

PARLIAMENTARY MINORITY

№ 10 802/3-1

12 11 2018

HE Ambassador Satu MATTILA-BUDICH
Ambassador, Permanent Representative
Of Finland to the Council of Europe
Chairperson of the CM/DH
Strasbourg, France

November 12, 2018

Your excellency, Dear Ambassador

With this letter, we are transmitting to you, as the Chairperson of Human Rights Meetings of the Committee of Ministers' Deputies (DM/DH), the attached address to the members of the Committee of Ministers' Deputies signed by 19 members of Parliament of Georgia.

We would be most grateful for your support in distributing the attached address to the members of the Committee.

Yours faithfully,

David Bakradze,
Minority Leader

Member of the Georgian Delegation to the Parliamentary Assembly of the Council of Europe

Giorgi Kandelaki, MP

Member of the Georgian Delegation to the Parliamentary Assembly of the Council of Europe

Attachment: Four (4) pages

To: members of the Committee of Ministers' Deputies of the Council of Europe

Dear Ambassador,

As you are aware, in its landmark decision published on 14 June 2016 the European Court of Human Rights ruled that fundamental rights of the former Prime Minister of Georgia – imprisoned since May 2013 – were violated by the Georgian state party. The Court specifically established that Article 18 of the European Convention of Human Rights was breached in relation to Article 5 and that the authorities pursued “ulterior motive” and “hidden agenda” when prosecuting him. On 27 November 2017 the Grand Chamber of the ECHR confirmed the earlier unanimous decision.

In almost 60-year history of the European Court of Human Rights there are only seven cases, including that of Mr Merabishvili, in which breach of Article 18 of the European Convention of Human Rights was established, but first time ECtHR's Grand Chamber has addressed the issue.

Mr Merabishvili is only third politician in relation to whom this breach was established by the Strasbourg Court and the first case of this kind in the history of Georgia. As you are well aware, the 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 another words, in addition to declaring Mr Merabishvili's continued detention in breach of article (5§3) of the Convention, the Court established that the reasons of restrictive measures applied to Mr Merabishvili (arrest and detention) were not those declared by the Government of Georgia, but rather the authorities had political motivation in those actions. Thus, while the Court does not use definition of “political prisoner” in any of its cases, this decision, virtually declared Mr Merabishvili to be a political prisoner just like Mr Lutsenko, Ms Timoshenko and others were.

Unfortunately, reaction of the Georgian authorities to this landmark judgment has been disappointing. Senior Georgian Government figures have tried to downplay its significance and have argued that payment of 4,000 EUR to Mr Merabishvili would constitute its actual execution.

In the Annual Human Rights Report presented to Parliament of Georgia on 12 July of this year the Georgian Public Defender (Ombudsman) Nino Lomjaria (see Annex I) called the Georgian authorities for timely execution of the judgment also mentioning that in most cases when violation of Article 18 is found member states tend to release individuals in question. Indeed, after the release of Ilgar Mammadov by Azerbaijan Mr Merabishvili remains the only individual on the Council of Europe territory who remains in jail despite having been recognised to be deprived of the Article 18 rights by the ECHR.

Last, but not least Mr Merabishvili has recently developed a medical condition that has added an additional – humanitarian dimension to his problem. Specifically, on September 12, 2018, Mr Merabishvili was diagnosed with Horner Syndrome, after undergoing 10 different medical examinations, following deterioration of his health in early August. A consilium of doctors held on October 3 established that it was no longer possible to establish causes of the condition. The doctors, however, agreed that the if the necessary examinations were carried out in proper time, it would have been possible to establish exact causes of the condition and that they were carried out with delay. As a result of the failure to establish a final diagnosis, Mr Merabishvili is not receiving any kind of medical treatment. In view of doctors this poses

serious risk to Mr Merabishvili's health as Horner Syndrome may be caused by wide variety of reasons, including tumor, lung cancer, damage of the main blood vessel, cyst or cavity in the spinal column and etc.

In this light, our most sincere request to members of the Committee of Ministers would be to hold a discussion on the case at the CM/DH meeting in December this year and call upon the Georgian authorities to release Mr Merabishvili as was the case in all other Article 18 judgments. Mr. Merabishvili has spent more than five years in jail, more than two years have passed since the initial decision of the European Court of Human Rights. It is time for Georgia to close this disappointing chapter of its history and move on.

Yours sincerely,

1. David Bakradze, MP
Chairman of the Parliamentary Minority

2. Sergi Kapanadze, MP
Vice Speaker of Parliament of Georgia

3. Otar Kakhidze, MP

4. Giga Bokeria, MP

5. Irakli Abesadze, MP

6. Giorgi Kandelaki, MP

7. Elene Khoshtaria, MP

8. Khatuna Gogorishvili, MP

9. Tengiz Gunava, MP

10. George Tsereteli, MP

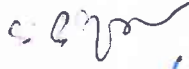
11. Lela Keburia, MP

12. Zaza Kedelashvili, MP

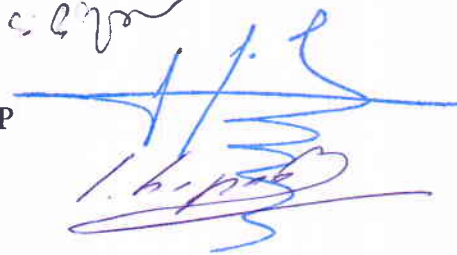
13. Irma Nadirashvili, MP

14. George Tugushi, MP

15. Lasha Damenia, MP



16. George Gviniashvili, MP



17. Sergo Ratiani, MP



18. Akaki Bobokhidze, MP

19. Zurab Tchiaberashvili, MP



ANNEX I

Annual Report of the Public Defender of Georgia The Situation of Human Rights and Freedoms in Georgia 2017¹

6.3. THE CASE OF IVANE MERABISHVILI

In the case of Ivane Merabishvili, the European Court of Human Rights found a serious violation of the right to liberty and security of person for the purposes other than those prescribed by the European Convention on Human Rights.²⁰⁷ For the restoration of this right, Georgia has yet to carry out effective measures. The violation of Article 18 taken in conjunction with a serious interference with the right to liberty of person is a rare occasion in the European Court's practice.²⁰⁸ In such cases, the respondent states mostly respond with the domestic measures involving the applicant's release.²⁰⁹ The Public Defender of Georgia deems that for the enforcement of the European Court's judgment regarding Ivane Merabishvili, the Georgian authorities, under the supervision of the Committee of Ministers of the Council of Europe, should take all necessary individual and general measures for comprehensive and timely execution of the judgments as required by article 46 of the European Convention.²¹⁰

²⁰⁷ Merabishvili v. Georgia, application no. 72508/13, judgment of the Grand Chamber of the European Court of Human Rights of 28 November 2017.

²⁰⁸ The violation of Article 18 of the Convention for the Protection Human Rights and Fundamental Freedoms were only found in 7 cases: Gusinskiy v. Russia (application no. 70276/01); Cebotari v. Moldova (application no. 35615/06); Lutsenko v. Ukraine (application no. 6492/11); Tymoshenko v. Ukraine (application no. 49872/11); Merabishvili v. Georgia (application no. 72508/13); Rasul Jafarov v. Azerbaijan (application no. 69981/14); and Ilgar Mammadov v. Azerbaijan (application no. 919/15). All the applicants, except for Ilgar Mammadov have been released from the places of deprivation of liberty.

²⁰⁹ Among other examples, the following cases are noteworthy: Ukraine released former Prime Minister Tymoshenko by a parliamentary resolution and released former Minister of Internal Affairs by a presidential pardon; Azerbaijani journalist Rasul Jafarov was also released by a presidential pardon. Information is available at: <https://rm.coe.int/compilation-decisions-2014-2018-en-/168077e33a>, (accessed on 4.3.2018).

²¹⁰ Under Article 46.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

¹ Annual Report of the Public Defender of Georgia
The Situation of Human Rights and Freedoms in Georgia 2017 URL:
<https://sites.google.com/view/geoombudsman2/reports/parliamentary-reports>