



BULLETIN

No. 111 (706), 1 September 2014 © PISM

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Georgia's Dilemma: A "Thick Line" Policy or Accountability for the Sins of the Old Ruling Elite

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Prosecutors' allegations against former President of Georgia Mikheil Saakashvili have raised concerns in the European Union and the U.S., where he has a reputation as the author of the anti-corruption reforms in Georgia. But in his own country he is perceived as an authoritarian politician and gaining punishment for violations of law from when Saakashvili was president has become the main goal of his opponents who form the Georgian Dream government. The EU should back the reforms of the judicial system in Georgia and offer political and economic support for the government in Tbilisi on the condition they are reliably implemented. The goal of the reforms must be complete independence of the prosecution and the courts from the executive.

On 2 August, Tbilisi City Court accepted the request of the prosecutor's office to arrest *in absentia* Mikheil Saakashvili and scheduled the first sitting of the court on 22 September. The allegations against the former president concern supposed abuses of power in November 2007 when he decided to pacify street protests in the capital and take over the office of private television station Imedi. On 5 August, the prosecutor put forward an allegation against the former president concerning an assault on one of his political opponents, and on August 13 further accused Saakashvili of misusing funds from the budget of the Special State Protection Service for his own and his administration's personal luxury expenses.

Saakashvili now lives abroad. He stressed in a speech that the charges against him are purely political and pointed to the international context of the case. He claims that the prosecution is controlled by Bidzina Ivanishvili, a former prime minister who is still the informal leader of the Georgian Dream ruling coalition and who has strong ties to Russia's business and political elite. According to Saakashvili, the indirect reason for the charges against him by the prosecution is Ivanishvili's dependency on Russia. For propaganda reasons, as Saakashvili insists, the Kremlin is interested in a conviction of the former president, who was Moscow's chief adversary in the Russia–Georgia war of August 2008.

International Reaction. The announcement of the charges against Saakashvili were met with criticism from the EU and the United States. The U.S. State Department issued a statement in which it emphasised that justice should not be a "tool of political revenge." Similarly, EU High Representative for Foreign and Security Policy Catherine Ashton expressed her concern and indicated that the activities of the Georgian prosecutor's office against opposition politicians should not be politically motivated and that the authorities in Tbilisi should move beyond conflicts of the past and focus on future challenges.

Maintaining a stable internal situation and the continuation of reforms in Georgia are in the interests of the EU. The country is one of the better examples of effective transformation, free market reforms and the prevailing democratic standards found in the EU among the members of the Eastern Partnership. Since 2008, Brussels has supported reform of the justice system in Georgia and its continuation of it is one of the key requirements under the Single Support Framework for 2014–2017. In 2014 alone, the EU allocated €50 million to strengthen the independence, professionalism, impartiality and efficiency of the judiciary, as well as to increase access to the justice system and the right to fair trial.

In order to gain more credibility for its actions against Saakashvili, the Georgian prosecutors announced on 24 July that they had invited a group of international lawyers to assist in "politically sensitive" cases (including Sir Geoffrey

Nice, who led the prosecution team in the trial of former Yugoslav President Slobodan Milosevic before the International Criminal Tribunal for the former Yugoslavia at The Hague, and Moshe Lador, the prosecutor who took on former President of Israel Moshe Katsav). However, in addition to this one-off declaration there has been no new information about the form of their involvement or the actual role of these experts.

Georgian Dream's Reforms and Saakashvili's Legacy. During Saakashvili's time in office, his United National Movement (UNM) carried out successful reforms of the police, eradicated widespread corruption and helped Georgia become a state friendly to foreign investors. However, the success of UNM's reforms was accompanied by violations of human rights and appropriation of the state by the ruling elite.

In October 2012, Georgian Dream, created by Ivanishvili, won the parliamentary elections, in part due to society's fatigue with the authoritarian practices of UNM. Currently, the government is trying to maintain the public's support by stressing the issue of bringing to account its predecessors for their alleged abuses of power. This process was initiated after Georgian Dream took power in 2012, and since then its targets have included former Prime Minister Vano Merabishvili, who was sentenced in February to five years in prison for abuse of power, including the use of budgetary resources for the purposes of UNM's election campaign.

Regardless of the ultimate assessment of the alleged guilt of the former president and representatives of his administration, it is clear that the attempts to bring to account those responsible for violations from the times he was in office play an important role in the current government's political struggle against the opposition. On the other hand, considering the ongoing transformation process in Georgia, the notion that the country should reckon with previous abuses of power should not be considered to be unequivocally negative.

The risk that the new authorities will exploit the justice system against Saakashvili's party for their own political gain is significantly limited by several factors: the stronger-than-ever civil society, especially since 2012; media competition; and the fact that UNM is still a strong faction in parliament. The current situation is a state of balance between the institutions and their relative autonomy. These factors, though, are not proof of the full stability and maturity of Georgia's political and judicial system. The Georgian prosecutors are not subordinate to the government, however, the office is headed by officials appointed by Georgian Dream. On the other hand, most of the judges were appointed in UNM's time.

The political system, which is more democratic than it was before 2012, prevents Georgian Dream from manually controlling proceedings against its political opponents. However, the risk of such influence remains. Further, positive systemic changes will be possible only if the recommendations of international organisations, including Georgia's main political partner—the EU—will be followed by the authorities.

Conclusions and Recommendations. The EU's proposal for the government in Tbilisi to focus on future challenges *de facto* means abandoning attempts to bring accountability for alleged abuses of power during Saakashvili's presidency. In the long run, this will not necessarily be a favourable solution for Georgian democracy. Further involvement of the EU in the reforms of the justice system in the country should not be seen as in conflict with Georgia's attempts to reckon itself with the alleged abuses in a fair and impartial manner.

The case against Saakashvili, as well as those of others in his administration, has a negative impact on the image of the government in Tbilisi abroad. The latter should not ignore the concerns of the EU, sparked by information about possible proceedings being launched against the former president. The aim of the authorities must be to make their intentions credible in the eyes of the international community so as to refute criticism claiming that the proceedings are driven purely by political objectives.

The prosecutors' goals to bring to justice some representatives of the former government should be based on a clear strategy so as to ward off any accusations of selective justice. Any proceedings against Saakashvili must be conducted in a fair manner and remain consistent with the highest standards of law.

In light of the deficiencies in Georgia's justice system cited by the EU (concerning the investigation skills of prosecutors, lack of accountability of the prosecutor's office or the need to increase the independence of judges), the move to incorporate the assistance of international experts seems to be wise. However, in order to limit the politicization of the proceedings against Saakashvili and to ensure the reliability of the measures taken in this regard, it is important that the participation of the international experts is based on detailed and clear terms.

Given the call to experts of international criminal law and that the Office for Democratic Institutions and Human Rights has already been involved in monitoring trials of high-ranking members of the previous government, it seems that the Georgian authorities should favour similar solutions that can strengthen the state's image as a country sincerely committed to completing its transition to the rule of law and democracy.

The charges against Saakashvili indeed may serve Russian propaganda efforts, portraying him as the main culprit of the August war in South Ossetia. Confirmation of the activities of the former Georgian president as a "criminal" in the event of a conviction, would be a success for the Kremlin. However, one cannot assume that the actions of the Georgian government and the prosecution are inspired by Russia. Though Saakashvili presents Georgian Dream as a pro-Russian party, there is no hard evidence to support the claim. The current policy of the governing party, bringing Georgia into closer association with the EU, in fact contradict such criticism.