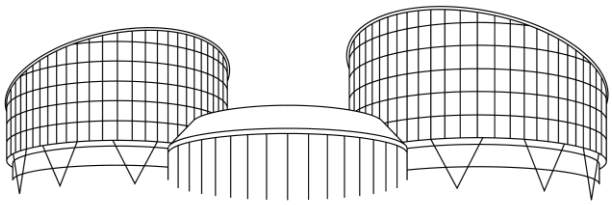

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KAKABADZE AND OTHERS v. GEORGIA

(Application no. 1484/07)

JUDGMENT

STRASBOURG

2 October 2012

FINAL

02/01/2013

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

In the case of Kakabadze and Others v. Georgia,

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

Josep Casadevall, *President,*
Egbert Myjer,
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria, *judges,*

and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 11 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 1484/07) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Georgian nationals, Mr Irakli Kakabadze ("the first applicant"), Mr Lasha Chkhartishvili ("the second applicant"), Mr Jaba Jishkariani ("the third applicant"), Mr Zurab Rtveliashvili ("the fourth applicant") and Mr Davit Dalaksihvili ("the fifth applicant") on 28 December 2006.

2. The applicants were represented by Ms Sopio Japaridze and Ms Natia Katsitadze, members of the Georgian Young Lawyers' Association (GYLA) in Tbilisi, as well as by Mr Philip Leach, of the European Human Rights Advocacy Centre (EHRAC) in London. The Georgian Government ("the Government") were represented by their Agent, Mr Levan Meskhoradze of the Ministry of Justice.

3. On 2 November 2009 the Court decided to give notice to the respondent Government of the applicants' complaints under Articles 5 § 1, 6 §§ 1 and 3 (c), 10 and 11 of the Convention and Article 2 of Protocol No. 7. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. The parties submitted observations on the admissibility and merits of the communicated complaints (Rule 54A of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first, second, third, fourth and fifth applicants were born in 1969, 1980, 1985, 1967 and 1984 respectively and live in Tbilisi. They are members of the Equality Institute, a Georgian non-governmental organisation established in February 2004 ("the NGO"). As part of its activities aimed at monitoring of the penal and law-enforcement authorities and promotion of the independence of the judiciary, the NGO held public press conferences and street demonstrations denouncing various serious human-rights abuses allegedly committed by the Ministry of the Interior and in Georgian prisons.

A. The incident of 29 June 2006

6. At around 2.20 p.m. on 29 June 2006 the applicants began a demonstration outside the Tbilisi Court of Appeal to express their support for Mr Shalva Ramishvili and Mr Davit Kokhreidze, owners of the 202 private television channel, who were on trial that day. The case of *Ramishvili and Kokhreidze* received considerable public attention at that time (for more details see *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, §§ 9-66, 27 January 2009).

7. As disclosed by the applicants' written statements drafted on 4 and 5 July 2006 as a reminder of the exact circumstances surrounding the incident of 29 June 2006 ("the applicants' written statements"), they entered the yard of the Tbilisi Court of Appeal through the main gates; the security guards noticed that one of the applicants was carrying a megaphone but did not object. The applicants stopped ten to twenty metres from the court-house, and the first applicant, using the megaphone, began uttering the following slogans:

> "We should not have political prisoners in Georgia! ... We urge you to obey justice and not the private interests of a number of high officials! ... Give me justice or give me death! ...".

8. Furthermore, taking the view that the existing situation concerning human rights in Georgia was similar to the terror unleashed by the Soviet State in the late 1930s, the first applicant disdainfully referred to the Minister of the Interior, Mr V.M., as "Lavrentiy Beria's bastard". According to the written statements of the fourth and fifth applicants, they also called for the immediate release of Mr Ramishvili and Mr Kokhreidze, as unlawfully detained, and urged the Tbilisi Court of Appeal "not to become an accomplice of the criminal activities of the [Minister of the Interior]".

9. According to the applicants, nothing was displayed or addressed to the court which could be construed as contempt: this could be confirmed by independent eyewitnesses to the incident, as well as by the images filmed by a cameraman from the 202 television channel (see a description of the video recording submitted by the applicants in paragraphs 23-27 below).

10. The first applicant's speech had lasted some three minutes when several uniformed court bailiffs approached the applicants and, allegedly without prior warning or explanation, restrained them by force. The applicants were then taken into the court-house and locked in the bailiffs' duty room.

11. According to the applicants' written statements, no record of their arrest was drawn up on the spot. In any event, they were not shown or asked to sign any such document. On the contrary, the bailiffs reassured the applicants that they were not formally under arrest, that it was a simple misunderstanding and that they would soon be released.

12. The case file, however, contained five separate records, on the arrest of each applicant. Those records indicated the name of the drafting bailiff as well as the name, date of birth, address and full serial number of the identification card of each of the applicants. The documents further stated that the applicants had been arrested at around 2.20 p.m. on the basis of section 76(3) § 1 (f) of the Courts of Common Jurisdiction Act of 13 June 1997 ("the Courts Act"). In particular, the offenders had "breached public order", which took the form of "contempt of court, insults, disregard of the bailiffs' lawful orders to stop the wrongdoing, resistance to the bailiffs, attempts to influence the court by actions and verbal expressions, impeding the administration of justice, and so on". All the records contained an entry, made in the drafting bailiff's handwriting indicating that the applicants had "refused to sign this record or to receive a copy thereof". The President of the Tbilisi Court of Appeal and the police were immediately informed of the offence and of the applicants' arrest.

13. According to the applicants, these records of their arrest were drafted and added to the file concerning their case *ex post factum*.

14. Having been confined in the duty room of the court-house in complete unawareness of the reasons for their detention for some three hours, the applicants were transferred by the police to an Interior Ministry remand centre; the case file contains an excerpt from the relevant prison log showing that the fourth applicant entered the remand centre at 5.45 p.m.

15. The case file also contained explanatory memos from three court bailiffs who had participated in the applicants' arrest. Those memos were half-page handwritten documents containing similar phrases, and were addressed to the Chief of the Bailiff Service of the Tbilisi Court of Appeals. Thus, according to those documents, the applicants, "standing near the public entrance of the court at around 2.20 p.m.", had started "demanding the release of political prisoners" and "insulting the court by their

expressions and actions". One of the bailiffs added in his memo that the applicants' actions had amounted to an encroachment upon the court's independence and impartiality, whilst another submitted that the wrongdoers had been trying to influence the court. All three bailiffs stated that, prior to resorting to the measure of arrest, they had requested the applicants to stop the disturbance.

16. When they were transferred to the remand centre the applicants learnt that they had been detained on the basis of a decision of 29 June 2006 issued by the President of the Tbilisi Court of Appeal.

B. The decision of 29 June 2006

17. As disclosed by the decision of 29 June 2006, a one-page document, the President of the Tbilisi Court of Appeal, Mrs E.T., sitting privately and without holding an oral hearing, decided, on the basis of the bailiffs' written submissions alone, to detain the applicants for thirty days under Article 208 § 6(1) of the Code of Criminal Procedure ("the CCP"). Thus, she took note of the bailiffs' version of the incident of 29 June 2006 (see paragraph 15 above), namely that "[the applicants], who were inside the court building, in its central entrance, were breaching public order, obstructing the normal functioning of the court and seeking to influence the court with respect to proceedings in a particular case". Despite the bailiffs' request that they stop the disturbance, the applicants persisted with their conduct, which took the form of "verbal expressions and actions". The President concluded that the applicants had "breached public order, shown manifest and gross contempt towards the court and endangered the administration of justice."

18. The operative part of the decision of 29 June 2006 indicated that no appeal lay against it, that the applicants were to serve their sentence in remand centre no. 2 of the Ministry of the Interior (see paragraph 16 above) and that the Tbilisi police department was responsible for its execution.

C. Subsequent developments

19. On 21 July 2006 the applicants, referring to the suspension of the operation of Article 208 § 7 of the CCP by the Constitutional Court's decision of 20 July 2006 (see the Constitutional Court's judgment of 15 December 2006 at paragraphs 42-47 below) and arguing that their detention was an administrative penalty, requested the Supreme Court of Georgia to examine their complaint against the decision of 29 June 2006 under Article 279 of the Code on Administrative Offences ("the CAO"). They complained that the President of the Tbilisi Court of Appeal had committed a manifest miscarriage of justice by punishing them under Article 208 of the CCP, which provision clearly envisaged liability only for

acts committed inside court buildings; a video recording of the applicants' demonstration was submitted to show that it had taken place in the yard of the Tbilisi Court of Appeal. Thus, the applicants argued that the above-mentioned provision could not be considered a foreseeable and therefore legitimate basis for their conviction and detention. They further complained that the President of the Tbilisi Court of Appeal had violated the principles of a fair trial by delivering her decision entirely on the basis of the one-sided account provided by the bailiffs. The applicants also complained that the President had chosen the severest sanction of those available under Article 208 of the CCP.

20. On 26 July 2006 a Supreme Court judge, Mr Z.M., examined, *in absentia*, the applicants' complaint of 21 July 2006 and dismissed it. The date of that examination was not communicated to the applicants in advance.

21. As disclosed by the decision of 26 July 2006, Judge Z.M. first noted that the suspension of Article 208 § 7 of the CCP did not automatically entitle the applicants to lodge an appeal against their detention. However, acknowledging that their detention was, by its nature, an administrative penalty, he ruled that the complaint of 21 July 2006 against the penalty could be examined under Article 279 of the CAO. Judge Z.M. went on to criticise the applicants for abusing their right to freedom of expression. He found it established from the case materials that the applicants had truly exhibited "manifest and gross contempt" towards the Tbilisi Court of Appeal by committing those acts "inside the court building, namely in its central entrance hall". In any event, the aim of Article 208 § 6(1) of the CCP was, in the opinion of Judge Z.M., to protect public order not only inside court-houses but also outside them, in adjacent premises. The President of the Court of Appeal had no other choice but to sanction the applicants under Article 208 § 6(1) of the CCP, since what was at stake in the given situation was "not the judge's own interests but the authority of the court and the proper administration of justice". In reply to the complaint that the President of the Court of Appeal had made her decision entirely on the basis of one-sided submissions, Judge Z.M. stated that all the evidence – the records of the applicants' arrest and the explanatory notes – had been drafted and submitted by the bailiffs for consideration by the President in accordance with a procedure envisaged by law. Judge Z.M. also stated that the thirty days' detention had been an appropriate punishment, given the gravity of the acts committed.

22. The period of the applicants' detention expired and they were released on 28 July 2006.

D. The video recording of the incident of 29 June 2006

23. The recording showed excerpts from a television programme prepared by the 202 channel concerning the incident of 29 June 2006.

24. The first scene briefly showed several uniformed bailiffs restraining some of the applicants in the yard of the Tbilisi Court of Appeal. The first applicant, holding a megaphone, was hustled by the bailiffs towards the central entrance of the court-house. At the end of the scene, a man's hand was placed over the lens of the camera.

25. In a later episode of the programme, the President of the Tbilisi Court of Appeal, Mrs E.T., was shown at a press conference concerning the applicants' arrest. She stated:

> "... five individuals, ... who have shown such direct and gross contempt towards the court and breached public order in the court... I will impose upon them, by my ruling, a form of detention for thirty days, and this will be another good example [of the fact] that respect towards courts and the maintenance of public order in court will be protected very strictly."

> ("...ხუთ მონაწილეს ამ აქციის,... რომლებმაც ასეთი პირდაპირი და უხეში უპატივცემულობა გამოხატეს სასამართლოს მიმართ და დაარღვიეს წესრიგი სასამართლოში ... მე გამოვიყენებ ჩემი განკარგულებით ოცდაათდღიანი დაპატიმრების ფორმას მათ მიმართ და ეს იქნება კიდევ ერთხელ კარგი მაგალითი იმისათვის, რომ პატივისცემის გამოხატვა სასამართლოს მიმართ და სასამართლოში წესრიგის დაცვა იქნება ძალიან მკაცრად დაცული.")

26. The commentator of the programme noted that, prior to taking office as President of the Tbilisi Court of Appeal, Mrs E.T. had served as deputy to Mr V.M., the Minister of the Interior.

27. The remaining scenes in the broadcast showed interviews with the applicants' advocates and supporters, some of whom stated that the applicants could not be held liable under Article 208 of the CCP, because their actions had taken place outside the court building.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Act of 13 June 1997 on Courts of Common Jurisdiction, as worded at the material time

28. Section 76(3) § 1 listed court bailiffs' rights and responsibilities:

Section 76(3)

"1. Bailiffs shall

(a) ensure the safety of judges, parties to proceedings and witnesses;

(b) maintain order inside the court-house and hearing rooms;

(c) enforce the instructions of the President of the court and of the hearing judge concerning the maintenance of order;

(d) protect the court-house;

(e) ensure that hearing rooms are well prepared for the conduct of proceedings...;

(f) prevent offences from being committed inside the court-house, identify offenders and, if necessary, arrest them for the purpose of handing them over to the police, and draft a written record on such arrests...;

(g) exercise all other powers envisaged by law."

29. Section 76(3) § 2 (a) gave bailiffs the right to resort to physical force, to "special equipment" and even to firearms in the exercise of their duties. Section 76(4) §§ 1 and 4 specified that the above-mentioned right could be exercised only if other less severe measures of constraint had been shown to be ineffective, and that bailiffs were obliged to issue a verbal warning to the persons concerned prior to resorting to force.

B. The Code of Criminal Procedure ("the CCP"), as worded at the material time

30. Article 208, on the basis of which the applicants were sanctioned by the decision of 29 June 2006, read as follows:

Article 208: "Liability for breach of public order in court"

"1. The President of the court shall ensure the maintenance of public order in the court, whilst the presiding judge shall be responsible for maintaining order during the hearing of cases...

2. A party to the proceedings, or any other person who has either breached public order during a hearing, or disregarded the presiding judge's ruling or is in contempt of court, shall be fined and/or expelled from the courtroom. If the person expelled from the courtroom continues to breach such an order, the detention envisaged by this Article may be imposed upon him or her....

6. If manifest and gross contempt of court has been shown, the judge presiding over the hearing may issue a decision to detain the offender for up to thirty days. Such a decision shall be enforced immediately...."

6(1). In the event of a breach of public order or contempt committed inside the court building, the President of the court shall be entitled to apply the measures envisaged by this Article against the offender.

7. So far as the current Article is concerned, the decisions of the presiding judge and of the President of the court shall be delivered by on-the-spot deliberations and without an oral hearing, and no appeal shall lie against them."

31. Subsequent to the Constitutional Court judgments of 15 December 2006 (see paragraphs 42-47 below), Article 208 of the CCP was significantly revised on 29 December 2006. Thus, the newly added paragraph 8 of that provision explicitly gave the court bailiffs the power to arrest a person who had either "breached public order in the court, was in

contempt, or had obstructed the normal functioning of the court". Bailiffs were obliged to draw up a record of such arrests and to bring the offenders before the President of the relevant court within twenty-four hours. The President had further twenty-four hours to issue a decision on whether to punish the offender. Paragraphs 10 and 11 of the amended Article 208 further stated that proceedings concerning the imposition of detention on an offender should always be adversarial, and conducted at an oral hearing at which the offender would be given an opportunity to defend him or herself. Should the President decide to detain the offender, the latter was entitled to lodge an appeal against that decision with the higher court within the next forty-eight hours.

C. The Code on Administrative Offences, as worded at the material time

32. The Code was adopted on 15 December 1984, when Georgia was part of the Soviet Union. Subsequently, numerous amendments were introduced. At the material time the relevant provisions of this Code read as follows:

Article 10: "The notion of an administrative offence"

> "An administrative offence is a wrongful action or omission, committed either deliberately or by negligence, which contravenes the State or public order, the rules on Governance, property or citizens' rights and freedoms, and which attracts administrative liability.
>
> Administrative liability shall be imposed only in those cases where the offences envisaged under the present Code do not call for criminal liability in the light of the applicable legislation."

33. Article 24 § 1 listed the forms of administrative penalties, of which administrative detention was the severest. Pursuant to Article 32 § 1, administrative detention could be imposed by a district (city) court, only as an exception, for certain types of administrative offences and for a period not exceeding thirty days.

34. Article 244 provided for measures of restraint in administrative proceedings, such as administrative arrest, search of the person or of objects, seizure of objects and of documents. Those measures, including arrest, could be used "in order to prevent an administrative offence..., to ensure a timely and proper examination of an administrative case, and to enforce any decision or ruling delivered in such a case".

35. Article 246 contained an inclusive list of those authorities which were empowered to effectuate an administrative arrest. Court bailiffs were not among them.

36. Pursuant to Article 247, administrative arrest must not exceed three hours, unless specific statutes provided for longer terms "in cases of exceptional need".

37. Articles 252, 263 and 264 contained procedural and substantive rules on the conduct of administrative proceedings, and were similar to those normally applicable to criminal proceedings in court. In particular, a person charged with an administrative offence to fundamental procedural rights such as the right to examine the case materials, to submit arguments and evidence and requests, to benefit from legal assistance during the examination of the case, to plead in his or her native language or to be assisted by an interpreter, and to appeal against procedural rulings. An administrative case was always to be examined in the presence of the charged person during an oral hearing; *in absentia* proceedings could take place only if that person had been duly summoned but had failed to appear.

38. Pursuant to Articles 271 and 279, no appeal lay, as a general rule, against a court decision convicting a person of an administrative offence and imposing a penalty. However, a final decision could be quashed by means of an extraordinary review. These provisions read as follows:

Article 271 § 2: "The right to lodge an appeal..."

"2. The city (district) court's decision to impose an administrative penalty is final and not subject to an appeal in administrative proceedings, except for those cases where a law holds otherwise."

Article 279: "Review of a case..."

"The administrative judge's (court's) decision concerning an administrative offence can be quashed or amended by the delivering judge (court) at a prosecutor's request and, whether or not such a request has been lodged, by the President of the superior court..."

D. The Civil Code and the Code of Civil Procedure, as worded at the material time

39. Article 413 of the Civil Code, explaining the notion of non-pecuniary damage, read as follows:

Article 413 § 1: "Non-pecuniary damage"

"1. Non-pecuniary damage, which amount should be reasonable and equitable, can be claimed exclusively in the situations explicitly envisaged by law.

2. An individual is entitled to request compensation for non-pecuniary damage caused in respect of damage to his or her health."

40. Article 1005 of the Civil Code specified that State agencies were jointly liable for damage caused to a private party by intentional or negligent actions on the part of their officials, including such particular instances, the existence of which should first be established by a court, as

unlawful conviction for a criminal or administrative offence or imposition of unlawful detention.

41. Subsequent to Article 423 § 1 (f) of the Code of Civil Procedure, a final judgment (decision) in a civil case could be reconsidered on the basis of newly discovered circumstances. Grounds for such reconsideration were, amongst others, factual circumstances or evidence which, had they been submitted to the domestic courts pending the original examination of the case, would have led to a different outcome.

E. The Constitutional Court's judgment of 15 December 2006 in the case of "Masurashvili and Mebonia v. the Parliament of Georgia"

42. The case originated in constitutional appeals by two advocates who had been detained under Article 208 § 6 of the CCP for breach of public order and contempt of court committed in courtrooms during the oral hearing of criminal cases.

43. In a decision of 20 July 2006, the Constitutional Court declared the constitutional appeals admissible for an examination on the merits, and suspended the operation of Article 208 § 7 of the CCP pending the proceedings.

44. In a judgment of 15 December 2006, the Constitutional Court abrogated Article 208 § 7 of the CCP as unconstitutional.

45. In its reasoning, the Constitutional Court, referring to the Court's case-law, found that Article 6 § 1 of the Convention applied under its "criminal head" to the proceedings under Article 208 of the CCP. It further reasoned that those proceedings, which entitled the hearing judge to convict a person of a breach of public order/contempt of court by on-the-spot deliberations, without holding an oral hearing, negated the most fundamental safeguards of a fair trial, such as the right to equality of arms and adversarial proceedings, the right to have adequate time and facilities for the preparation of the defence, and so on.

46. The Constitutional Court stated that, by denying a person convicted under Article 208 of the CCP the right to lodge an appeal, paragraph 7 of that provision violated Article 42 § 1 of the Constitution and Article 2 of Protocol No. 7. In support of the latter finding, the Constitutional Court referred to the Court's judgment in the case of *Gurepka v. Ukraine* (no. 61406/00, §§ 59-62, 6 September 2005).

47. In its judgment, the Constitutional Court also criticised the definition of the offence of contempt of court, as contained in paragraph 6 of Article 208 of the CCP, as vague. Notably:

> "the offence prescribed by the disputed provision is not clearly formulated... and the interpretation may be ambiguous due to the lack of specificity and vagueness of the provision.... Where the legislation introduces a sanction such as detention, an offender must clearly understand the nature of the offence for which he is subjected to

detention and, on the other hand, the judge applying the law should be able to do so correctly and adequately. ...

[I]n the Constitutional Court's view, achieving and maintaining such important purposes as the protection of the authority of the courts and the smooth functioning of the justice system should not be carried out at the expense of the impairment of fundamental human rights."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 5 § 1, 6 §§ 1 AND 3 (c) AND ARTICLES 10 AND 11 OF THE CONVENTION

48. The applicants complained that their arrest, conviction for breach of public order and contempt of court, and consequent punishment by deprivation of liberty, as imposed by the President of the Tbilisi Court of Appeal in her decision of 29 June 2006, was unlawful and unfair, in breach of Articles 5 § 1 and 6 §§ 1 and 3 (c) of the Convention.

49. The applicants further complained that their arrest and detention had constituted an unlawful and unreasonable restriction on their rights to freedom of expression and freedom of peaceful assembly, contrary to Articles 10 and 11 of the Convention.

50. The relevant provisions of the Convention read, in their relevant parts, as follows:

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court; ...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so."

Article 6

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

3. Everyone charged with a criminal offence has the following minimum rights: ...

(c) to defend himself in person or through legal assistance of his own choosing ..."

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 ... public safety, for ... maintaining the authority and impartiality of the judiciary."

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

51. The Government took the view that the applicants had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. Thus, the applicants could have requested compensation for non-pecuniary damage for their allegedly unlawful detention under Articles 413 and 1005 of the Civil Code (see paragraphs 39-41 above). Alternatively, they could have requested the quashing of their conviction of 29 June 2006 and the reopening of the relevant proceedings under Article 423 § 1 (f) of the Code of Civil Procedure, in view of newly discovered circumstances.

52. The applicants disagreed, claiming, by reference to a number of arguments, that the above-mentioned legal provisions were not relevant to their case.

53. As regards the remedy under Article 423 § 1 (f) of the Code of Civil Procedure, the Court notes its extensive case-law to the effect that an application for retrial or similar extraordinary remedies either in civil, criminal or administrative matters cannot, as a general rule, be taken into account for the purposes of applying Article 35 § 1 of the Convention (see, among many others, *The Foundation Mrevli v. Georgia* (dec.), no. 25491/04, 5 May 2009; *Galstyan v. Armenia*, no. 26986/03, §§ 39-42, 15 November 2007; and *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 40-45, 2 November 2010).

54. As to the suggested possibility of suing the State for damages for the applicants' allegedly unlawful detention under the Civil Code, the Court reiterates that where lawfulness of detention is concerned, an action for damages is not a relevant remedy, because the right to have the lawfulness of detention examined by a court and the right to obtain compensation for any deprivation of liberty incompatible with Article 5 of the Convention are two distinct rights (see, among others, *Włoch v. Poland*, no. 27785/95, § 90, ECHR 2000-XI, and *Khadisov and Tsechoyev v. Russia*, no. 21519/02, § 151, 5 February 2009, with further references). Indeed, noting that the applicants' various complaints are based on their arrest and detention, which

they had duly contested before the competent domestic court as unlawful, the Court dismisses the Government's objection of non-exhaustion (compare also with *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, §§ 48-50 and 93, ECHR 2011 (extracts)).

55. The Court further notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Lawfulness of the arrest and detention

(a) The Government's arguments

56. The Government submitted that the applicants' arrest and detention fell under the exception contained in Article 5 § 1 (c) of the Convention. Notably, they were arrested on suspicion of a breach of public order and contempt of court, which actions constituted "offences" within the meaning of that particular provision. As to the domestic legal basis for the applicants' deprivation of liberty, the Government referred to section 76(3) § 1 (f) of the Courts Act and Article 208 § 6(1) of the CCP, which entitled a competent judicial authority to punish offenders by the imposition of detention (see paragraphs 28 and 30 above). Alternatively, the Government suggested that the applicants' arrest and detention could also be considered to fall under Article 5 § 1 (b) of the Convention.

57. Whilst acknowledging that the literal wording of section 76(3) § 1 (f) of the Courts Act referred only to court bailiffs' power to arrest people inside court-houses, the Government argued that the provision should be read in a more interpretative manner, by having regard to the general aim that was sought to be achieved by the legal provision in question. Thus, since the essence of section 76(3) of the Courts Act was to enable bailiffs to protect the administration of justice, it was only natural for the applicants, who were insulting the Tbilisi Court of Appeal in its yard, to assume that bailiffs of that court could have exercised their relevant duties not only within the court-house but also on its protected territory outside.

58. The Government further submitted that the initial period of the applicants' arrest, pending examination of the incident by the President of the Tbilisi Court of Appeal, represented administrative arrest, a form of restraint measure in administrative proceedings, within the meaning of Article 244 of the CAO (see paragraph 34 above). The Government then assured the Court that that arrest had not exceeded the maximum permissible limit of three hours, as provided for by Article 247 of the CAO (see paragraph 36 above). In support, the Government referred to the fact that three hours and twenty-five minutes had passed between the applicants'

arrest and the placement of one of them in the remand centre of the Ministry of the Interior, the latter event necessarily occurring after the delivery of the decision of 29 June 2006 (see paragraphs 14 and 18 above); within that time more than twenty-five minutes would have been spent on transporting the applicants from the court-house to the place they were subsequently held in custody.

(b) The applicants' arguments

59. The applicants replied that their arrest was unlawful because it was clear that section 76(3) § 1 (f) of the Courts Act did not empower bailiffs to arrest people outside a court-house; these officers could only "prevent offences from being committed inside a court-house". The applicants complained that the overly extensive interpretation given to this provision by the domestic courts and the respondent Government arbitrarily expanded the territorial application of the bailiffs' powers of arrest, which did not meet the requirement of foreseeability and was thus unlawful within the meaning of Article 5 § 1 of the Convention.

60. The applicants further submitted that at the material time it was not clear which legal norms should have regulated the length of their arrest. They contested the applicability of Article 247 of the CAO, which set the statutory limit for administrative arrest, arguing that, as was clearly stated in its Article 10, the Code of Administrative Offences only applied to offences envisaged by that particular Code (see paragraph 32 above), whilst the applicants had been found guilty and punished under Article 208 of the Code of Criminal Procedure. On the other hand, if the Code of Administrative Offences were to be considered applicable to their situation, then a clear problem would arise under its Article 246, which excluded court bailiffs from the inclusive list of those State agents who were authorised by law to effect administrative arrests (see paragraph 35 above).

61. As to the basis for their subsequent punishment by the imposition of detention for thirty days under Article 208 § 6(1) of the CCP, the applicants stated that the provision similarly lacked foreseeability and precision. In support of that argument, they referred to the relevant findings of the Constitutional Court of Georgia, as well as to the subsequent amendment of that provision on 29 December 2006, which in the applicants' opinion constituted a tacit acknowledgment by the Georgian authorities of the defective nature of the initial version of the provision (see paragraphs 30 and 31 above). The applicants reiterated that they could not reasonably have foreseen that acts of theirs outside the court building could ever have led to their detention under Article 208 § 6(1) of the CCP.

(c) The Court's assessment

i. General principles

62. The Court reiterates that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a)-(f) of Article 5 § 1 of the Convention (see *Assanidze v. Georgia* [GC], no. 71503/01, § 170, ECHR 2004-II), be "lawful". Where the "lawfulness" of detention is in issue, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, 29 January 2008). This primarily requires any arrest or detention to have a legal basis in domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention (see *Stafford v. the United Kingdom* [GC], no. 46295/99, § 63, ECHR 2002-IV, and *Kafkaris v. Cyprus* [GC], no. 21906/04, § 116, ECHR 2008). "Quality of law" in this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness (see, for instance, *Nasrulloyev v. Russia*, no. 656/06, § 71, 11 October 2007, and *Mooren v. Germany* [GC], no. 11364/03, § 76, 9 July 2009). The standard of "lawfulness" set by the Convention thus requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Baranowski v. Poland*, no. 28358/95, § 52, ECHR 2000-III).

63. Compliance with national law is not, however, sufficient. Article 5 § 1 of the Convention requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *Bozano v. France*, 18 December 1986, § 54, Series A no. 111). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1. The notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi*, cited above, § 67). While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. Furthermore, detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith on the part of the authorities (see *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, § 53, 13 January 2009; *Bozano*, cited above, § 59; and *Saadi*, cited above, § 69) or where the domestic authorities have neglected to attempt to apply the relevant legislation correctly (see *Benham v. the United Kingdom*, 10 June 1996, § 47, *Reports*

of Judgments and Decisions 1996-III, and *Liu v. Russia*, no. 42086/05, § 82, 6 December 2007).

ii. Application of these principles to the circumstances of the case

64. At the outset, the Court notes that it does not need to answer the question of whether there could have been reasons for the Georgian authorities to take measures against the perceived disturbance of the public order or the need to enable the Tbilisi Court of Appeal to continue its work without being disturbed by the noise made by the applicants demonstrating outside the courthouse. What is at stake in the present case is the lawfulness of the applicants' deprivation of liberty. The Court further observes that it is not in dispute between the parties that the applicants' arrest and being locked up in the duty room of the Tbilisi Court of Appeal by the bailiffs, as well as their subsequent punishment by detention, as imposed by the President of the Tbilisi Court of Appeal, represented a continuous situation of deprivation of liberty within the meaning of Article 5 § 1 of the Convention. It can be assessed as falling into two periods – before and after the applicants were brought before the judge who sanctioned their detention in her decision of 29 June 2006.

65. As regards the first period of the applicants' deprivation of liberty, the Court is ready to accept that since they were arrested on the basis of a suspicion that they had committed the offences of breach of public order and contempt of court, that period could fall within the exception authorised by 5 § 1 (c) of the Convention (compare, for instance, with *Makhmudov v. Russia*, no. 35082/04, § 80 and 81, 26 July 2007, and *Schwabe and M.G.*, cited above, § 70). However, exercising its power to refer to the quality of the domestic law for the purposes of ascertaining the "lawfulness" of a questioned period of detention (see paragraph 62 above), the Court observes that the circumstances surrounding the applicants' arrest and being locked for some three hours in the duty room of the Tbilisi Court of Appeal can hardly be held compatible with the relevant domestic provisions.

66. Thus, if the Court is to accept the Government's argument that the applicants were taken into custody on the basis of the Code of Administrative Offences, and that their detention at that time fell within the statutory limit of three hours permitted for such administrative arrest (see paragraph 36 above), a clear problem would arise with respect to the powers of arrest of court bailiffs as such. The Court notes that bailiffs were not amongst the exhaustive list of those State agents who were empowered to conduct administrative arrests under that Code (see paragraph 35 above).

67. On the other hand, as could be seen from the verbatim records of the applicants' arrest (see paragraph 12 above), their arrest was linked to section 76(3) § 1 of the Courts Act, notably to its sub-paragraph (f), which entitled bailiffs to arrest individuals suspected of committing the offences of breach of public order and contempt of court. However, that domestic

provision, which stated that bailiffs could conduct arrests "for the purpose of handing [offenders] to the police", did not provide for any statutory time-limit during which an arrested individual could be kept in custody pending his or her appearance before a judicial officer. Consequently, it remains largely unexplained on the basis of which domestic legal provision, the court bailiffs took the liberty of locking the applicants up in the duty room of the Tbilisi Court of Appeal for at least three hours. Indeed, the Court notes that it was only subsequent to the applicants' arrest on 29 June 2006 that the Georgian legislator finally fixed, on 29 December 2006, a maximum permissible period for the duration of an arrest of an individual suspected of having committed the relevant offences (see paragraph 31 above).

68. Another matter for the Court's concern is that it cannot be discerned with a sufficient degree of certainty either from section 76(3) § 1 (f) of the Courts Act, which served as the basis for the applicant's arrest, or from Article 208 § 6(1) of the CCP, which became the basis for the subsequent finding of the applicants' guilt, whether it was legally possible to arrest individuals outside court-houses. The wording of these provisions limited the territorial scope of both the court bailiffs' powers of arrest and the offences of breach of public order and contempt to the interior of court buildings. That being so, the Court has certain doubts that the applicants could have foreseen at the relevant time and to a degree that was reasonable in the circumstances that their street picket in front of the Tbilisi Court of Appeal could entail their arrest and detention under the above-mentioned domestic provisions. It reiterates in this respect that national law must be of sufficient quality and, in particular, must be foreseeable in its application, in order to avoid all risks of arbitrariness (see *M. v. Germany*, no. 19359/04, § 104, ECHR 2009).

69. As regards the second period of the applicants' deprivation of liberty, their detention for thirty days, given that the President of the Tbilisi Court of Appeal imposed that measure in her decision of 29 June 2006 as a punishment for the offences of breach of public order and contempt of court under Article 208 § 6(1) of the CCP, the Court considers that that period can fall under the exception provided for under Article 5 § 1 (a) of the Convention (see, for instance, *Schwabe and M.G.*, cited above, § 74 and 83, and *M. v. Germany*, also cited above, § 87). However, the President never discussed the major legal issue of whether the bailiffs had had the power to arrest the applicants outside the court building and whether the applicants' behaviour out of doors could legitimately attract liability under the relevant domestic provisions. Her findings were based solely on the explanatory notes provided by the court bailiffs and, similarly to those notes, the findings lacked any detailed explanation and were strikingly succinct, and resulted in the endorsement in her decision of the obviously untrue statement that the applicants had committed the acts "inside the court

building, in its central entrance" (see paragraphs 12, 15 and 17 above). It is thus evident that the judge was negligent in reviewing both the factual and the legal basis for the applicants' detention (compare with *Hakobyan and Others v. Armenia*, no. 34320/04, § 123, 10 April 2012), and exercised her authority in manifest opposition to the elementary procedural guarantees against arbitrariness provided for by the Convention (compare with *Menesheva v. Russia*, no. 59261/00, § 92, ECHR 2006-III).

70. In the light of the foregoing the Court concludes that the applicants' arrest for some three hours could not be considered to have been based on sufficiently clear and foreseeable domestic provisions, whilst the subsequent imposition of detention for thirty days was made in an arbitrary manner, without the requisite exercise of good faith on behalf of the domestic authorities.

71. Accordingly, there has been a violation of Article 5 § 1 of the Convention.

2. Right to a fair trial

(a) The parties' arguments

72. Acknowledging the applicability of Article 6 § 1 of the Convention under its criminal head to the proceedings in question, the Government submitted that the principles of equality of arms and adversarial proceedings could not be considered to have been infringed by the absence of an oral hearing before the President of the Tbilisi Court of Appeal, in so far as that fact damaged the interests of both the applicants and the bailiffs equally. The Government further contended that the applicants could still have attempted to submit written comments in reply to the bailiffs' written submissions before the President had taken the relevant decision. The Government also submitted that the decision of 29 June 2006 of the President of the Tbilisi Court of Appeal contained relevant and sufficient reasons for the finding of the applicants' guilt under Article 208 § 6(1) of the CCP, which were then fully endorsed by the Supreme Court of Georgia.

73. The applicants replied that they had had no opportunity to communicate their views on the bailiffs' explanatory notes, which subsequently became the sole basis for their punishment by the President of the Tbilisi Court, either orally or at least in writing. They denounced the fact that the President did not attempt of her own motion to check or question the accuracy of the information provided by the bailiffs. The applicants emphasised that they had not even been notified in advance that the President was going to issue a decision on the spot, of which fact they had learnt *ex post factum* in the remand centre, and had thus been unable to submit arguments in their defence. They also stated that the decision of 29 June 2006 of the President of the Tbilisi Court of Appeal was far too

generally worded and did not contain any reference to specific acts, nor did it provide any detailed reasoning.

74. The parties also exchanged arguments on the applicants' complaints under Article 6 § 3 (c) of the Convention concerning their inability to defend themselves in person or through legal representation during the examination of their case.

(b) The Court's assessment

75. At the outset the Court confirms that, given the nature of the penalty imposed upon the applicants – deprivation of liberty – the proceedings in question certainly attracted the applicability of the criminal limb of Article 6 § 1 of the Convention, an issue not disputed by the Government (see, among many other authorities, *Menesheva*, cited above, § 94-98).

76. Having due regard to the similar findings of the Constitutional Court of Georgia, the Court considers that the manner in which the President of the Tbilisi Court of Appeal heard the applicants' case under Article 208 § 7 of the CCP – a cursory procedure conducted in private, on the basis of the court bailiffs' written submissions only and without giving the applicants a chance to be heard – constituted a complete negation of the most elementary procedural requirements of a fair trial, such the right to adversarial proceedings and equality of arms, the right to have adequate time and facilities for the preparation of a defence, the right to benefit from qualified legal assistance, and so on.

77. The Court considers that the findings given in the President's decision of 29 June 2006 were a mere unquestioning recapitulation of the description of the charges as presented by the bailiffs, and do not appear to have been reached as the result of an objective and thorough judicial examination of the particular circumstances of the incident (see *Menesheva*, cited above, § 99; *Ziliberberg v. Moldova*, no. 61821/00, §§ 40-42, 1 February 2005; and *Hakobyan and Others*, cited above, § 98). It is also a matter of concern to the Court that, having regard to the terms employed by the President of the Tbilisi Court of Appeal during the press conference concerning the applicants' arrest, she clearly prejudged the assessment of the facts and expressed the opinion that the applicants were guilty before they had been proved guilty according to law (compare *Böhmer v. Germany*, no. 37568/97, §§ 54 and 56, 3 October 2002, and *Nešťák v. Slovakia*, no. 65559/01, §§ 88 and 89, 27 February 2007).

78. The above considerations are sufficient for the Court to conclude that there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (c) of the Convention in the present case.

3. The rights to freedom of expression and freedom of peaceful assembly

(a) The parties' arguments

79. Acknowledging that there had been an interference with the applicants' rights under Articles 10 § 1 and 11 § 1 of the Convention, the Government argued that it had been justified within the meaning of the second paragraphs of these provisions. Notably, the interference had been based on section 76(3) § 1 (f) of the Courts Act and Article 208 § 6(1) of the CCP, which provisions fully satisfied the relevant requirements of accessibility, foreseeability and precision (see also paragraph 57 above). Furthermore, the interference had served the aim of maintaining the authority of the judiciary. The Government observed in that connection that in 2006 a reform of the judicial system had been ongoing in the country, during which period there was a particularly pressing need to protect the judiciary from unfounded attacks.

80. Referring to the insulting slogans uttered by the applicants during the demonstration in the yard of the Tbilisi Court of Appeal, the Government considered that those expressions, especially those referring to the Minister of the Interior as "a bastard" and urging the court not to obey and not to become an accomplice to the latter's "criminal activities" (see paragraph 8 above), exceeded the limits of normal criticism and reflected the applicants' intention to debase publicly the authority of the Tbilisi Court of Appeal. As to the proportionality requirement, the Government submitted that the sentence imposed upon the applicants – thirty days in prison – had been an adequate punishment, given the gravity of the applicants' actions, especially assessed against the fact that the applicants had allegedly refused to obey the bailiffs' initial lawful orders to stop their contemptuous behaviour. In that respect, the Government also informed the Court that the events of 29 June 2006 were not the first instance of such wrongful conduct by some the applicants, and that the first, third and fourth applicants already had an administrative record of breaches of public order committed during similar street demonstrations.

81. The applicants replied that, first, the interference with the demonstration had not been "prescribed by law" since the bailiffs did not have the power under either section 76(3) § 1 (f) of the Courts Act or Article 208 § 6(1) of the CCP, the two legal provisions relied on by the national authorities as the basis for the interference, which was to prevent offences occurring outside court-houses. As a result, the applicants could not have known to what extent they could exercise their rights to freedom of expression and freedom of assembly without being deprived of their liberty. The applicants further complained that, in her decision of 29 June 2006 the President of the Tbilisi Court of Appeal had not given relevant and sufficient reasons justifying the interference.

82. The applicants submitted that their utterances during the demonstration of 29 June 2006 mainly represented a form of political criticism of the Minister of the Interior, and had the overall objective of encouraging the Tbilisi Court of Appeal to hold a fair trial in the well-known criminal case of Mr Shalva Ramishvili. The only insulting word, they conceded, was "bastard", but that was clearly aimed at the Minister and not at a member of the judiciary. The applicants also stated in that regard that they represented an official human rights NGO whose objectives included the promotion of the independence of the judiciary and condemnation of abuses committed by the Ministry of the Interior. Therefore, they had had the right to contribute to public debate on a case which had attracted considerable public attention at the material time, and only the most compelling reasons could have justified the restriction on their political utterance, which was on a matter of public interest. The applicants also commented that that the imposition of detention for thirty days was a disproportionate punishment.

(b) The Court's assessment

i. The scope of the applicants' complaints

83. The Court notes that the applicants' complaints under Articles 10 and 11 of the Convention are based on the allegation that their arrest and detention was a measure to prevent them from demonstrating outside the Tbilisi Court of Appeal on 29 June 2006. 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. On the other hand, notwithstanding its autonomous role and particular sphere of application, Article 11 must, in the present case, also be considered in the light of principles developed under Article 10 (see, for instance, *Ezelin v. France*, 26 April 1991, §§ 35 and 37, Series A no. 202).

ii. Violation of Article 11 of the Convention

84. The Court reiterates that the right to freedom of assembly covers both private meetings and meetings on public thoroughfares, as well as static meetings and public processions (see *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III). The term "restrictions" in paragraph 2 of Article 11 must be interpreted as including both measures taken before or during the public assembly, and those, such as punitive measures, taken afterwards (see *Ezelin*, cited above, § 39, and *Galstyan*, cited above, § 101).

85. The Court observes that, in the instant case, the applicants held a demonstration in front of the Tbilisi Court of Appeal. Several minutes later they were arrested and subsequently punished by being placed in detention for breach of public order and contempt of court. Their prosecution, as conceded by the Government, amounted to an interference with the exercise

of the freedom of peaceful assembly. It must therefore be determined whether the interference complained of was "prescribed by law", prompted by one or more of the legitimate aims set out in Article 11 § 2 of the Convention, and "necessary in a democratic society".

86. As regards the requirement of "lawfulness", the Court reiterates that both section 76(3) § 1 (f) of the Courts Act and Article 208 § 6(1) of the CCP, which legal provisions served as the basis for the applicant's arrest and their punishment by detention, expressly and concomitantly stated that actions allegedly constituting a breach of public order and contempt of court could be prevented by court bailiffs and punished by the President of the relevant court if committed inside court-houses (see also paragraph 67 above). As regards the definition of the particular offence of contempt of court, the Court further attaches importance to a finding of the Constitutional Court of Georgia, which characterised it as vague (see paragraph 47 above). That being so, the Court, similarly to its finding under Article 5 § 1 of the Convention, has very serious doubts that the applicants could reasonably have foreseen that their demonstration outside the building of the Tbilisi Court of Appeal, in its yard, could ever have attracted liability under the above-mentioned wording of the domestic provisions (compare, *mutatis mutandis*, with *Altuğ Taner Akçam v. Turkey*, no. 27520/07, §§ 92-95, 25 October 2011, and also *Amann v. Switzerland* [GC], no. 27798/95, §§ 78-80, ECHR 2000-II). However, having regard to a more conspicuous problem arising with respect to the necessity of the interference, the Court does not deem it appropriate to limit its finding under Article 11 of the Convention to the lawfulness of the interference only (compare with *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, § 116, 14 September 2010, and *Hyde Park and Others v. Moldova (nos. 5 and 6)*, nos. 6991/08 and 15084/08, § 48, 14 September 2010).

87. The Court can accept the Government's argument that the interference in question pursued a legitimate aim: the prevention of disorder and the protection of the authority of the judiciary. What is at stake as regards the protection of the authority of the judiciary is the confidence which the courts in a democratic society must inspire in the public at large (see, *mutatis mutandis*, among other authorities, *Fey v. Austria*, 24 February 1993, § 30, Series A no. 255-A). The Court considers that its assessment must likewise relate to the question whether such a measure was necessary in a democratic society. Concurring with the Constitutional Court of Georgia (see paragraph 47 above), the Court reiterates in this regard that the right of peaceful assembly is, like the right to freedom of expression, one of the foundations of any democratic society. Consequently, only truly convincing and most compelling reasons can justify an interference with this right (see *Djavit An*, cited above, § 56, and *Ouranio Toxo and Others v. Greece*, no. 74989/01, § 36, ECHR 2005-X (extracts)).

88. Notably, the Court observes that the demonstration, in which just five persons participated, was dispersed a few minutes after it had started; during that extremely short period of time the applicants were able to voice only a very few slogans. Those facts already call into question the Government's assertion about the level of disruption of public order (compare with *Sergey Kuznetsov v. Russia*, no. 10877/04, § 44, 23 October 2008). Nor does the content of those slogans amount, in the eyes of the Court, to contempt of court or to an otherwise wrongful act. Thus, the majority of those slogans represented critical value judgments, in which the applicants, resorting to a certain degree of political exaggeration and harsh words, referred to a matter of public concern in Georgia – the independence of the judiciary; the applicants addressed the Tbilisi Court of Appeal without being violent or rejecting democratic principles in their speech. The Court reiterates in this respect that the judiciary, as with all other public institutions, cannot be immune from criticism, however shocking and unacceptable certain views or words may appear (see *Sergey Kuznetsov*, cited above, § 45, and *Skałka v. Poland*, no. 43425/98, § 34, 27 May 2003).

89. The Court considers that the only offensive phrase voiced by one of the applicants during their short picket was the referral to the Minister of the Interior as "Lavrentiy Beria's bastard". However, the Court cannot understand how that expression could constitute contempt of court, as it was not addressed to a member of the judiciary (contrast with *Skałka*, cited above, § 36). In any event, in a democratic society, greater tolerance should be shown to those expressing opinions which are critical of important public figures, even if those opinions are expressed, as in the instant case, inarticulately, intemperately or in a provocative manner (see *Hyde Park and Others (nos. 5 and 6)*, cited above § 43, and *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, §§ 52 and 53, ECHR 1999-VIII).

90. Furthermore, it is a matter of particular concern for the Court that in her decision of 29 June 2006 the President of the Tbilisi Court of Appeal, rather than fulfilling her duty to establish convincing grounds justifying the dispersal of the demonstration and the punishment of the applicants by the imposition of detention, mostly paraphrased the general and abstract terms of the qualification of offences of breach of public order and contempt of court under the domestic law. She did not explain, by reference to the particular circumstances of the incident, how exactly the administration of justice was being obstructed and which specific phrases uttered by the applicants were considered to be severe enough to constitute contempt of court; the only matter she relied on in her decision – the statement that the applicants had held their demonstration "inside the court building, in its central entrance" – was untrue and thus unacceptable for the purpose of justification under the second paragraph of Article 11 (see, among other authorities, *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 70, ECHR 2006-II). Consequently, restriction on the applicant's right to

peaceful assembly cannot be said to have been based on relevant and sufficient reasons (compare with *Sergey Kuznetsov*, cited above, §§ 40 and 45; and *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, §§ 63 and 64, Series A no. 30).

91. Lastly, the Court is struck by the fact that, given the absence of any violent behaviour by the applicants during the authorised picket, they were nevertheless subjected to the most severe penalty applicable to the offences in question, namely thirty days of deprivation of liberty (compare, for instance, *Galstyan*, cited above, § 116, in which the Court found that the sanction of deprivation of liberty for three days for participating in an authorised and peaceful street demonstration impaired the very essence of the right to freedom of peaceful assembly). The unreasonableness of the drastic penalty in the present case is further magnified when assessed against the above-mentioned absence of sufficient and relevant reasons in the underlying decision of 29 June 2006.

92. Having regard to the above considerations, the Court concludes that the Georgian authorities failed to act with due tolerance and good faith as regards the applicants' right to freedom of assembly, did not adduce sufficient and relevant reasons justifying the interference, and imposed a sanction which was disproportionate in the circumstances.

93. It follows that there has been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 7

94. The applicants further complained that that they had no right of appeal against their conviction of 29 June 2006, in breach of Article 2 of Protocol No. 7. This provision reads as follows:

Article 2 of Protocol No. 7

> "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."

95. The Government submitted that there had been no violation of the provision in question, as a judge of the Supreme Court had duly examined, under Article 279 of the CAO, the applicants' appeal of 21 July 2006 against their conviction of 29 June 2006.

96. The applicants disagreed, arguing that the examination of their appeal under Article 279 of the CAO had not been effective, as it had depended on the discretion of the domestic authorities.

97. The Court observes that the situation in the present case is identical to those examined by the Court in two similar landmark cases on the matter – *Gurepka v. Ukraine* (no. 61406/00, §§ 59-61, 6 September 2005) and *Galstyan* (cited above, §§ 124-127). Notably, in the instant case as well, irrespective of the fact that the applicants' appeal had actually been examined by a judge of the Supreme Court under Article 249 of the CAO, the extraordinary review procedure contained in that domestic provision, which depended on the domestic authorities' discretionary power and lacked a clearly defined procedure or time-limits, represented an ineffective remedy for the purposes of Article 2 of Protocol No. 7 (compare with *Galstyan*, cited above, § 126, and *Gurepka*, also cited above, §§ 60-61). Furthermore, the offences of which the applicants were convicted by the decision of 29 June 2006 cannot, given the severity of the consequent punishment, be considered "minor", and thus fall under the relevant exception contained in second paragraph of this provision (ibid.).

98. There has thus been a violation of Article 2 of Protocol No. 7.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

99. Lastly, relying on Article 5 §§ 2, 3, 4 and 5 of the Convention, cited independently and in conjunction with Article 13 of the Convention, the applicants complained about various specific instances of procedural unfairness of the domestic proceedings, including inability to lodge an appeal against their conviction of 29 June 2006.

100. However, having regard to its findings under Articles 5 § 1 and 6 § 1 of the Convention and Article 2 of Protocol No. 7 which are *lex specialis* with respect to the major legal issues examined in the present case (compare with *Hakobyan and Others*, cited above, § 125-127 and 136; *Galstyan*, cited above, § 53; *Gurepka*, cited above, § 51; and *Menesheva*, cited above, §§ 105-107), the Court considers that this part of the application, which is a reiteration of the already examined issues, must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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

102. The applicants claimed 20,000 euros (EUR) each in respect of non-pecuniary damage.

103. The Government considered the applicants' claims to be unfounded and excessive.

104. The Court has no doubt that the applicants suffered distress and frustration on account of the violation of their various rights (see paragraphs 71, 78, 93 and 98 above). Ruling on an equitable basis, the Court awards each of the applicants EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

105. The applicants claimed EUR 3,970 and 1,330 United Kingdom pounds sterling (GBP, EUR 1,667) on account of their representation before the Court by, respectively, the two Georgian lawyers and the British lawyer (see paragraph 2 above). The two amounts were broken down into the number of hours spent and the lawyers' hourly rates – seventy-nine hours and forty minutes at the rate of EUR 50 for the two Georgian lawyers and twenty-two hours at the rate of GBP 100 in 2006 and GBP 150 in 2010 for the British lawyer. That itemisation also indicated the dates and the exact types of legal services rendered.

106. The applicants further claimed, on the basis of the relevant receipts, 1,361.20 Georgian laris (GEL, EUR 657) for postal and translation expenses. They also claimed EUR 592 and GBP 160 (EUR 200) for certain other expenses allegedly incurred by their Georgian and British representatives when working on the application; no financial documents were submitted in support of the latter claim.

107. The Government briefly commented that the applicants' claims were mostly unsubstantiated and excessive.

108. The Court observes that the Georgian and British lawyers from GYLA and EHRAC actually rendered the necessary legal assistance to the applicants. It also observes in this connection that in a number of Georgian cases it has found that the teamwork of the lawyers from these two NGOs in proceedings before the Court could not be left uncompensated and that

similar evidence of the lawyers' work – a detailed and credible itemisation of the hours spent – was acceptable proof of the expenses incurred by the applicants' representatives (see *Klaus and Yuri Kiladze v. Georgia*, no. 7975/06, §§ 91-94, 2 February 2010, and *Tsintsabadze v. Georgia*, no. 35403/06, § 105, 15 February 2011). Thus, the Court considers it appropriate to award the applicants EUR 3,970 and GBP 1,330 (EUR 1,667) on account of their representation by, respectively, the two Georgian lawyers and the British lawyer.

109. As regards the administrative expenses, the Court, in the light of its well-established case-law on the matter (see, for instance, *Ghavtadze v. Georgia*, no. 23204/07, §§ 118 and 120, 3 March 2009), and having due regard to the documentary evidence submitted, considers that the applicants should be awarded GEL 1,361.20 (EUR 657) for postal and translation expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 5 § 1, 6 §§ 1 and 3 (c), 10 and 11 of the Convention and Article 2 of Protocol No. 7 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (c) of the Convention;

4. *Holds* that there has been a violation of Article 11 of the Convention;

5. *Holds* that there has been a violation of Article 2 of Protocol No. 7;

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

7. *Holds* unanimously
   (a) that the respondent State is to pay the applicants, within three months of 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 national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 6,000 (six thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 5,957 (five thousand nine hundred and fifty-seven euros) to the applicants jointly plus any tax that may be chargeable to them, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above 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 2 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President