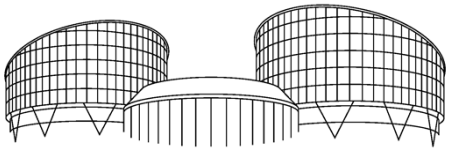

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TORTLADZE v. GEORGIA

(Application no. 42371/08)

JUDGMENT

Art 8 • Respect for home and private life • Unjustified search of consular premises in connection with drug-related criminal investigation using "urgent procedure" • Insufficient *ex post factum* judicial review
Art 6 § 1 (criminal) • Fair hearing • Use of evidence obtained in violation of Art 8 having no decisive impact on overall fairness of proceedings in light of all the circumstances, with conviction additionally based on other court-tested evidence • Access to court • Refusal of Supreme Court to consider applicant's case on the merits not unreasonable or disproportionate, with thorough examination of applicant's relevant arguments by first two instances

STRASBOURG

18 March 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tortladze v. Georgia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O'Leary, *President,*
Ganna Yudkivska,
Jovan Ilievski,
Lado Chanturia,
Ivana Jelić,
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 42371/08) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Mr Ermile Tortladze ("the applicant"), on 14 August 2008;

the decision to give notice to the Georgian Government ("the Government") of part of the application and to declare inadmissible the remainder;

the parties' observations;

Having deliberated in private on 9 February 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns, in particular, the search conducted in the course of a preliminary criminal investigation in the office of the Honorary Consular General of Côte d'Ivoire in Georgia, and the reliance by the domestic courts on the evidence obtained as a result. The applicant complains under Articles 3, 6 § 1, and 8 § 1 of the Convention.

THE FACTS

2. The applicant was born in 1964 and lives in Tbilisi. He was represented before the Court by Ms N. Margieva and Ms M. Shatirishvili, lawyers practising in Tbilisi.

3. The Government were represented by their Agent, Mr L. Meskhoradze, of the Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Search of the consular premises and initiation of criminal proceedings

5. The applicant was serving as Honorary Consul General of Côte d'Ivoire in Georgia at the material time. It appears from the case file that from time to time he was also performing the functions of a consular courier.

6. On 24 August 2005 the police arrested A.I., a former head of security at the Honorary Consulate General of Côte d'Ivoire ("the Honorary Consulate"), and a consulate lawyer at the material time, on suspicion of unlawful possession of drugs with intent to supply. While being questioned as a suspect, he named the applicant as his long-term drug dealer. He also claimed that he had purchased twelve-and-a-half Subutex (buprenorphine) pills from the applicant earlier that day on the premises of the Honorary Consulate.

7. On the same date the Ministry of the Interior ("the MoI") requested the Ministry of Foreign Affairs ("the MFA") to provide information about the legal status of the Honorary Consulate and the immunities that the applicant enjoyed in his capacity of Honorary Consul General.

8. On 25 August 2005 the head of the consular department of the MFA replied in writing, explaining that under Article 43 of the Vienna Convention on Consular Relations ("the Vienna Convention"), consular officers enjoyed functional immunity. As for the premises, it was noted that the inviolability of consular premises as laid down in Article 31 of the Vienna Convention did not extend to premises occupied by Honorary Consuls. Lastly, with respect to Honorary Consuls, only the provisions in Chapter III of the Vienna Convention were applicable (see the relevant provisions as cited in paragraph 38 below).

9. On the same date, the investigator in charge of the case against A.I. issued a decision ordering that a search be conducted on the premises occupied by the Honorary Consulate in urgent circumstances. The decision did not list the items the police were to search for or provide any other details concerning the investigative measure. On 25 August 2005 the police, acting on the above order, entered the Honorary Consulate and conducted a search. The applicant, who was present, challenged its lawfulness, claiming that it violated Article 328 of the Code of Criminal Procedure and relevant international norms protecting diplomatic and consular missions. He refused to sign the search report and added a written note to it explaining that the Consul General, in this specific case he himself, had to give prior consent before any search could be carried out.

10. According to the official record, the search of the Honorary Consulate was conducted between 5.27 and 6.45 p.m., attended by D.J., a representative of the MFA, and was recorded on video. The applicant waived his right to invite attesting witnesses to attend the search. As a result

of the search, 227 Subutex pills, seven ampoules of morphine hydrochloride and several gun cartridges were seized from a safe and a desk in the applicant's office.

11. On the same date police also searched the applicant's vehicle and apartment. The latter was similarly searched in the presence of D.J., the MFA representative, and the applicant's wife, who, according to the search report, waived her right to invite independent witnesses to attend. As a result of the search, which was recorded on video, a gun and several cartridges were recovered from the applicant's apartment. The applicant's wife refused to sign the search report, adding a note that the weapon found did not belong to her family.

12. According to the arrest record, the applicant was arrested on the premises of the Honorary Consulate at 6.50 p.m. on 25 August 2005.

13. On 26 August 2005 the applicant, after further questioning as a suspect, complained that the searches had been conducted unlawfully, in breach of the Vienna Convention on Consular Relations. He claimed that the Subutex pills found in his office did not belong to him, and that he did not know how they had ended up in the safe. As for the morphine ampoules, he admitted that they belonged to him and that as a heart sufferer, he had been keeping them for emergencies. He also denied that the gun found in his apartment belonged to him. After the above interview the applicant and A.I. were questioned in a confrontation with each other. A.I. maintained his allegations, while the applicant dismissed the accusations as untrue.

14. On the same date the prosecutor in charge of the criminal case against the applicant lodged three applications with a first-instance court in Tbilisi, asking to have the searches of 25 August 2005, which he claimed had been urgent, legalised. The requests simply indicated the places the searches had been conducted (the Honorary Consulate, the applicant's vehicle and his apartment), the substances and the arms that had been discovered as a result of the searches, and the offences the applicant had been suspected of. All three searches, according to the requests, had been conducted in urgent circumstances. In accordance with Articles 290, 315, 317, 322 and 323 of the Code of Criminal Procedure, the prosecutor asked the court to validate the searches. The requests did not mention any procedural documents submitted in support thereof.

15. On the same date the Tbilisi City Court examined the three requests in writing, without allowing the applicant to submit observations, and declared that the searches had been lawful. All three decisions, written in a summary manner, did not refer to relevant factual circumstances and did not elaborate on the necessity of searches in urgent circumstances. In connection with the search of the consular premises, the court noted that it was clear from the prosecution's request that the search had been conducted as there had been a risk of the evidence of a crime being destroyed, it had been urgent and that the police had complied with the rules of criminal

procedure. The decisions provided for a seventy-two-hour appeal period. It appears from the case file that the applicant did not avail himself of this opportunity.

16. On 27 August 2005 the applicant was formally charged with various drug and firearms offences under Article 260 §§ 2(a) and 3(a) and Article 236 §§ 1 and 3 of the Criminal Code. The following day a judge, at the request of the prosecutor, ordered that he be remanded in custody for three months.

17. During the pre-trial investigation the applicant's lawyer requested a dactyloscopic (fingerprint) examination of the drugs seized from his client's office and the weapon allegedly found in his apartment. The request was rejected by the prosecutor, who concluded that because the physical evidence bore the fingerprints of various people who had participated in the seizure and subsequent forensic examination, a dactyloscopic examination would prove pointless.

18. In another request, the applicant claimed that the drugs found in his office belonged to A.I. who, while employed by the Honorary Consulate, had enjoyed unlimited access to its premises. He requested in this connection that several other employees of the Consulate be called for questioning. He also dismissed as untrue A.I.'s allegations that he had purchased Subutex on the consular premises on 24 August 2005 and requested that several members of the security team of the consulate be summoned for questioning in this regard. Both requests were refused.

19. On 14 November 2005 the pre-trial investigation was completed. On 19 November 2005 the applicant, via his lawyer, lodged a request with the investigator in charge of the case, complaining of partiality and one-sidedness in the investigation. He maintained that by refusing to question the consulate's employees and members of its security team, the investigator had ignored the applicant's right to challenge A.I.'s credibility and the truthfulness of his statements. He reiterated his request for those witnesses to be called for questioning, and for a fingerprint examination of the drugs and weapon seized. He also claimed that the search of the Honorary Consulate had been unlawful, firstly because he had not been allowed to invite independent witnesses to attend, and secondly because consular premises were inviolable under international law. He maintained, with reference to Article 102 § 4 of the Code of Criminal Procedure, that there had been no urgent need to carry out a search in the absence of independent witnesses, since the Consulate premises and he himself had been under the absolute control of the police, thus preventing him from interfering with the evidence. He asked for access to the full video recordings of the searches of the Consulate and his apartment.

20. By a decision of 21 November 2005, the investigator rejected the applicant's requests.

B. The applicant's trial

21. The trial proceedings started on 19 October 2006. Before the trial court the applicant reiterated his request for a fingerprint examination of the seized drugs and weapon and for the questioning of several Consulate employees. According to the applicant, those witnesses could prove, *inter alia*, that A.I. had not been at the Consulate on 24 August 2005, and so could not have purchased drugs from the applicant that day. The applicant also asked to admit as evidence the video recordings made in the Consulate on 25 August 2005, and to obtain and admit as evidence a video recording made by a private TV company of the police searching the Consulate premises. While filing a number of other applications with the trial court, the applicant maintained that the search of the consular premises had been unlawful, firstly because he as a consular courier, and the Consulate as a whole, were covered by diplomatic immunity, and secondly because no independent eyewitnesses had been allowed to attend. He asked the court to reject as inadmissible the police report on the search of the Consulate and the physical evidence obtained thereby.

22. On 23 October 2006 the Tbilisi City Court partially granted the requests of the defence. It agreed, *inter alia,* to interview the defence witnesses in court. While providing general information on the functioning of the Consulate, the applicant's witnesses stated that they could not remember seeing A.I. on the premises of the Consulate on 24 August 2005.

23. During the trial proceedings the two police officers who had conducted the search of the Consulate were also questioned. Both noted that the search had been conducted on the basis of operational information; that the search had been video-recorded; and that there had been around ten to twenty people on the premises of the Consulate during the search. A.I., the key prosecution witness, also questioned during the trial, confirmed his pre-trial statement implicating the applicant in supplying drugs.

24. On 13 November 2006 the trial court interviewed D.J., the head of the consulate department at the MFA, who had been present at the searches. In respect of the Consulate's status, she noted that since it was headed by an Honorary Consul General rather than a career consular officer, only Chapter III of the Vienna Convention of 1963 was applicable. As far as her participation in the search was concerned, she explained that she had attended the search in view of the requirements of the criminal procedural law; she had not been there as a diplomatic representative, as the Consulate in question had not been a diplomatic mission protected under the Vienna Convention. In reply to a specific question, she confirmed that Article 31 § 2 of the Vienna Convention concerning the inviolability of consular premises did not extent to the premises of the relevant Honorary Consulate.

25. During the court proceedings a video recording depicting the search on the premises of the Consulate was shown. Two sequences in the video

recording showed the moments at which drugs were found in the applicant's desk and in a safe. The applicant denounced the video recording, claiming that it had been manipulated.

26. On 20 November 2006 the Tbilisi City Court convicted the applicant as charged and sentenced him to eighteen years' imprisonment. The trial judge, in finding his guilt established, relied on the relevant search reports, the evidence of A.I., the statements of the two police officers who had conducted the search of the consular offices, and the video recordings of the searches of the applicant's apartment and the consular offices. The trial court found the statements of the defence witnesses to be inconclusive and contradictory. As to the issue of the immunities and privileges, it relied entirely on the explanations provided by the head of the consular department at the MFA.

27. According to the applicant, he was placed in a metal cage during the court proceedings.

28. The applicant appealed against his conviction. He maintained, among other points, that the search of the consular offices had been unlawful. In this connection he alleged that he had not been notified of his right to invite attesting witnesses to attend the search; and that the search had been conducted in violation of Article 328 § 3 of the Code of Criminal Procedure (see paragraph 37 below), as the police had failed to seek authorisation from the head of the diplomatic mission of Cote d'Ivoire.

29. By a decision of 19 June 2007 the Tbilisi Court of Appeal, while upholding the applicant's conviction, reduced his prison sentence to seventeen years. Like the trial court, the appeal court dismissed the applicant's immunity argument. It concluded in particular, on the basis of the evidence presented by the MFA, that the applicant, enjoyed no personal inviolability in his capacity as Honorary Consul and no jurisdictional immunity of any kind; in connection with the applicant's additional argument that he performed the functions of a consular courier, the appeal court concluded, referring to Article 35 of the Vienna Convention, that at the moment of his arrest the applicant had not been performing this specific function. As for the premises, under Article 59 of the Vienna Convention on Consular Relations, the receiving State was required merely to protect them. In confirming the applicant's conviction, the Tbilisi Court of Appeal relied on the evidence of A.I., the statements of the two police officers who had conducted the search of the consular offices, the evidence of D.J., who had been present at the searches, the reports on the search of the consular offices and the applicant's apartment, and the relevant video recordings.

30. On 13 July 2007 the applicant lodged an appeal on points of law, reiterating the arguments he had made in his previous appeal. He claimed that the relevant video recording of the search of the consular offices showed clearly that the applicant had not been informed of his right to invite attesting witnesses and could not accordingly have waived it, and that he

had initially been restrained and only then had the search started, which implied that he could not have intervened with the evidence. He also reiterated his arguments concerning his immunity, stressing that he was not only the Honorary Consular General but he was also performing the functions of consular courier.

31. On 18 February 2008 the Supreme Court of Georgia rejected the applicant's appeal on points of law as inadmissible. The court reproduced the relevant provision of the Code of Criminal Procedure, noting that "the case [was] not important for the development of the law and coherent judicial practice; the [contested] decision [did] not differ from the Supreme Court's existing practice in such matters, and the appellate court [had] not committed any major procedural flaws during its examination which could have significantly affected its outcome."

32. In view of his poor medical condition the applicant was granted early release from prison on 21 January 2013.

C. Transfer and holding conditions on court premises

33. On 20 October 2006, during the ongoing trial hearings, the applicant complained to the Minister of Justice and to the head of the prisons department about the conditions in which he was transferred to and then held on the premises of the Tbilisi City Court ahead of his trial. He alleged, on the basis of his experience on 19 October 2006, that all the defendants were transferred to the courthouse in the morning at around 10 a.m., although they were not being called into court for their respective trials until between 5 and 7 p.m. in the evening. In the intervening period, around twenty-five detainees were kept in the same holding cell, measuring between 5 and 6 sq. m. The cell had no ventilation and no chairs. The applicant, referring to his medical condition, claimed that this amounted to inhuman and degrading treatment.

34. According to the minutes of the hearing held in the applicant's case on 2 November 2006, this complaint by the applicant was simply included, without any examination, in the materials of his criminal case. The trial minutes reveal that at no subsequent point did the applicant reiterate his grievances concerning the conditions of his transfer and detention in the so called "holding cell" at the first-instance court.

35. On 15 May 2007 the applicant complained to the Minister of Justice and the head of the prisons department about the conditions of the so-called holding cell on the premises of the court of appeal. He alleged that prisoners had to wait for their respective trials for 8 to 10 hours in a cell which was located underground; 20 to 35 prisoners were kept in a concrete cell destined for some 10 people, with no proper ventilation system. Referring to his own experience on 7 May 2007, he noted that he had been placed in such a cell for ten hours; as a result, he suffered a stenocardiac attack.

Referring to Article 3 of the Convention, he asked the relevant authorities to take adequate measure to protect his life and health.

RELEVANT LEGAL FRAMEWORK

A. Code of Criminal Procedure of 1998

36. The relevant provisions of the Code of Criminal Procedure, in force at the material time, read as follows:

Article 13. Inviolability of private life

"1. No one has the right to arbitrarily and unlawfully interfere with the private life of others. The inviolability of the home or other property ... is guaranteed by law.

2. A search [and/or] seizure ... is only permitted by an order of a judge or court. In cases of urgent necessity, as provided in law ... a search or seizure may be carried out in the absence of a court order, although its lawfulness and reasonableness shall be assessed by a judge within [twenty-four] hours of receiving the relevant documents. At the same time, the judge shall decide on the admissibility of the evidence obtained as a result of the procedural measure in question."

Article 290. Investigative act conducted with judicial authorisation

"...

2. A seizure [and/or] search ... may be carried out without a judicial warrant in urgent circumstances, on the basis of an order by an inquiry officer, an investigator or a prosecutor. In such cases the authorities must inform the competent judge ... within 24 hours, providing him or her with criminal case-file documents demonstrating the necessity of carrying out the investigative measure in question. ... the judge shall verify, with the prosecutor present, whether the measure was carried out in accordance with the law ... and shall (a) decide to legalise it, or (b) declare it unlawful and order the inadmissibility of the evidence obtained as a result.

3. In urgent circumstances a seizure [and/or] search ... may be carried out without a judicial warrant before the initiation of criminal proceedings. In such a case an inquiry body shall issue a reasoned decision („მოტივირებული დადგენილება"). [The inquiry body] shall immediately inform the prosecutor about the conduct [of an investigative measure]. After having acquainted himself or herself with the decision of the inquiry body ordering the investigative measure, the [relevant] reports, and the factual circumstances, the prosecutor shall apply within 24 hours to a judge ... providing him or her with documents showing the need to conduct the investigative measure before the opening of a criminal case. The judge ... with the participation of the prosecutor, shall verify the lawfulness of the investigative measure that has been carried out before the initiation of criminal proceedings. Having examined the prosecutor's request... the judge shall (a) decide to legalise the investigative measure ... or (b) declare it unlawful, close the criminal proceedings initiated on the basis of that investigative act and dismiss the evidence obtained as a result [as unlawful].

4. A case is considered urgent when: there is a real risk of the trace or evidence of a crime being destroyed or lost, if a person is apprehended *in flagrante delicto*; if objects or documents relevant to a case are discovered in the context of another

investigative measure (inspection of a crime scene, reconstruction of events, inspection) or if it is impossible to issue a judicial warrant on account of the absence of a judge.

...

7. In cases provided for in paragraphs 2 and 3 of the current Article, no verbatim record of the hearing shall be drawn up, and no appeal lies against the judge's decision."

37. Article 328 described the procedure for searches and seizures on the premises of diplomatic missions. It stipulated, *inter alia*, that a search or seizure on the premises of diplomatic missions, or on premises where a person with diplomatic immunity and his or her family member lived, could only be conducted at the request or with the consent of the head of the relevant diplomatic mission.

B. Vienna Convention on Consular Relations of 24 April 1963

38. The 1963 Vienna Convention on Consular Relation, which Georgia joined by accession on 21 July 1993, is the foundation of the institution of honorary consular. The Convention divides consular officers into two categories, career and honorary consular officers (Article 1 § 2). Chapter III of the Vienna Convention contains provisions relating to the honorary consular and consular offices headed by them. The relevant provisions of the Vienna Convention read as follows:

Article 1. Definitions

"1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

...

(d) 'consular officer' means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions; ...

(j) 'consular premises' means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;

2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers; the provisions of Chapter III govern consular posts headed by honorary consular officers.

3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by Article 71 of the present Convention."

Chapter II
Article 31. Inviolability of the consular premises

"1. Consular premises shall be inviolable to the extent provided in this Article.

2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

..."

Article 35. Freedom of communication

"...

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State, its diplomatic missions and its consular posts may designate consular couriers ad hoc. In such cases the provisions of paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge."

Chapter III
Regime Relating to Honorary Consular Officers and Consular Posts Headed by Such Officers

39. Chapter III of the Vienna Convention on Consular Relations provides for the regime relating to honorary consular officers and consular posts headed by such officers. According to Article 58 ("General provisions relating to facilities, privileges and immunities), Article 31 (Inviolability of the consular premises) does not apply to facilities headed by honorary consular officers. The most relevant provisions related to honorary consular officers read as follows:

Article 59. Protection of the consular premises

"The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity."

Article 63. Criminal proceedings

"If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an

honorary consular officer, the proceedings against him shall be instituted with the minimum of delay."

Article 64. Protection of Honorary Consular Officers

"The receiving State is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position."

Article 71. Nationals or permanent residents of the receiving State

"1. Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in Article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40. The applicant complained about the conditions of his transfer and wait on the premises of the trial court, and about his being placed in a metal cage during the trial proceedings. He relied on Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. The parties' submissions

41. As to the first limb of the applicant's complaint under Article 3, the Government submitted that the applicant's complaint regarding the conditions in which he was transferred and then required to wait on the premises of the trial court was inadmissible as out of time. They noted that the only time the applicant had voiced the respective allegations was in his complaint of 20 October 2006 (see paragraph 33 above). The complaint had been included in the applicant's case file on 2 November 2006 but no decision on its substance had ever been taken by the trial court (see paragraph 34). In the Government's view, in the absence of a follow-up complaint by the applicant, had he believed that there was no other effective remedy at his disposal to challenge the conditions of his transfer and detention in the court holding cell, the applicant was expected to file his

application with the Court by 2 May 2007 at the latest, and not on 14 August 2008 as he had done. They stressed in this connection that the applicant's complaint of 15 May 2007 concerned exclusively the conditions of his transfer to and subsequent detention on the premises of the appeal court, and not the circumstances of his appearance before the trial court.

42. In the alternative, the Government submitted that the relevant part of the applicant's complaint under Article 3 of the Convention amounted to an abuse of the right of application, for the following reason: in the sole domestic complaint, and in the proceedings before the Court, the applicant referred to 19 October 2006 as the date on which he had been transferred to the trial court and kept there in inhuman and degrading conditions. However, with reference to the relevant trial court minutes, the Government submitted that the applicant had never been transferred on 19 October 2006 to the premises of the trial court. They claimed that by providing inaccurate information the applicant had intended to mislead the Court and the relevant complaint was accordingly inadmissible under Article 35 § 3 (a) of the Convention.

43. As to the second limb of the applicant's complaint under Article 3 of the Convention, namely his placement in a metal cage during the hearings, the Government submitted that the applicant had failed to comply with the six-month rule. They noted that this complaint by the applicant concerned only the period of the trial court proceedings, which ended with his conviction on 20 November 2006. At no point did the applicant voice his allegations before the court of appeal or the Supreme Court. His complaint was thus inadmissible in accordance with Article 35 § 1 of the Convention.

44. The applicant did not comment on the Government's inadmissibility arguments.

2. The Court's assessment

45. Starting with the first limb of the applicant's complaint about the conditions of his transfer and detention on the trial court premises, the Court notes the following: it has received no information from the applicant about how many times he was transferred to the trial court and whether the conditions of his transfer and detention were always identical. In his initial submissions the applicant used rather abstract and impersonal language and submitted a copy of a single domestic complaint in support of his allegations. In his subsequent observations, although he was represented by a lawyer and under a duty to provide an elaborate and reasonably detailed account of the alleged events (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 122, 10 January 2012), the applicant simply omitted his relevant complaint under Article 3 of the Convention. Hence, he failed to rebut the Government's submission that he had not in fact been transferred to the Tbilisi City Court on 19 October 2006 and that his complaint was thus inaccurate. In such circumstances, in the absence of

pertinent information and details, the Court is unable to address the applicant's complaint (see *Krasnyuk v. Ukraine* [Committee], no. 66217/10, §§ 105-106, 17 December 2019). Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

46. As to the second limb of the applicant's complaint under Article 3 of the Convention, the Court notes that the applicant's relevant complaint, as raised in his application form with the Court lodged on 14 August 2008, concerned his confinement in a metal cage during the trial proceedings only. This round of proceedings ended with the applicant's conviction on 20 November 2006. The applicant did not raise his complaint before any domestic authority. In the event that there were no effective domestic remedies which could have been exhausted, he ought to have lodged his application with the Court no later than six months from the cessation of the situation complained of. By failing to do so he failed to comply with the six-month rule and his complaint is accordingly inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, §§ 86-87, ECHR 2014 (extracts).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 8 § 1 OF THE CONVENTION

47. The applicant complained about the unlawfulness and lack of justification for a search conducted on the consular premises where he had been serving as Honorary Consular General, and about the reliance of the domestic courts on the evidence obtained as a result of that search. He further complained of a violation of his right of access to a court in view of the refusal of the Supreme Court to consider his appeal on points of law on the merits. The applicant relied on Article 6 § 1 and Article 8 § 1 of the Convention, which in their relevant parts read as follows:

Article 6 § 1

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

48. The parties did not comment on the admissibility of these complaints. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

49. The applicant maintained that the criminal proceedings against him had been unfair. He alleged that his argument relying on his personal immunity and the inviolability of the consular premises had not been properly addressed by the domestic courts, and that the related problem of the unlawfulness of the search of the consular premises had also been left unanswered. In this connection, he contested the Supreme Court's rejection of his appeal on points of law without an examination on the merits, arguing that his case was unprecedented, there being no previous case before the cassation instance involving an issue of diplomatic immunity.

50. As far as the search was concerned, the applicant maintained that the search of the consular premises had constituted an interference with his right to respect for private life, which had not been prescribed by law and had not been necessary in a democratic society. In particular, according to the applicant, the search had been carried out in the absence of a judicial warrant, contrary to the requirements of domestic law and in breach of the international-law principles concerning consular immunity.

51. The Government, for their part, submitted that the search of the consular premises had been conducted in full compliance with the national legislation. With regard to the issue of the applicant's status, they claimed that the applicant himself had been inconsistent in his submissions before the national courts and the Court, claiming one day that he was performing the functions of a diplomatic courier and another day that he was a consular courier. With reference to the relevant provisions of the Vienna Convention on Consular Relations, and relying on the official position of the MFA, the Government dismissed the applicant's claims regarding his status and related immunity as groundless. As to the consular offices, the Government noted that the relevant premises were at the disposal of the Honorary Consul as opposed to a career consul and thus did not qualify for the protection of consular premises within the meaning of Article 31 § 2 of the Vienna Convention on Consular Relations. The relevant authorities had verified the status of the premises before conducting the search with the MFA; and they had also organised for a representative of the MFA to attend the search. The

Government thus stressed that all adequate and appropriate safeguards had been put in place.

52. As to the reliance by the domestic courts on the evidence obtained as a result of the contested search, the Government maintained that firstly, the applicant had had ample opportunities to challenge the evidence, particularly throughout his trial. By granting all of his relevant requests, the domestic courts had enabled him to challenge the unlawfulness of the search in an efficient way. Their reasoned decisions were based on the analysis of the relevant national and international provisions and at no point had the applicant alleged a breach of his defence rights. Secondly, the Government noted that, in addition to the evidence obtained as a result of the search, the applicant's conviction had been corroborated by other strong and reliable evidence, including the video recording of the search on the consular premises, the statement by D.J who had attended the search, and the evidence given by A.I.

53. As regards the Supreme Court's decision to reject the applicant's appeal on points of law as inadmissible, the Government submitted that, in view of the national standard as developed in the Supreme Court's case-law concerning the admissibility criteria for appeals on points of law and the relevant standards established by the Court concerning access to the cassation instance, the applicant should have anticipated this outcome. In the light of the Court's relevant case-law (they referred to *Perez v. France* [GC], no. 47287/99, § 81, ECHR 2004-I, and *Jahnke and Lenoble v. France* (dec.), no. 40490/98, ECHR 2000-IX) the Government submitted that the reasoning of the Supreme Court as to the admissibility of the applicant's appeal was sufficient and adequate.

2. The Court's assessment

54. In view of the nature of the applicant's allegations, the Court finds it appropriate to consider first the applicant's complaint under Article 8 § 1 of the Convention.

(a) Article 8 of the Convention

(i) General principles

55. For an interference with an applicant's "home" or his or her "private life" to be in compliance with Article 8 it must be "in accordance with the law", undertaken in pursuit of a "legitimate aim", and "necessary in a democratic society" (see, for example, *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 167, 24 January 2017; *Roman Zakharov v. Russia* [GC], no. 47143/06, § 227, ECHR 2015; *Saint-Paul Luxembourg S.A. v. Luxembourg*, no. 26419/10, § 40, 18 April 2013; and *Kennedy v. the United Kingdom*, no. 26839/05, § 130, 18 May 2010).

56. The wording "in accordance with the law" requires the impugned measure both to have some basis in domestic law and to be compatible with the rule of law, which is expressly mentioned in the Preamble to the Convention and inherent in the object and purpose of Article 8. The law must thus meet quality requirements: it must be accessible to the person concerned and foreseeable as to its effects (see *Roman Zakharov,* cited above, §§ 228-230, with further references).

57. As regards the "legitimate aim" requirement, the aim "to uncover physical evidence that might be instrumental for [a] criminal investigation into [a] serious offenc[e]" has consistently been deemed "legitimate" by the Court since it pursues the interests of public safety and has to do with the prevention of crime and the protection of the rights of others (see, for example, *K.S. and M.S. v. Germany*, no. 33696/11, § 43, 6 October 2016, and *Smirnov v. Russia*, no. 71362/01, § 40, 7 June 2007).

58. The notion of "necessity" implies that the interference is proportionate to the legitimate aim pursued (see, among many other authorities, *Camenzind v. Switzerland*, 16 December 1997, § 44, Reports 1997-VIII). Regarding, in particular, searches and seizures or similar measures (essentially in the context of obtaining physical evidence of certain offences), the Court will assess whether the reasons adduced to justify such measures were relevant and sufficient and whether the aforementioned proportionality principle has been adhered to (see, for example, *Camenzind*, cited above, § 45, with further references; see also *K.S. and M.S., v. Germany*, cited above, § 43). Concerning the latter point, the Court must first ensure that the relevant legislation and practice afford individuals adequate and effective safeguards against abuse; notwithstanding the margin of appreciation which the Court recognises the Contracting States have in this sphere, it must be particularly vigilant where the authorities are empowered under national law to order and effect searches without a judicial warrant (see also *Gutsanovi v. Bulgaria*, no. 34529/10, § 220, ECHR 2013 (extracts)). Secondly, it must consider the specific circumstances of each case, including but not limited to the severity of the offence in question, the manner and circumstances in which the search warrant was issued, the availability of other evidence at the time, the content and scope of the warrant in question, and the extent of possible repercussions on the reputation of the person affected by the search (see, among many other authorities, *Smirnov,* § 44; *Camenzind*, §§ 45-46; and *K.S. and M.S. v. Germany,* § 44, all cited above; see also *Misan v Russia*, no. 4261/04, § 55, 2 October 2014, and *Buck v. Germany*, no. 41604/98, § 45, ECHR 2005-IV).

(ii) Application of the above principles to the circumstances of the present case

(1) Whether there was an interference

59. It is common ground between the parties that the search of the consular premises constituted an interference with the applicant's rights under Article 8 of the Convention. The Court sees no reason to hold otherwise (see, among many other authorities, *Modestou v. Greece*, no. 51693/13, § 29, 16 March 2017; *Saint-Paul Luxembourg S.A.*, cited above, §§ 37 and 39; *Wieser and Bicos Beteiligungen GmbH v. Austria*, no. 74336/01, § 43, ECHR 2007-IV; and *Panteleyenko v Ukraine*, no. 11901/02, § 47, 29 June 2006). The question therefore remains whether this interference was justified under Article 8 § 2 of the Convention.

(2) Whether the interference was justified

60. As to whether the interference was in accordance with law, the Court notes that the search was conducted in the context of a criminal investigation opened following allegations of possession and sale of unlawful drugs. The "search in urgent circumstances" was regulated by Articles 13 and 290 §§ 2 and 4 of the CCP as in force at the material time (see paragraph 36 above). It follows that it had a basis in the relevant domestic law. As to the applicant's argument that the search had breached Article 328 of the CCP in as much as it had been conducted without the consent of the head of a diplomatic mission, the Court observes that, as noted by the domestic courts, that provision explicitly stated that it regulated the procedure for searches on the premises of diplomatic missions and, therefore, did not concern the applicant's case (see paragraph 37 above).

61. As to the compatibility of the search with the requirements of the Vienna Convention on Consular Relations, the Court notes that the domestic courts carefully examined the relevant principles of international law as far as the issue of the consular immunity was concerned and answered the applicant's arguments in a reasoned manner (see paragraphs 26 and 29 above). It refers in this connection to the preparatory works (*travaux préparatoires*) of the Vienna Convention on Consular Relations, according to which the two categories of consular officials, namely career consular officials and honorary consular officials, have a different legal status so far as consular privileges and immunities are concerned. The honorary consuls who are nationals of the receiving State, according to the preparatory works, do not enjoy any consular immunities other than immunity from jurisdiction in respect of official acts performed in the exercise of their functions. As to the premises of a consulate headed by an honorary consul, it should be noted that while the text of the preliminary draft Convention provided for the inviolability of such premises if they were exclusively used for the

exercise of consular functions, the relevant provision was eventually removed from the draft.

62. In the light of the above extracts from the preparatory works and in view of the relevant Articles of the Vienna Convention on Consular Relations, notably Articles 31, 58, 59 and 71 (see paragraphs 38 and 39 above) the Court finds that the domestic courts' conclusions related to the international law principles on consular immunity were substantiated and reasonable.

63. There is no doubt that the search served a legitimate aim, namely to prevent crime and protect the rights of others (see *Modestou*, § 39, *K.S. and M.S. v. Germany*, § 36, *Gerashchenko*, § 128, and *Smirnov*, § 40, all cited above). It remains to be examined whether the interference was "necessary in a democratic society". In this connection the Court will focus on the allegations of the applicant of insufficient protection from arbitrariness and lack of adequate safeguards.

64. Starting with the decision to conduct a search, in the current case the search was conducted in the absence of a prior judicial warrant, on the basis of a decision issued by the head of the relevant police department on 25 August 2005. That decision did not refer to any relevant facts and was not drawn up in precise terms. There was no reference whatsoever to the items, for example drugs, being looked for; no information was provided about a possible link between the case under investigation and the consular premises (compare *Modestou,* cited above, § 46). In addition, the decision did not set out the pressing circumstances which allegedly necessitated an urgent search without a prior judicial warrant (see in this respect Article 290 § 3 of the CCP as cited in paragraph 36 above). In the Court's view, the absence of a judicial warrant in the current case remains particularly problematic. It is noteworthy that the relevant investigative authorities considered it appropriate to make inquiries about the status of the consular premises with the MFA on the day prior to the search (see paragraph 7 above). Over the same period, however, they failed, for reasons which remain unclear, to seek a judicial warrant for the search. In the Court's view, the Government failed, in the circumstances of the current case, to justify the recourse to urgent procedure (compare *Dragoş Ioan Rusu v. Romania*, no. 22767/08, § 41, 31 October 2017).

65. At the same time, the Court cannot overlook the fact that the search was accompanied by a number of procedural safeguards. Thus, the police officers were accompanied by a representative of the MFA, who was allowed to be present throughout the investigative measure. It was recorded on a video, which was shown in court; and the applicant was present throughout the search. Also, at no point did the applicant argue that any other items, particularly those related to his work, had been seized during the search (contrast *Smirnov,* cited above, § 48).

66. As to the issue of judicial scrutiny, the Court notes that the absence of a prior judicial warrant for a search may be counterbalanced by the availability of an *ex post factum* judicial review (see *Heino v. Finland,* no. 56720/09, § 45, 15 February 2011). This review must, however, be effective in the particular circumstances of the case in question (see *Smirnov,* cited above, § 45 *in fine*). In the present case, the *ex post factum* judicial review was conducted promptly, on 26 August 2005 (see paragraph 14 above). However, the Court notes that it has already found in its judgments against Georgia, albeit in the context of the examination of the fairness of criminal proceedings under Article 6 of the Convention, that post-search judicial reviews are not adequate and sufficient for the purposes of establishing the circumstances of a search (see *Kobiashvili v. Georgia,* no. 36416/06, §§ 67-69, 14 March 2019, and *Megrelishvili v. Georgia* [Committee], no. 30364/09, § 35, 7 May 2020). The Court considers that a similar conclusion is warranted under Article 8 of the Convention in this case. Thus, the domestic court did not elaborate in its decision on the issue of the necessity of a search in urgent circumstances (see *Stoyanov and Others v. Bulgaria*, no. 55388/10, § 130, 31 March 2016). Nor did it examine whether the measure had been "necessary in a democratic society" and whether it had been proportionate (see paragraph 15 above; compare with *Doroż v. Poland*, no. 71205/11, § 28, 29 October 2020; see also, *mutatis mutandis, Hambardzumyan v. Armenia*, no. 43478/11, § 46, 5 December 2019, and *Zubkov and Others v. Russia*, nos. 29431/05 and 2 others, §§ 97-98, 7 November 2017). It seems that the domestic court was required to do so, as Article 13 § 2 of the CCP explicitly provided for the assessment of the lawfulness and reasonableness of a search and seizure carried out in the absence of a judicial order (see Article 13 § 2 of the CCP as cited in paragraph 36 above; contrast *Ivashchenko v. Russia*, no. 61064/10, § 89, 13 February 2018).

67. The applicant challenged the lawfulness of the search and the justification for it in the course of the criminal trial conducted against him. The Court notes that, while as argued by the Government, the domestic courts did indeed review the lawfulness of the search, they did not consider the issue of the justification for such an intrusion and its proportionality.

68. In view of all the foregoing, particularly having regard to the defects of the "urgent procedure" identified above and the absence of adequate and efficient judicial scrutiny of the interference in the present case, the Court considers that the search of the consular premises was not attended by appropriate and sufficient safeguards. There has accordingly been a violation of Article 8 § 1 of the Convention.

(b) Article 6 § 1 of the Convention

(i) General principles

69. The relevant general principles as far as the fairness of proceedings is concerned in relation to the use of evidence obtained in violation of Article 8 of the Convention were summarised by the Court in the case of *Bykov v. Russia* ([GC], no. 4378/02, §§ 88-93, 10 March 2009). In particular, in determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. It must be examined, in particular, whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy. While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (see ibid. § 90; see also *Lisica v. Croatia*, no. 20100/06, § 49, 25 February 2010; *Gäfgen v. Germany* ([GC], no. 22978/05, § 162-165, ECHR 2010; *Prade v. Germany*, no. 7215/10, § 33-34, 3 March 2016, and *Kobiashvili*, cited above, §§ 56-58).

70. The general principles on access to a court were recently summarised by the Court in the case of *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-99, 5 April 2018; see also *Chong Coronado v. Andorra*, no. 37368/15, § 32, 23 July 2020).

(ii) Application of the above principles to the circumstances of the present case

71. The Court notes that the applicant's complaint under Article 6 § 1 of the Convention was twofold: firstly, that his conviction was unfair because it was based on evidence obtained as a result of an unlawful search, and secondly that the Supreme Court had arbitrarily restricted his access to the cassation instance. The Court will address the two limbs of the applicant's complaint separately.

(1) Allegations concerning the unfairness of the trial on account of the admission and use of evidence obtained in the search of the consular premises

72. The Court has already found in the particular circumstances of various cases that the fact that domestic courts had relied on evidence which had been deemed to have been unlawfully obtained for the purposes of Article 8 of the Convention did not conflict with the requirements of fairness enshrined in Article 6 § 1 of the Convention (see, among other authorities, *Bykov,* cited above, §§ 94-98; see also *Khan v. the United Kingdom*, no. 35394/97, §§ 34-40, ECHR 2000-V; *P.G. and J.H.*

v. the United Kingdom, no. 44787/98, §§ 76-81, ECHR 2001-IX; *Valentino Acatrinei v. Romania*, no. 18540/04, §§ 73-77, 25 June 2013; and *Hambardzumyan*, cited above, §§ 78-81). As to the present case, the Court considers, in view of the relevant principles established in *Bykov* (cited above, §§ 89-90), that the applicant was able to challenge the lawfulness and the authenticity of the evidence obtained as a result of the impugned search in the adversarial procedure before the trial court and the appeal court. While the post-search judicial review was tainted by inadequacy and insufficiency (see the relevant reasoning under Article 8 of the Convention in paragraph 66 above) his arguments about the circumstances of the search and the reliability of the evidence obtained as a result were addressed by the courts and dismissed in reasoned decisions in the course of his criminal trial. It notes in this connection that the applicant made no complaints in relation to the alleged breach of his defence rights.

73. As to the quality of the evidence, starting with the circumstances of the search, the Court notes that the search of the consular premises in the current case was triggered by the incriminating evidence given by A.I. In addition to his pre-trial confrontation with the applicant, the latter was examined before the trial and appeal courts, with the participation of the defence. In this respect the present case is different from previous cases against Georgia where the Court found that the searches conducted on the basis of the operational information, which had never been examined by any of the domestic courts, had been tainted by arbitrariness (see *Kobiashvili*, §§ 61-65 and *Megrelishvili,* § 33, both cited above; and *Bakradze v. Georgia* [Committee], no. 21074/09, § 26, 10 December 2020). Furthermore, the circumstances of the search of the consular premises were confirmed by a video recording and by the statements of a representative of the MFA. The Court finds it problematic that the search of the consular premises was conducted in a manner which precluded subsequent dactyloscopic examination of the evidence seized. It considers that the police should have taken adequate precautions in order to prevent possible contamination of the evidence. Nevertheless, this failure did not, in the circumstances of the current case, call into question the reliability of the evidence that the substance seized belonged to the applicant. It is noteworthy that the applicant admitted to possessing the ampoules of morphine. Moreover, the drugs were seized from a safe and desk in the applicant's office.

74. Lastly, the Court attaches weight to the fact that the substance seized was not the only evidence on which the applicant's conviction was based. In finding the applicant guilty the domestic courts relied on incriminating evidence given by A.I. The latter reiterated his pre-trial incriminating evidence before the trial and appeal courts. The applicant's conviction was further based on other court-tested evidence, notably, the video recording of

the search, the statement of a representative of the MFA, and the statements of the police officers who had conducted the search.

75. In these circumstances, the Court finds that the use of the evidence obtained in violation of Article 8 of the Convention did not undermine the overall fairness of the criminal proceedings against the applicant.

76. There has accordingly been no violation of Article 6 § 1 of the Convention in this respect.

(2) Access to the Supreme Court

77. As regards the applicant's complaint about the lack of access to the Supreme Court, the Court recalls that the same issue has already been examined in the context of the relevant Georgian procedural law and practice and was found to have been compatible with Article 6 § 1 of the Convention (see *Kadagishvili v. Georgia*, no. 12391/06, § 175, 14 May 2020; *Kobiashvili*, cited above, § 76; *Kuparadze v. Georgia*, no. 30742/09, §§ 75-77, 21 September 2017; and *Tchaghiashvili v. Georgia* (dec.), no. 19312/07, § 34, 2 September 2014). In the present case, according to the applicant, this was the first time that the Supreme Court had been seized with a case dealing with the issue of consular immunity and that it was therefore important for the cassation court, for the purpose of developing uniform judicial practice, to admit the case and decide it on the merits. The Court notes, however, that the applicant had had the benefit of fully adversarial proceedings on the merits before the first and appellate instances. In view of the thorough examination of the applicant's relevant arguments by the first two instances, the Court considers that the fact that the applicant's appeal on points of law was declared inadmissible cannot be viewed as an unreasonable and disproportionate limitation of the right to have access to court. Nor does the limited reasoning given by the Supreme Court in its decision of 18 February 2008 for the rejection of the applicant's appeal raise an arguable issue (see, among many other cases, *Nersesyan v. Armenia* (dec.), no. 15371/07, §§ 23-24, 19 January 2010; *Kukkonen v. Finland* (no. 2), no. 47628/06, § 24, 13 January 2009; *Wnuk v. Poland* (dec.), no. 38308/05, 1 September 2009; *Marini v. Albania*, no. 3738/02, § 106, ECHR 2007-XIV (extracts), and *Jaczkó v. Hungary*, no. 40109/03, § 29, 18 July 2006).

78. In the light of the foregoing, the Court finds that there has been no violation of Article 6 § 1 of the Convention on account of the refusal by the Supreme Court to consider the applicant's case on its merits.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only

partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

80. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage. He submitted that as a result of the Government's unlawful actions his medical condition had deteriorated in prison and that he had not been provided with adequate medical treatment in this respect. The applicant did not claim any pecuniary damages.

81. The Government submitted that the applicant's claims in respect of non-pecuniary damage were either unsubstantiated or highly excessive. They stressed that the applicant had claimed non-pecuniary damage primarily on account of the alleged lack of adequate medical treatment in prison, an issue which fell outside the scope of the present case.

82. The Court considers that, in the circumstances of the present case, the finding of a violation of Article 8 constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant as a result of that violation.

B. Costs and expenses

83. The applicant also claimed approximately EUR 3,000 (3,500 United States dollars) for the costs and expenses incurred before the domestic courts and EUR 20,000 for those incurred before the Court. In support of his claim he submitted copies of the relevant contracts concluded with two lawyers for the purposes of the domestic proceedings and with four other lawyers for the purpose of conducting proceedings before the Court. He further requested the Court to reimburse various expenses in the amount of EUR 5,000.

84. The Government submitted that the applicant's purported legal costs and expenses were not duly substantiated, as the applicant had failed to submit to the Court the required financial and other documents.

85. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-372, 28 November 2017). In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant. It also dismisses as unsubstantiated the applicant's claim in relation to other expenses.

C. Default interest

86. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 6 § 1 and Article 8 § 1 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 § 1 of the Convention;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the alleged unfairness of the proceedings;

4. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the lack of access to the Supreme Court;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Síofra O'Leary
Registrar	President