



Reference: TG EUR 56/2023/3791

Mr Rati Bregadze
Minister
Ministry of Justice of Georgia
Gorgasali Street 24a
0114 Tbilisi
Georgia

10 February 2023

Dear Minister

RE: CALL TO RELEASE MIKHEIL SAAKASHVILI ON MEDICAL GROUNDS

We are writing to express our concerns about reports that the health of the imprisoned former Georgian President Mikheil Saakashvili has critically deteriorated in custody, including after his transfer to the medical clinic Vivamedi in the capital Tbilisi, and to urge you to re-consider his release on medical grounds.

We understand that on 6 February, a court in Tbilisi declined a motion, filed in December 2022, to grant deferral or suspension of Mikheil Saakashvili's sentence in line with Georgian law that provides for release on medical grounds.

Given Mikheil Saakashvili's rapidly deteriorating health and the apparent, consistent failure by the Georgian government to ensure adequate treatment and care in custody, which puts his life at risk and may amount to torture or other cruel, inhuman or degrading treatment or punishment, we are writing to call for urgent measures to protect his health, including release on medical grounds.¹

We understand that two independent medical teams have now assessed Mikheil Saakashvili's health and expressed the professional medical view that the gravity of his condition and its progressive deterioration while Saakashvili has been in custody necessitate his release on humanitarian grounds.

The Georgian government should take action in line with the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and ensure that medical decisions are only made by responsible health care professionals and are not overruled or ignored by non-medical authorities.² They should also afford Saakashvili full protection under Georgian law, which provides for release on medical grounds for seriously ill prisoners who are unfit for imprisonment.³

¹ The denial of medical treatment to prisoners may violate the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, including under Article 7 of the International Covenant on Civil and Political Rights. The UN Committee against Torture, in its General Comment 2, has also affirmed that depriving someone of basic needs, including medical attention, can violate the prohibition on torture and other ill-treatment.

² The Mandela Rules, Rule 27(2): https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

³ Georgian Code of Criminal Procedure (Article 283) provides that the court may defer the execution of a judgment "if the convicted person is ill with a serious illness that prevents them from serving the sentence".³ Article 284.1 also provides that "the court may release a convicted person from further serving a sentence if their health status is not compatible with serving the sentence and if, based on

A forensic medical report published on 1 December, by a team of independent medical experts,⁴ concluded that Saakashvili is suffering from life-threatening psychological, neurological, orthopedic and gastrointestinal conditions that make him unfit to serve his custodial sentence.⁵ On 6 December a separate report by another group of medical experts appointed by the Georgian Public Defender confirmed Saakashvili's health conditions were "severe", requiring urgent change to his "ineffective treatment".⁶

The team of forensic medical experts who examined Mikheil Saakashvili has unequivocally concluded that he is not receiving adequate healthcare in custody, including while in prison, prison hospital and private hospital under penitentiary supervision. Examinations by the same medical experts have confirmed that based on their medically documented physical and psychological trauma Saakashvili was subjected to torture or other ill-treatment "by a degree of medical certainty" and that he continues to suffer severe and untreated psychiatric conditions and life-threatening illnesses causing constant pain and suffering. They have argued that the failure to ensure proper medical care for these conditions amounted to a separate instance of continuous torture and that this, combined with his untreated conditions provide compelling grounds for his "release or transfer out of his current conditions of confinement."⁷

The Georgian Public Defender, Amnesty International and Human Rights Watch have previously expressed concerns about Mikheil Saakashvili's alleged "humiliation, inhuman and degrading treatment"⁸ and denial of adequate healthcare. The State Inspector's Service investigation into possible ill-treatment of Saakashvili was hastily abolished in December shortly after it was opened. To date, these allegations of ill-treatment remain without investigation.⁹

The forensic medical experts testified that the former president had lost over 40 kilograms, suffered seizures, and required immediate surgery to prevent him from becoming permanently disabled. The same medical experts also raised concerns about a "variety of medications being prescribed without clear instructions, including drugs of abuse" that had detrimental effects on Mikheil Saakashvili's health. Toxicology testing based on Saakashvili's hair and nails carried out in October and November 2022 at a USA-based laboratory revealed the presence of heavy metals,¹⁰ which according to the assessment of the expert toxicologist, he had been exposed to during his incarceration. These caused pathological symptoms, seizures and serious damage to his brain, and other vital organs including the liver, heart and kidneys.¹¹

the report following the examination, recovery and/or substantial improvement of the health of the convicted person is not expected." Georgian legislation also recognizes certain "severe and incurable diseases", including those that Saakashvili is diagnosed with, as grounds for immediate release from custodial sentences.

4 The forensic team of medical professionals include 10 Georgian and seven European and US licensed doctors.

5 Full medical report available on file. See as well: Press Release about the state of health condition of the detainee the 3rd President of Georgia, a citizen of Ukraine, the Chairman of the Council of Reforms of Ukraine, Mikheil Saakashvili – Empathy] <http://empathy.ge/en/16122022-%E1%83%AA%E1%83%94%E1%83%9C%E1%83%A2%E1%83%A0%E1%83%98-%E1%83%94%E1%83%9B%E1%83%9E%E1%83%90%E1%83%97%E1%83%98%E1%83%90-%E1%83%A1-%E1%83%92%E1%83%90%E1%83%9C%E1%83%AA/>

6 Public Defender (Ombudsman) of Georgia. Group of Experts Set up by Public Defender Issue Report No. 7 on Monitoring of Mikheil Saakashvili's Medical Condition. 6 December, 2022: <https://www.ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-mier-shekmnil-spetsialistaekspertta-jgufis-daskvna-n7-mikheil-saakashvilis-sameditsino-mdgomareobis-monitoringis-shedegebis-shesakheb>

7 Medical reports and court testimonies by Dr. Eric Goldsmith, M.D. certified Forensic Psychiatrist and clinical professor of psychiatry at NYU and Dr. James Cobey, MD certified orthopedic surgeon and Professor of Orthopedics at Georgetown University. Forensic medical report and court transcripts on file. See as well: <https://www.france24.com/en/live-news/20221220-doctors-urge-georgia-to-send-jailed-ex-leader-abroad-for-care>

8 <https://civil.ge/archives/454144>

9 <https://www.hrw.org/world-report/2023/country-chapters/georgia>

10 The toxicology report, copy available at: <https://www.radiotavisupleba.ge/a/32160126.html>

11 Court transcripts (17:20 to 21:44) available at: <https://kavkasiatv.ge/2022/12/29/%E1%83%93%E1%83%94%E1%83%9B%E1%83%94%E1%83%9C%E1%83%AA%E1%83%98%E1%83%90-%E1%83%A0%E1%83%9D%E1%83%9B%E1%83%94%E1%83%9A%E1%83%98%E1%83%AA-%E1%83%A1%E1%83%90%E1%83%90%E1%83%99%E1%83%90%E1%83%A8/>

see as well:

The Georgian authorities have insisted that Saakashvili's care is adequately managed at the private clinic where he currently remains under the supervision of the penitentiary and that the deterioration of his condition is a result of 'self-harm' —a reference to his previous hunger strikes and alleged failure to follow the recommended diet. On 30 January 2023, the government presented to the court an alternative forensic opinion by the Samkharauli National Forensics Bureau. It is our understanding that this opinion disputes the accuracy of some of Mikheil Saakashvili's previous diagnoses, yet as per our review of the report, it appears that it has been drawn without examining the patient himself. The National Forensics Bureau has been previously criticized by local human rights defenders for lack of impartiality and biased opinions in favor of the government in high profile cases.¹² According to Mikheil Saakashvili's legal defence, such "late filing" of the Bureau's forensic opinion, which does not provide new medical information, served only to delay the court proceedings and intimidate independent medical professionals for expressing their medical opinions.

It is our understanding that the progressive deterioration of Mikheil Saakashvili's health condition is not disputed, unlike its causes. To date, the Georgian government has not provided a plausible public explanation for its causes and independent forensic findings (including the laboratory-documented traces of heavy metals; MRI scans showing white matter reduction in his brain; post traumatic injuries including hip joint arteritis and intervertebral disc damage), while these cannot be explained by his past hunger strikes and diet. At the same time, the failure to provide adequate healthcare in custody has been well documented and is evidenced by Mikheil Saakashvili's progressively deteriorating health.

The Georgian authorities bear the sovereign responsibility and burden of proof for the provision of adequate care, medical supervision and treatment in confinement.¹³ The European Court of Human Rights (ECtHR) has expressly called upon the Georgian government to "ensure his safety in prison, and provide him with appropriate medical care" in its Interim measures applied in former Georgian President Saakashvili's case on November 2021.¹⁴

The Georgian government is accountable for all avoidable health impairments to prisoners caused by inadequate healthcare measures¹⁵ and bears the burden to provide plausible explanations for any injuries to a person's body or health acquired during the confinement.¹⁶

Failing to fulfil these obligations contributes to the denial of adequate treatment to prisoners and may violate the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, including under Article 7 of the International Covenant on Civil and Political Rights. The UN Committee against Torture, in its General Comment 2, has also affirmed that depriving someone of basic needs, including medical attention, can violate the prohibition on torture and other ill-treatment. In cases where adequate treatment of ill prisoners cannot be ensured, release on medical grounds should be considered to prevent violation of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

The importance of judicial procedures for release on medical grounds to protect from ill-treatment has been also stressed by the ECtHR, requiring states to provide remedies that guarantee the release from custody of persons who, because of their state of health, are deemed incapable of being in detention.¹⁷

<https://www.interpressnews.ge/en/article/123250-american-expert-toxicologist-in-my-opinion-saakashvili-was-poisoned-with-various-metals-including-mercury-arsenic-and-barium-which-cause-quite-serious-toxic-effects/>

¹² <https://www.radiotavisupleba.ge/a/31322843.html>

¹³ Kadagishvili v. Georgia, §124. No. 12391/06, ECHR, May 14, 2020: <https://hudoc.echr.coe.int/eng?i=001-202435>

¹⁴ [https://hudoc.echr.coe.int/eng-press#{%22itemid%22:\[%22003-7181571-9747611%22\]}](https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22003-7181571-9747611%22]})

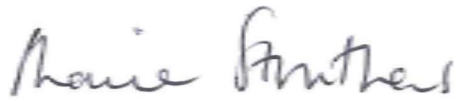
¹⁵ Prisons and Health, 1 The essentials about prisons and health (who.int)

¹⁶ Gogoladze v. Georgia, No. 8971/10, ECHR, July 18, 2019

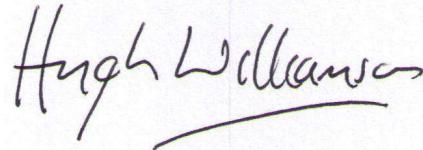
¹⁷ *Mouisel v. France*, §44; [https://hudoc.echr.coe.int/eng#{%22tabview%22:\[%22document%22\].%22itemid%22:\[%22001-60732%22\]}](https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22].%22itemid%22:[%22001-60732%22]})

Such remedies the court has ruled on should be carried out without “redundancies and delays”¹⁸ to allow a prisoner whose health is failing to benefit from “a rapid release”.¹⁹

Yours sincerely,



Marie Struthers,
Director
Eastern Europe and Central Asia Regional Office
Amnesty International



Hugh Williamson,
Director
Europe and Central Asia Division
Human Rights Watch

see as well:

European Prison Litigation Network. The right to the protection of health guaranteed under article 3 of the ECHR. P.17. http://www.prisonlitigation.org/wp-content/uploads/2021/08/Protection-of-health_Article-3.pdf

18 Gülay Çetin v. Turkey, §123, as cited by the European Prison Litigation Network, *ibid*

19 Raffray Taddei v. France, §102; Makharadze and Sikharulidze v. Georgia, §86, *ibid*
