



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

FIFTH SECTION

CASE OF BATIASHVILI v. GEORGIA

(Application no. 8284/07)

JUDGMENT

STRASBOURG

10 October 2019

FINAL

10/01/2020

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

In the case of Batiashvili v. Georgia,

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

Angelika Nußberger, *President*,

Yonko Grozev,

Ganna Yudkivska,

Síofra O'Leary,

Mārtiņš Mits,

Lətif Hüseynov,

Lado Chanturia, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 July, 3 September and 10 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 8284/07) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) by a Georgian national, Mr Irakli Batiashvili (the applicant), on 31 January 2007.

2. The applicant was represented before the Court by Mr I. Baratashvili, a lawyer practicing in Tbilisi; lawyers of a Tbilisi-based non-governmental organisation called “Article 42 of the Constitution” – most recently Mr N. Legashvili; and Mr P. Leach, Mr B. Bowring, and Ms J. Evans of the European Human Rights Advocacy Centre (EHRAC). The Georgian Government (the Government) were represented by their successive Agents, most recently Mr L. Meskhoradze of the Ministry of Justice.

3. The applicant, relying on Article 5 § 3 of the Convention, alleged that the domestic authorities had failed to justify his detention pending trial. The applicant also complained under Article 5 § 4 about the absence of oral hearings at appellate level, and his limited access to the case material. Relying on Article 6 § 2 of the Convention, the applicant further complained that the presumption of his innocence had been violated by the government’s dissemination of evidence that had been tampered with to the media.

4. On 16 January 2008 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Tbilisi.

A. Background

6. During the 1992-93 armed conflict in Abkhazia, Georgia, as a result of which Georgia lost *de facto* control over a large part of that region, a valley adjacent to the river Kodori known as “the Kodori Gorge” was defended by a local paramilitary group Monadire (“the armed group”) run by Mr E.K. Following a ceasefire agreement concluded in 1994, the Kodori Gorge remained under the control of the central government and E.K. was appointed as the President’s Envoy to the area, while retaining his status as the leader of the armed group. The armed group continued to be active in the Kodori Gorge after the ceasefire with the aim of ensuring the safety in the area and was granted the status of a battalion of the Georgian military forces by the Ministry of Defence.

7. On 27 May 2005 the Ministry of Defence ordered the dissolution of the armed group but the latter refused to comply with the order.

8. On 22 July 2006 E.K. gave a televised address declaring the armed group’s insubordination in relation to the central government which, according to him, was planning to forcibly take control of the Kodori Gorge on 27 July 2006. He warned that the situation could descend into a civil war.

9. On 22 July 2006 a preliminary investigation was opened at the Special Operative Department of the Ministry of the Interior in respect of a criminal case no. 090060756. The document on the opening of the preliminary investigation indicated that it had concerned “the creation and leadership of an illegal armed group, and the illegal purchase, storage and carrying of firearms” without elaborating on the grounds for opening the investigation, or persons identified as suspects.

10. On 23 July 2006 the investigating authorities obtained a judicial order permitting the interception and recording of E.K.’s telephone calls. As a result, it was revealed that following his declaration of insubordination, he had been in contact with the applicant, an opposition figure at the time and a former Chairman of the Information-Intelligence Service, who had known E.K. from his role in the 1992-93 armed conflict and the armed group’s subsequent activities in the region. In those telephone conversations the two discussed E.K.’s cause, his further plans (including the need to make another public statement calling on the State armed forces not to use arms on the insurgents), statements made by various opposition politicians, as well as the applicant’s statements to the media outlets.

11. On 25 and 26 July 2006 the Ministry of the Interior launched a police operation and took control of the Kodori Gorge. Two policemen were injured and one civilian died during the operation. E.K. and members of the armed group went into hiding.

B. Media coverage of the events

12. E.K.'s declaration of insubordination and the events in the Kodori Gorge attracted wide media coverage.

13. On 23 July 2006 the applicant gave an interview to a private television channel Rustavi 2 (Rustavi 2) in relation to the events in the Kodori Gorge. He noted that fighters who had "heroically defended the Kodori Gorge" together with E.K. in the 1992-93 armed conflict were now gathering to back E.K.'s "just protest" against the political situation in the country. The applicant warned against the government's alleged plan to quell the protest by force, noting that any such effort would have devastating results for the country, as "blood [would] be spilt amongst brothers". The applicant stated that the government had to handle the situation with prudence and caution, and to abstain from "labelling the people involved in the protest as criminals and traitors", as they were in fact "heroes who had defended their homeland [in the past]".

14. At 7 p.m. on 25 July 2006 the applicant commented on the Kodori Gorge events on a private television channel, Imedi, and stated, among other things, that "if E.K. is a traitor and G.B. [a member of the ruling political party at the time] is a patriot then this country is doomed ...". The applicant also noted in another interview given to the same television channel an hour later that he had been receiving regular updates from E.K. regarding the tense situation in the region.

15. At 9 p.m. on 25 July 2006 Rustavi 2 broadcast a recording of a telephone conversation between E.K. and the applicant. According to the journalist, the recording had been provided to the television channel by the Ministry of the Interior. The recording as aired by Rustavi 2 lasted one minute and forty-four seconds, and contained the following dialogue:

"[The applicant]: Yes...

[E.K.]: Yes, I wanted to say that, as they said that [I] met with the [so-called] Minister of Defence of Abkhazia ...

[The applicant]: [Expletive]

[E.K.]: Yes, of course, and ... I don't know the Minister of Defence at all, nor the other one, the Chief of the Peacekeeping Forces, right?

[The applicant]: Yes, yes

[E.K.]: I don't know him either and I was called by that K. [representative of the Abkhaz separatist forces] with whom I always maintain ... right?

[The applicant]: Yes.

[E.K]: So, he called and asked what was going on.

[The applicant]: Yes, and now ...

[E.K]: He offered me, like before, that he will stand by my side with a certain number, he said a considerable number and ... [no sound for 6 seconds]

[The applicant]: [laughs, followed by no sound for 21 seconds]

[E.K]: In short you did very well, otherwise the people here were demotivated, saying they did not want Georgia at all.

[The applicant]: [laughs] Don't worry, be strong, be strong now ..."

16. At 11 p.m. on the same evening the applicant denounced the recording on the Imedi television channel, claiming that it had been manipulated to omit the part where E.K. had clearly refused to accept help from K., and that such a manipulation was aimed at conveying the impression that K. and his forces were to be involved alongside E.K. The applicant added that E.K. had not gone into hiding and the government was misleading the population.

17. On 25 July 2006, while commenting on the events at the Kodori Gorge on Rustavi 2, Mr M.M., Deputy Chairman of the Parliament of Georgia, stated the following:

"If the people have still not understood what this is about, let me repeat that this is a plan that has been elaborated and financed outside our Georgian borders by supporters of the previous government who are opposed to our leadership, one of whom is Batiashvili ..."

18. On the same evening of 25 July 2006 Mr G.T., the Chairman of the Defence and Security Committee of the Parliament of Georgia, commented on the events at the Kodori Gorge on Rustavi 2 and, among other things, stated the following:

"I understand that Batiashvili wants to justify himself one way or another, but I hope that we will have enough proof for him to be sent to justify himself elsewhere. It is more than a little surprising that he refers to others' lack of conscience, when he supported [the former President] and the forces which got us into the situation we are in today ... He was indeed moving around with those so-called partisans who, at the time, were involved in smuggling and profited from it. This gentleman and the others made money alongside E.K. Therefore, obviously no ... justification he offers will be accepted. Just how well the armed group led by E.K. protected Georgia's interests in the valley is illustrated by the statement he made in the recording. He says that, like before, he is friends with and accepts help from our enemies. ... [That] is therefore, I believe, the evidence with which we proved everything we have said in the last few days. There is no longer any doubt, this is treason ... the betrayal of Georgia we were talking about yesterday, and he will be punished accordingly. I believe that first and foremost we must recognise the need for our government to stand firm and stick to its principles ... Anyone who – and I am no longer talking about Batiashvili who is an obvious enemy of the State, but [our] opposition whose position vis-à-vis E.K. is still not entirely clear – ... lay all responsibility at the ruling party's door ... should be aware that every politician has his responsibilities and will be dealt with accordingly."

19. On 26 July 2006 the applicant was questioned by an investigator of the Ministry of the Interior on the premises of the Chief Prosecutor's Office as a witness in relation to the criminal case no. 090060756 (see paragraph 9 above). Among other things, the applicant was asked about his knowledge of E.K.'s intentions, whether he had promised to support E.K. through soliciting political and popular support, as well as whether by telling E.K. to "be strong", as heard in the audio recording of their telephone conversation (see paragraph 15 above), the applicant had encouraged E.K. to keep up the insubordination. The applicant answered that from a legal perspective, E.K. and the group did not have a right to take up arms against the Government, but reiterated their role in defending the region, the importance of resolving the differences through peaceful means, and that he had only expressed his moral support to the people of the region. He noted that several political parties had expressed their adequate position on the matter, but he did not remember having solicited their future support. The applicant also noted that the telephone conversation aired by Rustavi 2 on 25 July 2006 had been edited to omit the part where E.K. had refused to accept K.'s help.

20. On the same day the applicant made several statements in the media. He stated he had had frequent telephone conversations with E.K., and that he could help defuse the situation if he were to be sent to the Kodori Gorge. He criticised the government for having chosen to resolve the matter with force and warned against a further escalation of the situation.

21. In the evening of 26 July 2006 the applicant was interviewed by N.T., a journalist of Rustavi 2, as part of an evening programme. The relevant part of the interview went as follows:

"[N.T.]: ...[if] I am not mistaken, there is a phrase said by you "be strong, be strong" in that telephone conversation concerning [K.'s] military aid which you say was cut...

[The applicant]: First of all, I would like to tell you, that as a television company with which I believe I cooperate and do not refuse to give an interview, you should not have accepted such a shamelessly mutilated recording without any criticism, where it was obvious that it had been edited...

...

[N.T.]: I will answer that, if you allow. In any civilised country, when public interest exists, and you will probably agree that a military rebellion deserves such public interest, any journalist is sometimes led to give up on verifying objectivity in favour of expeditiousness, which has happened in this case and then you were given [time] as part of the Kurieri programme, and I am not planning to justify myself now regarding that.

[The applicant]: I understand..."

22. The criminal case file in respect of the applicant contained an official transcript of the intercepted telephone conversation between the applicant and E.K. on 23 July 2006 prepared by the Ministry of the Interior on 29 July 2006. It is unclear when the applicant was granted access to the document in question. According to the transcript, the telephone

conversation between the applicant and E.K. lasted one minute and forty-four seconds and, in so far as relevant, went as follows [the parts of the conversation that had not been included in the recording as aired by Rustavi 2 (see paragraph 15 above) are *italicised*]:

“[The applicant]: Yes...

[E.K.]: Yes, I wanted to say that, as they said that [I] met with the [so-called] Minister of Defence of Abkhazia...

[The applicant]: [Expletive]

[E.K.]: Yes, of course, and ... I don't know the Minister of Defence at all, nor the other one, the Chief of the Peacekeeping Forces, right?

[The applicant]: Yes, yes

[E.K.]: I don't know him either and I was called by that K. [representative of the Abkhaz separatist forces] with which I always maintain *peace*, right?

[The applicant]: Yes.

[E.K.]: So, he called and asked what was going on.

[The applicant]: Yes, and now...

[E.K.]: He offered me, like before, that he will stand by my side with a certain number, he said a considerable number and *I said I would do it myself and when they exterminate us then he could do whatever he wanted, but they will not live to that day.*

[The applicant]: [laughs] *Listen, they are spreading that on purpose now...*

[E.K.]: *I know, yes, yes.*

[The applicant]: *This discre... But you know what, regardless of everything, all that they now showed on television about you still plays in your favour, because it shows that you are a fighter for this [part of the country].*

[E.K.]: In short you did very well, otherwise the people here were demotivated, saying they did not want Georgia at all.

The applicant: [laughs] Don't worry, be strong, be strong now..."

23. On 1 August 2006 Mr G.T., Chairman of the Defence and Security Committee of the Parliament of Georgia made the following statement at a press conference regarding the applicant which was aired live on Rustavi 2:

"We have witnessed further evidence presented by the Prosecutor's Office in relation to the Batiashvili case and I think you have all seen that Mr Irakli Batiashvili was giving advice to [E.K.]. This advice was designed to help the latter with achieving a successful conclusion to the rebellion. ... I think naturally we did not have any questions regarding the guilt of this person [the applicant], and I think if anyone did have [questions], they should no longer have such questions. Accordingly, if there had been a need for 'lustration' of those in our political opposition, I think they effectively 'lustrated themselves' when they unanimously declared this person to be illegally detained and a political prisoner while he was involved in treason, in the organisation of a rebellion against the State. By this [action] I think they finally revealed their views, their absolutely anti-governmental thinking and turned their

backs on their homeland at a decisive moment, and I think society has answered them many times and that finally they will get this answer at the elections.”

C. Initiation of criminal proceedings against the applicant and his pre-trial detention

24. On 27 July 2006 the investigating authorities obtained a judicial order authorising the retrieval of the call logs for the applicant’s incoming and outgoing telephone calls.

25. On 28 July 2006 E.K. was charged *in absentia* with high treason aimed at overthrowing the constitutional order by force.

26. On 29 July 2006 the applicant was arrested in relation to the criminal case no. 090060756 (see paragraph 9 above). He was charged with covering up the preparation of a crime, owing to his failure to inform the relevant authorities of the possible involvement of the Abkhaz separatist forces in the rebellion, and with aiding and abetting high treason aimed at overthrowing the constitutional order by force. The first charge concerning the applicant’s alleged failure to inform the relevant authorities of the possible involvement of the Abkhaz separatist forces in the rebellion was based solely on the applicant’s telephone conversation with E.K. as aired on Rustavi 2 on 25 July 2006 (see paragraph 15 above). As regards the second charge, namely aiding and abetting high treason, it was alleged that the applicant had provided intellectual support to E.K. by giving him instructions, advice, information, and the encouragement necessary to achieve his aims. According to the document containing the charges, the applicant further promised to create a favourable image of E.K. and his plans in public, and called E.K. a hero in one of his public speeches while calling on the government not to forcibly quell the rebellion in another speech. He further advised E.K. on his public speeches and image. The second charge was based on several recordings of telephone conversations between the applicant and E.K. during the period of 23-25 July 2006, the applicant’s speeches and comments broadcast by the media, E.K.’s speeches and other evidence.

27. On 29 July 2006 the investigator lodged an application before the Tbilisi City Court for the applicant’s pre-trial detention. Without specifying the exact date when the applicant came under suspicion, the investigator submitted that the criminal investigation no. 090060756 against E.K. and another person had revealed that the applicant had committed the crimes with which he had been charged. According to the investigator, it was necessary to place the applicant in detention owing to the particular seriousness of the charges, and that there were reasons to believe that, if released, the applicant would continue his criminal activities, impede the course of justice as the other persons implicated in the crimes in question were still at large, and abscond.

28. On 30 July 2006 the first-instance court ordered the applicant's pre-trial detention for two months. It reasoned that the seriousness of the charges against the applicant justified such a decision. Furthermore, noting the applicant's televised speeches and telephone conversations with E.K., the court concluded that there existed a risk that the applicant would reoffend if he were to be released. The court further noted that there was a risk that the applicant would obstruct justice due to the fact that other suspects were still at large and the applicant could have contacted them, if he were to be released. Finally, the court noted, without elaborating any further, that there was a risk of the applicant absconding. The court also noted that the relevant national legislation was in compliance with the Convention.

29. On 1 August 2006 the applicant appealed, arguing that the risks cited by the first-instance court to justify his pre-trial detention had been unsubstantiated. He noted that the court had failed to consider the fact that he had voluntarily appeared before the investigating authorities upon being summoned, and had a family, a permanent residence, and a job at a university.

30. On 3 August 2006 the Tbilisi Court of Appeal dismissed the applicant's appeal of 1 August 2006 in a reasoned decision. It endorsed the reasoning of the lower court (see paragraph 28 above) and added that the particular public threat posed by the actions ascribed to the applicant, the potentially larger circle of accomplices, the fact that the other identified suspects were still at large, the seriousness of the charges and the severity of the potential sentence all reinforced the suspicion that the applicant would abscond and obstruct justice. The court further noted that considering the swift arrest of the applicant, he had not had the opportunity to interfere with the course of the criminal investigation or tamper with the evidence, and his detention was in order to prevent such a risk from materialising. Accordingly, the fact that the applicant had voluntarily appeared before the investigating authorities before he had been charged could not have served as a sufficient reason for not detaining him pending the outcome of the criminal investigation.

31. On 29 July 2006 an investigator made a report on the applicant's familiarising himself with the evidence available in the criminal case file. The report was signed by the applicant's lawyer and the applicant with a handwritten note that the criminal case file was missing the evidence indicated in the statement outlining the suspicion against him. On 31 July 2006 the applicant's lawyer was informed about the possibility to get acquainted with the case file at the Ministry of the Interior. On 4 August 2006 the investigator attempted to reach the applicant's lawyer at the latter's cell phone without success. On 12 August 2006 the applicant's lawyer familiarised himself with the criminal case file, including transcripts of various telephone conversations, as confirmed by his signature on the

relevant document. The lawyer remarked that the file had not contained a recording of the applicant's interview given to a Russian television channel, and audio recordings of the applicant's telephone conversations with E.K. On 15 August 2006 the applicant's lawyer familiarised himself with the recordings of the telephone conversations in question. On 21 August 2006 the applicant's lawyer made a complete photocopy of the criminal case file, as confirmed by his signature.

32. On 22 September 2006 the prosecutor requested an extension of the applicant's pre-trial detention by one month, noting that a number of witnesses, including E.K.'s brother, had yet to be questioned and the investigation to be finalised.

33. On 22 September 2006 the Tbilisi City Court held an oral hearing in the presence of the parties and extended the applicant's pre-trial detention by one month. It reasoned that the case being particularly complex and the investigation being in an active phase, a number of investigative actions such as the questioning of E.K.'s brother and persons identified from the applicant's phone call logs had not yet been carried out. Furthermore, three out of four charged persons remained at large. Therefore, the reasons to keep the applicant in pre-trial detention persisted.

34. On 24 September 2006 the applicant appealed against the extension of his pre-trial detention. He submitted that the case materials did not contain cassettes with the recordings of the telephone conversations or the relevant material televised in the media and used as a basis for his charges. Furthermore, he argued that the second charge ought to be dropped as the transcript of the relevant telephone conversation showed that E.K. had refused any help from separatist forces. The applicant further argued that it was unclear why the witnesses had not yet been questioned. Furthermore, E.K.'s brother had been questioned on 11 August 2006, yet no questions had been put to him regarding the applicant's case. He suggested the investigating and prosecuting authorities were stalling the investigation to keep him detained as long as possible. Furthermore, the applicant noted that the need to finalise the case could not have served as a ground for extending his pre-trial detention.

35. On 27 September 2006 the Tbilisi Court of Appeal upheld the lower court's decision in a written procedure. According to the court, the applicant's arguments regarding the persistence of the grounds justifying his pre-trial detention had been duly addressed by the lower court, and no new circumstances justifying the alteration of the preventive measure had emerged. It further noted that the complexity of the case was a ground set out in Article 162 § 3 that could justify the extension of pre-trial detention (see paragraph 47 below). The court reasoned that in addition to the grounds noted by the lower court, the complexity of the case made it difficult to conclude the investigation within the initial pre-trial detention period, and justified, in the absence of arbitrary delays on the part of the investigative

authorities, the need for additional time to finish the investigation and implement certain investigative measures, draw up the indictment and send the case for trial.

36. On 23 October 2006 the investigator applied to the Tbilisi City Court for a second extension of the applicant's pre-trial detention for one month. He pointed out that a number of persons identified from the applicant's phone call logs were still to be questioned, the indictment had to be drawn up, and the case was to be sent firstly to the prosecutor and then to the trial court.

37. On 26 October 2006 the Tbilisi City Court held an oral hearing in the presence of the parties and, agreeing with the investigator's arguments concerning the need to finalise the investigation, including in respect of persons possibly connected to the applicant and the risk of the obstruction of justice, delivered a decision to extend the applicant's detention by another month.

38. The applicant appealed, arguing that the investigating authorities had failed to demonstrate why it had been impossible since 29 July 2006 to determine with precision the identity of the relevant witnesses and to question them, and querying which calls in his call logs had been suspicious. Furthermore, the need to finalise the indictment and send the criminal case to the prosecutor did not figure as one of the legitimate grounds for continuing pre-trial detention either in domestic law or the Convention. Nor was the complex nature of a case such a ground. Finally, the court's conclusion that the risk of the applicant absconding and obstructing justice "was not excluded" had not been based on any reasoned arguments or evidence, especially considering the applicant's voluntary cooperation with the investigating authorities.

39. On 1 November 2006, the Tbilisi Court of Appeal examined the applicant's appeal in a written procedure and upheld the lower court's findings. The appellate court noted that the criminal case no. 090060756 concerned the applicant "and other individuals". The court reasoned that considering the particular complexity of the case and the investigative measures that remained to be carried out, and in the absence of arbitrary delays, extra time was objectively necessary for the authorities to conclude the investigation. The appellate court further reasoned, regarding the possible use of non-custodial measures of restraint, that factors such as the factual circumstances of the case, the nature of the charges, the severity of the penalty and the existence of co-perpetrators that needed to be identified, in their totality created a reasonable doubt that, without the use of pre-trial detention, the applicant would abscond, tamper with the evidence, and reoffend. The court further noted that in accordance with the domestic legislation on the matter (see paragraph 48 below) it was within an appellate court's discretion to dispense with an oral hearing.

40. On 24 November 2006, the indictment which reproduced the charges of 29 July 2006 (see paragraph 26 above) was approved by a prosecutor as part of a criminal case no. 090061129 and the applicant was committed for trial in the Tbilisi City Court. The indictment did not provide an explanation as to the change of the criminal case number.

D. Disputed authenticity of the recording of the intercepted telephone conversation aired on Rustavi 2

41. On 18 September 2006 the applicant lodged a complaint with the Chief Prosecutor's Office regarding the tampering with evidence and requested that a criminal investigation be opened into the matter. He submitted that the recording of the telephone conversation between him and E.K. aired on Rustavi 2 had been disseminated by government authorities in a manipulated form to conceal the part where E.K. had refused to accept K.'s offer. It was aimed at creating an impression that the applicant had been complicit in a crime, and had failed to report K.'s involvement in the rebellion.

42. On 2 October 2006 the Chief Prosecutor's Office rejected the applicant's application, noting the absence of a crime. It indicated that the criminal case file had contained a full transcript of the telephone conversation in question and it appeared that the television company had shortened the conversation on their own initiative, given the limited airtime available.

43. On 14 February 2007, while the criminal proceedings against the applicant were pending before the first-instance court, the applicant requested that N.T., the former director of the Rustavi 2 channel, be questioned as a witness. The applicant referred to N.T.'s statement on 26 July 2006 stating that sometimes journalists have to prioritise delivering information without delay over verifying the objectivity of such information (see paragraph 21 above) and submitted that N.T. would have confirmed before the court that the recording of the applicant's telephone conversation with E.K. had been given to the media outlet in question in an already manipulated form, with the parts of the conversation where E.K. had refused to agree to the involvement of Abkhaz separatist forces being muted. The court granted the applicant's request to question N.T. as a witness.

44. On 3 May 2007 the applicant requested to question K.K., the deputy head of Rustavi 2's Information Service instead of N.T., who had apparently moved to the US and who it was impossible to locate. The prosecutor moved to reject the application as being irrelevant since the relevant charge concerning the failure to report a crime (see paragraph 26 above) had since been dropped, without specifying the date when this happened. The first-instance court rejected the applicant's request as being aimed at unduly delaying the proceedings.

E. Subsequent developments

45. As it appears from the parties' submissions, the applicant was found guilty by the court of first instance and the appellate court on 23 May and 13 September 2007 respectively. However, on 28 January 2008 the Supreme Court discontinued its consideration of an appeal on points of law lodged by the applicant in view of an earlier presidential pardon, granted on an unspecified date.

II. RELEVANT DOMESTIC LAW

46. The relevant provisions of the Code of Criminal Procedure (CCP) concerning pre-trial detention as they stood at the relevant time are summarised in the cases of *Patsuria v. Georgia* (no. 30779/04, § 32, 6 November 2007) and *Giorgi Nikolaishvili v. Georgia* (no. 37048/04, §§ 35 and 36, 13 January 2009).

47. Article 162 § 3 of the CCP provided that the initial period of detention "pending investigation" of two months could be extended on a maximum of two occasions, each time by one month, based on, among other grounds, the complexity of the case.

48. Article 243 § 10 of the CCP, in force at the material time, authorised an appellate court to dispense with an oral hearing in proceedings concerning the review of measures of restraint applied at the preliminary investigation stage.

49. Article 18 of the Civil Code, as it stood at the relevant time and in so far as relevant, provided:

"... 2. A person may protect in court, according to the procedures laid down by law, his or her honour, dignity, privacy, personal inviolability or business reputation from defamation.

3. If information defaming the honour, dignity, business reputation or privacy of a person has been disseminated through the mass media, it shall be retracted by the same means ...

6. The values referred to in this provision are protected regardless of the culpability of the wrongdoer. If the violation was caused by a culpable action, [the victim] may [also] claim damages. Damages may be claimed in the form of profit accrued to the wrongdoer. In the case of a culpable violation, [the victim] may also claim compensation for non-pecuniary (moral) damage ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

50. The applicant complained under Article 5 § 3 of the Convention that the judicial decisions authorising his pre-trial detention had lacked reasonable grounds. The provision 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. The parties' submissions

51. The Government contested that argument. They submitted that the reasons justifying the use of pre-trial detention in respect of the applicant had persisted throughout all four months of his pre-trial detention. Therefore, there was no need to refer separately to individual judicial decisions ordering and subsequently extending the applicant's pre-trial detention. As for the grounds relied on to justify the applicant's pre-trial detention, the Government submitted the following. First, the risk of reoffending had been demonstrated by the fact that the charge against the applicant consisted of aiding and abetting the military rebellion aimed at overturning the constitutional order and was based on his support for the rebels expressed through telephone conversations – an activity which the applicant could have resumed if released, given that the rebels had still been at large, issuing threats against the government. Second, if released, the applicant could have interfered with the investigation by influencing the witnesses that remained to be questioned. It was in this context that the complexity of the criminal investigation in question justified the applicant's continued detention. Third, the applicant's release would have threatened public order owing to the risk of him continuing to influence public opinion in order to gain public support for the rebels. The Government maintained that in sensitive cases such as the applicant's, involving matters of state security and the territorial integrity of the country, a genuine requirement of public interest existed that outweighed the rule of respect for individual liberty. Furthermore, the domestic courts also relied on other grounds such as the risk of absconding. These reasons, taken cumulatively, were adequate and sufficient to justify the applicant's pre-trial detention under Article 5 § 3 of the Convention. In any event, the overall duration of four months' pre-trial detention, following which the applicant had been released, had not been unreasonable.

52. The applicant submitted that none of the grounds relied on by the domestic courts to maintain his pre-trial detention had been based on

convincing reasoning and evidence, and that complexity of a case had not been a valid ground on which to base a pre-trial detention.

B. The Court's assessment

1. Admissibility

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

2. Merits

54. The Court reiterates that whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI, and *Pihlak v. Estonia*, no. 73270/01, § 41, 21 June 2005). It is essentially on the basis of the reasons given in the decisions of the domestic courts and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 91, 5 July 2016, and *Galuashvili v. Georgia*, no. 40008/04, § 46, 17 July 2008).

55. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but, after a certain lapse of time, it no longer suffices alone. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Buzadji*, cited above, § 87, with further references). The complexity and special characteristics of the investigation are factors to be considered in this respect (see *Kusyk v. Poland*, no. 7347/02, § 35, 24 October 2006).

56. Turning to the circumstances of the present case, it appears from the Government's submissions, which the applicant did not dispute, that the latter was released on 24 November 2006, after being committed for trial (see paragraphs 40 and 51 above). Therefore the Court accepts that the applicant's pre-trial detention complained of lasted for slightly less than four months.

57. The reasonableness of that period cannot be assessed *in abstracto*. In that connection, the Court notes that the initial period of the applicant's pre-trial detention for two months was ordered and upheld by the first-instance and appellate court decisions of 30 July and 3 August 2006

respectively. That period was extended twice, by a month on each occasion, on 22 September and 26 October 2006 at first-instance level, and upheld in reasoned decisions on 27 September 2006 and 1 November 2006 at appellate level. Consequently, in order to establish whether the applicant's detention was reasonable, within the meaning of Article 5 § 3 of the Convention, the Court is called on to examine the reasons given in those decisions, as well as the applicant's arguments raised in his applications for release (see *Patsuria v. Georgia*, no. 30779/04, § 63, 6 November 2007).

58. The Court observes that in addition to the suspicion that the applicant had committed the crimes with which he was charged, the domestic courts relied on the risk of the applicant absconding, though without much elaboration, and the possibility of his obstructing the course of justice as arguments against his release. In this latter respect the domestic courts took note of the investigation being in an active phase and principally referred to the fact that the applicant's co-accused had remained at large, and potential witnesses, including but not limited to E.K.'s brother, were yet to be questioned (see paragraphs 28, 30, 33, 35, 37, and 39). These grounds were also relied on to dismiss the applicant's request for a non-custodial measure of restraint (see paragraph 39 above). In the particular circumstances of the present case, owing to the initial stage of the investigation against the applicant and his co-accused being at large, the Court accepts that the above reasons cited by the domestic courts constituted relevant and sufficient grounds for extending the applicant's detention during the four months under consideration.

59. It remains to be ascertained whether the domestic authorities displayed "special diligence" in conducting the criminal proceedings against the applicant. The domestic courts repeatedly referred to the complexity of the case in the context of the authorities' inability to finalise the investigation in less than four months, and the persistence of the risk of the applicant's influencing witnesses and tampering with evidence. While the applicant's argument regarding the investigating authorities' failure to question E.K.'s brother in August 2006 (see paragraph 34 above) was apparently not addressed, it does not appear to have been the sole investigative measure to be carried out as part of the investigation. The domestic courts noted the absence of arbitrary delays on the part of the investigative authorities (see paragraphs 35 and 39 above). The Court is further mindful of the fact that the applicant was released upon the completion of the investigation (see paragraphs 40, 51 and 56 above). In such circumstances, the investigating and judicial authorities cannot be said to have displayed a lack of special diligence in handling the applicant's case.

60. Having regard to the foregoing, the Court considers that there has been no violation of Article 5 § 3 of the Convention.

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

61. Relying on Article 5 § 4 of the Convention the applicant complained that the appellate proceedings concerning the review of his detention were conducted without an oral hearing, and placed the burden of proof upon him to establish the existence of grounds justifying his release pending trial. He further complained under Article 6 §§ 1 and 3 (b) of the Convention that upon arrest he was not granted full access to the totality of the evidence on which the investigator based his position concerning the imposition of pre-trial detention. Being the master of the characterisation to be given in law to the facts of the case (see *Söderman v. Sweden* [GC], no. 5786/08, § 57, ECHR 2013), the Court considers that this complaint likewise falls to be examined under Article 5 § 4 of the Convention, which 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.”

A. Admissibility

62. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

63. The Government stated that the Convention standards had been complied with as a mandatory oral hearing had been held during the imposition and the review of the applicant's pre-trial detention at the court of first instance. The appellate decisions were duly reasoned. As regards access to the evidence, while access to some evidence such as transcripts of audio and video material had initially been limited for technical reasons, such as the need to transcribe the relevant materials, the applicant was able to familiarise himself with most of the evidence upon his arrest, as confirmed by the relevant protocol, which he had signed. In any event, the restriction had been only partial, temporary, and fully remedied between 12 and 21 August 2001.

64. The applicant reiterated that it was unjustified to dispense with an oral hearing in the appellate proceedings. As concerned access to the evidence, he maintained that the lack of access to the totality of the evidence before 21 August 2006 had rendered it impossible to challenge the position

of the prosecution concerning his pre-trial detention in the initial judicial proceedings of 30 July and 3 August 2006.

2. The Court's assessment

65. The Court reiterates that the requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, ECHR 2009, with further references).

66. According to the Court's case-law the proceedings must be adversarial and must always ensure "equality of arms" between the parties, the prosecutor and the detained person. While national law may satisfy this requirement in various ways, whatever method is chosen should ensure that the other party will be aware that observations have been filed and will have a real opportunity to comment thereon (see *Garcia Alva v. Germany*, no. 23541/94, § 39, 13 February 2001, and *Albrechtas v. Lithuania*, no. 1886/06, § 73, 19 January 2016). In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see, *inter alia*, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II). The opportunity of challenging effectively the statements or views which the prosecution bases on specific documents in the file may in certain instances presuppose that the defence be given access to these documents (see *Wloch v. Poland*, no. 27785/95, § 127, ECHR 2000-XI).

67. The Court reiterates that normally the procedural guarantees of Article 5 § 4 of the Convention are respected in circumstances where a detained person was present before the first-instance court which ruled on his request to be released but did not appear again before the second-instance court in the appeal proceedings (see *Çatal v. Turkey*, no. 26808/08, § 34, 17 April 2012).

68. Turning to the circumstances of the present case, the Court observes that the applicant was present at all hearings of the first-instance court related to his pre-trial detention, while the appellate court reached its decisions by means of a written procedure, based on the existing materials in the case file. These decisions contained the relevant reasoning as to why the lower courts' decisions were to be upheld. The requirements of Article 5 § 4 of the Convention were therefore respected in this respect.

69. As concerns the applicant's access to the criminal case file, the Court observed in *Galuashvili v. Georgia* ((dec.), no. 40008/04, 24 October 2006) that under Georgian law in force at the material time, review proceedings were urgent matters which had to be dealt with speedily. In view of this

requirement of speed, which is one of the core principles of Article 5 § 4 of the Convention, the domestic courts cannot be obliged in all circumstances to ensure the exchange of all of the parties' documents at once, which would render it impossible to take a decision within the statutory time-limit of twenty-four hours (*ibid.*).

70. The Court observes that any restrictions on the right of the detainee or his representative to have access to documents in the case file which form the basis of the prosecution case against him must be strictly necessary in the light of a strong countervailing public interest. Where full disclosure is not possible, Article 5 § 4 requires that the difficulties this causes are counterbalanced in such a way that the individual still has a possibility effectively to challenge the allegations against him (see *Ovsjannikov v. Estonia*, no. 1346/12, § 73, 20 February 2014, and *Gábor Nagy v. Hungary (no. 2)*, no. 73999/14, § 86, 11 April 2017). In this connection, the Court notes that the applicant was aware of the list of relevant evidentiary materials through the statement outlining the suspicion against him (see paragraph 31 above). Considering that the allegations against the applicant concerned his alleged support of E.K.'s cause expressed through his own televised speeches, and given the public nature of the statements made by E.K., as well as considering that the recording of their telephone conversation had been broadcast publicly, these factors counterbalanced the apparently limited access to the case materials at the initial stage of his arrest and detention in such a way that the applicant still had a possibility to challenge the allegations against him effectively.

71. In the light of the foregoing, the Court finds that there has been no violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

72. The applicant complained that the statements of the members of parliament and the dissemination of an edited recording of his telephone conversation to the media infringed his right to be presumed innocent under Article 6 § 2 of the Convention which reads as follows:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

73. The Government contested that argument.

A. The parties' submissions

74. The Government submitted, in so far as the statements of the members of parliament were concerned, that by presenting his grievances for the first time before the Court the applicant had failed to exhaust

domestic remedies. They referred to Article 18 of the Civil Code as a potential avenue of redress under which the applicant could have instituted civil proceedings against the pertinent officials.

75. As regards the dissemination of the recording of the applicant's telephone conversation with E.K., the Government submitted that it had been made necessary owing to the increased public interest in the events concerning important matters of national security, and the applicant had been given the opportunity to respond to the recording through media outlets. As to the question of whether the recording of the telephone conversation had been tampered with before being disseminated in the media, the Government provided the Court with a copy of the disputed audio recording, identical in length and in substance to that disseminated by Rustavi 2, noting it was the full version of the telephone conversation there being "no other version ... available in the criminal case file, used as the basis for [the applicant's] charges, and disseminated by Rustavi 2." They further submitted that it was at the discretion of the private television channel to transmit only the parts of the recording which it deemed relevant, or not to transmit the recording at all. In that connection, the applicant had failed to institute civil proceedings against the television company. The Government further noted that the applicant's arguments regarding the existence of a full transcript of the recording in his criminal case file had no added value for the applicant's arguments regarding tampering with evidence, especially considering that the transcript did not suggest that the applicant had not been affiliated with E.K.

76. The applicant submitted, in so far as the statements of the members of parliament were concerned, that he did not need to resort to a civil remedy in view of the purely criminal nature of the right to be presumed innocent in criminal proceedings.

77. As regards the alleged dissemination of the evidence that had been tampered with in the media, the applicant submitted that by claiming that only one version of the recording existed, the Government had failed to account to the Court for the fact that the criminal case file included a full official transcript of the very same telephone conversation which was different from the disseminated material. The fact that the Ministry of Interior had given the recording in question to the television company was not in dispute and, given that members of parliament had referred to the recording as aired by the television company in their public statements made in respect of the applicant, that pointed to an attempt by the government to falsely portray the applicant as a criminal and to influence public opinion rather than simply informing the public of the events in question.

B. The Court's assessment

1. Admissibility

(a) Applicability of Article 6 § 2

78. The Court reiterates that in criminal matters, Article 6 of the Convention applies to a person subject to a “criminal charge”, within the autonomous Convention meaning of that term (see, among other authorities, *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 249, 13 September 2016). A “criminal charge” exists from the moment that an individual is officially notified by the competent authority of an allegation that he has committed a criminal offence, or from the point at which his situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him (see, among other authorities, *Simeonovi v. Bulgaria* [GC], no. 21980/04, § 110, 12 May 2017, with further references therein). The Court notes that no plea of inadmissibility for incompatibility *ratione materiae* with Article 6 § 2 of the Convention was made by the Government in their observations. However, since this is a matter which goes to the Court's jurisdiction, the Court must examine it of its own motion (see *Mirovni Inštitut v. Slovenia*, no. 32303/13, § 27, 13 March 2018, see also *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006 III). The relevant case-law in the context of Article 6 § 2 of the Convention was summarised by the Court in *Blake v. United Kingdom* ((dec.), no. 68890/01, §§ 120-121, 25 October 2005).

79. The Court notes that the applicant was officially charged on 29 July 2006, and the dissemination of the disputed audio recording preceded that fact by four days. However, the Court is compelled to look behind the appearances and investigate the realities of the situation before it (see, *mutatis mutandis*, *Deweert v. Belgium*, 27 February 1980, § 44, Series A no. 35, and *Kalēja v. Latvia*, no. 22059/08, § 38, 5 October 2017). In this context, the Court notes that the authorities based one of the charges formally brought against the applicant exclusively on the recording (see paragraph 26 above). It is alleged that they had first manipulated that recording in order to insinuate the existence of a crime and then made it available to the public before formally bringing the charge against the applicant. Such allegedly *mala fide* conduct, if established or inferred during the Court's examination on the merits, combined with the close temporal proximity between the timing of the release of the recording, the questioning of the applicant and the bringing of the charge could attract, in the particular circumstances of the present case, the protection of Article 6 § 2 of the Convention (contrast and compare, *Zollman v. the United Kingdom* (dec.), no. 62902/00, ECHR 2003-XII, and *Blake*, cited above, §§ 120-121 and 123) from the moment the allegedly manipulated

version of the recording was made available to the public by the Ministry of the Interior.

80. Accordingly, the question of the applicability of Article 6 § 2 is so closely linked to the substance of the applicant's complaint under the said provision that it should be joined to the merits.

(b) Exhaustion of domestic remedies

81. The Court reiterates that the purpose of the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court. Consequently, States do not have to answer for their actions before an international body before they have had an opportunity to put matters right through their own legal system (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, with further references, and *Sabeh El Leil v. France* [GC], no. 34869/05, § 32, 29 June 2011, with further references). The Court further notes that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 74, 25 March 2014).

82. The Court notes that in the present case the applicant did not even once voice his grievances at the domestic level in so far as the statements of the members of parliament were concerned. He could have done so within the context of the impugned criminal proceedings (see, for example, *Fatullayev v. Azerbaijan*, no. 40984/07, § 153, 22 April 2010) or, as proposed by the Government, by lodging a civil complaint (see, for example, *Martin Babjak and Others v. Slovakia* (dec.), no. 73693/01, 30 March 2004). While it is true that in the absence of any domestic case-law concerning Article 18 § 2 of the Civil Code, the Court is not in a position to conclude that that remedy was indeed available and effective in practice, it still finds the applicant's failure to complain at domestic level of the alleged violation of the principle of the presumption of innocence unacceptable. By not giving the Government an opportunity to address this complaint at domestic level, the applicant, in the Court's view, did not meet the requirements of Article 35 § 1 of the Convention (see *Tuskia and Others v. Georgia*, no. 14237/07, § 91, 11 October 2018). The applicant's complaint under Article 6 § 2 of the Convention relating to the allegedly prejudicial statements of the members of parliament is therefore inadmissible owing to his failure to exhaust domestic remedies.

83. As regards the second limb of the applicant's complaint under Article 6 § 2 of the Convention that the presumption of his innocence had been violated by the State authorities by means of disseminating an edited audio recording of his telephone conversation with E.K. to the media, the

Court observes that the applicant complained about the matter, though without success, by requesting that a criminal investigation be opened as well as by raising the matter before the domestic courts (see paragraphs 41-44 above). In such circumstances, and considering that his complaint concerned the actions of the government authorities rather than private individuals, the applicant could not be expected to have resorted to yet another remedy such as civil proceedings against the television company. The Court therefore dismisses the Government's objection in that regard.

84. The Court further notes that the second limb of the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

85. The Court reiterates that the presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of a fair criminal trial that is required by paragraph 1 (see, among many other authorities, *Deweert v. Belgium*, 27 February 1980, § 56, Series A no. 35; *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308; and *Natsvlishvili and Togonidze v. Georgia*, no. 9043/05, § 103, ECHR 2014 (extracts)). Article 6 § 2 prohibits the premature expression by the tribunal of the opinion that the person "charged with a criminal offence" is guilty before he or she has been so proved according to law (see, among many other authorities, *Minelli v. Switzerland*, 25 March 1983, § 37, Series A no. 62, and *Peša v. Croatia*, no. 40523/08, § 138, 8 April 2010). It also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudice the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont*, cited above, § 41; *Daktaras v. Lithuania*, no. 42095/98, §§ 41-43, ECHR 2000-X; and *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II (extracts)).

86. The Court also reiterates that the freedom of expression guaranteed by Article 10 of the Convention includes the freedom to receive and impart information, including, to a certain extent, the right to seek and access information (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, §§ 155-56, 8 November 2016). Article 6 § 2 cannot therefore prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see *Allenet de Ribemont*, cited above, § 38, and *Karakaş and Yeşilırmak v. Turkey*, no. 43925/98, § 50, 28 June 2005).

(b) Application of the above principles in the present case

87. The Court notes at the outset that the applicant claims that the authorities overstepped the acceptable bounds of informing the press by editing a secret audio recording of the applicant's telephone conversation with E.K. before disseminating it to the media in such a form which omitted certain parts of the conversation and created an impression that the applicant had failed to report a crime. Notably, the applicant was charged with the latter crime based on the recording in question.

88. The parties' submissions differ as to whether the audio recording had been edited at all, as well as whether it had been the State authorities or the private television channel which had edited the recording in question.

89. The Court notes the applicant's consistent position, voiced several times at domestic level, including when he was first questioned by the police, that the audio recording had been manipulated in order to omit crucial parts of the conversation between him and E.K. which evidenced the latter's refusal of the military aid (see paragraphs 16, 19, 21, 41, and 43 above).

90. By contrast, the Government's position at domestic level and before the Court has several inconsistencies. In particular, the Government submitted before the Court that only one version of the audio recording existed at domestic level – the one that was aired by the television channel concerned was identical to the recording available in the applicant's criminal case file. Conversely, the refusal by the Chief Prosecutor's Office to open a criminal investigation into the applicant's allegations concerning tampering with evidence explicitly confirmed the existence of a full transcript of the audio recording, using it as an argument to conclude that it must have been the private television channel which had shortened the conversation based on their own operational needs (see paragraphs 41-42 above). The full transcript of the recording that the Chief Prosecutor's Office referred to, and which was available in the criminal case file, was prepared by the Ministry of the Interior (see paragraph 22 above) and its authenticity and reliability were never put in question. That transcript, in its relevant parts, contained the text of the conversation allegedly spoken during the six-second and twenty-one-second silences in the recording aired on Rustavi 2 (compare paragraphs 15 and 22 above). Therefore, the existence of two versions of the audio recording, even if the full version of that recording was not included in the applicant's criminal case file, is confirmed by the full transcript of the recording prepared by the Ministry of the Interior, and the reference made to it by the Chief Prosecutor's Office (compare paragraphs 22 and 42 above). It can therefore be concluded, based on the official documents issued by the Ministry of the Interior and the Chief Prosecutor's Office that two versions of the recording existed at domestic level. The Government have failed to provide any explanation for this fact.

91. As regards the question of whether it was the government authorities or the private television channel that manipulated the audio recording in question, the Government's argument at domestic level was that the television channel must have edited the video to omit the relevant parts based on the limitations of available airtime (see paragraph 42 above). As regards the Government's argument before the Court, they submitted that it was within the private television company's remit to transmit whichever parts of the conversation it deemed relevant (see paragraph 75 above). The Court will address the two arguments in turn. First, the argument regarding the operational needs of the television channel and the limited airtime is not convincing considering that the recording aired in the media lasted one minute and forty-four seconds, the same length as the recording in respect of which the full transcript was available in the criminal case file (compare paragraphs 15 and 22 above). Second, as regards the related but more general argument that the television company could have aired whichever parts of the conversation it considered relevant, that is not consistent with the Government's position before the Court that only one official version of the recording existed and that it was identical to the one transmitted by the television channel in question (see paragraph 75 above).

92. In addition to the points noted above, the Court observes that, on the basis of all the information available, the recording was provided to the media outlet in question by the Ministry of the Interior (see paragraph 15 above). Furthermore, the Court pays particular regard to the applicant's interview given to the mentioned television channel on the evening following the transmission of the impugned recording in which the journalist, when criticised for transmitting the edited recording without verifying its accuracy, stated that the media cannot be expected to verify the veracity of the information provided to it when a heightened public interest exists regarding a matter of such importance as a military rebellion (see paragraph 21 above).

93. Against this background, the Court will have to reach a conclusion as to whether a standard of proof "beyond reasonable doubt" has been established in respect of the applicant's claim regarding the manipulation of the audio recording before its dissemination to the media by the government authorities. In that regard, the Court reiterates that when assessing evidence it is not bound by formulae and adopts the conclusions supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 315, 28 November 2017). In view of the above considerations, the Court considers that it has to draw inferences from the available material and the authorities' conduct, and must proceed on the basis that the applicant's allegations concerning the manipulation of evidence in his criminal case file and the reasons for and timing of its subsequent dissemination to the media are well-founded.

94. As to whether such conduct is compatible with Article 6 § 2 of the Convention, the Court observes that while the audio recording in question was provided to the media on 25 July 2006 and the applicant was officially charged on 29 July 2006, the Court will, as noted above (see paragraph 79 above), look beyond the appearances of the situation before it, and consider the sequence of events taken as a whole. In particular, the Court does not lose sight of the fact that the recording in question had been obtained as part of the preliminary criminal investigation opened on 22 July 2006, which subsequently, on an unspecified date, also included the applicant (see paragraphs 9, 19, 26, 27, and 39 above). More importantly, the investigating authorities manipulated that recording before providing it to the media on 25 July 2006 to insinuate that E.K. had been cooperating with the Abkhaz separatist forces in the context of his rebellion, and that the applicant had approved such actions (see paragraphs 87-93 above). The applicant was questioned on 26 July 2006 as a witness, and he complained about the manipulation of the audio recording (see paragraph 19 above, *in fine*). The authorities decided to formally charge and arrest him only four days later, on 29 July 2009 (see paragraph 26 above). One of the charges was based solely on the manipulated audio recording, as disseminated in the media (see paragraph 26 above). This sequence of closely inter-connected events, considered as a whole, indicates that the applicant's situation was substantially affected, for the purposes of the applicability of Article 6 § 2 of the Convention, by the conduct of the investigating authorities which wrongly created a suspicion in respect of the applicant by tampering with evidence and having it disseminated, in order to subsequently charge him with a crime based on that material (contrast and compare, *Blake*, cited above, § 123).

95. While, and this is not in dispute between the parties, the charge in question was dropped in the course of the proceedings before the first-instance court (see paragraph 44 above), the Court does not lose sight of the fact that the indictment sent for trial on 24 November 2006 – almost four months after the recording was made available to the public – had still referred to the charge in question (see paragraph 40 above) even though the prosecuting authorities must have been well aware of the falseness of the evidence underlying that charge owing to its manipulation by the Ministry of the Interior, the availability in the case file material of the full transcript of that recording, and the applicant's numerous complaints in that regard (see paragraph 89 above). In such circumstances, the Court considers that the applicant's portrayal as guilty in respect of the charge of failing to report a crime continued beyond the initial transmission of the audio recording in the media and persisted for at least four months.

96. The Court additionally notes that immediately following the transmission of the recording on 25 July 2006, several statements were made by members of parliament which referred to the recording and

expressed their opinions as to the applicant's role in the events at the Kodori Gorge (see paragraphs 17-18 and 23 above). While the applicant's complaints relating to those statements have been found by the Court to be inadmissible for failure to exhaust domestic remedies (see paragraph 82 above), they nevertheless inform the overall context surrounding the transmission of the recording and indicate that it helped create an impression that the applicant had committed the crimes he was charged with before his guilt was proved in court.

97. In the light of the foregoing, the Court considers that the dissemination of the recording of the telephone conversation between the applicant and E.K. in a manipulated form could not have been justified by the public interest in obtaining information regarding the events at the Kodori Gorge. The Court therefore finds that the relevant authorities' involvement in the manipulation and the subsequent dissemination of the audio recording to the media contributed to the applicant being perceived as guilty before his guilt was proved in court.

It, thus, finds, in the particular circumstances of the present case, that Article 6 § 2 of the Convention is applicable, and that there has been a violation of the said provision.

IV. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 5 § 1

98. The applicant complained that the purpose behind his pre-trial detention had been to remove him from the political scene rather than any of the grounds specified in Article 5 § 1 of the Convention. He further noted that the statements of the high-level political figures made immediately before and after his arrest supported his position. He relied on Article 18 of the Convention, which reads as follows:

“The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

99. The Government maintained that the applicant's pre-trial detention had been strictly connected to his alleged involvement in a crime, had been subject to a judicial review, and that nothing in the case file supported a different conclusion.

100. The relevant general principles concerning the scope and application of Article 18 of the Convention have been clarified in the *Merabishvili v. Georgia* judgment (cited above, §§ 287-317).

101. The Court refers to its findings under Article 5 § 3 of the Convention with respect to the judicial proceedings authorising the applicant's pre-trial detention (see paragraphs 56-60 above) and notes that the applicant's arrest and pre-trial detention were carried out for a purpose

prescribed under Article 5 § 1 (c) of the Convention. What remains to be assessed is whether the restriction of his right to liberty also pursued a purpose not prescribed by Article 5 § 1 (c), and if any such ulterior motive was the predominant factor in restricting his liberty (see *Merabishvili*, cited above, § 318).

102. The Court considers that a criminal prosecution against an opposition political figure as well as statements by politicians concerning the applicant's arrest cannot, as such and in the absence of evidence that the judicial authorities had not been sufficiently independent from the executive authorities, lead to a conclusion that the courts which dealt with the question of whether or not to place and keep the applicant in pre-trial detention were driven by the ulterior purpose of removing him from the political scene (*ibid.*, §§ 323-24). The case file before the Court and the speedy and reasoned manner in which the review proceedings against the applicant were conducted (see paragraphs 56-60 and 67-71 above) also do not indicate that there was such a purpose behind the applicant's pre-trial detention.

103. In view of the foregoing, the Court does not find it established that there was an ulterior motive behind the applicant's pre-trial detention of removing him from Georgia's political scene.

104. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

107. The Government contested the claim as unsubstantiated.

108. The Court, ruling in equity as required under Article 41, awards the applicant EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

109. The applicant also claimed EUR 12,500 for the costs incurred before the domestic authorities; EUR 3,100, 475 British pounds

sterling (GBP), and 12,284 Georgian laris (GEL) in respect of the proceedings before the Court.

110. The Government submitted that the amount claimed was neither supported by any evidence nor reasonable.

111. According to the Court's settled case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 130, 5 July 2016). A representative's fees are considered to have been actually incurred if the applicant has paid them or is liable to pay them. The opposite is the case with respect to the fees of a representative who, without waiving them, has simply taken no steps to pursue their payment or has deferred it. The fees payable to a representative under a conditional-fee agreement are actually incurred only if that agreement is enforceable in the respective jurisdiction (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017, with further references).

112. In this case, the applicant did not submit documents showing that he had paid or was under a legal obligation to pay the fees charged by his representatives, whether in respect of the domestic proceedings or the proceedings before the Court. In the absence of such documents, the Court is not in a position to assess the points mentioned in the previous paragraph. It therefore finds no basis on which to accept that the costs and expenses claimed by the applicant have actually or necessarily been incurred by him (compare *Merabishvili*, cited above, §§ 361-72). It follows that the claim must be rejected.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the question of the applicability of Article 6 § 2 of the Convention in the context of the dissemination of an allegedly edited audio recording in the media;
2. *Declares* the complaints under Article 5 §§ 3 and 4, and the complaint under Article 6 § 2 concerning the dissemination of an edited audio recording in the media admissible, and the remainder of the application inadmissible;

3. *Holds* that there has been no violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been no violation of Article 5 § 4 of the Convention;
5. *Holds* that Article 6 § 2 of the Convention is applicable, and that there has been a violation of the said provision;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President