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

SECOND SECTION

CASE OF RAMISHVILI AND KOKHREIDZE v. GEORGIA

(Application no. 1704/06)

JUDGMENT

STRASBOURG

27 January 2009

FINAL

27/04/2009

This judgment may be subject to editorial revision.

In the case of Ramishvili and Kokhreidze v. Georgia,

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria, *judges,*
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 6 january2009,

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

PROCEDURE

1. The case originated in an application (no. 1704/06) 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 Shalva Ramishvili ("the first applicant") and Mr Davit Kokhreidze ("the second applicant"), on 9 January 2006.

2. The applicants' initial representatives, Mr Aleksandre Baramidze and Mr Hans von Sachsen-Altenburg, were replaced on 23 February 2007 by Ms Lia Mukhashavria and Mr Vakhtang Vakhtangidze, lawyers practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr M. Kekenadze of the Ministry of Justice.

3. On 8 February 2006 urgent notice of the introduction of the application was given to the Government in accordance with Rule 40 of the Rules of Court. On 16 February 2006 priority treatment was granted to the application under Rule 41 of the Rules of Court. On 3 April 2006 the application was communicated to the Government under Rule 54 § 2 (b) of the Rules of Court.

4. The applicants alleged that their treatment in the courthouse during their remand hearings and trial had been degrading within the meaning of Article 3 of the Convention. The first applicant further challenged the conditions of his confinement in a punishment cell, whilst the second applicant complained of overcrowding in his ordinary cell. Under Article 5 §§ 1 (c) and 4 of the Convention, the applicants complained that their pre-trial detention between 27 November 2005 and 13 January 2006 had been unlawful and challenged the fairness and speediness of the judicial proceedings bearing on the detention issues.

5. On 30 June 2006 the Government filed their observations on admissibility and merits. The applicants replied on 29 August and 19 September 2006. Another set of observations was submitted by the Government and the applicants on 9 and 30 November 2006 respectively.

6. By a decision of 26 June 2007, the Court declared the application partly admissible.

7. Neither of the parties availed themselves of the right to submit further written observations on the merits (Rule 59 § 1 of the Rules of Court). The applicants filed their claims for just satisfaction on 3 September 2007. Despite the Court's invitation, the Government did not submit comments in reply.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The first and second applicants were born in 1971 and 1961 respectively and live in Tbilisi.

A. As the case stood prior to its communication on 3 April 2006

9. The applicants were co-founders of and shareholders in a private media company ("the media company") which owned the television channel "TV 202" ("the channel"), broadcasting in Tbilisi. The first applicant, as an anchorman of the popular talk show "Debatebi" (*Debates*), often addressed politically sensitive issues.

10. Under a service agreement of 25 April 2005, the media company undertook to air several documentary films made by "Studio Reporter", a private film-production company ("the production company"). Consequently, in May 2005, the latter started working on a documentary concerning certain business activities of Mr B., a parliamentarian from the presidential political party ("the ruling party"), which held at that time the majority of seats in Parliament. The object of the documentary was to expose Mr B.'s allegedly illegal commercial activities. According to the Government, except for the applicants, nobody within the media company knew about the making of the compromising film.

11. After Mr B. had tried in vain to persuade the journalists of the production company to drop the project, he contacted the first applicant. From May to August 2005 the parliamentarian placed numerous telephone calls, asking Mr Ramishvili to block the film. Eventually, they agreed to meet and discuss the issue.

12. During their first meeting, which took place in the morning of 26 August 2005, an agreement was reached whereby the first applicant would not allow the airing of the film on his channel in exchange for USD 100,000 (EUR 80,000[1]). Immediately after this meeting, Mr B. complained to the Minister of the Interior that the first applicant had been blackmailing him. He reported to the authorities that, in the event of the compromising film being aired, it could have disastrous consequences not only for him personally but also for the image of the ruling party.

13. The same day, the Ministry of the Interior initiated criminal proceedings on suspicion of extortion for the purpose of gaining vast profits. Later that day, Mr B. met the first applicant again. They agreed that the latter would accept the sum in two instalments: USD 30,000 and 70,000 (EUR 24,010 and 56,000).

14. In the morning of 27 August 2005, Mr B. informed the prosecution service that he would hand over the first instalment to the first applicant around noon. The 100 US dollar notes were consequently processed with invisible chemicals and marked with a special pencil, while their serial numbers were recorded by the investigation authorities. The Prosecutor General's Office ("the PGO") issued a ruling, dated 27 August 2005, at 11.00 a.m., authorising the secret videoing of the meeting without a court order, due to "urgent necessity". The camera was hidden on the parliamentarian's person.

15. The meeting during which Mr B. handed over the money to the first applicant took place on 27 August 2005 at noon, in the apartment of a mutual friend of theirs. It was also attended by the second applicant. The conversation and the handing over of the money were videoed secretly ("the video recording of 27 August 2005") by the parliamentarian. When the applicants left the meeting and got into the second applicant's car, they were arrested and searched. USD 30,000 and the car in which the money was found were seized. On the same day the Tbilisi City Court legalised the secret video recording.

16. On 28 August 2005 Mr B. was recognised by the investigation as a victim and both applicants were charged with conspiracy to commit extortion. They pleaded "not guilty" and refused to testify at that time.

17. On 29 August 2005 the Tbilisi City Court granted the prosecutor's motions and remanded the applicants in custody for three months. The order noted that the collected evidence – the parliamentarian's statements, the results of the on-the-spot search of the applicants, the seized materials and the video recording of 27 August 2005 – substantiated the suspicion that the applicants had committed the offence with which they had been charged. The court dismissed the prosecutor's argument that the applicants might

[1] Here and elsewhere, approximate conversions are given in accordance with the exchange rate on 30 October 2008.

abscond in view of the gravity of the charge as unsubstantiated. However, it endorsed the fear that they could interfere with the establishment of the truth by exerting pressure on those witnesses who were under their hierarchical authority in the media company.

18. On 31 August 2005 the applicants appealed against this decision, complaining that their detention was not lawful within the meaning of Article 5 of the Convention, since the prosecution had failed to prove the reasonableness of the imposition of such a measure. They complained in particular that, apart from the parliamentarian's statements, the prosecution had not submitted any other evidence substantiating the suspicion that a crime had been committed. Further, they alleged that, contrary to Article 18 of the Convention, they had been detained not for the purpose of bringing them before the competent legal authority but in order to silence their television channel.

19. On 31 August 2005 the investigator issued a ruling, incorporating as evidence into the criminal case file the seized US dollar notes, the second applicant's car and the traces of chemicals found there, as well as the applicants' fingerprints and some other results of their search and arrest on 27 August 2005.

20. On 2 September 2005 the Tbilisi Regional Court dismissed the applicants' appeal at an oral hearing. The case file contained photographs of that hearing showing that the applicants had been kept in a barred dock, surrounded by several guards. The photographs further showed that the court room was extremely overcrowded (for a detailed description of the hearing, see paragraphs 52-65 below).

21. The decision of 2 September 2005 endorsed the reasoning of the lower court concerning the applicants' managerial positions in the media company as a ground supporting the risk that they might influence the witnesses. It reiterated that the collected evidence – the parliamentarian's statements, the results of the on-the-spot search of the applicants, etc. – suggested "with a high degree of probability" that the applicants had committed the crime.

22. On 6 September 2005 the investigator incorporated the video recording of 27 August 2005 and its verbatim transcript as evidence into the criminal case file. On 29 September 2005 the investigator presented the transcript to the applicants. Calling its authenticity into question, the applicants requested leave to watch the recording.

23. On 19 October 2005 the investigator informed the applicants in writing that the preliminary investigation had been terminated. On 11 November 2005 the case materials were presented to the applicants in prison. However, because at that time no appropriate equipment had been provided, it was only on 14 and 16 November 2005 that the applicants, in the presence of their advocates, watched the video recording of 27 August 2005 for the first time.

24. On 22 November 2005 the prosecutor sent the criminal case, along with the bill of indictment of 19 November 2005, to the Tbilisi City Court for trial.

25. On 27 November 2005 the three month pre-trial detention period expired without the court ordering its extension.

26. On 6 December 2005 the applicants filed a complaint with the Tbilisi City Court, demanding their immediate release. They claimed that they had been deprived of their liberty in breach of Article 159 of the Code of Criminal Procedure ("the CCP") and Article 5 of the Convention, since no judicial decision had authorised their detention since 27 November 2005. No immediate response from the court was forthcoming.

27. On 11 January 2006 the administration of Tbilisi No. 5 Prison, where the first applicant was provisionally detained, transferred the latter from his ordinary cell to the punishment cell (*karceri*), which measured 5.65 square metres and was intended for solitary confinement, as a disciplinary punishment for using a mobile telephone, the latter incident occurring for the first time. According to the first applicant, in Soviet times, this type of cell was used for the confinement of those on death row. There was another person sharing the cell with the applicant ("the second inmate").

28. On 13 January 2006, the applicants were taken to the admissibility hearing before the Tbilisi City Court. The City Court decided to commit the applicants for trial under Article 417 § 1 of the CCP. In addition, it rejected their motion of 6 December 2005 to be released or to have their detention pending trial replaced by a more lenient measure of restraint, ruling in the following terms:

> "The defence incorrectly alleges a violation of the Convention as regards the fact that, after the three month detention period expired, [the applicants] were not immediately brought before a court. [In fact] the criminal procedural law does not require that, once the case is referred to the court for a hearing on the merits, any procedural decision be taken on the measure of restraint applied to the accused. According to the Convention, the [national] court ought to decide on a case within a reasonable period of time. 'Reasonable period of time' is defined by Article 680(4) § 8 of the CCP as follows. 'In the course of the hearing of a criminal case by a District (Regional) Court, the period of detention must not exceed 12 months from the date on which the case is sent to the court.' Consequently, the [applicants'] detention pending trial has not exceeded its legal term."

29. In the operative part of the decision of 13 January 2006, it was noted that there was no appeal possible.

30. The case file contained photographs showing that the applicants had been kept in a barred dock during the hearing of 13 January 2006 and that there had been security guards armed with machine guns and wearing hood-like black masks in the court room.

31. On 14 January 2006 at about 11.00 p.m., some toxic smoke (later explained by the authorities to have been caused by the burning of a

mattress in the adjacent cell, see paragraphs 44 and 74 below) leaked into the first applicant's punishment cell. Owing to the lack of ventilation, the smoke filled the cell quickly, causing the applicant and the second inmate to suffer from smoke inhalation, an inability to breathe and eye watering. According to the first applicant, they shouted and knocked on the door for half an hour before the prison guard opened the door and let both inmates out until the smoke was gone.

32. On 15 January 2006 the first applicant was returned from the punishment cell to his ordinary cell.

33. On 19 January 2006 the second applicant, also provisionally detained in Tbilisi No. 5 Prison, was moved from his six-bed cell, with six inmates in it, to another cell with twelve beds, where twenty-nine prisoners were kept. The inmates were obliged to take turns to sleep.

34. On 20 January 2006 the first applicant filed a complaint with both the PGO and the Ministry of Justice ("the MJ"), the authority in charge of the penitentiary system, challenging the conditions in the punishment cell and the lawfulness of his confinement there. According to the complaint, the punishment cell had no window or ventilation and was extremely damp. Tap water ran non-stop and noisily 24 hours a day. A narrow pipe in the corner, located just one metre away from the bed, was designated as a toilet. It was so narrow that it was difficult for the inmates to pass urine and excrement straight into the hole; there was no partition separating "the toilet" from the rest of the cell and a stench hung in the air all the time. One inmate could not avoid seeing what the other was doing. The cell was infested with cockroaches and rats occasionally ran through it. The only bed, infested with vermin, was not wide enough to accommodate two persons.

35. In such conditions, the first applicant claimed that he had not been able either to have any normal sleep or to eat properly. During the whole period of his confinement in the punishment cell, he was never let out for a walk or other physical exercise. He alleged that he was never visited by a doctor or provided with any other care.

36. From 20 January 2006 hearings were held almost daily. In the hearing rooms, the applicants were always kept in the same conditions as those on 13 January 2006: being displayed to the public in the barred dock, in the presence of hooded guards with machineguns.

37. At a hearing on 23 February 2006, the second applicant announced that he had been continuously deprived of necessary medical care and of drinking water in prison. He declared that he intended to begin a hunger strike. The judge did not respond. Shortly afterwards, six more inmates were placed in the second applicant's already overcrowded 12-bed cell, increasing the total number of prisoners there to 35.

38. On 25 February 2006 the PGO informed the first applicant that it had taken note of his complaint of 20 January 2006. It also advised him that,

according to the MJ Penitentiary Department, the conditions in the punishment cell fully complied with "international standards".

39. On 27 February 2006, after the prosecution had finalised its submissions before the court, the applicants requested, on the basis of Article 140 § 17 of the CCP, that their detention pending trial be replaced by a more lenient measure of restraint in view of newly discovered circumstances. In that connection the applicants referred to the fact that none of the witnesses questioned by the prosecution appeared to be under their hierarchical authority, but were rather co-founders of the media company. The Tbilisi City Court dismissed that request on the same day. The judge acknowledged that this fact was indeed "a newly-discovered circumstance...", but ruled that it was "not a significant new circumstance which could justify revision of the imposed restraint measure". The judge went on to say, "This is especially true since the accused have not yet presented their submissions and have not been examined; nor has the collected evidence been assessed..."

40. The applicants then challenged the judge for bias, questioning her impartiality, but this challenge was dismissed as unsubstantiated by the same judge of the Tbilisi City Court that same day. An appeal against both decisions of 27 February 2006 lay only in connection with an appeal against the final verdict.

41. On 29 March 2006 the Tbilisi City Court, convicting them of conspiracy to commit extortion, sentenced the first applicant to four and the second applicant to three years in prison. On 30 June 2006 the Tbilisi Appellate Court upheld the verdict.

42. After conviction the applicants were transferred from Tbilisi No. 5 Prison to Rustavi No. 6 Prison. They challenged the appellate decision of 30 June 2006 in the Supreme Court. The case file did not contain information on any further developments in the criminal proceedings.

B. Subsequent developments in the case, as disclosed by the parties' observations

1. Proceedings with regard to the first applicant's confinement in the punishment cell

43. On 3 July 2006 the PGO informed the first applicant that on 18 May 2006 it had opened a criminal case with regard to his complaint of 20 January 2006 concerning his confinement in the punishment cell but, after a preliminary investigation, had decided on 26 June 2006 to close it as no elements of a crime had been disclosed.

44. The PGO decision of 26 June 2006 noted that the first applicant's transfer to the punishment cell had been, under Rule 22 § 1 (b) of the Prison Rules, a lawful disciplinary punishment for the use of a mobile telephone,

such an act representing a grave violation of detention rules. Based on the statements of the administrative staff of Tbilisi No. 5 Prison, as well as the prison doctor and the second inmate, the decision stated that the first applicant had been visited by the doctor daily and offered food identical to that provided in the ordinary cells. It noted however that, according to the first applicant's statements, he had refused to consume the food due to the unsanitary conditions in the punishment cell. As to the fire incident created by the inmate in the adjacent cell on 14 January 2006, the PGO, relying on witness testimonies, stated that the first applicant had immediately been taken out of his cell until the smoke was gone and that there had been no danger to his life.

45. The Government submitted the minutes of the interview with the second inmate on 21 May 2006. The latter specifically mentioned that the food in the punishment cell had been of a satisfactory quality and that, in any case, he and the first applicant had had ample supplies because of their relatives' food parcels, which they had brought with them from their ordinary cells.

46. Relying on the examination of the punishment cell carried out by an investigative commission on 23 May 2006, the PGO's decision of 26 June 2006 further stated that the cell had been equipped with an appropriate system of "air filtration" and inside artificial lighting, and that there had been a toilet, partitioned by a special wall from the rest of the cell.

47. According to the minutes of the punishment cell inspection of 23 May 2006, submitted by the Government, it was conducted without the first applicant or his advocates' participation. They further disclosed that the punishment cell had been located in the basement of Tbilisi No. 5 prison, its length and width being 276 cm by 205 cm, and the bed had been 120 cm wide. As to the toilet, it consisted of a hole in the ground and two cemented bricks for placing the feet. There was no sink, and the water tap was set just above the toilet hole. The only source of lighting was an electric bulb. According to the minutes of the inspection and the attached plan of the cell, there was no window with access to daylight.

48. With due regard to the above findings, the PGO decided on 26 May 2006 that the prison officials had not exceeded or abused their powers when transferring the first applicant to the punishment cell.

49. On 18 July 2006 the first applicant filed a complaint against this decision, claiming that the investigation had not been effective or objective. He complained that, whilst he had filed his complaint on 20 January 2006, the PGO had opened proceedings only five months later on 18 May 2006. This lapse of time, in his view, had been more than sufficient for the prison administration to renovate the cell completely with a view to hiding the appalling conditions in which he had been held. In this regard, he challenged the PGO's failure to enquire as to when exactly the ventilation, lighting and the toilet partition had been installed in the punishment cell.

The first applicant further complained that the PGO had inexplicably disregarded his assertions that none of the above-mentioned conditions had existed during his confinement and had arbitrarily endorsed those of the prison staff who, being potential suspects in the case, could not be said to have been impartial witnesses. He challenged the fact that, despite his statement that he had never been provided with medical care, the PGO had trusted the statements of the prison doctor, another potential suspect, without having examined any other source of information (i.e. the relevant prison logbook of medical visits). He further claimed that the second inmate, being under the complete control of the authorities who were well-known for abuses in prisons, might easily have been threatened or forced to make false statements. Finally, the first applicant complained that he and his advocates had learnt about the initiation of the criminal proceedings against the prison administration only after they were terminated on 26 June 2006. Consequently, they had not been given a chance to participate in the investigation so as to ensure its objectivity.

50. On 24 July 2006 the first applicant's complaint of 18 July 2006 was dismissed by the Tbilisi City Court. In reply to his complaint that the criminal proceedings had commenced only four months after his complaint of 20 January 2006 had been lodged, the decision noted that "the case materials do not support the suspicion that the cell has been renovated since the proceedings were opened on 18 May 2006." It further stated that the PGO had duly assessed the witnesses' statements, including those of the prison staff and the first applicant, and that nothing in the case file suggested that the second inmate might have been forced to testify against the first applicant.

51. The decision of 24 July 2006 was adopted without an oral hearing and pronounced *in absentia*.

2. Hearing of 2 September 2005

(a) The video recording submitted by the Government

52. As part of their observations on the admissibility and merits of the application, the Government submitted a video recording of the proceedings concerning the applicants' appeal against their detention on remand held at the Tbilisi Regional Court on 2 September 2005. The applicants replied that this recording did not include the scenes of greatest turmoil and had been considerably edited to portray a more favourable image of the hearing, excluding, for example, images of armed men inside the court room. They agreed however that this recording should be accepted and relied on as a source of information about the hearing. The applicants additionally provided annotations to some of the scenes.

53. The opening scenes of the Government's recording showed an overcrowded court room before the start of the hearing. A large number of

media personnel and cameras on tripods were situated in the middle of the room. The dock was a metal cage with a barred ceiling, located at the far end and separated from the rest of the court room. The audience was comprised of civilians, with a large number of women most of whom could be identified as the applicants' supporters. However, there were some fifteen men in plain clothes who were undercover police agents, according to the applicants. Moreover, many of those men were openly identified as agents by the applicants' supporters on the spot. The supporters engaged in heated argument with several men in plain clothes, complaining about the lack of space and the State's inability to provide a larger court room for the hearing.

54. The four uniformed guards and several men in plain clothes escorted the handcuffed applicants into the court room. When the judge was seated, the crowd was still pressing into the room. The entrance door was blocked by the plain-clothes men from inside, while several hooded and armed guards could be seen forcing the door closed from the outside. The judge requested the people in the room to calm down. The judge specifically reproached the media representatives for their disorderly behaviour.

55. The general noise level in the court room remained unabated even after the hearing was declared open. The judge offered the applicants the possibility of conducting the hearing *in camera* but they refused. Loud male voices could be heard in the court room bitterly arguing and uttering vulgar curses. The body language of the judge betrayed resignation and frustration, as he was unable to establish order.

56. When the advocates spoke they were dazzled by camera flashes and halogen camera lights of the journalists. During their speech there were continual interruptions by the judge and the public, and relentless banging on the entrance door from the outside, as well as the sound of construction works nearby. Now and then mobile telephones rang and persons conducted conversations. Communication between the defence, the prosecution and the judge, constantly hampered by the unsolicited interruptions of journalists, was made possible by repeatedly requesting other people to move aside or sit down on the floor. The temperature in the court room was high, judging by the sweat on people's faces. The persons presumed to be undercover agents, and some court personnel, could be seen constantly entering and leaving the judge's deliberation room.

57. In order to see what was happening, respond to the judge or be heard, the applicants had to stand on the chair in the barred dock, hanging on to the metal side bars, and shout. They repeatedly asked the judge and the prosecutors to speak louder as they could not hear them. When answering one of the judge's questions, the first applicant, hanging on the bars and grimacing as if to emphasise by body language his resentment at the situation, made the following remark:

> "...The Government might have something against me...this I can [more or less understand]...but [I cannot] understand why it is necessary to detain [the second applicant] ... [unless,] of course, the Government wish to fill up the prisons [*cixeebi*]!...[Well,] I have been there [in the prison]; unimaginable things happen there!...There is no need for [the second applicant]...no place for him to be with me, here, in this cage! [*galiaSi*]...This is my declaration!"

58. The immediate proximity of the prosecutor to the judge presented no obstacle of audibility for them. The dialogue of questions and answers between judge and prosecutor was unaffected. Several persons alleged to be undercover agents in plain clothes were shown behind the prosecutor and investigator.

59. There were episodes when the prosecutor refused to reply to the second applicant's questions regarding specific circumstances of the case, and instead made fun of him. Thus, for example, when the second applicant asked the exact time of his arrest, the prosecutor answered: "How should I know?!...I was not there when they arrested you!" To another question of the second applicant, the prosecutor answered: "That is a ridiculous question... go and ask the parliamentarian about that!", and the question was then dismissed by the judge.

60. In another episode, when the second applicant asked, "Could you, please, indicate the page and the paragraph in the case materials which prove that the parliamentarian...has testified against me?", the prosecutor started laughing in reply and answered in a sarcastic tone, "Which case materials?! Which page?! Which paragraph?!" and then murmured "This man is not sane..." The judge intervened and rephrased the question as follows, "Do the parliamentarian's testimonies incriminate [the second applicant]?" The prosecutor's "yes" was endorsed by the judge as a reply to the question.

61. In some episodes, when the applicants or their advocates asked questions which perplexed the prosecutor, the judge either directly replied instead (i.e. by locating the necessary pieces of evidence in the case file) or rephrased the questions in a leading manner, thereby suggesting a suitable answer for the prosecutor. Thus, one of the advocates asked the prosecutor why it was necessary to impose detention on remand for three months, when there were only 8-12 witnesses who remained to be examined. As the prosecutor was unable to answer, the judge interrupted with, "[Because] the criminal procedural legislation does not envisage the imposition of detention for a lesser term".

62. As the judge retired for deliberations, the public were ushered out of the court room by the guards and plain-clothes men. After the deliberations, the room contained many fewer people than before. The composition of the public had changed to an almost all-male audience, avoiding the camera by ostentatiously turning their backs towards it and the judge. As the judge read the decision, the plain-clothes men stood next to him. Strangers constantly entered and left the judge's deliberation room. There were brief

glimpses of one or two guards wearing black hood-like masks inside the court room in front of the closed door.

63. The closing scenes briefly showed the large number of presumably undercover plain-clothes agents leaving the court room, not hiding their irritation when filmed. A few of the applicant's supporters, readmitted to the room after the deliberations, complained that the agents had occupied almost all of the seats. They asked the cameraman to film the presence of the agents. The first applicant then stated, "Look, there they are ...the agents (*TanamSromlebi*)!" and pointed to the plain-clothes men. The following remarks could be heard: "Their presence was overwhelming! ...More agents than family or friends!"

64. In the last scene, a hooded, armed man inside the court room nodded to the cameraman, apparently requesting the latter to stop recording.

(b) The video recording submitted by the applicants

65. The case file also contained a video recording, submitted by the applicants, showing how around 30-34 plain-clothes men, identified in the Government's video as undercover agents, attending the hearing of 2 September 2005, left the Tbilisi City Court through the same back door exit as the handcuffed applicants. The agents were shown being greeted with familiarity in the backyard by the special security forces waiting for the applicants. Some of the undercover agents were filmed changing from their civil clothes into police jackets. The applicants were escorted from the courthouse in the presence of a great number of guards carrying machine guns and wearing black, hood-like masks.

3. Early release of the second applicant

66. In a letter of 11 July 2007, the second applicant informed the Court of his early release from prison on the basis of a Presidential pardon of 26 May 2007. He maintained his intention to pursue the Court proceedings.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

67. *The Code of Criminal Procedure ("CCP"), as it stood at the material time*

Article 12 § 7 "Security of the person, respect for human dignity..."

"In the course of an investigative or judicial action, it is prohibited to exert upon a person physical or psychological pressure...or to subject a detained person to conditions that encroach upon his or her human dignity."

Article 159 §§ 1 and 2 "Detention"

"1. No one may be arrested without a court order or other judicial decision.

2. Courts, prosecutors and investigators are obliged to immediately release any person who is detained unlawfully."

Article 417 §§ 1 and 3 "Committal for trial"

"1. Where there is a sufficient basis for hearing the case, the judge (court), without prejudging the merits of the case, shall commit the accused for trial...

3. During the admissibility hearing, in addition to deciding whether to commit the accused for trial..., the judge (court) shall decide whether to impose a measure of restraint on the accused."

Article 419 "Time-limits for committal decisions"

"The judge (court) shall decide whether to commit the accused for trial within 14 days or, in complicated cases, within a month of the date of delivery of a final judgment on the last criminal case registered with the same judge (court)."

Article 437 §§ 2 and 3 provided that the presiding judge was the authority in charge of a hearing. He or she was responsible for maintaining order in the court room and carried out all kinds of procedural actions envisaged by the Code. In addition, Article 442 stated that, during a hearing, the judge had to abide by all the general legal principles contained in Chapter II of Part I of the Code, of which Article 12, cited above, formed a part.

68. *The Criminal Code*

Article 181 § 1 - "Extortion"

"Extortion is claiming another person's object or property right or property use under threat of using violence against the victim, or the victim's close relative, destroying or damaging the object, or of making public information which may impair the victim's reputation, or of spreading such information as may substantially prejudice the victim's rights..."

69. *The Prison Rules, adopted by Order No. 367 of 28 December 1999 (as it stood at the material time)*

Under Rule 29 § 3 of the Prison Rules, in the event of a violation of prison regulations, a detainee could be subjected by the prison administration to disciplinary sanctions. Rule 29 § 8 listed the disciplinary sanctions as follows:

(a) a warning;

(b) a reprimand;
(c) a short-term or long-term ban on visits;
(d) confinement from 3 to 20 days in a punishment cell;
(e) prohibition to receive parcels.

Rule 30 § 1 explicitly prohibited detainees from taking food to a punishment cell from their ordinary cells.

Under Addendum No. 1 to the Prison Rules, detainees were forbidden to use telephones in prison.

70. *The Report of 30 June 2005 (CPT/Inf (2005) 12) on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ("the CPT") from 18 to 28 November 2003 and from 7 to 14 May 2004*

The relevant parts of the Report read as follows:

"**a. Prison No. 5, Tbilisi**

67. At the end of the visit in 2001, the CPT's delegation asked the Georgian authorities to take out of use all cells located in the basement of the main detention block (i.e. quarantine, transit and disciplinary cells). This measure was reportedly taken soon after the 2001 visit. However, as a result of the increasing number of prisoners sent to Prison No. 5, it became necessary to start using the basement cells again. In May 2004, some 170 prisoners were being held in the basement... The cells were dark, badly ventilated, damp and disgustingly filthy. Further, in some cells, prisoners were sharing beds.

68. Conditions on the other levels of the main detention block remained extremely poor. Many of the dormitories were grossly overcrowded, with as little as 1 m² of living space per prisoner. The number of inmates often exceeded the number of beds, thereby compelling prisoners to sleep in two and occasionally even three shifts (for example, 46 prisoners in a cell measuring 45 m² which was equipped with 28 beds). The situation was exacerbated by poor ventilation and lack of natural light...The sanitary arrangements were also completely inadequate: up to 50 prisoners might be sharing the same dilapidated and generally filthy toilet facility inside a dormitory. Further, there was no heating, and exposed electrical wires throughout the accommodation areas created a high risk of accidents...

...

72. The situation with regard to food had not changed since the 2001 visit; in practice, prisoners relied to a great extent on food parcels from their families.

Further, as in 2001, prisoners did not receive any personal hygiene items and there were no laundry facilities. The prison had relinquished responsibility for providing prisoners with bedding and many prisoners slept in what could only be described as rags...

74. ...at the end of the visit in November 2003 the delegation made three immediate observations in respect of Prison No. 5 in Tbilisi, requesting the Georgian authorities

to: ...(ii) definitively take out of service all cells located in the basement of the main detention building (including the isolation and "*karzer*" cells); (iii) ensure that all prisoners, including those in the "quarantine" section and disciplinary isolation cells, are guaranteed outdoor exercise of at least one hour per day.

In view of the deteriorated situation observed in May 2004, the delegation reiterated the above-mentioned immediate observations...

75. At the end-of-visit talks in May 2004, the Minister of Justice acknowledged that Prison No. 5 was substandard in all the key aspects...

...

c. Discipline

138. ...At Prison No. 5 in Tbilisi, the disciplinary cells criticised in the report on the visit in 2001 had been taken out of service and replaced with nine other cells, located in a different part of the basement of the main detention block. Admittedly, the cells in question were larger and equipped with sleeping platforms. However, the cells were substandard in all other respects; in particular, they had no access to natural light and were unventilated, humid and dilapidated...

139. During the second periodic visit, the delegation was concerned to note that prisoners undergoing disciplinary confinement in the establishments visited were still not offered outdoor exercise ... at the end of the visit in November 2003, the delegation made an immediate observation, requesting the Georgian authorities to ensure that inmates placed in disciplinary cells in all penitentiary establishments in the country are guaranteed at least one hour of outdoor exercise per day...The CPT reiterates [that] recommendation..."

71. *Human Rights Watch Report "Undue Punishment: abuses against prisoners in Georgia." (Volume 18, No. 8(D) September 2006)*

The relevant parts of the Report read as follows:

"...The space allocated for prison cells in Georgia—both in law and in practice—is significantly less than that required by regional human rights standards... In its 2001 recommendations to the Georgian government, the CPT lowered this standard suggesting, "A standard of 4 m² per prisoner should be aimed at." Georgia's Law on Imprisonment requires that the living space for each convict in the cells of the Penitentiary Department must be not less than two square meters. Detainees should each be provided with a separate bed...

Tbilisi Prison No. 5 dates from 1912...In many parts of Tbilisi Prison No. 5, the walls and floors are crumbling and in a state of disrepair. Electrical wires are exposed in the cells and corridors. The regular detention cells are filled with as many two-tier metal bunk beds as the rooms will hold. There were no tables or chairs in the rooms at the time of Human Rights Watch's visit. Detainees must sit on beds or on the floor when they are not sleeping. The toilets are partitioned from the rest of the cell by only a short wall or sometimes with a piece of fabric or shower curtain that the inmates have put up themselves. This design allows for very little privacy for those using the sanitary facilities. Because of the overcrowding, beds are often placed very close to

the toilets. The toilets are decaying and filthy. In several cells Human Rights Watch found piles of garbage near the door. Human Rights Watch considers the conditions in which detainees are housed in this facility violate the prohibition on inhuman or degrading treatment.

All of the cells in Tbilisi Prison No. 5 visited by Human Rights Watch smelled strongly of human sweat, human excrement, and cigarette smoke. Detainees spend consecutive days and weeks in these cells without being allowed outside... The cells were also unreasonably hot, due to the overcrowding and lack of ventilation. Many prisoners were reduced to wearing very little clothing in an effort to stay cool...

Human Rights Watch found the most appalling conditions to be in the basement "quarantine" cells in Tbilisi Prison No. 5...The cells visited by Human Rights Watch had no natural light or ventilation, owing to their location in the basement, and only one tiny window covered with screens. Artificial light was provided by a bright light over the door. There was no running water in the sinks. There was standing water on the floor in one cell. The bed frames consisted of bare iron planks, and there were no mattresses and only a few tattered blankets...

The deputy director of Tbilisi Prison No. 5 claimed that detainees "wash once per week." However, detainees stated that they do not shower once per week because "[t]here are too many people."...

In Tbilisi Prison No. 5, Human Rights Watch found the kitchen building to be decaying. Water was overflowing some of the food preparation containers resulting in standing water on the floor..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

72. Under Article 3 of the Convention, the first applicant challenged the conditions of his confinement in the punishment cell of Tbilisi No. 5 Prison, whilst the second applicant complained of the overcrowding in the same prison. Both applicants also submitted that their treatment in the courthouse – being kept in "metal cages", surrounded by intimidating, hooded, armed guards, being exposed to an independent observer as "criminals" – had been degrading.

73. Article 3 of the Convention provides:

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

A. The first applicant's confinement in the punishment cell

1. The parties' arguments

74. The Government submitted that the first applicant's confinement in the punishment cell from 11 to 15 January 2005 had been a lawful disciplinary sanction under Rule 29 §§ 3 and 8 of the Prison Rules and Addendum I thereto. They claimed that the prosecution authorities had opened a criminal case on 18 May 2006 and conducted a comprehensive domestic inquiry, the conclusions of which, based on the statements of the prison staff and the second inmate, showed that the conditions in the punishment cell had been fully satisfactory (see paragraphs 44-46 above). They went on to emphasise that the first applicant's health had been examined by the doctor daily and that the food provided had been of the same quality as that provided in ordinary cells. In addition, the Government stated, the first applicant had been allowed to receive food parcels from his relatives, which had helped him to maintain adequate nutrition in the punishment cell. As to the fire incident of 14 January 2006, the Government alleged that the authorities had acted with due diligence by immediately taking the first applicant out of the punishment cell until the smoke had gone.

75. The Government submitted that the limited duration of confinement in the punishment cell, the objective it pursued and the effect it had on the first applicant should be taken into account when assessing whether that measure had amounted to ill-treatment within the meaning of Article 3 of the Convention.

76. The first applicant replied that the authorities' internal investigation could not be regarded as "effective" because it had only been launched four months after his complaint of 20 January 2006, and after the Court had given notice of his application to the Government. The fact that the investigation was terminated on 26 June 2006, that is shortly before the Government submitted their initial observations on the admissibility and merits of the application, on 30 June 2006, proved that the prosecution authorities had been guided not by the duty of due diligence to provide the first applicant with a reasonable possibility of redress, but rather to equip the Government with an additional argument in the proceedings before the Court. The first applicant further stated that, owing to the belated nature of the investigation, the prison administration had had plenty of time to improve the conditions in the punishment cell. For example, the administration might have built a partition wall between the toilet and the rest of the cell or fixed a water tap. Since neither he nor his advocates had been afforded an opportunity to visit the punishment cell after his confinement there, he was not in a position to provide any further comments. The first applicant particularly condemned in this regard the fact

that neither he nor his advocates had been offered the opportunity to take part in the relevant criminal proceedings and investigation measures, and that the prosecution authorities had relied only on the statements of the prison administration and the second inmate – whose impartiality could reasonably be questioned.

77. The first applicant further submitted that some of the findings of the domestic inquiry still disclosed unacceptable conditions of his confinement in the punishment cell. Thus, the authorities acknowledged that the cell had no window with access to the daylight, that there was no sink and that the inmates had to wash their face and body above the toilet hole. In addition, a 120 cm bed, the existence of which was confirmed by the authorities, could not accommodate two grown men. The first applicant noted that the Government had not commented on his complaint about the inability to have outdoor exercises throughout his confinement.

78. Lastly, the first applicant alleged that the placement in the punishment cell was not proportionate to the impugned breach of the prison rules, especially since the trial was due to begin two days later.

2. The Court's assessment

79. The Court reiterates that, under Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured (see *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII; *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). When assessing conditions of detention, one must consider their cumulative effects as well as the applicant's specific allegations (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

80. Most of the Government's arguments are based on the results of the internal criminal investigation, to the effect that the first applicant's complaints about the conditions in the punishment were untrue. However, the Court is not convinced by that conclusion. First, the investigation cannot be considered to have been effective because it was launched only four months after the first applicant complained to the prosecution authorities, thus giving the prison administration sufficient time to renovate the cell in question. Secondly, the investigation could not reasonably be considered to have been objective, in so far as it was conducted without the participation of the first applicant's advocates, and its conclusions were mostly based on the statements of the prison administration complained of (see, amongst many others, *Gharibashvili v. Georgia*, no. 11830/03, §§ 60-63, 29 July

2008; *Barbu Anghelescu v. Romania*, no. 46430/99, § 66, 5 October 2004; *Corsacov v. Moldova*, no. 18944/02, § 70, 4 April 2006).

81. The Court further notes that some of the first applicant's allegations were either undisputed by the Government or even confirmed by the results of the above-mentioned internal investigation. Thus, for example, the Government said nothing about the lack of access to outdoor exercise and conceded that the punishment cell, located in the basement, did not receive any daylight. Further corroboration of the first applicant's description of his punishment cell is to be found in the Reports on the visits to Tbilisi No. 5 Prison made by the CPT and Human Rights Watch at the material time (see paragraphs 70 and 71 above; *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II; *Kehayov v. Bulgaria*, no. 41035/98, § 66, 18 January 2005; *Ostrovar v. Moldova*, no. 35207/03, § 80, 13 September 2005).

82. As to the Government's argument that the first applicant's confinement in the punishment cell was in compliance with the relevant internal regulations, the Court reiterates that the subject matter of the first applicant's complaint under Article 3 of the Convention is not an illegal use of power by the prison staff, nor the lawfulness of the imposition of that disciplinary sanction, but rather the compatibility of the general conditions in the punishment cell of Tbilisi No. 5 Prison with the requirements of Article 3 (cf. *Ramishvili and Kokhreidze v. Georgia* (dec), no. 1704/06, 26 June 2007). A measure of disciplinary confinement may not in itself be in breach of those requirements. It is rather the proportionality of its imposition and the conditions of the confinement which may be questionable under the above provision (see, *mutatis mutandis*, *Rohde v. Denmark*, no. 69332/01, §§ 96-98, 21 July 2005, and *Mikadze v. Russia*, no. 52697/99, §§ 110-127, 7 June 2007).

83. Nevertheless, the Court observes that, amongst the several available disciplinary sanctions envisaged for a breach of prison regulations (see paragraph 69 above), the administration chose the most severe one – confinement in a punishment cell. No consideration was apparently given to such facts as, for example, the nature of the first applicant's wrongdoing, his personality and the fact that it was his first such breach. The Court recalls in this connection that the proportionality of an additional punitive measure imposed upon a prisoner is of importance when assessing whether or not the unavoidable level of suffering inherent in detention has been exceeded (see, *mutatis mutandis*, *Renolde v. France*, no. 5608/05, §§ 120-129, 16 October 2008, and *Mathew v. the Netherlands*, no. 24919/03, §§ 197-205, ECHR 2005-IX).

84. As to the conditions in the punishment cell, the Court observes that, as acknowledged by the Government, the space in the cell was 5.65 square metres for two inmates (see paragraph 47 above). The Court notes in this connection that, as early as 2001, the CPT recommended the Georgian Government to aim at a minimum standard of 4 square metres per prisoner

(see paragraph 71 above). It is to be recalled that the lack of personal space afforded to detainees can be so extreme as to justify, in itself, a finding of a violation of Article 3 of the Convention. Thus, for example, in a number of cases, the Court has found violations of that provision solely on the basis of the fact that the applicants were afforded less than 3 square metres of personal space (see, for example, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005; *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005).

85. In the *Peers* case, an even bigger cell (7 square metres for two inmates) was considered a relevant factor in finding a violation, coupled, as in the present case, with a lack of ventilation and daylight (see *Peers v. Greece*, no. 28524/95, § 70-72, ECHR 2001-III, and *Trepashkin v Russia*, no. 36898/03, § 94, 19 July 2007). The Court further notes that, during his confinement, the applicant was not allowed to take outdoor exercise. That factor adds to the problem of the insufficient cell space per detainee (see *Karalevičius v. Lithuania*, no. 53254/99, § 36, 7 April 2005).

86. The requirement of sufficient personal space also presupposes, under Article 3 of the Convention, that a detainee should be able to enjoy basic privacy in his or her everyday life (see, *mutatis mutandis*, *Belevitskiy v. Russia*, no. 72967/01, §§ 73-79, 1 March 2007; *Valašinas*, cited above, § 104; *Khudoyorov*, cited above, §§ 106 and 107; *Novoselov v. Russia*, no. 66460/01, §§ 32, 40-43, 2 June 2005). As the first applicant was obliged to share a 120 cm bed with a stranger and could not even relieve himself in "the toilet" without being observed by the latter, the conditions obviously did not allow any elementary privacy (see *Kalashnikov v. Russia*, no. 47095/99, § 99, ECHR 2002-VI).

87. Nor could the sanitary conditions in the punishment cell (see paragraph 34 above) be deemed to have been acceptable. As acknowledged by the Government, the first applicant had even refused to consume the food on account of the unhygienic conditions in the cell (see paragraphs 34, 35 and 44 above). As regards the nutrition problem, the Court further notes that the Government were apparently content to acknowledge that the first applicant had been able to rely on his relatives' food parcels in the punishment cell (see paragraph 74 above). However, the permission to consume one's own food cannot be a substitute for appropriate catering arrangements, because it remains the State's obligation to ensure the well-being of persons deprived of their liberty (see *Stepuleac v. Moldova*, no. 8207/06, § 55, 6 November 2007; *Kadiķis v. Latvia* (no. 2), no. 62393/00, § 55, 4 May 2006; *Valašinas*, cited above, § 109).

88. The above factors are sufficient for the Court to conclude, without exploring other aspects of the complaint, that, when confined to a punishment cell in Tbilisi No. 5 Prison from 11 to 15 January 2006, the first

applicant was held in inhuman and degrading conditions, in violation of Article 3 of the Convention.

B. The conditions of the second applicant's detention

1. The parties' arguments

89. Despite the Court's invitation, the Government did not comment on the admissibility and merits of the second applicant's complaints concerning the conditions of his detention.

90. In reply, the second applicant maintained his complaints and stated that the Government's silence amounted to the tacit acknowledgment of a violation.

2. The Court's assessment

91. The Court notes that the Government did not dispute the second applicant's complaint about the conditions of his detention in Tbilisi No. 5 Prison. The latter's description of these conditions coincides with the relevant accounts of the CPT and Human Rights Watch (see paragraphs 70 and 71 above).

92. The focal point here is the second applicant's transfer to an overcrowded cell on 19 January 2006. Initially, he shared with 29 inmates a cell where there were only 12 beds. After he had raised this issue before a court on 23 February 2006, six more inmates were placed in his cell, increasing the total number of prisoners to 35. The inmates were obliged to take turns to sleep (see paragraphs 33 and 37 above). Such overcrowding was in itself a breach of Article 3 (see, among many others, *Kalashnikov*, cited above, §§ 96-97), the more so since the restricted space for sleeping was not compensated by freedom of movement during the daytime with outdoor exercise (see, *a contrario*, *Valašinas*, cited above, §§ 103 and 107, and *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004). The second applicant's detention in such overcrowded conditions lasted, according to the case file, at least until 29 March 2006, the date of his conviction, after which he was transferred from Tbilisi No. 5 Prison to Rustavi No. 6 Prison (see paragraphs 41 and 42 above).

93. In the light of the above observations, the Court concludes that there has been a violation of Article 3 of the Convention on account of the second applicant's detention in an overcrowded cell at Tbilisi No. 5 Prison.

C. The applicants' treatment in the courthouse

1. The parties' arguments

94. Although invited to do so by the Court, the Government did not provide an explanation or justification for the applicants' placement in a barred dock during the public hearings. They limited their observations to the submission of a video recording of the judicial review of the applicants' detention on 2 September 2005 (see paragraph 52 above), in support of the assertion that there had been only four uniformed guards in the court room, excluding the presence of "special forces".

95. The applicants replied, first, that the Government's silence with respect to their complaint about being placed in the cage-like dock should be interpreted as tacit acceptance that they had been. Secondly, the applicants stated that even the Government's video recording, despite having been edited, still showed armed and hooded men present inside and outside the court room. Moreover, relying on another video recording showing the premises of the courthouse on 2 September 2005, the applicants reiterated their complaint that there had been many other hooded and armed men waiting outside the court room, which instilled feelings of fear and tension in the courthouse (see paragraphs 52-65 above).

2. The Court's assessment

96. The Court reiterates that a measure of restraint does not normally give rise to an issue under Article 3 of the Convention where this measure has been imposed in connection with a lawful detention and does not entail a use of force, or public exposure, exceeding that which is reasonably considered necessary. In this regard it is important to consider, for instance, whether there is a danger that the person concerned might abscond or cause injury or damage (see, among many others, *Raninen v. Finland*, 16 December 1997, § 56, *Reports of Judgments and Decisions* 1997-VIII).

97. The Court recalls that a violation of Article 3 of the Convention was found in a case where the applicant, who was not a public figure, was unjustifiably handcuffed, the latter restraint measure being less stringent than those complained of in the present case, during public hearings (see *Gorodnichev v. Russia*, no. 52058/99, §§ 105-109, 25 May 2007). Even in the absence of publicity, a given treatment may still be degrading if the victim could be humiliated in his or her own eyes (see *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26). Thus, handcuffing the applicant in a private setting still gave rise to a violation of Article 3 of the Convention in a situation where no serious risks to security could be proved to exist (see *Henaf v. France*, no. 65436/01, §§ 51 and 56, ECHR 2003-XI; *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05 and 8742/05, §§ 57 and 58, 27 March 2007).

98. Returning to the circumstances of the present case, the Court notes that the applicants were people enjoying social esteem; they were co-founders and shareholders of a television channel. The first applicant enjoyed a wider reputation as anchorman of a popular TV talk-show which had been on the air almost daily. Both applicants were on trial for the first time and for the offence of extortion – payment in exchange for not disclosing an embarrassing documentary about an allegedly corrupt parliamentarian.

99. Having examined the relevant photo and video materials, the Court notes that, during the judicial review of the issue of their detention on 2 September 2006, the public watched the applicants in a barred dock, which looked very much like a metal cage, separated from the rest of the court room and having a barred ceiling. Heavily armed guards wearing black hood-like masks were always present in the courthouse. Several photographs show such guards inside the court room. As acknowledged by the Government, the hearing was broadcast live throughout the country (see paragraph 119 below).

100. The Court shares the applicants' concern that such a harsh and hostile appearance of judicial proceedings could lead an average observer to believe that "extremely dangerous criminals" were on trial. Apart from undermining the principle of the presumption of innocence, the disputed treatment in the court room humiliated the applicants in their own eyes, if not in those of the public. The Court also accepts the applicants' assertion that the special forces in the courthouse aroused in them feelings of fear, anguish and inferiority (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX; *Tyrer*, cited above, § 32). Such harsh treatment could easily have had an impact on the applicants' powers of concentration and mental alertness during the proceedings bearing on such an important issue as their physical liberty, thus calling for very close scrutiny by the Court (see *Khudoyorov*, cited above, § 119).

101. The Court notes that, against the applicants' status as public figures, the lack of earlier convictions and their orderly behaviour during the criminal proceedings, the Government have failed to provide any justification for their being placed in a caged dock during the public hearings and the use of "special forces" in the courthouse. Nothing in the case file suggests that there was the slightest risk that the applicants, well-known and apparently quite harmless persons, might abscond or resort to violence during their transfer to the courthouse or at the hearings (see *Sarban v. Moldova*, no. 3456/05, §§ 88 and 89, 4 October 2005).

102. In the light of the above considerations, the Court concludes that the imposition of such stringent and humiliating measures upon the applicants cannot be justified in the present case. There has accordingly been a violation of Article 3 of the Convention on account of the applicants' treatment during the hearing of 2 September 2005.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

103. Under Article 5 § 1 (c) of the Convention, the applicants challenged the lawfulness of their detention after the court order of 29 August 2005 expired on 27 November 2005. The provision relied on reads, in its relevant part, as follows:

> "1. ... No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (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..."

1. The parties' arguments

104. The Government submitted that there was no need for a court to authorise the applicants' pre-trial detention after the three month detention period had expired on 27 November 2005, in so far as by that time their case had already been referred for trial. The Government stated that, pursuant to the relevant provisions of the CCP, the fact that the case had been transmitted to the trial court already sufficed for the detention to fall under "judicial scrutiny" and thus to be fully compatible with Article 5 § 1 of the Convention.

105. The applicants replied that their detention from 27 November 2005 to 13 January 2006 had been unlawful because it was not covered by any valid court decision.

2. The Court's assessment

106. The Court notes that a violation of Article 5 § 1 (c) of the Convention has been found in a number of cases concerning the practice of holding defendants in custody solely on the basis of the fact that a bill of indictment had been filed with a trial court. Detaining defendants without a specific legal basis or clear rules governing their situation – with the result that they may be deprived of their liberty for an unlimited period of time without judicial authorisation – is incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see, amongst others, *Gigolashvili v. Georgia*, no. 18145/05, §§ 32-36, 8 July 2008; *Ječius v. Lithuania*, no. 34578/97, §§ 60-64, ECHR 2000-IX; *Grauslys v. Lithuania*, no. 36743/97, §§ 39-41, 10 October 2000; *Baranowski v. Poland*, no. 28358/95, §§ 53-58, ECHR 2000-III; *Khudoyorov*, cited above, §§ 146-147).

107. The Court notes that the present application is no different from the *Gigolashvili* or *Ječius* cases cited above, owing to the similar deficiencies in Georgian criminal procedural law and practice at the material time.

108. Notably, under Article 417 §§ 1 and 3 of the CCP, once the prosecution had terminated the investigation and transmitted the criminal case file to the court with jurisdiction, the latter could hold an admissibility hearing and decide whether to commit the accused for trial and whether it was necessary to impose a measure of restraint on that individual.

109. However, a problem arose with the timing of such a hearing. Pursuant to Article 419 of the CCP, an admissibility hearing was required to be held within fourteen days or, for "complicated cases", within a month of the delivery of a final judgment on the last, unrelated criminal case brought before the same judge, but the latter had no time constraints in deciding that "last" case. The CCP neither required that, in the meantime, a judicial order authorising the defendant's detention should be issued, nor did it specify any statutory limits for this phase of detention. Such statutory lacunae resulted in the practice of detaining defendants without any judicial decision for months (see also *Absandze v. Georgia* (dec.), no. 57861/00, 20 July 2004).

110. It follows that, between 27 November 2005 and 13 January 2006, for one month and seventeen days, there was no judicial decision authorising the applicant's detention. The fact that the criminal case file was sent, together with the bill of indictment, to the trial court did not render the remaining period of detention "lawful" within the meaning of Article 5 § 1 of the Convention (see *Gigolashvili*, cited above, § 36, and *Nakhmanovich v. Russia*, no. 55669/00, § 68, 2 March 2006).

111. There has thus been a violation of Article 5 § 1 (c) of the Convention in respect of that period of detention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

112. The applicants complained that the judicial review of the lawfulness of their detention on 27 August and 2 September 2005 and 13 January 2006 had breached the guarantees afforded by Article 5 § 4.

113. In particular, they complained that the prosecution had not made available to their lawyers, prior to the initial review of their detention on 27 August and 2 September 2005, a copy of the video recording of 27 August 2005.

114. Specifically referring to the manner in which the hearing of 2 September 2005 had been held, and assessing it against the situation in the judiciary obtaining in the respondent State at that time (cf. *Ramishvili and Kokhreidze v. Georgia*, decision cited above), the applicants asserted that the issue of their detention had not been the object of a fair hearing by an

impartial and independent tribunal. The applicants also alleged that, having been placed in "metal cages" during that hearing, they would have been presumed guilty on the basis of their appearance by any independent observer. Moreover, the judge might have had difficulty in remaining impartial in the presence of such a high number of undercover agents and hooded, armed men in the courthouse.

115. As to the review of 13 January 2006, the applicants complained that it was not a speedy reply to their complaint of 6 December 2005. They also submitted that their advocates had been notified about that hearing only two days in advance.

116. Article 5 § 4 of the Convention reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

1. The parties' arguments

117. The Government submitted that the judicial review of 29 August 2005 had been conducted within the statutory time-limit of 72 hours following the applicants' arrest on 27 August 2005. Consequently, the proceedings had been speedy. As to the review of 13 January 2006, the fact that the Tbilisi City Court examined the applicants' complaint of 6 December 2005 satisfied, in the Government's view, the requirements of Article 5 § 4 of the Convention.

118. In response to the complaint about the absence of the video recording of 27 August 2005 from the criminal case file at the beginning of the criminal proceedings, the Government stated that the applicants had been given access to its verbatim transcript on 29 September 2005, that they had watched the recording on 16 November 2005 and that, in any case, the video had been shown to the parties during a hearing on the merits.

119. As to the review of detention on 2 September 2005, the Government reiterated their argument under Article 3 of the Convention, namely, that there had been only four uniformed guards in the court room, excluding the presence of any hooded, armed men. They claimed that the presence of four guards had been necessary to secure order and did not render the proceedings unfair. With regard to the overcrowding in the court room, the Government noted that the judge had offered the applicants the possibility of conducting the hearing *in camera* but they had refused. In any case, the Government claimed, communication between the accused applicants and the judge had not been hampered by the turmoil in the court room. Moreover, the applicants could make applications to the judge in writing. The Government added that, whilst at the material time there had been a shortage of court rooms of appropriate size due to the reconstruction of the courthouse, the authorities had not been under an obligation to

provide larger premises. Noting that the hearing had been broadcast live throughout the country, the Government added that the principle of publicity had been respected.

120. Finally, the Government stated that the applicants' reliance on the statements of former judges of the Supreme Court of Georgia in support of their allegation concerning the ineffectiveness of the judiciary in Georgia was unconvincing (cf. *Ramishvili and Kokhreidze*, decision cited above). Those judges had been dismissed from office for "flagrant violations of the law" and, consequently, their comments could not be deemed impartial.

121. The applicants replied that the Government's own video recording proved the fact that on 2 September 2005 they had been denied a fair hearing by an independent and impartial tribunal. Despite the great number of security personnel at the beginning, and an even greater number at the end of that hearing, the court had been unable to maintain order. The prosecution was seated significantly closer to the judge than the defence. As for the applicants, they had been placed in a cage at the far end of the court room. They had had to stand on a chair in the cage and even suspend themselves from the bars in order to follow the proceedings at least visually. The ability of the advocates to listen to the prosecutor's address was severely diminished and it was at times entirely impossible for the applicants in their remote location. The authorities could not be expected to designate large court rooms but they did have the obligation to secure the applicants and their advocates' effective and fair participation at the hearing. Referring to the relevant episodes of the video recordings, the applicants stated that, in the presence of the authorities' machine guns in and outside the court room and numerous uniformed and plain-clothes agents freely entering and leaving his deliberation room, the hearing judge could not possibly have been uninfluenced in reaching his decision on 2 September 2005.

122. As to the hearing on 13 January 2006, even though their complaint of 6 December 2005 had been heard, this could not be said to constitute a speedy reply and was likewise not protected by the safeguards of a fair hearing.

123. Lastly, the applicants noted that the situation in the judiciary had been deplored not only by former judges of the Supreme Court of Georgia but also by independent and competent international observers, such as the European Judges and Public Prosecutors for Democracy and Fundamental Rights ("Magistrats européens pour la Démocratie et les Libertés – MEDEL") (cf. *Ramishvili and Kokhreidze*, decision cited above).

2. The Court's assessment

(a) As to the inability to have access to the video recording of 27 August 2005 during the initial review of the applicants' pre-trial detention

124. The Court recalls that, under Article 5 § 4 of the Convention, the concept of lawfulness of detention is not limited to compliance with the procedural requirements set out in domestic law but also concerns the reasonableness of the suspicion grounding the arrest, the legitimacy of the purpose pursued by the arrest and the justification of the ensuing detention. Therefore, information which is essential for the assessment of the lawfulness of a detention should be made available in an appropriate manner to the suspect's lawyer (see, amongst other authorities, *Lamy v. Belgium*, 30 March 1989, § 29, Series A no. 151, and *Garcia Alva v. Germany*, no. 23541/94, §§ 39-43, 13 February 2001).

125. In the present case, the Court notes that the applicants were caught red-handed with the parliamentarian's money. This fact alone was sufficient to raise a reasonable suspicion that extortion had been committed. Furthermore, even without a copy of the video recording of 27 August 2005, the criminal case file contained many other relevant pieces of evidence – the US dollar banknotes, the results of the search, the second applicant's car, fingerprints, etc. – by the time the detention order of 29 April 2005 was reviewed by the appellate and final instance court on 2 September 2005 (cf. *Ramishvili and Kokhreidze*, decision cited above).

126. Thus, the absence of the video recording of 27 August 2005 from the criminal case file at the beginning of the criminal proceedings, which fact might well have been conditioned by the considerations of the efficiency of investigation and/or speediness of the *habeas corpus* procedure (see, *Shishkov v. Bulgaria*, no. 38822/97, § 77, ECHR 2003-I (extracts); cf. *Galuashvili v. Georgia* (dec.), no. 40008/04, 24 October 2006), cannot be said to have rendered it impossible for the domestic courts to review the lawfulness of the applicants' pre-trial detention.

127. The Court concludes that there has been no violation of Article 5 § 4 of the Convention in connection with the above-mentioned complaint.

(b) As to the hearing of 2 September 2005

128. The Court recalls that, although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required by Article 6 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see, for instance, *Assenov and Others v. Bulgaria*, 28 October 1998, § 162, *Reports* 1998-VIII; *Włoch v. Poland*, no. 27785/95, § 125, ECHR 2000-XI; *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A). In view of

the dramatic impact of the deprivation of liberty on the fundamental rights of the person concerned, proceedings conducted under Article 5 § 4 of the Convention should in principle meet, to the largest extent possible under the circumstances of an on-going investigation, the basic requirements of a fair trial (see *Shishkov*, cited above, § 77). The proceedings must be adversarial and must always ensure "equality of arms" between the parties (see, among others, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II, and *Schiesser v. Switzerland*, 4 December 1979, §§ 30-31, Series A no. 34).

129. Having examined the relevant photographic and video materials, the Court deplores the manner in which the hearing of 2 September 2005 was held. It notes that the applicants were placed in a caged dock at the far end of the court room in complete disorder and surrounded by guards. They could hardly communicate with their lawyers, could not properly hear the prosecutor and the judge and could hardly make their submissions audible due to the turmoil in the room. In order to participate in the hearing, the applicants had to stand on a chair in the barred dock, hanging on to the metal side bars, and shout. Communication in the court room was constantly hampered by the unsolicited interruptions of journalists, unabated ringing of mobile telephones, persons vehemently arguing with each other and uttering vulgar curses, etc., and the judge was either unwilling or unable to establish order.

130. The Court further notes that, unlike the prosecutor, the applicants' advocates, when making their defence statements, were dazzled by camera flashes and halogen camera lights. Their statements were hardly audible. By contrast, due to the immediate proximity of the prosecutor's seat to the judge, the dialogue of questions and answers between them was unaffected and presented no comparable obstacle of audibility (see paragraphs 52-64).

131. The Court considers that an oral hearing in such chaotic conditions can hardly be conducive to a sober judicial examination. It cannot accept the Government's argument that the possibility of written applications could have palliated the above-mentioned turmoil in the court room. It notes that oral hearings should create such conditions that verbal responses and audio-visual exchanges between the parties and the judge in a court room flow in a decent, dynamic and undisturbed manner.

132. The Court reiterates that the applicants' confinement inside the barred dock, which looked like a metal cage, and the presence of "special forces" in the courthouse were detrimental to their powers of concentration, powers which are indispensable for conducting an efficient defence (see paragraph 100 above). The Court further agrees with the applicants that such humiliating and unjustifiably stringent measures of restraint during the public hearing, the latter being broadcast throughout the country, tainted the presumption of innocence, the respect for which principle is of paramount importance at every stage of criminal proceedings, including proceedings bearing on the lawfulness of detention pending trial (see, for example,

Iłowiecki v. Poland, no. 27504/95, § 76, 4 October 2001, and *Lebedev v. Russia*, no. 4493/04, § 95, 25 October 2007).

133. The Court recalls that, even without an explicit stipulation of these requirements in Article 5 § 4 of the Convention, it would be inconceivable to suppose that this provision, which enshrines the right "to take proceedings [in] a court", did not envisage, as a fundamental requisite, the independence and impartiality of that court (see *Neumeister v. Austria*, 27 June 1968, § 24, Series A no. 8; *D.N. v. Switzerland* [GC], no. 27154/95, § 42, ECHR 2001-III; *Bülbül v. Turkey*, no. 47297/99, §§ 26-28, 22 May 2007).

134. In the present case, the personal conduct of the judge presiding over the hearing on 2 September 2005 could not be said, in the eyes of the Court, to have been devoid of bias. Thus, the Court cannot escape the observation that the judge was obviously aiding the prosecutor during the hearing, by either directly responding to the questions of the defence instead of the latter or rephrasing these questions in a manner more advantageous to the prosecutor (see paragraphs 60-61 above).

135. As to the requisite "independence", it was undoubtedly tainted by the high number of under-cover government agents and even "special forces" present during the hearing of 2 September 2005. The court cannot be said to have given the appearance of independence when the government agents seemed to be more in control of the situation in the court room than the hearing judge himself and when the latter's deliberation room, which should be private and inviolable, was easily accessed by strangers (see paragraphs 53-54 and 62-65 above).

136. The above considerations are sufficient for the Court to conclude that the judicial review of 2 September 2005 lacked the fundamental requisites of a fair hearing. The review was thus held in violation of the applicants' rights under Article 5 § 4 of the Convention.

(c) As to the hearing on 13 January 2006

137. The Court notes that, whilst the applicants filed a complaint alleging the unlawfulness of their detention without a valid court order on 6 December 2005, the Tbilisi Regional Court replied only on 13 January 2006, i.e. 38 days later. The Government did not explain that inordinate delay. Nothing suggests that it could be attributable to the applicants.

138. In such circumstances, the Court concludes that the judicial review of 13 January 2006 cannot be regarded as a "speedy" reply to their complaint of 6 December 2005. There has thus been a violation of Article 5 § 4 of the Convention (see, for example, *Kadem v. Malta*, no. 55263/00, §§ 43-45, 9 January 2003, where the Court found a period of seventeen days for examining an appeal against detention to be too long, and *Rehbock v. Slovenia*, no. 29462/95, §§ 82-86, ECHR 2000-XII, where two such periods of twenty-three days were considered excessive).

139. As disclosed by the applicants' post-communication submissions, their complaint under Article 5 § 4 of the Convention about the hearing on 13 January 2006 was aimed at challenging the absence of a speedy judicial response (see paragraph 122 above). In view of its finding above, the Court does not deem it necessary to examine, within the same context of "speediness", the applicants' undeveloped allegation that their lawyers had been given notice of that review only two days in advance (see, *mutatis mutandis*, *Mitev v. Bulgaria*, no. 40063/98, §§ 125 and 126, 22 December 2004).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

140. 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

1. Pecuniary damage

141. The first applicant did not submit a claim in respect of pecuniary damage. Accordingly, the Court considers that there is no call to award him any sum on that account (see *Fadıl Yılmaz v. Turkey*, no. 28171/02, § 26, 21 July 2005).

142. The second applicant submitted that he had been taken ill with a skin problem during his detention in Tbilisi No. 5 Prison, Rustavi No. 6 Prison and Rustavi No. 2 Prison. Upon his release from prison on 27 May 2007 (see paragraph 66 above), he visited a dermatologist who diagnosed him, in June 2007, with neurodermatosis, an allegedly incurable and chronic disease.

143. In support of his medical complaint, the second applicant submitted a medical opinion. Having examined that opinion, the Court notes that, apart from reiterating the applicant's own allegation, it did not independently establish at least an approximate cause and date of the origin of the disease. The opinion also stated that, together with a particular kind of medication, the second applicant required sanatorium-type treatment at a resort with a dry climate (i.e. the Dead Sea).

144. Relying on this medical opinion, the second applicant asserted that, in order to avoid any further complication of his skin condition, he would need to spend EUR 10,000 per year, to cover medical consultations, medication and resort treatment. He asked for the respondent Government

to be required to pay him the above-mentioned sum, annually, for the next fifteen years.

145. The Court recalls that there must be a clear causal connection between the pecuniary damage claimed by the applicant and the violation of the Convention. A precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of pecuniary losses suffered by applicants may be prevented by the inherently uncertain character of the damage flowing from the violation. The question to be decided in such cases is the level of just satisfaction in respect of both past and future pecuniary losses. The determination of this matter lies within the Court's discretion, and should be equitable (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 120, ECHR 2001-V).

146. Returning to the circumstances of the present case, the Court first notes that it has found a violation of Article 3 of the Convention not with respect to the total period of the second applicant's detention, covering all possible aspects of poor conditions in all the prisons where he had been kept, but only with respect to the specific fact of his placement in an overcrowded cell at Tbilisi Prison No. 5 between 19 January and 29 March 2006 (see paragraph 92 above). However, the second applicant's submissions did not establish with the requisite degree of certainty that the overcrowding there was the direct cause of his skin condition.

147. Consequently, the Court considers that no clear causal link has been established by the second applicant between the alleged pecuniary damage and the violation it has found. Furthermore, as regards the claim for compensation for the medical costs that might be incurred by the second applicant within the next fifteen years, the Court reiterates that the greater the lapse of time involved, the more uncertain the link becomes between the breach and the damage (see *Sunday Times v. the United Kingdom (no. 1)* (Article 50), 6 November 1980, § 15, Series A no. 38, and *Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, §§ 18-19, ECHR 2000-IX). This uncertainty is aggravated by the second applicant's failure to show the necessity of the claimed amount, in that he did not itemise the approximate prices of the required medication and treatment.

148. In view of the above, the Court rejects the second applicant's claim in respect of pecuniary damage.

2. Non-pecuniary damage

149. The applicants submitted that, as a result of the violations of their Convention rights, they had been subjected to feelings of anguish and anxiety. Pointing out that they were well-known public figures who had been held in high social esteem, they submitted that their good reputation had been significantly damaged by the authorities' arbitrary and debasing

actions in the course of the criminal proceedings against them. Each of them claimed EUR 80,000 in non-pecuniary damages.

150. The Court has no doubt that the applicants must have suffered distress on account of the violations found above. Taking into account the various relevant factors and making its assessment on an equitable basis, the Court awards each of the applicants EUR 6,000 under this head.

B. Costs and expenses

1. Domestic proceedings

151. In the domestic proceedings the applicants were represented by the advocates from two separate law firms – *Andronikashvili, Sachsen-Alternburg, Baramidze & Partners* and *Svanidze & Partners*.

152. Relying on a legal services contract of 30 August 2005 and an invoice dated 30 September 2005, the applicants claimed USD 1,062 (EUR 830), which sum included 18% VAT in accordance with Georgian tax law, as reimbursement for the legal costs paid to *Andronikashvili, Sachsen-Alternburg, Baramidze & Partners* for the representation of their interests during the judicial review of 2 September 2005.

153. The applicants also submitted a legal services contract of 6 July 2006, according to which they were to pay *Svanidze & Partners* GEL 3,600 (EUR 1,987), to which sum should be added 18% VAT, for their representation in all criminal and administrative-legal proceedings against them.

154. Lastly, the applicants claimed that their relatives had spent around EUR 10,000 on supplying them with adequate food in prison. No document or other material evidence in support of the latter claim was submitted.

155. The Court reiterates that, where a violation of the Convention has been found, it may award the applicant the costs and the expenses incurred before the national authorities for the prevention or redress of the violation (see, among other authorities, *Papon v. France*, no. 54210/00, § 115, ECHR 2002-VII, and *Patsuria v. Georgia*, no. 30779/04, § 158, 6 November 2007). Such a claim must always be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

156. In view of its findings with respect to the judicial review of 2 September 2005 (see paragraphs 102 and 136 above), the Court awards the applicants, jointly, EUR 830 in respect of their representation by the law firm *Andronikashvili, Sachsen-Alternburg, Baramidze & Partners* on the basis of the legal services contract of 30 September 2005.

157. As to the claim in respect of the applicants' representation by the second law firm, *Svanidze & Partners*, the Court notes that the underlying legal services contract was signed only on 6 July 2006, i.e. well after the

relevant domestic remedies aimed at preventing or putting an end to the violations of Article 3 and Article 5 §§ 1 (c) and 4 of the Convention had been used by the applicants. The case file shows that, subsequent to the emergence of that second legal contract, there was only one domestic complaint, dated 18 July 2006, aimed at asserting the first applicant's rights under Article 3 of the Convention (see paragraph 49 above). However, having duly examined the complaint of 18 July 2006, the Court notes that it was drafted and filed by a lawyer from the first law firm, *Andronikashvili, Sachsen-Alternburg, Baramidze & Partners*. In the light of the above considerations, the Court rejects the claim made on the basis of the legal services contract of 6 July 2006 as unjustified.

158. Since no documents in support of the food related expenses in prison were submitted, i.e. records from the prison log confirming the fact of receipt of "food parcels" by the applicants, the Court rejects the applicants' claim of EUR 10,000 as unsubstantiated.

2. Proceedings before the Court

(a) The representation by Mr Aleksandre Baramidze and Mr Hans von Sachsen-Altenburg

159. The applicants claimed GEL 25,007 (EUR 13,803) in respect of their representation before the Court by Mr Aleksandre Baramidze and Mr Hans von Sachsen-Altenburg in 2006. In support of this claim, they submitted an invoice dated 31 December 2006 breaking down the services provided into hours and fees, and showing that the payment of the above sum, which included 18% VAT in accordance with Georgian tax law. The applicants submitted another invoice dated 26 September 2006, according to which they had paid these representatives GEL 110 (EUR 61) in additional telephone and postal expenses.

160. With due regard to the above financial documents, the Court considers the claims to be justified and awards the applicants EUR 13,864, jointly, in respect of their representation before the Court by Mr Aleksandre Baramidze and Mr Hans von Sachsen-Altenburg.

(b) The representation by Ms Lia Mukhashavria and Mr Vakhtang Vakhtangidze

161. The applicants' two other representatives, Ms Lia Mukhashavria and Mr Vakhtang Vakhtangidze, also claimed EUR 4,600 for the services they had provided. The representatives asserted that they had spent 92 hours on the Court proceedings at the rate of EUR 50. No invoices, vouchers, contracts or other documents were submitted in support of the above claim.

162. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable

as to quantum. In the present case, regard being had to the absence of any legal or financial documents in support of the applicants' agreement to pay the above-mentioned sum to Ms Lia Mukhashavria and Mr Vakhtang Vakhtangidze and the fact that, except for filing the just satisfaction claims, all the major representative work – the filing of the initial application and two sets of observations on admissibility and merits – was done by the applicants' initial representatives, the Court dismisses this claim.

C. Default interest

163. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 3 of the Convention on account of the first applicant's confinement in a punishment cell at Tbilisi No. 5 Prison;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the second applicant's detention in an overcrowded cell at Tbilisi No. 5 Prison;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicants' treatment in the courthouse on 2 September 2005;

4. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention on account of the absence of a valid court order authorising the applicants' detention between 27 November 2005 and 13 January 2006;

5. *Holds* that there has been no violation of Article 5 § 4 of the Convention on account of the applicants' inability to have early access to the video recording of 27 August 2005;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the manner in which the judicial review of 2 September 2005 was conducted and the absence of a speedy reply to the applicants' complaint of 6 December 2005;

7. *Holds*

(a) that the respondent State is to pay, 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 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 damages;

(ii) EUR 14,694 (fourteen thousand six hundred and ninety-four 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 27 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President