decision of the ECHR.

28.11.17 – Minister of Corrections, Sozar Subari – Merabishvili's custody will not be revised. This decision of the court does not have anything in common with Merabishvili's custody.

28.11.17 – MP Levan Gogichaishvili – This decision will not affect the condition of Vano Merabishvili, the cases that were launched against him, the verdicts that were made regarding him and the cases that may be launched in future.

28.11.17 – MP Anri Okhanashvili – This decision does not mean that Mr. Merabishvili is being released or will be released.

29.11.17 – Minister of Justice, Tea Tsulukiani – Since the dispute is over now, I can openly declare that despite of what Strasbourg has established regarding removal from the cell, that is not important for me

30.11.17 – MP Levan Gogichaishvili – Decision of Strasbourg will not affect the ongoing verdict that Vano Merabishvili has, as well as the charges that are against him. Other charges may be brought against him in future, since the investigation is constantly working regarding the crimes that he has committed during those years.

02.12.17 – MP Nukri Kantaria – Strasbourg is of course a very authoritative institution, but even it is not above the sky... Of course, liberation is not threatening Merabishvili and I would like to say, as I said before, everyone should be calm in this regard. Everyone must serve their sentence and large part of society still believe that this is a very small sentence for those crimes that he has committed.

17.12.17 MP Archil Talakvadze, Leader of the Parliamentary Majority (commenting the statement of MPs of Estonia calling for the release of Vano Merabishvili) – the appeal belongs to 4 people, one of them was the Georgian government's hired consultant in 2008. The European Court has clearly stated in its decision that political motivation in Mr Merabishvili's case and his detention is excluded.

20.12.17 - Minister of Justice, Tea Tsulukiani – violation of the article 18 is not what you have been expecting for. You have been waiting for granting the status of the political prisoner through the Strasbourg court and could not manage that. If you ask me if Vano should be released from the prison, I believe that it should not happen. because he is serving a sentence.

21.12.17 - Minister of Justice, Tea Tsulukiani – do not tell the society that the result was the same as in the cases of Lutsenko and Tymoshenko. Every day of Vano Merabishvili's custody was admitted as legal by Strasbourg court! This is the answer and nothing else can be said regarding this question.

## **Additional statements of Government officials and MPs regarding decision of the ECHR**

28.12.17 – MP Sopio Kiladze, Chairman of the Human Rights Committee of the Parliament and member of the Parole Board – even if we [Parole Board] made a decision in favor of Vano Merabishvili, it is theoretically impossible for him to leave the prison facility in the nearest future... in case if we used the practice that previous government had, accumulation of sentenced years, and if not the amnesty passed during our government, Vano Merabishvili would have to spend about 31 years in prison.

28.12.17 - MP Tamar Khulordava – now it is important to see the decision of the Committee of Ministers. The decision of the Committee of Ministers is mandatory for Georgia and Georgia will accomplish it I believe, as we have one of the best records of accomplishing the decisions of the Committee.

23.01.18 - Vice-Speaker of the Parliament, Tamar Chugoshvili – there is only one episode from the period of his detention, regarding which ECHR established the violation. Regarding this single specific episode, the government will obey the decision of the Ministers' Committee. Ministers' Committee should declare what will be considered as an execution of the decision of the court. I am sure that his release will not and cannot be discussed. Vano Merabishvili is convicted completely legally and fairly and therefore, I am sure that his release will not be discussed. As for that specific episode, I think it will be necessary to launch an investigation into this episode. I am not the one who decides that. Ministers' Committee should establish that.

03.02.18 – President of Georgia, Giorgi Margvelashvili – today Vano Merabishvili is known as the victim by Strasbourg. When we were in the confrontation, could we imagine that in a few years Europe would ask us why this man is a victim?! I used to say about Merabishvili that it would return to us badly that we had to be a little bit more cautious. Today, no one has asked any reply from anyone for this public-political absurd that Vano Merabishvili is a victim.

14.02.18 – President of Georgia, Giorgi Margvelashvili – I don't think Saakashvili and Merabishvili should be pardoned. I cannot go through the details with you, why - yes and why- no. But if I considered that they should be pardoned I would not approach to the matter with taking a political component into account in the process of pardon.

09.05.18 – President of Georgia, Giorgi Margvelashvili – Merabishvili's rights were violated during his imprisonment, but this does not mean that he is a political prisoner... Let them work out their problem in Strasbourg themselves. I must not always correct their mistakes. Let them take responsibilities. I was saying to investigate the fact of [Merabishvili's] removal from his prison cell. They refused and it came back to us as assault. Someone said that Merabishvili's case is lost in Strasbourg and I am repeatedly told that Merabishvili is a political prisoner and did someone say "I am guilty because this case came to Strasbourg ?!"

19.06.18 - Minister of Justice, Tea Tsulukiani – [MP Otar Kakhidze] is lawyer of Merabishvili and is fighting for his release, but this release cannot and will not happen.