



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

FIFTH SECTION

CASE OF MAKARASHVILI AND OTHERS v. GEORGIA

(Applications nos. 23158/20, 31365/20, 32525/20)

JUDGMENT

Art 6 § 1 (criminal) • Unfair proceedings in respect of second applicant, through domestic court's treatment of statements by police officers, acting as the prosecuting authority, as having a higher degree of credibility • No overall unfairness in respect of first and third applicants, where conviction also supported other evidence
Art 11 • Peaceful assembly • Arrest and sanctioning of first and third applicants, for refusal to free road leading to Parliament entrances, within State margin of appreciation • Art 11 applicable to intentional action aimed at serious disruption of Parliamentary activity, but impacting on "necessity" assessment, in the light of the importance of Parliament's effective functioning in a democratic society • Lack of relevant and sufficient reasons for second applicant's conviction and sentence

STRASBOURG

1 September 2022

FINAL

30/01/2023

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

In the case of Makarashvili and Others v. Georgia,

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

Síofra O’Leary, *President*,
Stéphanie Mourou-Vikström,
Lətif Hüseyinov,
Lado Chanturia,
Ivana Jelić,
Arnfinn Bårdsen,
Mattias Guyomar, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the applications (nos. 23158/20, 31365/20 and 32525/20) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Georgian nationals (“the applicants”) on the dates indicated in the Appendix;

the decision to give notice to the Georgian Government (“the Government”) of the complaints under Article 6 and Article 11 of the Convention and to declare inadmissible the remainder of the applications;

the parties’ observations;

Having deliberated in private on 28 June 2022,

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

INTRODUCTION

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

THE FACTS

2. The applicants are civil society activists who were represented by Mr E. Marikashvili, a lawyer practising in Tbilisi. The applicants’ details are provided in the appended table.

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

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

I. BACKGROUND

5. On 24 June 2019 the chairman of Georgian Dream, a political party that at the time in question held an absolute majority in Parliament, announced, in response to public demonstrations held over the preceding days, that the

planned transition of the parliamentary electoral system from a “mixed-member” system to one of proportional representation would be brought forward from 2024 to 2020. He stated that because of the accelerated reform, the parliamentary elections of 2020 would be carried out solely on the basis of a system of proportional representation.

6. On 14 November 2019 the draft amendments to the Constitution of Georgia meant to facilitate the transition to a proportional representation electoral system did not garner sufficient votes in Parliament (apparently because some members of the ruling party did not support it), and were, therefore, not adopted. As can be seen from the media coverage of the events, on the same day a demonstration was held in front of the Parliament building.

7. On 17 November 2019 another demonstration was held at the Parliament building to protest against Parliament’s failure to adopt the above-mentioned legislative amendments. The media coverage of the events indicated that approximately 5,500 individuals participated. This number included opposition politicians, civil society activists, and ordinary citizens. The demonstrators’ demands included the resignation of the government and the holding of snap Parliamentary elections; they stated that they would continue to block the functioning of Parliament until such time as their demands were met. Opposition politicians attached padlocks to one of the entrance gates to Parliament. They were removed by law-enforcement officers on the same day. In the evening, sandbags and tents were brought in and placed in the vicinity of one of the entrances to the Parliament building. Some of the demonstrators, including the three applicants, held a vigil at the building during the night. The demonstrators installed makeshift wood braziers as a heat source. Police officers were present on the site of the events throughout this period. No incidents were reported other than some officers’ apparently futile attempts to prevent the demonstrators from bringing wood for the braziers.

8. On the same day the Ministry of Internal Affairs issued a statement warning the demonstrators of the unlawfulness of blocking entrances to the legislative body and of interfering with its activities. It called on the organisers and the participants in the demonstration to abide by the rules concerning the holding of demonstrations (including the prohibition on blocking access to administrative buildings) and to abide by the lawful orders of the police.

II. EVENTS OF 18 NOVEMBER 2019 AND THE APPLICANTS’ ARREST

9. Sometime during the morning of 18 November 2019 the demonstration resumed. Some organisers, including opposition politicians, called on the participants to continue obstructing the work of Parliament until their

demands, including the holding of snap Parliamentary elections, were satisfied.

10. Members of Parliament who tried to enter the building were denied access by the demonstrators, who continued to block all entrances to the Parliament building.

11. At approximately 2 p.m. the Ministry of Internal Affairs issued a statement urging the organisers of the demonstration and its participants to obey the lawful orders of the police. The Ministry noted that the police had provided the necessary conditions for citizens to exercise their right to freedom of peaceful assembly during the demonstration of 17 November 2019, but that the demonstration had later become unlawful. In particular, it noted that the blocking of the entrances to Parliament had been contrary to section 9 of the Assemblies and Demonstrations Act. The Ministry called on the organisers of the demonstration and its participants to cease blockading Parliament, failing which the police would “react accordingly, within the mandate provided [to them] by law.”

12. Between 4.14 p.m. and 4.52 p.m. the police officers negotiated at the site of the demonstration with its organisers, as shown in video material broadcast by the media. One of the organisers of the demonstration – an opposition politician, A.E. – stated that the demonstrators had been “warned twice” by the police. The police officers’ statements to the organisers and participants in the demonstration included the following:

“Our goal is to negotiate with you in order to defuse the situation. The barricades [at the entrances to Parliament] must be removed ... The road must be reopened. Appropriate measures will be taken if this does not happen. Blocking the road is one reason; the other is the blocking of the Parliament of Georgia, an administrative building. ... There [has been] a breach of the Assemblies and Demonstrations [Act] ...; please respect the law. ...

Our request is [for you] to open the road and clear the entrance of the Parliament building ... This is my second warning, I urge you to obey the law.”

13. In the absence of a response to its earlier calls, at 5 p.m. the police proceeded to clear the entrances to Parliament and the road leading to them. It appears that water cannons were used for this purpose. The exact number of participants in the demonstration and of police officers involved remains unclear, but as appears from the visual material available in the case file, a couple of hundred demonstrators, several hundred police officers, and a number of police cars must have been present on the ground.

14. The first applicant was arrested at 5.20 p.m. The administrative-arrest report noted that he had been arrested on 9 April Street “in the area alongside the Parliament building, where a demonstration was being held.” The report stated that the first applicant had “blocked the entrance to Parliament and was swearing indiscriminately.” The officer who drafted the report stated that he had “called on [the first applicant] to calm down and to obey [his] lawful request, explaining the [nature] of a breach under the Code of Administrative

Offences of Georgia”, which had made the first applicant “even more aggressive.” The report indicated that the first applicant’s arrest had been made in respect of offences listed under Articles 166 and 173 of the Code of Administrative Offences (“the CAO”) (see paragraphs 39-40 below). An identical account was given in the administrative-offence report of 19 November 2019.

15. The second applicant was arrested at 7.15 p.m. The administrative-arrest report noted that he had been arrested “on Rustaveli Avenue, alongside the Parliament building.” The report noted that the second applicant “had been swearing”. It was also stated that he had been “a participant in the demonstration and [had] maliciously disobeyed the police officers’ repeated lawful orders.” The second applicant’s arrest was made under Articles 166 and 173 of the CAO. An identical account was provided in the administrative-offence report of 19 November 2019.

16. The third applicant was arrested at 5.20 p.m. The administrative-arrest report noted that he had been arrested on 9 April Street, “in the area alongside the Parliament building, where a demonstration was being held.” The report stated that “the participants in the demonstration, including [the third applicant], did not comply with the lawful order of the police to free the entrance to Parliament (which they had blocked), and started swearing.” The third applicant’s arrest was made under Articles 166 and 173 of the CAO. The administrative-offence report of 19 November 2019 noted that the third applicant had been a participant in a demonstration on 9 April Street, had breached public order, and had not obeyed the repeated lawful orders of the police (but without the exact circumstances of the offence or of the police orders being specified, other than by reference to Articles 166 and 173 of the CAO).

17. In total, thirty-seven protesters, including the three applicants, were arrested during the events of 18 November 2019. Four protesters and two law-enforcement officers were injured. All entrances to Parliament were cleared. The police then erected metal structures at the entrances to the Parliament building in order to prevent their being blocked.

18. Members of Parliament regained access to the building in the evening, and a meeting of the Parliament’s Bureau (responsible for matters including organisational and administrative issues relating to the daily work of the Parliament and its members) that had been scheduled for 3 p.m. that day was held at 8.30 p.m.

19. According to the case-file material, the second and the third applicant displayed signs of injury upon their placement in a detention facility, and a criminal investigation into the matter was initiated by the authorities of their own motion. The outcome of that investigation is unclear, and the applicants did not refer to it in their submissions.

III. ADMINISTRATIVE-OFFENCE PROCEEDINGS AGAINST THE APPLICANTS

20. On 19 and 20 November 2019 the Tbilisi City Court held hearings. The first and second applicants' cases were joined. The third applicant's case was decided as part of separate administrative-offence proceedings. The applicants were represented by lawyers of their choosing. The police officers who had arrested the applicants requested that the court find the applicants guilty of minor hooliganism and of disobeying the lawful orders of the police. The court allowed requests lodged by the applicants for the hearing to be postponed in order to allow them to acquaint themselves with the relevant material.

21. During the respective hearings the video material involving the first and third applicants was examined, with the parties' participation. All three applicants were able to put questions to the police officers summoned as witnesses. A request lodged by the first and second applicants for a further witness (who was not a police officer) to be questioned was granted. The third applicant did not lodge any such request. The witness stated that the first and second applicants had not blocked the entrance to Parliament and had not been disobedient towards the police. During the trial, the police officers (including those who had arrested the applicants) gave witness statements and noted that the applicants had been among those protesters who had decided to block the entrances to the Parliament building and had later hindered the police officers' access to those entrances by blocking the roads leading to them. The police officers further stated that the first applicant had stood in the way of police trying to reach the Parliament building's entrances; the third applicant had sat down on the road to prevent the officers from proceeding to one of the entrances to the Parliament building, and the second applicant had attempted to block the avenue in front of Parliament. As regards the applicants' submissions, the first applicant sang the national anthem in lieu of recounting his version of events; the second applicant refused to give a statement, stating that he regarded the court as the ruling party's "tavern"; and the third applicant did not dispute the authenticity of the video material showing him sitting in the road, in the way of those police officers who had started to clear access to the Parliament building but claimed that it had been an expression of his right to freedom of demonstration. The applicants' representatives maintained that their clients had been merely protesting against the failure of Parliament to carry out the promised electoral reform.

22. On 21 November 2019 the Tbilisi City Court delivered two judgments: the first one concerned the first and second applicants, and the second related to the third applicant. The description of the factual circumstances of the case contained in the respective judgments referred, as the basis of those judgments, to the case-file material, the parties' submissions, and the content of the administrative-arrest and

administrative-offence reports in respect of the applicants (see paragraphs 14-16 above).

23. In stating the reasons for its approach to the assessment of the evidence placed before it in respect of the first and second applicants, the court stated that:

“... particular attention should be paid to the information given by those individuals who put an end [*სამართალდარღვევის აღმკვეთი პირები*] to the administrative offence [in question], given that [such information] is particularly instructive and constitutes a greatly important source of evidence. The attention of this group of eyewitnesses is [particularly] focused because of the nature of their professional activities and their understanding of their public and civic duties. The receipt of information [regarding an offence] by this group of eyewitnesses is connected to the implementation of their professional duties, which they carry out by means of paying purposeful attention to certain circumstances, actions, objects, and individuals. [The] high [powers] of perception of such eyewitnesses [and] the completeness of [their] witness statements is connected to the fact that an official knows, in advance (even if only in general terms), the signs of a situation or an event [that could potentially constitute an offence]. ... Information provided by persons who put an end to administrative offences always has a direct link to the case, contains information regarding the facts to be assessed by a court, and corresponds to the requirement of admissibility of evidence. In view of the foregoing, explanations given by a public official contain signs of a high [degree of] trustworthiness, which is important for the formation of a judge’s inner conviction. Under Article 5 [§ 1] of the General Administrative Code, an administrative body has no right to carry out any action that is in contravention of the requirements of the law, which leads to the presumption of good governance [*კეთილსინდისიერი მმართველობის პრეზიუმირება*], [and] the burden of proving the contrary rests, on the basis of the adversarial principle, on the opposing party.

As regards an explanation given by persons in breach of administrative [rules and regulations] (*ადმინისტრაციული სამართალდამრღვევი პირები*), this cannot, unless supported by other evidence, be regarded as constituting incontrovertible evidence in respect of determining the circumstances of a case. ... An explanation given by persons against whom administrative-offence proceedings are ongoing is not, generally, characterised by a high degree of trustworthiness, given that [these individuals are] interested parties and that the information provided by them may be aimed at covering up an offence [and] avoiding sanctions, [among] other aims. Accordingly, statements given by such individuals must always be considered together with other evidence gathered in relation to a case.

In the instant case the evidence presented includes documents drafted by the individuals who put an end to the administrative offence [in question] – the administrative-arrest and [administrative-offence] reports, which contain information regarding the contested actions attributed to the individuals accused of the administrative offences. The court has also received the parties’ explanations, witness statements and video material. ...

The court indicates that the case-file material and the parties’ explanations confirm that the persons accused of the administrative offence resisted lawful orders [given by] law-enforcement officers. This falls under Article 173 of the Code of Administrative Offences, and other evidence that would enable the court to find otherwise has not been presented.

On the basis of the parties' explanations and the case-file material, it is established that ... Giorgi Makarashvili [the first applicant] committed an administrative offence. Namely, on 18 November 2019 [he was on 9 April Street], alongside the grounds of the Parliament of Georgia [and] did not obey a lawful order [given by] the police. ...

Irakli Katcharava [the second applicant] committed an administrative offence. Namely, on 18 November 2019 ... [he was] on Rustaveli Avenue, in the area alongside the Parliament of Georgia ... and maliciously disobeyed a lawful order [given by] the police. ...

After assessing the case-file material and the parties' explanations, the court finds that [the accused] did not commit an act proscribed under Article 166 of the Code of Administrative Offences [for lack of evidence incontrovertibly proving the commission of such an act]. In particular, [it has not been established that the accused] swore at the site of a public gathering [and] disturbed the public order. ..."

24. The court went on citing the Police Act regulating the police officers' conduct and reiterated that in the implementation of their duties police officers are presumed to be acting in good faith, having all the relevant qualities and skills to adequately assess the particular circumstances of a situation. As for disobedience to their orders, the legislature required, according to the court, the occurrence of disobedience in the face of multiple orders. It was irrelevant, the court stated, whether the order in question had been of a general nature or addressed to a particular individual.

25. Against this background, and in so far as the first and second applicants' individual circumstances were concerned, the court noted as follows:

"In the case under consideration it has been established that on 18 November 2019 there was a protest demonstration ongoing in Tbilisi, on Rustaveli Avenue. The police officers ensured the peaceful conduct of this demonstration and the protection of citizens' constitutional rights. [The officers] ensured the protection of the [demonstrators'] security and of citizens' constitutionally protected right to move freely on Rustaveli Avenue and the adjacent streets. ... [This] creates sufficient grounds [to consider that] the officers, who were obliged to pre-empt and put an end to breaches of the law, carried out necessary measures provided for by the law.

The evidence presented in respect of the case, the parties' explanations, witness statements, and video recordings confirm [the occurrence of] an appeal (*მოწოდება*) made by the police officers and the [ensuing] non-compliance of the individuals accused of the administrative offence [in question]. Specifically, the representatives of the law-enforcement body appealed to persons in breach of the law (*სამართალდამრღვევებს*) to leave the road so that cars would be able to move freely; [this call] was not complied with. The court considers it established that the law-enforcement [officers] requested that the order be complied with, [and] that this order was based on the law and was aimed at achieving the legitimate aim [of] protecting individuals' security and public order. Accordingly, those persons who were in breach of the law failed to obey the lawful orders of the law-enforcement officers. Therefore, the court considers that they should have anticipated the possible risks entailed in disobeying the orders of the police.

The court also notes paragraph 1 of section 11¹ of the Assemblies and Demonstrations [Act], under which, in the event of a partial or a full blockade by participants [in a

demonstration or gathering] of an assembly or of a road used by transport vehicles, the executive branch of a local self-government authority has the right to decide to clear the road and/or restore the movement of transport if, taking into account the number of participants [involved], it is possible [for them] to hold a gathering or a demonstration [by other means]. When the executive branch of a local self-government body does not or cannot act on the authority granted by the [provision in question], the government of Georgia has the right to [make such a decision]. Under the second paragraph of this section, it is not permitted to [do so] if, on the basis of the number of the participants, it is impossible to hold a gathering or a demonstration [by other means], and provided that all the rules [provided by] this [Act] have been respected. Paragraph 3 of the indicated provision provides that the executive branch of a local self-government body [and] the government of Georgia must take the decision provided for in paragraph 1 in each specific situation, depending on the existing circumstances and the public interest, in accordance with the rule laid down in paragraph 3 of Section 2 of this [Act]. It is impermissible to intentionally block a road if this is not rendered necessary by the number of the participants of an assembly or a demonstration. It is equally impermissible to block a road by using cars, different objects and/or items.

On the basis of a joint analysis of the parties' explanations, video recordings ... and other evidence, the court considers that a need to block the road has not been demonstrated in the present case. Accordingly, the persons charged with administrative offences did not have the right to use the road used by transport and, given the objectives of the Police Act, multiple requests by the police officers for [that area] to be cleared in order to allow cars to move freely were ... lawful [but not heeded by] the persons [concerned], and only the intervention of the police made their withdrawal from the road possible."

26. The Tbilisi City Court's decision relating to the third applicant contained identical reasoning in respect of the assessment of the evidence (see paragraph 23 above). As in the case of the proceedings against the first and second applicants, the third applicant was acquitted of minor hooliganism for lack of evidence. As regards any disobedience in respect of the lawful orders of the police, a reasoning similar to that in the judgment concerning the first and second applicants was offered (see paragraphs 24-25 above). The court found that the evidence available in the case-file material indicated that the police had issued a lawful order for the road to be cleared for traffic and that the third applicant had disobeyed that order.

27. The first-instance court thus found the three applicants guilty of the administrative offence of disobeying the lawful orders of the police under Article 173 of the CAO (see paragraph 40 below) and, referring to Articles 33 and 35 of the CAO (see paragraph 38 below), reasoned that the imposition of a custodial sentence of twelve days on the first applicant, four days on the second applicant and seven days on the third applicant (as opposed to the imposition of a fine) would constitute the most appropriate sanction for the purposes of attaining the objectives of a punishment.

28. On 22 November 2019 the applicants lodged an appeal. They argued that the administrative-arrest and administrative-offence reports had been couched in vague terms, rendering it impossible to mount a defence, and that the decision of the first-instance court had not contained sufficient reasoning

to justify their conviction. Furthermore, in so far as the applicants' individual circumstances were concerned, it was noted that the video material available in the case-file material in respect of the first applicant had only showed him being escorted to the police car, rather than the circumstances of his arrest. As regards the second applicant, it was noted that there had been no video or other evidence confirming the police officers' account and the content of the administrative-arrest and administrative-detention reports. The third applicant noted that one video recording assessed during the proceedings had shown him sitting down on the road, while the other had shown him standing in front of police officers with the Georgian flag on his back and blowing a whistle – a form of intentional non-violent protest against developments in the country. The applicants submitted that the administrative-offence proceedings had been “criminal” in nature, within the meaning of Article 6 of the Convention, necessitating the application of the standards of a criminal trial, including the principle that nobody should be obliged to prove their innocence and that any doubt should benefit the accused. The applicants stated that their conviction had amounted to the collective punishment of all demonstrators for the blocking – by only some participants in the demonstration – of the entrances to Parliament; they further submitted that they had been legitimately exercising their right to protest in relation to important issues in a democratic society. The three applicants also submitted, in general terms, that the police had used excessive force in dispersing the demonstration and that their arrest and punishment would create a chilling effect on the right to peaceful assembly.

29. On 25 and 26 November 2019 the Tbilisi Court of Appeal, sitting as a court of final instance, dismissed, by means of written proceedings, the applicants' appeals as manifestly ill-founded. It briefly stated that the applicants had failed to demonstrate what important issues and evidence had been insufficiently assessed by the lower court, which requirements of the law had been breached, and/or what errors had been committed by the first-instance court in the examination of their cases. The appellate court added that in its assessment of the relevant circumstances, the first-instance court had taken into account all the facts of the cases relating to the applicants, thereby justifying the appellate court's decision to declare the appeals inadmissible.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. ASSEMBLIES AND DEMONSTRATIONS ACT (1997)

30. Section 2(1) of the Assemblies and Demonstrations Act (“the Assemblies and Demonstrations Act” or “the Act”), as worded at the material time, provided the “right of individuals, as recognised by the Constitution of

Georgia, to gather publicly, unarmed, both indoors and outdoors, without [the need for] prior authorisation.”

31. Section 2(3) provided for restrictions on this right. It referred to the legitimate aims of an interference provided in the Constitution of Georgia, such as: protecting national security or public safety, territorial integrity, or the rights of others; preventing the disclosure of confidential information; and maintaining the independence and impartiality of a court. Any interference in the pursuance of such aims had, under the provision in question, to be based on the law, necessary in a democratic society, non-discriminatory, proportionate, and such that the interest protected by the restriction would outweigh the damage inflicted by it.

32. Section 9(3) of the Act provided as follows: “the blocking of entrances to buildings ... during an assembly or a demonstration shall be prohibited.”

33. Section 11(2)(e) provided that it was “prohibited ... to deliberately create obstruction for the traffic, including by breaching the requirements of Section 11¹ of this Act.”

34. Under section 11¹(1), “in the event of a partial or a full blocking by the participants of an assembly or a demonstration on a road used by transport vehicles, the executive branch of the local self-government [authority] may decide to clear the road ... and/or restore the traffic if the number of the participants in an assembly or a demonstration allows for the latter to be held [elsewhere]. If the executive branch of the local self-government authority does not or cannot implement the powers provided in this paragraph, the government of Georgia can decide to clear the road ... and/or restore the traffic.” Any such decision was, under section 11¹(3) of the Act, to be taken “in a particular case, taking into account the existing circumstances and the public interest, in line with section 2(3) of this Act.”

35. Section 11¹(4) of the Act provided that “the artificial blocking of a road, if this is not necessitated by the number of participants of an assembly or a demonstration, [and] the blocking of a road by means of cars, objects, and/or other items, shall be prohibited.”

36. Section 13(3) of the Act provided that in the event of a breach of section 11(2)(e) and/or the taking of a decision under section 11¹(1) the organiser of an assembly or a demonstration was obliged, within fifteen minutes from receiving a warning from the authorities, to address the participants of an assembly or a demonstration and to take all reasonable measures to clear the road and/or restore the movement of the transport vehicles. A failure on the part of an organiser to ensure compliance with these rules would, under section 13(6), entail the law-enforcement authorities’ taking “actions provided for in international law and Georgian legislation” aimed at clearing the road and/or restoring the movement of traffic.

37. Under section 13(5) of the Act, a breach of section 11 of the Act by individual participants of an assembly or a demonstration would incur individual liability under the relevant legislation.

II. CODE OF ADMINISTRATIVE OFFENCES (1984)

38. Article 33 of the Code of Administrative Offences (CAO) provided that the nature of the offence, the personalities of the offenders, the degree of blame to be ascribed to the latter, their financial status, and any extenuating and aggravating circumstances were to be taken into account at the sentencing stage. Article 35 provided, among other things, that a prior commission of an administrative-offence and continuation of unlawful conduct in the face of demands of authorised officials to stop doing so, constituted aggravating factors at the sentencing stage.

39. Article 166 of the CAO, as worded at the material time, defined minor hooliganism as “swearing and cursing in a public place, [causing] the insulting harassment of a person, or other similar actions that disturb public order and peace.” It was punishable by a fine and/or up to fifteen days’ administrative detention.

40. Article 173 of the Code provided that “disobeying a lawful instruction or order [issued by] a law-enforcement officer on duty ... or insulting [the latter]” was punishable by a fine in the minimum amount of 1,000 Georgian laris (GEL) and the maximum amount of GEL 4,000, or up to fifteen days’ administrative detention.

41. Article 174¹ §§ 1 and 2 provided that a breach of rules concerning the organisation and conduct of an assembly or a demonstration would incur a fine in the amount of GEL 500 in respect of participants and GEL 5,000 in respect of the organisers. Article 174¹ § 4 provided that a breach of sections 9, 11 and 11¹ of the Assemblies and Demonstrations Act (see paragraphs 32-35 above) would incur a fine in the amount of GEL 500 (for participants) or GEL 5,000 (for organisers), or up to fifteen days’ administrative detention.

42. Under Articles 271 of the CAO, an appeal against a decision issued as part of administrative-offence proceedings could be lodged by the individual against whom that decision had been issued, by a victim of the offence in question, or by the author of the administrative-offence report.

III. CODE OF ADMINISTRATIVE PROCEDURE (1999)

43. Article 14 of the Code of Administrative Procedure provides that the author of an administrative-law document is a party to the respective administrative-law proceedings.

IV. PRACTICE OF THE SUPREME COURT

44. In a judgment of 2 April 2013 (case no. BS-544-535(K-12) relating to the annulment of a fine issued by police for a violation of traffic rules) the Chamber of Administrative Cases of the Supreme Court criticised the lower courts' practice of affording heightened importance to the evidence given by police officers. The Supreme Court explained that such practice had apparently stemmed from an incorrect interpretation of its earlier judgment of 2007 in which it had underlined the special skills and know-how of the police in determining that an offence had taken place. In this regard, the Supreme Court noted that it had not, in that earlier judgment, excluded the possibility that an officer addressing an offence could make an "imprecise, partial or unobjective assessment." The Supreme Court clarified that "under no logical reading could its earlier assessment [regarding the officers' special skills and know-how] be transformed into imperative, slogan-type declaration such as 'a representative of a law-enforcement authority has focused attention which stems from the nature of their professional activities [and] the understanding of their public and civic duties.'" The Supreme Court also criticised a blank statement that "an explanation given by persons against whom administrative-offence proceedings are ongoing may be aimed at covering up an offence, avoiding sanctions, or other aims [and such explanations] must always be balanced against other evidence gathered in respect of a case." The Supreme Court concluded as follows:

"...based on the information available to the Court of Cassation [such an interpretation by the lower courts] is not, unfortunately, a one-off occurrence and, accordingly, there is a risk of its repetition. [This] requires the taking of preventive measures ... so that the lower courts make an adequate and competent application of the legal conclusions of the Supreme Court, if shared by them, to the cases before them[.] [By making the above-noted interpretations] the lower courts breach the fundamental principles of administrative and civil procedure - [the principle of] impartiality and [that of] equality of arms."

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. COMPLIANCE WITH THE SIX-MONTH TIME-LIMIT

46. The Court reiterates that the six-month rule is an autonomous public-policy rule (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 247, 28 November 2017). It will, therefore, in the absence of any objection from the Government, assess the question of whether the second and the third

applicants complied with Article 35 § 1 of the Convention by introducing applications nos. 31365/20 and 32525/20 on 15 June 2020, despite the fact that the final domestic decision was delivered on 26 November 2019.

47. Citing its interpretive jurisdiction under Article 32 of the Convention, the Court has found that in order to preserve the right of individual petition during the outbreak of the global pandemic, the method of calculation of the six-month rule had to be adjusted to the reality of that crisis (see *Saakashvili v. Georgia* (dec.), applications nos. 6232/20 and 22394/20, § 57, 1 March 2022). Accordingly, if a calendar six-month period either started to run or was due to expire during the time frame specified in the decisions of the President of the Court (from 16 March until and including 15 June 2020), the six-month rule under Article 35 § 1 of the Convention should be exceptionally considered to have been suspended for three calendar months in total (*ibid.*, § 58).

48. Having regard to the fact that (i) in respect of applications nos. 31365/20 and 32525/20 the calendar six months expired on 25 May 2020, and (ii) the latter date fell within the above-noted time frame, the Court rules that the second and third applicants had an additional three months – until and including 25 August 2020 – in which to lodge an application with the Court. The Court therefore finds that these applications cannot be considered to have been lodged out of time, within the meaning of Article 35 § 1 of the Convention, given the exceptional circumstances outlined above.

III. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

49. Relying on Article 6 of the Convention, the applicants complained that the administrative-offence proceedings against them had been unfair, claiming that the domestic courts had unduly given primacy to the police officers' statements against the applicants, placing the burden of proof on the latter, and that the absence of a prosecutor in those proceedings had invested the trial judge with the functions of a prosecuting authority, in breach of the judicial impartiality requirement under paragraph 1 of the provision in question. The applicants also complained of a lack of adequate time and facilities to prepare their defence and of their inability to obtain the attendance of witnesses on their behalf under the same conditions as those in respect of witnesses against them. Article 6 of the Convention, in so far as relevant, reads as follows:

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

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

...

(b) to have adequate time and facilities for the preparation of his defence; ...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ...”

A. Admissibility

50. Having regard to all the material in its possession, the Court finds that the applicants’ complaints under Article 6 §§ 1 and 3 (b) and (d) of the Convention regarding the lack of adequate time and facilities afforded them to prepare their defence and their inability to obtain the attendance of witnesses on their behalf under the same conditions as those in respect of witnesses against them do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto. This part of the applications must therefore be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

51. As regards the remainder of the applicants’ complaints under Article 6 § 1 of the Convention (see paragraphs 53-54 below), although the applicability of Article 6 to the administrative proceedings in question is not in dispute, the Court considers it necessary to address this issue. It notes that each applicant was sentenced to administrative detention, a sanction leading to deprivation of liberty and of a purely punitive nature. Therefore, referring to its well-established case-law, the Court considers that the proceedings in the present case should be classified as determining criminal charges against the applicants, even though such charges are characterised as “administrative” under Georgian legislation (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, §§ 77-80, 15 November 2018, with further references, and *Huseynli and Others v. Azerbaijan*, nos. 67360/11 and 2 others, § 103, 11 February 2016).

52. These complaints are furthermore neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties’ submissions

(a) The applicants

53. The applicants submitted that the absence of a prosecutor in the administrative-offence proceedings against them had invested the trial judge with the functions of a prosecuting authority, in breach of the judicial impartiality requirement under Article 6 § 1 of the Convention.

54. The applicants also stated that the domestic courts had unduly, and in breach of Article 6 of the Convention, given primacy to the police officers’ statements against the applicants, placing the burden of proof on the latter, despite the criminal nature of the proceedings. As a result, in the applicants’

submission, the courts had not treated the parties in the same manner and had not, furthermore, addressed any of the applicants' arguments made as part of those proceedings. The applicants also raised a number of generic grievances, alleging the non-compliance of the Code of Administrative Offences (CAO) with the requirements of a fair "criminal" trial under Article 6 of the Convention.

(b) The Government

55. The Government submitted that the applicants were essentially challenging the outcome of the proceedings against them rather than those proceedings' procedural fairness. This was confirmed, in the Government's submission, by the fact that the first and second applicants had refused to offer their version of the facts at the domestic level when they had been asked to make their statements to the trial court. The Government furthermore submitted that – under the domestic law, and unlike the situation that had obtained in the case of *Karelin v. Russia* (no. 926/08, §§ 64-65, 20 September 2016) – the absence of a prosecutor in the administrative-offence proceedings had been sufficiently counterbalanced. In particular, the law granted to the author of an administrative-offence report powers similar to those of a prosecutor. They could, therefore, act as a prosecuting party in administrative-offence proceedings. Accordingly, there had been no violation of the judicial impartiality requirement under Article 6 of the Convention.

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

2. The Court's assessment

57. The relevant general principles were summarised in the cases of *Kress v. France* ([GC], no. 39594/98, § 72, ECHR 2001-VI); *Bykov v. Russia* ([GC], no. 4378/02, §§ 88 and 90, 10 March 2009); *Janosevic v. Sweden* (no. 34619/97, §§ 96-97 and 101, ECHR 2002-VII); *Navalnyy and Yashin v. Russia* (no. 76204/11, § 82, 4 December 2014); *Frumkin v. Russia*, no. 74568/12, §§ 159-62, 5 January 2016; and *Karelin* (cited above, §§ 51-57).

58. The Court takes note of the applicants' submissions regarding the allegedly unsatisfactory state of the domestic law regulating the conduct of administrative-offence proceedings. However, it is not the Court's task to review the domestic legislation in general terms. Instead, the Court must confine itself, as far as possible, and without losing sight of the general context, to examining the issues raised by the case before it. Therefore, it will determine whether the manner in which the applicants' trial was conducted resulted, given the particular circumstances of the present case, in a breach of their rights under Article 6 of the Convention (see *Mikhaylova v. Russia*, no. 46998/08, § 86, 19 November 2015).

59. Turning to the assessment of the applicants' specific complaints, the Court does not consider that the absence of a prosecutor in the administrative-offence proceedings against the applicants, in and of itself, undermined the objective impartiality requirement under Article 6 of the Convention. In particular, the author of an administrative-offence report is, under Georgian domestic law, a party to those proceedings and has the authority to lodge an appeal against the decisions of the domestic courts in those proceedings (see paragraphs 42-43 above; compare and contrast *Karelin*, cited above, § 79, and *Hasanov and Majidli v. Azerbaijan*, nos. 9626/14 and 9717/14, § 39, 7 October 2021).

60. At the same time, however, the Court observes that there is a close link, given the circumstances of the present case, between, on the one hand, the applicants' complaint relating to the absence of a prosecutor in the administrative-offence proceedings against them and, on the other hand, the domestic courts' stance regarding the burden of proof in those proceedings, including the acceptance of certain presumptions in respect of the evidence given by the police officers while acting as the prosecuting authority.

61. In the present case, the first-instance court stated that the evidence given by the police officers, some of whom were also acting as the prosecuting authority in the proceedings, carried a higher degree of credibility (see paragraphs 23-24 above). The court justified this assertion on the basis of what was termed the "presumption of good governance" on the part of police officers and the latter's professional know-how in respect of the situations that their statements would concern. This reasoning was complemented by the statement that explanations given by persons charged with an offence were to be regarded as untrustworthy and might have aimed at evading responsibility, unless confirmed by other evidence (*ibid*). The appellate court endorsed this assessment.

62. However, the Court emphasises that such an approach to evidence given by police officers was quite rightly criticised by the Supreme Court as a general matter of principle (see paragraph 44 above). It recalls that the notion of a "witness" is an autonomous concept in the Convention system, irrespective of the classifications in domestic legal systems (see *Ürek and Ürek v. Turkey*, no. 74845/12, § 50, 30 July 2019). The Court will assess the

actual impact on the applicants' case before the domestic courts of the latter's approach to statements given by the police officers in this case. Within this context, the Court takes note of the fact that all three applicants were represented by the lawyers of their choosing and were able to examine witnesses against them, including the relevant police officers (contrast and compare, *Navalnyy and Gunko v. Russia*, no. 75186/12, § 66, 10 November 2020). It also notes that the first and second applicants chose not to give statements to the trial court, while the third applicant admitted to having stayed on the road in spite of the police instructions (see paragraph 21 above).

63. More importantly, while the trial court articulated the view that the statements of police officers would, in principle, be sufficient to shift the burden of proof onto the applicants, the Court does not lose sight of the fact that, for instance, the officers' allegation that the applicants had been swearing was not found sufficient, in and of itself, to shift the burden of proof onto the applicants. Namely, the trial court found it unsubstantiated by other evidence and acquitted all three applicants of the related charge. As regards the applicants' conviction for having blocked the road leading to the Parliament building, while the first and third applicants' conviction was indeed based largely on the police officers' account, it was also supported by other evidence such as video footage relating to the contested events. It was within the domestic courts' remit to consider the relevance and sufficiency of such material for the first and third applicants' conviction. In such circumstances, and considering that the Court does not have before it an identical copy of the full case file available before the domestic courts, the Court does not find that the trial court's reasoning as regards its approach to evidence affected, in practice, the first and third applicants in so far as their conviction was concerned. There has therefore been no violation of Article 6 of the Convention in respect of the first and third applicants.

64. By contrast, and in so far as the second applicant's conviction is concerned, the fact that the police statements against him were not supported by evidence other than the police officers' account is undisputed (see paragraph 76 below, *in fine*). In such circumstances, the second applicant was in fact put in a position of having had to prove his innocence, within the framework of the police accusations, in the absence of any evidence other than the account of the accusing party. While the second applicant referred to the principles of presumption of innocence, objective impartiality and that of equality of arms, the Court finds that the trial court's above approach to the statements given by police officers undermined, in the particular circumstances of the present case, the overall fairness of the proceedings against the second applicant. There is no indication either in the Court of Appeal judgment that it sufficiently reviewed the trial court's approach; a review necessary given the practice of the Supreme Court in relation to police evidence (see paragraph 44 above) and the absence of other supporting

evidence in his case. There has therefore been a violation of Article 6 § 1 of the Convention in respect of the second applicant.

IV. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

65. The applicants complained that their arrest at a demonstration and their subsequent conviction for the administrative offence of disobeying the lawful orders of the police had amounted to a violation of their right to peaceful assembly, in breach of Article 11 of the Convention. The provision reads as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

A. Admissibility

1. *The parties’ submissions*

(a) The Government

66. The Government submitted that the applicants’ complaints were either incompatible *ratione materiae* with the Convention or manifestly ill-founded. They submitted, in this regard, that the demonstration of 18 November 2019 should be treated as an “incitement to violence [and a] rejection of the foundations of a democratic society”, given that “its participants and organisers, including all three applicants, [had] intended to block the building of the Parliament of Georgia and hinder its capacity to exercise its constitutional functions, thereby purposely obstructing traffic and the ordinary course of life.”

67. Additionally, the Government submitted that the applicants had failed to exhaust the available domestic remedies by instituting civil proceedings against the police.

(b) The applicants

68. The applicants submitted that the demonstration of 18 November 2019 had been a public protest in response to Parliament’s failure to adopt legislative amendments aimed at implementing the electoral reform promised by the ruling party. They submitted that the demonstration had not been violent, and that their arrest and conviction had not been supported by cogent evidence and reasons. Rather, the domestic courts’ approach had had a

chilling effect on the exercise of their rights under Article 11 of the Convention.

69. As regards the exhaustion of domestic remedies, the applicants submitted that the administrative-offence proceedings against them had been a sufficient forum for raising their complaints under Article 11 of the Convention.

2. *The Court's assessment*

70. As regards the exhaustion of domestic remedies, the Court observes that the applicants did, in the course of the administrative-offence proceedings against them, raise a complaint regarding the lawfulness and proportionality of their arrest and conviction within the context of their right to peaceful assembly. They were not, therefore, required to institute separate civil proceedings following the rejection of that complaint in the administrative-offence proceedings.

71. As concerns the Government's objection concerning the alleged incompatibility *ratione materiae* of the applicants' complaint with Article 11 of the Convention on account of the blockade of the Parliament building, the point at issue is, given the circumstances of the present case, closely linked to the merits of the complaint regarding the alleged occurrence of an interference in the applicants' rights under the said provision. This objection should therefore be joined to the merits of the applicants' complaint.

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

B. Merits

1. *The parties' submissions*

(a) **The applicants**

73. The applicants submitted, *inter alia*, that their arrest at the demonstration of 18 November 2019 and their ensuing conviction for resisting lawful orders given by the police had been in breach of Article 11 of the Convention. The applicants maintained that, unlike the circumstances pertaining to the case of *Kudrevičius and Others v. Lithuania* ([GC], no. 37553/05, § 167, ECHR 2015), the demonstration of 18 November 2019 had been a political protest held in response to a political event and had concerned an important debate concerning the undelivered promise of the ruling party regarding electoral reform. The applicants argued that the domestic courts had failed to provide adequate reasoning in respect of the lawfulness of the police orders and the question of whether the applicants had individually committed the offences ascribed to them; in any event, no reasoning had been given as regards the proportionality of the impugned

measures in so far as their right to peaceful assembly was concerned. Additionally, the sanctions imposed on them had been intended to have a chilling effect on the exercise of political speech and the right to peaceful assembly.

74. The applicants additionally stated that no evidence, other than the officers' account, had been presented at domestic level to indicate that they personally had blocked the entrances to the Parliament building. Even assuming that the applicants had blocked Parliament, the domestic courts had not assessed the implications of such conduct and the need for interference. They also submitted that the interests of public order "might not outweigh those of the applicants, who, having blocked Parliament, ... attempted to introduce changes in their negotiations" with the government. As regards the blocking of the road, the applicants noted, in general terms, that the first and third applicants had chosen to stay at the demonstration in the belief that their right to peaceful assembly had outweighed the importance of restoring traffic and removing the "discomfort" caused to Parliament. The third applicant specified that the video evidence available in respect of his behaviour before his arrest on the road had indicated "nothing but passive and peaceful disobedience to the actions of the police force ... in an attempt to uphold his fundamental rights." The second applicant noted that he had remained with the demonstration after the police had started to disperse the people gathered at the Parliament building's entrances. More and more people had started to congregate in the pedestrian area in front of Parliament, rendering the blocking of Rustaveli Avenue inevitable owing to their sheer numbers. The three applicants submitted that, at any rate, they had not been convicted of breaching rules relating to the holding of assemblies and demonstrations under Article 174 of the Code of Administrative Offences (see paragraph 41 above).

(b) The Government

75. The Government submitted that the domestic authorities had enjoyed a wide margin of appreciation in respect of sanctioning the disruption of ordinary life and traffic by the applicants, who had intentionally staged the demonstration in a manner that had breached the relevant rules and regulations. In particular, the organisers of the demonstration of 18 November 2019 had openly called for the blocking of access to the Parliament building in order to obstruct its work and had later resisted police efforts to allow Parliament's work to resume. In this regard, the Government noted that the first and third applicants had not disputed that they had been among the organisers of the demonstration of 18 November 2019 and that they had themselves admitted the obstructive objectives of the demonstration.

76. In so far as the proportionality of the interference was concerned, the police had, in the Government's submission, provided all appropriate conditions for citizens to hold a peaceful protest, including on 17 November

2019 – the day before the events in question – and had made several official statements regarding the conduct of the demonstration and given meaningful warnings to the participants in the demonstration. In not heeding the police warnings to clear access to Parliament, the demonstration had, in the Government’s submission, rendered itself unlawful, thus placing itself outside the scope of the applicants’ right to peaceful assembly (or at the very least, giving the attending officers the right to arrest the applicants and the domestic courts the right to impose the relevant sanctions). These measures, according to the Government, had not – in view of the blocking of the Parliament building and the adjacent roads and the traffic – been disproportionate to the legitimate aims of preventing disorder and protecting public safety. In this regard, the Government emphasised that the first and third applicants did not deny having defied the orders of the police by continuing to sit on the road when the police had started to clear access to Parliament. As for the second applicant, the Government stated that the domestic courts had not been presented with video evidence regarding his actions; however, such video material was available, as it had been aired by various media outlets and the Court might, if it examined this material, conclude that the second applicant had indeed actively attempted to occupy the road, in defiance of police orders.

77. As for the potential chilling effect of the applicants’ arrests on the exercise of the right to peaceful assembly, the Government noted, among other things, that rather than disperse the demonstration, the authorities had merely arrested those demonstrators who had broken the law. As regards the proportionality of the relevant sanctions, they had not been severe, and the domestic courts had had before them the applicants’ personal administrative-offence files (indicating that the first and third applicants had committed administrative offences in the past) to guide their decision under Articles 33 and 35 of the CAO (see paragraph 38 above).

2. *The Court’s assessment*

(a) **General principles**

78. The right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (see *Kudrevičius and Others*, cited above, § 91, and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 98, 15 November 2018).

79. Article 11 of the Convention only protects the right to “peaceful assembly”, a notion which does not cover a demonstration where the organisers and participants have violent intentions. The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (see *Kudrevičius and Others*, cited above,

§ 92).

80. Even if there is a real risk that a public demonstration might result in disorder as a result of developments outside the control of those organising it, such a demonstration does not as such fall outside the scope of paragraph 1 of Article 11, and any restriction placed thereon must be in conformity with the terms of paragraph 2 of that provision (*ibid.*, § 94).

81. In order to establish whether an applicant may claim the protection of Article 11, the Court takes into account (i) whether the assembly was intended to be peaceful or whether the organisers had violent intentions; (ii) whether the applicant demonstrated violent intentions when joining the assembly; and (iii) whether the applicant inflicted bodily harm on anyone (see *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, § 491, 21 January 2021). It notes that where both sides – demonstrators and police – were involved in violent acts, it is sometimes necessary to examine who started the violence (see *Primov and Others v. Russia*, no. 17391/06, § 157, 12 June 2014).

82. If on the basis of the foregoing criteria the Court accepts that the applicant enjoyed the protection of Article 11, it focuses the analysis of the interference on the proportionality of the sanction imposed. The Court recognises that when individuals are involved in acts of violence the State authorities enjoy a wider margin of appreciation when examining the need for an interference with freedom of assembly, and the imposition of a sanction for such reprehensible acts may be considered to be compatible with the guarantees of Article 11 of the Convention. Even so, the imposition of lengthy prison terms for unarmed confrontation with the police, or for throwing stones or other missiles at them without causing serious injuries, has in a number of cases been considered disproportionate (see *Shmorgunov and Others*, cited above, § 492).

83. The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities (see *Christian Democratic People's Party v. Moldova (no. 2)*, no. 25196/04, § 23, 2 February 2010).

84. In the Court's view, although not an uncommon occurrence in the context of the exercise of freedom of assembly in modern societies, physical conduct purposely obstructing traffic and the ordinary course of life in order to seriously disrupt the activities carried out by others is not at the core of that freedom as protected by Article 11 of the Convention. This state of affairs might have implications for any assessment of "necessity" to be carried out under the second paragraph of Article 11 (see *Kudrevičius and Others*, cited above, § 97).

85. Any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic. This fact in itself does not justify an interference with the right to freedom of assembly, as it is important for the public authorities to show a certain degree of tolerance. The appropriate "degree of tolerance" cannot be defined *in abstracto*: the Court

must look at the particular circumstances of the case and particularly at the extent of the “disruption to ordinary life”. This being so, it is important for associations and others organising demonstrations, as actors in the democratic process, to abide by the rules governing that process by complying with the regulations in force (*ibid.*, § 155).

86. The intentional failure by the organisers to abide by these rules and the structuring of a demonstration, or of part of it, in such a way as to cause disruption to ordinary life and other activities to a degree exceeding that which is inevitable in the circumstances constitutes conduct which cannot enjoy the same privileged protection under the Convention as political speech or debate on questions of public interest or the peaceful manifestation of opinions on such matters. On the contrary, the Court considers that the Contracting States enjoy a wide margin of appreciation in their assessment of the necessity of taking measures to restrict such conduct (*ibid.*, § 156).

87. The intentional serious disruption, by demonstrators, to ordinary life and to the activities lawfully carried out by others, where such disruption was more significant than that caused by the normal exercise of the right of peaceful assembly in a public place, might be considered a “reprehensible act” within the meaning of the Court’s case-law. Such behaviour might therefore justify the imposition of penalties, even of a criminal nature (*ibid.*, § 173).

88. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they took. This does not mean that it has to confine itself to ascertaining whether the State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine, having established that it pursued a “legitimate aim”, whether it answered a “pressing social need” and, in particular, whether it was proportionate to that aim and whether the reasons adduced by the national authorities to justify it were “relevant and sufficient” (*ibid.*, § 143). In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (*ibid.*).

(b) Application of these principles to the present case

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

89. At the outset, the Court observes that the demonstration of 18 November 2019 had, as acknowledged by the applicants, been designed to obstruct Parliament’s work. To that end, its organisers and some of the participants blocked access to all entrances to the building. According to the applicants, this form of protest was undertaken in response to Parliament’s failure to approve the previously planned electoral reform aimed at improving

the democratic process in the country. By contrast, the Government maintained that – as an objective of the demonstration – the blocking of access to the main legislative body of the country and paralysing its democratic functioning had, in and of itself, been at odds with the democratic foundations of society and had thus constituted a reprehensible act that had deprived the demonstration and its participants of the guarantees provided under Article 11 of the Convention.

90. Against this background, the Court reiterates the general principle whereby the guarantees of Article 11 normally apply to all gatherings except those where the organisers and participants have violent intentions, incite violence, or otherwise reject the foundations of a democratic society (see paragraph 79 above). In this regard, the Government did not demonstrate that the demonstration of 18 November 2019 had been intended to be violent, had incited violence, or had become violent at the time when the decision to arrest the applicants had been taken. Nor does the domestic courts’ reasoning suggest this (see paragraphs 20-29 above).

91. As regards the question of whether the demonstration otherwise undermined the foundations of a democratic society, the Court is mindful of the obstructive form of protest used in the present case, its incompatibility with the domestic laws and regulations in force (see paragraphs 32-35 above), and the disruption it may have created for the legislative process within Parliament (see paragraphs 7, 10 and 18 above), which should not be taken lightly. However, the Court reiterates that the question of whether a gathering falls within the autonomous concept of “peaceful assembly” set out in paragraph 1 of Article 11 is independent of the question of whether that gathering was conducted in accordance with a procedure provided by the domestic law, the latter issue becoming relevant only after the Court has concluded that a gathering falls within the scope of protection of the provision in question (see *Navalnyy*, cited above, § 99).

92. In this regard, it is particularly significant to note that ensuring the effective functioning of Parliament is a value of key importance for a democratic society (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 383, 22 December 2020). In the present case, while the disputed gathering blockaded the Parliament building and aimed at obstructing the legislative process by way of a form of protest, it was meant to express political ideas – namely to object to the failure of the ruling party to deliver on its undertaking to bring forward from 2024 to 2020 the reform of the electoral system. Reiterating the close link between the freedom of assembly provided in Article 11 and the freedom of expression guaranteed by Article 10 (*ibid.*, § 101), the Court is prepared to accept, in the circumstances of the present case, that a gathering of politicians, civil activists, and ordinary citizens contesting the progress of legislative reforms aimed at enhancing the democratic processes in the country, even if it used an obstructive form of

protest, should not necessarily be regarded constituting a rejection of the foundations of a democratic society.

93. Therefore, rather than exclude altogether the applicability of Article 11 of the Convention in the present case (see paragraph 78 above), this intentional action aimed at obstructing the ordinary course of life in order to seriously disrupt the activities carried out by Parliament would have implications for any assessment of “necessity” to be carried out under the second paragraph of Article 11 (as regards the Court’s similar approach to a blockade as a form of protest see, among other authorities, *Kudrevičius and Others*, cited above, § 97, with further references therein, and *Donat and Fassnacht-Albers v. Germany* (dec.), nos. 6315/09 and 12134/09, § 67, 11 February 2014; see also *G. v. Germany*, no. 13079/87, Commission decision of 6 March 1989, Decisions and Reports 60, p. 263).

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

(ii) Whether the interference was prescribed by law

95. The rules concerning the conduct of a demonstration were clearly set out in the Assemblies and Demonstrations Act and included a prohibition on blocking access to administrative buildings and on intentionally blocking traffic during a demonstration (see paragraphs 32-35 above). The domestic laws in force at the material time also provided for a range of measures that could be taken in the event of a breach of such rules (see paragraphs 36-37 and 40-41 above). The fact that the applicants’ conviction was based on a more general rather than specialised provision under the CAO (compare paragraphs 40 and 41 above) does not affect the lawfulness of the interference, as these provisions were not mutually exclusive and provided for an identical custodial sanction.

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

(iii) Whether the interference pursued a legitimate aim

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

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

(α) The first and third applicants

98. As regards the assessment of the necessity and the proportionality of the particular measures taken against the individual applicants, the Court notes that the demonstration of 18 November 2019 was intentionally structured in such a way as to cause disruption to the ordinary life of society by blocking the activities of the democratically elected legislative body until certain political demands were met, in express breach of the relevant rules and regulations (see paragraphs 9-10, 32-35, 41 and 74 above). What is more, the Court cannot remain impervious to the first and third applicants' somewhat contradictory submissions and own admissions, made in the proceedings before it, regarding their choice of obstructive forms of protest (firstly in respect of the blocking of the entrances to the Parliament building, and then regarding the sit-in on the road leading to those entrances – apparently to obstruct the efforts of the police to reopen access to the Parliament building – see paragraph 74 above), disregarding the importance of the effective functioning of Parliament in a democratic society (see, for instance, *Selahattin Demirtaş*, cited above, § 383). Such a blockade must, for all intents and purposes, have created disruption going beyond the level of minor disturbance (see also *Kudrevičius and Others*, cited above, §§ 155-56; contrast *Navalnyy*, cited above, § 143).

99. In this connection, the Court considers that, even though the first and third applicants had neither carried out acts of violence, nor incited others to engage in such acts, the complete obstruction of the entrances to the Parliament's building and later of the police efforts to reopen those entrances, in blatant disregard of the domestic legislation, multiple warnings given to them, and of the needs and rights of the democratically elected members of Parliament to discharge their functions which are essential in any democratic society can be described as "reprehensible" conduct (see, for instance, *Kudrevičius and Others*, cited above, § 174; see also *Knežević v. Montenegro* (dec.), no. 54228/18, § 84, 2 February 2021, and *Ekrem Can and Others v. Turkey*, no. 10613/10, § 90, 8 March 2022 [not final yet]). In this regard, the Court reiterates that the Contracting States enjoy a wide margin of appreciation in their assessment of the necessity of taking measures to restrict such conduct, including the imposition of penalties, even of a criminal nature (compare, among other authorities, *Kudrevičius and Others*, cited above, §§ 156 and 171-73; *Chernega and Others v. Ukraine*, no. 74768/10, § 264, 18 June 2019; and *Drieman and Others v. Norway* (dec.), no. 33678/96, 4 May 2000).

100. Within this context, the respondent State was entitled to consider that the interests of protecting public order outweighed those of the applicants in resorting to blocking the Parliament building until such time as a breakthrough were achieved in their negotiations with the government (see

paragraphs 7, 9 and 74 above; see also *Kudrevičius and Others*, cited above, § 175). The Court particularly emphasises in this regard the status of the first and third applicants as civil society activists and reiterates that those organising and participating in demonstrations, as actors in the democratic process, should respect the rules governing that process by complying with the regulations in force (see *Balçık and Others v. Turkey*, no. 25/02, § 49, 29 November 2007). Therefore, while the domestic courts' decisions taken in respect of the first and third applicants only briefly mentioned the blocking of the Parliament building's entrances and concentrated, instead, on the blocking of the road in the subsequent but related episode involving the police attempt to reopen access to the Parliament building, the Court, owing to the close link between the two events (see paragraphs 12 and 21 above) and the two applicants' admissions in that regard (see paragraph 74 above), cannot consider, taking into account the margin of appreciation afforded to the authorities to restrict reprehensible conduct, that the decision of the domestic authorities relating to the necessity of reopening access to the Parliament building and the first and third applicants' arrest in that process had been manifestly arbitrary or unreasonable.

101. In this regard, and as concerns the conduct of the authorities, the police negotiated with the protesters, including the first and third applicants, informing and warning them regarding the relevant rules and regulations concerning the conduct of demonstrations (especially the prohibition on blocking access to administrative buildings) with the aim of allowing access to the Parliament building rather than dispersing the demonstration as such (see paragraphs 10-12 above). It has not been alleged that the police orders were unclear or inaudible (contrast *Chernega and Others*, cited above, § 250). Nor has it been shown that the relevant rules prohibiting the blocking of roads and administrative buildings had not been formulated with sufficient precision or that their application had been unforeseeable (see *Knežević*, cited above, § 88). Even so, none of the three entrances were cleared by way of heeding the repeated requests by the police. Additionally, the protesters did not allow the police to proceed once the latter decided to clear access to the Parliament building. Within this context, the Court emphasises that the first and third applicants were not convicted of participating in the demonstration (see *Barraco v. France*, no. 31684/05, § 46, 5 March 2009, and *Budaházy v. Hungary*, no. 41479/10, § 43, 15 December 2015; also contrast *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, § 43, 17 May 2011). Rather, the contested conviction and sanctions related to their eventual refusal to free the road leading to the entrances of the Parliament building.

102. As regards the extent to which the first and third applicants' arrest and the sanctions imposed on them had been proportionate, the Court notes that these applicants were able to express their disapproval of Parliament's failure to adopt the relevant legislative amendments and to voice their concerns (together with other participants in the demonstration), without the

need for any prior notification, and without restraint or repercussions (even in respect of blocking access to the Parliament's building), for at least a day and a half (see paragraphs 7-13 above; contrast *Akgöl and Göl*, cited above, § 44). Taking into account the fact that the blockade of Parliament was not limited in duration and appears to have been intended as a continuous disruptive protest tactic aimed at ensuring that the protesters' demands were met by the government (see paragraphs 7, 9 and 74 above), the Court does not consider that the authorities failed to show a degree of tolerance towards the gathering (see *Éva Molnár v. Hungary*, no. 10346/05, §§ 42-43, 7 October 2008; contrast and compare *Oya Ataman v. Turkey*, no. 74552/01, § 41, ECHR 2006-XIV). Additionally, had the first and third applicants obeyed the order to clear the road leading to the Parliament, nothing would have prevented them from continuing with the protest (see *Chernega and Others*, cited above, § 265).

103. The Court is very attentive when assessing proportionality as regards the chilling effect of custodial sanctions (see, among other authorities, *Knežević*, § 88 and *Ekrem Can and Others*, §§ 93-94, both cited above, with further references). However, the administrative custodial sanction in the present case, as noted above, was not imposed for the first and third applicants' organising and/or participating in the protests, but for their having blocked the road during the police attempts to reopen access to the Parliament building. Blocking roads and administrative offices were both administrative offences laid down in the legislation in a clear and foreseeable manner (see paragraph 101 above). Given the foregoing considerations (see paragraphs 98-102 above) and in view of the relatively short duration of the administrative custodial sanctions imposed on the first and third applicants (which were apparently also conditioned by their prior conduct – see paragraphs 27 and 77 above; see also *Steel and Others v. the United Kingdom*, 23 September 1998, § 107, *Reports of Judgments and Decisions* 1998-VII; *Chernega and Others*, cited above, § 267; and *Knežević*, cited above, § 88; compare and contrast *Ekrem Can and Others*, cited above, §§ 93-94), the Court is not convinced by the relevant applicants' arguments, in the particular circumstances of the present case, that the domestic authorities overstepped their margin of appreciation by arresting and sanctioning them in respect of disobeying the lawful orders of the police.

There has, therefore, been no violation of Article 11 of the Convention in so far as the first and third applicants are concerned.

(β) The second applicant

104. As regards the second applicant, the available domestic material did not demonstrate that he was among the organisers of the demonstration or personally blocked either the Parliament building's entrances or the police attempts aimed at clearing them. Rather, he was arrested some two hours after the police had started to reopen the entrances to the Parliament building. It

remained unclear at the domestic level and during the proceedings before the Court whether, by then, the police had managed to succeed, at least partly, in reopening those entrances. If they indeed had succeeded, then that would affect the assessment of the necessity and the proportionality of the second applicant's arrest and his subsequent conviction.

105. This lack of an appropriate judicial review, at least in substance, of the particular circumstances relating to the second applicant's arrest could not have been remedied, as suggested by the Government, by the media coverage of the events (see paragraph 76 above). It is not for the Court, in the context of its examination of a complaint under Article 11 of the Convention after the exhaustion of domestic remedies, to take the place of the competent national authorities and to act as a court of first instance and look into additional evidence which the respondent State points to and which the domestic courts did not rely on (see, *mutatis mutandis*, *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 69, ECHR 2010, and *Rubins v. Latvia*, no. 79040/12, § 74, 13 January 2015). Even assuming that the second applicant had indeed been among those who had moved from the pedestrian area in front of the Parliament building to a road used for traffic, no assessment was made by the domestic courts of whether that blocking of the road had been intentional or a result of circumstances on the ground, such as the number of demonstrators and the related question of the "lawfulness" of the police demands (see, for instance, *Annenkov and Others v. Russia*, no. 31475/10, § 138, 25 July 2017, and *Navalnyy and Gunko*, cited above, § 69, 10 November 2020).

106. The Court thus considers that the authorities failed to demonstrate the existence of relevant and sufficient grounds for justifying, within the context of the second applicant's rights under Article 11 of the Convention, the necessity and the proportionality of his conviction and the imposition of a four day custodial sentence.

There has therefore been a violation of the provision in question in so far as the second applicant is concerned.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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

108. The second applicant claimed 5,900 euros (EUR) in respect of non-pecuniary damage. He additionally submitted that the appropriate just

satisfaction in this case would be a finding of a violation of Articles 6 and 11 of the Convention and an indication of general measures to be adopted by Georgia to reform the Code of Administrative Offences.

109. The Government submitted that the requested sum was excessive. As to the request regarding general measures, the Government stated that there were no grounds, given the circumstances of the present case, to examine the matter under Article 46 of the Convention.

110. The Court, ruling on an equitable basis, awards the second applicant EUR 1,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

111. As regards the request for additional measures to be indicated to the respondent State under Article 46 of the Convention, the Court refers to its findings reached under Article 6 § 1 and Article 11 of the Convention (see paragraphs 58-63 and 98-106 above), including that it is not the Court's task to review the domestic legislation in general terms. It would therefore be for the respondent State to choose, subject to supervision by the Committee of Ministers, the exact means to be used in its domestic legal order to discharge its obligations under the Convention (see *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I).

B. Costs and expenses

112. The second applicant did not submit a claim under this head. Accordingly, the Court is not called upon to make any award in this respect.

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. *Decides* to join the applications;
2. *Joins* to the merits the Government's objection concerning the applicability of Article 11 of the Convention and *dismisses* it;
3. *Declares* the complaints under Article 6 § 1 of the Convention concerning the alleged unfairness of the administrative-offence proceedings and the requirement of judicial impartiality, and those concerning the interference with the applicants' right to freedom of peaceful assembly under Article 11 of the Convention, admissible, and the remainder of the applications inadmissible;

4. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the first and third applicants;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the second applicant;
6. *Holds* that there has been no violation of Article 11 of the Convention in respect of the first and third applicants;
7. *Holds* that there has been a violation of Article 11 of the Convention in respect of the second applicant;
8. *Holds*
 - (a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,600 (one thousand six hundred euros), 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;
9. *Dismisses* the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 1 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytkhik
Registrar

Síofra O’Leary
President

MAKARASHVILI AND OTHERS v. GEORGIA JUDGMENT

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	23158/20	Makarashvili v. Georgia	24/05/2020	Giorgi MAKARASHVILI 1985 Tbilisi Georgian	Mr Eduard MARIKASHVILI
2.	31365/20	Katcharava v. Georgia	15/06/2020	Irakli KATCHARAVA 1978 Kutaisi Georgian	Mr Eduard MARIKASHVILI
3.	32525/20	Berdzenishvili v. Georgia	15/06/2020	Zurab BERDZENISHVILI 1991 Tbilisi Georgian	Mr Eduard MARIKASHVILI