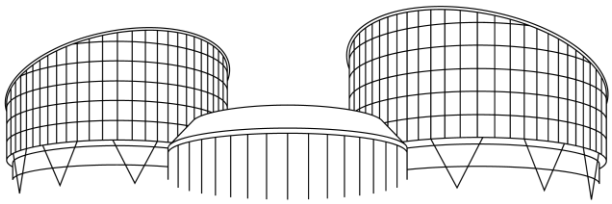

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SAGHINADZE AND OTHERS v. GEORGIA

(Application no. 18768/05)

JUDGMENT
(merits)

STRASBOURG

27 May 2010

FINAL

27/08/2010

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

In the case of Saghinadze and Others v. Georgia**,**

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

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

Having deliberated in private on 29 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 18768/05) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by six Georgian nationals, Mr Batalbi Saghinadze ("the first applicant"), Mrs Lia Saghinadze ("the second applicant"), Mr Vasil Saghinadze ("the third applicant"), Mrs Nana Bliadze ("the fourth applicant"), Mrs Ketevan Saghinadze ("the fifth applicant") and Mrs Nino Saghinadze ("the sixth applicant"), on 27 April 2005. The application initially concerned the applicants' eviction from their home. On 13 December 2006 the first applicant introduced new complaints concerning his pre-trial detention.

2. The applicants were represented by Mr Zurab Todua and Mr Malkhaz Pataraia, lawyers practising in Tbilisi. The Georgian Government ("the Government") were represented by their former Agent, Mr David Tomadze of the Ministry of Justice.

3. On 29 August 2007 the Court decided to give notice to the Government of complaints under Articles 3, 5 §§ 3 and 4 and 8 of the Convention and Article 1 of Protocol No. 1. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Government and the applicants each filed, on 25 December 2007 and 29 February 2008 respectively, observations on the admissibility and merits of the communicated complaints (Rule 54A of the Rules of Court).

5. On 30 July and 5 August 2008 and 5 October 2009, the applicants submitted unsolicited and lengthy pleadings, reiterating arguments already raised in the observations they had submitted and also introducing new and unrelated grievances. The Court decided that those submissions should not

be accepted for inclusion in the case file for its consideration, pursuant to Rule 38 § 1 of the Rules of Court and the practice direction issued by the President of the Court on 1 November 2003.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicants' settlement in the cottage

6. The first and second applicants are husband and wife. They were both born in 1937. Their son, the third applicant, and his wife, the fourth applicant, were born in 1964 and 1970 respectively. The fifth and sixth applicants are the daughters of the first and second applicants and were born in 1962 and 1971 respectively.

7. The applicants, with the exception of the fourth applicant, are internally displaced persons ("IDPs") from Abkhazia, Georgia. As a result of the armed conflict in 1992-93, they, along with approximately 300,000 other mostly ethnic Georgians, fled Abkhazia, abandoning their homes and property there.

8. As the first applicant had been a high-ranking official of the Abkhazian Ministry of the Interior, the Georgian Minister of the Interior offered him, in January 1994, the post of Head of the Investigative Department within his Ministry. After the first applicant accepted the offer, he and his family were settled in a cottage belonging to the Ministry situated at no. 15 Avtchala Street, in the outskirts of Tbilisi ("the cottage").

9. According to the case file, the cottage became the Ministry's property on 29 October 1993. Under Order no. 531 of the Minister of the Interior issued on the above-mentioned date, the Ministry retrieved possession of the cottage from the State sports club Dinamo, and the Ministry's Department of Finances and Logistics became responsible for its use. The order of 29 October 1993 stated that the retrieval of the cottage was justified in the light of "a substantial increase in the number of staff members, ... coupled with the fact that, in view of the current hostilities in Abkhazia, exiled staff members of the Ministry need to be provided with employment and accommodation."

10. The first applicant and his family started using premises adjacent to the cottage to create a small household economy by installing various fixtures and fittings for growing fruit and vegetables, and keeping poultry and small livestock. Later, the Saghinadze family gave free accommodation

to eight homeless relatives who had been similarly displaced from Abkhazia ("the Saghinadze family's relatives"). In 1998 or 1999 the third applicant married the fourth applicant, and the couple also stayed in the cottage.

11. In 1998 the first applicant retired from service with the Georgian Ministry of the Interior.

12. On 20 April 2000 the Ministry issued a letter confirming the legitimacy of the possession of the cottage and the adjacent premises by the first applicant ("the Ministry's letter of 20 April 2000"). The letter stated that the first applicant and his family had been settled in the cottage in 1994 on the basis of an ordinance issued by the then Minister under the Internally Displaced Persons and Refugees Act of 28 June 1996 ("the IDPs Act"). The letter further noted that the possession was of a temporary nature, its period not being specified, and that the possessor had a duty of care. A copy of that letter was also addressed to the relevant local government authorities for information.

13. As made clear by the case materials, in 2001 the fifth applicant left the cottage to settle with her husband in Ukraine. On 31 August 2001 the sixth applicant became the registered owner of part of the land adjacent to the cottage.

B. The *Kaladze* case

14. Almost immediately after the Rose Revolution in November 2003 (for more details, see *The Georgian Labour Party v. Georgia*, no. 9103/04, §§ 11-13, 8 July 2008), the newly appointed Minister of the Interior recalled the first applicant from retirement, asking him to lead the investigation into the *Kaladze* case. This high-profile criminal case, which the authorities had been unable to investigate since 2001, concerned the abduction and disappearance of the brother of Mr K. Kaladze, a well-known Georgian footballer with the Italian football club AC Milan. Having accepted the offer, the first applicant was promoted to the rank of police colonel and appointed as head of an independent investigative unit in charge of the *Kaladze* case and other high-profile abduction cases, by a ministerial order of 13 December 2003.

15. According to the first applicant, his investigative unit elucidated the circumstances of the *Kaladze* case over the following months. Allegedly, those findings were embarrassing for certain high-ranking officials who had been covering up criminal machinations in Georgian football, and on 30 March 2004 the then Prosecutor General, Mr I.O., personally requested the first applicant to drop the investigation.

16. In June 2004 the Prosecutor General, Mr I.O., was appointed as Minister of the Interior. Allegedly, the newly appointed Minister removed the first applicant from the *Kaladze* case and ousted him from office in a degrading manner on 26 June 2004.

17. On 13 October 2004 the first applicant submitted a confidential file to the National Security Council, a consultative body of the President of Georgia. Allegedly, that file contained information revealing abuses of power by Mr I.O. and other high-ranking officials.

C. The eviction from the cottage

18. On 25 October 2004 the police visited the Saghinadze family at home and requested, on the basis of an oral instruction given by the Minister of the Interior, Mr I.O., that they vacate the cottage. The first applicant showed the police the Ministry's letter of 20 April 2000 as proof of the legitimacy of his possession and requested the officers to leave.

19. On 30 October 2004 the police visited the Saghinadze family again, with the same eviction request. However, as the police could not produce a court decision, the first applicant did not let them in.

20. On 31 October 2004 the police made another attempt to evict the applicants. This time the cottage was allegedly besieged by approximately fifteen policemen and several special forces agents wearing black balaclava-like masks. They reiterated that they had an oral order from the Ministry of the Interior to evict the applicants. The first applicant engaged in heated argument with the officers, demanding that they either show a court authorisation to enter his home or leave immediately. On witnessing the tense situation, the second applicant fainted. The fourth applicant, who was pregnant at that time, also suffered a nervous reaction. As the police did not have the necessary court decision, they withdrew.

21. According to the applicants, on 1 November 2004 a group of approximately sixty armed special forces agents wearing black balaclava-like masks broke into their cottage. The Head of the Mtskheta-Mtianeti Regional Police Department was in charge of that operation. The police, who did not have any legal document authorising such an action, forcibly ousted the second applicant and the Saghinadze family's relatives from the cottage (the other applicants, including the first applicant, were not at home during the incident). After the eviction, several police officers remained stationed in the cottage. An adjacent plot of land, which was the sixth applicant's registered property, was also occupied by the police.

D. The remedies pursued

22. Subsequent to the incident of 1 November 2004, the first applicant brought civil proceedings and filed criminal complaints, challenging the arbitrary taking of the cottage and the obstruction of his professional activities by high-ranking officials of the Ministry of the Interior.

23. In those proceedings, which are described below, the first applicant acted throughout on his own behalf as the sole claimant/complainant. None

of the remaining five applicants issued any document authorising either the first applicant or a lawyer to act on their behalf. Consequently, in so far as the first applicant's claim for recovery of possession was concerned, the domestic courts limited the scope of their examination to the first applicant's title to the cottage (see paragraphs 26, 33-37 and 43-44 below).

24. In addition to the proceedings pursued by the first applicant, the sixth applicant brought a successful action concerning the occupation of her plot of land (see paragraph 21 above). As a consequence of her complaints, the Ministry of the Interior vacated the land on 14 March 2005.

1. The proceedings brought by the first applicant to recover possession

(a) The proceedings at first instance

25. On 22 November 2004 the first applicant filed a civil action against the Ministry of the Interior, seeking to recover possession of the cottage under Articles 155, 159 and 160 of the Civil Code. The first applicant complained that the cottage had been in his legitimate possession and had served as the home for him and his family since 1994. Stating that all his personal and household belongings had remained in the sealed cottage and that he and his family had no other place to live, the first applicant also sought an injunction enabling them to remain in the cottage pending resolution of the dispute. On the same day, the Krtsanisi-Mtatsminda District Court in Tbilisi refused the request for an injunction as unsubstantiated but declared the main action admissible for examination on the merits. The first applicant then requested that, if his action were allowed, an immediately enforceable judgment be delivered under Article 268 of the Code of Civil Procedure ("the CCP").

26. In a judgment dated 30 December 2004, the Krtsanisi-Mtatsminda District Court allowed the first applicant's action, ordering the respondent Ministry to hand the cottage back to the first applicant. Noting that the Ministry's letter of 20 April 2000 had been proof of the fact that he and his family had settled there as IDPs from Abkhazia on the basis of a ministerial ordinance, the court found that his possession of the cottage had been legitimate. The court further reasoned that section 7 § 3 of the Act of 28 June 1996 on Internally Displaced Persons and Refugees ("the IDPs Act") prohibited eviction of IDPs already in accommodation, unless (a) an agreement had been reached with them, (b) alternative accommodation had been offered, (c) the eviction had been made necessary by acts of nature and adequate compensation had been provided for, or (d) the IDPs had occupied the disputed premises vexatiously, without any lawful basis. In so far as none of the above-mentioned conditions had been met in the first applicant's case, the court reasoned that the eviction of 1 November 2004 had been unlawful. The District Court also criticised the respondent Ministry for taking the cottage without any legal decision, on the sole basis of the

Minister's oral instruction. It pointed out that, pursuant to Article 51 §§ 1 and 2 of the General Administrative Code, an administrative act such as a ministerial order could be issued orally only in urgent situations and should be followed by a written copy within three days; this had not occurred in the present case. In the light of the above considerations, the court concluded that possession of the cottage should be restored to the first applicant on the basis of Article 160 of the Civil Code.

27. However, the Krtsanisi-Mtatsminda District Court refused to order immediate enforcement of its judgment. It stated that the refusal was justified in the light of the respondent Ministry's allegation that, after the eviction, it had stationed a unit of special forces at the cottage, which needed time to withdraw.

28. On 6 January 2005 supporters of the first applicant visited the cottage. Having found it empty, they learned from the two policemen guarding the premises that, after the eviction of the Saghinadze family, the rooms had been sealed and no unit had ever been stationed there. A record of those findings was drawn up at the scene.

(b) The appellate proceedings

29. On 27 January 2005 the respondent Ministry lodged an appeal against the judgment of 30 December 2004. Acknowledging that it had authorised the first applicant to use the cottage, the Ministry specified that his possession of the property had been of a temporary nature only. Consequently, the termination of the first applicant's possession rights, and the attendant eviction of his family, could not be said to have been unlawful. The Ministry also claimed that the cottage and the adjacent land represented a strategic object for the State.

30. On 13 February 2005 the first applicant also lodged an appeal against the judgment of 30 December 2004 in so far as the refusal to order its immediate enforcement was concerned. Relying on the relevant record (see paragraph 28 above), he complained that the respondent Ministry had misled the lower court about the stationing of a police unit. As another argument for urgent recovery of possession of the cottage, he referred to the difficult social and housing situation of some of his family members. Thus, amongst other arguments, he claimed that the fifth applicant was about to return from Ukraine with her new-born child and that she had nowhere to live in Georgia other than in the cottage.

31. On 19 December 2005 the Tbilisi Regional Court held a hearing on the merits. During that hearing the respondent Ministry acknowledged again that, apart from "Mr I.O.'s oral order", no legal basis for the taking of the cottage had existed. The Ministry also stated that it had offered the first applicant on more than one occasion the opportunity to recover his personal and family belongings from the cottage, but that the latter had refused to cooperate.

32. The Regional Court also examined written and oral submissions from two witnesses, Mr D.M. and Mr J.M., who had been Deputy Ministers of the Interior when the first applicant was settled in the cottage. Those witnesses stated that the first applicant had written to the then Minister of the Interior in January 1993, requesting employment and accommodation. The Minister had approved that request by appending his signature, and, consequently, the first applicant had been offered a new post within the Ministry and accommodated in the cottage. The decision had been prompted by the fact that the first applicant, a qualified agent praised for his investigative skills, had been left homeless by the hostilities in Abkhazia.

33. The Tbilisi Regional Court delivered its judgment on the same day, allowing the respondent Ministry's appeal in full. The court acknowledged the fact that the first applicant had used the cottage and the adjacent premises between January 1994 and 1 November 2004. Referring to the order of 29 October 1993 of the Minister of the Interior (paragraph 9 above), the court further found it established that the cottage had been the Ministry's property at the material time. It was also acknowledged that the first applicant had never obtained a registered title to the real property in question.

34. The appellate court then addressed the issue of whether or not the first applicant could be said to have possessed the cottage in good faith. It stated that, under Article 159 of the Civil Code, the main consideration in that regard was whether he could be said to have acquired possession legitimately. Legitimacy would be excluded if the first applicant could have realised that he had taken possession unlawfully. Conversely, if his possession had turned out to be unlawful but the applicant could not have known it, he should be regarded as having possessed the property in good faith.

35. Reasoning in the light of the above-mentioned principles the Regional Court stated that, in so far as the first applicant had failed to submit a legal document which would show that the cottage had been transferred to him on a lawful basis, his entry into possession could not be said to have been legitimate. The Ministry's letter of 20 April 2000 was not accepted as valid proof in that regard, owing to the inconsistency of the information it contained. Thus, the appellate court noted that, whilst the letter stated that the first applicant had obtained the cottage in 1994 on the basis of the IDPs Act, the latter statute had in reality entered into force much later, on 28 June 1996. In addition, a simple letter could not give rise, in the opinion of the court, to the creation of a legal relationship. The Regional Court further reasoned that the first applicant could not rely on the IDPs Act, in so far as it had been adopted subsequent to his settlement in the cottage. In any case, section 5 § 4 of that Act, prohibiting the eviction of IDPs without a court order, was not applicable to his situation, as it had

been added to the Act on 6 April 2005, that is, after the taking of the cottage on 1 November 2004.

36. In the light of the above considerations, the Tbilisi Regional Court concluded that the first applicant should have realised that his possession of the cottage was unlawful. That being so, the respondent Ministry, as the rightful owner of the cottage, had been entitled to claim its property back from the first applicant's dishonest possession, under Articles 160 and 172 § 1 of the Civil Code.

37. One of the three appellate judges, disagreeing with the majority, delivered a separate opinion. She was of the view that the respondent Ministry's letter of 20 April 2000 clearly showed that the first applicant had obtained the cottage on the basis of a ministerial ordinance. Consequently, he should not be regarded as a dishonest possessor. The judge further noted that the Ministry had evicted the applicants without a court decision. Consequently, whilst the Ministry had a superior title to the cottage, the first applicant was nevertheless entitled to recover possession under Article 160 *in fine* of the Civil Code.

(c) The cassation proceedings

38. On 27 January 2006 the first applicant filed an appeal on points of law. Referring to the respondent Ministry's letter of 20 April 2000, the statements of the ex-Deputy Ministers of the Interior and other evidence in the case file, the first applicant challenged the appellate court's conclusion as to his possession in bad faith. He emphasised that he had not occupied the cottage vexatiously but had been offered it by the respondent Ministry. The legitimacy of his possession further followed from the ministerial order of 29 October 1993, to which the appellate court had referred in its judgment. The first applicant noted that the order clearly stated that, at the time he had been resettled in the cottage, the Ministry had been authorised to use the cottage for the very purpose of housing displaced staff members.

39. The first applicant further argued that the main reason why the cottage had been transferred to him without extensive formalities was the humanitarian crisis prevailing in Georgia in 1993-1994, when around 300,000 homeless IDPs from Abkhazia needed to be urgently housed by central Government. Referring to the statistical data, according to which around 150,000 IDPs had been provided with accommodation by the State in the aftermath of the Abkhazian conflict, the first applicant argued that it was unrealistic to expect that all property-transfer formalities should have been meticulously followed in every such case. The first applicant referred to numerous domestic legal acts – ordinances of the Head of State dated 30 December 1992, 2 October 1993 and 29 March 1995, resolutions dated 31 December 1994 and 17 April 1996 of, respectively, the Cabinet of Ministers and Parliament, the IDPs Act of 28 June 1996, a Presidential Decree dated 5 January 2002, and so on – by which the Georgian State had

assumed the obligation to house IDPs. In view of that responsibility on the part of the State, his settlement in and consequent possession of the cottage had been fully legitimate.

40. The first applicant further complained that, before depriving him and his family of their home, the Ministry should have proved its case in a court. However, the eviction had been carried out not only without a court decision but also without any written administrative act. In this connection, the first applicant alleged that the appellate court had arbitrarily disregarded section 7 § 3 of the IDPs Act which had been in force at the time of their eviction and explicitly prohibited the eviction of IDPs who were already settled, without due process and proper compensation. In support of his arguments, the first applicant referred to the Supreme Court's decision of 28 November 2001 in the similar case of *Khintibidze and Others* (see paragraph 69 below). Finally, referring to his difficult social and financial situation, the first applicant requested either full exemption from the court fee or deferral of its payment until after the examination of the case.

41. On 24 February 2006 the Supreme Court criticised the first applicant for his failure to pay the court fee, ordering him to do so within fifteen days on pain of having his appeal rejected without examination. On 17 March 2006 the first applicant paid a fee of 1,200 Georgian laris (510 euros[1] (EUR)), corresponding, in line with the relevant statutory requirement, to 4% of the value of the cottage. He also submitted an agreement showing that the money had been lent to him by a private individual for two years.

42. On 27 September 2006, the Supreme Court dismissed the first applicant's appeal on points of law and fully upheld the appellate judgment of 19 December 2005.

43. Endorsing the appellate court's reasoning, the Supreme Court reiterated that the first applicant could recover possession of the cottage from the owner, the respondent Ministry, under Articles 160 and 162 of the Civil Code only if his initial possession had been legitimate. Legitimacy meant that possession had to have been exercised on a lawful basis. However, since the first applicant had failed to produce a legal decision of the relevant authority authorising his occupation of the cottage in 1994, his ensuing possession could not be considered to have been exercised in good faith. As to the respondent Ministry's letter of 20 April 2000, the Supreme Court refused to accept it as a valid document, reasoning that, by virtue of Decree no. 487 issued by the President of Georgia on 8 September 1997, only the Ministry of State Property Management had been competent to enter into such transactions with private individuals. The Supreme Court further stated that only the Ministry of Resettlement of Refugees and IDPs ("the Ministry of IDPs") was competent to accommodate IDPs under

[1] Here and elsewhere, approximate conversions are given in accordance with the exchange rate of the Georgian lari (GEL) and the United States dollar to the euro on 21 January 2010.

section 5 § 2 of the IDPs Act. Given that the cottage had not been offered to the first applicant by the latter Ministry, the Supreme Court reasoned that the housing guarantee contained in the IDPs Act did not apply to his situation. In the light of the above considerations, the Supreme Court concluded that the Ministry, as the rightful owner of the cottage, had been entitled to retrieve its property from the first applicant's dishonest possession under Articles 160 and 172 § 1 of the Civil Code.

44. One of the judges of the Supreme Court delivered a dissenting opinion. The judge in question stated that the facts of the case proved that the first applicant had at least possessed the cottage in good faith. Even assuming that he had not been a legitimate possessor, the respondent Ministry was not entitled to retrieve the cottage without due process and by force, in breach of the requirements of Article 115 of the Civil Code. The dissenting judge therefore concluded that the first applicant was entitled to reclaim possession of the cottage under Article 160 *in fine* of the Civil Code.

2. The criminal complaints filed by the first applicant

45. The criminal remedy was pursued by the first applicant concurrently with the civil one described above.

46. On 22 November 2004 the first applicant requested the Prosecutor General's Office ("the PGO") to open a criminal case concerning the arbitrary and violent eviction of 1 November 2004 and the obstruction of his investigation into the *Kaladze* case by high-ranking officials of the Ministry of the Interior.

47. On 23 December 2004 the PGO replied in writing that criminal proceedings could not be initiated "owing to the absence of any relevant materials."

48. On 8 January 2005 the first applicant lodged a court complaint against the PGO's reply of 23 December 2004.

49. In a letter dated 28 January 2005 the Ministry of the Interior, in reply to a query from the Public Defender's Office, provided its version of the incident of 1 November 2004. Acknowledging that the cottage had been transferred to the first applicant's possession in 1994 by a decision of the then Minister of the Interior, the letter stated that the possession in question had "recently become unlawful". Consequently, the Ministry had decided to reclaim possession of its cottage, but the first applicant had refused to cooperate. Eventually, after several unsuccessful attempts, the Ministry, acting through the police, had persuaded the second applicant and the Saghinadze family's relatives to vacate the cottage, in the absence of the first applicant. The letter emphasised that the eviction had not been forcible but, on the contrary, had been voluntary and peaceful, and that the second applicant had been able to take her personal belongings with her on eviction. As to the remaining movables in the cottage, including poultry and

small livestock, the Ministry's letter stated that the applicants had been invited to retrieve them on more than one occasion and could still do so. The letter noted that, subsequent to the eviction of 1 November 2004, the cottage had been sealed in order to prevent its being looted. It was also noted that the actual value of the cottage was GEL 45,541.69 (EUR 19,630).

50. In a decision of 28 February 2005 the Krtsanisi-Mtatsminda District Court rejected the first applicant's complaint against the PGO's reply of 23 December 2004. Stating that an informal letter from the prosecution authority could not be subjected to judicial review, the court advised the first applicant to challenge the letter before a senior prosecutor.

51. On 9 March 2005 the first applicant lodged with the Supreme Court an interlocutory appeal against the decision of 28 February 2005 and simultaneously lodged a hierarchical complaint within the PGO.

52. On 7 April 2005 the Supreme Court dismissed the first applicant's interlocutory appeal of 9 March 2005 for the same reasons as those given by the Krtsanisi-Mtatsminda District Court on 28 February 2005. As to the hierarchical complaint, the PGO replied on 21 April 2005, paraphrasing the impugned letter of 23 December 2004 as follows: "Your request to initiate criminal proceedings for the eviction ... cannot be satisfied owing to the absence of any relevant materials".

53. On 18 April 2006 the Public Defender recommended that the PGO open a criminal case for abuse of power by high-ranking officials of the Ministry of the Interior. The Public Defender noted that if there had been lawful grounds for dispossessing the first applicant, the Ministry should first have brought civil proceedings to that end, as required by the relevant domestic law.

E. The criminal proceedings against the first applicant

54. On 20 February 2006 the police conducted a search of the cottage, as an urgent investigative measure and in the absence of the first applicant or his lawyers. Local municipality officials attended the search as witnesses. On completion of the search the police drew up a report recording the discovery of firearms and of copies of documents concerning various criminal cases, including the *Kaladze* case. On the same day a criminal case was opened against the first applicant for unlawful storage of a gun and confidential official documents. He was not however arrested at that time.

55. On 21 February 2006 the Mtskheta District Court, having examined the lawfulness of the urgent search, decided to legalise its results *ex post facto*.

56. On 20 March 2006 the PGO, in view of the information obtained in the course of its investigation into the *Kaladze* case, opened a criminal case for abuse of power allegedly committed by the first applicant's investigative unit in 2004 (see paragraphs 14 and 15 above). In particular, several

members of the unit, including the first applicant, were suspected of having wilfully misled the investigation into that case by extorting, under duress, false statements from a witness, Mr M., and otherwise fabricating evidence.

57. On 30 May 2006 the two above-mentioned criminal cases were joined, and on 2 June 2006 the first applicant was charged with unlawful possession of a gun, misappropriation of confidential official documents, ill-treatment of a person, fabrication of evidence and other abuses of power committed in public office. The charges were based, *inter alia*, on the legalised results of the search of 20 February 2006 and the incriminating statements of the victim, Mr M., as well as other documents and information including statements from several relevant witnesses, collected by the PGO in the course of its own investigation into the *Kaladze* case (see the preceding paragraph).

58. On 4 June 2006 the first applicant was arrested and, the following day, the prosecutor requested the Tbilisi City Court to remand him in custody pending trial. The reasons given for the request were the risk that the first applicant might abscond in view of the gravity of the charges and that he might impede the investigation, given that he could use his authority as a former high-ranking law-enforcement officer to influence the parties to the proceedings.

59. On 6 June 2006 the Tbilisi City Court examined the prosecutor's request at an oral hearing. The first applicant was assisted by two lawyers during that hearing. Refusing the first applicant's application for bail, the court ordered his detention for two months. Having reviewed the criminal case materials and heard the parties' oral pleadings, the court confirmed the existence of a reasonable suspicion that the offences had been committed. The imposition of pre-trial detention was found to be further justified, under Article 159 § 3 of the Code of Criminal Procedure, by the assumption that the accused could abscond in view of the severity of a possible sentence. Lastly, without giving detailed arguments in that regard, the court shared the prosecutor's fear that, if released, the first applicant could unduly influence the parties to the proceedings.

60. On 7 June 2006 the first applicant appealed against the detention order of 6 June 2006, complaining, *inter alia*, that it had been based only on the gravity of the charges, and that the lower court had disregarded such elements as his age, his state of health, the difficult social situation of his family, his reputation and social esteem. Calling into question the credibility of the incriminating evidence against him, the first applicant also stated that there could be no reasonable suspicion of his having committed the offences in question.

61. On 14 June 2006, without holding an oral hearing, the Tbilisi Court of Appeal dismissed the first applicant's appeal. The court did not solicit written comments from the prosecutor, and its decision was based on the examination of the first applicant's arguments only in the light of the case

materials. Noting that it was premature to assess the well-foundedness of the charges, the appellate court, after reviewing the available evidence, confirmed the existence of a reasonable suspicion against the first applicant. It upheld the detention order, reasoning as follows:

> "When selecting a measure of pre-trial restraint, account should be taken of the nature of the charges (the repeated abuses of power committed in public office by the use or threat of force, actions which are particularly dangerous to public safety) as well as their gravity (the charges carry long-term prison sentences). Moreover, the investigation has still to establish the origins of the seized firearms, whether they could have been used in other crimes ... In view of the above, the prosecutor's fear that the accused might abscond and/or unduly influence the parties to the proceedings is justified. Despite the fact that the accused is more than 65 years old, ... a more lenient measure of restraint would not secure the aims mentioned in Article 151 § 1 of the Code of Criminal Procedure."

The appellate court further stated that the first applicant had failed to submit recent medical documents in support of his health complaints. Overall, the appellate court answered all the main arguments submitted by the first applicant.

62. On 29 June 2006 the investigation was terminated and the prosecutor sent the bill of indictment, accompanied by all relevant documentation about the first applicant's detention as well as other case materials, to the Tbilisi City Court for trial. On the same day the trial judge, without holding an oral hearing, reviewed the first applicant's continued detention. He issued a standard decision on a page-long template with pre-printed reasoning. The judge added in the blank spaces the name of the accused, the definition of the offence and the measure of pre-trial restraint. The pre-printed reasoning read as follows:

> "In selecting the measure of pre-trial restraint, both the formal (procedural) grounds and the factual grounds (sufficient evidence for imposing a restraint measure) have been taken into account. The defendant is charged with a serious offence and the imposition of any other measure of restraint would not secure the aims mentioned in Article 151 of the Code of Criminal Procedure.
>
> Having examined the criminal case materials I consider, in the light of the arguments which were relied on when the restraint measure was first imposed, that there exist no grounds for cancelling or amending that measure at this stage of the proceedings either."

63. On 22 February 2007 the first applicant was convicted at first instance of the offences with which he had been charged and was sentenced to seven years in prison. The case file shows that the conviction was upheld at last instance by the Supreme Court on 19 December 2007 and that the first applicant is currently serving his prison sentence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Civil Code as it stood at the material time

64. The relevant provisions of the Civil Code bearing on the notions of possession and ownership read as follows:

Article 115 – Prohibition of abuse of rights

"Civil rights must be exercised lawfully. It is prohibited to exercise a right with the intention to harm somebody."

Article 155 §§ 1 and 3 – Concept and types [of possession]

"1. Possession arises from the intentional acquisition of actual dominion over an asset. ...

3. A person who possesses an asset on the basis of a legal relationship which either confers entitlement for a definite period or confers an obligation shall be considered as the direct possessor, whilst the person who conferred the above-mentioned right or obligation shall be considered as the indirect possessor."

Article 159 – Possessor in good faith

"A possessor shall be considered to be in good faith if he or she possesses an asset on a legitimate basis or if such an assumption could be made by diligently observing his or her transactions."

Article 160 – Claim for recovery of possession by a possessor in good faith

"A possessor in good faith who has been dispossessed may claim recovery of the disputed asset from the new holder within three years. This rule shall not apply if the new holder has a superior title to the asset. A claim for recovery of possession may also be directed against a holder with superior title if the latter acquired the disputed asset under duress or by fraud."

Articles 162, 163 and 164 of the Civil Code differentiated between the following types of possession, affording them diminishing degrees of protection: (i) clearly legitimate possession (a notion which, as shown by Article 159, already contained the element of good faith), (ii) possession in good faith but without a legitimate title and (iii) possession in bad faith.

Article 168 – Termination of possession on a reasoned request by the owner

"Possession is terminated on the submission by the owner of a reasoned claim against the possessor."

Article 170 § 2 – Concept of ownership

"2. The exercise of ownership in a manner which causes harm to others, unless justified by the owner's overriding interests or other justifiable needs, shall be considered an abuse of a right."

Article 172 §§ 1 and 2

"1. The owner can claim the asset back from the possessor unless the latter is entitled to possess it.

2. In the event of interference with the exercise of ownership other than the taking of the asset, the owner may request the trespasser to put an end to such an action. If the interference persists the owner may bring a court action against the trespasser."

Articles 992-1008 contained the rules on liability for civil wrongs, so-called tort law. In particular, whilst the general provision, Article 992, stated that a civil wrong gave rise to a claim for compensation, Article 1005 specified that State agencies were jointly liable for damage caused to a private party by intentional or negligent actions on the part of their officials which amounted to an abuse of power.

B. The General Administrative Code as it stood prior to 24 June 2005

65. Under Article 51 §§ 2 and 3 an administrative act could be issued orally in urgent situations only, when any delay could harm the legitimate interests of the State, the public or an individual. If an oral administrative act limited an individual's rights or legitimate interests it had to be re-issued in writing within three days.

C. The Code of Criminal Procedure as it stood at the material time

66. The relevant provisions of the Code concerning pre-trial detention are summarised in paragraphs 35-36 and 29-41 of the Court's judgment in the case of *Giorgi Nikolaishvili v. Georgia* (no. 37048/04, ECHR 2009-... (extracts)).

D. The Internally Displaced Persons and Refugees Act ("the IDPs Act") of 28 June 1996

67. From its adoption on 28 June 1996, sections 5 § 2 and 8 of the IDPs Act stated that the Ministry of Resettlement of Refugees and IDPs, together with other agencies of central Government and the local authorities, was responsible for the practical implementation of the rights conferred upon IDPs by the Act. Section 9 further specified that the State stood as the guarantor of the protection of IDPs' rights.

On 18 December 2001 section 7 was amended as follows:

Section 7 §§ 2 and 3

"2. The State shall provide internally displaced persons with temporary accommodation.

3. Housing disputes shall be settled in court. Moreover, pending the restoration of the State's jurisdiction over the whole of the territory of Georgia, internally displaced persons shall not be evicted from dwellings in which they have been settled collectively, except where:

(a) an agreement has been concluded with the internally displaced persons concerned;

(b) the internally displaced persons have been offered another appropriate dwelling which will not represent a worsening of their existing housing situation;

(c) an act of nature has occurred and appropriate compensation is provided for...;

(d) the contested dwelling has been occupied by the internally displaced persons vexatiously."

Section 7 remained in force, in the version cited above, until 6 April 2005. On that date an amendment to the IDPs Act removed the above-mentioned provisions from section 7 and incorporated them, with some – mostly textual – corrections, into section 5 § 4.

E. The Enforcement Proceedings Act of 16 April 1999 ("the Enforcement Act") as it stood at the material time

68. Under sections 4, 20 and 90 of the Enforcement Act, a person's eviction from his or her home could be carried out only on the basis of a final and binding court decision and the corresponding enforcement order, and was a prerogative of the enforcement authority, which formed part of the Ministry of Justice.

F. The Supreme Court's decision of 28 November 2001 in the case of *Khintibidze and Others*

69. As it emerges from the circumstances of that case, several homeless IDPs from Abkhazia occupied vacant dwellings in Tbilisi in 1993. The dwellings were State property at that time, being owned in particular by the State publishing house. The IDPs had settled there with the consent of the management of the publishing house but without any formal authorisation or supervision from either the Ministry of IDPs or any other central or local authority. Subsequently, some staff members of the publishing house

claimed ownership of the dwellings in question and the management brought a court action in 2000 requesting the IDPs' eviction.

The Supreme Court finally resolved the dispute in the IDPs' favour, reasoning as follows:

> "[t]he State has undertaken to accommodate IDPs. Hence, by a resolution of 31 December 1994 of the Cabinet of Ministers ... as well as by the Presidential Decree of 25 September 2001, the central and local authorities were instructed to ensure the protection of IDPs by settling them in vacant buildings ... pending final resolution of the [Abkhazian] conflict. ...
>
> The circumstances of the case show that [the IDPs in question] did not occupy the disputed dwellings vexatiously, ... the dwellings were vacant at that time, and the management did not contest the IDPs' right to possess them until 2000.
>
> The condition subject to which the State has undertaken to provide IDPs with accommodation – the resolution of the conflict – has not been fulfilled yet. It is objectively impossible for [the IDPs in question] to return to their homes [in Abkhazia].
>
> The case file shows that the disputed dwellings ... were and still are State property. Consequently, the State may not request [the IDPs in question] to vacate these dwellings without offering them adequate alternative accommodation.
>
> On the basis of the above-mentioned obligation of the State, the [IDPs'] possession of the dwellings is legitimate within the meaning of Article 155 § 3 of the Civil Code. [Consequently], their eviction, [which would amount to] the termination of their possession rights, is prohibited under Article 162 § 1 of the same Code."

G. The United Nations Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, dated 11 February 1998

70. Principles 18, 21 and 28 read as follows:

Principle 18 § 1

> "1. All internally displaced persons have the right to an adequate standard of living."

Principle 21 §§ 1 and 2

> "1. No one shall be arbitrarily deprived of property and possessions.
>
> 2. The property and possessions of internally displaced persons shall in all circumstances be protected ..."

Principle 28 § 1

> "1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country."

THE LAW

I. THE SCOPE OF THE CASE

71. The Court points out that the applicants' unsolicited and lengthy pleadings, submitted after the communication of the application to the respondent Government and the exchange of the parties' observations on the admissibility and merits, were not accepted for inclusion in the case file. Those submissions contained, *inter alia*, numerous fresh grievances, unrelated to the communicated complaints, under various provisions of the Convention concerning the facts in the *Kaladze* case, the personal conflict between the first applicant and Mr I.O., the then Minister of the Interior, and allegedly erroneous findings of fact in relation to the former's conviction (see paragraphs 3-5 above).

72. In the Court's view, since the new complaints are not an elaboration of the applicants' original complaints on which the parties have commented, these matters cannot be taken up in the context of the present application (see, for instance, *Khaylo v. Ukraine*, no. 39964/02, §§ 53 and 54, 13 November 2008, and *Solovey and Zozulya v. Ukraine*, nos. 40774/02 and 4048/03, §§ 45-47, 27 November 2008). The scope of the present case is thus limited to the following two episodes: (a) the taking of the cottage and the ensuing recovery proceedings and (b) the proceedings concerning the first applicant's pre-trial detention.

II. THE TAKING OF THE COTTAGE AND THE PROCEEDINGS TO RECOVER POSSESSION

73. The applicants complained under Articles 2, 3 and 8 of the Convention about the family's degrading and arbitrary eviction from the cottage on 1 November 2004 and the resulting loss of their home.

74. Relying on Article 6 § 1 of the Convention, taken separately and in conjunction with Articles 13 and 14, the applicants challenged the findings of the domestic courts, the length of the proceedings to recover possession and the PGO's refusal to open a criminal case concerning the first applicant's complaints.

75. Under Article 1 of Protocol No. 1, the applicants complained about the taking of the cottage and about the resulting loss of their movables. The sixth applicant complained that, in the period between 1 November 2004 and 14 March 2005, she had been prevented from enjoying possession of her plot of land.

A. Admissibility

1. The parties' arguments

76. The Government stated that, in so far as the second, third, fourth, fifth and sixth applicants had never been parties to the impugned domestic proceedings, their complaints should be declared inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

77. The Government also submitted that the disputed cottage had not been the applicants' "possession" within the meaning of Article 1 of Protocol No. 1 and that, consequently, the complaint about its taking was incompatible *ratione materiae*. As regards the loss of the applicants' movables, the Government stated that the relevant authorities should not be held responsible for that. The applicants should have complied with the authorities' repeated requests to vacate the cottage in due time, which would have allowed them to remove all their belongings peacefully. The Government also emphasised that the second applicant had been able to take her personal belongings on her eviction on 1 November 2004, whilst the remaining applicants had been invited on more than one occasion to retrieve the remaining movables from the sealed cottage.

78. The applicants replied that the fact that only the first applicant had pursued the domestic proceedings was sufficient for the purposes of Article 35 § 1 of the Convention with respect to all of them. They explained that the first applicant was the head of their family, that he had voiced grievances on their behalf as well and that, in the event of a successful outcome of the proceedings brought by him to recover possession, all of them would have benefited. The applicants further added that it made no difference who exactly had lodged the criminal complaints about the family's eviction from the cottage, as the PGO, having learnt of that fact, should have automatically launched a comprehensive investigation and declared all the applicants to be victims.

79. The applicants also commented on the Government's objection *ratione materiae* under Article 1 of Protocol No. 1. With regard to the fate of their movables, the applicants accused the relevant authorities of negligence in that regard. Hence, they asserted that, when sealing the cottage, the Ministry had not made an inventory of the fixtures. They further claimed that, as a result of restoration work on the cottage allegedly carried out by the authorities in 2005-2006, all their movables and small livestock had perished.

2. The Court's assessment

(a) The complaints introduced by the second, third, fourth, fifth and sixth applicants

80. The Court recalls that Article 35 § 1 of the Convention requires those seeking to bring their case against a State to use first those remedies provided by the national legal system, including available and effective appeals. The complaints intended to be made subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law. Article 35 § 1 further requires that any procedural means that might prevent a breach of the Convention should have been used (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). The Court is called on to examine whether, in all the circumstances of the case, the applicants did everything that could reasonably be expected of them to exhaust domestic remedies (see *Akdivar and Others v. Turkey*, 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV, and *Baumann v. France*, no. 33592/96, § 40, 22 May 2001).

81. The Court notes that the second, third, fourth, fifth and sixth applicants were not parties to the contested civil and criminal proceedings. According to the case file, these five applicants did not authorise either the first applicant or a lawyer to act on their behalf, nor did they ever try to address the competent judicial and prosecution authorities with their own written and/or oral pleadings (see, by converse implication, *P., C. and S. v. the United Kingdom* (dec.), no. 56547/00, 11 December 2001). A legitimate result of this was, for instance, that the domestic courts limited the scope of their judgment in the proceedings for recovery of possession to the first applicant's legal situation, without pronouncing on the rights of the remaining five applicants (see paragraph 23 above and, conversely, *Khamidov v. Russia*, no. 72118/01, §§ 27, 28, 48-50 and 125, ECHR 2007-XII, and *P., C. and S.*, cited above).

82. The participation of each applicant in the contested domestic proceedings would hardly have been superfluous, given that, in view of their particular situations, not all of them were affected by the alleged violations to the same extent. Thus, for example, only the second applicant was the direct victim of the alleged ill-treatment during the eviction on 1 November 2004 (see paragraph 86 below). Furthermore, it is not entirely clear whether the cottage could be said to have constituted a home, within the meaning of Article 8 of the Convention, for all the applicants, as not all of them had retained equally strong links with the place prior to its loss (see paragraphs 13 and 30 above and compare with *Zehentner v. Austria*, no. 20082/02, § 52 and 53, ECHR 2009-...). The Court is also unsure as to the sixth applicant's standing in the present case. It is unclear whether she also claims to have had possession rights over the cottage and

its premises, or whether her complaint is limited to the unlawful occupation of her registered land by the Ministry of the Interior between 1 November 2004 and 14 March 2005. In any event, she never voiced the latter grievance before the domestic courts. All in all, the Court considers that the participation of each of the applicants in the domestic proceedings would have promoted the interests of further factual clarity and legal certainty before both the domestic authorities and the Court (compare *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, §§ 37-39, ECHR 2004-III, and *Çelikbilek v. Turkey* (dec.), no. 27693/95, 22 June 1999).

83. The remaining five applicants' hope that they would benefit equally from a successful outcome of the first applicant's civil and criminal actions (see paragraph 78 above) cannot, in the eyes of the Court, discharge them, as persons with full legal capacity to act, from the obligation to pursue the domestic proceedings either jointly with or separately from him. If they had really wished to designate the first applicant as their representative, a more appropriate course of action would have been to provide him with an authority rather than relying informally on his status as head of the family. That simple formality would have made it clear to both the domestic authorities and the Court that the complaints about the taking of the cottage were being raised by the first applicant on behalf of the remaining five applicants also (see *Khamidov*, the paragraphs cited above). It should be reiterated, in that connection, that Article 35 § 1 of the Convention has to operate with a degree of deference to domestic formalities, in particular when, as in the case at hand, considerations of legal certainty are at stake (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 53, ECHR 2000-VII, and *Agbovi v. Germany* (dec.), no. 71759/01, 25 September 2006).

84. In view of the above considerations, the Court concludes that the second, third, fourth, fifth and sixth applicants cannot be exempted from the requirement to pursue the contested domestic proceedings or initiate separate proceedings. Consequently, their various complaints must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

(b) The first applicant's complaints under Articles 2 and 3 of the Convention

85. The first applicant complained under Articles 2 and 3 of the Convention about the degrading manner in which the eviction from the cottage had been carried out on 1 November 2004.

86. However, as is clear from the circumstances of the case, the first applicant was not personally affected by the alleged violation, as he was not at home during the impugned eviction (see paragraph 21 above). The only alleged direct victim of that incident was his wife, the second applicant, a person with full legal capacity to act, who, as the Court found above, failed to exhaust the relevant domestic remedies (see paragraph 84 above). In such circumstances, the first applicant may not validly claim to be an indirect

victim of the alleged violations of the second applicant's rights under Articles 2 and 3 of the Convention (compare *İlhan*, cited above, § 53, and *Çelikbilek*, cited above).

87. It follows that the first applicant's complaints under Articles 2 and 3 of the Convention are incompatible *ratione personae* with the provisions of the Convention, within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

(c) The first applicant's complaints under Articles 6 § 1, 13 and 14 of the Convention

88. Relying on Article 6 § 1 of the Convention, taken separately and in conjunction with Articles 13 and 14, the first applicant called into question the domestic courts' findings in the proceedings to recover possession and the length of those proceedings, as well as the authorities' refusal to open a criminal case against certain officials of the Ministry of the Interior.

89. As to the latter complaint, the Court reiterates that Article 6 § 1 does not guarantee the right to institute criminal proceedings against a third party (see, amongst other authorities, *Members (97) of the Gldani Congregation of Jehovah's Witnesses v. Georgia* (dec.), no. 71156/01, 6 July 2004). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

90. In reply to the first applicant's complaints under Article 6 § 1 of the Convention concerning the proceedings to recover possession, the Court, noting that the case file does not disclose the existence of any separate issue under this provision, considers that it would be more appropriate to examine the complaint about the domestic courts' findings of fact and law under Article 8 of the Convention and Article 1 of Protocol No. 1 (see paragraphs 110-118 and 122-123 below). As regards the length of those proceedings, the Court notes that they lasted less than two years for three levels of jurisdiction (see paragraphs 25 and 42 above). Such a period, coupled with the fact that there were no significant periods of inactivity, cannot raise an issue under the "reasonable time" requirement of the above provision (see, for example, *Zhurba v. Ukraine* (dec.), no. 11215/03, 19 June 2007).

91. Lastly, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that no separate issues arise under Articles 13 and 14 of the Convention.

92. It follows that the first applicant's complaints under Article 6 § 1, 13 and 14 of the Convention concerning the proceedings to recover possession are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4.

(d) The first applicant's complaints under Article 8 of the Convention and Article 1 of Protocol No. 1

93. The first applicant complained under Article 8 of the Convention and Article 1 of Protocol No. 1 about the loss of the cottage which had been his home. He also complained, under the latter provision, about the loss of his personal and household belongings.

(i) As regards the loss of movable goods

94. The Court notes that the civil proceedings initiated by the first applicant in the present case were aimed only at recovering possession of the cottage as such, as an item of immovable property, under the rules on possession contained in the Civil Code and the housing guarantees of the IDPs Act (see paragraphs 25-26, 36 and 43 above).

95. However, neither in the course of those proceedings, nor, more appropriately, by bringing a separate action, did the applicant ever request compensation for the alleged loss of his personal and household belongings and other movable property. Having regard to the first applicant's arguments in that regard, the Court considers that, since he imputed the loss of those goods to the conduct of the Ministry of the Interior (see paragraph 79 above), he should have sued the Ministry for damages under the tort provisions of the Civil Code, in particular under Articles 992 and 1005 (see paragraph 64 above).

96. Since such a clear remedy was never pursued at the domestic level, it follows that the first applicant's complaint under Article 1 of Protocol No. 1 about the loss of movable property must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(ii) As regards the taking of the cottage

97. The Court notes that the question of whether or not the cottage represented a "possession" of the first applicant within the meaning of Article 1 of Protocol No. 1 raises serious issues of fact and law. Consequently, the Government's objection in this regard (see paragraph 77 above) should be joined to the merits of the case.

98. The Court concludes that the first applicant's complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 concerning the taking of the cottage are neither manifestly ill-founded within the meaning of Article 35 § 3 of the Convention nor inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Alleged violation of Article 1 of Protocol No. 1

99. Article 1 of Protocol No. 1 reads, in its relevant part, as follows:

Article 1 of Protocol No. 1

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. ..."

(a) The parties' arguments

100. The Government noted that the first applicant had never obtained a registered property title, either by the operation of law or by a court decision, to the cottage which had been owned by the Ministry of the Interior. Nor could he claim to have been a possessor in good faith of that property within the meaning of Article 159 of the Civil Code, for the reasons noted by the domestic courts. The Government reiterated that the Ministry's letter of 20 April 2000 could not be accepted as proof of the first applicant's legitimate possession, given that only the Ministry of State Property Management had been entitled, by virtue of the Presidential Decree of 8 September 1997, to administer State property. Nor could the IDPs Act apply to his situation, given that the disputed cottage had not been transferred to the first applicant by the Ministry of IDPs. The Government therefore concluded that the first applicant had occupied the cottage vexatiously and that his ensuing possession had been in bad faith.

101. Even if the Court were to find that the disputed cottage fell within the scope of the protection afforded by Article 1 of Protocol No. 1, the Government argued that the interference had nevertheless been justifiable. Hence, in so far as the cottage and the adjacent premises represented a strategic object for the Ministry of the Interior, the latter authority, being the only rightful owner thereof, had been fully entitled to reclaim its property from the first applicant's dishonest possession in accordance with Article 179 of the Civil Code. The Government further stated that, since the first applicant had been settled in the cottage for an undetermined period on the basis of on oral decision of the Minister, the Ministry could reclaim possession of the cottage any time it wished on the basis of another oral decision. They also noted that the taking of the cottage had not come as a surprise to the first applicant as, prior to the eviction of 1 November 2004, he had been invited to vacate the premises on several occasions. Lastly, the Government stated that, since the domestic courts had confirmed the lawfulness of the Ministry's actions, it was not for the Court to rule on appeal on the merits of the domestic decisions.

102. The first applicant replied that he had possessed the disputed cottage in good faith, in so far as it had been transferred to him by the Ministry itself. A considerable body of evidence stood in support of that fact: the respondent Ministry's pleadings before the domestic courts, the oral and written statements of the competent officials as well as the Government's submissions before the Court. However, even assuming that his possession of the cottage had lacked legitimacy, the Ministry did not have the right to dispossess him without a valid court decision. Nor could that interference be said to have been in "the public interest", as the respondent Government had failed to prove the existence of a legitimate aim. Hence, their claim that the cottage, an ordinary dwelling, represented "a strategic object" remained a blunt, unsubstantiated assertion.

(b) The Court's assessment

(i) Whether there was a "possession"

103. The Court reiterates that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent of the formal classifications in domestic law: the issue that needs to be examined is whether the circumstances of the case, considered as a whole, may be regarded as having conferred on the applicant title to a substantive interest protected by that provision (see, *mutatis mutandis*, *Zwierzyński v. Poland*, no. 34049/96, § 63, ECHR 2001-VI). Accordingly, as well as physical goods, certain rights and interests constituting assets may also be regarded as "possessions" for the purposes of this provision (see *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II, and *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I). The concept of "possessions" is not limited to "existing possessions" but may also cover assets, including claims, in respect of which the applicant can argue that he or she has at least a reasonable and "legitimate expectation" of obtaining effective enjoyment of a property right (see, for instance, *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 83, ECHR 2001-VIII). An "expectation" is "legitimate" if it is based on either a legislative provision or a legal act bearing on the property interest in question (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 45-52, ECHR 2004-IX).

104. The Court observes that the first applicant settled, together with his family, in the cottage in January 1994. He was not squatting there: the dwelling had been offered to him by his employer, the Ministry of the Interior. These facts are clearly confirmed by the circumstances of the case (see, for instance, paragraphs, 12, 29, 32-33 and 49 above).

105. The Court notes that the Government cannot validly rely on the Presidential Decree of 8 September 1997 and the IDPs Act of 28 June 1996 in order to argue that only the Ministry of State Property Management or the

IDPs Ministry had been competent to settle the first applicant in the cottage in January 1993, in so far as his settlement preceded the adoption of the above-mentioned legal acts. The Court observes the existence of the ministerial order of 29 October 1993, which explicitly stated that the Ministry was authorised to use the cottage for the purpose of housing staff members displaced from Abkhazia; this corresponded exactly to the first applicant's situation (see paragraphs 9 and 38 above). However, even assuming that there existed a more appropriate formal procedure for the transfer of the cottage to the first applicant, which was an ordinary private-law transaction and did not concern matters of vital public interest, this omission on the part of the Ministry cannot be attributed to the first applicant or allow a conclusion that he settled in the cottage vexatiously (see *Stretch v. the United Kingdom*, no. 44277/98, §§ 34, 39 and 40, 24 June 2003). Of further importance in that regard is the historical context in which the relevant facts of the case took place. Hence, the Court shares the first applicant's opinion that, in view of the humanitarian crisis prevailing in Georgia in 1993-1994, when around 300,000 displaced persons from Abkhazia needed to be urgently accommodated by central Government, it would have been hardly realistic to expect the authorities to meticulously follow the administrative formalities in all such housing transactions.

106. As regards the first applicant's continued possession of the cottage, the Court considers that it maintained its good-faith character, even in the absence of a registered property title, for the following reasons. Of paramount importance in that regard, according to the Court's relevant case-law, was the authorities' own manifest tolerance of the first applicant's exclusive, uninterrupted and open use of the cottage and the adjacent premises for more than ten years. Thus, during that period, the first applicant installed and planted various fixtures, fruit trees and vegetables, and started keeping poultry and small livestock; he was also able to accommodate eight of his displaced relatives, without applying for additional permission from the State; the State never objected to the socio-economic and family environment established by the first applicant (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 105, 106 and 127, ECHR 2004-XII; *Stretch*, cited above, § 34; *Doğan and Others v. Turkey*, nos. 8803-8811/02, 8813/02 and 8815-8819/02, § 139, ECHR 2004-VI (extracts); *Matos e Silva, Lda., and Others v. Portugal*, 16 September 1996, § 72, *Reports* 1996-IV).

107. The Court attaches further importance to the fact that, subsequent to the transfer of the cottage by the Ministry to the first applicant for temporary accommodation, the State, by adopting various legal acts, confirmed IDPs' rights in the housing sector and established solid guarantees for their protection (see paragraphs 39, 67 and 69 above). The most conspicuous and authoritative amongst these was the IDPs Act, which recognised that an IDP's possession of a dwelling in good faith constituted a

right of a pecuniary nature. Thus, it was not possible to evict an IDP against his or her will from an occupied dwelling without offering in exchange either similar accommodation or appropriate monetary compensation. The Supreme Court of Georgia, in its judgment of 28 November 2001 in the case of *Khintibidze and Others*, confirmed that an IDP's temporary dwelling, even where the person concerned had no registered property title to it, represented an asset protected under the rules of possession contained in the Civil Code (see paragraph 69 above).

108. In the light of the above-mentioned factual and legal considerations and having due regard to the circumstances of the present case assessed as a whole, the Court concludes that the first applicant had a right to use the cottage as his accommodation and that this right had a clear pecuniary dimension. It should therefore be regarded as "a possession" for the purposes of Article 1 of Protocol No. 1 (see *Minasyan and Semerjyan v. Armenia*, no. 27651/05, § 56, 23 June 2009).

(ii) Whether there was interference

109. It was not in dispute between the parties that there had been interference within the meaning of Article 1 of Protocol No. 1 (see paragraphs 101 and 102 above), and the Court considers that the situation complained of should be examined in the light of the general rule contained in Article 1 of Protocol No. 1 (see, for example, *Beyeler*, cited above, § 106).

(iii) Whether the interference was justified

110. In order to be compatible with the general rule of Article 1 of Protocol No. 1, an interference must be in accordance with the law, in the public interest, and proportionate to the aim pursued (see *Beyeler*, cited above, §§ 108 and 111).

111. The Court notes that, under both the Civil Code (Article 172 § 2) and the IDPs Act (section 7 § 3), the only lawful way for the Ministry of the Interior to reclaim the cottage from the first applicant's possession was to bring adversarial proceedings in court. That was exactly how another State agency acted in the similar case of *Khintibdze and Others* (see paragraph 69 above). Only if and when the dispossession of the first applicant had been authorised by a court could eviction proceedings, as an enforcement measure, have been instituted against the first applicant under the Enforcement Act (see paragraph 68 above).

112. However, in the present case, the eviction and dispossession occurred in the absence of any court decision. Instead, the Government referred to the existence of an "oral order" of the Minister of the Interior. Firstly, the Court notes that, under Article 51 § 2 of the General Administrative Code, an administrative act could be issued orally only in exceptional situations, where there was an imminent risk of damage to the

public interest or the rights of others. The Court cannot understand why, after he had lived there peacefully with his family for more than ten years, the first applicant's occupation of the cottage should suddenly have become such a burning issue. Moreover, the Minister should have re-issued his order in written form within three days, pursuant to Article 51 § 3 of the General Administrative Code; he did not do so in the present case. Be that as it may, considerations as to the form of the ministerial order are merely incidental. What really matters for the Court is that the Ministry took the cottage from the first applicant without a court authorisation obtained through fair and adversarial proceedings.

113. As to the Government's argument that the domestic courts confirmed *ex post facto* the first applicant's dispossession and eviction, the Court reiterates, in the light of its findings above, that such adversarial proceedings, in order for them to represent an effective procedural safeguard against arbitrariness, should have, according to the domestic law, preceded the interference in question (see, *mutatis mutandis*, *Hentrich v. France*, 22 September 1994, §§ 41, 42, 45 and 46, Series A no. 296-A). It should be pointed out that, when rights under the Convention or its Protocols are at stake, the Court is not bound by the findings of the domestic courts and may depart from them or set them aside where this is rendered unavoidable by the circumstances of a particular case (see, among many other authorities, *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II; *Bruncrona v. Finland*, no. 41673/98, § 75, 16 November 2004; *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 75, ECHR 2007-X; *Khamidov*, cited above, § 135; *Matyar v. Turkey*, no. 23423/94, § 108, 21 February 2002).

114. In particular, the Court notes that the relevant domestic courts failed to acknowledge that the first applicant had obtained the cottage and been in continuous possession of it for ten years in good faith without encountering any objections from the State, a fact confirmed by the evidence contained in the case file (see the findings above, paragraphs 104-107 above). The courts further overlooked the fact that the applicant's dispossession and eviction had been carried out contrary to the relevant domestic law (see the findings above, paragraphs 111-112). Yet, as noted by the first-instance court and the dissenting judges at both the appeal and cassation instances, such a finding was apparently indispensable for the recognition of the first applicant's right to regain his possession under Article 160 *in fine* of the Civil Code (see paragraphs 26, 37 and 44 above).

115. More importantly, the domestic courts failed to afford to the first applicant the relevant protection under the IDPs Act. In particular, the Supreme Court of Georgia stated, in its final decision of 27 September 2006, that the first applicant could not rely on the relevant housing guarantee contained in the IDPs Act, in so far as he had not been settled in the cottage by the Ministry of IDPs, the agency directly in charge of such

matters (see paragraph 43 above). The Court regrets this formalistic interpretation of the IDPs Act, the very spirit of which was, on the contrary, to confirm IDPs' rights, including the right to accommodation, vis-à-vis the State as a whole rather than any of its executive agencies in particular. It is evident that, by adopting the IDPs Act, the Georgian State aimed to alleviate, in so far as possible, the plight of homeless and destitute IDPs. This laudable undertaking was, incidentally, in line with the United Nations Guiding Principles on Internal Displacement (see paragraphs 67 and 70 above; see also *Doğan and Others*, cited above, § 154). The Court points out in this connection that it is not uncommon for other member States who have experienced massive migrations of population due to military conflicts to pass legislation aimed at the creation of similar housing guarantees for IDPs and refugees being accommodated on a temporary basis (see *Radanović v. Croatia*, no. 9056/02, §§ 27, 29, 45-46 and 49, 21 December 2006, and *Akimova v. Azerbaijan*, no. 19853/03, §§ 21-25 and 47-48, 27 September 2007).

116. The Court also notes that the Supreme Court's position regarding the first applicant's situation contradicts its own judgment of 28 November 2001 in the similar case of *Khintibidze and Others*. Hence, in the latter case, the Supreme Court prevented the State agency from retrieving a State-owned dwelling from the IDPs concerned who, like the first applicant, had occupied it in 1993 without any permission from the Ministry of IDPs (for more details, see paragraph 69 above). The Court reiterates that where such manifestly conflicting rulings stem from the same jurisdiction, and no reasonable explanation is given for the divergence, such rulings smack of arbitrariness (see *Beian v. Romania (no. 1)*, no. 30658/05, §§ 37-40, ECHR 2007-XIII (extracts); *Vinčić and Others v. Serbia*, nos. 44698/06, 44700/06, etc., § 56, 1 December 2009; *Tudor Tudor v. Romania*, no. 21911/03, § 29, 24 March 2009).

117. In the light of the above findings, the Court concludes that the interference with the first applicant's peaceful enjoyment of his possession was not lawful, whilst the subsequent judicial review, having been arbitrary, amounted to a denial of justice. This conclusion makes it redundant to ascertain whether the interference pursued a legitimate aim and, if so, whether a fair balance was struck (see, *Akimova*, cited above, §§ 39-51, 27 September 2007, and *Khamidov*, cited above, §§ 141-145).

118. There has therefore been a violation of Article 1 of Protocol No. 1.

2. Alleged violation of Article 8 of the Convention

119. Article 8 of the Convention reads insofar as relevant as follows:

Article 8

"1. Everyone has the right to respect for his ... home ...

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

120. The Government denied that there had been any violation of this provision, on the same grounds as those advanced in connection with Article 1 of Protocol No. 1. Referring to the Court's judgment in the case of *Chapman v. the United Kingdom* ([GC], no. 27238/95, § 99, ECHR 2001-I), they also added that Article 8 of the Convention did not guarantee the right to be provided with a home.

121. The applicant disagreed.

122. The Court is in no doubt that the taking of the cottage, which had been the first applicant's home for more than ten years, in addition to giving rise to a violation of Article 1 of Protocol No. 1, also constituted an unlawful interference with his right to respect for his home (see, *Khamidov*, cited above, §§ 119-146, and *Doğan and Others*, cited above § 159).

123. Accordingly, the Court concludes that there has been a violation of Article 8 of the Convention.

III. THE FIRST APPLICANT'S PRE-TRIAL DETENTION

124. The first applicant complained, in his voluminous submissions under Articles 5 §§ 1 (c), 3 and 4 and 6 §§ 1 and 3 and 13 of the Convention, about his pre-trial detention. In particular, he alleged that his arrest had been unlawful in so far as there had been no reasonable suspicion that he had committed the offences, that the court decisions authorising his detention had not been accompanied by sufficient reasons and that the judicial reviews of 14 and 29 June 2006 had been unfair. He also alleged, relying on Article 10 of the Convention, that his pre-trial detention had been ordered in retribution for his independent and professional investigation into the *Kaladze* case.

A. Admissibility

1. The complaint under Article 5 § 1 (c) of the Convention

125. The first applicant submitted that he should not have been remanded in custody, as the criminal case file against him had not contained sufficient evidence to substantiate "a reasonable suspicion" within the

meaning of Article 5 § 1 (c) of the Convention. In particular, referring to the relevant circumstances surrounding the search of his cottage, he claimed that the results of that search had not constituted appropriate evidence.

126. The Court reiterates that having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned might have committed the offence (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 32, Series A no. 182). Moreover, facts which raise a suspicion need not be of the same level of certainty as those necessary to justify a conviction or even the bringing of a charge, which comes at a later stage of the process of criminal investigation (see *Murray v. the United Kingdom*, 28 October 1994, § 55, Series A no. 300-A).

127. The Court notes that the episode concerning the unlawful storage of firearms and confidential documents was based on the results of a search of the applicant's cottage, the lawfulness of which was later duly confirmed by the court (see paragraph 55 above). However, even assuming that there exist grounds for questioning that evidence, the Court notes that the first applicant was not arrested on that basis alone (see paragraph 54 above). Rather, his arrest and custody pending trial were based mostly on the second episode, which related to the fabrication of evidence, ill-treatment of a person and other abuses of power committed in public office. The second episode was based on the victim's incriminating statements as well as on other relevant information collected by the PGO in the course of its investigation into the *Kaladze* case (see paragraphs 56-57 above). Having due regard to the relevant case materials, the Court considers that, at least as far as the second episode was concerned, there existed relevant information which would satisfy an objective observer that the impugned offences in public office had been committed when the first applicant was remanded in custody (compare *Ramishvili and Kokhreidze v. Georgia* (dec.), no. 1704/06, 27 June 2007, and *Galuashvili v. Georgia*, no. 40008/04, § 33-34, 17 July 2008).

128. It follows that the complaint under Article 5 § 1 (c) of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4.

2. The complaints under Article 5 §§ 3 and 4 of the Convention

129. The Court notes that the first applicant's complaints concerning the alleged lack of adequate reasons in the relevant court decisions and the unfairness of the judicial reviews of his detention on 14 and 29 June 2006, which fall to be examined under Article 5 §§ 3 and 4 of the Convention, are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

3. The remaining complaints

130. In so far as Article 5 of the Convention is the *lex specialis* in matters of detention, there is no room for examining the same issues under Articles 6 §§ 1 and 3 and 13 of the Convention (see *Patsuria v. Georgia*, no. 30779/04, § 92, 6 November 2007, and *Ramishvili and Kokhreidze*, cited above).

131. As to the complaint under Article 10 of the Convention, the Court notes that it is totally unsubstantiated.

132. It follows that the complaints under 6 §§ 1 and 3, 10 and 13 of the Convention are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

1. Alleged violations of Article 5 § 3 of the Convention

133. The first applicant complained that the court decisions of 6, 14 and 29 June 2006 authorising his pre-trial detention had not been accompanied by sufficient reasons. Those decisions had either used phrases taken from a template, or pasted text from the prosecutor's request for the imposition of detention, without relating them to the specific circumstances of his case.

134. The Government contested that argument, maintaining that the reasons expressly given in the contested judicial decisions had been adequate.

135. Article 5 § 3 of the Convention reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

(a) As regards the decisions of 6 and 14 June 2006

136. The Court notes that the court decisions of 6 and 14 June 2006 constituted two instances of the same *habeas corpus* procedure bearing on the initial period of the applicant's pre-trial detention. Consequently, in order to establish whether that period of detention was reasonable, within the meaning of Article 5 § 3 of the Convention, the reasons given in those decisions, as well as the arguments of the parties to the proceedings, should be examined as a whole (compare *Ramishvili and Kokhreidze*, cited above; *Galuashvili*, cited above, §§ 46 and 48, 17 July 2008; *Jabłoński v. Poland*, no. 33492/96, § 79, 21 December 2000).

137. The Court notes that one of the grounds relied on by the prosecutor in his request for the imposition of the detention measure, which was confirmed by the domestic courts in the contested decisions, was sufficiently closely linked to the circumstances of the case. Specifically,

there was a fear that, if released, the first applicant could have used his authority as a former high-ranking law-enforcement official to influence the parties to the proceedings. The Court does not consider that line of reasoning to have been manifestly unreasonable or irrelevant at the material time. Consequently, the period of his detention which was covered by those two court decisions – twenty-five days, from 4 June 2006, the day of his arrest, until 29 June, when the detention was reviewed again – cannot be said to have been unreasonable within the meaning of Article 5 § 3 of the Convention (compare *Ramishvili and Kokhreidze*, cited above, and *Galuashvili*, cited above, § 50).

138. The Court therefore concludes that there has been no violation of Article 5 § 3 of the Convention on account of the court decisions of 6 and 14 June 2006.

(b) As regards the decision of 29 June 2006

139. The Court's notes that, when confirming the first applicant's detention on 29 June 2006, the Tbilisi City Court, contrary to its obligation to establish convincingly the existence of concrete facts justifying continued detention and to consider alternative non-custodial pre-trial restraint measures, acted without due diligence by issuing the decision on a template form containing pre-printed reasoning couched in abstract terms. That deficient decision remanded the first applicant in custody for an additional six months and twenty-four days (see paragraph 62 above). That period of detention cannot be deemed reasonable when assessed in the light of the absence of relevant and sufficient reasons in the contested decision (see *Giorgi Nikolaishvili*, cited above, §§ 73, 76 and 79, and *Patsuria*, cited above, § 74).

140. The Court concludes that there has been a violation of Article 5 § 3 of the Convention on account of the court decision of 29 June 2006.

2. Alleged violations of Article 5 § 4 of the Convention

141. The first applicant complained that the judicial reviews of 14 and 29 June 2006 had been unfair, in so far as no oral hearings had been held.

142. The Government submitted that, since the oral pleadings of the first applicant and his two lawyers had been duly heard at first instance on 6 June 2006, it was not necessary for the Tbilisi Court of Appeal to hold another oral hearing on 14 June 2006. It sufficed, for the purposes of Article 5 § 4 of the Convention, for the first applicant to have addressed the appellate court with written pleadings and received, in the decision of 14 June 2006, sufficiently reasoned answers to each of his arguments.

143. The Government likewise justified the absence of an oral hearing during the examination of the first applicant's detention on 29 June 2006 by reference to the criminal procedural law.

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

145. 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."

146. The Court reiterates that this provision entitles a detained person to institute proceedings concerning the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of the deprivation of liberty (see, among many other authorities, *Brogan and Others v. the United Kingdom*, 29 November 1988, § 65, Series A no. 145-B). The proceedings must be adversarial and must always ensure "equality of arms" between the parties. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II). However, Article 5 § 4 of the Convention cannot be interpreted as requiring that a judicial review of detention be attended by exactly the same degree of protection as is required by Article 6 of the Convention for criminal or civil litigation (see, for instance, *Włoch v. Poland*, no. 27785/95, § 125, ECHR 2000-XI).

(a) As regards the judicial review of 14 June 2006

147. The Court first notes that, during the review of the first applicant's pre-trial detention at first instance, the Tbilisi City Court duly heard, on 6 June 2006, oral pleadings from the first applicant and his two lawyers (see paragraph 59 above). The case file does not contain anything to suggest that there was an arguable issue as regards the first applicant's right to adversarial proceedings and equality of arms during that hearing; this has not been disputed by the first applicant.

148. The Court further notes that the prosecutor did not submit any reply to the first applicant's appeal against the first-instance court's decision of 6 June 2006 (see paragraph 61 above). The first applicant cannot, consequently, claim that the absence of an oral hearing deprived him of the possibility to obtain knowledge of and, if necessary, comment on the other party's submissions before the delivery of the final decision of 14 June 2006 (see, conversely, *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224; *Giorgi Nikolaishvili*, cited above, §§ 93 and 94; *mutatis mutandis*, *Depa v. Poland*, no. 62324/00, §§ 46-48, 12 December 2006).

149. Lastly, given that the Tbilisi Court of Appeal responded, in its decision of 14 June 2006, to all the main arguments submitted by the first applicant (see paragraph 61 above), the Court has no reason to doubt the effectiveness of the underlying written procedure. It has to be borne in mind that legal arguments, as well as those relating to factual matters, may be presented just as effectively in writing as orally (see, *mutatis mutandis*, *Rizhamadze v. Georgia*, no. 2745/03, §§ 40-42, 31 July 2007).

150. The Court therefore concludes that, in view of the fact that the first applicant and his two lawyers had benefited from an adversarial oral hearing at first instance, and given that the prosecutor had not commented on his appeal against the detention order, the absence of an oral hearing before the Tbilisi Court of Appeal on 14 June 2006 cannot be said to have undermined the principles of equality of arms and adversarial proceedings to the detriment of the first applicant.

151. There has therefore been no violation of Article 5 § 4 of the Convention in that regard.

(b) As regards the judicial review of 29 June 2006

152. As to the absence of an oral hearing during the judicial review of 29 June 2006 – that is, when the Tbilisi City Court authorised, on the basis of the prosecutor's submissions only, the first applicant's continued detention – the Court points out that such a situation was already found to be incompatible with Article 5 § 4 of the Convention in the similar case of *Giorgi Nikolaishvili* (cited above, §§ 93-96).

153. Hence, as a matter of domestic law and practice, in the present case also, the prosecutor had the privilege of addressing to the trial court, along with the bill of indictment, submissions pertinent to the issue of continued detention which the first applicant could not contest either in writing or in oral submissions. The judicial review of 29 June 2006 cannot therefore be said to have been of an adversarial nature, where the principle of equality of arms was respected. Even the form of the relevant decision – a template in which the findings had been pre-printed – suggests that the Tbilisi City Court did not carry out a proper judicial review on 29 June 2006 (see *Giorgi Nikolaishvili*, cited above, §§ 39 and 93-96, and *Belevitskiy v. Russia*, no. 72967/01, § 111, 1 March 2007).

154. There has therefore been a violation of Article 5 § 4 of the Convention on account of the judicial review of 29 June 2006.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

155. 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

156. The applicants claimed EUR 1,220, 10,570 United States dollars (EUR 7,712) and 679,721.14 Georgian laris (EUR 289,673.12) in

respect of pecuniary damage for the loss of their valuables and other movables in the cottage. The applicants also claimed a total of EUR 90,000 as compensation for the State's failure to provide them with alternative accommodation in exchange for the cottage. They emphasised their willingness to forfeit the latter monetary claim if the State agreed to restore possession of the cottage to them pending the resolution of the Abkhazian conflict, as required by the IDPs Act. Lastly, the applicants claimed EUR 75,000 each for non-pecuniary damage.

157. The Government submitted that the applicants' claims were manifestly ill-founded and excessive. They also noted that, should the Court find a violation in this case, that finding would in itself constitute sufficient just satisfaction.

158. Recalling its inadmissibility findings above (see paragraphs 84 and 96), the Court rejects the first applicant's pecuniary claim related to the loss of movables as well as all pecuniary and non-pecuniary claims emanating from the other five applicants.

159. However, the Court finds that the compensation claimed by the first applicant in exchange for the cottage has a causal link to the violations of his rights under Article 8 of the Convention and Article 1 of Protocol No. 1. As it transpires from the formulation of that claim, the first applicant seeks, in principle, *restitutio in integrum*, which the Court finds reasonable. It must be reiterated in this connection that a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court. The respondent State is expected to make all feasible reparation for the consequences of the violation in such a manner as to restore as far as possible the situation existing before the breach (see, amongst others, *Apostol v. Georgia*, no. 40765/02, § 71, ECHR 2006-...; *FC Mretebi v. Georgia*, no. 38736/04, § 61, 31 July 2007; and *Assanidze*, cited above, § 198).

160. Consequently, having due regard to its findings in the instant case, and without prejudice to other possible measures remedying the violations of the first applicant's rights under Article 8 of the Convention and Article 1 of Protocol No. 1, the Court considers that the most appropriate form of redress would be *restitutio in integrum* under the IDPs Act, that is, to have the cottage restored to the first applicant's possession pending the establishment of conditions which would allow his return, in safety and with dignity, to his place of habitual residence in Abkhazia, Georgia. Alternatively, should the return of the cottage prove impossible, the Court is of the view that the first applicant's claim could also be satisfied by providing him, as an internally displaced person, with other proper

accommodation or paying him reasonable compensation for the loss of the right to use the cottage, the amount of which should be agreed on by the parties within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention. However, should the parties fail to reach agreement within that period, the Court reserves the right to fix the further procedure under Article 41 of the Convention, in order to determine itself the amount of such compensation (Rule 75 §§ 1 and 4 of the Rules of Court).

161. In addition, the Court has no doubt that the first applicant suffered distress and frustration on account of the violations of his various rights under the Convention and Article 1 of Protocol No. 1. The resulting non-pecuniary damage would not be adequately compensated for by the mere finding of these breaches. Making its assessment on an equitable basis, the Court awards the first applicant EUR 15,000 under this head.

B. Costs and expenses

162. The applicants' representatives claimed reimbursement of the court fee of GEL 1,200 (EUR 510) paid to the Supreme Court in the recovery proceedings as well as GEL 132.65 and USD 250 (overall total – EUR 242) incurred, according to the submitted invoices, for postal and translation expenses in the proceedings before the Court. The representatives also claimed GEL 16,100 (EUR 6,834) for the legal assistance which they had afforded to the applicants before both the domestic courts and the Court. No invoices, contracts or other documents were submitted in support of the latter claim, the representatives explaining that their services had been provided free of charge in view of the difficult social and financial situation of the applicants.

163. The Government submitted that, since the representatives had rendered their legal services to the applicants free of charge, there was no call to award any compensation.

164. In the light of its well-established case-law on the matter (see, for instance, *Ghavtadze v. Georgia*, no. 23204/07, §§ 118 and 120, 3 March 2009), and having due regard to the relevance of the above-mentioned claims as well as to the insufficient documentary evidence in its possession, the Court considers that the first applicant should only be awarded EUR 510 in reimbursement of the fee paid in the cassation proceedings, and EUR 242 for the postal and translation expenses.

C. Default interest

165. 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

1. *Declares* unanimously the first applicant's complaints under Articles 5 §§ 3 and 4 and 8 of the Convention and Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;

2. *Holds* unanimously that there has been no violation of Article 5 § 3 of the Convention on account of the court decisions of 6 and 14 June 2006;

3. *Holds* unanimously that there has been a violation of Article 5 § 3 of the Convention on account of the court decision of 29 June 2006;

4. *Holds* unanimously that there has been no violation of Article 5 § 4 of the Convention on account of the judicial review of 14 June 2006;

5. *Holds* unanimously that there has been a violation of Article 5 § 4 of the Convention on account of the judicial review of 29 June 2006;

6. *Holds* unanimously that there has been a violation of Article 8 of the Convention on account of the taking of the cottage;

7. *Holds* by 6 votes to 1 that there has been a violation of Article 1 of Protocol No. 1 on account of the taking of the cottage;

8. *Holds* by 6 votes to 1 that
(a) should the return of the cottage prove impossible, the respondent State is to provide the first applicant, as an internally displaced person, with other proper accommodation or is to pay him, under a mutual agreement (see paragraph 160 above), reasonable compensation in the national currency of the respondent State, plus any tax that may be chargeable on this amount, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention;
(b) should the parties fail to reach agreement on the amount of the monetary compensation, the Court will determine itself the sum to be paid by the Government (see paragraph 160 above);
accordingly,
(i) *reserves* the question of the application of Article 41 of the Convention in part;
(ii) *invites* the Government and the first applicant to submit, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement which they may reach;

(iii) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

9. *Holds* unanimously
(a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and
(ii) EUR 752 (seven hundred and fifty-two euros), plus any tax that may be chargeable to the applicant, for 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;

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

Done in English, and notified in writing on 27 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:
(a) partly concurring opinion of Judge Jočienė;
(b) partly dissenting opinion of Judge Cabral Barreto.

FT
SD

PARTLY CONCURRING OPINION OF JUDGE JOČIENĖ

I agree with the conclusions of the Chamber as indicated in the operative part of the judgment. I also voted with the majority of the Chamber in finding a violation of Article 1 of Protocol No. 1; however, in this case I would like to stress two decisive aspects concerning the applicability of Article 1 of Protocol No. 1.

First of all, taking into account the case-law of the Court developed in this field (see paragraphs 106 and 108 of the judgment, and especially the dissenting opinion of Judge Mularoni in the case of *Öneryıldız v. Turkey* [GC], no. 48939/99, ECHR 2004 XII), I consider that the question of the applicability of Article 1 of Protocol No. 1 raises some issues in this case. I wish to draw attention to the fact that the first applicant was granted the disputed cottage for the purposes of his service as a high-ranking official of the Abkhazian Ministry of the Interior (see paragraphs 8 and 104). This fact, in normal circumstances, should have meant that the applicant could use the cottage while discharging his official functions in the above-mentioned Ministry. After being dismissed from the Ministry of the Interior, the applicant should then have stopped living in the cottage, which had been granted for official purposes only.

But this case has very specific circumstances which, in my opinion, attract the application of Article 1 of Protocol No. 1. Accepting the fact that the cottage had been granted for official purposes, I note that the first applicant on 20 April 2000 received an official letter from the Ministry of the Interior confirming that he and his family had settled in the cottage in 1994 on the basis of an ordinance issued by the Minister under the Internally Displaced Persons and Refugees Act of 28 June 1996 (“the IDPs Act” – see paragraph 12 of the judgment). I accept the arguments developed by the Chamber in paragraph 105 and I further note that there was a clear legal obligation on the State to accommodate and protect internally displaced persons in view of the humanitarian crisis prevailing in Georgia in 1993 to 1994. Taking into account the Chamber's arguments set out in paragraph 107 that the State, by passing various legal acts, confirmed IDPs' rights in the housing sector and established solid guarantees for their protection, I consider that such a clearly established legal obligation on the State to protect IDPs' rights, including the right to accommodation, creates for them a clear pecuniary dimension protected under Article 1 of Protocol No. 1.

Furthermore, I would stress another argument in favour of the applicability of Article 1 of Protocol No. 1 in this case: the Georgian courts at three levels of jurisdiction (see paragraphs 25-44 of the judgment) had clearly decided that the applicant had “possession” of the cottage (see paragraphs 26, 36, 43 and 44). In its case-law, the Court has recognised its own *subsidiary character* (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97,

§ 140, ECHR 2006-V), which means that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, *mutatis mutandis*, *Kopp v. Switzerland*, 25 March 1998, § 59, *Reports of Judgments and Decisions* 1998-II). In this case, the Georgian courts' clear acknowledgment of the first applicant's "possession" with regard to the disputed cottage and its use brings the case within the scope of Article 1 of Protocol No. 1.

PARTLY DISSENTING OPINION OF JUDGE CABRAL BARRETO

(Translation)

I can follow the majority in all its reasoning except for that concerning the violation of Article 1 of Protocol No. 1.

In my view, the first applicant was not the owner of any possession, within the meaning of Article 1 of Protocol No. 1.

1. As is said at paragraph 8 of the judgment, the first applicant was a high ranking official in the Ministry of the Interior who, in January 1994, was offered the post of Head of the Investigative Department; once he had accepted that job, he and his family were provided with accommodation in a cottage belonging to that Ministry.

2. My understanding is that the cottage was offered to the applicant by virtue of his civil servant status.

The applicant was in possession of this property not in his own name, but in that of the owner, the Ministry of the Interior

Even if the applicant's possession of the cottage lasted more than ten years, there was never any qualitative change in the applicant's legal relationship with that property.

3. However, the right to inhabit particular accommodation of which one is not the owner does not amount to right to property within the meaning of Article 1 of Protocol No. 1 (see, amongst other authorities, the Court's decision in the case of *JLS v. Spain,* no. 41917/98, *Reports* 1999-V).

Even if there has been an interference in or deprivation of certain property, only the owner or the person in possession in his or her own name may claim to have suffered a violation of Article 1 of Protocol No. 1.

4. In the light of these considerations, I prefer to examine the events to which the first applicant was subjected under Article 8 of the Convention and find a violation of his right to respect for his home.