



Georgian authorities did not investigate effectively the kidnapping and killing of 28-year old man

In today's Chamber judgment in the case **Enukidze and Girgvliani v. Georgia** (application no. 25091/07), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

Violations of Article 2 (right to life) and Article 38 (obligation to cooperate with the Court) of the European Convention on Human Rights.

The case concerned the abduction, beating and killing, on a winter night in 2006, of a 28-year old man by a group of senior law enforcement officers and the lack of an effective investigation and appropriate punishment.

Principal facts

The applicants are two Georgian nationals: Ms Enukidze who was born in 1950 and died in 2007; and Mr Girgvliani who was born in 1956 and lives in Tbilisi, Georgia. They are the parents of Sandro Girgvliani who was beaten, wounded and died on 28 January 2006 after leaving the Café Chardin in Tbilisi.

Shortly after 1 a.m. on 28 January 2006, Sandro Girgvliani went with a male friend to the Café Chardin, apparently to see a lady he was courting at the time. She happened to be sitting at a table together with a number of well-known senior officials from the Ministry of Interior, among whom was also the Minister of the Interior's wife. Sandro Girgvliani spoke to his lady friend, who had temporarily sat at his table, expressing displeasure to see her in the company of unknown men, and agreed with her that she join him later that night. He apparently also spoke to her in dismissive terms at least about the Ministry of Interior's spokesman who was in the group of Ministry-related friends.

Sandro Girgvliani and his male friend left the café about an hour after they had arrived. According to Sandro Girgvliani's friend, who is still alive, while walking towards the main road outside the café they were forcefully pushed into a silver Mercedes and driven away to a cemetery outside Tbilisi. There the two young men were made to strip and were severely beaten, separately and at a distance from each other, by four unknown people who eventually left. Sandro Girgvliani's friend managed to get up at some point, did not see Sandro Girgvliani anywhere and made his way to a service station from where he called the police a few hours later, once he felt able to speak and borrow a passer-by's mobile phone.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Sandro Girgvliani's body, naked from the waist up and covered with many wounds and lesions, including 12 knife cuts on his throat, was found at about 3 p.m. lying in the snow in the woods near the cemetery in Okrokana, a suburb of Tbilisi, 6.3 km from the Café Chardin.

A criminal investigation was opened the same day by the Ministry of the Interior. A number of investigative steps were carried out, including: an autopsy of Sandro Girgvliani's body; questioning of witnesses, including Sandro Girgvliani's beaten friend; a search for all silver Mercedes cars throughout Tbilisi; collecting from the mobile phone operators lists of mobile phone numbers which had been in communication during the night of 28 January 2006 around the areas under investigation; and, the seizure of video recordings made by a surveillance camera at a private home near the Okrokana cemetery.

In March 2006, the case was taken away from the Ministry of the Interior and handed over to Tbilisi City Prosecutor's Office. Four men were arrested, all senior officers of the Ministry of the Interior, on suspicion of abducting and assaulting Sandro Girgvliani and his friend. They were placed for a few months in the same cell, despite a legal provision making that against the law. The investigation concluded that, on the night in question, the suspects were going to the café to join the group of Ministry friends. They used a silver Mercedes parked in the Ministry's courtyard. They came across Sandro Girgvliani as he was leaving the café and insulting their colleagues. In retaliation, they abducted Sandro Girgvliani and the male friend with whom he was leaving the café and beat them up.

The four officials were charged with causing death by intentional wounding and premeditated unlawful confinement by a group using life-threatening violence. A list of "fourteen items of evidence" gathered by the investigating authorities was appended to the bill of indictment. Sandro Girgvliani's parents applied on a number of occasions, including to the Georgian Supreme Court, for access to that evidence, but it was never granted. They were also left in an informational vacuum as regards the progress of the investigation.

The applicants made numerous unsuccessful requests to the courts to have specific items of the collected evidence examined in public and with the participation of the parties. The courts found the accused guilty of all but one charges, and sentenced one of them, the first deputy director of constitutional security of the Ministry of Interior, to seven-and-a-half years imprisonment, and the other three to spend six and a half years in prison. Following a presidential pardon in November 2008, their remaining sentences were reduced by one half. In September 2009 they were released on parole.

Complaints, procedure and composition of the Court

Relying mainly on Articles 2 and 38, the applicants complained that their son had been killed by Ministry of Interior officials and no adequate investigation had been carried out into the killing.

The application was lodged with the European Court of Human Rights on 11 June 2007.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Ireneu **Cabral Barreto** (Portugal),
Vladimiro **Zagrebelsky** (Italy),
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),

András **Sajó** (Hungary), *judges*,
Irakli **Adeishvili** (Georgia), *ad hoc Judge*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 2 (investigation)

The Court recalled that States were obliged, under Article 2 of the Convention, to secure people's right to life by putting in place effective criminal-laws (as a deferral against crime) and law-enforcement machinery (for the prevention, suppression and punishment of the perpetrators). In addition, States had to conduct an effective official investigation when people had been killed, irrespective of whether the perpetrators were private individuals, official figures, or unknown.

While it had been undisputed that an investigation had been carried out into Sandro's assault and killing, the Court found that it had lacked integrity and efficiency, which had irreparably undermined its effectiveness, for the reasons outlined below.

Despite circumstances implicating Ministry of Interior officials in the case from an early stage of the investigation, the same Ministry remained in charge of the investigation for a significant period of time – between January and March 2006. During that period the Ministry had conducted numerous important investigative steps. The Court was particularly struck by the institutional connection and even hierarchical subordination between the implicated senior Ministry officers and the investigators, given that one of the Ministry-related friends occupying the table in the café was the direct hierarchical superior of both the suspects and the investigators.

As regards the part of the investigation carried out by the prosecution authorities, the Court noted a number of serious omissions, the main one being the refusal to allow the applicants to be involved in the investigation. In addition: a number of potential witnesses had not been identified or questioned, the version of the accused as to what had happened had been accepted on its face by the authorities, and important items of evidence had either not been collected at all, or disclosed in the domestic proceedings or before the Court. The Court found that the prosecution authority had been misleading in the conduct of the investigation.

Finally, during the trial, the applicants had been in a clearly disadvantageous position compared to the accused who had had unrestricted access to the case materials. As a result, Sandro's parents had not had sufficient time and facilities to study the file and had been consequently deprived of the opportunity to prepare their position and participate effectively in the trial. The Court found particularly regrettable that the Georgian courts had disregarded the applicants' allegation that the investigative authorities had destroyed or concealed evidence as they had introduced in the criminal file only a selection of the calls records made and received by the perpetrators, while they had obtained the information from the mobile phone operators in its entirety. The Court emphasised that such a selective approach was unacceptable because effective investigations had to be based on a thorough and impartial analysis of all relevant elements.

Examining further the punishment given to the four perpetrators, namely the prison sentences and the way they had been imposed in practice, the Court held that it had been inadequate. Looking in particular at the prison sentences, the Court found that the domestic courts had not accounted for the cruel, life-threatening inhuman treatment to which Sandro Girgvliani had been subjected. As regards the pardon granted to them in November 2008, and their subsequent release on license, that had been too lenient and

unreasonably generous. The Court stressed that States had to be all the more stringent when punishing their law-enforcement officers convicted of killing someone, in order to combat the sense of impunity.

Summarising its findings, the Court noted with particular concern how the different branches of State power – including the Ministry of the Interior, the prosecution authority, the domestic courts and the President of Georgia– had all acted in concert in preventing justice from being done in that gruesome homicide case.

In conclusion, the Court found a violation of Article 2 as a result of the Georgian authorities' failure to carry out an effective investigation into Sandro Girgvliani's death.

Article 2 (killing)

The Court found that the convicted perpetrators had acted in their personal capacity and their acts had not been connected to their status as officials. Therefore, their conduct could not attract the entire State's international responsibility for the killing.

Article 38 (authorities' obligation to cooperate with the Court)

The Georgian Government had been late, and had partly failed, to submit a number of requested items of evidence to the Court, without providing convincing reasons for it. That led the Court to conclude that the authorities had not complied with their obligations to furnish all necessary facilities to the Court, in violation of Article 38.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Georgia was to pay Sandro Girgvliani's father (the mother having died in the meantime) 50,000 euros (EUR) in respect of non-pecuniary damage, EUR 388 for costs and expenses.

Separate opinions

Judges Cabral Bareto, Jočienė and Popović expressed a joint partly dissenting opinion, and Judge Adeishvili expressed a separate partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.