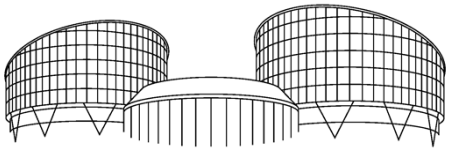

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MZHAVANADZE AND RUKHADZE v. GEORGIA

(Applications nos. 29760/21 and 33931/21)

JUDGMENT

Art 6 § 1 (criminal) • Unfair proceedings in respect of second applicant due to trial court's approach to a police officer's statement not supported by other evidence as the basis of conviction • Domestic courts' finding that no evidence "contradicting" the officer's account was submitted put the second applicant in a position of having to prove his innocence • No overall unfairness in respect of first applicant, where his conviction was also based on other evidence
Art 11 • Peaceful assembly • Applicants' arrest at demonstrations and conviction for administrative offence of disobeying lawful police orders • Impugned conduct not of such a nature and degree as to be removed from the scope of protection under Art 11 • Demonstrations against the outcome of parliamentary elections and a COVID-19 pandemic curfew concerned matters of public interest and contributed to an ongoing debate in society • First applicant's custodial sentence of three days' administrative detention for non-violent conduct disproportionate • Lack of sufficient reasons justifying the necessity and proportionality of impugned interference

Prepared by the Registry. Does not bind the Court.

STRASBOURG

15 July 2025

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 Mzhavanadze and Rukhadze v. Georgia,

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

Jolien Schukking*, President*,
Lado Chanturia,
Faris Vehabović,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu,
András Jakab*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 29760/21 and 33931/21) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Georgian nationals, Mr Giorgi Mzhavanadze ("the first applicant") and Mr Nodar Rukhadze ("the second applicant"), on 20 May and 18 June 2021 respectively;

the decision to give notice of the applications to the Georgian Government ("the Government");

the parties' observations;

Having deliberated in private on 29 April and 24 June 2025,

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

INTRODUCTION

1. The case concerns the applicants' complaint that their arrest at a demonstration and their ensuing conviction for the administrative offence of disobeying the lawful orders of the police had been in breach of Article 6 and Articles 10 and 11 of the Convention.

THE FACTS

2. The first and second applicants were born in 1993 and 1996, respectively. They live in Tbilisi. Both applicants are civil society activists and founding members of the Shame Movement, a non-governmental organisation aiming, according to the relevant statutory document, to support "Georgia's democratic development and the process of its integration in the Euro-Atlantic space, protecting human rights, aiding the implementation of fair and free elections, raising civic awareness and informing citizens".

3. The applicants were represented by Mr E. Marikashvili, a lawyer practising in Tbilisi.

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

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

I. BACKGROUND

6. On 31 October 2020 parliamentary elections were held in Georgia.

7. On 8 November 2020 a demonstration took place in Tbilisi to protest against the outcome of the parliamentary elections. Several thousand demonstrators gathered in front of the Parliament building and subsequently moved towards the building of the Central Election Commission ("the CEC"). A number of the demonstrators became violent, throwing various items at officers in the police cordon and attempting to break through in order to enter the CEC building. The police eventually dispersed the demonstration.

8. On 9 November 2020, as part of special measures to counter the global outbreak of COVID-19, the government issued Decree (დადგენილება) no. 670, which introduced, with immediate effect, a curfew between 10 p.m. and 5 a.m.

9. On 9 November 2020 demonstrators and opposition politicians, continuing the protest from the previous day (see paragraph 7 above), gathered in front of the Parliament building. They demanded the resignation of the CEC chairperson and the holding of new parliamentary elections. During a press briefing held that same day, the Deputy Minister of Internal Affairs issued a warning that any breach of the law would receive an immediate response. The applicants joined the demonstration sometime in the evening.

10. In parallel to the above-mentioned demonstration, the applicants' organisation – the Shame Movement (see paragraph 2 above) – announced that a demonstration of civil disobedience would take place immediately following the one against the outcome of the elections. The aim of the event was to denounce the curfew introduced by the government (see paragraph 8 above) as unfair and unjustified in view of the ongoing political protests. Its participants were to hold a vigil at the Parliament building. Some politicians announced that they would take part.

II. THE APPLICANTS' ARREST

11. According to the first applicant's administrative-arrest report, he was arrested on 9 November 2020 "next to the Parliament building" for minor hooliganism and disobeying the lawful orders of the police (offences under Articles 166 and 173 of the Code of Administrative Offences ("the CAO") – see paragraph 32 below). The exact nature of his conduct was not specified. The report noted that he had been particularly aggressive and indicated 9.25 p.m. as the time of his arrest.

12. The second applicant was also arrested "next to the Parliament building" for minor hooliganism and disobeying the lawful orders of the police. The exact nature of his conduct was not specified. The administrative-arrest report indicated 10 p.m. as the time of his arrest.

III. ADMINISTRATIVE-OFFENCE PROCEEDINGS

13. The first and second applicants' cases were joined.

14. The Tbilisi City Court held hearings on 10 and 11 November 2020.

15. At the hearing of 10 November 2020, the applicants requested that the trial court instruct a prosecutor to be involved as a party to the proceedings. That request was dismissed. The court explained that the prosecution service had a discretionary power to become involved as a party in administrative-offence case and a trial court could only send a case to a prosecutor if it believed a criminal, rather than an administrative, offence had been committed in a given case.

16. The applicants also asked to have four police officers (A.S., A.P., G.I., and O.S.) questioned as witnesses. The request was granted only with respect to A.S. and O.S. The trial court did not find it relevant to have A.P. and G.I. questioned as they had not, in the applicants' own submission, witnessed the alleged commission of the administrative offences by the applicants and would only give statements regarding the period following their arrest.

17. On 11 November 2020 the Tbilisi City Court found the applicants guilty under Article 173 of the CAO (see paragraph 32 below). It acquitted the applicants, for lack of evidence, of the charge under Article 166 of the CAO which had concerned their alleged swearing in public without addressing any particular person. The applicants were notified of the judgment on 14 November 2020.

18. The judgment was based on the following material: the first and second applicants' statements; witness statements given by four police officers (A.S., M.D., and I.U. in respect of the first applicant; and O.S. in respect of the second applicant), statements of defence witnesses (G.M. and A.Tch.); video evidence collected by the body-worn cameras of O.S. and A.S. (the arresting officers) reflecting the period after the applicants had been placed in the police car; and video footage filmed by a television company, reflecting the commotion on the ground and the movement of a car carrying the head of the Patrol Police Department which the applicants were alleged to have obstructed.

19. According to the evidence given by the police officers during the trial and reproduced in the court's judgment, the applicants had been among a group of individuals who had chased a car carrying the head of the Patrol Police Department and blocked its way, swearing indiscriminately and then directly at the police. They had been arrested following their refusal to clear the road. The police officers had noted that the first applicant had been

particularly aggressive. The officers explained that there might have been some difference between the actual time of arrest and the one indicated on the arrest reports because it had been impossible to complete them at the scene. The commotion resulting in the arrest had started at approximately 9.40 p.m., but the officers had not been in a position to check the time when making the arrests.

20. According to the first applicant's evidence given during the trial, at the time of the events in question he had heard that a friend had been arrested. Accordingly, he had opened the door of a black police car (see paragraph 19 above) to see whether his friend was inside. When he saw that his friend was not in the car, he had closed the door. The car had then left. He had not been ordered to clear the road. He had been arrested while trying to reach another demonstrator. Of the three officers claiming to have arrested him, only two had done so, and he had met the third one (A.S.) in the police car. The police had used violence against him during his arrest, prompting some resistance on his part. According to the first applicant, that use of violence by the police was the reason why they had failed to submit as evidence the recordings of his arrest (as opposed to the subsequent period) captured by the body-worn cameras.

21. According to the second applicant's evidence given during the trial, he had attempted to take firewood to the demonstration as its participants had intended to hold a vigil and needed a source of heat. He had been prevented from doing so by the police, and so he had abandoned that idea and had simply joined the demonstrators near the Parliament building. Shortly thereafter he had seen the first applicant being arrested by two policemen and he had approached the location. He had tried to get closer but was arrested, as the police had noticed that he was an active demonstrator. The second applicant stated that contrary to officer O.S.'s claim that he had arrested him, O.S. had been standing by the police car to which he had been taken immediately following his arrest.

22. The applicants argued that the video material did not reflect the period before their arrest, and that the police officers' accounts were inconsistent. The times of their arrests indicated in the respective arrest reports were inconsistent with the video material obtained from media sources which was available in the case file. There was no evidence in the case file that the officers had given any lawful orders to the applicants which they had disobeyed.

23. In reply to a question posed during the trial concerning the use of body-worn cameras by the police in similar contexts, O.S. (see paragraph 18 above) stated that in practice cameras were not always activated, as continuous use would drain the battery. However, when circumstances so warranted, they were normally activated by the officers wearing them. The second applicant's lawyer asked O.S. whether his body-worn camera had been activated at the time of the events in question and if the captured footage

would depict the circumstances leading to the second applicant's arrest, as described in O.S.'s witness statement. O.S. replied that his camera "should have been activated" at the relevant time, later stating: "I would have definitely activated it." He also explained the procedure for managing body-worn camera recordings. Specifically, O.S. stated that while the circumstances concerning the second applicant "should [in principle] be depicted" in the recording made by his camera, he did not know the exact content of that recording, as once a recording had been made, the officer whose body-worn camera had captured the footage no longer had access to it. Instead, recordings were uploaded to a centralised server managed by the relevant service of the Ministry of Internal Affairs ("the MIA"), which was responsible for their processing. The trial judge asked a representative of the MIA to provide the court with the video material recorded by the body-worn cameras issued to O.S. and A.S. and any other available recordings made by body-worn cameras issued to other officers who had been present on the ground. The MIA representative subsequently provided the video recordings made by the cameras issued to O.S. and A.S., which showed the events following the applicants' arrest. However, the representative stated that it was not possible to provide any further recordings as, other than those officers who had been witnesses in the proceedings against the applicants, the two officers also known to have been present had not been equipped with body-worn cameras. As for any other police officers who might have had their body-worn cameras activated during the events, their identity was unknown on account of the sheer number of officers who had been present during the demonstration, and the fact that the applicants' arresting officers could not remember who else had been there at the time of the arrest. As to why only the period following the applicants' arrest had been depicted in the material submitted to the court, the representative speculated that the officers might have pushed the button on the cameras without in fact activating them. In another exchange with the judge in the context of the trial proceedings, the MIA representative noted that it had been the officers' right, rather than an obligation, to activate their body-worn cameras to record the events, and stated that they might have chosen to do so only following the arrest. The MIA claimed to have provided the court with all the material that had been given to it by the service in charge of processing the recordings.

24. A witness (G.M.) called by the applicants stated that he had seen the black car referred to by the police moving towards Rustaveli Avenue. The first applicant had been behind it and had later turned away. Another witness (A.Tch.) stated that she had seen the second applicant at the scene. He had not been swearing but had been trying to "understand the situation" and the apparent arrest of another demonstrator, but she had not witnessed the second applicant's arrest herself.

25. The trial court described the video evidence available in the case file material in the following terms:

"It is established, from a video-recording (made by a television company) available in the case file, that on 9 November 2020 a black car was travelling on 9 April Street, in the direction of Rustaveli Avenue. The recording confirms that a certain group of citizens obstructed its movement and had to be moved off the road by the police.

The recording from the body-worn camera assigned to [A.S.] ... shows the [first applicant], who had been placed under administrative arrest, being transported in a patrol [police vehicle] ...

The recording from the body-worn camera assigned to [O.S.] ... shows the [second applicant], who had been placed under administrative arrest, being transported in a patrol [police vehicle] ..."

26. As regards the trial court's approach to the evidence and to the applicants' convictions, the judgment stated as follows:

"The court notes that when assessing conflicting items of evidence, [and in order to] establish a fact, a video-recording (including a body-worn camera recording) from the location of the incident, depicting the disputed event ... is irreplaceable; however, its absence does not preclude the establishment of an offence from other items of evidence. ...

Accordingly, in the present case, whether or not [the applicants] committed the offences under Article 166 and Article 173 [of the CAO] must be determined by means of an examination of [all] the evidence available in respect of the case, and be based on Article 237 of the [CAO], which provides that an authority [or holder of a position] must be guided by the law and must assess the evidence with an inner conviction based on a thorough, complete and objective evaluation of all the circumstances of the case in their totality ...

The court cannot share the defence's position that the statements of the authors of the administrative-arrest reports are untrustworthy because those individuals had an interest in the outcome of the case. Such [an interpretation would be] contrary to Article 236 [of the CAO], which provides that administrative-arrest and offence reports and all factual information capable of establishing the existence, or not, of an administrative offence, constitute evidence. Additionally, should the court accept the position of the defence, then a person charged with an administrative offence is also an individual interested in the outcome of the case ... It is precisely in order to exclude these subjective elements that Article 237 [of the CAO] provides for an assessment of the evidence based on the inner conviction of the individual examining the case, based on a thorough, complete and objective evaluation of all the circumstances of a case, in their totality. It is also to be noted that the authors of [the relevant reports] have been questioned before the court as witnesses, and they have been warned against giving false statements, which carries a risk of criminal prosecution.

Neither can the court share the defence's position regarding the reliability of the witness statements; it would point out that inaccuracies in witness statements do not always mean that a witness is giving a false statement, because errors in a statement may be caused by the way in which an individual perceives certain facts and circumstances [and] by the individual's ability to remember and to express them. Accordingly, there may be errors in statements given by those individuals who wish to provide a full account of an incident. Thus, when assessing a witness statement, one should take into account those subjective and objective factors which may negatively affect the accuracy of such a statement.

In the light of the foregoing, the court considers that the inaccuracies in the witness statements pointed out by the defence do not constitute such inaccuracies, when examined alongside the other evidence available in the case, as to cast doubt on their trustworthiness[.] Witness statements given by the individuals participating in the administrative arrest and those given by the defence witnesses complement, rather than exclude, one another.

...

In the present case, one of the legal grounds for having compiled the administrative-offence reports in respect of [the applicants] is Article 173 [of the CAO]. In particular, according to the evidence given by the patrol police ..., [the applicants] failed to comply with the lawful order of the police officers to clear the road, in order to impede the movement of the car, and they also verbally insulted the police officers.

...

The court clarifies [on the basis of a legal analysis of the relevant regulations, including the Traffic Act and the Police Act] that movement onto a road by a pedestrian and the obstruction of the movement of transport vehicles [ტრანსპორტის მოძრაობის შეფერხება]constitutes a breach of the law ... Accordingly, a request for a pedestrian to clear the road and stop obstructing traffic constitutes a lawful order of a police officer and the obligation to obey such an order is set out in Article 173 of [the CAO].

The video-recording from 9 November 2020, submitted as part of the case at hand, shows a black car travelling on 9 April Street in the direction of Rustaveli [Avenue]. The movement of that car on the [street in question] was also evidenced by witness statements given by [O.S., A.S., I.B., A.Tch.] and by the explanation given by [the first applicant].

The same video-recording confirms that the movement of the car was impeded by a group of citizens who were removed from the road by police officers. This was also confirmed by witnesses: [O.S., A.S. and I.B.] Witness [M.D.] was unable to provide a statement in respect of the incident with the car as he had been unable to see the road on account of [his location] and the large number of people gathered on the ground. Witness [G.M.] stated in that regard that he had not seen the movement of the car [on the street in question.] [A]ccordingly, he could not have seen [its movement] being impeded [as] he saw the car when it was already on Rustaveli Avenue. Witness [A.Tch.] stated that the car had driven up the street to the fountains, but that she had not seen what had happened next as her attention had been drawn to a scuffle near [the building located next to the Parliament building]. When assessing the matter, it is also important [to consider] the [first applicant's] explanation that he had opened the door of the black car when crossing 9 April Street [to see whether his friend had been in it]. ... [He] stated that the car had not been moving when he had opened the door [and had started to move again once he had closed it]. On the basis of an examination of all the evidence (video evidence, witness statements, [and] the explanation of the person charged with an administrative offence), the court considers it established that the obstruction of the car's movement was caused precisely by the gathering of a group of citizens in the road. [The fact that, as the first applicant explained,] the car had not been moving when he opened the door was the result of that obstruction. ...

Witness [O.S.] confirmed that the group of citizens who impeded the movement of the car included [the second applicant]. The explanation given [by the second applicant] was that there had been a commotion on the right-hand side of the Parliament building and that he had believed that [his female acquaintances] were being arrested and so ran

towards them, crossing 9 April Street ... [A.Tch.] noted that she had seen [the second applicant] at the building [where the commotion had started] ... On the basis of an examination of that evidence, the court considers it established that [the second applicant] impeded the movement of a car on 9 April Street.

The court also considers it established that the group of citizens who impeded the movement of a car on 9 April Street included [the first applicant]. Witness [A.S.] ... saw [him] as he approached the car from the driver's side ... Witness [I.B.] stated that [the first applicant] had blocked the black car's way from the front and had also approached its door. It is important to note that [the first applicant] explained that he had opened the door of the car on 9 April Street. Accordingly, on the basis of an examination of this evidence, the court considers it established that [the first applicant] impeded the movement of a car on 9 April Street.

... The court also notes that on 9 November 2020, at 10 p.m., the '*sirtskhvilia* [shame]' movement was holding a demonstration on Rustaveli Avenue, in front of the Parliament building. [The applicants] were among the organisers of that demonstration. It is true that the Assemblies and Demonstrations Act ... allows participants in an assembly or demonstration to move onto the road and impede the movement of transport [vehicles] if their movement is otherwise impossible because of the number of demonstrators ... [H]owever, in the present case, the explanation given by the parties does not reveal the existence of circumstances justifying their presence in the road or rule out the lawfulness of police orders to clear it.

...

As for [the applicants'] failure to comply with the above-mentioned lawful order of the police officers, the court notes that the witness statement of [O.S.] indicates that he, together with other officers, called on the people standing in front of the car to clear the road, but they did not comply with that request [and] they had to be moved away by the police officers. [O.S.] was in direct contact with [the second applicant] when he asked him to clear the road. Witness [A.S.] stated that [the first applicant] was asked to move off the road several times but [he did not comply and] the officers took him to the [side]. He also stated that the police officers asked the citizens to clear the road, in order to allow the passage of the car, several times. No evidence contradicting those circumstances has been presented in the present case. On the basis of a joint examination of the witness statements, the court considers it established that [the applicants] disobeyed the lawful order of police officers to move off the road. Accordingly, they have committed an administrative offence under Article 173 of the [CAO] ... The court also notes that ... it does not matter whether the order [of the police] is of a general character or is addressed towards a specific individual.

The [charge] under Article 173 [of the CAO] also related to the evidence given by the Patrol Police Department ... that the [applicants] had ... verbally insulted the police officers.

The evidence presented in respect of the case under consideration does not establish that [the second applicant] verbally insulted police officers. Witness [O.S.] stated that he had heard [the second applicant] swearing but he had not heard ... to whom exactly that swearing had been addressed. Witness [A.Tch.] gave evidence that [the second applicant] had not been swearing ... As for [the first applicant], his having verbally insulted police officers is confirmed by the witness statements of [A.S., M.D., and I.B.]"

27. As regards the sanctions imposed on the applicants, the trial court reasoned as follows:

> "... the main objective of applying an administrative sanction is not to punish the offender but to implement preventive and educational measures so that similar offences are avoided in the future. When examining each concrete case, the court is obliged to take into account the specificity of a given situation and the nature of the offence and to be guided by the principle of proportionality when applying the sanction, which means determining the balance between the interests protected by the law.
>
> Under Article 33 of the [CAO], an administrative sanction is to be imposed within the limits established by the normative act providing for liability for an administrative offence ... When imposing a sanction [the following factors] are to be taken into account[:] the nature of the offence, the personality of the offender, the degree of culpability, their financial situation, [and] any mitigating and aggravating factors.
>
> In the light of the foregoing, and taking into account the circumstances of the case (the nature of the offence, its importance, the degree of culpability, the personality of the offender, any mitigating and aggravating factors), the [second applicant] should be given a sanction within the scope of Article 173 of the [CAO, namely] a fine in the amount of 1,500 (one thousand five hundred) [Georgian] laris.
>
> Taking into account the circumstances of the case (the nature of the offence, its importance, the degree of culpability, the personality of the offender, any mitigating and aggravating factors), the [first applicant] should be given a sanction within the scope of Article 173 of the [CAO, namely] three days' administrative detention."

28. The custodial sanction imposed on the first applicant started to run from the moment when the trial court's judgment was announced at 11.06 p.m. on 11 November 2020. The time spent in pre-trial detention from 9.25 p.m. on 9 November to 10.58 p.m. on 10 November 2020 was counted as time served by him. He was detained in the detention facility administered by the Ministry of Internal Affairs to serve the remainder of the sentence.

29. On 13 November 2020 the applicants lodged their appeal against the lower court's judgment within the forty-eight-hour time-limit provided for by the law (see paragraph 34 below). On 16 November 2020, having received a copy of the trial court's judgment, the applicants sent additional arguments to accompany the original appeal. They argued, among other things, that the lower court's judgment had been in breach of their rights under Article 6, Article 10 and Article 11 of the Convention. Among other things, they argued that the absence of a prosecutor as a party to the proceedings had undermined the fairness of the trial; the trial court had relied to an excessive extent on the statements of police officers in circumstances where video-recordings of the incident and defence witnesses had not supported their accounts; the burden of proof ought to have rested on the accusing party to prove all the circumstances against the applicants; and the court had failed to give due consideration to the applicants' right to freedom of speech, assembly and demonstration in a democratic society. They also argued that the statements given by the police officers had contained multiple inaccuracies (including as regards the timing of the applicants' arrests, the timeline of the events, and the details relating to the conduct attributed to the applicants), rendering their accounts unreliable. For instance, the administrative arrest report in respect of the second applicant had indicated 10 p.m. as the time of arrest whereas

the video material available in the case file (filmed by a media outlet) had clearly indicated the time of the arrest to have been 9.40 p.m. In such circumstances, the explanation of the arresting officer – the only police witness to the second applicant's arrest – that the time indicated in the report had been a "mechanical error" had not been convincing. Additionally, while the officer in question had stated categorically that the second applicant had chased the black car and that he had been swearing, the video material did not confirm that allegation. The applicants pointed out that the officers had stated during the trial proceedings that they had switched on their body-worn cameras before the applicants' arrests; however, only the footage depicting the period following their arrests had been presented to the court, raising suspicions that the footage relating to earlier events would have confirmed the applicants' account. The applicants emphasised that in circumstances where the Ministry of Internal Affairs had failed to provide recordings from the various body-worn cameras used by the police during the applicants' arrest, the witness statements given by the arresting officers had to be treated with caution. The applicants also complained that the administrative arrest and offence reports had been compiled in generic terms, without reference to the actual facts; the two applicants had been accused of virtually identical conduct in the same period, whereas the first applicant's arresting officer alleged not to have seen the second applicant and vice versa; the second applicant's conviction had been based on the account of one police officer only; the first applicant had not been given an explanation as regards his procedural rights upon arrest; there had been a delay of almost two hours before he had been able to contact his lawyer; and excessive force had been used to arrest him. The applicants also argued that the trial court's reasoning concerning the sanctions imposed on them had been identical and did not explain why the exceptionally strict sentence of administrative detention had been ordered in respect of the first applicant.

30. On 20 November 2020 the Tbilisi Court of Appeal, sitting as a court of final instance, rejected the first applicant's appeal as manifestly ill-founded by means of written proceedings. It briefly stated that the first applicant had failed to explain what important issues or evidence had been insufficiently assessed by the lower court, which requirements of the law had been breached, and/or what errors had been committed by the first-instance court in the examination of his case. The appellate court added that it was justified in declaring the appeal inadmissible as, in its assessment of the relevant circumstances, the first-instance court had taken into account all the relevant facts and legal issues.

31. On 18 December 2020 the Tbilisi Court of Appeal, sitting as a court of final instance, dismissed the second applicant's appeal and upheld the lower court's judgment in full by means of written proceedings.

RELEVANT LEGAL FRAMEWORK

32. Article 166 of the Code of Administrative Offences ("the CAO"), as worded at the material time, defined disorderly conduct ("minor hooliganism") as "swearing and cursing in a public place, [causing] harassment of a person by means of insults, or other similar actions that disturb public order and peace". It was punishable by a fine and/or up to fifteen days' administrative detention. Article 173, as worded at the material time, provided that "disobeying a lawful instruction or order [issued by] a law-enforcement officer on duty ... or insulting [the latter]" was punishable by a fine of a minimum of 1,000 Georgian laris (GEL) and a maximum of GEL 4,000, or up to fifteen days' administrative detention.

33. Under Article 272 § 4 of the CAO, "a judgment of a first-instance court shall be executed from the moment of its adoption[; and an] appeal lodged against such a judgment shall not have a suspensive effect unless the [CAO] or other legal acts of Georgia provide differently." Article 275 §§ 1 and 1^1 of the CAO provide, among other things, that the introduction of an appeal within the relevant time-limit will suspend the enforcement of certain decisions relating to the imposition of administrative sanctions except for those concerning an administrative warning or administration detention; or those involving offences listed in Articles 208 and 208^2 of the CAO. Offences listed in Article 208 include those provided for in Articles 166 and 173 (see paragraph 32 above). Article 281^2 § 3 of the CAO also specifies that submitting an appeal against a trial court's judgment involving a sanction of administrative detention shall not suspend the enforcement of the sanction.

34. Under Article 273 of the CAO, the time-limit for lodging an appeal against an administrative-offence case is ten days. This time-limit is reduced to 48 hours, as per Article 281^1 of the CAO, in administrative-offence case involving administrative detention. Under Article 281^2 § 4 of the CAO, an appellate court shall decide on the admissibility of such an appeal within 24 hours of its introduction, and under Article 281^3 of the CAO, the merits shall be decided within 48 hours following the admissibility decision.

35. Section 11(2)(e) of the Assemblies and Demonstrations Act ("the Act"), as worded at the material time, provided that it was "prohibited ... to deliberately obstruct traffic, including by breaching the requirements of section 11^1 of this Act".

36. Section 11^1(4) of the Act provided, as worded at the material time, that "the artificial blocking of a road, if this is not necessitated by the number of participants in an assembly or a demonstration, [and] the blocking of a road by means of cars, objects, and/or other items, shall be prohibited".

37. The broader relevant legal framework and practice has been summarised in *Makarashvili and Others v. Georgia* (nos. 23158/20 and 2 others, §§ 30-44, 1 September 2022).

THE LAW

I. JOINDER OF THE APPLICATIONS

38. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

39. Relying on Article 6 of the Convention, the applicants complained that the administrative-offence proceedings against them had been unfair. They argued, among other things, that the domestic courts had given undue weight to the police officers' statements, placing the burden of proof on the applicants; and that the absence of a prosecutor in the proceedings had invested the trial judge with the functions of a prosecuting authority, in breach of the judicial impartiality requirement under paragraph 1 of the provision in question. Article 6 of the Convention, in so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

A. Admissibility

40. The Government submitted that the applicants' complaints were manifestly ill-founded.

41. The applicants reiterated their complaints.

42. Although the applicability of Article 6 to the administrative proceedings in question is not in dispute, the Court considers it necessary to address this issue. It notes that the first applicant was sentenced to administrative detention, a sanction involving a deprivation of liberty which is of a purely punitive nature. While the second applicant was ordered to pay an administrative fine, the offence of disobeying lawful orders of the police could potentially give rise to administrative detention, a sanction involving deprivation of liberty. Therefore, referring to its well-established case-law, the Court considers that the proceedings in the present case should be classified as determining criminal charges against the applicants, even though such charges are characterised as "administrative" under Georgian legislation (see *Huseynli and Others v. Azerbaijan*, nos. 67360/11 and 2 others, § 103, 11 February 2016).

43. The Court considers that the applicants' complaints under Article 6 of the Convention are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

44. The applicants reiterated their complaints (see paragraph 39 above), adding that their conviction had essentially been based on the accounts of the police officers, contrary to the principles established by the Court in *Makarashvili and Others v. Georgia* (nos. 23158/20 and 2 others, §§ 59-64, 1 September 2022). They also claimed that the domestic law regulating the conduct of administrative-offence proceedings had not been compliant with Article 6 of the Convention.

(b) The Government

45. The Government submitted that the applicants were essentially challenging the outcome of the proceedings against them rather than those proceedings' procedural fairness. Furthermore, the issue concerning the absence of a prosecutor in the proceedings against them had already been settled by the Court in a previous case, where it had found that that element alone, given the state of the Georgian legislation on the matter, did not amount to a breach of the Convention (the Government referred to *Makarashvili and Others*, cited above, § 59).

46. Additionally, in the Government's submission, the domestic courts had ensured respect for equality of arms and adversarial proceedings in the applicants' cases. In particular, the parties had been given an equal opportunity to participate in the proceedings, to present their respective evidence and to substantiate their claims, to cross-examine each other's witnesses, including the police officers, and to submit various motions. The application of the principle of adversarial proceedings in the applicants' cases had not, in practice, resulted in the shifting of the burden of proof onto them. That was confirmed by the fact that despite the police officers' accounts regarding the applicants' alleged swearing, the domestic courts had not found sufficient evidence to support that allegation, and the applicants had eventually been acquitted of the charge of minor hooliganism.

2. The Court's assessment

47. The relevant general principles have been summarised in *Makarashvili and Others* (cited above, § 57) and in *Karelin v. Russia* (no. 926/08, §§ 51-57, 20 September 2016).

48. As regards the applicants' submissions regarding the allegedly unsatisfactory state of the domestic law regulating the conduct of administrative-offence proceedings, the Court reiterates that its task is not to review the relevant legislation or an impugned practice in the abstract. Instead, it must confine itself, as far as possible, and without losing sight of

the general context, to examining the issues raised by the case before it (see *N.C. v. Italy* [GC], no. 24952/94, § 56, ECHR 2002-X).

49. In this respect, the Court has already found that given the manner in which the matter is regulated in Georgia, the absence of a prosecutor in administrative-offence proceedings would not, in and of itself, undermine the objective impartiality requirement under Article 6 of the Convention (see *Makarashvili and Others,* cited above, § 59; compare and contrast *Karelin*, cited above, § 79). However, it has also found that there may be a close link, depending on the circumstances, between a complaint concerning the absence of a prosecutor in such proceedings and the manner in which the domestic courts approach the evidence given by police officers acting as the prosecuting authority in a particular case (see *Makarashvili and Others,* cited above, § 60).

50. In the present case, the first-instance court did not consider that the evidence given by the police officers, some of whom were also acting as the prosecuting authority in the proceedings, necessarily carried a higher degree of credibility. However, it emphasised, in respect of the evidence given by police officers (one of whom had been the sole witness against the second applicant), that no evidence had been submitted "contradicting" the officers' description of the applicants' failure to comply with the alleged verbal order to not obstruct a car (see paragraph 26 above). The Court also takes note of the fact, as regards video material available in the case file against the applicants, that the police officers only submitted video-recordings from the time after the applicants' arrest, and the MIA did not submit any video material from body-worn cameras relating to the events preceding the arrest (see paragraph 23 above). The Court will thus assess the actual impact on the applicants' case of the trial court's approach to the statements given by the police officers.

51. Within that context, the Court takes note of the fact that both applicants were represented by lawyers of their choosing and were able to examine witnesses against them, including the relevant police officers. Additionally, the Court does not lose sight of the fact that the officers' allegation that the applicants had been swearing, within the meaning of Article 166 of the CAO, was not found by the trial court to be substantiated by other evidence and it acquitted both the applicants of the related charge (see paragraph 17 above).

52. As regards the offence provided in Article 173 of the CAO, the accusation against them had contained two elements: having blocked the road next to the site of the demonstration, impeding the movement of a police car, and having sworn at the police officers. In so far as the first element is concerned, the Court notes the undisputed fact that despite the availability of a video recording, made by the media, which depicted the general commotion on the ground and the progression of the events, there was no video and audio material showing the particular conduct attributed to the applicants – as

regards both the impediment to the movement of the police car and the police officers' instruction to disperse. Yet, the first applicant's conviction was also based on his own admission that he had opened the door of a police car while that car's movement was being impeded. Although he disagreed about his role in obstructing the car, it is not the role of the Court to question the substantive findings by the domestic courts in this respect, which must have had a better understanding of the material in the case file, including the first applicant's statement. It was thus within the domestic courts' competence to consider the relevance and sufficiency of such material for his conviction.

53. This also concerns the domestic courts' findings that the first applicant verbally insulted the police officers, within the meaning of Article 173 of the CAO (see paragraph 26 above, *in fine*), which could potentially explain the harsher sentence imposed on him compared to that applied to the second applicant in respect of whom charges of swearing were dropped for lack of evidence. As to the related but distinct issue of whether the reasons adduced by the domestic courts in support of the sanction imposed on the first applicant were in line with the Convention's standards for justifying an interference with his rights under Articles 10 and 11 of the Convention, the matter will be more appropriately addressed within the context of the first applicant's complaints under Article 10 and Article 11.

54. As to the second applicant's conviction under Article 173 of the CAO, he was not, as noted above, found to have been swearing at the officers. However, he was convicted of having blocked the road next to the site of the demonstration, impeding the movement of a police car. The fact that the police officer's statement against him was not supported by other evidence is undisputed. The Government have suggested that the second applicant had admitted to having been at the scene of the events, therefore substantiating the police account. Indeed, witness A.Tch. also confirmed his presence on the ground. However, having been present at the scene would not, as such, amount to an interference with the police car, or as in the present case, to disobeying police orders.

55. The Court is mindful of the difficulties encountered by law-enforcement authorities in the investigation and prosecution of offences arising in the context of mass demonstrations. It further takes note of the fact that in the present case the domestic courts did not accord primacy to the witness statements of the police officers.

56. At the same time, however, the Court cannot overlook the fact that the only item of direct evidence against the second applicant was a witness statement by a police officer who represented the accusing party, in circumstances where additional evidence such as video footage depicting the disputed events could, or should, have been captured by the officer's body-worn camera and produced in court. In particular, while it is understandable that police body-worn cameras cannot be recording continuously, it is clear that the purpose of such cameras is to record events

whose circumstances may later be challenged on various grounds. The relevant officer's explanation that, in practice, the circumstances leading to the applicants' arrest would have warranted the activation of a body-worn camera and that, in principle, he would have activated his camera at the time (see paragraph 23 above), is consistent with what a reasonable person would expect in such circumstances. By contrast, the video recording concerning the second applicant only depicted the events following his arrest (see paragraph 25 *in fine*). No satisfactory explanation was advanced as to why only that period was recorded in circumstances where the period most relevant to the applicant's case had been the time preceding the arrest, as also noted by the relevant officer (see paragraph 23 above). In such particular circumstances, and in the absence of any other evidence against the second applicant, the domestic courts' finding that no evidence "contradicting" the officers' account had been submitted (see paragraph 50 above) did effectively put the second applicant in a position of having to prove his innocence, within the framework of the police accusations in proceedings characterised as "criminal" within the meaning of Article 6 of the Convention (see paragraph 42 above; see also *Makarashvili and Others*, cited above, § 64). The Court therefore finds that the trial court's approach to the police officer's evidence undermined the overall fairness of the proceedings in respect of the second applicant. Furthermore, there is no indication in the Court of Appeal's decision that it sufficiently reviewed the trial court's approach.

57. In the light of the foregoing, the Court considers that there has been a violation of Article 6 § 1 of the Convention in respect of the second applicant, and no violation of the provision in question in respect of the first applicant.

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

58. The applicants complained that their arrest at a demonstration and their subsequent conviction for an administrative offence had amounted to an interference with their rights to freedom of expression and freedom of assembly, in breach of Articles 10 and 11 of the Convention. Articles 10 and 11, in so far as relevant, read as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas 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,

for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others ...

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 ..."

59. Having regard to the nature of the applicants' complaints, the Court considers that they should be examined under Article 11 alone, which must, however, be considered in the light of Article 10 (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, §§ 85 and 86, ECHR 2015).

A. Admissibility

1. The parties' submissions

60. The Government submitted that the complaints were inadmissible as being incompatible *ratione materiae* with the provisions of the Convention. They argued that it had been the applicants' intention to obstruct traffic and to disrupt the ordinary course of life without any reasonable justification, and that such conduct did not fall within the scope of the rights to freedom of assembly.

61. In the alternative, they argued that the applicants had failed to exhaust effective domestic remedies in respect of their complaints by instituting civil-law proceedings against the police.

62. The applicants contended in reply that there had been an interference with their rights under this head. As regards the exhaustion of domestic remedies, they submitted that the administrative-offence proceedings against them had been a sufficient forum for raising their complaints.

2. The Court's assessment

63. As regards the exhaustion plea, the Court observes that, in the course of the administrative-offence proceedings against them, the applicants did raise a complaint regarding their rights to freedom of expression and assembly (see paragraph 29 above). The trial court expressly addressed the matter, and the appellate court endorsed the lower court's findings. The applicants were not therefore required to institute separate civil proceedings following the rejection of their arguments in the administrative-offence proceedings against them (see *Makarashvili and Others*, cited above, § 70, and *Chkhartishvili v. Georgia*, no. 31349/20, § 42, 11 May 2023). The Government's objection in that regard should therefore be dismissed.

64. As concerns the Government's objection concerning the alleged incompatibility *ratione materiae* of the applicants' complaint with Article 11 of the Convention on account of the allegation that they had intentionally blocked traffic and disrupted the ordinary course of life, this issue is, given the circumstances of the present case, closely linked to the merits of the applicants' complaint. This objection should therefore be joined to the merits of the complaint (see *Makarashvili and Others*, cited above, § 71).

65. The Court also notes that this complaint is not manifestly ill-founded or inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

66. The applicants submitted that their arrest and subsequent conviction for an administrative offence had not been lawful or necessary and had not observed the fair balance between the means employed and the aims sought to be achieved. Their arrest and conviction had therefore created a chilling effect on other individuals' willingness to express their opinions and engage in peaceful protests.

67. The Government submitted that there had been no interference with the applicants' rights as they had been able to exercise them without interference up until their arrest for having disobeyed the lawful orders of the police. In the alternative, the Government submitted that the interference had been prescribed by law, had pursued legitimate aims, and the authorities had observed the fair balance between the means employed and the aims sought to be achieved. They added that the domestic courts had duly considered all the relevant circumstances of the case and their findings had been in compliance with the principles established by the Court with regard to the necessity of an interference with the right to freedom of peaceful assembly.

2. The Court's assessment

(a) General principles

68. The Court refers to the principles established in its case-law regarding the right to freedom of peaceful assembly (see, among other authorities, *Kudrevičius and Others*, cited above, §§ 142-60).

69. In particular, it reiterates that any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic. That 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 (ibid., § 155; see also *Disk and Kesk v. Turkey*, no. 38676/08, § 29, 27 November 2012, and *Budaházy v. Hungary*, no. 41479/10, § 34, 15 December 2015). 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" (see *Kudrevičius and Others*, cited above, § 155).

(b) Application of these principles to the present case

(i) Applicability of Article 11 and the existence of an interference

70. At the outset, the Court observes that on 9 November 2020 two demonstrations took place consecutively. The first was aimed at protesting against the outcome of the elections (see paragraph 9 above) and the second was designed to contest the introduction of a curfew related to the COVID-19 pandemic (see paragraph 10 above). The applicants were participants in the former and organisers of the latter. They were arrested at the end of the first demonstration and the beginning of the second, on charges of minor hooliganism and disobeying the lawful orders of the police (see paragraphs 11-12 above). The latter charge was based on the allegation that the applicants had blocked the road, impeding the movement of a police car, and disobeyed the police order to free it. The domestic courts eventually found that charge to have been proven and the applicants' failure to comply with the officers' order to free the road to have constituted obstruction of traffic (see paragraphs 26 and 52 above).

71. Accepting that the first applicant did block the movement of the police car (see paragraph 52 above, *in fine*) and even assuming that the same conduct could also be attributed to the second applicant (contrast paragraphs 54-56 above), there is nothing in the case file to suggest that the applicants had intentionally structured the demonstration in such a way as to cause disruption to ordinary life or other activities to a degree exceeding that which was inevitable in the circumstances. In fact, the case file does not contain any indication that other than the police car in question, the applicants had obstructed the movement of any other vehicle.

72. Therefore, the Court does not consider that the impugned conduct for which the applicants were held responsible was of such a nature and degree as to remove their participation in the demonstration from the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention (see, among other authorities, *Kudrevičius and Others*, cited above, § 98).

73. The Court accordingly finds that the applicants are entitled to rely on the guarantees of Article 11, which is therefore applicable in the present case, and that their arrest and conviction following administrative-offence proceedings amounted to an interference with their right to freedom of peaceful assembly. The Court therefore dismisses the Government's objection.

(ii) Whether the interference was prescribed by law

74. The rules concerning the conduct of a demonstration were set out in the Assemblies and Demonstrations Act and included a prohibition on obstructing traffic unless this was necessitated by the high number of participants in a demonstration (see paragraphs 33-36 above).

75. Therefore, the Court accepts that the impugned measures had a basis in domestic law.

(iii) Whether the interference pursued a legitimate aim

76. The Court accepts that the applicants' arrest and subsequent conviction for the administrative offence of disobeying lawful orders pursued the legitimate aims of preventing disorder and protecting public safety.

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

77. At the outset, and as regards the general context of the demonstrations of 9 November 2019, the Court notes that the first protest was part of a series of protests against the outcome of the parliamentary elections and the second, while aimed in general at contesting the introduction of a curfew related to the COVID-19 pandemic, concerned more specifically the question of whether that curfew was a proportionate measure in view of the importance of the right to protest against the outcome of the parliamentary elections. These were matters of public interest and contributed to an ongoing debate in society. Accordingly, very strong reasons would be required to justify the restriction on the applicants' expression of their opinions during the demonstration (compare *Bumbeș v. Romania*, no. 18079/15, § 92, 3 May 2022).

78. At the same time, the Court notes that the applicants were not punished for having organised or participated in either of the two demonstrations. Rather, sanctions were imposed on them primarily with respect to the allegation that they had blocked the road, impeding the movement of a police car, and disobeyed the police order to stop doing so.

79. In this connection, the Court has already found a violation of the second applicant's right to a fair trial under Article 6 § 1 of the Convention on account of the fact that he was effectively put in a position of having to prove his innocence with respect to such allegations (see paragraphs 54-56 above). The Court thus considers that the authorities failed to demonstrate the existence of relevant and sufficient grounds justifying the necessity of the interference, within the context of the second applicant's rights under Article 11 of the Convention.

80. As for the first applicant, the Court takes note of the fact that he partly admitted to the conduct attributed to him (see paragraph 52 above). However, even accepting that there may have been sufficient grounds justifying his arrest, the first applicant also complained that the sanction imposed in respect

of his conduct had been disproportionate from the perspective of Article 11 of the Convention. The Court reiterates in this regard that the Contracting States' discretion in punishing illegal conduct relating to expression or association, although wide, is not unlimited, and it must examine with particular scrutiny cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence (see *Chernega and Others v. Ukraine,* no. 74768/10, § 221, 18 June 2019).

81. In considering the proportionality of the measure, account must be taken of its potential chilling effect, as enforcement measures such as, for instance, arrest, detention and/or ensuing administrative convictions of participants in a demonstration may have the effect of discouraging them and others from participating in similar assemblies in future (see *Balçık and Others v. Turkey*, no. 25/02, § 41, 29 November 2007). In that respect, the nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued (see *Kudrevičius and Others*, cited above, § 146).

82. Within this context, the Court cannot overlook the fact that the first applicant's attendance at the demonstration was motivated by his wish to express discontent with respect to matters of public interest (see paragraph 77 above). While the Court's reasoning should not be taken as approval of the manner in which the first applicant behaved at the demonstration, and notwithstanding the fact that that applicant's conduct may have justified the intervention by the authorities, the latter should have borne in mind that the custodial sanction in issue was being imposed in the context of the exercise of a fundamental freedom, thus calling for a particularly careful approach. The Court emphasises in this regard that his actions were not alleged to have been violent (compare paragraph 7 above) and did not result in any escalation of the circumstances on the ground (compare and contrast *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, ECHR 2001-X).

83. Moreover, the grounds cited in the trial court's judgment for imposing the custodial sanction on the first applicant – his "personality" and the "seriousness" of the conduct attributed to him – were not sufficient, without further elaboration, to render proportionate the imposition of a sanction of three days' administrative detention for non-violent, even if disruptive, conduct.

84. Having regard to the foregoing, the Court concludes that the domestic courts failed to adduce sufficient reasons to justify the necessity and proportionality of the interference in the present case.

85. The Court therefore finds that there has been a violation of Article 11 of the Convention in respect of both applicants.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 7 OF THE CONVENTION

86. Relying on Article 2 of Protocol No. 7, the first applicant complained about the manner in which his appeal was examined. According to the first applicant, the appellate court ought to have carefully examined the merits of his appeal owing to the application of a custodial sanction in his case. He underlined that the appellate court's inadmissibility decision had deprived him of an effective remedy to vindicate his rights under Articles 10 and 11 of the Convention. The provision in question reads as follows:

> "1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.
>
> 2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal."

Admissibility

87. In reply to a question put by the Court, the Government submitted that the immediate enforcement of the custodial sanction imposed on the first applicant before the appeal hearing could take place had been in compliance with Article 2 of Protocol No. 7. In any event, the Government argued that the first applicant's complaint before the Court had primarily concerned the adequacy of the review carried out by the appellate court. In that connection they submitted that the first applicant had faced no limitations in his access to the higher court and the latter had thoroughly examined his claims, even if they were eventually declared inadmissible.

88. In his submissions in reply to the Government's observations dated 3 July 2023, the first applicant stated that it had not been shown that his serving of the three-day custodial sanction before the appeal court could decide his appeal had either been necessary or unavoidable. He then reiterated the complaint concerning the scope of the substantive review by the appellate court, claiming that the latter had failed to adequately address the issues raised in his appeal, and argued that this had been in breach of Article 2 of Protocol No. 7.

89. The Court observes that the first applicant's complaint under Article 2 of Protocol No. 7 has two limbs. It will address them in turn.

90. The first applicant's original complaint, as formulated in the application form, concerned the manner in which his appeal was reviewed by the appellate court. He contested, in particular, the fact that the appeal was declared inadmissible rather than assessed on the merits which would have been warranted given the custodial sanction imposed (see paragraph 86 above).

91. The Court observes that the first applicant exercised his right to appeal against the first-instance court's judgment. It is undisputed that the Tbilisi Court of Appeal was competent to set the lower court's judgment aside, as requested by the applicant. Having regard to the general principles articulated in its case-law regarding Article 2 of Protocol No. 7 (see, among other authorities, *Shvydka v. Ukraine*, no. 17888/12, §§ 48-51, 30 October 2014, with further references), the Court concludes that the mere fact that the Tbilisi Court of Appeal declared the first applicant's appeal against the lower court's judgment inadmissible (see paragraph 30 above) does not raise an issue under Article 2 of Protocol No. 7. This limb of the applicant's complaint is therefore manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention.

92. As concerns the second limb of the applicant's complaint related to his serving of the custodial sanction before the appeal court could decide his appeal (see paragraph 88 above), the Court notes that it was not part of his original complaint (see paragraph 86 above; see also *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, §§ 145-48, 1 June 2023). It was, therefore, a new and distinct complaint, raised in his submissions in reply to the Government's observations following the Court's question put to the parties. While nothing prevents an applicant from raising a new complaint in the course of the proceedings before the Court, such a complaint must, like any other, comply with the admissibility requirements (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 135, 20 March 2018).

93. The Court observes that the domestic proceedings in the first applicant's case ended on 20 November 2020 (see paragraph 30 above), while the above complaint under Article 2 of Protocol No. 7 was raised by the applicant in his submissions dated 3 July 2023, that is more than six months later. In this connection the Court reiterates that even though no plea of inadmissibility concerning compliance with the six-month rule was made by the Government in their observations, it is not open to it to set aside the application of the six-month rule solely because a government have not made a preliminary objection to that effect (see *Radomilja and Others*, cited above, § 138, with further references).

94. It follows that the second limb of the first applicant's complaint under Article 2 of Protocol No. 7 is inadmissible under Article 35 § 1 of the Convention for non-compliance with the six-month rule and must therefore be rejected pursuant to Article 35 § 4 thereof.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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."

96. The second applicant claimed 1,500 Georgian laris (approximately 529 euros (EUR)) in respect of pecuniary damage corresponding to the administrative fine imposed in the impugned proceedings (see paragraph 27 above). The applicants also claimed EUR 2,000 euros each in respect of non-pecuniary damage.

97. The Government submitted that the claims had been unsubstantiated and, in any event, were excessive.

98. The Court notes that there is a clear link between the fine imposed on the second applicant and its finding of a violation of Articles 6 and 11 of the Convention in the present case. It therefore awards the second applicant EUR 529 in respect of pecuniary damage.

99. 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 first applicant EUR 1,200 and the second applicant EUR 1,600 under this head, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Decides* to join to the merits the Government's objection concerning the applicability of Article 11 of the Convention and *dismisses* it;

3. *Declares* the complaints under Articles 6 and 11 of the Convention admissible, and the remainder of the applications inadmissible;

4. *Holds* that there has been no violation of Article 6 of the Convention in respect of the first applicant;

5. *Holds* that there has been a violation of Article 6 of the Convention in respect of the second applicant;

6. *Holds* that there has been a violation of Article 11 of the Convention in respect of both applicants;

7. *Holds*
   (a) that the respondent State is to pay 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 529 (five hundred and twenty-nine euros) to the second applicant, plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, to the first applicant, in respect of non-pecuniary damage;

(iii) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable, to the second applicant, 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;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski Deputy Registrar	Jolien Schukking President