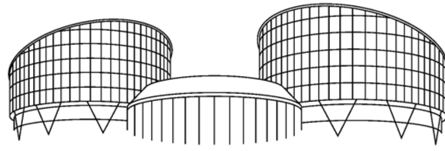

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF PERADZE AND OTHERS v. GEORGIA

(Application no. 5631/16)

JUDGMENT

Art 11 (+ 10) • Freedom of peaceful assembly • Applicants' arrest and conviction for an administrative offence of disorderly conduct during public demonstration, namely holding banners with a lewd slogan • Failure by the domestic courts to consider the degree of disturbance caused to public life by the applicants' conduct or adduce sufficient reasons to justify the necessity of the interference • Vulgar nature of the impugned statement unduly dissociated from its context and goal to express significant disapproval of the ongoing construction project

STRASBOURG

15 December 2022

FINAL

15/03/2023

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Peradze and Others v. Georgia,

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

Síofra O'Leary*, President*,
Arnfinn Bårdsen,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Lado Chanturia,
Mattias Guyomar,
Mykola Gnatovskyy*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 5631/16) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the seven Georgian nationals listed in the appendix on 12 January 2016;

the decision to give notice to the Georgian Government ("the Government") of the complaint under Articles 10 and 11 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 13 September and 22 November 2022,

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

INTRODUCTION

1. The case concerns, under Articles 10 and 11 of the Convention, the applicants' complaints that their arrest during a public demonstration and their conviction for the administrative offence of disorderly conduct amounted to a violation of their right to freedom of expression and peaceful assembly.

THE FACTS

2. The names of the applicants and their dates of birth are set out in the appendix. They were represented before the Court by four Georgian lawyers (Ms T. Abazadze, Ms T. Dekanosidze, Ms K. Shubashvili and Ms N. Jomarjidze) and three British lawyers (Ms J. Sawyer, Ms. J. Gavron and Mr P. Leach).

3. The Government were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. BACKGROUND

5. In 2014 the Georgian Co-Investment Fund ("the GCF"), a private equity fund established in 2013 for the purpose of attracting large private investments into Georgia, unveiled a project to build, on Sololaki Hill overlooking the historical part of Tbilisi ("the Old Town"), four new city areas, which were to include hotels, serviced apartments, offices, exhibition and conference halls, health and leisure centres, as well as all the necessary transport infrastructure, including roads, cable cars, inclined elevators and extensive parking places. The construction project was officially presented as Panorama Tbilisi.

6. One of the largest contributors to the GCF was the former Prime Minister of Georgia, B.I., who had publicly advocated for the construction of the Panorama Tbilisi.

7. After the Panorama Tbilisi project was announced, its opponents, who included representatives from various societal and professional groups, such as environmental activists, urbanists and architects, started expressing concerns that the construction work could cause irreparable damage to the uniqueness of the Old Town's landscape. The opponents were also concerned that the authorities had failed to consult or involve society in the decision-making process regarding the project.

II. THE INCIDENT OF 19 JULY 2015

8. In July 2015 Tbilisi hosted the 2015 European Youth Summer Olympic Festival. The Olympic Flame was stationed in front of the entrance to Tbilisi City Hall from 17 July 2015 until the opening ceremony on 26 July 2015. It was guarded during the day by two teenagers dressed in traditional Georgian clothing and became a busy meeting place for young people.

9. On 19 July 2015 the applicants, together with hundreds other like-minded individuals, gathered in front of Tbilisi City Hall, after giving prior notification to the municipal authority of their intention to hold a demonstration to protest against Panorama Tbilisi in view of the fact that a construction permit had been issued for it on 16 July 2015. Immediately before the demonstration, the police officer in charge of ensuring public order at the site gave the first applicant (Ms Peradze), the main organiser of the protest event, specific instructions on how to remain within the boundaries of peaceful and regular conduct, advising her of the possible legal consequences for committing "irregular actions".

10. The demonstration started at 5 p.m. and occupied the entire area next to the Olympic Flame. The majority of the protesters held banners with slogans such as "No to Panorama!", "Sololaki Hill is Tbilisi's main identity!" and "We will not stop!".

11. The second applicant (Mr Makarashvili), whilst standing still among the other protesters, held a banner with an inscription likening Panorama Tbilisi to a human penis, using the lewdest synonym available in the colloquial Georgian language for the latter: "Panorama, my cock!" ("*პანორამა არა, ყლე!*").

12. While the second applicant was standing still with his banner, the police tolerated his conduct for some fifty minutes. However, after he started moving with his banner around the Tbilisi City Hall's entrance and the Olympic Flame with the aim of drawing the attention of passers-by, including underage children, the police arrested him.

13. According to the second applicant's arrest record, he was arrested at 5.50 p.m. on 19 July 2015 under Article 166 of the Code of Administrative Offences ("the CAO") for disorderly conduct for holding a banner with the above-mentioned lewd slogan. It was also noted in the record that he had been chanting the same slogan when approached by the police officers.

14. The second applicant's arrest was followed by a spontaneous act of solidarity. The other six applicants (Ms Peradze, Ms Malashevski-Jakeli, Mr Chachanidze, Mr Kareli, Ms Mamulashvili and Mr Mgaloblishvili) impulsively wrote the same slogan – "Panorama, my cock!" – on pieces of paper and started demonstratively flaunting these impromptu banners in front of the police. One of the banners had a slightly modified inscription, making B.I., the former Prime Minister (see paragraph 6 above), the direct addressee of the relevant slang term. According to the police records, the six applicants were arrested under Article 166 of the CAO at 6 p.m. The seventh applicant (Mr Mgaloblishvili) was also charged, under Article 173 of the CAO, with disobeying the lawful orders of the police for failing to stop lewd chanting in public.

15. After the applicants were removed from the event by the police, all the remaining participants were able to continue with the demonstration as planned.

III. COURT PROCEEDINGS

16. On 20 July 2015 the Tbilisi City Court started examining the administrative-offence charges against the applicants. It heard all of them in person, the police officers who had arrested them and two witnesses who had been called to testify at the trial on behalf of the applicants. In addition, the court examined video recordings of the circumstances preceding the applicants' arrest during the demonstration of 19 July 2015.

17. The police officers examined stated that they had had no intention of arresting the second applicant while he had been standing still with his banner. They had only become genuinely concerned about his conduct after he had started moving with the banner around the entire venue of the demonstration, flashing its content to passers-by, including youngsters

gathered around the Olympic Flame (see paragraphs 11 and 12 above). As regards the remaining six applicants, the police officers stated that they had warned them several times not to imitate the second applicant's conduct, reiterating that a group of children were standing in close proximity. However, the six applicants had not only disregarded the repeated warnings, they had started flaunting the banners even more provocatively and putting pieces of paper with the same lewd inscription on the windscreens of the police patrol cars.

18. The applicants, when examined by the court, acknowledged that they had been holding either full-size banners or sheets of paper containing the lewd term in question during the demonstration. They explained that they had been expressing their protest against Panorama Tbilisi in the exercise of their rights to freedom of expression and freedom of peaceful assembly. On the other hand, they denied chanting the slogan aloud. As regards the two witnesses examined on behalf of the applicants (see paragraph 16 above), they stated that they had not heard the applicants chanting anything.

19. The Tbilisi City Court examined the video recordings surrounding the incident of 19 July 2015 (a copy of these recordings was also submitted to the Court). On some of these recordings, children could be seen standing close to the applicants who were calmly holding sheets of paper with the lewd inscription. One of the recordings captured a dialogue between the applicants and a police officer, when, in reply to the officer's request to put the banners down so as to not upset the children standing nearby or passing by, some of the applicants could be heard saying: "Oh yeah? These children probably cannot even read!" and "Arrest us! A [the synonym in question for a penis] is just another human organ, like a nose!".

20. By a decision of 23 July 2015, the Tbilisi City Court found all seven applicants guilty of disorderly conduct for silently holding the banners with the above-mentioned lewd slogan, but acquitted the seventh applicant of the administrative offence of disobeying the lawful orders of the police. The court specified that the case material examined during the trial could not confirm beyond reasonable doubt either that any of the applicants had shouted out the lewd slogan, or that any of them had received but disobeyed the police officers' lawful orders.

21. With respect to the incident concerning the banners and sheets of paper held by the seven applicants during the demonstration, the City Court started its reasoning by acknowledging the fact that the applicants had acted in the exercise of their rights under Articles 10 and 11 of the Convention, but that those rights could be subject to a proportionate interference that ought to have a legal basis in domestic law, pursue one or more legitimate aims and be necessary in a democratic society. As regards the lawfulness issue, the court emphasised that Article 166 of the CAO was directly applicable to the applicants' situation because the provision explicitly made swearing in public illegal (see paragraph 23 below). The City Court then referred to the need to

protect public order and morals as the legitimate aims of the interference in question. As to whether or not the applicants' administrative sanctioning could be considered necessary in a democratic society, the court emphasised that the applicants had depicted the slang term as "sheer indecency, void of any political, cultural, educational or scientific value". Indecency could not contribute to public debate in a civilised manner and could therefore be legitimately restricted, under section 9(1) of the Freedom of Expression Act, without major prejudice to the applicants' right to freedom of expression. The court further specified that the lewd term in question was considered "a particularly offensive insult" in Georgian society. It then noted that "the way in which the colloquial expression containing the lewd word [had been] constructed could in no way be understood as conveying any particular opinion on the subject [of the Panorama Tbilisi construction project] in question, the expression thus could not be said to [have been] capable of contributing to the ongoing public debate. The expression [had been] hollow, meaningless, and the only possible reason why it [had] attracted attention was the degree of the lewdness it [had] carried in itself". That being so, the court continued, by sanctioning the applicants, the police had merely been protecting public order, within the meaning of Article 166 of the CAO, as well as the morals and interests of the children who had been standing near the demonstration. Having assessed the circumstances of the case, the Tbilisi City Court ruled that a fine in the amount of 100 Georgian laris (GEL – approximately 40 euros) would be a sufficient penalty for each of the applicants.

22. The applicants appealed against the decision of 23 July 2015, but their appeals were dismissed by the Tbilisi Court of Appeal on 7 and 11 September 2015. The appellate court fully upheld the reasoning of the lower court. In particular, it confirmed that it was "a well-established practice for Article 166 of the CAO to apply to swearing in public or any other acts of indecency committed in a public setting" (see also paragraph 23 below). It then continued by noting that the fact that the applicants had displayed the lewd word during their public demonstration had not been disputed by the latter. As to whether or not the applicants' conduct was protected by their freedoms of peaceful assembly and expression, the appellate court noted that the lower court had already conducted a thorough balancing exercise between the competing interests at stake and that it saw no reason to disagree with that court's findings.

RELEVANT LEGAL FRAMEWORK

23. Article 166 of the CAO reads as follows:

Disorderly conduct

> "Disorderly conduct, that is, swearing and cursing in public places, insulting and harassing a person, or similar actions that disturb public order and peace shall be sanctioned by a fine of GEL 100 or, if the fine is considered to be insufficient in the light of the particular circumstances of the case, up to fifteen days' administrative detention."

24. Section 1(f) of the Freedom of Expression Act defined "indecency" ("უხამსობა") as "content which has no political, cultural, educational or scientific value and which transgresses widely held ethical standards." Section 9(1)(b) of the same Act further stipulated that indecent content could be regulated and excluded from the scope of protection of freedom of expression.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

25. The applicants complained that their arrest during the public demonstration and conviction for the administrative offence of disorderly conduct had amounted to a violation of their right to freedom of expression and peaceful assembly, in breach of Articles 10 and 11 of the Convention. The relevant parts of these provisions read as follows:

Article 10

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions ... without interference by public authority and regardless of frontiers ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others ..."

Article 11

> "1. Everyone has the right to freedom of peaceful assembly ...
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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

26. The Government submitted that the applicants had failed to exhaust the available domestic remedies by either suing the police under the Civil

Code or lodging a criminal complaint against them. They also briefly stated, without providing any additional arguments, that the application should be dismissed for lack of any significant disadvantage under Article 35 § 3 (b) of the Convention.

27. The applicants replied that the administrative-offence proceedings against them had been a sufficient forum for raising their complaints under Articles 10 and 11 of the Convention. They further disagreed with the Government's objection under Article 35 § 3 (b) of the Convention.

28. The Court reiterates that where there is a choice of remedies, the exhaustion requirement must be applied to reflect the practical realities of the applicant's position, so as to ensure the effective protection of the rights and freedoms guaranteed by the Convention. An applicant who has used a remedy which is apparently effective and sufficient cannot be required also to have tried others that were also available but probably no more likely to be successful (see, among many other authorities, *Adamski v. Poland* (dec.), no. 6973/04, 27 January 2009). Given that the applicants' rights under Articles 10 and 11 of the Convention lay at the core of their defence during the administrative-offence proceedings against them, during which they were given a proper opportunity to contest the impugned conviction for disorderly conduct, they cannot be reproached for not having had recourse to the other two remedies, either the civil or criminal, referred to by the Government (compare *Amaghlobeli and Others v. Georgia*, no. 41192/11, § 23, 20 May 2021; *Tuskia and Others v. Georgia*, no. 14237/07, §§ 58 and 60, 11 October 2018; and *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, § 97, 10 April 2018). The Government's objection in this regard should therefore be rejected.

29. As to the Government's objection under Article 35 § 3 (b) of the Convention, the Court observes that it is unsubstantiated. They did not explain why they considered that the applicants had suffered no significant disadvantage (compare, for instance, *Amaghlobeli and Others v. Georgia*, no. 41192/11, § 24, 20 May 2021). Furthermore, no submissions were made on the two "safeguard clauses" contained in the relevant provision. Noting the nature of the issues raised in the present case, which also arguably concerns important matters of principle under Articles 10 and 11 of the Convention, as well as the scope of the limitation of the exercise of the relevant Convention rights (ibid. § 24, and also *Berladir and Others v. Russia*, no. 34202/06, § 34, 10 July 2012), the Court does not find it appropriate to dismiss the present application with reference to Article 35 § 3 (b) of the Convention.

30. The Court additionally notes that these complaints are not manifestly ill-founded or inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

31. The applicants submitted that the interference with their freedom of expression and freedom of assembly rights, which had taken the form of their sanctioning for disorderly conduct, had not been "prescribed by law" within the meaning of Articles 10 and 11 of the Convention. It had not been foreseeable to them that peacefully holding the banners with the relevant inscription, without shouting out the slogans on them, could attract their liability. They argued that the domestic authorities had interpreted Article 166 of the CAO too broadly when using that provision as a legal ground for sanctioning them. The applicants also claimed that the interference had not had any legitimate aim and had not been "necessary in a democratic society". They stated that the police should have tolerated the slang word written, as the aim of this type of expression during the demonstration of 19 July 2015 had been to draw the competent domestic authorities' attention to the lack of transparency with which Panorama Tbilisi was being implemented. The use of the slang term had been meant to contribute to public debate and to convey the applicants' strong opposition to the construction project. As regards the striking of a fair balance between the competing interests, the applicants submitted that the domestic courts had failed to properly assess the proportionality of the restriction against the cornerstones of a democratic society, namely the rights to freedom of expression and freedom of assembly. In particular, their relevant rights should not have been restricted for the protection of the abstract notion of public morals. They also claimed that the fines imposed upon them had been a disproportionate penalty. Instead of fining them, the police could have, in the applicants' view, simply confiscated the banners. Lastly, the applicants, whilst acknowledging that the slang term was impolite and somewhat offensive, challenged the degree of its profanity, stating that the term was widely used in colloquial language in Georgia to insult someone or something or simply to express discontent in an emotional manner. In that connection, they also asked the Court to draw parallels with the Court's judgment in the case of *Kakabadze and Others v. Georgia* (no. 1484/07, §§ 84-93, 2 October 2012), where a violation of Article 11 of the Convention had been found, in the applicants' understanding, on account of the sanctioning of the applicants for having referred to the then Minister of the Interior as "Lavrentiy Beria's bastard."

32. Acknowledging that the applicants' conviction in the administrative-offence proceedings for disorderly conduct had amounted to an interference with their rights under Articles 10 and 11 of the Convention, the Government submitted that the interference had been "prescribed by law, reference being made to Article 166 of the CAO and section 9(1) of the Freedom of Expression Act, and had pursued, as also explicitly noted by the domestic courts (see paragraph 21 above), the legitimate aim of protecting

morals and/or the rights and freedoms of others. They added that the interference had been "necessary in a democratic society" for the following reasons. First, the Government pointed out that the domestic courts had examined the matter in a fully adversarial manner, after hearing the applicants, the police officers and even two independent witnesses (see paragraphs 16-20 above), and had delivered decisions containing relevant and sufficient reasons for the applicants' administrative sanctioning. Secondly, they emphasised that the police had shown a sufficient degree of tolerance by allowing the second applicant to display the banner with the rude term for almost an hour, as long as he remained still, and had only decided to arrest him after he had started moving around the place, drawing more public attention to the banner. As regards the remaining six applicants, they had been duly warned by the police that their conduct was offensive to the public and had been requested to place the impromptu banners out of the sight of the youngsters near the Olympic Flame (see paragraphs 8, 12 and 17 above). Thirdly, the Government argued that, since the legitimate aim of protecting morals had been at stake, the national authorities had been better placed to assess the peculiarities of the conception of morals in Georgian society, and that, therefore, these authorities had a wide margin of appreciation in determining the level of obscenity of the language used by the applicants during the demonstration. Lastly, the Government also asked the Court to take into account the very lenient nature of the administrative sanction imposed by the domestic courts, when assessing the proportionality of the interference.

2. *The Court's assessment*

(a) The legal classification of the applicants' complaints

33. The Court notes that the applicants' complaints under Articles 10 and 11 of the Convention are based on the same facts and allegations, namely that they were sanctioned on account of the content of the banners that they had been holding during the demonstration. In such circumstances, Article 11 is to be regarded as a *lex specialis* and it is unnecessary to take the complaint under Article 10 into consideration separately (compare *Kemal Çetin v. Turkey*, no. 3704/13, § 26, 26 May 2020, and *Ekrem Can and Others v. Turkey*, no. 10613/10, § 68, 8 March 2022). At the same time, notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10, since, in the present case, the aim of the exercise of freedom of assembly was the expression of personal opinions as well as the need to secure a forum for public debate and the open expression of protest (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, §§ 85-86, ECHR 2015).

(b) General principles

34. An interference with the right to freedom of peaceful assembly will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of the aim or aims in question (see *Laguna Guzman v. Spain*, no. 41462/17, § 44, 6 October 2020). The right to freedom of assembly, one of the foundations of a democratic society, is subject to a number of exceptions which must be narrowly interpreted and the necessity for any restrictions must be convincingly established. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered "necessary in a democratic society" the Contracting States enjoy a certain but not unlimited margin of appreciation. It is, in any event, for the Court to give a final ruling on the restriction's compatibility with the Convention and this is to be done by assessing the circumstances of a particular case (see *Kudrevičius and Others*, cited above, § 142, and *Mushegh Saghatelyan v. Armenia*, no. 23086/08, § 238, 20 September 2018).

35. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they took. This does not mean that it has to confine itself to ascertaining whether the State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine, after having established that it pursued a "legitimate aim", whether it answered a "pressing social need" and, in particular, whether it was proportionate to that aim and whether the reasons adduced by the national authorities to justify it were "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts. The proportionality principle demands that a balance be struck between the requirements of the purposes listed in paragraph 2 on the one hand, and those of the free expression of opinions by word, gesture or even silence by persons assembled on the streets or in other public places, on the other. The nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued. Where the sanctions imposed on the demonstrators are criminal in nature, they require particular justification. A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction, and notably to deprivation of liberty. Thus, the Court must examine with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence (see *Kudrevičius and Others*, cited above, §§ 143, 144 and 146, and *Chernega and Others v. Ukraine*, no. 74768/10, § 221, 18 June 2019).

36. Any demonstration in a public place may cause a certain level of disruption to ordinary life. This fact in itself does not justify an interference with the right to freedom of assembly, as it is important for the public authorities to show a certain degree of tolerance. The appropriate "degree of tolerance" cannot be defined in abstracto: the Court must look at the particular circumstances of the case and particularly at the extent of the "disruption to ordinary life". This being so, it is important for associations and others organising demonstrations, as actors in the democratic process, to abide by the rules governing that process by complying with the regulations in force. The intentional failure by the organisers to abide by these rules and the structuring of a demonstration, or of part of it, in such a way as to cause disruption to ordinary life and other activities to a degree exceeding that which is inevitable in the circumstances constitutes conduct which cannot enjoy the same privileged protection under the Convention as political speech or debate on questions of public interest or the peaceful manifestation of opinions on such matters. On the contrary, the Court considers that the Contracting States enjoy a wide margin of appreciation in their assessment of the necessity of taking measures to restrict such conduct. The intentional serious disruption, by demonstrators, to ordinary life and to the activities lawfully carried out by others, where such disruption was more significant than that caused by the normal exercise of the right of peaceful assembly in a public place, might be considered a "reprehensible act" within the meaning of the Court's case-law. Such behaviour might therefore justify the imposition of penalties, even of a criminal nature (see *Kudrevičius and Others*, cited above, §§ 155, 156 and 173).

37. As regards the relevant principles under Article 10 of the Convention, the Court reiterates that this provision is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24). There is little scope under Article 10 § 2 for restrictions on political speech or debates on questions of public interest (see *Bumbeș v. Romania*, no. 18079/15, § 92, 3 May 2022). As to the form of expression, the Court has held that offensive language may fall outside the protection of freedom of expression if it amounts to wanton denigration, for example, where the sole intent of the offensive statement is to insult (see *Skałka v. Poland*, no. 43425/98, § 34, 27 May 2003). However, the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression as it may well serve merely stylistic purposes. Style constitutes part of the communication as the form of expression and is as such protected together with the content of the expression (see *Uj v. Hungary*, no. 23954/10, § 20, 19 July 2011).

(c) Application of these principles to the circumstances of the present case

(i) Whether there has been an interference which was prescribed by law and pursued a legitimate aim

38. The Court observes that there was clearly an interference with the applicants' right to freedom of assembly on account of their arrest and the administrative penalty imposed on them for disorderly conduct during the demonstration of 19 July 2015, a fact which was not in dispute between the parties.

39. It further notes that the interference was clearly "prescribed by law", within the meaning of the second paragraph of Article 11 of the Convention. The applicants' administrative penalty was based on Article 166 of the CAO, a provision which explicitly prohibited the use of profane language in a public place (see paragraph 23 above). As the applicants never disputed the fact that they had displayed the banners/placards containing the slang word, which they themselves acknowledged was offensive colloquial language (see paragraph 31 above), the Court has no doubt that the applicants could have foreseen, to a degree reasonable in the circumstances, that their conduct during the demonstration of 19 July 2015 would entail administrative liability under Article 166 of the CAO. There was thus nothing arbitrary in the fact that the domestic authorities referred to that provision as the basis for conducting the administrative-offence proceedings against the applicants, and the Court sees no reason for questioning whether it met the quality-of-law requirement under the Convention (compare *Tuskia and Others*, cited above, §§ 82-85).

40. Being mindful of its supervisory role, the Court further subscribes to the domestic courts' finding that, in the circumstances of the present case, the interference in question pursued the legitimate aim of protecting morals and the rights of others (see paragraph 21 above and compare *Müller and Others v. Switzerland*, 24 May 1988, § 30, Series A no. 133, and, *mutatis mutandis*, *Perrin v. the United Kingdom* (dec.), no. 5446/03, ECHR 2005-XI).

(ii) Whether the interference was necessary in a democratic society

41. The Court notes that by demonstrating against Panorama Tbilisi the applicants wished to alert the public and the competent domestic authorities of their concerns regarding the damage that the construction project might cause to the landscape of the Old Town, as well as to express their disapproval of what they considered to be the authorities' failure to involve society in the decision-making process regarding the project. The controversial urban development project in the capital was clearly a topic of high public interest, and very strong reasons were therefore required for justifying the restriction on the expression of the applicants' opinions during the demonstration (compare *Bumbeș*, cited above, § 92, 3 May 2022, with further authorities therein).

42. Having regard to the fact that the applicants' demonstration took place at a venue freely open to public and that they were sanctioned for disorderly conduct committed in a public setting, the Court acknowledges that it remained in the first place within the purview of the discretion of the national authorities, who had direct contact with those involved, to determine how to react to the applicants' conduct during the public event (see *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, § 169, 26 April 2016). Nevertheless, in the light of the general principles under Article 11 of the Convention for the present case (summarised in paragraph 3636 above), the Court considers that, in the particular circumstances of the present case, its task when dealing with the applicants' complaints (see also paragraph 33 above) is to assess whether the decisions taken by the authorities in relation to their protest duly considered the extent of the "disruption of ordinary life" caused by it (see *Primov and Others v. Russia*, no. 17391/06, § 145, 12 June 2014).

43. In this connection, the Court observes that the domestic courts did not address in their decisions the question of the degree of disturbance caused to public life by the applicants' conduct and considers this to be an omission in the way they dealt with the proportionality requirement under Article 11 § 2 of the Convention (compare *Obote v. Russia*, no. 58954/09, § 43, 19 November 2019). Given the domestic courts' silence on this particular aspect, it cannot but note that the video recordings of the circumstances preceding the applicants' arrest – which were available both to the domestic courts and also formed part of the file – showed that the applicants' conduct was peaceful and passive. Indeed, they were calmly holding the impromptu banners without being aggressive towards the police or passers-by, or otherwise behaving in a manner that could be considered to be disruptive of ordinary public life (see paragraph 19 above).

44. As regards the content of the applicants' banners – "Panorama, my cock!" *("პანორამა არა, ყლე!")* – the Court takes due note of the domestic courts' assessment that the slang vulgar word used by the applicants was "sheer indecency" and "a particularly offensive" insulting word in the Georgian language. Indeed, by reason of their direct and continuous contact with the vital forces of their country, the evolving conception of morals as well as the linguistic features of the Georgian language, the domestic authorities were in a better position than the international judge to give an opinion on the exact content and compatibility with the ethical standards currently held in the country of the form chosen by the applicants to express their opinions (compare *Müller and Others*, § 36, and *Handyside*, § 48, both cited above). However, the Court reiterates that the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression under Article 10 as it may well serve merely stylistic purposes (see the general principles cited *in fine* of paragraph 37 above).

45. Having regard to the reasons advanced by them in their decisions, the Court considers that the national courts unduly dissociated the vulgar nature of the impugned statement from its context and apparent goal, by focusing only on the form (compare *Ziembiński v. Poland (no. 2)*, no. 1799/07, §§ 44-45, 5 July 2016). They failed to acknowledge that Article 10 is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population (see *Handyside*, cited above, § 49). It is also of importance that the impugned offensive statement was not directed against any individual or institution in particular, which is why it cannot be considered to be an insult or wanton denigration of anyone in particular (contrast *Skałka*, cited above, §§ 34, 36 and 40). The lewd word was used by the applicants as a stylistic tool for expressing the very high degree of their disapproval with the construction project ongoing in the city, and the controversial form they chose to express their opinions on the matter of public interest could not thus be sufficient in itself for restricting speech in a public demonstration seeking to highlight a matter of considerable public interest. In this connection, the Court reiterates that it has found a violation of Article 10 in a number of cases involving clearly vulgar and/or offensive language and/or conduct, including expressions with sexual references, as long as the provocative language contributed to debates on topics of public interest (see, for instance, *Vereinigung Bildender Künstler v. Austria*, no. 68354/01, §§ 8 and 32-38, 25 January 2007; *Mătăsaru v. the Republic of Moldova*, nos. 69714/16 and 71685/16, §§ 6-7 and 32-34, 15 January 2019; and *Patrício Monteiro Telo de Abreu v. Portugal*, no. 42713/15, §§ 6-9 and 41-47, 7 June 2022).

46. Lastly, as regards the proportionality of the sanction, whilst the applicants did not advance this argument in support of their complaints, the Court cannot but note that the interference with their rights to freedom of expression and assembly consisted not only of the fines imposed on them, which were rather insignificant, but also of being coercively removed from the demonstration by the police and affected, as was shown in the video recordings (see paragraph 19 above), the conduct of the latter. The fact that the applicants were not removed immediately but after having spent some time displaying the impugned banners cannot be seen as decisive. In any event, the Court considers that the imposition of a sanction, however lenient, for an expression forming part of a legitimate public debate may have an undesirable chilling effect on freedom of expression (compare *Bumbeș*, cited above, § 101).

47. Having regard to all the above considerations, and in particular the domestic courts' omission to assess a number of important aspects of the applicants' protest – which lay at the core of the exercise of their rights to freedom of expression and assembly – and thus to adduce sufficient reasons to justify the necessity of the interference (see paragraphs 43 and 45 above),

the Court concludes that there has been a violation of Article 11 of the Convention read in the light of Article 10.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicants claimed GEL 100 (EUR 40) each in respect of pecuniary damage, referring to the fines with which they had been sanctioned. They submitted a copy of the receipts attesting to the payment of the fines.

50. The applicants also claimed EUR 1,000 each in respect non-pecuniary damage.

51. The Government submitted that the amounts claimed were not justified in the circumstances of the case.

52. The Court notes that there is a clear link between the fines imposed on the applicants and its finding of a violation of Article 11 of the Convention read in the light of Article 10 in the present case. It therefore awards each of the applicants EUR 40, plus any tax that may be chargeable, in respect of pecuniary damage.

53. The Court further accepts that the applicants must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It thus considers it appropriate to award the applicants EUR 1,000 each under this head, plus any tax that may be chargeable.

B. Costs and expenses

54. The applicants claimed a total of EUR 2,549.60 pounds sterling (GBP – approximately EUR 2,900) for the costs and expenses incurred before the Court by one of their British lawyers (see paragraph 2 above). No copies of legal service contracts, invoices, vouchers or any other supporting financial documents were submitted. The amount claimed was based on the number of hours spent by the lawyer in question on the case (15 hours) and the lawyer's hourly rate (GBP 150) and included, in addition, a claim for postal, translation and other administrative expenses incurred by the latter.

55. The Government submitted that the claim was unsubstantiated and excessive.

56. The Court notes that a representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017). In the present case, the

applicants did not submit documents showing that they had had paid or were under a legal obligation to pay the fees charged by their British representative or the expenses incurred by the latter. In the absence of such documents, the Court finds no basis on which to accept that the costs and expenses claimed by the applicants have actually been incurred (compare, amongst many others and as a recent authority, *Women's Initiatives Supporting Group and Others v. Georgia*, nos. 73204/13 and 74959/13, § 92, 16 December 2021).

57. It follows that the claims must be rejected.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 11 of the Convention read in the light of Article 10;

3. *Holds* there is no need to examine separately the complaint under Article 10 of the Convention;

4. *Holds*

   (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

   (i) EUR 40 (forty euros), plus any tax that may be chargeable, in respect of pecuniary damage;

   (ii) EUR 1,000 (thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 15 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President

APPENDIX

No.	Applicant's Name	Year of birth
1.	Ms Natalia PERADZE ("the first applicant")	1968
2.	Mr Giorgi MAKARASHVILI ("the second applicant")	1985
3.	Ms Elene MALASHEVSKI-JAKELI ("the third applicant")	1993
4.	Mr Konstantine CHACHANIDZE ("the fourth applicant")	1980
5.	Mr Vakhtang KARELI ("the fifth applicant")	1990
6.	Ana MAMULASHVILI ("the sixth applicant")	1992
7.	Mr Irakli MGALOBLISHVILI ("the seventh applicant")	1988