



## Assessments made by the Strasbourg Court regarding the “Case of Rustavi 2”

Today, on 18 July, the European Court of Human Rights rendered the decision into the [\[link\] of Rustavi 2 Broadcasting Company LTD and Others v. Georgia](#). The Strasbourg Court held the hearing on the merits concerning the complaint submitted to determine the independence and impartiality of the judges, though did not find a violation. In this part, the judgment of the European Court of Justice has not entered into legal force and the applicant party can submit the case to the Grand Chamber within three months, request the **Court to deem inadmissible other grievances indicated in the complaint which led to the cancellation of the interim measure adopted by the European Court on 3 March 2017**. Consequently, the legal restrictions imposed by the European Court on the enforcement of the decision delivered by the Supreme Court into the case of Rustavi 2 were abolished.

## The factual circumstances of the case

The civil proceedings at the national level into the present case of Rustavi 2 were initiated in August 2015. Kibar Khalvashi and [REDACTED] LLC filed a lawsuit claiming that the deals for selling the shares of [REDACTED] Company Rustavi 2" were made under the threats and coercion exerted by former high-ranking officials of the previous government and the price provided in the share-purchase agreements was far below than the actual value of the television channel. Rustavi 2 and its owners of that time did not agree with any of the given circumstances claiming that they were honest buyers and there was no legal basis to return the shares.

On 5 August 2015, the first instance court granted the complaint of Kibar Khalvashi and rendered a decision on the seizure of the corporate assets and shareholders' shares in Rustavi 2. On 20 November 2015, the Tbilisi Court of Appeals affirmed the actions for securing the claim and only introduced minor changes into the decision, namely, Rustavi 2 was allowed to rent some of its real and movable property and implement internal organizational changes.

The decision of the first instance court of 3 November 2015 established that the impugned transactions were immoral deals under Article 54 of the Civil Code, as the disputed property was transferred into the applicants' ownership for an inappropriate price. Consequently, the Court considered the disputed transactions null and substantiated its decision on returning the property by referring to the ground of gaining unjustified wealth. The Tbilisi Court of Appeals fully upheld the assessments offered by the first instance court in connection to the factual and legal issues of the case. However, according to the decision of the Grand Chamber of the Supreme Court of Georgia, the dispute ought to have been considered not under Article 54 of the Civil Code indicated by the lower courts, but pursuant to Article 85 of the same Code (transactions made by duress). The Grand Chamber Therefore overturned the decision of the Court of Appeals in this part and rendered a new decision.

## The main arguments of the European Court regarding the [REDACTED] of Rustavi 2"

Under the decision of 18 July 2019, the European Court of Justice held the merits

hearing of the complaint submitted by brothers Karamanashvili and TV Company Sakartvelo LTD regarding the impartiality and independence of the judges. The European Court did not find a violation of Article 6 (1) of the Convention (right to a fair trial) based on the following grounds:

- In relation to the allocation of the case to Judge Tamaz Urtmelidze at the first instance court, the Court considered that in the light of the fact that the case was distributed to the judge in accordance with the procedure established by the national legislation the applicant's complaint in this part was unsubstantiated. The Court explained that the applicants' complaints that the criminal proceeding launched against Urtmelidze's mother influenced the judges during the examination of the case were also unsubstantiated. The applicants also failed to provide evidence and solid arguments to confirm the direct impact of the Facebook posts published by Urtmelidze's wife on the independence and impartiality of the judge;
- In conjunction to the impartiality of the judge of the Tbilisi Court of Appeals Natia Gujabidze, the European Court considered the applicants' arguments ill-founded concerning the close communication of Urtmelidze and Gujabidze, which may have become the ground to challenge Gujabidze's participation in the current dispute regarding the property right at the Court of Appeals;
- In connection to Mzia Todua, Judge of the Supreme Court of Georgia, the European Court reiterated that it would be normally preferable for the judges to refrain from contributing to political parties, however, according to this particular case materials, the judge contributed to the political party some years previously at a time when she was employed in the private sector, and the applicants were not able to submit to the court any other facts suggestive of the judge's involvement in the transfer of funds during the term of office. The court also concluded that there were no sufficient grounds to prove a violation of independence and impartiality and disqualify the judge of the Supreme Court.

In addition, with today's decision, the European Court of Appeals deemed inadmissible other complaints submitted based on the following arguments:

- The Court considered inadmissible the complaints filed by the first applicant ("Rustavi 2") in relation to Article 6 (1), 10 (Freedom of expression), 18 (Limitation on use of restrictions on rights) and Article 1 of Protocol No. 1 (Protection of Property).

**The Court considered that the complaint filed by Rustavi 2 with the European Court regarding the securing procedures of the claim was delayed.**

In particular, according to the Rules of the European Court of Human Rights, a complaint shall be filed with the Strasbourg Court within six months from the moment of rendering the final decision. In the given case, the decision of the Tbilisi Court of Appeals regarding the [ ] of Rustavi 2 A finalized on 20 November 2015 by which the Court of Appeals left the decision on the first instance court in effect was the security of the complaint. **The European Court of Appeal considered that Rustavi 2 had to calculate the six-month term of appeal from that very day.** Furthermore, the Court noted in relation to the first applicant that he did not have a proper authorization to lodge a complaint regarding the current dispute over the shares of Rustavi 2. The court pointed out that "Rustavi 2" was the object of the property dispute between Kibar Khalvashi and other applicants and not the subject;

- The Court considered inadmissible most of the complaints filed by the former owners of "Rustavi 2" (Brothers Karamanishvali and TV Company Sakartvelo LTD) in relation to Article 6 (1), Article 18 and Article 1 of the Protocol No. 1 of the Convention. The European Court reiterated that the Supreme Court did not change the approach of the lower instances when the former applied Article 85 instead of Article 54 of the Civil Code, but rather interpreted the law. According to the European Court, the arguments submitted by the parties demonstrated that the use of Article 85 during the entire legal proceedings was actively referred to in both Kibar Khalvashi [ ] submission of 4 August 2015 as well as in the decisions of the first and second instance courts. Consequently, the European Court held that both parties had equal opportunities to submit written considerations, and the Supreme Court was entitled to examine the accuracy of the interpretation of the relevant legal norms offered by the lower instances.

- The European Court considered that the legal reasoning of the decision of 2 March 2017 rendered by the Supreme Court of Georgia did not contain obvious violations. Under the circumstances, the submissions filed by the applicants about the use of the time-limit of rescission under Article 89 of the Civil Code, non-submission of the complaint of 1 December 2008 by Kibar Khalvashi and confirmation of the facts of coercion of Khalvashi into the cession of shares was of the "fourth instance" nature which did not fall within the scope of the European Court of Justice.

- In relation to the dispute over the property rights, the Court considered that the part of the complaint, which challenged the result of the current dispute over the property rights, does not automatically raise Article 1 of Protocol No. 1 of the Convention, since

this provision cannot be construed as a guarantee that the desired outcome will be obtained in civil litigation and judicial determination of the ownership rights cannot amount to an interference with property rights.

### **The possibility to submit the decision of the Court to the Grand Chamber**

In accordance with the European Convention, any person may, in exceptional cases, submit an application to the Grand Chamber in particular if a case pending raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or other serious issues of common importance. However, taking into consideration the court practice, the Grand Chamber may receive only the part of a pending case that the Court recognized admissible and considered at the merits hearing. **Consequently, a party may not request to submit to the Grand Chamber the part of the case which the Court deemed inadmissible.** In its turn, the Grand Chamber is not authorized either to consider such case if requested.

### **The effect of the interim measure**

On 3 March 2017, the European Court, based on the submission of the applicants, delivered the decision on application of an interim measure and ordered the State to stop the enforcement of the decision of the Supreme Court of 2 March 2017 and refrain from interfering with the editorial policy of the TV company. The Court extended the term of the said interim measure until the following notification.

**Based on today's decision, the European Court decided to cancel the interim measure.** Taking into account the case-law of the court, since the applicants' complaint was considered inadmissible in the part that led to the termination of the interim measure, the European Court lacked the legal basis for extending the term of the interim measure.