

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

FIFTH SECTION

CASE OF MELIA v. GEORGIA

(Application no. 13668/21)

JUDGMENT

Art 5 § 1 (c) • Lawful pre-trial detention of opposition politician, ordered as measure of last resort, in the context of criminal proceedings against him • Existence of reasonable suspicion that applicant might have committed an offence • Reasoned decisions regarding need to apply preventive measures referring to risks of absconding, tampering with evidence and reoffending
Art 18 (+ Art 5 § 1) • Existence of ulterior purpose not established

STRASBOURG

7 September 2023

FINAL

07/12/2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Melia v. Georgia,

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

Georges Ravarani*, President*,
Lado Chanturia,
Carlo Ranzoni,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Mattias Guyomar,
Mykola Gnatovskyy*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 13668/21) 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 Nikanor Melia ("the applicant"), on 1 March 2021;

the decision to give notice of the application to the Georgian Government;

the parties' observations;

Having deliberated in private on 4 July 2023,

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

INTRODUCTION

1. The application concerns allegations under Articles 5 and 18 of the Convention that the domestic courts' decision ordering the applicant's pre-trial detention was unjustified and unnecessary for the purposes of the criminal proceedings against him and that it had the goal of keeping him out of political life.

THE FACTS

2. The applicant was born in 1979 and lives in Tbilisi. He was represented by Ms H. Lazariashvili, a lawyer practising in Tbilisi.

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. THE APPLICANT'S PARTICIPATION IN THE DEMONSTRATION OF 20-21 JUNE 2019

A. Background information

5. The applicant is an opposition politician. At the time of the events, he was a member of Parliament and one of the leaders of the United National

Movement ("the UNM" – a political party which ran the country between November 2003 and October 2012). He became its chairman on 27 December 2020 (holding the office until 30 January 2023).

B. Demonstration of 20-21 June 2019

6. On 20 June 2019 a session of the Interparliamentary Assembly on Orthodoxy (IAO – an interparliamentary institution based in Athens, set up to foster relations between Christian Orthodox lawmakers) was held in the Parliament building. S.G. – a member of the Russian State Duma and, at the time of events, President of the General Assembly of the IAO – sat in the chair reserved for the Speaker of the Georgian Parliament and delivered a speech in the Russian language. His actions were criticised as unacceptable and sparked widespread civic and political protest.

7. A demonstration to protest against the events of the day (see paragraph 6 above) started at 7 p.m. Soon thereafter its participants occupied the entire space in front of the Parliament building and the avenue alongside it. According to media accounts, the demonstration was initially peaceful, with approximately 12,000 people gathered at the site. The applicant – together with other leaders of the opposition parties – participated in the demonstration and addressed the individuals gathered there.

8. At about 8.53 p.m., one of the politicians addressed the protesters and presented the main demand directed at the ruling party: resignation of the Speaker of the Parliament, the Minister of the Interior and the Head of the State Security Service. Another demand voiced during the demonstration was to hold snap parliamentary elections and to transition to a proportional system of representation. The ruling party was given until the end of the day to comply with those demands. At 9 p.m. another politician addressed the protesters and stated that "civil disobedience" would be inevitable in the event of the authorities' failure to heed the protesters' demands. In a video recording of a discussion among the opposition politicians, the phrase "A revolution is about to begin" is heard. It is unclear who uttered it.

C. The applicant's conduct during the demonstration

9. The video material available in the case file shows that the applicant took the stage (apparently at 9.09 p.m.) and made the following statement:

> "... Today, the representative of the ... evil force which for centuries shot us and tortured us settled in the main chair of this fundamental symbol without blinking an eye ... I want to ask you: why do we have to stand in front of Parliament and why can we not stand inside the Parliament building? ... I believe that if, within an hour, those who must resign fail to do so, we have no business standing here in front of Parliament [and] we should enter [loud cheers of the crowd are heard] peacefully, with raised hands, the Parliament building, make our protest even more fierce and when they resign then we should come out."

10. Sometime later (apparently at 9.17 p.m.) the applicant addressed the protesters again:

> "I want to ask you again, does [S.G.] have the right to sit in this building, in the seat of the Parliament's Speaker but Georgian people do not even have the right to stand in the Parliament yard?
>
> In my opinion, in just a little while, [and] peacefully, those who honestly think that the dignity of the country – of the State and not only of individual citizens of Georgia – has been tarnished ... we should request [the return] of this building, which is no longer a Parliament building ... and of the country to the people ... we no longer have either the Parliament or the country. Let us enter here peacefully and request [inaudible] ...
>
> If they do not respond within ten minutes, those who honestly believe that they are here to protect the dignity of the State and not of some political party will restore this dignity and we will get back what belongs to us, the symbols [such as] the flag, the hymn, the coat of arms, and everything which was fought for by generations ... In ten minutes we will enter, peacefully and very constructively, with raised hands, the yard of the Parliament building."

11. The video material available in the case file shows that the speech was followed by cheers from the protesters located in the immediate vicinity. It also contains footage showing the applicant using a hand gesture appearing to signal to others to follow him towards the entrance. The exact moment when this happened is unclear.

D. Subsequent developments at the demonstration

12. Sometime after the statements made by the opposition politicians, including the applicant (see paragraphs 9-10 above), apparently at around 9.49 p.m., several hundred individuals who had gathered immediately below the stairs of the Parliament building leading to its entrance started pushing their way towards the entrance. They attempted to break through the police cordon located just above the stairs. It was reinforced by members of the special forces from inside the Parliament yard. The footage of the events shows that several participants cried out that there was a risk of crowd crushing. The officers shielded some journalists standing there and warned them against the risk of crushing. Several protesters threw plastic bottles at the officers. Others started dismantling the metal constructions which had been aimed at keeping the protesters away from the entrances to Parliament. Certain protesters managed to seize officers' shields and rubber batons and handed them to one another. As is apparent from the material available in the case file, including reports by non-government organisations relating to the events in question, a large part of the demonstrators who were gathered in front of the Parliament building, away from the stairs, may have been unaware of the developments at the area leading to the entrance to Parliament. The video material relating to the incident shows the police telling the demonstrators to retreat and not to push forward. Eventually, at

approximately 10.30 p.m. the tension was somewhat defused and the police managed to push the protesters back towards the stairs.

13. The situation at the demonstration appears to have escalated again from 11.22 p.m. Some of the protesters, who were standing near the stairs to the Parliament building, jointly started attempting to break through the police cordon again, while several others managed to overcome the police cordon and the metal constructions located in front of the Parliament building. Eventually, the police used teargas and fired rubber bullets. Once the protesters receded, water cannons were used to lead them away from the area in front of the Parliament building. The events continued into the early hours of 21 June 2019. In total, over 200 individuals were injured during the events of 20-21 June 2019, including approximately eighty police officers and forty journalists.

II. INSTITUTION OF CRIMINAL PROCEEDINGS AGAINST THE APPLICANT AND IMPOSITION OF PREVENTIVE MEASURES

A. Opening of a criminal investigation in respect of the applicant and lifting of his parliamentary immunity

14. On 21 June 2019 a criminal investigation was opened under Article 225 of the Criminal Code ("organisation or management of group violence or participation therein" – see paragraph 73 below).

15. Subsequently the case against the applicant was separated and on 25 June 2019 the Office of the Prosecutor General of Georgia ("the POG") prepared a document containing the charges against the applicant. Despite being notified, the applicant did not appear before the authorities to be handed the document. It was instead served on his lawyer. The applicant was charged under Article 225 §§ 1 and 2 of the Criminal Code (ibid.) on the basis of witness statements, a report relating to the inspection of the site of the events, the evidence seized as a result of that inspection, and video material. The document described the grounds for the charges in the following terms:

> "On 20 June 2019 a demonstration was held on Rustaveli Avenue in Tbilisi, in front of the Parliament [building]. The participants demanded the resignation of the Speaker of the Parliament of Georgia and other high-ranking officials. The participants in the demonstration started to gather at around 7 p.m. and the demonstration was peaceful until 9.50 p.m.
>
> During the citizens' gathering, at approximately 9 p.m., a member of parliament, Nikanor Melia [the applicant], addressed the citizens and stated that if their demands were not granted within an hour, all of them had to move inside the Parliament building. As the demand was not granted, some of the [demonstrators], under Nikanor Melia's leadership and with his participation, [and] with a view to storming ('შეჭრის მიზნით') the Parliament palace, engaged in violent behaviour towards the police officers gathered at the front perimeter of Parliament, assaulted them while using various items as weapons, and damaged and destroyed objects belonging to the law-enforcement officers. As a result of the above-mentioned violent acts, various injuries

were received by law-enforcement officers and by citizens who had gathered peacefully to express their protest."

16. On the same day – 25 June 2019 – the POG submitted an application to Parliament, on the basis of the Constitution of Georgia and Parliament's Rules of Procedure, for the applicant's parliamentary immunity to be lifted in order to be able to proceed with the case and make a request to the Tbilisi City Court to remand him in custody. Parliament granted the application on the following day.

B. Imposition of bail subject to conditions

17. On 27 June 2019 the Prosecutor General requested the Tbilisi City Court to place the applicant in pre-trial detention on the grounds that there was a risk of his absconding, reoffending, influencing the witnesses and tampering with the process of evidence gathering. A hearing was held on the same day. During the proceedings before the court the applicant requested that bail in the amount of 10,000 Georgian laris (GEL – approximately 3,100 euros (EUR)) together with any additional conditions provided for by law be applied as an alternative to detention.

18. On the same day – 27 June 2019 – the Tbilisi City Court found that the evidence available in the case file concerning the applicant (statements by six witnesses, report on the inspection of the scene of the incident, evidence seized as a result of that investigative measure, video recordings, an expert examination and "other documents") supported "a reasonable suspicion of [the applicant's] possible commission of a criminal offence".

19. The court granted the prosecutor's application in part. It found that a real risk of absconding, tampering with evidence and reoffending existed but considered that detention would have been a disproportionate measure with regard to the aim pursued by preventive measures. It thus set bail in the amount of GEL 30,000 (approximately EUR 9,300) and imposed additional conditions. Specifically, the applicant was ordered: (a) not to leave home without receiving prior consent from the investigating authorities; (b) to abstain from making statements in public places; (c) to abstain from any kind of communication with witnesses; and (d) to surrender his passport and any other identity documents to the investigating authorities.

20. Among other arguments, the court noted the following as regards the risk of absconding and the necessity of bail:

"**Danger of absconding** [emphasis in the original]: ... The sentence to be expected if the charges [lead to a conviction] will be custodial, without an alternative. Accordingly, the argument that the risk of absconding is based on the anticipation of a severe sentence can be accepted. The second circumstance [relied on in the prosecutor's application] relates to the [applicant's] frequent travel abroad and his diplomatic privileges ... The fact that the accused has travelled abroad freely on many occasions cannot, taken alone and given his status and [professional] activities, indicate a risk of absconding. The enjoyment of the constitutional right of free movement cannot be used against the

accused if he does not have such links and influences abroad which ... will help him evade justice. However, the ... severity of the possible sentence, the history of border crossings, the financial capacity and diplomatic privileges of the accused, considered together, [do] create a reasonable suspicion that the risk of absconding is real. In this connection the court notes that despite the attempts of the investigating authority it proved impossible to hand ... the documents containing the charges directly to the applicant because he evaded the summons and it was instead given to his lawyer. Such an attitude on the part of the accused towards a request from an investigating authority creates, to an extent, difficulties in terms of his availability and a reasonable suspicion that such disobedience might recur in the future. At the same time, the court also takes into account that [the applicant] was aware of the [prosecutor's] application ... requesting the imposition of detention and ... he appeared at the hearing and did not evade the possible [detention].

... [T]he court considers that the accused has sufficient means to leave the territory of the country, he also has subjective motives to disregard the summons of the investigating authority, while the severity of the possible sentence considered together with these circumstances justifiably creates a possibility of absconding or not appearing. The court considers that detention is not a necessary counterbalance for the danger of absconding as the procedural legislation provides for other means which can successfully exclude the risk of absconding in a given case. The use of bail as a preventive measure together with additional conditions is wholly justified to neutralise such a risk and complies with the principle of proportionality. Specifically, Article 199 [paragraph] 2 of the Code of Criminal Procedure lists as examples the conditions which give the court the choice of an alternative [to detention], together with a preventive measure, when the risk of absconding exists ... One such example is the 'obligation to surrender one's passport and other identification documents'. Additionally, the list provided in Article 199 is not exhaustive and a judge can decide on other measures which [he or she] deems appropriate depending on the individual circumstances of the case. The court considers that in order to avoid the risk of the charged [individual] Nikanor Melia absconding it will be sufficient and proportionate, in addition to imposing bail, to prohibit his leaving his place of residence without the ... permission of the investigating authority and [to order] him to surrender his passport and other identification documents. The court points out that the prohibition on leaving one's place of residence is not absolute and is subject to informing the investigating authority and obtaining its authorisation ... As regards the surrender of the passport and other identification documents, ... the investigating authority will decide on the arrangements governing their use. Such types of additional obligations are efficiently used in the courts' practice and are justified in order to ensure the accused's interest in remaining at liberty."

21. As regards the risk of tampering with the process of evidence gathering, the Tbilisi City Court reasoned as follows:

"The court considers that without the use of preventive measures in respect of the accused, there is a risk of [his] influencing witnesses and accordingly a risk of [his] destroying evidence and tampering with [the process of] obtaining evidence. ... The prosecution has already questioned some of the individuals who possess information relevant to the case. The reports [containing statements] relate to, among other things, the reasonable suspicion regarding [the applicant's] commission of a criminal offence. The defence has been given full information regarding these individuals. Accordingly, the accused is aware of the substance of the information given by important witnesses in the case and of the details necessary to identify them. Considering that [he] has the possibility of contacting the witnesses and a motive to avoid responsibility, he might

try to illicitly communicate with them and to incite them to voluntarily alter their statements. It is noteworthy that one of the eyewitnesses to the incident ... indicates that [he or she] has already been subjected to influence and judgment by a group of certain individuals because of the statement given by [him or her]. ... [Given] the circumstances of the present case, the risk that the existing witnesses might change their statements or that other individuals in possession of information ... might not cooperate with the investigation because of the fear of judgment or pressure cannot be excluded. The accused, as a political leader, has a rather significant influence on a large segment of society and he can, personally or through intermediaries, tamper with the investigating authorities' process of evidence gathering by means of influencing witnesses. The court considers that in addition to bail, [this risk] can be overcome by ... the prohibition on [initiating] any contact with witnesses. [This] includes personal and direct approaches to witnesses, as well as electronic and [other] communications or such contact by means of intermediaries ..."

22. As to the risk of reoffending, the court made the following remarks:

"... The criminal offence of which Nikanor Melia is accused relates to directing and participating in the violent actions of a group. The circumstances obtaining in the country should also be taken into account, given that the question of turning a peaceful protest into a violent one is particularly sensitive. Accordingly, it is important to exclude the risk of reoffending and inciting citizens to violence ... Considering the active political activities of Nikanor Melia, and taking into account that he exudes influence on the will of numerous supporters, it is necessary to exclude the risk that he might continue allegedly directing the violent actions of a group. ..."

23. The court added that the applicant had been charged in connection with another criminal case (no information was made available to the Court in that respect) where bail without additional conditions had not proved effective to prevent the alleged commission of another offence (apparently alluding to the applicant's involvement in the events of 20-21 June 2019). This circumstance had, in the opinion of the court, justified the imposition of additional measures alongside bail, including the prohibition on making statements at public events so as to avoid the risk of influencing people and reoffending.

24. On 29 June 2019 the applicant appealed against the Tbilisi City Court's decision. He did not challenge the setting of bail but contested the imposition of part of the additional conditions as disproportionate and contrary to the Constitution of Georgia. Specifically, the applicant emphasised that despite the lifting of his immunity, his constitutional mandate as a member of Parliament had not been suspended. Accordingly, the imposition of additional restrictive measures such as the prohibition on leaving his apartment had effectively constituted an interference with his mandate, including his constitutional duty to participate in the sessions of Parliament. He further stated that the prohibition on communicating with witnesses had also been applied with respect to any "future" witnesses, rendering it inherently vague and impossible to comply with. The applicant did not request the annulment of the restriction on making public statements.

25. The Prosecutor General also appealed against the Tbilisi City Court's decision, requesting that detention be imposed in respect of the applicant as the only possible effective measure to prevent the risks cited in the court's decision from materialising.

26. On 2 July 2019 the Tbilisi Court of Appeal held an oral hearing and upheld the lower court's decision. It agreed that there existed a reasonable suspicion regarding the commission of a criminal offence and that the risks cited by the lower court were real. It noted that detention as a preventive measure should only be used as a last resort, taking into account the particular circumstances of each case. The court also emphasised the importance of ensuring the protection of the right of an accused to a presumption of innocence. Citing the cases of *Wemhoff v. Germany* (27 June 1968, Series A no. 7), *Yağcı and Sargın v. Turkey* (8 June 1995, Series A no. 319-A), *Bakhmutskiy v. Russia* (no. 36932/02, 25 June 2009), and *Arutyunyan v. Russia* (no. 48977/09, 10 January 2012), the appellate court emphasised that detention must constitute a measure of last resort and that any decision ordering it must be based on relevant and sufficient grounds to justify departure from the rule of respect for individual liberty. It then found that bail, together with additional conditions imposed on the applicant, could achieve the legitimate aim of preventing the relevant risks from materialising, as opposed to detention as requested by the Prosecutor General.

27. As regards the applicant's appeal relating to the conditions imposed alongside bail (see paragraph 24 above), the appellate court underlined that the applicant had not challenged the imposition of bail as such. The court explained that Article 207 of the Code of Criminal Procedure ("the CCP" – see paragraph 74 below) provided for the possibility of appealing against a first-instance court's decision on the application, change or annulment of a specific preventive measure. As the types of preventive measures provided in paragraph 1 of Article 199 of the CCP (ibid.) were exhaustive, the law did not provide for the possibility of challenging separately the conditions attached to bail without contesting the imposition of bail itself. The appellate court thus found that it did not have jurisdiction to consider the merits of the applicant's request regarding the conditions attached to bail.

28. In upholding the lower court's findings, the appellate court additionally ordered, in the operative paragraph of its decision, the electronic monitoring of the applicant's movements with a special tracking bracelet. The decision was final.

29. On 15 July 2019 the applicant posted bail. On an unspecified date he started wearing the electronic monitoring bracelet.

C. Period between 15 July 2019 and 31 October 2020

30. Between 15 July 2019 and 31 October 2020 all requests submitted by the applicant to be allowed to visit Parliament were granted. His whereabouts

were monitored by means of the electronic bracelet. During the period in question the applicant was present at the Parliament of Georgia on five occasions; visited headquarters of various political parties forty-eight times; held three press conferences from the headquarters of his political party; visited various broadcasters fifty times; participated in television shows, including non-political ones, forty-eight times; attended public demonstrations three times; met with supporters on three occasions; and made various private visits. The applicant also gave interviews to the media from his home.

31. On 13 September 2019 the POG circulated a public statement that on 10 September 2019 the applicant had left his home to physically participate in a talk show, despite the authorities' refusal to grant his request. According to the statement, the applicant had been summoned to be told that such conduct constituted a breach of the conditions attached to bail and could, if repeated, entail the application of stricter preventive measures.

32. It appears from the parties' submissions that on an unspecified date in March 2020 the criminal proceedings against the applicant were suspended in view of his participation in the electoral campaign for the upcoming parliamentary elections.

33. In an interview given on 15 September 2020 the applicant stated that he had been actively involved in the pre-election campaign since 5 June 2020 and that he had already met with approximately 7,000 individuals from his electorate.

34. On an unspecified date the applicant requested that the imposition of bail in respect of him be annulled, along with the condition regarding the temporary confiscation of his identity document, in the context of his participation in the parliamentary elections of 31 October 2020 (the case file does not contain a copy of the application). On 16 September 2020 the Tbilisi City Court granted the applicant's request in part. It stated that the risks which had existed at the time the preventive measure had been applied persisted and that no new arguments or evidence had been presented to justify the annulment of bail. As regards the applicant's identity document, the court noted the importance of ensuring the constitutionally guaranteed right to stand in elections and annulled the decision of the Tbilisi Court of Appeal of 2 July 2019 in so far as it related to the applicant's obligation to surrender his identity document.

35. On 31 October 2020 parliamentary elections were held. Exit polls reported that the ruling party had garnered the majority of the votes. The applicant's party was projected as the runner-up, earning him a renewed mandate in Parliament.

D. Removal of the electronic tracking bracelet

36. On 1 November 2020 the applicant gave a speech at a demonstration held in front of the Parliament building to protest against the projected outcome of the parliamentary elections held the previous day on account of alleged irregularities on election day. During the speech he publicly removed the bracelet he had been wearing since the appellate court's final decision of 2 July 2019 (see paragraph 26 above) and tossed it away. He made the following statement:

> "This is a symbol of injustice. This is a bracelet [of violence] which I will no longer wear. This is out of the question. I know that whether I am imprisoned or I stand with you in the fight in the coming days, the nation will be victorious."

E. Increase of the amount of bail

37. On 2 November 2020 the POG applied to the Tbilisi City Court with a request to increase the amount of bail and set it at GEL 100,000 (approximately EUR 31,000). It also requested that the court prohibit the applicant from leaving the country without the prosecution authorities' prior approval. In reply, the applicant requested that the preventive measures be annulled altogether (the case file does not contain a copy of the relevant submission).

38. On 3 November 2020 the Tbilisi City Court granted the prosecutor's application in part. The court took note of the bail and the related conditions imposed on the applicant by the judicial decisions of 27 June and 2 July 2019 (see paragraphs 19 and 26-28 above). It also stated that under Article 200 § 7 of the CCP (see paragraph 74 below), a breach of bail conditions or the law by an accused would entail the application of a stricter measure. As regards the applicant's conduct and the grounds for applying a stricter measure in his case, the court explained its approach as follows:

> "The defence does not contest, and the court considers it established, that [the applicant] had been informed of the legal consequences to be expected in the event of breaching the conditions [attached to the] monitoring [decision]. Despite this, on 1 November 2020, [he] deliberately breached the condition attached to the preventive measure in ... front of the Parliament building [when he] publicly removed the electronic monitoring bracelet and tossed it away. The accused had been aware that this action of his would legally result in the application of a stricter preventive measure, as he himself stated during his public speech.
>
> The application and the information submitted by the prosecution reveal that the accused breached the condition attached to the preventive measure in public. The court emphasises that the breach took place in the presence of multiple individuals, which indicates [the applicant's] attitude towards the law and public order. The breach in question publicly expressed [his] disrespect for the administration of justice and [his] non-compliance with the judicial decision. The court emphasises that in instances involving such a breach, the measures already in place have to be made harsher and

> actions that are not only stricter but more effective have to be selected to ensure that the aims of a preventive measure are complied with in the future."

The court thus increased the amount of bail and ordered the applicant to deposit GEL 40,000 (approximately EUR 12,400). The Tbilisi City Court ordered that the applicant be acquainted with the content of Article 200 § 7 of the CCP (see paragraph 74 below). The applicant was given fifty days to post bail. The decision could be appealed against "together with the final decision" (შემაჯამებელ გადაწყვეტილებასთან ერთად).

39. The court also imposed a prohibition on leaving the country without the prosecution authorities' prior approval. It annulled the remaining conditions imposed on the applicant by the decisions of 27 June and 2 July 2019 (not to leave home without receiving prior consent from the investigating authorities; not to make statements in public places; prohibition of any kind of communication with witnesses; and the wearing of the electronic monitoring bracelet).

F. Detention order of 17 February 2021

40. The time-limit for depositing the amount of bail indicated in the decision of 3 November 2020 expired on 24 December 2020. The applicant was given an additional week for that purpose.

41. On 27 December 2020 the applicant was elected chairman of the UNM (see paragraph 5 above).

42. On 5 February 2021 the POG stated that it would lodge an application with the court requesting that bail be changed to detention if the applicant failed to post the amount of bail indicated.

43. On the same day – 5 February 2021 – the applicant made the following statement:

> "I will not pay and you will not be able to arrest me (ვერ დამიჭერთ). I greatly respect the State institutions, but ... all these institutions [the POG, the courts, and Parliament] are in the pocket of [the founder of the ruling Georgian Dream party]. I beg your pardon but I have no moral right to participate in this fraud, this farce. ...
>
> For two months, together with colleagues, I have been requesting that [Parliament] terminate our mandates [apparently as a form of protest against the outcome of the parliamentary elections of 31 October 2020]. What the [POG] needs to do ... they know better than me. They have already done this once – they need to send that kind fellow to Parliament and request what they have already requested once with ninety-two people pressing the button [apparently referring to the initial lifting of his immunity – see paragraph 16 above]. They have to do the same. This way they will terminate my mandate, which is what I have been begging for but they have not done so. Therefore, what Georgian Dream will do is for them to decide. My will has been expressed. I simply could not have acted otherwise."

44. On 11 February 2021 the applicant publicly refused to pay the amount set as bail and warned that no other person should post it on his behalf. He

stated that the refusal was caused by his protest against an unlawful decision against him and that it was a matter of principle.

45. On 13 February 2021 the leader of the parliamentary majority (of the ruling Georgian Dream party) held a press conference and announced that his party had decided to authorise the lifting of the applicant's immunity with a view to his possible pre-trial detention if he failed to post the bail. He called on the applicant to take a decision "prompted not by a provocative agenda but [by] respect towards the laws of his country".

46. On 16 February 2021 the Public Defender of Georgia (an independent body mandated by the Constitution and the Organic Law on the Public Defender to oversee the observance of human rights and fundamental freedoms in Georgia) issued a statement. She urged the POG to reconsider its stance and Parliament not to grant the application for the lifting of the applicant's immunity. Among other things, the Public Defender noted as follows:

> "... [T]he use of a preventive measure requires that its objectives and grounds be sufficiently reasoned. Specifically, the prosecution [service] must prove that the particular form of preventive measure is necessary because the defendant might fail to appear in court, abscond, destroy important information for the case or commit a new crime.
>
> Non-compliance with a preventive measure by an accused should not be an automatic ground for imposing detention or any other strict preventive measure. When deliberating on the imposition of detention in respect of Nikanor Melia, the main subject of the assessment should be whether today there exists a need to restrict the defendant's conduct and if this restriction serves the interests of justice, especially when more than eighteen months have passed since the opening of the criminal proceedings against [him], the investigation has been completed and the case is currently being considered at the merits stage."

47. On the same day – 16 February 2021 – Parliament granted the application lodged by the POG and allowed it to request that the Tbilisi City Court impose the measure of pre-trial detention on the applicant.

48. On the same day the Prosecutor General applied to the Tbilisi City Court seeking an order for the applicant's detention. The application was motivated by the applicant's repeated "deliberate" failure to post bail. It was argued that increasing the amount of bail had proved ineffective to ensure the applicant's compliance with the "objectives of the preventive measure" and that a further increase in the amount of bail would not "guarantee [the applicant's] behaviour in compliance with the law". The application referred to Article 200 § 5 of the CCP (see paragraph 74 below) and stated that it had been the obligation of the POG to request that stricter preventive measures be ordered in such cases. It emphasised that the aim of the bail measure had been to ensure the appropriate conduct of the accused in the context of achieving the aims provided for in Article 198 of the CCP. In that context, the applicant's failure to comply with conditions attached to the preventive measure and his public statements had been sufficient to exclude his

compliance with the aims of the preventive measure. The application noted that the "analysis of information available in the criminal case file unequivocally confirm[ed] the existence of relevant and persistent factual and formal grounds for the [application of] a preventive measure". It then briefly referred to the existence of evidentiary material and grounds regarding the various risks present in the case at hand (see paragraphs 18 and 20-22 above), adding that the applicant had demonstrated his negative attitude towards the authorities and towards the official requests and procedures imposed by the domestic courts. As regards the formal grounds justifying the application of stricter preventive measures, the Prosecutor's application stated, among other things, that "the risk of absconding, destruction of information important for the case, influencing of witnesses and reoffending ... [were] persistent and relevant given several grounds, including: the nature of the criminal offence, its seriousness ..., the manner of its commission; the personal characteristics of the accused; the factor of avoiding possible strict punishment; [risk] of prohibited communication with witnesses and their influencing; [and] his negative attitude towards the investigating authority and the official/legal requests of the courts or participation and compliance with such." The POG concluded that, taking into account the failure of the less strict measures to have a "containment" (შემაკავებელი) effect, pre-trial detention was the only preventive measure which could attain the aims provided for in Article 198 of the CCP (see paragraph 74 below).

49. On 17 February 2021 the Tbilisi City Court granted the application by the POG. It took note of the earlier judicial decisions of 27 June 2019, 2 July 2019 and 3 November 2020 which had authorised the application of preventive measures in the context of the criminal proceedings pending against the applicant. Taking into account the argument regarding the applicant's refusal to deposit the bail, and relying on Article 200 §§ 5 and 7 of the CCP (see paragraph 74 below), the court ordered that a stricter measure – pre-trial detention – be imposed in respect of the applicant. The court's decision was reasoned as follows:

> "Nikanor Melia [the applicant] was charged under paragraphs 1 and 2 of Article 225 of the Criminal Code in relation to the criminal case no. 009230619001, namely in respect of the management of a group activity accompanied by violence, raids, damage to or destruction of another individual's property, armed resistance to and assault on representatives of public authorities and [in respect of] participation [in such an activity].
>
> The decision of 27 June 2019 [adopted] by the Chamber of the Criminal Cases ... of the Tbilisi City Court applied in respect of the accused, Nikanor Melia a preventive measure of bail in the amount of 30,000 (thirty thousand) [Georgian] laris [and] the time-limit to post it was set at 20 (twenty) days. In addition to the preventive measure [the applicant] was barred, based on paragraph 2 of Article 199 [of the Code of Criminal Procedure] from: leaving his residence (home) without informing the investigating authority and obtaining their permission; making public statements in places of civic gathering; any kind of communication with witnesses; and he was also imposed an

obligation to surrender his passport and any other identity documents to the investigating authorities.

The decision of 2 July 2019 of the Tbilisi Appellate Court dismissed the appeals lodged by the Prosecutor General of Georgia and the applicant's lawyer ... Electronic monitoring was additionally used in respect of the [applicant].

The decision of 3 November 2019 [adopted] by the Chamber of the Criminal Cases ... of the Tbilisi City Court granted, in part, the application lodged by the prosecutors ... and the preventive measure of bail applied in respect of the [applicant based on] the decisions of 27 June 2019 and 2 July 2019 ... was made stricter ... and the amount was increased by 40,000 (forty thousand) laris, to the [total] of 70,000 laris. The time-limit for [the applicant] to post the bail amount was set at 50 (fifty) days; he was also barred from leaving the State borders without informing the investigating authority and obtaining their permission.

On 16 February 2021 the Prosecutor General of Georgia ... lodged an application to the Tbilisi City Court and requested that the preventive measure of bail applied in respect of the accused be changed to a stricter measure – detention, indicating the following as grounds [for the request]: Nikanor Melia deliberately failed to post the bail amount indicated by the court to the relevant account, nor did he ensure it with a property of equivalent value. The accused publicly and demonstratively, more than once, stated that he would not comply with the court's decision and that he would not pay the bail amount. In the present case there is a fact of the improper behaviour by the accused, the failure to comply with conditions attached to a preventive measure and the failure to pay [the bail amount], which is in conflict with the legitimate aims of the preventive measure applied and creates the necessity of applying a stricter measure [of] detention in respect of the accused (see the application [paragraph 48 above]).

During the hearing the prosecutors ... supported the application and requested that the preventive measure of bail applied in respect of the accused Nikanor Melia be substituted with a stricter preventive measure – detention.

During the hearing the lawyers of the accused ... disagreed with the application of the prosecution and requested that the preventive measure be annulled (see the application, minutes of the hearing).

The court considered the application, heard the parties' explanations, acquainted itself with the material presented, assessed whether the application was reasoned [and the presence of] the legal grounds for amending the preventive measure and found that the Prosecutor's application should be granted because of the following circumstances:

The court notes that in order to apply a preventive measure there must exist factual (evidentiary) and formal (procedural) grounds. Factual grounds for the preventive measure are concerned with evidence, whereas formal (procedural) grounds relate to the prevention of the risks provided for in Article 198 § 2 of the [CCP].

Under Article 206 § 8 [of the CCP], a party is entitled to apply to a magistrate judge, on the basis of the location of the investigation, for the amendment or annulment of a preventive measure.

Under paragraph 9 of the same Article, in cases relating to the application, change or annulment of a preventive measure the burden of proof is always on the prosecution.

Under Article 200 § 5 of the CCP, if an accused does not deposit the amount [or property of equivalent value] indicated in respect of bail within the set time-limit [to the account of the National Enforcement Bureau], a prosecutor is to apply to a court for the application of a stricter preventive measure. As can be seen from the substance of

> paragraph 7 of the Article in question, if an accused who had been granted bail breaches conditions attached to that measure or specified by law, bail will be changed to a stricter preventive measure by a decision of a court based on an application by the prosecutor.
>
> [The applicant] was aware of the legal implications of the breach of bail conditions, in spite of which he publicly claimed that he would not pay the amount set as bail and would not comply with the obligation imposed by the court. This reflects his attitude towards the law [and his] disrespect ... towards judicial decisions and the administration of justice.
>
> In the present case he did not fulfil the obligation imposed on him by [the court's] decision, purposefully avoided the fulfilment of the obligation imposed in accordance with the law, [and] violated the conditions accompanying bail.
>
> Having regard to all the foregoing, there exists a lawful ground for granting the application [by the prosecution] to change the preventive measure of bail to the stricter measure of detention."

50. The decision indicated that it could be appealed against together with the "final decision" (შემაჯამებელი გადაწყვეტილება) of the court. The applicant lodged an appeal, which was rejected as inadmissible. The appellate court explained that the appeal to which Article 207 of the CCP referred (see paragraph 74 below) was not applicable in respect of a trial court's decision regarding preventive measures once a criminal investigation was terminated and the case was sent for examination on the merits. Any such decision could only be appealed against together with the final judgment of the trial court.

G. The applicant's arrest

51. On 18 February 2021 the Prime Minister resigned, citing his disagreement with his political party's demand to implement the outstanding judicial decision ordering the applicant's detention. According to his statement, even if the decision might have been lawful, it could, in his opinion, only have exacerbated the political tensions in the country.

52. On the same day – 18 February 2021 – various national and international figures made statements urging the ruling party to show restraint and de-escalate the political tensions in the country.

53. The enforcement of the detention order was postponed until the formation of the new government. Parliament confirmed the new Prime Minister and his government on 22 February 2021.

54. On 23 February 2021 the applicant was arrested at the UNM headquarters. Hundreds of his supporters, along with other politicians, had gathered there. The video footage of the events shows that the police gave a warning to the people gathered there not to hinder the arrest process and the implementation of the relevant judicial decision. The applicant's supporters were asked to leave the building. A few individuals chose to leave the building and were let out by the police but the majority stayed in the building. The applicant was given time to voluntarily comply with the decision ordering his detention and "avoid escalating the situation". As he did not

come out of the building, the police proceeded to enforce the detention order. According to reports by local and international non-governmental organisations denouncing the applicant's arrest, the police used teargas during the process. The applicant was transferred to Rustavi prison no. 12 and placed in pre-trial detention.

55. On the same day – 23 February 2021 – the Public Defender visited the applicant in the Rustavi prison no. 12. She stated as follows:

> "I consider that [the applicant's] pre-trial detention, as a preventive measure, was not based on any reasons, and I consider that the political component (მდგენელი) is predominant compared with the legal component behind his arrest."

56. The applicant's arrest was followed by statements by multiple domestic non-governmental organisations, international governmental and non-governmental organisations, diplomats and foreign government officials and institutions, and other international political figures. Among other things, they criticised the arrest process and warned against the risk of politicised justice and the potential negative impact of the applicant's arrest on the tense political environment in the country.

57. On 25 February 2021 the POG made a public statement "owing to heightened public interest". It noted that the applicant's "arrest had never been an end in itself for the prosecution service". The statement referred to the initial imposition of bail on the applicant, together with electronic monitoring, and his removal of the electronic bracelet on 1 November 2020 and the subsequent judicial decisions. Referring to Article 200 § 5 of the CCP, the POG explained that the failure of the accused to post bail had been the grounds, under the CCP, for the prosecutor's obligation to apply to a court and request the application of a stricter preventive measure. The applicant's refusal to post bail, despite the extension of the relevant time-limit, along with his public statements on the matter, had demonstrated his attitude towards the administration of justice and had prompted the POG to apply to a court for the imposition of a stricter measure. The POG also noted that the applicant's actions had constituted an encouragement of law-breaking behaviour. The POG expressed readiness, in the event that the applicant complied with the decision of 3 November 2020 imposing bail on him, "to apply to the Tbilisi City Court for the preventive measure to be changed from detention to bail".

58. On 12 March 2021 I.K., chairman of the ruling Georgian Dream party, stated that the stance of the former Prime Minister and the party towards the applicant's arrest had been identical up until 5 p.m. on 17 February 2021 (the time when the trial court's detention order was made) and that it had "suddenly changed" after 5 p.m. On 14 March 2021 I.K. clarified the statement, explaining that given the fact that the court had been called upon to determine the question of whether the detention of a politician was called for, the ruling party had naturally discussed the two possible outcomes that could have followed the court's hearing. Such discussions had been aimed at

having the party's political response ready for both scenarios once a decision had been adopted.

59. In a telephone interview given on 20 March 2021, the applicant called his refusal to post bail "a political act" given, in his view, the unfairness of the decision imposing it, and stated that the future payment of the amount or any similar compromise was "out of the question".

60. On 13 April 2021 the applicant's detention was reviewed by the judge, on the basis of Article 230[1] of the CCP (see paragraph 74 below). A partial recording of the hearing was made available to the Court. It appears that the microphone was placed on the applicant's side, as a result of which the judge's and the prosecutor's statements were barely audible. Among other things, the applicant contested the legal basis for the criminal proceedings against him and the relevant decisions. He maintained that he had initially complied with the conditions attached to the bail because the ruling party had proposed to reform the electoral system, but had changed his mind following the authorities' failure to pass the reform (see *Makarashvili and Others v. Georgia*, nos. 23158/20 and 2 others, §§ 5-6, 1 September 2022). He stated that since September 2019 he had breached the bail conditions on numerous occasions (by leaving his home in the absence of authorisation) but that the POG had ultimately decided to take action against him for removing the bracelet, the aim being, in the applicant's submission, to punish him for his political boycott of Parliament, and to use his detention as a political bargaining chip. While contesting the fact that the POG had not asked the judge, during the hearing in question, to change the preventive measure of pre-trial detention to bail, the applicant stated that he would not, in any event, pay any amount of bail even if ordered to do so and requested that he be unconditionally released.

H. The applicant's release

61. On 18 April 2021 the President of the European Council made a proposal to the representatives of Georgian political parties to sign an agreement for a way ahead to end the political standoff between the parties following the 31 October 2020 elections which were alleged by the opposition to have been accompanied by serious irregularities, causing the opposition to boycott Parliament. The situation appears to have been exacerbated by the applicant's arrest. The proposed document aimed to end the ongoing political dispute and to advance Georgia's democratic and rule-of-law agenda through various reforms.

62. On 19 April 2021 the ruling party and some of the opposition parties (not including the applicant's party) signed the agreement in question. The signatories agreed, among other things, to enter Parliament and to fully participate in parliamentary business upon signing the agreement. The parties undertook various commitments in that respect. For instance, section 1 of the

agreement referred to "addressing perceptions of politicized justice" as follows:

> "In the interest of Georgia's political stability and in order to implement this agreement, the signatories commit to address, within one week of signing this agreement, the two cases of perceived politicized justice [one of which was widely reported as the applicant's case], either by an amnesty and/or by taking such steps as to produce an equivalent outcome. In particular, within one week of signature of the agreement, a party represented in Parliament shall initiate an amnesty law for all violations and convictions stemming from the 19-21 June 2019 protests.
>
> Moreover, Parliament shall address the perception of politicized justice through legislation and amending the Rules of Procedure as necessary, to require a higher than simple majority threshold for the lifting of parliamentary immunity."

Section 3 of the agreement included a commitment to undertake an "ambitious judicial reform".

63. On 21 April 2021 I.K. (see paragraph 58 above) noted, apparently in relation to the applicant's initial refusal to accept the posting of bail by the European Union ("the EU") on his behalf within the context of the agreement of 19 April 2021 (see the previous paragraph), that in circumstances where the applicant was refusing to accept the proposal to have bail posted in his name, it was not likely that he would accept a "pardon" (also referred to as "mercy" in another phrase) by the ruling party in the form of an amnesty. I.K. stated that the Amnesty Act would nevertheless be passed. On 22 and 28 April 2021 I.K. repeated the substance of the statement, adding, on the respective dates, that the applicant had committed the "gravest crime" and that the party would "pardon the violent (მოძალადე) Melia" despite his refusal to be amnestied.

64. On 8 May 2021 the EU had GEL 40,000 deposited in the account of the National Bureau of Enforcement with a view to covering the amount of bail imposed on the applicant by the decision of 3 November 2020 (see paragraph 38 above).

65. The following day – 9 May 2021 – the POG applied to the Tbilisi City Court to have the preventive measure of pre-trial detention changed to bail. The application referred to the emergence of new material circumstances and evidence "demonstrating compliance [by the applicant] with the condition of a less restrictive preventive measure [such as] bail". Noting that non-compliance with that condition had been the ground for the previous judicial decision to remand the applicant in custody, the POG stated that the bail of GEL 40,000 which had been deposited in the applicant's name in the account of the National Bureau of Enforcement had demonstrated the applicant's fulfilment of the bail conditions and his readiness for future compliance, indicating that a less restrictive measure such as bail could achieve the aims previously sought by pre-trial detention.

66. On 10 May 2021 the Tbilisi City Court upheld the application of the POG and the applicant was released. The judge agreed with the prosecutor's application without elaborating any further.

III. SUBSEQUENT DEVELOPMENTS

67. On 7 September 2021, within the context of the agreement of 19 April 2021 (see paragraph 62 above), Parliament passed an Amnesty Act in respect of the events of 20-21 June 2019. The amnesty would apply to any individual who did not refuse its application to their case (see paragraph 72 below).

68. On 9 September 2021 the prosecutor in the applicant's case made a public statement. He noted, among other things, the following:

> "On 7 September [2021] the Amnesty Act was passed [and] today it is in force and has legal power. During today's hearing the judge determined, in accordance with the procedure provided for by law, the position of the defence regarding the application of the Act. ... [T]he defence used their right to a fair trial and rejected the application of the Act. This means that this particular criminal case will proceed under the standard procedure ... Additionally, there was a discussion regarding the application of the Amnesty Act, which provides for the right of an accused to withdraw his or her written rejection at any stage of the proceedings, whether during the consideration of the case or, [if] a judgment convicting him or her is delivered, at any stage of serving the sentence, which automatically means that, in accordance with the Act, the judge will release him or her from criminal responsibility and from the sentence. In our case as well, the accused has the right to benefit from this [opportunity] at any time."

69. The criminal proceedings against the applicant appear to be ongoing.

70. On 21 May 2021, in the context of the proceedings before the Court, the applicant's lawyer commented on the notification of the application to the Government and on the questions put to the parties. He noted that the questions had referred to the cases of *Tymoshenko v. Ukraine* (no. 49872/11, 30 April 2013) and *Navalnyy v. Russia (no. 2)* (no. 43734/14, 9April 2019), stating that this had been "very important" and that the Court had also put a question under Article 18 of the Convention, which normally came into play in cases where a government used the law-enforcement machinery for illegitimate purposes, such as political persecutions and arrests. The lawyer noted, in relation to the expectations regarding the proceedings before the Court, that he would "naturally continue to protect [the applicant's] interests and, accordingly, ... try to prove that [he] was persecuted based on political motives and that his detention was the government's attempt to neutralise a political opponent".

71. On 23 July 2021 the applicant announced his candidacy for the election of the mayor of Tbilisi. He lost the bid in the second round.

RELEVANT LEGAL FRAMEWORK

72. The Amnesty Act of 7 September 2021 provides as follows:

Section 1

"1. All individuals who have committed a criminal offence relating to the events of 20-21 June 2019 ... and who do not refuse, by means of the procedure provided for in this Act, the application of the amnesty provided for in this section, shall be released from criminal liability and their sentence, [including] a suspended sentence.

2. The amnesty provided for in this section shall also apply to individuals who ... have attempted or prepared a criminal offence provided for in this section.

3. An individual to whom the amnesty ... is applied shall not have a criminal record. ..."

Section 2

"The amnesty provided for in section 1 of this Act shall not apply to criminal offences under Articles 117 [Intentional infliction of serious harm to health] and 144^1-144^3 [torture, threat of torture, humiliating or inhuman treatment] of the Criminal Code."

Section 3

"...

2. [I]f an amnesty is applied to an accused person ..., a preventive measure applied in respect of him or her shall be annulled.

3. If the criminal proceedings have ended, the first-instance court which delivered the judgment may, after assessing the circumstances provided for in sections 1 and 2 of this Act, take a decision regarding the application of the amnesty ... by means of an oral hearing or written proceedings. ..."

Section 4

"1. Criminal proceedings shall continue in respect of an individual to whom an amnesty provided for in this Act is not applied. The individual concerned shall exercise his or her right to a fair trial. ...

2. An individual who has been convicted at first instance shall have a right to withdraw, at any time and in writing, his or her [prior] written refusal to have the amnesty provided for by this Act applied to him or her. ..."

73. Article 225 of the Criminal Code, as it stood at the material time, provided as follows:

"1. The organisation or management of a group activity accompanied by violence, raids, damage to or destruction of another individual's property, the use of arms, or armed resistance to or assault on representatives of public authorities, shall be punished by six to nine years' imprisonment.

2. Participation in the conduct specified in paragraph 1 of this Article shall be punished by four to six years' imprisonment.

Note: for the purposes of the present provision, arms are understood to include firearms, ammunition, explosive or flammable substances, explosive devices, lachrymatory, radioactive, nerve-paralysing or poisonous substances, cold weapons or any device or item which can be used to damage or destroy living or other objects."

74. The relevant provisions of the Code of Criminal Procedure, as they stood at the material time, provided as follows:

Article 198 – Aims and grounds for applying a preventive measure

"1. A preventive measure shall be applied with the aims of ensuring that the accused appears in court, preventing his or her further criminal activities, and ensuring the enforcement of the judgment. Neither pre-trial detention nor any other preventive measure may be applied in respect of an accused if the purposes referred to in this paragraph can be achieved through other less severe preventive measures.

2. The grounds for applying a preventive measure shall be a reasonable assumption that the accused will abscond, destroy important information for the case or commit a new offence.

3. When filing an application for a preventive measure to be applied, the prosecutor shall provide reasons justifying the appropriateness of the measure requested and the inappropriateness of another, less severe measure.

4. A court may impose detention as a preventive measure on the accused only when the aims provided for by paragraph 1 of this Article cannot be achieved by the application of other less severe measures.

5. When deciding to apply a preventive measure and the specific type of measure to apply, the court shall take into consideration the personality, occupation, age, health status, marital and material status of the accused, compensation for any damage caused to property, breaches of any previously applied preventive measures, and any other circumstances. ..."

Article 199 – Types of preventive measure

"1. The preventive measures are the following: bail, an agreement not to leave [a specified territory] and to behave properly, personal surety, supervision by commanding officers of the behaviour of a military service person, and detention.

2. Along with a preventive measure, the following may also be applied in respect of an accused: an obligation to appear in court at a specified time or upon a summons; a prohibition on engaging in certain activities or pursuing a certain profession; an obligation to report to a court, the police or any other State body daily or at other intervals; supervision by an agency designated by the court; electronic monitoring; an obligation to be at a certain place during certain hours or without [the hours being defined]; a prohibition on leaving or entering certain places; a prohibition on meeting certain persons without special authorisation; an obligation to surrender a passport or any other identity document; or any other measure defined by a court which is necessary to achieve the aims of the preventive measure. ..."

Article 200 – Bail

"1. Bail consists of a monetary sum or immovable property. A monetary sum shall be deposited by the accused or by another person on his or her behalf or in his or her favour in the deposit account of the ... National Bureau of Enforcement, with a written undertaking given to the court that the accused will behave appropriately and that he or she will appear before the investigator, prosecutor or court in a timely manner. Any immovable property deposited instead of a monetary sum shall be subjected to a freezing order. A report shall be made on receipt of bail; one copy of the report shall be kept by the bailor.

2. When filing an application with a court requesting bail as a preventive measure against the accused, the prosecutor shall indicate the amount of the bail and the time-limit for posting it. ...

3. Before posting bail, the bailor shall be warned about the potential consequences in the event of non-performance of the conditions set out in the written obligation, referred to in paragraph 7 of this Article.

...

5. If the accused fails, within the specified period, to deposit the amount of bail ... or the immovable property, the prosecutor shall file an application with a court requesting that a stricter preventive measure be applied.

...

7. If the accused against whom bail has been applied as a preventive measure violates the condition for applying such a measure or [breaches] the law (ამ ღონისძიების გამოყენების პირობა ან კანონი), the court, upon an application by a prosecutor, shall deliver a decision replacing bail with a stricter preventive measure. By the same decision, the monetary sum posted as bail shall be transferred to the State budget, while immovable property shall be made the subject of enforcement procedures ... to ensure the recovery of the bail.

..."

Article 205 – Pre-trial detention

"1. Pre-trial detention, as a preventive measure, shall only be applied when it is the sole means to prevent the accused from:

(a) absconding and interfering with the administration of justice;

(b) interfering with the collection of evidence;

(c) reoffending.

2. The overall length of the accused's pre-trial detention shall not exceed nine months ...

3. The period of detention of the accused pending the opening of a pre-trial conference shall not exceed sixty days. After the expiry of that period, the accused shall be released from detention, except in the situation provided for by Article 208 § 3 of this Code. ..."

Article 206 – Application, change and annulment of preventive measures

"...

8. A party may submit an application for the change or annulment of a preventive measure in respect of an accused with a magistrate judge on the basis of the location of the investigation. The magistrate judge shall decide, without an oral hearing, on the admissibility of the application within twenty-four hours. In particular, the magistrate judge shall decide what new, essential issues have been raised and evidence presented which may indicate the possibility of changing or annulling the preventive measure [which had been] applied. The magistrate judge shall give a decision on the admissibility of an application. If an application is found to be admissible, the court shall hold an oral hearing within the time-limits provided for in this Code and in accordance with the rules and standards provided for in this Article.

9. When reviewing the issue of the application, change or annulment of a preventive measure, the burden of proof shall, in all cases, be on the prosecution."

Article 207 - Procedure for appealing against a decision on the application, change or annulment of a preventive measure

"1. A decision on the application, change or annulment of a preventive measure may be the subject of a one-off appeal, within forty-eight hours, by the prosecutor, the accused and/or his or her defence lawyer before the investigation panel of a court of appeal. The appeal shall be lodged with the court that delivered the decision, and [that court] shall immediately forward the appeal and related material to the relevant court [of appeal] according to [territorial] jurisdiction. Appealing against a decision shall not suspend its enforcement. ...

5. If an appeal is found to be admissible, the judge shall hold an oral hearing within the time-limit and in the manner established by this Code. The judge may review an appeal without an oral hearing [if it] does not concern a decision regarding a preventive measure. ...

7. A decision delivered under this Article shall be final and may not be appealed against. ..."

Article 230[1] – Deciding on the question of detention as a preventive measure during a hearing on the merits

"1. If detention was imposed against the accused as a preventive measure, the presiding judge shall, before delivering the judgment [and] on his or her own initiative, periodically, [and] at least once every two months, review the necessity of keeping the accused in detention. The two-month period shall start to run from the day when the judge conducting the preliminary hearing takes the decision to continue the detention. When deciding the issue referred to in this paragraph, the court shall be guided by the procedure and standard established under Article 206 of this Code. ..."

THE LAW

I. PRELIMINARY OBJECTIONS

A. The parties' submissions

1. The Government

75. The Government submitted that the applicant had abused the right of individual application and that the relevant complaints were manifestly ill-founded. Specifically, in the Government's submission, the applicant had deliberately failed to comply with a judicial decision imposing an obligation to post bail and had refused to accept the posting of bail on his behalf. He had also rejected the application of the Amnesty Act of 7 September 2021 to his case (see paragraph 72 above). Accordingly, the applicant had "artificially" created the legal basis for his allegations before the Court in order to advance his own political agenda and the actual object and purpose of the application had been political: to bring about the applicant's pre-trial detention in order

to portray him as a victim persecuted by the government. The Government additionally stated that the applicant's lawyer had discussed in the media the documents received from the Court when notice of the application had been given, mentioning the case-law references contained in the questions put to the parties. He had stated that the Court was reviewing the present application in the light of its judgments in *Tymoshenko v. Ukraine* (no. 49872/11, 30 April 2013) and *Navalnyy v. Russia (no. 2)* (no. 43734/14, 9 April 2019), which were referred to in the relevant questions.

76. The Government also submitted that the matter had been resolved given the applicant's release from pre-trial detention, his return to active political life by having participated in the mayoral elections (see paragraph 71 above), and the possibility of having the Amnesty Act applied in respect of the criminal proceedings against him.

2. The applicant

77. The applicant stated that the conditions set out in the Court's case-law for an application to be found to be an abuse of the right of application had not been met in the present case. In particular, his lawyer had answered questions from journalists regarding the case in the context of the media interest sparked by the notification of the application to the Government. In that connection, the lawyer had only mentioned the content of a public document, having noted the importance of the questions put to the parties by the Court. No other mention of the proceedings had been made since that event. By contrast, it had been members of the ruling party who, according to the applicant, had hinted that by applying to the Court, he had been fighting against his own country, and had thereby portrayed the submission of the application as a disgraceful act. As regards his alleged non-compliance with the law in the context of the bail order, he had considered the decision of 3 November 2020 unlawful and unfair and had merely tried to fight against injustice in his capacity as chairman of the largest opposition party in circumstances where there were fundamental problems regarding the independence of the justice system in the country.

78. As concerns the question of whether the matter had been resolved at domestic level, the applicant maintained that the authorities had not admitted to a violation of his rights under the Convention on account of his pre-trial detention. Furthermore, the applicant stated that the circumstances of the case pointed to a link between the ordering of his pre-trial detention on 17 February 2021 and the political agenda of the ruling party and, therefore, raised important matters of principle requiring that the matter be addressed by the Court.

B. The Court's assessment

79. The Court will address, firstly, the objection relating to the abuse of the right of application and, secondly, the objection that the matter has been resolved on account of the applicant's release and/or the adoption of the Amnesty Act.

1. Abuse of the right of application

(a) General principles

80. The Court reiterates that the implementation of Article 35 § 3 (a), which allows it to declare inadmissible any individual application that it considers to be "an abuse of the right of individual application", is an "exceptional procedural measure" and that the concept of "abuse" refers to its ordinary meaning, namely the harmful exercise of a right by its holder in a manner that is inconsistent with the purpose for which such right is granted (see *S.A.S. v. France* [GC], no. 43835/11, § 66, ECHR 2014 (extracts), and *Khachaturov v. Armenia*, no. 59687/17, § 70, 24 June 2021). In that connection, the Court has noted that for such "abuse" to be established on the part of the applicant it requires not only manifest inconsistency with the purpose of the right of application but also some hindrance to the proper functioning of the Court or to the smooth conduct of the proceedings before it (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 65, 15 September 2009, and *Podeschi v. San Marino*, no. 66357/14, § 86, 13 April 2017).

81. The Court has applied this provision in four types of situation (for a summary and references relating to such situations, see *S.A.S. v. France*, cited above, § 67). The Court has specified that an application is not an abuse of the right of application merely because of the fact that it is motivated by the desire for publicity or propaganda (see, for instance, *McFeeley v. the United Kingdom*, no. 8317/78, Commission decision of 15 May 1980) unless it is clearly unsupported by evidence or is outside the scope of the Convention (see *Buscarini and Others v. San Marino*, no. 24645/94, Commission decision of 7 April 1997). The situation is different where the applicant, driven by political interests, gives an interview to the press or television showing an irresponsible and frivolous attitude towards proceedings that are pending before the Court (see *Miroļubovs and Others*, cited above, § 66).

(b) Application of these principles to the present case

82. Turning to the circumstances of the present case, the Court observes that the Government's objection has two interrelated limbs: the first concerns the argument that the applicant had attempted to use the proceedings before the Court for political gains at domestic level and the second relates to the alleged "artificial" creation of the subject matter of the complaint.

83. In so far as the first limb of the Government's objection is concerned, the Court emphasises, at the outset, that it is not its role to examine disputes over internal politics (see *Georgian Labour Party v. Georgia* (dec.), no. 9103/04, 22 May 2007) or to assess whether the applicant gained any political advantage by submitting the present application to the Court. What it can examine is, as noted above, whether the applicant's or his representatives' behaviour was manifestly contrary to the purpose of the right of individual application as provided for in the Convention and at the same time impeded the proper functioning of the Court or the proper conduct of the proceedings before it.

84. In this connection, the Court observes that the applicant's representatives did discuss in the media the content of the questions put to the parties by the Court. However, the document containing the questions was, in any event, accessible to the public. As for the views expressed by the representative on the possible implications of the case-law references cited in the relevant questions, the Court does not consider that the discussion went beyond an expression of the representative's professional opinion regarding the subject of the present proceedings in response to the media interest at the time (see paragraph 70 above; see also *Gherardi Martiri v. San Marino*, no. 35511/20, §§ 82-83, 15 December 2022). The Court thus concludes that the contested behaviour was not contrary to the purpose of the right of application. The Government's related objection must therefore be dismissed.

85. As concerns the second limb of the Government's objection alleging the absence of a genuine allegation under the Convention, it relies on two main arguments. The first relates to the applicant's refusal to have the Amnesty Act of 7 September 2021 applied to his case, while the second suggests that his pre-trial detention was an obvious consequence of his own deliberate conduct.

86. The Court observes that the Amnesty Act was passed after the applicant's release on 10 May 2021 and could not therefore have affected his detention. In any event, the fact that the applicant refused to have the Amnesty Act applied to the ongoing criminal proceedings against him is of no consequence for the present application, which concerns his pre-trial detention under Article 5 of the Convention rather than the fairness of the criminal proceedings. As concerns the Government's second argument, the fact that the applicant's detention was imposed following what appears to have been his refusal to comply with a judicial decision nonetheless raises a legitimate question as to whether the detention was justified within the meaning of Article 5 of the Convention. The Court will accordingly examine the merits of the relevant complaint.

87. In view of the foregoing, the second limb of the Government's objection must also be dismissed.

2. Resolution of the matter

88. As regards the objection relating to the alleged resolution of the matter on account of the applicant's refusal to have the Amnesty Act applied to him, whether it is treated from the perspective of the loss of victim status within the meaning of the Court's case-law under Article 34 of the Convention or the alleged grounds for striking the case out of the list of cases under Article 37 § 1 (b) of the Convention, the Court does not consider that the relevant conditions set out in the case-law have been met in the present case.

89. In particular, a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 218, 22 December 2020). It is undisputed that this has not been done in the present case.

90. As regards the question of whether the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention, the Court must answer two questions in turn: firstly, whether the circumstances complained of by the applicant still exist and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Kaftailova v. Latvia* (striking out) [GC], no. 59643/00, § 48, 7 December 2007).

91. In this connection, the Court notes that the applicant was released on 10 May 2021 (see paragraph 66 above). However, this does not change the fact that he was detained for a period of approximately two and a half months (see paragraphs 54 and 66 above). While the Government suggested that the applicant could apply for the discontinuation of the criminal proceedings against him, those proceedings are not related to the subject matter of the present application. Accordingly, the Court cannot find that the effects of a possible violation of the Convention in respect of the applicant's detention between 23 February and 10 May 2021 could have been redressed by the application of an Amnesty Act. The applicant is therefore entitled to complain to the Court that his detention was contrary to Article 5 taken alone and in conjunction with Article 18 of the Convention (see, for instance, *Hysa v. Albania*, no. 52048/16, § 47, 21 February 2023).

92. The Court therefore dismisses the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

93. The applicant complained under Article 5 §§ 1 and 3 of the Convention that the pre-trial detention ordered on 17 February 2021 had been unlawful and unnecessary in the context of the criminal proceedings against him. The provision in question, 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:

...

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. ..."

A. Admissibility

1. The parties' submissions

94. The Government submitted that the applicant had not exhausted domestic remedies. In particular, rather than applying to the Court within a week after his detention had been ordered, the applicant ought to have appealed against the decision under Article 206 § 8 of the CCP (see paragraph 74 above). Alternatively, he could have waited for an automatic judicial review, within two months, of the necessity of the continued detention, as provided under Article 230[1] of the CCP (ibid.). The Government also submitted that the Amnesty Act of 9 September 2021 constituted a new remedy with respect to the applicant's claims under Article 5 of the Convention.

95. The applicant submitted, among other things, that the Tbilisi City Court's decision of 17 February 2021 had clearly stated that it was not subject to a separate appeal. He had nevertheless lodged an appeal challenging the lawfulness of his pre-trial detention, but to no avail. He had not therefore failed to make use of an effective remedy. He also submitted that the remedy under Article 230[1] of the CCP had been ineffective, as it concerned the assessment relating to the continued necessity of detention, rather than its initial lawfulness. In any event, the applicant's detention had been reviewed under the provision in question on 13 April 2021 and the judge had kept him in detention, although detention could only be used as a measure of last resort if other less severe measures could not achieve the goals sought by it.

2. The Court's assessment

96. The Court observes that the Government's submission regarding the applicant's alleged failure to exhaust effective domestic remedies has three limbs.

97. First, as regards the argument that the applicant submitted the application a week after the trial court's decision imposing detention without having exhausted the effective remedies, the Court observes that the applicant did lodge an appeal against the decision of 17 February 2021. However, as was explained by the appellate court, no separate appeal lay against the trial court's decision at that stage (see paragraph 50 above). In this connection, the Government suggested that the applicant ought to have lodged an appeal under Article 206 § 8 of the CCP. However, that provision provided for a right to submit an application for a preventive measure to be changed or annulled on the basis of new information or evidence (see paragraph 74 above), rather than an immediate appeal against a detention order. It was therefore not relevant with respect to the detention order of 17 February 2021.

98. Second, regarding the Government's suggestion that the applicant ought to have awaited the automatic review of his detention within two months from its imposition, as per Article 230[1] of the CCP (ibid.), such a review would only have been prospective, with a view to determining the continued need for detention, rather than assessing the lawfulness or reasonableness of the initial period already spent in detention. It could not therefore constitute an effective remedy with respect to the applicant's allegation that the decision of 17 February 2021 in itself and the detention which had followed it had been in breach of Article 5 §§ 1 and 3 of the Convention.

99. Finally, as regards the Amnesty Act of 9 September 2021, the Court observes that by the time the Act was passed, enabling the annulment of the detention order imposed on the applicant, he had already been released.

100. The Court therefore dismisses the objection relating to the exhaustion of domestic remedies.

101. The Court further concludes that the applicant's complaint under Article 5 of the Convention 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

(a) The applicant

102. The applicant argued that the reasons given by the trial court on 17 February 2021 to justify his pre-trial detention had been marred by such shortcomings as to call into question the lawfulness of his detention within

the meaning of Article 5 § 1 of the Convention. In particular, no explanation had been provided as to how his refusal to pay the increased amount of bail could justify the imposition of pre-trial detention, especially when the case had been sent for trial on the merits on 3 October 2019 and all investigative measures had been completed. The applicant stated that he had never tried to flee or obstruct justice during a period of a year and a half before the pre-trial detention had been imposed on him. Nor had he attempted to jeopardise any of the interests provided for in Article 205 § 1 of the CCP relating to the imposition of the pre-trial detention (see paragraph 74 above).

103. The applicant noted, as regards the existence of relevant and sufficient grounds justifying pre-trial detention, that the Government's submissions before the Court had referred to an analysis of the reasoning provided in the judicial decision of 27 June 2019 relating to the imposition of bail (see paragraph 107 below) and had suggested that reference to that decision in the subsequent detention order of 17 February 2021 (the measure which was being challenged by him as part of the present application) had been sufficient to establish the necessity of the latter measure. However, the initial judicial order had not, in the applicant's submission, been based on a reasonable suspicion of his having committed a criminal offence, since the witness statements made against him had originated from individuals affiliated with the ruling party. The applicant also maintained that the order to monitor his movement electronically as an additional condition attached to bail had been an "unprecedented" measure.

104. In any event, in the applicant's submission, the domestic court had been obliged to provide the parties with a well-reasoned decision on applying preventive measures, especially that of detention, regardless of the existence of earlier decisions on the matter. His detention had therefore not been compatible with Article 5 §§ 1 (b)-(c) and 3 of the Convention.

(b) The Government

105. The Government submitted, as regards the application of preventive measures against the applicant, that the evidence in the criminal case file concerning him had demonstrated the existence of a reasonable suspicion, within the meaning of Article 5 § 1 (c) of the Convention, and that the initial preventive measures applied in respect of the applicant had been duly reasoned with reference to the risks of absconding, obstructing the administration of justice and influencing the witnesses. Furthermore, rather than impose pre-trial detention as initially requested by the prosecution authorities, the domestic courts had first imposed bail along with additional conditions to ensure a balance between the aim of avoiding the relevant risks and respecting the applicant's right to liberty. In that connection, the Government emphasised that when lodging the appeal against the Tbilisi City Court's decision of 27 June 2019, the applicant had only challenged the imposition of additional conditions rather than the preventive measure itself,

thereby indirectly accepting the existence of the preconditions for the application of such a measure. The Government also submitted that the applicant had never requested that the preventive measure against him be changed.

106. Additionally, and as concerns the domestic court's decision of 17 February 2021 imposing pre-trial detention because of the breach of bail conditions, it had been in full conformity with the principle of proportionality and had used detention as a measure of last resort. In particular, the applicant had been well aware of the content of Article 200 §§ 5 and 7 of the CCP (see paragraph 74 above) and the possible consequences of the breach of bail conditions. Yet he had deliberately breached them, first when he had taken off the electronic monitoring bracelet on 1 November 2020 and later when he had refused to comply with a court decision of 3 November 2020 which had ordered the posting of an increased amount of bail. Additionally, the applicant had defied the relevant orders publicly, showing disrespect towards the national courts and the administration of justice by them. He had thus been well aware that he had been leaving the prosecution and judicial authorities with no other choice but to apply the law and to impose detention as a preventive measure. The Government added that the applicant's express instructions to third parties not to have bail posted on his behalf had demonstrated his wish for the pre-trial detention to actually be ordered to promote his political agenda and portray himself in the public eye as a victim persecuted by the Government.

107. The Government specified that when imposing pre-trial detention as a preventive measure on 17 February 2021 the Tbilisi City Court had provided relevant and sufficient reasons justifying the measure. Specifically, the court had referred to the initial decision of the Tbilisi City Court of 27 June 2019; the decision of the Tbilisi Court of Appeal dated 2 July 2019; and the decision of the Tbilisi City Court dated 3 November 2020. By referring to these earlier decisions, the Tbilisi City Court had, according to the Government, established that sufficient risks had existed, within the meaning of Article 198 of the CCP, necessitating the application of a stricter preventive measure. Additionally, the trial court had emphasised, when ordering the applicant's detention, that he had full knowledge of the consequences of breaching the conditions attached to bail, yet had nonetheless repeatedly and deliberately violated the conditions attached to bail. In such circumstances, the applicant's detention had remained the only means of achieving the objectives of the preventive measures and had therefore been in compliance with the requirements of sub-paragraphs (b) and (c) of Article 5 § 1 and those of Article 5 § 3 of the Convention.

2. The Court's assessment

(a) General principles

108. The relevant general principles relating to the aim of Article 5 and the permissible grounds of detention have been summarised in the cases of *S., V. and A. v. Denmark* ([GC], nos. 35553/12 and 2 others, §§ 73-77, 22 October 2018), *Selahattin Demirtaş* (cited above, §§ 311-21) and *Denis and Irvine v. Belgium* ([GC], nos. 62819/17 and 63921/17, §§ 23-33, 1 June 2021).

109. As for the first limb of Article 5 § 1 (c) of the Convention, it only permits deprivation of liberty in connection with criminal proceedings (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 182, 28 November 2017).

110. To be compatible with that provision, an arrest or detention must meet three conditions. First, it must be based on a "reasonable suspicion" that the person concerned has committed an offence, which presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed an offence. Secondly, the purpose of the arrest or detention must be to bring the person concerned before a "competent legal authority" – a point to be considered independently of whether that purpose has been achieved. Thirdly, an arrest or detention under sub-paragraph (c) must, like any deprivation of liberty under Article 5 § 1 of the Convention, be "lawful" and "in accordance with a procedure prescribed by law" (ibid., §§ 184-186, with further references).

111. In the context of sub-paragraph (c) of Article 5 § 1, the reasoning of the decision ordering a person's detention is a relevant factor in determining whether the detention must be deemed arbitrary. In respect of the first limb of sub-paragraph (c), the Court has found that the absence of any grounds in the judicial authorities' decisions authorising detention for a prolonged period of time was incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1. Conversely, it has found that an applicant's detention on remand could not be said to have been arbitrary if the domestic court gave certain grounds justifying the continued detention, unless the reasons given were extremely laconic and did not refer to any legal provision which would have permitted the applicant's detention (see *S., V. and A. v. Denmark*, cited above, § 92, with further references).

(b) Application of the general principles to the present case

112. It is not in dispute that the applicant's detention between 23 February and 10 May 2021 constituted deprivation of his liberty within the meaning of Article 5 § 1 of the Convention. The Government contended that the detention was justified under sub-paragraphs (b) and (c) of Article 5 § 1 of the Convention.

113. The Court reiterates that the permissible grounds for deprivation of liberty provided for under Article 5 § 1 of the Convention may overlap in that

detention may, depending on the circumstances, be justified under more than one sub-paragraph (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 126, 4 December 2018).

114. Against this background, it is true that the applicant's refusal to comply with the decision of 3 November 2020 imposing bail was a decisive factual element in the reasoning of the detention order. However, the Court cannot overlook the fact that the decisions with which the applicant failed to comply had been adopted within the framework of the criminal proceedings pending against him, with the overarching aims of avoiding the risk of his absconding and of providing guarantees to ensure his appearance at the trial (see paragraphs 18-19 and 26-28 above). The detention order of 17 February 2021 expressly referred to those decisions (see paragraph 49 above) and to the relevant domestic law which provided for the conversion of bail into pre-trial detention in such situations (ibid.). Additionally, following the implementation of the decision of 17 February 2021, the applicant's detention was reviewed under Article 230^1 of the CCP (see paragraph 60 above). That provision was concerned with pre-trial detention in ongoing criminal proceedings. Therefore, the purpose of the applicant's detention was to ensure his appearance at the trial, given that from the moment the detention order was made, there was no longer an obligation to post bail and detention replaced bail as a measure to secure the applicant's appearance at the trial.

115. Thus, while there may be arguments for also looking at sub-paragraph (b) of Article 5 § 1 of the Convention as a possible justification for the applicant's detention, the Court considers that the essence of the issue before it is whether the detention was justified under sub-paragraph (c) of Article 5 § 1.

116. Within this context, the Court observes that at the time the criminal proceedings were instituted against the applicant there existed neutral evidence – video material – depicting his speech and conduct during the events of 20-21 June 2019 (see paragraphs 9-11 above) and the domestic courts relied on such evidence in their reasoning of decisions of 27 June and 2 July 2019 (see paragraphs 18-27 above). Accordingly, and setting aside the question of whether the additional evidence (such as witness statements) was also neutral, the Court agrees with the domestic courts' reasoning that at the preliminary stage when the criminal investigation was opened, the material available in the case file concerning the applicant supported a "reasonable suspicion", within the meaning of Article 5 of the Convention, that he might have committed a criminal offence. The decisions in question were also extensively reasoned regarding the need to apply preventive measures in the applicant's case with reference to the risks of absconding, tampering with evidence and reoffending (see paragraphs 19, 20-22 and 26 above).

117. In this regard, the Court takes note of the fact that the trial court's decision of 17 February 2021 referred to (a) the decisions of 27 June and 2 July 2019 (see the previous paragraph); (b) the content of Article 198 § 2

of the CCP (see paragraph 49 above) which, in turn, provided for the risks of absconding, destruction of evidence, and reoffending as possible grounds for applying preventive measures; and (c) the applicant's erratic behaviour and his demonstrative attitude in refusing to comply with the judicial decisions adopted in respect of him (see paragraphs 36 and 43-44 above). In the light of the foregoing, and taking into account the submissions of the Prosecutor General (see paragraph 48 above) to which the decision of 17 February 2021 also referred, the reasoning of the decision in question evidenced the trial court's inference, which the Court does not consider unreasonable, that the risks cited in the decisions of 27 June and 2 July 2019 (see paragraphs 18-22 and 26-28 above) still persisted, justifying the conversion of bail into pre-trial detention, as provided for in the law.

118. The Court additionally observes that the pre-trial detention in the present case was ordered as a measure of last resort, following the applicant's explicit refusal to comply with the bail order of 3 November 2020, and only after the time-limit to post the increased amount of bail had expired. In this connection, the Court emphasises that while the decision of 3 November 2020 also imposed on the applicant an obligation to obtain the authorities' authorisation to leave the country, it annulled all the other outstanding conditions attached to bail (see paragraph 39 above). Thus, the posting of the increased amount of bail by the applicant – which was not suggested to have been beyond his means – would have put him in a better situation than he had been in before the breach of the bail conditions.

119. The applicant had suggested at domestic level that he had had "no moral right" to obey a decision taken by institutions which in his view were influenced by his political rivals (see paragraph 43 above) and subsequently called his non-compliance a "political act" (see paragraph 59 above). In this connection, the Court can appreciate that the applicant's conduct may have been situated within the broader context of the apparently tense political environment in the country at the material time, his status as a politician and his right to freedom of expression (see paragraph 64 above). However, it appears that rather than face any consequences expressly provided for in the law for non-compliance with the bail order, the applicant expected, given the lapse of a year and a half since the opening of the criminal investigation in respect of him, to have the preventive measures applied in the context of the criminal proceedings against him annulled altogether (see paragraphs 37, 60 and 104 above). However, the Court cannot endorse such an interpretation of the domestic law and the Convention, as it would imply that applicants can expect to benefit from breaching a lawful judicial order rather than bear any consequences provided for in the law, an interpretation which would be inconsistent with the spirit of the Convention and the principle of the rule of law which underlies Article 5 § 1 of the Convention and, more generally, is inherent in the system of protection established by the Convention and the Protocols thereto, being expressly mentioned in the Preamble to the

Convention (see, for instance, *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 211, 1 December 2020).

120. The foregoing considerations are sufficient for the Court to conclude that there has been no violation of Article 5 § 1 of the Convention in the particular circumstances of the present case.

121. As concerns the complaint under Article 5 § 3 of the Convention, the Court observes that the applicant mentioned, in his submission concerning the alleged ineffectiveness of the remedy provided for under Article 230[1] of the CCP, that the review of his detention on 13 April 2021 had proved ineffective (see paragraph 95 above). However, no separate complaint or arguments regarding the review of his detention on 13 April 2021 were formulated with respect to the merits of the complaint under Article 5 § 3 of the Convention. The latter complaint only concerned the detention order of 17 February 2021 and relied essentially on the same arguments as those made in respect of his complaint under Article 5 § 1 of the Convention. Accordingly, the Court finds that the applicant's complaint before the Court was limited to the detention order of 17 February 2021.

122. That being so, and having regard to its findings in relation to the applicant's complaints under Article 5 § 1 of the Convention (see paragraphs 112-120 above), the Court considers that no separate issue arises under Article 5 § 3 of the Convention in the circumstances of the present case.

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

123. The applicant complained that his detention had served the purpose of excluding him from political life in Georgia and punishing him for his political activity. He relied on Article 18 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

125. The applicant stated that his arrest and detention were to be viewed in the light of the political context obtaining at the material time. Specifically, he had been a leading opposition candidate in the 31 October 2020 parliamentary elections and had "managed to consolidate the opposition parties and confront [the ruling party] during and after" those elections. In his submission, the parliamentary elections had fallen short of democratic standards, causing the opposition parties to boycott its results and the work of the newly elected Parliament. The applicant claimed that it had been in that context that the government had instructed the prosecution service to request his detention, with the aim of punishing him for the boycott. He stated that the decision had also been motivated by a wish to appease the Russian authorities, which had demanded the punishment of individuals who had protested against S.G.'s visit (see paragraph 6 above). The applicant reiterated that the existence of the above motives behind his detention was confirmed by the fact that the detention had been imposed at the final stage of the trial on the merits in circumstances when he had not attempted to interfere with the administration of justice. He argued that his arrest had exacerbated an already serious political crisis triggered by the ruling party's handling of the elections.

126. The applicant also argued, in the context of his eventual release from detention, that the decision of 17 February 2021 had annulled the bail imposed on 3 November 2020, leaving no legal grounds for compliance with it. In such circumstances, the request from the POG and the trial court's subsequent decision to accept bail posted on the applicant's behalf had been outside the legal framework and had instead been "intended for the benefit of the [ruling party] to humiliate and oppress the leader of the opposition." This was further confirmed, according to the applicant, by the inclusion of a requirement in the Amnesty Act for the accused's acceptance of its application, potentially leading to the applicant's "political humiliation" given the statement made by one of the leaders of the ruling party that the Amnesty Act had constituted "mercy" by the ruling party towards the applicant despite his commission of the "gravest crime" (see paragraph 63 above).

127. The applicant invited the Court to look beyond appearances and, taking into account the multiple statements made following his arrest – including by domestic and international figures who denounced that event – find a violation of Article 18 of the Convention in conjunction with Article 5 § 1 of the Convention. In that connection, the applicant also stated that the leader of the ruling party had admitted that the party had known the content

of the trial court's decision before its adoption on 17 February 2021, demonstrating the connivance between the various branches of the government. He also alleged that the courts, owing to the lack of judicial independence, had been "weaponised to target political opponents" and were managed by a "clan" of judges affiliated with the ruling party. In that connection, he referred to the agreement of 19 April 2021 (see paragraph 62 above) and stated that judicial reform and perceptions of politicised justice had been high on the agenda of Georgia's international partners.

128. The applicant additionally submitted that the criminal case against him had been "fabricated" and that its only purpose had been "to restrict an opposition political leader in his activities when the ruling Georgian Dream [party] so wishe[d]." He also stated that the criminal proceedings against him had been "biased" given that a former official of the Ministry of the Interior had admitted to the media having been ordered to erase data gathered by the surveillance cameras stationed outside the Parliament building and the domestic courts had refused to grant the requests of the defence to have the footage of the surveillance cameras retrieved and witnesses questioned, including State officials and ruling party representatives. The applicant also alleged that the authorities had pursued selective prosecutions and that no effective investigation had been carried out in respect of the civilian victims of the events of 20-21 June 2019. Elsewhere in his submissions, the applicant emphasised that the criminal case against him was pending before the Tbilisi City Court and was "not the subject matter of the present application", which concerned his "unlawful and politically motivated arrest and detention".

(b) The Government

129. The Government submitted that the applicant had failed to discharge the burden of proof regarding his allegations under Article 18 of the Convention. Among other things, they stated that the criminal investigation against the applicant had been opened on charges of leading and participating in violent activities by a group, a criminal offence under paragraphs 1 and 2 of Article 225 of the Criminal Code. The "reasonable suspicion" that he had committed the offence in question had been based on the testimonies of eyewitnesses, documentary evidence and video recordings, and the domestic courts' decisions in that respect had been duly reasoned. Thus, the only reason behind the opening of the criminal proceedings against the applicant had been the interests of justice.

130. The Government stated that, according to the Court's case-law, the mere fact that criminal proceedings were instituted against an opposition politician would not suffice to find a violation of Article 18 of the Convention. In that connection, the applicant had not discharged the burden of proof in showing any improper motives behind the ordering of his detention, especially given his own disregard for the domestic law and his explicit refusal to comply with the domestic courts' lawful decisions.

According to the Government, while the applicant had "demonstratively" violated the conditions of bail imposed by the domestic courts, the prosecution authorities had not requested the imposition of detention. Rather, they had applied to the Tbilisi City Court with a request to increase the amount of bail. It had been the applicant's explicit refusal to comply with the trial court's decision granting that request which had led to the application of the pre-trial measure, as provided for in the domestic legislation.

131. The Government reiterated that the applicant had actually wished for his detention to be ordered so that he could portray himself as a victim of political persecution. By contrast, and despite the preventive measures that had been applied against him, the authorities had facilitated the implementation of his mandate as a member of parliament and guaranteed him unlimited contact with the media and involvement in the political life of the country, including by ensuring his participation in the parliamentary elections of 2020 (which had earned him a renewed mandate in Parliament) and subsequently in the Tbilisi mayoral elections. Thus, rather than "keeping him out of political life", as suggested by the applicant, the only reason behind the adoption – as a measure of last resort – of the detention order in respect of him had been his own behaviour, which had disregarded lawful judicial orders in circumstances where he had been well aware of the risk of being subjected to detention.

132. As concerns the applicant's submission that the authorities had not launched an investigation as regards the events of 20-21 June 2019, the Government submitted that this had not been the case. Specifically, a criminal investigation had been initiated on 22 June 2019 under Article 333 (3) (b) ("exceeding official powers using violence or a weapon") of the Criminal Code. While the investigation in question had not, in the Government's submission, been relevant within the context of the present case, they noted that the investigative authorities had granted dozens of demonstrators the procedural status of victims; three officers of the Ministry of the Interior had been charged; and the Ministry had suspended the director of the Special Tasks Department and ten law-enforcement officers pending the outcome of the investigation. Thus, the authorities had not, contrary to the applicant's submission, sought one-sided accountability in the context of the events of 20-21 June 2019. Another investigation had been launched with reference to a statement that the data from the surveillance cameras had been deleted by an official of the Ministry of the Interior on the orders of a superior and, in any event, the data had already been obtained from the cameras in question.

133. The Government added that the applicant had misinterpreted the statements of the then Prime Minister and the chairman of the ruling party and had falsely claimed that his arrest had triggered a political crisis in the country, noting that that crisis had been linked to the October 2020 elections. Finally, as regards the necessity of judicial reforms referred to by the applicant, the Government stated that a large-scale judicial reform had been

actively ongoing since 2012 to ensure compliance with international best practices. However, inasmuch as the applicant alleged that there had been "problems" in the judicial system, such a submission constituted an *actio popularis* and fell outside the scope of the present application.

2. The Court's assessment

(a) General principles

134. The Court refers to the general principles concerning the interpretation and application of Article 18 of the Convention, in particular as set out in its judgments in *Merabishvili* (cited above, §§ 287-317) and *Navalnyy* (cited above, §§ 164-65; see also *Selahattin Demirtaş*, cited above, § 421).

(b) Application of these principles to the present case

135. Turning to the circumstances of the present case, the Court takes note of the apparent political tensions in Georgia between 2019 and 2021 (see paragraphs 6-13 and 61-62 above), the nature of the offence with which the applicant was charged, and the fact that his arrest and pre-trial detention took place after the contested elections of 31 October 2020, the related boycott of Parliament by the opposition parties, and the applicant's election as chairman of the UNM. Within that context, there may have been some degree of suspicion regarding a risk of political impetus, initially behind the charges and then behind the applicant's eventual detention. It is also true that, when allegations of an ulterior purpose behind a criminal prosecution are raised, it is hard to divorce the pre-trial detention from the criminal proceedings (see *Merabishvili*, cited above, § 320, with further references). However, there is no right as such under the Convention not to be criminally prosecuted (ibid.).

136. In this connection, the Court observes that at the preliminary stage when the criminal investigation was opened, the material available in the case file concerning the applicant supported a "reasonable suspicion", within the meaning of Article 5 of the Convention, that he might have committed a criminal offence (see paragraph 116 above). Additionally, it does not appear, contrary to the applicant's submission, that he was the only person investigated in connection with the events of 20-21 June 2019 (see paragraph 132 above).

137. More importantly, however, as regards the allegation that the authorities had wished to remove the applicant from the political scene in Georgia, the Court cannot overlook the fact that the domestic courts, relying on the importance of protecting the applicant's right to liberty and security, initially rejected the prosecutor's application to have pre-trial detention imposed on the applicant (see paragraphs 18-22 and 26-27 above). As concerns the initial conditions attached to bail, while they appear to have been extensive, the authorities did not restrict the applicant in carrying out his

parliamentary mandate, engaging with the media and the public, and carrying out a pre-election campaign which earned him a renewed seat in Parliament (see paragraphs 30-35 above). In fact, it appears that the criminal proceedings against the applicant were suspended in order to allow him to participate properly in the parliamentary elections (see paragraph 32 above). The trial court also granted his application to have identity documents returned to him for that purpose (see paragraph 34 above). Accordingly, and emphasising the fact that the present case does not cover the criminal proceedings pending against the applicant, the Court does not consider that through the mere fact of charging the applicant as part of those proceedings, the authorities pursued the ulterior purpose of removing him from the political scene in the country.

138. As regards the applicant's detention ordered on 17 February 2021, which is at the core of his complaint before the Court, it has been found to have been implemented for a purpose provided for under Article 5 § 1 (c) of the Convention (see paragraphs 112-120 above). It has not been argued that the measure in question constituted a restriction of any other rights under the Convention. It follows that, even if it is established that the restriction of the applicant's right to liberty also pursued a purpose not prescribed by Article 5 § 1 (c), there will only be a breach of Article 18 if that other purpose was predominant. The Court must therefore determine whether that was so with regard to the applicant's allegation that his detention was meant to remove him from the political scene and/or to punish him for his political activities. The Court will therefore assess whether the various factors referred to by the applicant are sufficient, considered alone or together, to establish that such a predominant purpose was pursued.

139. The Court takes note of the fact that the enforcement of the detention order adopted by the trial court on 17 February 2021 triggered the resignation of the then Prime Minister (see paragraph 51 above). The fact that the latter considered such a decision badly timed, from the perspective of the existing political tensions in the country, cannot, in and of itself, indicate the existence of an ulterior purpose behind the applicant's detention. Nor can the fact that the authorities had discussed the eventuality of the applicant's detention before it was ordered be regarded as unusual, as was also explained by the chairman of the ruling party (see paragraph 58 above). Admittedly, the Court does not approve of the divisive rhetoric used in respect of the applicant (see paragraph 63 above), which may, potentially, raise questions under Article 6 § 2 of the Convention. However, observing that that provision has not been relied on within the context of the present application and taking note of the otherwise tense and polarised political environment in the country at the time, the Court does not consider that the relevant statements – made after the applicant's arrest – constitute evidence of an ulterior motive behind his detention. Furthermore, while the applicant complained that the judiciary had not been independent from the ruling party, it was the domestic courts which

had initially rejected the prosecution's application to have the applicant placed in pre-trial detention and had subsequently ordered his release.

140. It is true that the detention order of 17 February 2021 led various individuals and organisations to believe that the court's decision had been driven by the desire to remove the applicant from the political scene. Additionally, the manner in which the applicant's arrest was effected was widely criticised (see paragraphs 54 and 56 above). However, the Court must base its decision on "evidence in the legal sense", in accordance with the criteria it laid down by it in the *Merabishvili* judgment (cited above, §§ 309-17) and on its own assessment of the specific relevant facts (see *Kavala v. Turkey*, no. 28749/18, § 217, 10 December 2019 and *Ugulava v. Georgia*, no. 5432/15, § 123, 9 February 2023). Therefore, criticism of the detention order and the subsequent arrest process, especially considering the undisputed refusal by the applicant and his supporters to allow the implementation of the order, cannot be indicative, within the meaning of the standard of proof used by the Court, of an ulterior motive on the authorities' part, whether that of removing him from the political scene or that of punishing him for his political activities.

141. The Court also takes note of the applicant's submission that the Amnesty Act of 2021 had been passed with a view to ensuring his "political humiliation" in the event that he accepted its application to his case. In this connection, the Court observes that the wording of section 1 of the Act ("[a]ll individuals who have committed a criminal offence..." – see paragraph 72 above) may suggest that an accused could, when accepting the application of an amnesty to his or her case, be perceived as having admitted to the commission of an offence. However, the Act had an unlimited personal scope and was also applicable after a conviction by a court. In any event, its enactment was a result of a broader political process (see paragraphs 61-62 above). Therefore, the Court cannot see how such wording is demonstrative of an ulterior motive behind the applicant's detention, which was decided well before the Act was passed.

142. Lastly, the applicant also insisted that his detention had contributed to the escalation of political tensions in the country and that the authorities' subsequent acceptance of the bail posted on his behalf and his release had been at odds with the law, demonstrating the existence of a political agenda behind his detention. In this connection, the Court will not go into the question of whether the release process was in line with the Code of Criminal Procedure, which, on the surface, does not appear to have been at odds with it. It is sufficient to note that it was the applicant's decision to defy the domestic court's lawful order which had served as grounds for his eventual detention (see paragraphs 112-120 above) and, according to his own line of reasoning, the exacerbation of the existing political crisis in the country. In such circumstances, the applicant cannot rely on the political compromise to

ensure his release as an argument indicating any ulterior motive behind his detention.

143. In sum, although the applicant's detention was ordered against the backdrop of bitter political antagonism between, on the one hand, the UNM and other opposition parties and, on the other hand, the ruling Georgian Dream party, the various points cited by the applicant, taken separately or in combination with each other, do not form a sufficiently homogenous whole for the Court to find that the applicant's detention pursued a purpose not prescribed by the Convention (see, for instance, *Ahmet Hüsrev Altan v. Turkey*, no. 13252/17, § 246, 13 April 2021).

144. The foregoing considerations are sufficient for the Court to conclude that there has been no violation of Article 18 of the Convention taken in conjunction with Article 5 § 1.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 5 § 1 of the Convention;

3. *Holds* that no separate issue arises under Article 5 § 3 of the Convention;

4. *Holds* that there has been no violation of Article 18 of the Convention taken in conjunction with Article 5 § 1 of the Convention.

Done in English, and notified in writing on 7 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Georges Ravarani President