

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

FOURTH SECTION

CASE OF MATCHAVARIANI v. GEORGIA

(Application no. 46852/21)

JUDGMENT

Art 5 § 1 • Deprivation of liberty • Applicant's administrative detention during administrative-offence proceedings against him not free from arbitrariness • Lack of necessity assessment
Art 6 § 1 (criminal) • Impartial tribunal • Lack of legitimate doubts about the trial judge's objective impartiality for briefly adjourning the administrative proceedings to allow the police, acting as a prosecuting authority, to gather additional evidence to substantiate the charge against the applicant • Judge's conduct had a basis in domestic law • Applicant able to comment on evidence without any hinderance • Conviction also rested on other evidence
Art 10 and Art 11 • Applicant's explicit refusal to comply with police order not to take firewood to the demonstration did not enjoy same privileged protection under the Convention as political speech or debate on public interest questions or the peaceful manifestation of opinions on such matters • Applicant could have joined the demonstration without the firewood • Domestic courts conducted a balancing exercise of the rights at stake • Imposed fine, the least severe sanction provided by domestic law • Margin of appreciation not overstepped • Manifestly ill-founded

Prepared by the Registry. Does not bind the Court.

STRASBOURG

20 May 2025

FINAL

20/08/2025

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



In the case of Matchavariani v. Georgia,

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

Jolien Schukking*, President*,
Lado Chanturia,
Faris Vehabović,
Tim Eicke,
Lorraine Schembri Orland,
Anne Louise Bormann,
András Jakab*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 46852/21) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Mr Aleksi Matchavariani ("the applicant"), on 15 September 2021;

the decision to give notice of the application to the Georgian Government ("the Government");

the parties' observations;

Having deliberated in private on 29 April 2025,

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

INTRODUCTION

1. The case concerns the applicant's administrative detention and subsequent conviction in administrative-offence proceedings for attempting to take firewood to a demonstration. The applicant relied on Articles 5, 6, 10 and 11 of the Convention.

THE FACTS

2. The applicant is a civil society activist and a founding member of a non-governmental organisation, the Shame Movement, whose aims, according to the relevant statutory document, include supporting Georgia's democratic development, protecting human rights and contributing to civic engagement.

3. The applicant was born in 1977 and lives in Tbilisi. He was represented by Mr I. Chitashvili, a lawyer practising in Tbilisi.

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

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

I. BACKGROUND

6. On 31 October 2020 parliamentary elections were held in Georgia.

7. On 8 November 2020 a demonstration took place in Tbilisi to protest against the outcome of the parliamentary elections. Several thousand demonstrators gathered in front of the Parliament building and subsequently moved towards the building of the Central Election Commission ("the CEC"). A number of the demonstrators became violent, throwing various items at the officers in the police cordon and attempting to break through in order to enter the CEC building. The police eventually dispersed the demonstration.

8. On 9 November 2020, as part of special measures to counter the global outbreak of COVID-19, the government issued Decree (დადგენილება) no. 670, which introduced, with immediate effect, a curfew between 10 p.m. and 5 a.m.

9. On 9 November 2020 demonstrators and opposition politicians, continuing the protest from the previous day (see paragraph 7 above), gathered in front of the Parliament building. They demanded the resignation of the CEC chairperson and the holding of new parliamentary elections.

10. During a press briefing held that same day, the Deputy Minister of Internal Affairs issued a warning that any breach of the law would receive an immediate response.

11. In parallel to the above-mentioned demonstration, the Shame Movement (see paragraph 2 above) announced that a demonstration of civil disobedience would take place immediately following the one against the outcome of the elections. The aim of the event was to denounce the curfew introduced by the government (see paragraph 8 above) as unfair and unjustified in view of the ongoing political protests. Its participants were to hold a vigil at the Parliament building. Some politicians announced that they would take part.

12. The applicant was one of the organisers of the second demonstration. He attempted to take part in it but was arrested shortly before the event officially started.

II. THE APPLICANT'S ARREST

13. On the evening of 9 November 2020 at around 9 p.m. the applicant attempted to approach the area where a demonstration (see paragraph 9 above) was taking place. He took along several pieces of firewood. He was stopped by police officers on 9 April Street. They informed the applicant that firewood could not be brought to the demonstration on Rustaveli Avenue.

14. An audio-visual recording of the applicant's arrest showed him having a verbal altercation with V.S., the head of the Patrol Police Department of the Ministry of Internal Affairs of Georgia ("the MIA"). V.S. informed the

applicant that he could not enter the demonstration area with firewood, stating that there had been cases in which firewood had been misused to attack the police and that the applicant had to obey a lawful order not to bring such items to the demonstration or he would risk being arrested. The applicant kept repeating that the order was unlawful, asking to be given information as to which legal provision prohibited taking firewood to a demonstration, and stating that he would not obey such an unlawful order. When V.S. turned his back on the applicant, intending to walk away, the applicant uttered, "We will break you," and as V.S. turned around, he stated, "We will break this government" and V.S. ordered the applicant's arrest. V.S. was then shown talking to media outlets stating that firewood had been used in violent activities against the police and that it had also been burnt in front of the Parliament building, posing a danger to the individuals gathered there.

15. The applicant's administrative-arrest report noted that he had been arrested on 9 April Street, alongside the Parliament building, for disobeying the lawful orders of the police. The exact nature of his conduct was not specified. The report indicated 9.27 p.m. as the time of the arrest. The administrative-offence report of the following morning contained identical information.

16. Following his arrest, the applicant was transferred to a police station and then to a temporary detention facility.

III. ADMINISTRATIVE-OFFENCE PROCEEDINGS

17. The Tbilisi City Court, sitting in a single-judge formation, commenced a hearing in the applicant's case at 12.33 p.m. on 10 November 2020.

18. During the hearing the applicant asked for V.S. (see paragraph 14 above) to be questioned as a witness. He stated that V.S.'s order not to bring firewood to the demonstration had been unlawful, resulting in the applicant being arrested without any legal grounds and being unable to attend the demonstration. The applicant also claimed that V.S. had accused him of insulting the police. The judge dismissed the request given that neither of the parties to the proceedings had contested the factual circumstances regarding the applicant's arrest as depicted in the video footage available in the case file (see paragraph 14 above), and given that the applicant had not been accused of having insulted the police. The judge therefore found that there was no need to question a witness in those circumstances.

19. As regards the administrative offence with which the applicant was charged, the representatives of the MIA argued that the prohibition on taking firewood to the demonstration had been justified owing to the highly flammable nature of the item in question (section 11(a) of the Assemblies and Demonstrations Act ("the Act")). They argued that there had been a risk of the firewood being used against the police and stated that there had been past

instances where such incidents had taken place at demonstrations. Taking firewood to the demonstration had therefore posed a potential risk to the life and health of the individuals gathered at the event. The representatives of the MIA stated that the applicant's disobedience had consisted of his protest against the decision of the police not to allow him to take firewood to the demonstration and his verbal expression of his intention to do so anyway. The judge asked whether section 11(b) of the Act was also relevant to the MIA's claim and also allowed the MIA to present submissions in respect of that provision.

20. The defence argued that the applicant's arrest had lacked a legal basis and had been arbitrary. Firstly, in the applicant's submission, the firewood had been intended to be used as a source of heating during the vigil on a cold night and the police had had no grounds to believe that it would have been used for an unlawful objective. In that connection, the applicant submitted, without providing any specific evidence, that he had organised many demonstrations where firewood had been used for heating, without any issues arising. Secondly, the applicant argued that there had been no disobedience or resistance to an order. After the applicant had been given a verbal warning that it was prohibited to take firewood to the demonstration, he had merely protested and sought to be given an explanation from the police officers. The applicant submitted that while he had expressed his desire to take firewood with him, he had not taken any physical action to that end. The real reason behind his arrest had been V.S.'s irritation caused by his protest.

21. During the trial, the judge examining the case addressed a MIA representative and asked him to present evidence that firewood had been misused during demonstrations in the past to substantiate the claim that a similar risk had existed in the applicant's case. The MIA representative stated that he did not have such evidence before him but that the misuse of firewood at demonstrations, including the previous day (see paragraph 7 above), was public knowledge, owing to media coverage, and similar administrative-offence cases had already been adjudicated by the Tbilisi City Court. The judge responded that she was not aware of any such precedents and that the officer, when making specific factual allegations, was required to substantiate his position. In that connection, she asked whether he could present such evidence following a brief adjournment. The MIA representative replied that collecting the evidence would be unreasonably time-consuming. The judge explained that the officer's claim that there was a precedent needed to be substantiated by reference to the cases concerned. As for the claim that such incidents had been reported by the media, the judge stated that she might have "seen a lot of things but" she had to rely on the evidence available in the case file. The judge thus adjourned the proceedings for three hours and instructed the MIA representative to present evidence that proved his claims. No appeal lay against the adjournment decision.

22. Before the decision to adjourn the proceedings took effect, the defence asked for the applicant to be released from detention as there was no reason to keep him there while the proceedings were pending. The trial court dismissed the request. It stated that the court could not assess the lawfulness of his detention, a matter regulated under Article 251 of the Code of Administrative Offences ("the CAO" – see paragraph 38 below), but only whether the time-limit provided in Article 247 of the CAO (see paragraph 37 below) had been complied with. The court noted in that connection that a detained individual was required to remain in detention while the administrative-offence proceedings were pending, and that a court could order his or her release only if the maximum time-limit of forty-eight hours prescribed in the provision in question had been reached.

23. The proceedings were adjourned between 2.36 p.m. and 6.02 p.m. During that period, the applicant was placed in a detention cell at the Tbilisi City Court.

24. Following the resumption of the proceedings, the MIA representative submitted three video-recordings. The first two related to the events that had occurred near the CEC building on 8 November 2020 (see paragraph 7 above). The date and location of the events in the third video were unknown. All three recordings showed that several demonstrators had thrown various items at the police, including burning firewood.

25. The defence argued that the mere fact that unknown individuals had breached the law in the past by using firewood as weapons could not have served to substantiate the alleged threat of such misuse by the applicant.

26. At 8.03 p.m. the judge delivered the judgment, finding the applicant guilty of conduct prohibited under Article 173 of the CAO. He was ordered to pay an administrative fine of 1,000 Georgian laris (GEL –approximately 255 euros (EUR) at the time). The applicant was then released from detention.

27. According to the judgment, the applicant had disobeyed the lawful order of a police officer, namely V.S., to not take firewood to the ongoing demonstration in front of the Parliament building. The court noted that the applicant had been given an explanation as to why firewood had not been allowed at the demonstration, namely the risk of its being used against the police. The applicant had explicitly stated, as confirmed by the relevant audio-video recording, that he would not comply with that order and that he intended to take the firewood with him regardless of the police officer's instructions. In that connection, the trial court established that the instruction not to take firewood had been lawful and the applicant had disobeyed it.

28. In particular, the court stated that it had been within the police authorities' remit to implement measures to prevent the commission of offences, and to ensure the safety of participants in assemblies and demonstrations. Within that context, the court stated that section 11 of the Act contained a prohibition on taking certain items to a demonstration. In the court's view, sub-paragraph (a) concerned items or substances which posed

certain risks regardless of the circumstances. As for sub-paragraph (b), it referred to items in ordinary use which could, however, be regarded as dangerous in specific circumstances. The sub-paragraph in question conferred a certain discretion on the police to determine, depending on the specific circumstances on the ground, whether a certain item could pose a risk to the life and health of the participants in a demonstration or other individuals. In that regard, the court noted that the assessment under sub-paragraph (b) of section 11 of the Act was to be made by police officers on the basis of clear criteria and ascertainable risk. For the court, even when a risk had been proved to exist in one case, the police were required to conduct a fresh assessment in another case to avoid generalisation and to tailor their approach to the specific case. The court noted that the risk of misusing the firewood had been apparent given that such incidents had taken place a day before the demonstration which the applicant had attempted to join. It relied in that connection on the video-recording submitted by the police (see paragraph 24 above) showing that burning firewood had been thrown at the police during demonstrations. Given that the demonstration in question had been linked to the one of 8 November 2020, in that it had attempted to challenge the curfew on account of its alleged encroachment on the right to protest against the outcome of the parliamentary elections, it would have involved a similar group of demonstrators, carrying a higher risk that the events of the previous day would repeat themselves. On the basis of the video footage available in the case file, the court established that the circumstances substantiated the risk – with respect to an objective observer standard – of firewood being misused at the demonstration which the applicant had intended to join. Accordingly, the police had been authorised, under sub-paragraph (b) of section 11 of the Act, to prevent the applicant from taking firewood to the demonstration. By extension, their order had been lawful within the meaning of Article 173 of the CAO. As concerns the applicant's disobedience, the court relied on the video footage showing his arrest (see paragraph 14 above) and established that his disobedience had been explicit. To that end, the court clarified that the offence of disobedience could have been committed by failing to comply with a verbal instruction, whether actively or passively, via physical action or even verbally. As the applicant had expressed his refusal to comply with the police officer's instruction several times, the trial court found that the police had been justified when they had "started administrative-offence proceedings against him". The court thus established that the applicant was guilty of conduct proscribed under Article 173 of the CAO.

29. The applicant was given a copy of the judgment on 19 February 2021.

30. On 22 February 2021 the applicant lodged an appeal. Among other things, he argued that the police ought to have decided in favour of the applicant's right to freedom of expression and assembly and other individuals' improper use of firewood should not have been relied on to

justify the interference with his rights; in any event, the order not to take firewood to the demonstration was not sufficient grounds for his arrest as he could have remained where he was to express his protest; and it had been solely his verbal protest which had irritated the head of the Patrol Police Department and served as the real reason for his arrest. The applicant also complained that his arrest had been an unnecessary measure; under Article 244 of the CAO, it ought to have been a measure of last resort for a limited number of aims listed therein, whereas he had been kept in detention until the conclusion of the proceedings against him. The applicant also complained that the trial court's decision not to order his release had not been justified. In addition, the applicant submitted that the trial court had unjustifiably refused to question V.S. and the judge had assisted the representative of the MIA in formulating the factual basis of the accusation against him, contrary to the principles of equality of arms and adversarial proceedings. According to the applicant, "the judge had effectively assumed the role of the accusing party because of the inertia shown by the [police and] actively participated in the ... collection of evidence which may have strengthened the [accusation]." As an example the applicant referred to the judge's request addressed to the police officer and her insistence to present video recordings that demonstrated the misuse of firewood. He submitted that his arrest, detention and conviction had resulted in a breach of Articles 5, 6, 10 and 11 of the Convention.

31. On 17 March 2021 the Tbilisi Court of Appeal, sitting as a court of final instance in a single-judge formation, dismissed the applicant's appeal by means of written proceedings. It upheld the lower court's judgment in full. Among other things, the Court of Appeal noted that the parties had not contested the factual circumstances shown in the video-recording relating to the applicant's arrest. It therefore agreed with the trial court's reasoning as regards the refusal to question V.S. Relying on the case-law of the Constitutional Court, the Court of Appeal further clarified that the phrase "may be used" in section 11(b) had been intended to cover situations such as the applicant's, where there had been a reasonable risk that an otherwise ordinary object could be used to harm individuals. In that respect, the courts were to look at all the circumstances of a case and the broader context rather than solely the conduct of one individual demonstrator. Agreeing with the lower court's assessment of the link between the events of 8 November 2020 and the demonstration the applicant had been planning to join (see paragraph 28 above), the appellate court stated that there had been a risk of firewood being used to harm the police or other individuals at the demonstration. In that connection the appellate court noted that the rights under Article 10 and Article 11 of the Convention were not absolute and that the interference in the present case had been necessary to achieve the legitimate aim of protecting the rights of others.

32. As to the manner in which the proceedings had been conducted before the trial court, the appellate court found that "there had been no significant procedural shortcomings" and the case had been decided in compliance with the applicable legislation.

33. Lastly, as regards the question of detention, the appellate court disagreed with the applicant's argument that there had been no grounds to keep him in detention while the proceedings were pending before the trial court and that the latter ought to have ordered his release. In that connection, it noted that the maximum period for that type of detention specified in Article 247 of the CAO had not expired and the administrative proceedings had still been ongoing. In addition, bearing in mind that Article 173 of the CAO provided for a custodial sanction, the applicant's detention during the proceedings had been aimed at ensuring the implementation of any such potential sanction in his case. The appellate court also noted that the applicant had not remained in detention for the maximum period permitted for administrative arrest, the period of his detention more or less coinciding with the oral proceedings held before the trial court. His complaint was therefore found to have been unsubstantiated.

RELEVANT LEGAL FRAMEWORK

34. Article 173 of the Code of Administrative Offences (CAO), as worded at the material time, 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 of a minimum of GEL 1,000 and a maximum of GEL 4,000, or up to fifteen days' administrative detention.

35. Article 244 § 1 ("Measures to secure the conduct of 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 his or her belongings, and have belongings and documents seized from him or her."

36. Article 246(a) authorises MIA officials, including police officers, to place an administrative offender under administrative arrest within the meaning of Article 244 § 1 of the CAO (see the previous paragraph), in respect of a defined list of offences. The list includes disobeying the lawful instructions or orders of a police officer (see paragraph 34 above).

37. Article 247 § 1 of the CAO, as worded at the material time, provided that the "administrative arrest of an individual who has committed an

administrative offence shall not last longer than twelve hours". Article 247 § 2 provided that "an individual whose period of arrest coincides with non-working hours (არასამუშაო დროს) may be ... placed in a preliminary detention cell until a final decision is taken by an authorised authority. In such cases the overall length of the administrative arrest shall not exceed forty-eight hours."

38. Article 251 of the CAO provides that "interested parties may lodge an appeal against an administrative arrest, a personal search, a search of objects, [or] the confiscation of objects or documents with a superior authority (or office holder) or a prosecutor". It does not define a time-limit for lodging the complaint or the time-limit applicable to its consideration.

39. Article 4 ("Adversarial proceedings and the investigation of a case by a court") of the Code of Administrative Procedure of Georgia provides as follows:

> "During the examination of an administrative-law case the parties shall enjoy the rights and duties granted by Article 4 of the Code of Civil Procedure of Georgia[;] additionally the court may, of its own initiative, decide to [require the parties to] present additional information or evidence."

40. Under Article 4 ("principle of adversarial [proceedings]") of the Code of Civil Procedure:

> "1. Legal proceedings shall be conducted on the basis of the principle of adversarial [proceedings]. Parties shall have equal rights and opportunities to substantiate their claims [and] reject or refute claims, opinions or evidence presented by the other party. It shall be the parties who determine which facts serve as the basis for their claims or which evidence must be used to verify those facts.
>
> 2. To verify the circumstances of a case, a court may, on its own initiative, apply the means provided for in this Code."

41. Section 11(2) of the Assemblies and Demonstrations Act ("the Act"), at the material time and in so far as relevant, provided as follows:

> "2. It shall be prohibited for participants in an assembly or a demonstration to:
>
> (a) carry firearms[;] explosive, flammable or radioactive substances, or cold weapons;
>
> (b) carry such items or substances that are used or may be used to cause harm to the life and health of participants in an assembly or a demonstration, or other individuals;
>
> ..."

42. The broader relevant legal framework has been summarised in *Makarashvili and Others v. Georgia* (nos. 23158/20 and 2 others, §§ 30-44, 1 September 2022) and *Dzerkorashvili and Others v. Georgia* (no. 70572/16, §§ 40-52 and 54, 2 March 2023).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

43. The applicant complained that his arrest and detention while the administrative proceedings were pending had been arbitrary and unlawful. He relied on Article 5 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

44. The Government submitted that the applicant had failed to exhaust domestic remedies. They stated that he should have (a) instituted civil/administrative proceedings to claim damages at domestic level; and (b) submitted a complaint in relation to the allegedly "unlawful deprivation of liberty" to the General Inspectorate of the MIA, in order for the latter to respond to any potential errors committed in the performance of official duties and/or illegal actions by its employees.

45. In the alternative, the Government argued that the applicant's arrest and detention had been lawful, necessary and compatible with Article 5 of the Convention. His complaint was therefore manifestly ill-founded.

46. The applicant submitted that his complaint had already been raised and addressed as part of the administrative-offence proceedings against him. He had therefore not been required to institute separate proceedings.

2. The Court's assessment

47. The general principles pertaining to the exhaustion of domestic remedies have been summarised in the case of *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-46, 27 November 2023).

48. Turning to the circumstances of the present case, the Court observes that on 9 November 2020 the applicant was arrested on the grounds that he had disobeyed the lawful orders of the police. He was taken to the police station, and then to the courthouse, before being released. Domestic law and procedure provided for avenues of redress for challenging the lawfulness of his administrative arrest and detention, and the administrative-offence

proceedings against him were one such avenue (see *Kakabadze and Others v. Georgia*, no. 1484/07, § 54, 2 October 2012; see also *Dzerkorashvili and Others,* cited above, §§ 54 and 77).

49. In circumstances where the applicant raised the matter in the administrative-offence proceedings against him, and the appellate court explicitly addressed the matter in a final decision, stating that his pre-trial detention had complied with the law and had been aimed at ensuring the implementation of any potential sanctions in his case (see paragraph 33 above), he was not required to resort to another remedy. The Government's objection of non-exhaustion of domestic remedies should therefore be dismissed.

50. The Court additionally 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

51. The applicant submitted that his arrest and pre-trial detention while the administrative proceedings were pending had been arbitrary and unlawful. He stated that his conduct had not amounted to an administrative offence warranting his arrest in the first place. In any event, it had not been necessary to either arrest or detain him. Moreover, there had been no legal grounds to remand him in custody pending the hearing before the Tbilisi City Court. Lastly, the Tbilisi City Court's refusal to order his release from detention had also been incompatible with Article 5 of the Convention.

52. The Government submitted that the applicant had been arrested at 9.27 p.m. on 9 November 2020 on suspicion of having committed an administrative offence under Article 173 of the CAO; the arrest had been carried out with the intention of bringing him before the appropriate domestic court. The legal basis authorising the police to carry out his administrative arrest had been clearly stated in the administrative-arrest report and confirmed by the relevant domestic courts. He had been promptly brought before the Tbilisi City Court, without any unrecorded or unacknowledged period of deprivation of liberty. When the application for the applicant's release had been made, the proceedings were ongoing, and the maximum period of administrative arrest allowed under Article 247 of the CAO had not expired. Additionally, the period of the applicant's detention had mostly coincided with the oral hearing of the case. The Government argued that in the light of those circumstances, there had been no procedural irregularities, flaws or arbitrariness in the applicant's arrest and subsequent detention during the administrative-offence proceedings before the trial court.

2. The Court's assessment

(a) General principles

53. 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).

54. 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).

55. 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).

56. 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).

57. 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).

58. 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).

59. 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*, § 190, and *Saadi*, § 69 both cited above).

60. 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 of 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*, § 77; *Saadi*, § 70; and *Denis and Irvine*, § 130, all cited above).

(b) Application of those principles to the present case

61. The Court observes that according to the applicant's formal arrest report, his administrative arrest and detention were carried out in connection with the offence of disobeying a lawful police order. The offence in question allowed for an administrative arrest (compare paragraphs 34 and 36-37 above). Bearing in mind the applicant's explicit refusal to comply with the orders of the police, as captured on video (see paragraph 14 above), the Court considers that the police officers arrested the applicant on the basis of a "reasonable suspicion" within the meaning of Article 5 § 1 (c) of his having committed an offence under Article 173 of the CAO.

62. However, 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 *Dzerkorashvili and Others*, cited above, § 102). In this connection, the Court takes note of the Government's submission that the applicant's administrative

detention had been necessary for drawing up the administrative-offence and administrative-arrest reports and ensuring that the case was duly considered by a court (see paragraph 52 above).

63. Yet, formally, the police used only the charge of disobeying a lawful order as grounds for justifying the applicant's arrest, without any reference to the other aims provided for in Article 244 § 1 of the CAO (see paragraphs 15 and 35 above). As for the judicial proceedings, the trial court stated that it could only assess whether the maximum time-limit of forty-eight hours applicable to the applicant's detention had passed, which had not been the case, and found that it lacked the jurisdiction to order the applicant's release while the administrative-offence proceedings were pending (see paragraph 22 above).

64. As for the appellate court, it noted that the applicant's detention had not exceeded the maximum period of detention provided for in the CAO, essentially endorsing the lower court's explanation that detention was normally regarded as lawful during the initial forty-eight hours. Were such an interpretation of the relevant legislation to be accepted, it could suggest that any pre-trial detention in administrative-offence proceedings would be justified, provided that it falls within the applicable maximum time-limits. However, this would be incompatible with the Court's case-law on the matter (see paragraph 60 above).

65. The appellate court further stated that the applicant's detention had been aimed at ensuring the implementation of a potential custodial sanction in his case (see paragraph 33 above). The Court emphasises, however, that a mere reference to the application of a custodial sanction, especially in the context of administrative-offence proceedings involving the applicant's non-violent conduct related to his participation in a demonstration cannot be a sufficient justification for the application of pre-trial detention which, in any event, ought to be resorted to in exceptional circumstances (see paragraph 60 above; see also, *mutatis mutandis*, *Mehmet Hasan Altan v. Turkey*, no. 13237/17, § 212, 20 March 2018).

66. The Court cannot, thus, overlook the fact that the domestic courts' judgments did not contain an individual assessment, balancing relevant arguments for and against release, of whether the detention – which had lasted for over twenty-two hours – had been a proportionate measure of last resort in the particular circumstances of the applicant's case (see also *Taran v. Ukraine*, no. 31898/06, § 68, 17 October 2013, and *Dzerkorashvili and Others*, cited above, § 104).

67. The foregoing considerations are sufficient to conclude that the applicant's administrative detention was not free from arbitrariness in that the authorities had failed to show that the applicant's detention had been necessary in the circumstances.

68. There has therefore been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

69. Relying on Article 6 §§ 1 and 3 (d) of the Convention, the applicant complained that he had been unable to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him. He further complained that the trial court had actively aided the police in presenting and substantiating their case against him, thereby breaching the principle of equality of arms and the objective impartiality requirement under the provision in question. Being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), the Court will examine the latter complaint only from the perspective of the impartiality requirement. Article 6 of the Convention, in so far as relevant, reads as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by ... an independent and impartial tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

A. The parties' submissions

1. The Government

70. The Government submitted, as concerns the trial court's refusal to call V.S. as a witness, that the courts had duly justified their decisions in that respect (see paragraph 18 above).

71. As for the complaint regarding the objective impartiality of the trial judge, the Government submitted that a similar complaint had already been addressed by the Court in *Makarashvili and Others* (cited above), and that no violation of the provision had been found. In addition, the Government stated that the Code of Administrative Procedure (see paragraph 39 above) had provided for the possibility of the domestic courts asking, of their own motion, the parties to furnish supplementary information or evidence. This had been the legal basis for the trial court's conduct in the applicant's case. In this connection they stated that the Tbilisi City Court had not, either expressly or tacitly, treated the evidence submitted by the police officers in the applicant's case as having a higher degree of credibility, and the relevant judgments had been based on multiple items of evidence.

72. The Government added that the applicant had been represented by a lawyer of his own choice and he had been able to (a) present evidence and substantiate his position; (b) cross-examine the witnesses; (c) submit applications; and (d) examine the video evidence available in the case file.

The Government also stated that the domestic courts' decisions had contained sufficient reasons justifying the applicant's conviction for an administrative offence.

2. The applicant

73. The applicant submitted that V.S. would have been an important witness in his case, as he had been the one responsible for ordering the applicant's arrest and could have provided valuable information about its factual and legal basis.

74. The applicant also stated that the trial judge had assisted the MIA in correctly formulating the accusation against him and obtaining evidence to strengthen the MIA's case to convict him. The judge had insisted that the MIA submit evidence which had then been referred to by the court in finding the applicant guilty. The trial judge had also helped the MIA clarify the legal basis for the prohibition on taking firewood to the demonstration. According to the applicant, the judge's conduct during the proceedings had played a pivotal role in influencing the outcome of the case. That approach had undermined the requirement of impartiality and compromised the fairness of the trial.

B. The Court's assessment

1. Admissibility

75. At the outset, the Court observes that the applicability of Article 6 to the administrative proceedings in question is not in dispute. However, the Court considers it necessary to address this issue of its own motion. It notes that the applicant was sentenced in respect of conduct proscribed by Article 173 of the CAO. While he was ordered to pay an administrative fine, the offence of disobeying lawful orders of the police gave rise to administrative arrest (see paragraph 36 above) and could also give rise to administrative detention, a sanction involving deprivation of liberty which was of a purely punitive nature (see paragraph 34 above). Therefore, referring to its well-established case-law, the Court considers that the proceedings in the present case should be classified as determining criminal charges against the applicant, even though such charges are characterised as "administrative" under Georgian legislation (see, for instance, *Huseynli and Others v. Azerbaijan*, nos. 67360/11 and 2 others, § 103, 11 February 2016).

76. As regards the applicant's complaint under Article 6 § 3 (d) of the Convention concerning the domestic courts' rejection of his request to question witness V.S. (see paragraphs 18 and 30-31 above), the Court finds, having regard to all the material in its possession, that this complaint does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto. This part of the application must

therefore be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

77. As regards the complaint under Article 6 § 1 of the Convention concerning the impartiality requirement, it is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) General principles

78. The Court reiterates that impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. According to the Court's settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, for example, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII; *Micallef v. Malta* [GC], no. 17056/06, § 93, ECHR 2009; *Morice v. France* [GC], no. 29369/10, § 73, ECHR 2015; and *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 287, 4 December 2018).

79. As to the subjective test, the principle that a tribunal must be presumed to be free of personal prejudice or partiality is long-established in the case-law of the Court (see *Kyprianou*, § 119; *Micallef*, § 94; and *Morice*, § 74, all cited above). The personal impartiality of a judge must be presumed until there is proof to the contrary (see *Hauschildt v. Denmark*, 24 May 1989, § 47, Series A no. 154). As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will for personal reasons (see *De Cubber v. Belgium*, 26 October 1984, § 25, Series A no. 86, and *Morice*, cited above, § 74).

80. In the vast majority of cases raising impartiality issues the Court has focused on the objective test (see *Micallef*, cited above, § 95). However, there is no watertight division between subjective and objective impartiality since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test) (see *Kyprianou*, cited above, § 119). Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, 10 June 1996, § 32, *Reports* 1996-III, and *Morice*, cited above, § 75).

81. As to the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Micallef*, cited above, § 96).

82. The objective test mostly concerns hierarchical or other links between the judge and other protagonists in the proceedings. It must therefore be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see *Morice*, cited above, § 77).

83. In this connection even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done" (see *De Cubber*, cited above, § 26). What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (see *Castillo Algar v. Spain*, 28 October 1998, § 45, *Reports* 1998-VIII; *Micallef*, cited above, § 98; and *Morice*, cited above, § 78).

84. Moreover, in order that the courts may inspire in the public the confidence which is indispensable, account must also be taken of questions of internal organisation (see *Piersack v. Belgium*, 1 October 1982, § 30 (d), Series A no. 53). The existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is a relevant factor. Such rules manifest the national legislature's concern to remove all reasonable doubts as to the impartiality of the judge or court concerned and constitute an attempt to ensure impartiality by eliminating the causes of such concerns (see *Zahirović*, cited above, § 35). In addition to ensuring the absence of actual bias, they are directed at removing any appearance of partiality and so serve to promote the confidence which the courts in a democratic society must inspire in the public. The Court will take such rules into account when making its own assessment as to whether a tribunal was impartial and, in particular, whether the applicant's fears can be held to be objectively justified (see *Micallef*, cited above, § 99).

(b) Application of those principles to the present case

85. The Court observes at the outset that the applicant did not allege personal bias on the part of either the trial or the appeal judges. In addition, there is no evidence that the judges in question acted with any personal prejudice. Thus, no issue arises in the present case under the subjective test.

86. By contrast, the Court is called upon to determine whether the applicant's specific allegations concerning the manner in which the trial judge

conducted the proceedings, raised legitimate doubts about the objective impartiality of the trial court.

87. The Court has already found that given the manner in which the matter is regulated in Georgia, the absence of a prosecutor in the administrative-offence proceedings would not, in and of itself, undermine the objective impartiality requirement under Article 6 of the Convention (see *Makarashvili and Others*, cited above, § 59). It notes that the police had been acting as a prosecuting authority in the case against the applicant.

88. As regards the role of the trial judge in proceedings, such as in the present case, the Court observes that Article 4 of the Code of Administrative Procedure (see paragraph 39 above) provides that a court may require the parties to present additional information or evidence in administrative-offence proceedings. It also takes note of the fact that the proceedings in the present case determined criminal charges against the applicant (see paragraph 75 above). In this regard, the Court notes that while it is normally the task of a public authority in a case of public prosecution to present and substantiate the criminal charge with a view to adversarial argument with the other party or parties (see *Karelin*, cited above, § 77), the criminal-head guarantees of Article 6 do not necessarily apply with their full stringency to all categories of cases falling under that head (see *Jussila v. Finland* [GC], no. 73053/01, § 43, 23 November 2006, with further references).

89. Within this context, the Court's task is not to review the relevant legislation or an impugned practice in the abstract. Instead, it must confine itself, as far as possible, and without losing sight of the general context, to examining the issues raised by the case before it (see *N.C. v. Italy* [GC], no. 24952/94, § 56, ECHR 2002-X). Turning to the specific manner in which the provision was applied in the applicant's case, it has not been disputed by the parties that the trial court asked the police to present evidence to substantiate the argument that firewood had been misused at demonstrations in the past (see paragraph 21 above), and then announced a brief adjournment of the proceedings, of its own accord, to allow time for the police to gather such evidence. The Court also observes that the trial judge insisted on the adjournment in question notwithstanding the objection by the MIA representative that it would be unreasonable in the circumstances (see paragraph 21 above).

90. However, the judge's conduct should be assessed in the context of the proceedings as a whole. On the one hand, the evidence requested by the trial court appears to have been an important element in proving the accusation against the applicant in that the applicant's conviction – and more specifically, the domestic courts' finding that the order of the police which the applicant had disobeyed had been lawful – was based on the evidence that the police submitted following the trial judge's intervention (see paragraphs 28 and 31 above). On the other hand, however, the Court does not lose sight of the fact that the risk posed by taking firewood to the

demonstration could also have been self-evident. Namely, it was undisputed that the demonstration of 8 November 2020 had been marked by tension, with demonstrators having thrown various items at police officers (see paragraph 7 above). An objective observer could, in such circumstances, reasonably anticipate the risk of similar developments taking place during the demonstration of the following day.

91. Importantly, in circumstances where the proceedings against the applicant were not conducted in the absence of a prosecuting party (see paragraph 87 above), the application of Article 4 of the Code of Administrative Procedure to examine a matter that was allegedly public knowledge (see paragraph 21 above) could not have cast doubt on the judge's impartiality in the eyes of an objective observer (see, for instance, *Fey v. Austria*, 24 February 1993, §§ 32-36, Series A no. 255-A). Additionally, the Court notes that the applicant was able to comment on the evidence eventually submitted by the police without any hindrance. Lastly, the applicant's conviction also rested on other evidence, including the audio-video recording demonstrating his explicit refusal to comply with the orders of the police (see paragraph 27 above).

92. Accordingly, the manner in which the trial judge conducted the proceedings could not have raised legitimate doubts about the objective impartiality of the trial court.

93. The foregoing considerations are sufficient for the Court to find that there has been no violation of Article 6 § 1 of the Convention in relation to the impartiality requirement.

III. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

94. The applicant complained that his arrest and conviction for an administrative offence had constituted an unjustified interference with his rights under Articles 10 and 11 of the Convention.

95. The Government submitted that there had been no breach of the provisions in question. Among other things, the courts had taken into account the applicant's rights under Articles 10 and 11 of the Convention, holding that the interference with those rights had been necessary in the pursuit of a legitimate interest of protecting the rights of others. The applicant's arrest and the sanction imposed upon him, therefore, could not have had a "chilling effect", particularly in light of the fact that the courts had imposed the least severe sanction available.

96. Turning to the specific circumstances related to the applicant's complaints under Articles 10 and 11 of the Convention, the Court notes that he was one of the organisers of the demonstration. In this regard, the Court reiterates that it is essential for organisers of demonstrations, as participants in the democratic process, to abide by the rules governing that process by

complying with the regulations in force (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 155, ECHR 2015). Within this context, the Court observes that there was nothing to prevent the applicant from joining the demonstration without the firewood which he had been carrying. Nevertheless, he insisted on bringing the firewood to the demonstration site, threatening to defy the instructions of the police in that respect. In such circumstances, his explicit refusal to comply with the order not to take firewood to a demonstration cannot enjoy the same privileged protection under the Convention as political speech or debate on questions of public interest or the peaceful manifestation of opinions on such matters. It is important to underline in this respect that the applicant would have been able to express his disapproval of the government's imposition of the curfew had he complied with the instruction of the police not to take firewood with him.

97. Additionally, the Court does not overlook the fact that the domestic courts duly addressed the necessity of finding a balance between protecting the applicant's rights under Articles 10 and 11 of the Convention and the rights of others in the context of a risk that the firewood carried by the applicant could present in the circumstances. As regards the extent to which the sanction imposed on the applicant was proportionate, the domestic courts imposed on him the least severe sanction provided for by law: an administrative fine of GEL 1,000 (approximately EUR 255 at the time; see paragraph 34 above). Accordingly, the domestic authorities did not overstep their margin of appreciation by sanctioning the applicant for disobeying the lawful orders of the police.

98. The applicant's complaint is therefore manifestly ill-founded and should be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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."

100. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

101. The Government submitted that the claim was excessive.

102. Having regard to the nature of the violation found, and ruling on an equitable basis, the Court awards the applicant EUR 1,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 § 1 and Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the impartiality requirement;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski Deputy Registrar	Jolien Schukking President