



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

FIFTH SECTION

CASE OF DZERKORASHVILI AND OTHERS v. GEORGIA

(Application no. 70572/16)

JUDGMENT

Art 5 § 1 • Deprivation of liberty • Administrative arrest and detention of applicants for about twelve hours not free from arbitrariness • Lack of necessity assessment

STRASBOURG

2 March 2023

FINAL

02/06/2023

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

In the case of Dzerkorashvili and Others v. Georgia,

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

Georges Ravarani, *President*,

Mārtiņš Mits,

Stéphanie Mourou-Vikström,

Lado Chanturia,

María Elósegui,

Kateřina Šimáčková,

Mykola Gnatovskyy, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 70572/16) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Georgian nationals (“the applicants”), whose details are listed in the appended table, on 17 November 2016;

the decision to give notice to the Georgian Government (“the Government”) of the complaints under Articles 3, 5, 8, 11, 13 and 14 of the Convention and to declare the remainder of the application inadmissible;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Ordo Iuris Institute for Legal Culture, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 7 February 2023,

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

INTRODUCTION

1. The present case principally concerns the applicants’ complaint under Article 5 of the Convention relating to their alleged unlawful detention for approximately twelve hours, and their complaint under Articles 3, 8 and 14 of the Convention regarding alleged ill-treatment. It also relates to negotiations by an “LGBT activists’ initiatives group” with the domestic authorities concerning the selection of a venue for a public event and the applicants’ complaint that they were negatively affected by the authorities’ conduct, in breach of Article 11 of the Convention.

THE FACTS

2. The applicants’ details are set out in the appended table. They were represented by Ms T. Mikeladze and Ms M. Begadze, lawyers practising in Tbilisi and by Ms R. Remezaite, Ms J. Gavron, Ms J. Sawyer, and Mr P. Leach, lawyers practising in London.

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. ARRANGEMENTS RELATING TO THE IDAHOT EVENT OF 2016

5. On 28 April 2016 an “LGBT activists’ initiatives group” (“the group of activists”) asked the authorities to ensure support and protection of the LGBT activists’ right to freedom of assembly. The relevant letter did not identify either the contact person for the group or its individual members. The officials were notified of the group’s plan to hold a silent gathering in order to commemorate the International Day against Homophobia, Transphobia and Biphobia (IDAHOT) and raise the public’s awareness of the need to protect the rights of the lesbian, gay, bisexual and transgender (LGBT) community. The letter noted that between 100 and 150 individuals would gather in front of the Parliament building on 17 May 2016 at noon. The event would last one hour. The group of activists referred to past instances of homophobic violence faced by individuals who had tried to commemorate IDAHOT (see *Identoba and Others v. Georgia*, no. 73235/12, §§ 68-81, 12 May 2015, and *Women’s Initiatives Supporting Group and Others v. Georgia*, nos. 73204/13 and 74959/13, §§ 60-78, 16 December 2021) and requested that the various authorities, including the police, create a working group to coordinate the measures to be taken in order to protect the rights and the life and health of the participants of the event planned for 17 May 2016.

6. On 3 May 2016 the Tbilisi City Hall informed the group of activists that notice of various events relating to the “family sanctity day” (in May 2014 the Georgian Orthodox Church had declared 17 May a day to celebrate the strength and sanctity of the family and respect for one’s parents, to be celebrated by prayers and a procession in the streets) and other commemorations had already been given in respect of the area surrounding the Parliament building and Freedom Square. Those notifications had been made on various dates between 11 February and 14 April 2016. The Tbilisi City Hall proposed to the activists that they choose a different location.

7. As appears from the parties’ submissions and the case file material, on 4 May 2016 the Deputy Minister of Internal Affairs and various other officials met some of the activists in order to discuss the request of 28 April 2016 (see paragraph 5 above). The meeting was also attended by a representative of the Office of the Public Defender. The identity of the activists who were present and the exact content of the discussions is unclear, but the MIA confirmed in a letter addressed to the applicants’ representative on 25 August 2016 that the activists present at the meeting had been warned about the “risks associated with holding the assembly.” In a letter addressed to the applicants’ representative by the Office of the Public Defender, it was noted that the activists had categorically insisted on holding the gathering in a central location such as Rustaveli Avenue and had rejected all proposals in

respect of alternative venues despite having been warned that three parallel demonstrations had already been planned to take place in the Rustaveli avenue, constituting a security threat if the activists went ahead with their demonstration in their preferred location.

8. On 5 May 2016 the group of activists informed the authorities that they had selected an alternative location. The event would be held in Pushkin Square (a central space adjacent to Freedom Square). The letter indicated the address and a mobile telephone number of one individual – N.B. – who was designated as a contact person.

9. By a letter dated 16 May 2016, the Tbilisi City Hall informed the contact person for the activists, N.B., in response to N.B.’s letter of 5 May 2016, that notice of various events had been given earlier in respect of different central locations, and that the City Hall “[did not] consider it advisable to hold any type of additional events at the perimeter of the listed locations”. The activists were requested to “choose an alternative location for the planned gathering and to inform [the City Hall] accordingly”.

10. The case file material contains internal correspondence of the different MIA entities, including the police, to which the activists’ letters were forwarded to ensure a “response in case of need”.

11. On 16 May 2016 an “independent group of LGBT activists” circulated a statement. The statement referred to the interactions and meetings with the authorities and explained that in the absence of security guarantees by the authorities in respect of a public event to be held at or around Rustaveli Avenue (those guarantees, according to the statement, had been “a categorical request”), the activists had decided not to hold the event as no alternative place or date suggested by the authorities would fit the purpose of their event.

12. None of the present applicants feature in the official correspondence or other documents relating to the planning of the event on 17 May 2016. The case file material contains a statement of N.B. (see paragraphs 8 and 9 above) obtained by the applicants’ representatives on 25 October 2016. According to that statement, N.B. was involved in the planning of “almost all” public events relating to the protection of LGBT rights, including the event of 17 May 2016 which could not be held. She stated that one of the meetings with the authorities (see paragraph 7 above) relating to that event had also been attended by some activists, including the first and fifth applicants. She also described the communication she had had with various authorities, and stated that she had received the letter dated 16 May 2016 (see paragraph 9 above) on 23 May 2016.

II. APPLICANTS’ ARREST

13. In the early hours of 17 May 2016, the applicants went to the main building of the Patriarchate of the Georgian Orthodox Church.

14. At 3.55 a.m. the first six applicants were arrested together with the seventh applicant. The official documents relating to their arrest indicated

that all seven applicants had been drawing graffiti (stencilling the phrase “Fuck homophobia and transphobia”) on the walls of the building. According to the applicants’ account at the domestic level and before the Court, rather than drawing graffiti, the seventh applicant had been waiting for his wife – the fourth applicant – in the car when he was arrested.

15. The administrative-offence reports of 17 May 2016 in respect of all seven applicants noted that they had been arrested under Articles 150 and 173 of the Code of Administrative Offences (“the CAO”; see paragraphs 41-42 below), stating that none of the applicants had obeyed police orders to stop putting unauthorised writing on the building. As regards the grounds for the arrest, the administrative-arrest reports of the same date repeated that the applicants had been putting unauthorised writing on the building, had refused to comply with the order to stop doing so, and had resisted arrest. The relevant reports did not specify whether they had been drafted on the spot or at the police station.

16. The administrative-arrest reports contained notes that the first applicant had a “minor redness in the waist area”, the second applicant had “a greenish spot on her right thigh” and an old scar on the right arm, the fifth applicant had a “small injury (მცირე სახის დაზიანება) near the left ankle”, and the sixth applicant had an old scar on her right arm. No such notes were made in respect of the remaining applicants. It was also stated in respect of all but the seventh applicant that they had spray paint with them at the time of the arrest. The applicants refused to sign the relevant reports.

17. Documents obtained from the MIA and the mayor’s office on 30 May and 1 June 2016 indicated that no video surveillance footage of the events was available, either because of the lack of cameras in certain areas or the malfunctioning of those which had been installed.

18. On 10 and 20 June 2016, the Administrative Chamber of the Tbilisi City Court held hearings in the applicants’ cases. The applicants maintained that the police officers had not worn identifiable insignia, that there had been no disobedience on the applicants’ part, and that the drawing of the graffiti by the first six applicants was protected by their freedom of expression. The seventh applicant submitted that he had been in his car at the time of his arrest. The court acquitted all of the applicants of the charge of disobeying police orders, finding that there was insufficient evidence to prove the existence of such disobedience. As regards the charge of putting unauthorised writing on a building, the first six applicants were found guilty and sentenced to an administrative fine of 50 Georgian laris (GEL – approximately 20 euros (EUR)). The seventh applicant was acquitted with respect to both charges with the court noting, without further elaboration, that the evidence available before it did not demonstrate that the seventh applicant had committed the offences with which he had been charged. On an unspecified date the first six applicants appealed against their conviction.

19. On 19 July and 30 September 2016, the Tbilisi Court of Appeal upheld the lower court's findings.

III. SUBSEQUENT DEVELOPMENTS

A. Administrative complaints

20. On 30 May 2016 the applicants (with the exception of the first and third applicants) complained to the General Inspectorate of the MIA (the unit in charge of disciplinary supervision of those working for the Ministry), and requested that disciplinary proceedings be initiated against the police officers involved in their arrest and detention. They complained that they had not disobeyed any lawful orders, and the arresting officers had not worn police insignia, causing the applicants distress because the applicants had thought that they had been chased by ultraconservative, homophobic groups. The applicants stated that their administrative arrest had, in such circumstances, been unnecessary. They also argued that the police officers had not explained to them their procedural rights and had used homophobic and degrading language throughout the applicants' administrative arrest and detention. The second applicant stated that she had been requested to use the bathroom in the presence of a female officer who, in reply to the second applicant's objection, had cynically remarked "as if you have not done much worse." The second applicant indicated the name of the officer in question. The sixth applicant stated that when brought for trial the following day, the applicants had witnessed a female police officer's threat to another LGBT activist who had apparently been arrested in respect of another case. That individual had, according to the applicants, insulted the Patriarch, and the officer had threatened, with gestures, to strangle him, claiming that people like that "should rot and die." She was then calmed down by another officer.

21. On 17 June 2016 the seven applicants sent a complaint to the MIA. They relied on section 56 of the Police Act, Article 208 of the Administrative Code and Article 251 of the CAO (see paragraphs 47-52 below) and complained that their administrative arrest had been unlawful. The applicants claimed that there had been no need to make the arrests, as the sole reason for the applicants' running away from the officers had been the lack of police uniforms and insignia on the arresting officers, as well as the police officers' failure to identify themselves prior to chasing the applicants and grabbing them. This had led the applicants to believe that they had been chased by religious extremists rather than law-enforcement officials, which was confirmed, according to the applicants, by the fact that the moment the officers arrested them and made their official status clear, no resistance was offered by any of the applicants. It was emphasised that their arrest and detention had thus been wholly unnecessary, as any perceived resistance had been the result of the police officers' behaviour. The applicants also noted that the administrative-offence reports could have been filed on the spot,

without the need to take them to the police station. They added that those documents did not contain sufficient information regarding the incident and the necessity of detaining the applicants. As regards the seventh applicant, he had not been involved in the events at all and had been sitting in his car. The applicants claimed that their detention for approximately twelve hours had not been lawful, necessary, or proportionate. Among other things, they emphasised that detention had to be used as a last resort, rather than an automatic measure.

22. On 22 September 2016 the deputy chief of the police station which employed the applicants' arresting officers responded to the applicants' complaint of 17 June 2016 (see the previous paragraph) and stated that the relevant officers had acted in full conformity with the law when arresting the applicants, and that the first-instance court had delivered its judgments concerning the incident.

23. On an unspecified date a disciplinary inquiry was launched by the General Inspectorate of the MIA. On 30 March and 4 April 2017 the Inspectorate interviewed the police officers involved in the applicants' administrative arrest. The officers denied physical or verbal ill-treatment in respect of the applicants. The case file material contains no information as to whether the inquiry reached any conclusions.

B. Judicial proceedings

24. On 4 November 2016 the applicants, represented by a lawyer of their choice, instituted proceedings against the MIA. They requested the "nullity of the administrative-arrest reports" and "compensation for moral damage." The applicants briefly repeated the content of their earlier complaints (see paragraphs 20-21 above). They noted that their complaint with the superior authority under Article 251 of the CAO had been left without a meaningful reply, only the letter of 22 September 2016 which had been received on 3 October 2016 (see paragraph 22 above). The applicants provided a photograph allegedly depicting one of the arresting officers not wearing a police uniform.

25. On 9 November 2016 the applicants' request to have the administrative-arrest reports declared null and void was not accepted for consideration on the merits by the first-instance court. On 3 April 2017 the Tbilisi Court of Appeal remitted the matter to the first-instance court for reconsideration. The case file material does not contain copies of those decisions.

26. On 24 August 2017 the Tbilisi City Court, and subsequently on 30 November 2017 the Tbilisi Court of Appeal, found that the applicants had failed to abide by the special rules concerning the appeals relating to administrative arrests made by the police. Namely, rather than appealing against the outcome of a complaint under Article 251 of the CAO and section 56 of the Police Act (see paragraphs 47 and 52 below), the applicants

had, according to the court, requested a direct review by the domestic courts of the legality of their administrative-arrest reports, contrary to the established procedure and practice. What is more, rather than formulate the request with respect to the provisions of the CAO, the application had requested nullity of the arrest reports under the General Administrative Code, thereby rendering the core of the applicants' claim incorrectly formulated. It was further emphasised by the courts that during the hearing on the matter the applicants' representative had insisted on the nullity of the relevant documents under the General Administrative Code rather than formulating the request with a view to contesting the factual acts of the police under the Code of Administrative Offences. The applicants' complaint was thus declared inadmissible in a final decision of 30 November 2017.

27. As regards compensation for damage relating to the applicants' arrest, on 18 October 2018 the Tbilisi City Court found that the applicants' failure to properly trigger the procedure under Article 251 of the CAO for complaining about the unlawfulness of their administrative arrest had led to the courts' inability to make a ruling on whether such an arrest had entailed any damage entailing the award of compensation under Article 1005 § 1 of the Civil Code. The decision was upheld on appeal in a final decision of 8 December 2020. The case file material does not contain a copy of the applicants' appeal and the final decision.

C. Criminal complaints

28. On 6 September 2016 the first, second, third and fifth applicants applied to the Tbilisi Prosecutor's Office requesting the opening of an investigation into unlawful deprivation of liberty and inhuman treatment. The content of the complaint was brief but similar to that made on 30 May 2016 (see paragraph 20 above). On 19 October 2016 the second, fourth, sixth and seventh applicants also applied to the Tbilisi Prosecutor's Office. They complained of the unlawfulness of their administrative arrests and requested that an investigation be opened in that respect, but also stated, briefly, that the police had made mocking comments and used "hate speech" against the applicants. The letter of 19 October 2016 referred to the complaint made by the first, second, third and fifth applicants on 6 September 2016, and noted that all seven applicants had already given statements and detailed information regarding the possible criminal offences committed against them by the police officers. All of the applicants referred to themselves as LGBT activists.

29. Between 4 and 12 October 2016 a prosecutor interviewed all of the applicants in the presence of their lawyer. The applicants repeated the content of their earlier complaints, including the complaint that the absence of police insignia on the arresting officers and their cars had aroused in them a fear of being persecuted by ultraconservative groups. The majority of the applicants noted that they had initially resisted arrest because they had not realised that

it was police officers who were arresting them. The first applicant stated that the police had forced her into the car because of such resistance. She also stated that she had felt unwell during detention because she had undergone surgery some days before the incident and that an ambulance had been called by the police. She expressed suspicion that another procedure she had to undergo at the end of May 2016 had been made necessary because of the events of 17 May 2016. The second applicant mentioned having taken a photograph of the arresting officer who had not been wearing a police uniform. The fifth applicant stated that she had been hit in the neck while running away from the officers (who she had not realised were the police) and that her right leg was injured as a result of the officer's attempt to kick away a can of spray paint which was lying on the ground. The seventh applicant stated that he had been sitting in his car at the time of his arrest. All of the applicants stated that there had been no physical violence against them at the police station but complained that some officers had made cynical and condescending remarks (such as saying "go make children", and calling them provocateurs) in their respect given their LGBT activism, and that no explanation had been given regarding any of their procedural rights. The majority of the applicants stated that the second applicant had been told to urinate in the presence of a female police officer (whom they identified by name). The third applicant stated that it had been the first applicant who had been told to do so, which he had personally protested against. The fifth applicant said that she had been hit in the neck while running away and that her "right shin" was injured because an officer had tried to kick a can of spray paint which she had dropped on the ground and his foot had hit her right shin instead. The can of spray paint had hit her. She also said that one of the officers had asked her, while at the police station, why people became "like her" (implying, according to the fifth applicant, her sexual orientation). The third applicant claimed that one officer, who he could not identify visually or by name, had told him that all "homos" should be burned. Some of the applicants mentioned that their photographs had been taken by police officers' private mobile telephones. All of the applicants stated that while they had been waiting for their trial to commence, a detainee unrelated to them had made disapproving remarks regarding the Patriarch of Georgia which had irritated two female officers, one of whom (identified by name) had made threatening comments in respect of all LGBT activists while another had told them that her religious beliefs were her primary consideration and her official duties only secondary. The two were eventually calmed down by another officer. Some of the applicants stated that they could not give more details of the contested incidents because of the stress undergone as a result of that experience and owing to the passage of time. The first, fourth and sixth applicants attributed the delay in lodging their complaint to the stress experienced during the events complained of, their having been abroad, and their wish to wait for the outcome of the administrative-offence proceedings against them.

30. On 15 December 2016 a criminal investigation was opened by the Tbilisi Prosecutor's Office into alleged excess of powers by the police during the applicants' arrest. It was noted that the alleged offence related to the "activists of the working group on countering homophobia and transphobia".

31. Between 17 and 27 January 2017 the applicants were interviewed as part of that investigation. They largely repeated their earlier account (see paragraph 29 above), noting that there had been no instances of physical ill-treatment in respect of the incident complained of, but they had experienced intense anguish by thinking that they had been chased by homophobic groups, and later cynical and sometimes homophobic remarks were made which the applicants attributed to their activism. They also explained that the incident at the courthouse had involved another activist, unrelated to their arrest, who had uttered profanities in respect of the Patriarch which had caused the contested remarks by the police officer.

32. Between 1 and 19 November 2019 the police officers involved in the applicants' arrest and detention, including their transfer to the courthouse, were interviewed by the Tbilisi Prosecutor's Office. All of the officers stated that they had been wearing police uniforms during the applicants' arrest, and that the applicants had run away after police orders had been given to stop spray painting the walls, and had then shown resistance during their arrest. They further testified that they had explained the reason for the arrest and the content of the administrative offence to the applicants. While some of the officers could not recall all the details of the incident, they stated that none of the applicants had been subjected to any kind of verbal or physical abuse during or after the administrative arrest, and that the applicants had shown no signs of any physical injuries. The applicants had been allowed to contact their representatives, who had later come to the police station.

33. The criminal investigation into alleged excess of powers by the police (see paragraph 30 above) appears to be ongoing.

34. The case file material contains reports made in respect of the first six applicants between 12 and 15 November 2016 by a non-governmental organisation specialising in the rehabilitation of victims of torture. The reports were written by two individuals who, according to the documents in question, were doctors employed by that organisation. The reports refer to the events as recounted by the applicants and conclude that they are suffering from post-traumatic stress disorder, among other ailments. The material also contains a medical certificate issued on 30 May 2016 in respect of the first applicant stating that on 27 May 2016 she was placed in a hospital with urinary tract issues. It does not appear that any of these documents was submitted to the investigating authorities.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. ASSEMBLIES AND DEMONSTRATIONS ACT

35. Section 2(1) of the Assemblies and Demonstrations Act, as worded at the material time, provided for 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.” Section 2(3) provided for restrictions on that 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.

36. Section 5(1) of the Act provided that a local self-government authority was to be notified of an assembly in advance if such a gathering were to be held on a road used by transport. Under section 8(1), such a notification was to be made five days in advance of the planned event, at the latest.

37. Section 10 of the Act provided as follows:

“1. In order to ensure [the protection of] public order [and] the normal functioning of State and public bodies, enterprises, institutions, organisations and transport [services], an executive branch of a local self-government authority may, within three days from receiving a notification [of the holding of an assembly or a demonstration] discuss, in the presence of the persons responsible for the organising and holding of an assembly or demonstration, the question of whether it is appropriate to change the venue and the time of [the event.] [I]t shall give [the organisers] a written recommendation on the matter if:

(a) the [planned] assembly or demonstration poses a real threat to the normal functioning of enterprises, institutions [or] organisations;

(b) another [assembly or demonstration] (which had been notified to the executive body of a local self-government authority earlier) is planned to be held at the same venue and at the same time.

2. An executive branch of a local self-government authority shall designate an authorised representative within the period referred to in the first paragraph of this section and shall inform accordingly the persons responsible for the organising and holding of an assembly or a demonstration in writing.”

38. Section 14(1) stated that “the executive branch of the local self-government authority may refuse to allow (არ დაუშვას) the holding of an assembly or a demonstration if there exists clear information (სმკარს მონაცემები), verified by the police, that the holding of such an assembly or a demonstration poses an immediate risk to the constitutional order [or] citizens’ life and health.”

39. Section 14(2) of the Act provided that “the decision of the executive branch of the local self-government authority on the prohibition [of holding] an assembly or a demonstration may be appealed against before a court which shall give a final decision within two working days.”

II. CIVIL CODE

40. Articles 992-1008 of the Civil Code contain the rules on liability for civil wrongs, or torts. In particular, while the general provision, Article 992, states that a civil wrong gives rise to a claim for compensation, Article 1005 § 1 of the Civil Code specifies that State agencies are jointly liable for damage caused to a private party by intentional or negligent actions on the part of their officials.

III. CODE OF ADMINISTRATIVE OFFENCES

41. Article 150 § 1 of the CAO provided for a fine of GEL 50 for “putting unauthorised writing, drawings or symbols on buildings, shop windows, fences, columns, trees or plants...”

42. Article 173 of the CAO 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 GEL 250 and the maximum amount of GEL 2,000, or up to fifteen days’ administrative detention.

43. Article 243 § 1 (“escorting of an offender”) authorised the relevant authorities to compel a person to follow an officer, for instance to a police station, for the purposes of compiling an administrative-offence report when it could not be done on the spot. Article 243 § 5 provided that a decision to escort an individual to a police station would result in the administrative arrest of an individual. The individual should be taken to the destination “in as little time as possible.”

44. Article 244 § 1 (“measures to secure the conduct of the administrative-offence proceedings”) of the CAO states as follows:

“In order to put an end to the commission of administrative offences in instances explicitly provided for by the legislative instruments of Georgia, when all other measures (ზემოქმედების სხვა ზომები) have been exhausted, and in order to determine an individual’s identity, to draft an administrative-offence report (if that report is necessary but cannot be done on the spot), and to ensure the timely and due consideration of an administrative-offence case and the enforcement of [any] decisions (დადგენილება) taken [in that context], an individual may be placed under administrative arrest, subjected to a personal search or a search of their belongings, and have belongings and documents seized from them.”

45. Article 246(a) authorised the officials of the MIA, including police officers, to place an administrative offender under administrative arrest within the meaning of Article 244 § 1 of the Code (see the previous

paragraph), in respect of a defined list of offences. The list included disobeying the lawful instructions or orders of a police officer (see paragraph 42 above). It did not refer to the conduct proscribed by Article 150 of the CAO (see paragraph 41 above).

46. Article 247 § 1 of the CAO provided that “administrative arrest of an individual who has committed an administrative offence shall not last longer than twelve hours. In exceptional circumstances, for reasons of particular necessity, the legislative instruments of Georgia may provide for different [time-limits].” Article 247 § 3 provided that “an individual whose period of arrest coincides with non-working hours (არასამუშაო დროს) may be ... placed in the preliminary detention cell of the Ministry of Internal Affairs of Georgia until a final decision is taken by an authority charged with examining the case.” In such cases the length of administrative arrest could not exceed forty-eight hours.

47. Article 251 of the CAO provided that “interested parties may lodge an appeal against an administrative arrest, personal search, search of objects, [or] confiscation of objects or documents with a superior authority (holder of an office) or a prosecutor”. It did not define a time-limit for lodging the complaint.

48. Article 273 of the CAO provided that “a decision (დადგენილება) issued in an administrative case, and a decision issued after hearing an administrative case on site... can be appealed within 10 days after it is issued.”

49. A decision of the Tbilisi Court of Appeal (no. 3b/2426-18, 13 March 2019), submitted to the Court by the Government, revealed the apparent practice of the MIA to apply the time-limit of one month under Article 180 of the General Administrative Code (see paragraph 50 below) to complaints lodged under Article 251 of the CAO.

IV. GENERAL ADMINISTRATIVE CODE

50. Article 180 of the General Administrative Code provided for a statutory time-limit of one month for appealing against the legal and factual acts of the administrative authorities. Article 183 provided that unless otherwise specified, a one month time-limit was applicable to the procedure for reviewing administrative complaints. This time-limit could be extended by one month.

51. Article 207 of the Code stated that an individual could sue a State agency for damage inflicted, under the rules on liability for civil wrongs contained in the Civil Code. Article 208 provided that the State was responsible for any damage inflicted by an official in the exercise of his or her functions.

V. POLICE ACT

52. Section 56(1) specified that an individual could lodge an appeal against the actions of the police with a superior authority, a prosecutor, or a court. Section 56(2) of the Police Act provided that a preventive measure taken by the police – whether in the form of an administrative act (ადმინისტრაციულ-სამართლებრივი აქტი) or a factual act (რეალაქტი) – was to be subject to an appeal to a superior authority. Any outcome of such an appeal could then be made the subject of a judicial review. Section 56(3) of the Act provided that “a police measure (საპოლიციო ღონისძიება) taken on the basis of an administrative offence or of criminal law provisions shall be appealed on the basis of the procedure provided for in Georgian legislation.” Section 57 designated the General Inspectorate of the MIA as an independent body supervising the conduct of policemen and other employees of the Ministry. Section 57(5) provided that if signs of a criminal offence became apparent while a matter was being examined, the General Inspectorate was to send the case to the Chief Prosecutor’s Office “without delay.”

VI. DECREE OF THE MINISTER OF HEALTH

53. Decree no. 338/n of 9 August 2007 provided that a medical report was to be issued by medical establishments by filling in a specific form (no. IV-100/a).

VII. PRACTICE OF THE SUPREME COURT

54. In a decision of 2 October 2018 (no. bs-1143-1137(2k-17)), the Supreme Court stated that any individual wishing to challenge the lawfulness of his or her administrative arrest had to use the remedy provided for this purpose under Article 251 of the CAO, taken together with section 56 of the Police Act, and “appeal against his or her administrative-arrest report” either by means of a hierarchical complaint or to a prosecutor. The Supreme Court further clarified that a claim for damages under Article 1005 § 1 of the Civil Code could not involve an assessment of the legality of the police actions with respect to administrative arrest and thus required the existence of a finding of a breach of duties by the police as part of the procedure envisaged under Article 251 of the CAO and section 56 of the Police Act.

OTHER RELEVANT MATERIAL

55. A report of 22 May 2017 by the Public Defender of Georgia (საქართველოს სახალხო დამცველი) entitled “The Situation Regarding the Protection of Human Rights and Freedoms in Georgia in 2016” referred to the applicants’ arrest and noted that “although the making of unauthorised

drawings on a façade ... of a building is an administrative offence ..., the legislation does not provide for a possibility of [applying] administrative arrest for [it].”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 AND/OR ARTICLE 8 OF THE CONVENTION, TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14

56. The first six applicants relied on Article 3 and Article 8 of the Convention, taken alone and in conjunction with Article 14. On the one hand, they complained of physical ill-treatment, stress experienced during their arrest, and discriminatory verbal abuse directed at them during their detention at the police station and the courthouse; on the other hand, they complained that there had been no effective investigation into these allegations or their contention that the treatment complained of had had discriminatory overtones because of their sexual orientation and/or LGBT activism.

The provisions in question read as follows:

Article 3

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

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Admissibility

1. The parties’ submissions

57. The Government submitted that the applicants’ submissions were incomplete, contradictory and, in any event, unsubstantiated by any evidence. Therefore, they had to be rejected as manifestly ill-founded.

58. The first six applicants submitted that they had given a cogent account of their experience at the hands of the police. They had suffered physical and discriminatory verbal ill-treatment in addition to stress because the arresting officers in question had not worn police uniforms or any police insignia during their arrests. The first six applicants referred to the reports obtained between 12 and 15 November 2016 from a non-governmental organisation specialising in the rehabilitation of victims of torture (see paragraph 34 above). The first applicant also referred to the medical certificate issued on 30 May 2016 regarding some urinary tract issues (see paragraph 34 above).

59. The third-party intervener, the Ordo Iuris Institute for Legal Culture, argued that not all acts of ill-treatment violating Article 3 of the Convention required a criminal response; a State could protect individuals by the mere introduction of a mechanism of administrative or civil liability. Closure of an investigation did not necessarily indicate a failure, carelessness or ineffectiveness on the part of the authorities. In cases not involving ill-treatment in State custody, the burden of proof lay with the applicants to demonstrate that a violation of the Convention, as argued by them, had taken place.

2. *The Court's assessment*

(a) **General principles**

60. Allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Bouyid v. Belgium* [GC], no. 23380/09, § 82, ECHR 2015).

61. On this latter point the Court has explained that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim (*ibid.*, § 83; see also *Creangă v. Romania* [GC], no. 29226/03, § 88, 23 February 2012, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 152, 13 December 2012).

62. According to the Court's case-law regarding ill-treatment in general, it must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim. Furthermore, Article 3 cannot be limited to acts of physical ill-treatment; it also covers the infliction of psychological

suffering. Hence, the treatment can be categorised as degrading when it arouses in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Identoba and Others*, no. 73235/12, § 65, 12 May 2015). The Court further reiterates that discriminatory treatment as such can in principle amount to degrading treatment within the meaning of Article 3 where it attains a level of severity such as to constitute an affront to human dignity (see *Sabalić v. Croatia*, no. 50231/13, § 65, 14 January 2021). In the specific context where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Bouyid*, cited above, § 100). The Court emphasises that the words “in principle” cannot be taken to mean that there might be situations in which such a finding of a violation is not called for, because the above-mentioned severity threshold has not been attained. Any conduct by law-enforcement officers vis-à-vis an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his or her conduct, whatever the impact on the person in question (*ibid.*, § 101).

63. Where a measure falls short of Article 3 treatment, it may, however, fall foul of Article 8 of the Convention which, *inter alia*, provides protection of physical and moral integrity under the respect for private life head (see *Wainwright v. the United Kingdom*, no. 12350/04, § 43, ECHR 2006-X).

(b) Application of these principles to the present case

64. Turning to the circumstances of the present case, the Court notes that the first six applicants' complaint under Articles 3 and 8 of the Convention, taken alone and in conjunction with Article 14, has several limbs. On the one hand, the applicants complained of physical ill-treatment, stress experienced during their arrest, and discriminatory verbal abuse directed at them during their detention at the police station and the courthouse; on the other hand, they complained that there had been no effective investigation into these allegations or their contention that the treatment complained of had had discriminatory overtones because of their sexual orientation and/or LGBT activism. The Court will address these elements in turn.

(i) Allegation of physical ill-treatment

65. As regards the allegations of physical ill-treatment, the Court observes that there are no official medical certificates available in the case file material demonstrating that the first six applicants received injuries specifically related to their arrest (the health certificate submitted by the first applicant shows that there were no signs of physical injuries, and in any event does not relate to the incident – see paragraph 58 above). At the same time, there is

some information available in the administrative-arrest reports. On the basis of those reports, there were no signs of any injuries in respect of the second, third and fourth applicants. As regards the sixth applicant, she had an old scar on her right arm, unrelated to the arrest. The first applicant had a “minor redness in the waist area” which does not necessarily constitute an “injury” and could well be explained, by her own admission, with regard to the resistance shown by her during the arrest (compare paragraphs 16 and 29 above). As for the fifth applicant, she was observed to have a small injury near her left ankle (see paragraph 16 above), but the criminal complaint made several months after the incident indicated that she had received a scar on her right shin which, in any event, appears to have been an accident (compare paragraphs 16 and 29 above). Although the fifth applicant also claimed that she had been hit in the back, the documents available in the case file material do not confirm this. What is more, subsequently, in January 2017, the relevant applicants noted that no instances of physical ill-treatment had taken place against them (see paragraph 31 above). Accordingly, considering the applicants’ submissions and the lack of appropriate medical evidence, the Court finds the complaint of physical ill-treatment unsubstantiated.

66. This aspect of the applicants’ complaints must therefore be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

(ii) Allegation of stress experienced during the applicants’ arrest

67. In so far as the applicants’ complaint relates to the stress supposedly experienced during their arrest on account of the allegation that the police did not wear uniforms or other insignia, the Court considers that this argument is relevant in the context of assessing whether sufficient grounds existed for the purposes of Article 5 of the Convention to justify the applicants’ administrative arrest and detention (see paragraphs 100-105 below). In any event, the Court does not consider that the treatment complained of – which was of a brief duration and low intensity – was disproportionate to the applicants’ behaviour involving the unauthorised drawing of the graffiti and then running away or that it diminished their human dignity (see, for instance, *Ilievi and Ganchevi v. Bulgaria*, nos. 69154/11 and 69163/11, §§ 60-61, 8 June 2021). The related complaint must therefore be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

(iii) Allegation of discriminatory verbal abuse and investigation of the related complaint

68. As regards the first six applicants’ complaint that they were verbally abused at the police station and the courthouse on account of their real or perceived belonging to the LGBT community, the Court reiterates that an essential step preceding the classification of treatment supposedly inflicted on an applicant is the establishment of the facts. In this regard, the Court

concedes that there are certain difficulties involved in assessing claims relating to alleged mental suffering or humiliation in the absence of actual bodily injury. In the present case, although the applicants submitted to the Court copies of reports regarding their mental health following those incidents (see paragraphs 34 and 58 above), these were not official medical documents made in compliance with the relevant procedure (see paragraph 53 above), and they were written several months after the contested events, just days before the lodging of the present application. Most importantly, it does not appear that these reports were submitted to the investigating authorities. The Court cannot therefore afford such documents any probative value (see *Mikeladze and Others v. Georgia*, no. 54217/16, § 62, 16 November 2021). As regards the medical document regarding the first applicant's health issues (see paragraphs 34 and 58 above *in fine*), it does not prove any link to the events complained of.

69. In such circumstances, the consistency of the applicants' account and their diligence in raising the matter at domestic level takes on particular importance as regards the existence of an arguable claim to trigger the procedural obligation to conduct an effective investigation (contrast and compare, for instance, *Gök and Güler v. Turkey*, no. 74307/01, § 39, 28 July 2009; *Durđević v. Croatia*, no. 52442/09, § 86, ECHR 2011 (extracts); and *Mikeladze and Others*, cited above, § 62).

70. However, even assuming that the obligation to investigate the applicants' claims was triggered in the present case, the Court considers that the capacity of that investigation to determine the veracity of the applicants' account was seriously limited. The Court observes firstly that initially the authorities were not presented with a full account of the incident, as the first and third applicants did not complain until approximately four months after the incident (compare paragraphs 20 and 28 above). The Court also notes that the complaints were worded in a relatively generic manner. Furthermore, once they were questioned as part of the criminal investigation opened by the authorities, the applicants' account was not consistent. In particular, the allegation made by the third applicant during his eventual questioning – that an officer who, importantly, he could not identify visually or by name, had told him that all “homos” should be burned – was not supported by the remaining applicants' account (see paragraph 29 above; see also, for instance, *Adam v. Slovakia*, no. 68066/12, § 58, 26 July 2016). Additionally, and as concerns the alleged order in respect of one of the female applicants to urinate in the presence of a female officer, the seven applicants' accounts, in terms of which one of them was targeted by the request, were contradictory. While the majority claimed it had been the second applicant, the third applicant detailed how it had been the first applicant involved in the alleged incident, and he explained that he had stood up for her. In those circumstances, and in the absence of any corroborating evidence or information, the Court does not consider the applicants' account had presented the investigating authorities with cogent elements to carry out an effective investigation.

71. As regards the allegation that a threatening gesture and homophobic remarks were made by two officers during the applicants' stay at the courthouse, the applicants' account suggests the existence of a heated debate between, on the one hand, an arrested individual not related to the applicants and, on the other hand, the officers in question. This exchange was sparked by profanities uttered by that individual in respect of a religious figure (see paragraph 31 above). More importantly, the exchange ended swiftly owing to an intervention by another officer and the applicants were released shortly thereafter. In the specific circumstances, taking into account all elements regarding the known facts and the context, the Court cannot find it established that the applicants were subjected to treatment proscribed by the provisions relied on by them.

72. Lastly, while the investigation could be reproached for not having reached a conclusion regarding the applicants' complaints, this would not be sufficient, in and of itself, for the Court to find a violation of the procedural obligations of the respondent Government, considering the absence of any evidence or consistent and credible submissions by the applicants at domestic level or before the Court concerning the alleged treatment contrary to Article 3 and/or Article 8 of the Convention, whether taken alone or in conjunction with Article 14 (compare and contrast *M.C. and A.C. v. Romania*, no. 12060/12, § 120, 12 April 2016).

73. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

74. The applicants complained that their administrative arrest on 17 May 2016 had been unlawful and arbitrary. They relied on Article 5 § 1 of the Convention which, in so far as relevant, reads as follows:

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

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

A. Admissibility

1. *The parties' submissions*

75. The Government submitted that the applicants had failed to properly exhaust the relevant domestic remedies. Namely, although the applicants had made several complaints to different authorities, they had not, in the Government's submission, followed the special procedure for challenging the lawfulness of an arrest effected in respect of administrative offences. That

procedure had, under Article 251 of the CAO, required the submission of a complaint to a prosecutor or the making of a complaint to the General Inspectorate of the MIA (the authority in charge of supervising police conduct) and, only if unsatisfied with the outcome, the lodging of an appeal with a court. In this regard, the Government submitted that although the applicants had instituted judicial proceedings against the MIA, they had wrongly formulated their request by appealing against the administrative-arrest reports, claiming that they were null and void, rather than appealing against the outcome of the complaint under Article 251 of the CAO. In this connection, the Government noted that the applicants had been well aware, by the time of lodging their application before the domestic court, that the General Inspectorate had opened a disciplinary inquiry into their complaints. Thus, rather than waiting for its outcome and appealing against it, they had opted to subject their administrative arrest and detention to direct judicial review – a course of action which had been bound to fail as non-compliant with the existing law and procedure. The Government also stated that the applicants had missed the time-limit of ten days to file their complaints (see paragraph 48 above).

76. The applicants submitted that the remedy referred to by the Government had been attempted but that it had proved ineffective in their case. Namely, although they had received a response to their hierarchical complaint, the response letter had been drafted by the police division implicated in their arrest and detention. That authority did not, therefore, constitute a superior authority within the meaning of Article 251 of the CAO. Moreover, that letter did not refer to the possibility of appealing against it, in breach of the relevant rules provided for in the General Administrative Code of Georgia. In those circumstances, they could not have appealed against that response. As regards the inquiry by the General Inspectorate of the MIA, the applicants stated that there had been a delay of 11 months in the questioning of the police officers, the questions had been generic, and some officers were not questioned at all. The applicants submitted that the relevant judicial decisions had unfairly declared their complaint inadmissible for having requested nullity of the administrative-arrest reports rather than a judicial review under Article 251 of the CAO. They also argued that the domestic courts ought to have aided them in the correct formulation of their application.

2. The Court's assessment

77. Turning to the circumstances of the present case, the Court observes that on 17 May 2016 the applicants were arrested on the grounds that they had disobeyed the lawful orders of the police while drawing graffiti in an unauthorised location. They were taken to the police station followed by the courthouse and then released. The domestic law and procedure provided for an avenue of redress for challenging the lawfulness of their administrative arrest and detention. Namely, the administrative-offence proceedings against

them was one such avenue (see *Kakabadze and Others v. Georgia*, no. 1484/07, § 54, 2 October 2012). While the applicants did contest, in substance, the lawfulness of their detention before the first-instance court, the latter did not address the complaint and simply acquitted them of the charge relating to disobeying the lawful orders of the police on the grounds that the facts underlying the charge had not been proven in court.

78. Following their release, the applicants contested the lawfulness of their arrest and detention based on Article 251 of the CAO (see paragraphs 47 and 52-54 above). In this regard, the Court reiterates that where an applicant complains that he or she was detained in breach of domestic law and where the detention has come to an end, a remedy capable of leading to an acknowledgment of the alleged violation and an award of compensation is in principle an effective remedy which needs to be pursued if its effectiveness in practice has been convincingly established (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 208, 22 December 2020). The Court will thus address the Government's submission that the remedy in question had been effective, and that the applicants had incorrectly triggered it, depriving the authorities of an opportunity to address their complaints under Article 5 of the Convention before bringing the matter before the Court.

79. The Court observes that Article 251 of the CAO provided for a two-step procedure. It was necessary to submit a complaint regarding the unlawfulness of an administrative arrest and detention either with the General Inspectorate of the MIA (the authority in charge of supervising police conduct – see paragraph 52 above) or with a prosecutor, and if this proved unsuccessful, it was possible to apply for a judicial review of the matter (see paragraphs 47 and 52-54 above). The Court considers such a course of action was not in and of itself ineffective considering that it provided for the possibility of a judicial review of the administrative authorities' decisions (see, for instance, *Smirnova v. Russia* (dec.), no. 37267/04, §§ 39 and 48, 8 July 2014).

80. The applicants and the Government disagreed as to the applicable time-limits for the remedy in question and its effectiveness. However, setting aside the question of time-limits and even assuming the general effectiveness of the remedy proposed by the Government, the Court considers, in the particular circumstances of the present case, that the applicants cannot be reproached for failing to comply with the formalities laid down in national law to make use of such a remedy.

81. Namely, the applicants lodged their complaints relating to the lawfulness of the administrative arrest and detention with the MIA and its General Inspectorate (see paragraphs 20-21 above). However, rather than a formal decision being delivered by the General Inspectorate (the authority in charge of disciplinary supervision of those working for the Ministry – see paragraph 52 above), the applicants' complaint was dealt with by the police station involved in the contested incident. Furthermore, instead of reaching a decision amenable to appeal, the police merely sent the applicants a short

letter stating that the relevant officers had acted in full conformity with the law when arresting the applicants, and that the first-instance court had already delivered its judgments concerning the incident (see paragraph 22 above).

82. In this regard, and although the subsequent judicial proceedings instituted by the applicants on the grounds of the unlawfulness and arbitrariness of their administrative arrest and detention clearly referred to the unusual turn which their complaint under Article 251 of the CAO had taken (see paragraphs 24 and 81 above), the Tbilisi Court of Appeal declined to review the case on its merits. It stated that it was not empowered to engage in a direct review of the police actions in view of the applicants' failure, according to the court, to adequately engage in the procedure under Article 251 of the CAO. It also noted that rather than contest the lawfulness of the factual acts of the police under the CAO, the applicants incorrectly asked to have their administrative-arrest reports declared null and void under the General Administrative Code (see paragraph 26 above).

83. In this connection, the Court reiterates that it is for the domestic courts to interpret and apply the relevant domestic law and procedure to complaints before them (see *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 143, ECHR 2005-VI). However, when it comes to the rule of exhaustion of domestic remedies, it must be applied with some degree of flexibility and without excessive formalism, given the context of protecting human rights (see *Zalyan and Others v. Armenia*, nos. 36894/04 and 3521/07, § 234, 17 March 2016). This rule is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Akdivar and Others v. Turkey*, 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV; see also, *mutatis mutandis*, *Ateş Mimarlık Mühendislik A.Ş. v. Turkey*, no. 33275/05, § 39, 25 September 2012).

84. Within this context, and as the core of the applicants' complaint related to the unlawfulness of their administrative arrest and detention, the Court does not consider it unreasonable for them to have requested that the administrative arrest reports – the only documents referring to the ground for their administrative arrest – be declared null and void in view of the alleged unlawfulness and/or arbitrariness. In this regard, it also takes note of the Supreme Court's general stance that it had been those reports which should have been challenged under Article 251 of the CAO (see paragraph 54 above). The domestic courts' approach to the matter was therefore excessively formalistic.

85. More importantly, the domestic courts did not establish that the applicants had made any errors or omissions in lodging the hierarchical complaint under Article 251 of the CAO (see paragraphs 20-21 and 26 above). In addition, despite the fact that the applicants' application did refer to the outcome of that complaint and the negative short letter (rather than a decision amenable to appeal) received from the very same police department which had been implicated in the events (see paragraph 81 above), the

domestic courts did not address the crucial question of whether such conduct on the part of the authorities had essentially deprived the applicants of their right to have the lawfulness of their arrest and detention reviewed by a court. Accordingly, the applicants can be considered to have availed themselves of the remedy under Article 251 of the CAO, which proved ineffective in the particular circumstances pertaining to their case.

86. As regards the applicants' claim for compensation at domestic level (see paragraph 27 above), the Court takes note that this claim was, as noted by the Tbilisi City Court (*ibid.*), linked to the proceedings instituted under Article 251 of the CAO. In view of the Court's findings regarding the effectiveness of the latter proceedings (see the previous paragraph), the applicants were not required to pursue the compensation proceedings.

87. In the light of the foregoing considerations, the Court concludes that the remedy referred to by the Government proved ineffective in the circumstances pertaining to the present applicants. It therefore rejects the Government's objection.

88. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

89. The Government submitted that the fact that the administrative-offence proceedings in respect of the charge of resisting the lawful orders of the police had been terminated on the basis of a lack of evidence did not demonstrate that there had been no "reasonable suspicion" at the time the arrest had been effected by the police. In this regard, the applicants had expressly admitted that they had attempted to flee the scene and had not cooperated with the police. The Government stated that Article 5 could not be interpreted in such a way as to make it impracticable for the police to fulfil their duties of maintaining order and protecting the public, provided that they comply with the underlying principle of Article 5, which was to protect the individual from arbitrariness. They submitted that the applicants' arrest had been in full compliance with domestic law, satisfying the requirement of lawfulness under Article 5 of the Convention. Namely, according to the Government, the applicants' administrative arrest had fallen within the scope of Article 244 of the CAO and Article 5 § 1 (c) of the Convention, and had served the following purposes: (i) preventing the commission of an administrative offence (putting unauthorised writing on a building and disobeying the lawful orders of the police); (ii) allowing the drawing up of administrative-offence reports and administrative-arrest reports (the preparation of which had been impossible at the scene of the

incident); and (iii) ensuring that the administrative offence case had been duly considered by a court.

90. The applicants submitted that there had been no lawful grounds to arrest and detain them. Namely, the police had not worn identifiable insignia or given any warnings or orders to them before proceeding with the arrest. The applicants had therefore thought that the men in civilian clothes were representatives of ultraconservative groups, and this had prompted them to run away. It was only later, at the time of coming under the physical control of those individuals, that the applicants had realised that the people chasing them had been police officers. Given that they had not disobeyed the lawful orders of the police (which had also been confirmed by the domestic courts acquitting all of the applicants of that charge), there had been no grounds, according to the applicants, to arrest and detain them, as the charges relating to the defacing of the walls of a building under Article 150 of the CAO did not provide for a custodial sanction and did not permit administrative arrest. The applicants additionally submitted that the Government had failed to engage with the questions of the necessity and proportionality of their arrests.

91. The third-party intervener, the Ordo Iuris Institute for Legal Culture, elaborated, among other things, on the general principles in respect of Article 5 § 1 (c) of the Convention and submitted that a subsequent acquittal of an individual did not render the initial arrest devoid of reasonable suspicion and therefore unlawful, within the meaning of that provision.

2. *The Court's assessment*

(a) **General principles**

92. Any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, be “lawful”. Where the “lawfulness” of detention is in issue, including the question whether “a procedure prescribed by law” has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of that law (see *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 125, 1 June 2021).

93. In laying down that any deprivation of liberty must be carried out “in accordance with a procedure prescribed by law”, Article 5 § 1 primarily requires any arrest or detention to have a legal basis in domestic law. However, these words do not merely refer back to domestic law. They also relate to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that all law be sufficiently precise to

allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 91-92, 15 December 2016; *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013; and *Denis and Irvine*, cited above, § 128).

94. In addition to being in conformity with domestic law, Article 5 § 1 requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among recent authorities, *Rooman v. Belgium* [GC], no. 18052/11, § 190, 31 January 2019, and *Denis and Irvine*, cited above, § 129).

95. No detention which is arbitrary can be compatible with Article 5 § 1, the notion of “arbitrariness” in this context extending beyond the lack of conformity with national law. As a consequence, a deprivation of liberty which is lawful under domestic law can still be arbitrary and thus contrary to the Convention (see *Mooren v. Germany* [GC], no. 11364/03, § 77, 9 July 2009, and *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008).

96. While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute “arbitrariness” for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. It is, moreover, clear from the case-law that the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 75, 22 October 2018).

97. One general principle established in the case-law is that detention will be “arbitrary” where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities or where the authorities neglected to apply the relevant legislation correctly (*ibid.*, § 76, with further references).

98. For arbitrariness to be excluded, conformity with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1 is required in respect of both the ordering and the execution of the measures involving deprivation of liberty. In addition, there must be some relationship between the ground relied on for the permitted deprivation of liberty and the place and conditions of detention (see *Rooman*, cited above, § 190, and *Saadi*, cited above, § 69).

99. In the context of the first limb of sub-paragraph (c) of paragraph 1 (reasonable suspicion of having committed an offence) of Article 5, the Court has held that “[i]n order for deprivation of liberty to be considered free from arbitrariness, it does not suffice that this measure is executed in conformity with national law; it must also be necessary in the circumstances.” Similarly, in the contexts of sub-paragraphs (b), (d) and (e), the Court has affirmed that the notion of arbitrariness also includes an assessment whether detention was necessary to achieve the stated aim. The detention of an individual is such a serious measure that it is justified only as a last resort where other, less severe

measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained (see *S., V. and A. v. Denmark*, cited above, § 77; *Saadi*, cited above, § 70; and *Denis and Irvine*, cited above, § 130).

(b) Application of these principles to the present case

100. The Court observes that according to the formal arrest reports made in respect of the applicants, their administrative arrest and detention was effected in connection with the offence of disobeying a lawful police order, and the offence of putting unauthorised writing on a building. However, of the two offences imputed to the applicants, only the offence of disobeying a lawful police order – but not the offence of putting unauthorised writing on a building – appear to have permitted administrative arrest for up to twelve hours (compare paragraphs 44-45 and 55 above; see also *Makhmudov v. Russia*, no. 35082/04, §§ 81-85, 26 July 2007).

101. In this connection, the applicants consistently denied that they had disobeyed any police orders within the meaning of Article 173 of the CAO, including by explaining that they had run away from the officers without realising that those officers had official status because they had not worn police uniforms or other identifiable police insignia. The applicants even submitted to the domestic authorities a photograph supposedly proving that allegation. However, this argument was left unanswered at domestic level (see paragraphs 77-87 above). The submissions by the respondent Government to the Court contained no facts or information relating to the offence of disobeying a lawful police order other than the officers' account, which had already proved unconvincing before the domestic courts. In these circumstances, the Court considers that the applicants' argument of the police not having given any lawful orders or worn any identifiable insignia prompting the applicants to flee – conduct on which the charge under Article 173 of the CAO was based – did, at the very least, require the domestic courts' explicit answer either as part of the administrative offence proceedings against the applicants or through the separate complaint procedure. This would have enabled the domestic authorities and the Court to assess whether any "reasonable suspicion" – within the meaning of Article 5 § 1 (c) – had existed at the time of the applicants' arrest.

102. In any event, and even accepting that the police officers had arrested the applicants based on a "reasonable suspicion" of their having committed an offence under Article 173 of the CAO, the Court reiterates that for deprivation of liberty to be considered free from arbitrariness under Article 5 § 1 of the Convention, it does not suffice that that measure be taken and executed in conformity with national law; it must also be necessary in the circumstances (see *Nemtsov v. Russia*, no. 1774/11, § 101, 31 July 2014; *Butkevich v. Russia*, no. 5865/07, § 64, 13 February 2018; and *Teslenko and Others v. Russia*, nos. 49588/12 and 3 others, § 83, 5 April 2022). However,

no assessment was made at domestic level as to whether it had been necessary to keep the applicants under arrest for approximately twelve hours.

103. In this regard, the Court takes note of the Government's submission that the applicants' administrative detention was necessary for drawing up the administrative-offence and administrative-arrest reports and ensuring that the case was duly considered by a court (see paragraph 89 above). However, the relevant reports do not specify where those reports were drafted, and in any case, formally, the police used only the charge of disobeying a lawful order as grounds for justifying the applicants' initial arrest and subsequent detention lasting up to twelve hours. The Court cannot therefore accept the grounds provided in the Government's submissions which are absent from the relevant documents, as it was incumbent on the domestic authorities to ascertain that the deprivation of liberty was "reasonably considered necessary" in the circumstances of the case to achieve one of the aims provided for in Article 244 § 1 of the CAO (see paragraph 44 above).

104. By contrast, the administrative detention applied in respect of the applicants appears to have been an automatic measure, without any assessment as to its necessity. In this regard, the Court observes that it does not appear that the domestic law required the authorities to differentiate between the grounds listed in Article 244 § 1 of the CAO or to justify their decision as to the necessity of administrative detention pending the administrative-offence proceedings. Yet, the Court reiterates that detention pursuant to Article 5 § 1 (c) must embody a proportionality requirement, which implies a reasoned decision balancing relevant arguments for and against release (see *Butkevich*, cited above, § 64). Additionally, the authorities should have borne in mind that the measure had been applied in the context of an administrative offence and, possibly, in the context of the exercise of a fundamental right or freedom, such as freedom of expression or freedom of peaceful assembly (*ibid.*).

105. In these circumstances, the Court finds that the applicants' administrative arrest was not free from arbitrariness.

There has therefore been a violation of Article 5 § 1 (c) of the Convention in respect of all seven applicants.

III. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 14

106. The first six applicants submitted that they had been unable to exercise their right to hold a public assembly on the International Day against Homophobia, Transphobia and Biphobia on account of the authorities' failure to communicate to the LGBT activists' initiatives group in a clear and meaningful manner the strategy for ensuring the activists' safety during the event planned for 17 May 2016, and given the indirect restrictions imposed on the location and time of the public event. The first six applicants also complained under Article 14 of the Convention, taken in conjunction with

Article 11, that the LGBT activists had been the only group of individuals, compared to those celebrating the so-called family sanctity day, who had been unable to hold a public assembly on 17 May 2016. The provisions relied on by the applicants read as follows:

Article 11

“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.”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Admissibility

1. The parties’ submissions

(a) The Government

107. The Government submitted that the first six applicants had lacked victim status and that their complaint had in fact been an *actio popularis*. According to the Government, the applicants had failed to demonstrate that they had (i) been members of the LGBT activists’ initiatives group; (ii) been personally engaged in the planning of the IDAHOT event or the communication with the authorities; or (iii) had a clear intention to participate in the planned assembly. In those circumstances, their complaint had related to the decision of the LGBT activists’ initiatives group not to hold the planned event on 17 May 2016 rather than their own decision. In any event, in the Government’s submission, the applicants’ complaint regarding that decision related to a hypothetical scenario as the domestic legislation had not required authorisation to be obtained prior to holding the event, and LGBT activists had not been prohibited from holding the assembly. In addition, it had been the applicants’ own decision not to hold the assembly opting, instead, to draw graffiti on the building of the Patriarchate of the Georgian Orthodox Church.

108. The Government further submitted, relying on Article 17 of the Convention, that the first six applicants’ complaints were to be declared incompatible, *ratione materiae*, with the provisions of the Convention because of the drawing of the graffiti on the walls of the building of the

Patriarchate of Georgia in the early hours of 17 May 2016. Namely, the Government noted that the applicants were “deriving from Articles 11 and 14 their ‘right’ to engage in an unlawful activity [namely] the commission of an administrative offence and [the drawing] of the graffiti on the walls of the patriarchate, ... which [was] in direct [contradiction] with [the] value protected under Article 9 of the Convention.” The Government added that the “abuse of rights in the present case [could] be established based on the content, tone and tenor of the applicants’ acts” in relation to that incident.

109. Alternatively, the Government submitted that the applicants had failed to pursue effective judicial remedies to claim compensation in respect of the alleged inability to hold a demonstration and the alleged discrimination.

(b) The first six applicants

110. As regards their victim status, the applicants submitted that the LGBT activists’ initiatives group had advocated for all activists, including the first six applicants. They had not, therefore, been required to seek separate channels of communication with the authorities. The applicants submitted in addition that they had been actively involved, in different capacities, in organising the assembly of 17 May 2016 and, in the absence of an adequate response from the authorities, they had not been able to hold or participate in the public IDAHOT event. The latter issue was, according to the applicants, at the core of the merits of their complaint under Article 11 of the Convention, within the context of the authorities’ positive obligations under the provision in question.

111. As regards the graffiti, the applicants submitted that the high threshold under Article 17 of the Convention had not been met and that the phrase “Fuck homophobia and transphobia” had expressed their protest against the homophobic attitudes in society.

112. As concerns the exhaustion of domestic remedies, the applicants submitted that the authorities’ conduct, such as the lack of an explicit decision regarding the assembly planned for 17 May 2016, did not enable them to apply to the judicial authorities prior to the planned event. As regards the judicial remedy referred to by the Government, allegedly enabling them to obtain compensation, the applicants submitted that the Government had failed to supply the Court with examples confirming that it had been a sufficient and effective remedy in situations similar to that of the applicants (relating to complaints concerning the inability to hold an assembly rather than a violation of rights during an assembly or a demonstration). In this regard, the applicants submitted that the possibility of obtaining a separate finding of discriminatory treatment after the date of the planned event would not, even if available, remedy the core of their complaint concerning the inability to exercise their rights under Article 11 of the Convention.

(c) Third-party intervener

113. The third-party intervener – the Ordo Iuris Institute for Legal Culture – primarily made submissions with regard to the general principles on the basis of which complaints regarding the positive obligations of States under Article 11 of the Convention should be assessed.

2. The Court's assessment**(a) General principles regarding victim status**

114. In order to be able to lodge an application in accordance with Article 34, an individual must be able to show that he or she was “directly affected” by the measure complained of (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008, and *İlhan v. Turkey* [GC], no. 22277/93, § 52, ECHR 2000-VII). This is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (see *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015, with further references).

115. Article 34 of the Convention does not allow complaints *in abstracto* alleging a violation of the Convention. The Convention does not provide for the institution of an *actio popularis*, meaning that applicants may not complain against a provision of domestic law, a domestic practice or public acts simply because they appear to contravene the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 101, ECHR 2014, with further references). In order for applicants to be able to claim to be a victim, they must produce reasonable and convincing evidence of the likelihood that a violation affecting them personally will occur; mere suspicion or conjecture is insufficient in this respect (*ibid.*; see also *Tauira and 18 Others v. France*, no. 28204/95, Commission decision of 4 December 1995, DR 83-B, p. 112 at p. 131; compare and contrast, *Roman Zakharov*, cited above, §§ 174-79).

(b) Application of these principles to the present case

116. At the outset, the Court notes that the crux of the first six applicants' complaint before it relates to the authorities' conduct in their dealings with the entity in charge of planning the IDAHOT event on 17 May 2016 (see paragraph 5 above) rather than the state of the domestic law on holding such events (compare and contrast *S.A.S. v. France* [GC], no. 43835/11, §§ 57-58, ECHR 2014 (extracts), and *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, §§ 47-50, ECHR 2013 (extracts)).

117. Against this background, the Court observes that the applicants do not figure in any interactions with the domestic authorities, judicial decisions or any other official documents (compare and contrast *Lashmankin and*

Others, nos. 57818/09 and 14 others, §§ 7-11, 13-19, 21-27, 31-36, 39-50, 55-91, 93-105, 108-118, 125-204, 209-214, 7 February 2017).

118. It is furthermore unclear whether the first six applicants were members of the “LGBT activists’ initiatives group” (see paragraph 5 above) and/or the “independent group of LGBT activists” (see paragraph 11 above). Although the document concerning the opening of a criminal investigation referred to the applicants as “activists of the working group on countering homophobia and transphobia” (see paragraph 30 above), it is unclear whether these three variations of the name referred to the same or different organisations and the applicants provided no clarification in this respect. Furthermore, the accuracy of the latter reference is also open to doubt considering that it included the seventh applicant despite his submission at domestic level and before the Court that he had not been an LGBT activist.

119. It is true that the first, fourth and fifth applicants figure as LGBT activists in the Court’s judgments (see the appendices in *Identoba and Others* and *Women’s Initiatives Supporting Group and Others*, both cited above). As regards the second, third and sixth applicants, publicly available material points to their engagement in the field, to different degrees. However, while the official exchange with the authorities demonstrates that the organisers of the assembly planned for approximately 150 LGBT activists to participate in the silent gathering planned for 17 May 2016 (see paragraph 5 above), being an LGBT activist would not automatically confer victim status on the first six applicants in respect of the complaint relating to the interactions between the entity in charge of planning the IDAHOT event of 2016 and the national authorities.

120. In this connection, the Court pays particular attention to the fact that the applicants did not, even in response to the Government’s reasoned objection, submit any evidence that they had been involved in the planning and/or organisation of the event in question. By contrast, the case file material contains an account by N.B. (the contact person in communication with the authorities about the planning of the event on 17 May 2016, see paragraphs 8, 9 and 12 above). It describes her leading role in the planning and organisation of “almost all” public events relating to LGBT rights. While that statement mentions that one of the meetings with the authorities was attended by the first and fifth applicants in their capacity as LGBT activists, that element alone would not necessarily confer on these two applicants the status of organisers of the event in question as opposed to or alongside N.B., whose role in that regard is undisputed (see paragraph 12 above). In this regard, the Court emphasises that N.B. is not one of the applicants in the present case.

121. Accordingly, the Court considers that the first six applicants failed to advance reasonable and convincing evidence that they were, at the time, directly affected by the authorities’ contested conduct in the interactions with the LGBT activists’ initiatives group and its contact person concerning the planning of the event of 17 May 2016. The complete absence of any individual particulars makes it impossible to conduct an assessment of the

applicants' situation, including the existence and exhaustion of any domestic remedies by the applicants (see, *mutatis mutandis*, *Zambrano v. France*, (dec.), no. 41994/21, §§ 24-26, 21 September 2021).

122. At any rate, as regards the potential impact on the applicants of the authorities' contested conduct in the interactions with the LGBT activists' initiatives group and the latter's decision not to hold the event as planned, the Court takes note of the fact that under domestic legislation the lack of prior authorisation for holding an event would not render it unlawful so as to justify dispersal (compare and contrast *Lashmankin and Others*, cited above, § 461). The applicants had not, therefore, been deprived of an opportunity to hold an event on 17 May 2016, even if it appears that such an event could not necessarily have been held at their desired location owing to prior notifications in respect of other assemblies and apparent security risks (see paragraph 7 above and compare, for instance, *Berladir and Others v. Russia*, no. 34202/06, § 56, 10 July 2012, and *Csiszer and Csibi v. Romania*, nos. 71314/13 and 68028/14, § 108-09, 5 May 2020).

123. In the light of the foregoing, the Court considers that the first six applicants' complaints of the authorities' conduct as regards the planning of the event on 17 May 2016, raised under Article 11 of the Convention, taken alone and in conjunction with Article 14, are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

124. Accordingly, it is not necessary for the Court to address the Government's remaining objections.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

125. Relying on Article 13 of the Convention, the applicants complained that no effective remedies had been available to them in respect of their complaints under Article 3, Article 5, Article 8 and Article 14 of the Convention.

126. Considering its findings regarding the applicants' complaints under the relevant provisions, the Court considers that it is unnecessary to examine the admissibility and merits of the applicants' complaint under Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. 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

128. The applicants claimed 5,000 euros (EUR) each in respect of non-pecuniary damage.

129. The Government submitted, among other things, that the claim was excessive.

130. Having regard to the nature of the violation found, and ruling on an equitable basis, the Court awards the applicants EUR 2,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

131. The applicants also claimed 5,925 pounds sterling (GBP) in respect of the costs of their representation before the Court by one of their British lawyers (no claim was made with respect to the applicant's representation by their remaining representatives). The amount was based on an unsigned document dated 17 December 2020 setting out the number of hours spent by the British lawyer in question on the case (thirty-nine hours and thirty minutes) and the lawyer's hourly rate (GBP 150). No copies of the relevant legal service contracts, invoices, vouchers or any other supporting financial documents were submitted. In addition, the applicants claimed GBP 150, 1,586 United States dollars and 2,905 Georgian laris for the costs and expenses incurred before the Court by the same representative.

132. The Government submitted that the case file material did not contain an authority form in respect of the British representative and that, in any event, the applicants had failed to submit any documentary evidence proving that they had actually paid the claimed fees or were placed under a legal obligation to pay them.

133. The Court observes at the outset that it appears that, regrettably, the additional authority forms submitted to the Court on 20 June 2017, including those in respect of the lawyer concerned, were not sent to the Government for information. In any event, however, the Court notes that a representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017). In the present case, the applicants did not submit documents showing that they had paid or were under a legal obligation to pay the fees charged by their British representative or the expenses incurred by her. In the absence of such documents, the Court finds no basis on which to accept that the costs and expenses claimed by the applicants have actually been incurred (see *Women's Initiatives Supporting Group and Others*, cited above, § 92, with further references).

134. It follows that the claim must be rejected.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 § 1 of the Convention admissible;
2. *Declares* the complaints under Article 3, Article 8, Article 11 and Article 14 inadmissible;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
4. *Holds* that there is no need to examine separately the admissibility and merits of the complaint under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) each, 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; and
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Georges Ravarani
President

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth	Nationality	Place of residence	Representatives
1.	Gvantsa DZERKORASHVILI	1990	Georgian	Tbilisi	Ms M. Begadze and Ms T. Mikeladze, based in Tbilisi Ms R. Remezaite, Ms J. Gavron, Ms J. Sawyer, and Mr P. Leach, based in London
2.	Marine KURTANIDZE	1991	Georgian	Tbilisi	
3.	Giorgi KIKONISHVILI	1988	Georgian	Tbilisi	
4.	Shorena GABUNIA	1977	Georgian	Tbilisi	
5.	Magda KALANDADZE	1986	Georgian	Tbilisi	
6.	Tamar TARKHAN-MOURAVI	1982	Georgian	Tbilisi	
7.	Levan JANEZASHVILI	1984	Georgian	Tbilisi	