

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

FIFTH SECTION

CASE OF UGULAVA v. GEORGIA

(Application no. 5432/15)

JUDGMENT

Art 5 § 1 • Lawful arrest and first pre-trial detention of applicant, a former high-ranking State official, in connection to criminal proceedings against him • Lack of fixed period of detention in detention orders for first pre-trial detention compatible with Art 5 § 1 in view of maximum duration prescribed under domestic law
Art 5 § 3 • Reasonableness of pre-trial detention • Refusal of applicant's request for release during first pre-trial detention period not based on relevant and sufficient reasons • Domestic court's failure to take into account new information and conduct fresh examination of grounds for detention as required by the passage of time
Art 5 § 1 • Lawful arrest or detention • Authorities' failure to protect applicant from arbitrariness when imposing second consecutive period of pre-trial detention concerning different parallel criminal proceedings
Art 18 (+ Art 5) • Restriction for unauthorised purposes • Existence of ulterior purpose not established

STRASBOURG

9 February 2023

FINAL

09/05/2023

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



In the case of Ugulava v. Georgia,

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

Georges Ravarani*, President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
Françoise Tulkens*, ad hoc judge*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 5432/15) 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 Giorgi Ugulava ("the applicant"), on 27 December 2014;

the decision to give notice to the Georgian Government ("the Government") of the application on 28 September 2015;

the parties' observations;

Considering that Mr Lado Chanturia, the judge elected in respect of Georgia, was unable to sit in the case (Rule 28) and that the President of the Chamber accordingly appointed Ms Françoise Tulkens to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29);

Having deliberated in private on 17 January 2023,

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

INTRODUCTION

1. The application, lodged under Article 5 §§ 1 (c), 3 and 4 of the Convention, concerns the allegedly unlawful and arbitrary pre-trial detention of the applicant. He also relies on Article 18 of the Convention taken together with Article 5 § 1 alleging political motivation behind his continuous pre-trial detention.

THE FACTS

2. The applicant was born in 1975 and detained in Tbilisi at the relevant time. He was represented by Mr P. Leach, Mr O. Kakhidze (subsequently withdrew from the proceedings) and Mr D. Kakoishvili, lawyers practising in London and Tbilisi respectively.

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

4. The facts of the case, as submitted by the parties, may be summarised as follows.

BACKGROUND INFORMATION

5. The applicant was one of the leaders of the United National Movement ("the UNM"), a political party which ran the country between November 2003 and October 2012. The applicant was first appointed mayor of Tbilisi in 2005 and then elected to the post in 2010. In October 2012 the Georgian Dream coalition, led by Mr Bidzina Ivanishvili, won parliamentary elections and formed a new government. The applicant continued to serve as mayor of Tbilisi.

A. First set of criminal proceedings against the applicant and relevant pre-trial proceedings (case no. 092261112002)

6. On 10 November 2012 an investigation was initiated under Article 210 § 1 of the Criminal Code into the use of fraudulent tax documents in connection with the activities of Akhali Rike LLC, a private company. On 26 November 2012 a separate investigation was initiated under Article 182 § 1 and Article 210 § 1 of the Criminal Code (embezzlement of budget funds and use of fraudulent tax documents respectively) in connection with the activities of Tbilservice Group, one of the limited companies formed by the Tbilisi mayor's office. The two investigations were eventually merged (case no. 092261112002). On 1 February 2013 the applicant was summoned as a witness in relation to the above-mentioned proceedings. He duly appeared and was questioned by an investigator on 2 February 2013.

7. On 22 February 2013 the applicant was officially charged with aggravated embezzlement under Article 182 §§ 2 (d) and 3 (b) of the Criminal Code. He was also charged with misappropriation and money laundering, offences under Article 182 §§ 2 (d) and 3 (a) and (b) and Article 194 § 3 (a) and (g) of the Criminal Code respectively, in connection with his alleged involvement in an unlawful scheme to seize control of a private television company, Imedi.

8. On 24 February 2013 the Tbilisi City Court rejected a request by the prosecutor to impose bail of 1,000,000 Georgian laris (GEL). The applicant thus remained free without bail. On 25 February 2013 the City Court also refused a request by the prosecutor to dismiss the applicant from his position as mayor. Both decisions were upheld by the Tbilisi Court of Appeal on 1 March 2013.

9. On 18 September 2015 the applicant was convicted in part in connection with the Tbilservice Group charges and sentenced to four and a half years in prison. The applicant was detained immediately to serve his prison sentence. On 6 January 2017, while rejecting the applicant's appeal, the Tbilisi Court of Appeal re-qualified his charges and found him guilty of abuse of power, an offence under Article 332 § 1 of the Criminal Code. His prison sentence was reduced on account of an Amnesty Act to one year, three

months and twenty-two days and the applicant was immediately released from prison.

B. Second set of criminal proceedings against the applicant and relevant pre-trial proceedings (case no. 092200213002)

10. On 20 February 2013 an investigation was launched under Article 182 § 3 (b) of the Criminal Code into the activities of the Old Tbilisi Rehabilitation and Development Fund, founded by the Tbilisi mayor's office. On 18 December 2013 these proceedings led to the applicant being formally charged with aggravated embezzlement.

11. On 21 December 2013 the Tbilisi City Court rejected a request by the prosecutor to remand the applicant in custody. The court instead imposed bail of GEL 50,000 on the applicant.

12. The prosecutor also requested the court to rule on removing the applicant from office. In a decision of 22 December 2013, the Tbilisi City Court, sitting in camera, granted that request and ordered his suspension from his position as mayor until the conclusion of the criminal proceedings. The suspension order was upheld by the Tbilisi Court of Appeal on 26 December 2013.

13. On 28 February 2018 the Tbilisi City Court re-qualified the charge of aggravated embezzlement and convicted the applicant of exceeding of official powers (an offence under Article 333 § 1 of the Criminal Code). His final sentence, in view of an Amnesty Act, was set at one year, three months and twenty-two days in prison. The applicant's conviction was confirmed on appeal on 10 December 2018. By a decision 10 February 2020 the Supreme Court amended again the qualification of the offence and convicted the applicant of aggravated embezzlement. He was sentenced to nine years' imprisonment, which sentence, by virtue of an Amnesty Act and in view of the period he had already spent in detention in the context of the first set of criminal proceedings, was reduced to three years, two months and eight days.

C. Third set of criminal proceedings against the applicant and relevant pre-trial proceedings (case no. 092250613004)

14. On 12 and 13 April 2014 the applicant was questioned as a witness in another criminal investigation, this time concerning the activities of CT-Park LLC, a company in charge of managing car parks in Tbilisi.

15. On 28 June 2014 the applicant received a further summons to appear for questioning, which was scheduled for 30 June 2014. When served with the summons, the applicant made the following note:

> "This summons is politically motivated. In addition to the fact that there is an electoral moratorium [on the arrest of opposition politicians], I am leaving on a special business trip on 29 June at 6.50 a.m. and will return to Georgia on the Kyiv flight on 5 July at

5 a.m. This was well known to the investigation, and they have deliberately acted to prevent my business trip."

16. The applicant did nevertheless appear for questioning on 30 June 2014. He was then charged with aggravated embezzlement in the above-mentioned proceedings. When served with the charges, he informed the investigator that he was to make several business trips outside of Georgia between 1 and 6 July 2014. In reply, the investigator warned him not to leave the country. The applicant complained, claiming that his freedom of movement could be only restricted in exceptional circumstances on the basis of a court order. Further to his complaint, the Public Defender of Georgia sought the initiation of disciplinary proceedings against the investigator for taking an unlawful decision. It is not clear from the case file what the outcome of that complaint was, if any.

17. On 1 July 2014 the prosecutor requested the Tbilisi City Court to impose bail of GEL 50,000. He also requested that the applicant be ordered, under Article 199 § 2 of the Code of Criminal Procedure, to surrender his ID card and international passport. On 2 July 2014 the court decided that the applicant should remain free without bail, concluding that the request for the application of a preventive measure was unsubstantiated. It also refused to order the surrender of his ID card and passport, concluding that such measures could only be applied in combination with preventive measures. The decision was upheld by the Tbilisi Court of Appeal on 5 July 2014.

18. It appears that during the detention hearing before the Tbilisi City Court, the applicant once again provided the investigative authorities with information concerning his travel plans in early July.

19. The parties have not informed the Court about the outcome of the third set of criminal proceedings conducted against the applicant.

D. Fourth set of criminal proceedings against the applicant (case no. 092060614001), his arrest and pre-trial detention

1. The subject matter of the fourth set of proceedings

20. On 5 June 2014 criminal proceedings were initiated under Article 226 of the Criminal Code in connection with the alleged organisation of a violent incident at the office of the Marneuli district electoral commission earlier that day (case no. 031050614001). Over the following days, twelve witnesses were interviewed in connection with the incident. They identified the applicant as being part of the group which had allegedly violently burst into the office of the electoral commission, causing a disturbance, and hindering its functioning. As part of the investigation, a video recording was obtained which showed the violent nature of the incident. According to the case file, the applicant was not interviewed in connection with the above-mentioned criminal proceedings.

21. In the meantime, another set of criminal proceedings was initiated against the applicant (case no. 092150414002) on suspicion of his involvement in a money laundering scheme. Notably, on 15 and 22 April 2014 respectively two individuals, R.Kh. and G.K., wrote to the investigative department at the Ministry of Finance alleging that the applicant had invited them to participate in a fraudulent scheme involving their offshore companies for money laundering purposes. Having conducted several interviews and after seizing certain financial documents, including contracts and invoices confirming various bank transfers, late in the evening of 2 July 2014 an investigator summoned the applicant to appear for questioning at 10 a.m. on 4 July 2014 in connection with the above-mentioned case. The summons was duly served on him at 10.10 p.m. by the investigator in person. The applicant claimed that when served with the document, he had explained to the investigator that he could not cancel his business trip to Ukraine (see paragraph 16 above). He was, however, prepared to shorten it and return from Kyiv early in the morning of 4 July 2014. The summons, duly signed by the applicant and the investigator, does not bear any explanatory note in this regard.

22. According to the case file, later that evening, G.K., one of the main witnesses in the money laundering case, wrote to the prosecution alleging that he had received threats from the applicant. He expressed his willingness to cooperate with the prosecution on the matter.

2. The applicant's arrest and initial pre-trial detention

23. On 3 July 2014 at 5.57 a.m. the applicant was arrested at Tbilisi International Airport. According to the arrest report, he was accused of aggravated money laundering, an offence under Article 194 §§ 2 (a) and (3) (c) of the Criminal Code. The arrest was based on the risk of his absconding (Article 171 § 2 (e) of the Code of Criminal Procedure, see paragraph 51 below). The applicant refused to sign the arrest report. His lawyers, who were refused immediate access to him, requested detailed information about the new charges. They complained on the applicant's behalf that when he had been arrested, he had not been properly informed of the nature of the new accusations. It appears that despite several requests, the lawyers were not allowed to see him during the initial four to five hours of his detention. They were also denied access to the case file.

24. The next day the criminal case concerning the violent incident at the office of the Marneuli district electoral commission (see paragraph 20 above). was merged with the criminal case concerning money laundering (see paragraph 21 above). At 9.45 a.m. official charges were brought against the applicant in the consolidated criminal case (no. 092060614001) for offences under Article 194 §§ 2 (a) and 3 (c) and Article 362 § 1 of the Criminal Code (concerning his alleged involvement in a money laundering scheme), and

offences under Article 150 § 1 and Article 226 of the Criminal Code (concerning the alleged organisation of a violent incident). The applicant was served with a copy of the decision on 4 July 2014 at 11 a.m.

25. The first charge was that in April 2014 the applicant and his accomplice G.Gh. had devised, with the participation of two offshore companies, a fraudulent money laundering scheme where one company was to pay the other company 1,500,000 US dollars (USD) in return for certain services. According to the charge, between 4 May and 3 June 2014 USD 760,000 was first transferred from one company's bank account to that of another and then eventually, on the basis of fraudulent loan agreements, to the bank account of a certain limited company registered in Georgia and withdrawn from there by the applicant and his accomplice. According to the prosecution authorities, the applicant had thereby committed the offence of aggravated money laundering (Article 194 §§ 2 (a) and 3 (c) of the Criminal Code) and the offence of complicity in making, selling or using a forged document (Article 362 § 1 of the Criminal Code).

26. The second charge was that on 5 June 2014 the applicant, together with UNM supporters and other party members, decided to block the office of the Marneuli district electoral commission and hinder its functioning, in order to prevent its head from taking a negative decision with respect to a candidate for the position of governor from the UNM. After blocking the building, according to the prosecution, they had burst into the office and refused to leave, disobeying police orders. The applicant, having restricted the "freedom of action" of the head of the electoral commission, had exerted psychological and physical pressure on him not to sign the document. According to the prosecution, the applicant had thereby committed the offences of coercion (Article 150 § 1) and organising or participating in a group activity disrupting public order (Article 226).

27. On the same date the prosecutor asked the Tbilisi City Court to place the applicant in pre-trial detention. He described the offences with which the applicant had been charged and cited the witness and other evidence supporting the charges. He argued that in view of the nature and seriousness of the charges against the applicant and the severity of the possible sentence, and having regard to his character, there was a risk that he would flee, tamper with evidence and influence witnesses, and continue his criminal activity. In connection with the latter, the prosecutor stated that while being free on bail in other ongoing criminal proceedings, the applicant had nonetheless committed new offences; the risk of his reoffending could therefore no longer be averted by a less restrictive measure. In the prosecutor's view, the flight risk was substantiated by the fact that the applicant had many contacts abroad and had been travelling frequently. Moreover, he had attempted to cross the border on 3 July 2014 despite being summoned by an investigator the day before. The risk of tampering with evidence was, for its part, borne out by the

applicant's attempt to put pressure on one of the key witnesses in the money laundering case (see paragraph 22 above).

28. The applicant's defence lawyers opposed the prosecution's request. In their submissions before the Tbilisi City Court, they argued that the applicant's arrest had been unlawful and in breach of Article 171 of the Code of Criminal Procedure, as there had been no legal and factual basis for detaining him without a judicial warrant. They further argued that the request for him to be remanded in custody was unsubstantiated and unwarranted. The alleged risk that he would abscond was not supported by concrete evidence, and, on the contrary, was belied by his cooperation with the investigating authorities. He had been out of Georgia many times and had never tried to flee. On the day preceding his arrest he had forewarned the relevant investigative authorities about his one-day trip to Kyiv.

29. The Tbilisi City Court heard the prosecution's request at an oral hearing held on 4 July 2014 and decided to remand the applicant in custody. It briefly noted that, according to the material in the case file, there had been no procedural breaches in the applicant's arrest and the bringing of charges against him. It considered that there was sufficient information to show that there was a reasonable suspicion against him. When substantiating the decision to remand him in custody, the court referred to the gravity of the charges and the severity of the possible sentence, concluding that there was a risk of his hindering the investigation by obstructing the gathering of evidence and influencing other participants in the proceedings. In support of the above arguments the court referred, *inter alia*, to a statement given by G.K., who had alleged that the applicant had threatened him (see paragraph 22 above). The court also noted that several of the applicant's accomplices, who were in possession of important information, had already fled Georgia.

30. In connection with the other criminal proceedings pending against the applicant, the court held as follows:

> "The fact that the applicant was released on bail in a separate criminal case and that no preventive measures have been ordered against him in other cases does not imply, in view of the specific circumstances of the [current] case, that none of the preventive measures, including detention, could be imposed ... each criminal case relates to separate danger and risks ..."

31. The Tbilisi City Court noted that the applicant, despite being served with a summons on 2 July 2014 for questioning on 4 July 2014 at 10 a.m., had nevertheless maintained his plan to travel abroad on 3 July 2014 and had not communicated the necessary additional information in this regard to the investigative authorities. The court therefore agreed with the prosecution that there was a risk that he would flee.

32. The decision was upheld by the Tbilisi Court of Appeal on 8 July 2014. The appellate court concluded that there had been no procedural violations during the applicant's arrest and the bringing of charges against

him. It further stated that his defence rights had not been breached during the initial period of his detention and that no revocation of his pre-trial detention was therefore warranted. The appellate court fully accepted the reasoning of the first-instance court regarding the applicant's remand in custody because, faced with a reasonable suspicion of having committed the offences in question and a possible severe punishment, he might flee. That risk was corroborated by his attempt to cross the border on 3 July 2014, as well as by his many trips abroad, which showed that he would have no difficulties getting out of Georgia. The court further reasoned that in view of the case material, particularly that shedding light on his character and the fact that he had held high office for many years, there was a risk of his obstructing the investigation by influencing those involved in the process, tampering with evidence and reoffending.

3. The applicant's request for release during the pre-trial conference

33. The pre-trial conference was opened on 22 December 2014. On 16 February 2015 the applicant lodged an application with the trial judge requesting the replacement of his detention with bail. In his application, he reiterated his arguments about the unlawfulness of his arrest and the initial pre-trial detention. He also maintained that neither the risk of his fleeing nor that of his influencing the witnesses was real. He went on to say that the circumstances concerning G.K. giving a statement about pressure and threats being exerted on him had never been properly examined, and that in any event, since the investigation had already been concluded and the authorities had secured all witnesses and other evidence, there was no longer any risk of his obstructing the investigation process. In connection with the risk of reoffending, the applicant stated, among other things, that he had been removed from his position as mayor, which excluded the possibility of his continuing his purported criminal activity via abuse of authority and his status.

34. The prosecution argued that in view of the applicant's character, financial situation, connections abroad and history of regularly travelling abroad, the risk of his leaving Georgia and thus fleeing trial was real. In support of their argument, they referred to the applicant's attempt of 3 July 2014 to leave Georgia for Kyiv. The prosecution further argued that, given that some of the new charges brought against him related to offences he had allegedly committed while on bail, a stricter preventive measure was required. As to the risk of the applicant obstructing the investigation, the prosecution claimed, with reference to the statement of G.K. (see paragraph 22 above), that such a risk had been duly demonstrated during the 4 July 2014 detention hearing. They further argued that since the list of prosecution witnesses had been formally confirmed during the pre-trial conference, the risk of the applicant putting pressure on them had increased.

The witnesses were still due to testify at trial, which was by law the only way of adducing their evidence. Lastly, the prosecution submitted that in view of the number and complexity of the criminal cases ongoing against the applicant, his character, and given that he had allegedly reoffended while on bail, the risk of his reoffending was also still present.

35. The request was examined and rejected orally by the Tbilisi City Court on 18 February 2015. As heard in the audio recording of the hearing, the judge reasoned, with reference to Article 206 §§ 8 and 9 of the Code of Criminal Procedure, that no new circumstances had been identified warranting the applicant's release. The judge then went on to find that the grounds for detention as examined and accepted by the trial judge in the initial detention order of 4 July 2014 were still valid. In addition, in connection with the risk of influencing witnesses, she accepted the prosecution's argument that the risk of the applicant exerting pressure on witnesses had increased since the list of prosecution witnesses had been confirmed by the trial judge for examination during the trial. The risk of reoffending was also found to be present, particularly given that the applicant had allegedly committed new offences while on bail. Lastly, the trial judge noted that the applicant had been in pre-trial detention for just over seven months, a period which, in view of the circumstances of his case, appeared reasonable and not excessive.

36. In reply to the applicant's request for a written decision, he was provided with an extract from the minutes of the hearing, which stated:

> "The request of the defence to amend the preventive measure applied to Giorgi Ugulava is refused."

E. Fifth set of criminal proceedings against the applicant (case no. 074251013802) and detention in its context

37. On 28 July 2014 the applicant was charged with exceeding of official powers under Article 333 § 1 of the Criminal Code on account of his alleged involvement in the misappropriation of the Imedi television company and of property belonging to another company, Lynx Ltd.

38. On 13 March 2015 the charges against the applicant were amended. In connection with the two above-mentioned incidents, he was also charged with aggravated embezzlement and money laundering under Article 182 §§ 2 (a) and 3 (b) and Article 194 § 3 (b) and (c) of the Criminal Code.

39. When served with the decision to bring charges against him, the applicant made the following note:

> "The charges are absurd and politically motivated. The purpose is to extend my pre-trial detention because the nine-month time-limit expires on 2 April ..."

40. On 14 March 2015 the Chief Prosecutor's Office requested the Tbilisi City Court to remand the applicant in custody pending trial on the grounds that there was a well-founded risk of his absconding or failing to appear in

court, destroying important information relevant to the case file or reoffending. The prosecution emphasised the possibility of the applicant influencing witnesses, having regard to his background. In connection with the detention order of 4 July 2014, which was due to expire on 2 April 2015, they claimed that the impugned restrictive measure had been applied in another set of criminal proceedings (case no. 092060614001, see the subject matter of the fourth set of proceedings in paragraphs 21-32 above) and was hence irrelevant.

41. The defence objected. Their argument was mainly threefold; firstly, with reference to Article 18 of the Constitution and Article 205 of the Code of Criminal Procedure (see the relevant provisions cited in paragraphs 50 and 52 below), they claimed that the maximum length of pre-trial detention was nine months and that accordingly there was no legal basis to apply a new period of pre-trial detention. They maintained that the prosecution's argument that the nine-month time-limit was to be calculated for each set of criminal proceedings separately was unconstitutional. Secondly, the defence claimed that the investigation in the current case, which had started in July 2014, was over. Most of the witnesses had already been questioned and the required investigative measures taken, and no instances of witnesses being influenced had been confirmed; there was therefore no reasonable suspicion that the applicant would obstruct an investigation that was almost complete. Lastly, the defence argued that as far as the Imedi incident was concerned, the same facts had formed the basis for another case against the applicant, which had been opened in February 2013 (see paragraph 6-8 above). The investigation in that case had been concluded and the case was being examined by the Tbilisi City Court on the merits. It was therefore contrary to the Constitution, the provisions of the Code of Criminal Procedure and the rule against double jeopardy to initiate another set of proceedings in connection with the same facts and to request a further period of pre-trial detention.

42. By a decision of 15 March 2015 the Tbilisi City Court granted the prosecutor's request to order the applicant's pre-trial detention. The trial judge concluded that there was a risk of his hindering the investigation by, *inter alia*, influencing witnesses, and of his absconding. The trial judge did not address the defence's argument about the unlawfulness of the new period of pre-trial detention.

43. On 20 March 2015 the Tbilisi Court of Appeal declared the applicant's appeal inadmissible. Confirming the reasoning of the first-instance court, the appellate court noted that as far as the alleged unlawfulness of the new detention order was concerned:

> "[The court] considers that the assertion of an alleged violation of the time-limit for detention, as provided for by the Constitution, is unsubstantiated ... According to the case file, detention as a preventive measure was applied to Giorgi Ugulava on 4 July 2014 in a different criminal case on other charges and the time-limit of nine months ... for the above pre-trial detention expires on 2 April. On 15 March 2015 the Tbilisi City

> Court examined the prosecution's request in the current criminal case to remand Giorgi Ugulava in custody pending trial ... and granted it ...
>
> [The appellate court] notes that a court is authorised to impose pre-trial detention as a preventive measure if the charges in another criminal case concern different incidents and facts. At the same time, the statutory time-limit, as provided for in the Constitution, expires in the initial criminal case where pre-trial detention had been ordered ..."

44. On 3 April 2015 the applicant lodged an application with the court for a review of his detention order. This was dismissed on 5 May. Identical applications by him dated 5 May and 30 June 2015 were also dismissed by the domestic courts.

45. The parties have not informed the Court about the outcome of the fifth set of criminal proceedings against the applicant.

F. Proceedings before the Constitutional Court and the applicant's release from pre-trial detention

46. On 15 April 2015 the applicant lodged a constitutional complaint with the Constitutional Court alleging that his continued pre-trial detention extending beyond the maximum nine-month time-limit fixed for such detention by the Constitution was unconstitutional. He asked, among other things, for Article 205 § 2 of the Code of Criminal Procedure to be found unconstitutional.

47. On 15 September 2015 the Constitutional Court ruled on the case (*Giorgi Ugulava v. the Parliament of Georgia)* finding that the "normative content" of Article 205 § 2 of the Code of Criminal Procedure, which could be understood as allowing repeated imposition of the nine-month time-limit separately in parallel criminal proceedings without any safeguards against arbitrariness, was unconstitutional. Without ruling on the question whether the applicant's continued pre-trial detention was unlawful, the Constitutional Court held that the nine-month period could in principle be calculated separately for each set of criminal proceedings, provided that an accused already charged with one offence was again indicted for another offence committed after he or she had been remanded in custody in relation to the initial charges. The court, hence, confirmed that there would be nothing inappropriate in authorising an accused's pre-trial detention (for the duration of the statutory period of nine months) repeatedly if the cases had been initiated consecutively. At the same time, it stated that the repeated imposition of pre-trial detention in concurrently initiated sets of criminal proceedings – which were opened and took place simultaneously – called for caution. What the Constitution proscribed, in its view, was either an intentional delay in charges being brought against a person or the delayed imposition of "consecutive" pre-trial detention, in order to prolong the overall period of pre-trial detention by counting the nine-month period separately for each consecutive indictment. After assessing Article 205 § 2 of the Code of

Criminal Procedure and the existing court practice on the matter, the Constitutional Court held, *inter alia*, that, while the Code of Criminal Procedure in general conferred broad discretion on the prosecution authorities as to when to press charges, it was silent on the application of the nine-month time-limit in cases involving multiple parallel indictments, and furthermore did not set a different overall maximum time-limit for pre-trial detention in cases involving multiple consecutive indictments. Given this omission, the provision thus created the possibility of indefinite detention of a person subject to multiple indictments, which was against the spirit of the Constitution that pre-trial detention should in principle be limited in time. The rule it prescribed therefore lacked the requisite clarity *vis-à-vis* cases involving multiple parallel indictments and was susceptible to varied interpretations. The court thus concluded that the interpretation of Article 205 § 2 of the Code of Criminal Procedure as allowing the application of the nine-month time-limit separately for each consecutive indictment would only be constitutional if it precluded any instances of arbitrariness as outlined above.

48. The relevant parts of the judgment read as follows:

> "32. Where a person is indicted with several offences, there might well be an interest in applying detention, for the purpose of preventing prejudice to justice, individually in relation to each [indictment]. Accordingly, the purpose of Article 18 of the Constitution ... is not to determine the maximum period of detention ... of a person throughout his whole life. The purpose of Article 18 of the Constitution is to oblige the State to promptly decide on the charges of a defendant when he or she is in custody.
>
> 33. At the same time, the maximum period of nine months of pre-trial detention in relation to each individual criminal case is also applicable in a case where a person is simultaneously facing several indictments. Where a person is in pre-trial detention, Article 18 § 6 of the Constitution also obliges the State to exercise prompt justice. As far as the implications for a person charged are concerned, detention has similar effect[s] on a right regardless of the charge for which it is requested. Accordingly, when facing several simultaneous indictments, the reasons for imposing the maximum period of pre-trial detention apply equally to each criminal case, regardless of the crime for which the person is in detention.
>
> 34. Therefore, for the purposes of determining the maximum period of pre-trial detention within the meaning of Article 18 § 6 of the Constitution ... a person charged with a criminal offence shall be considered to be in pre-trial detention, even if ... the detention was actually imposed in another criminal case. In the event of several simultaneous indictments, when imposing the maximum period of pre-trial detention in each individual case, the period that a person has already spent in pre-trial detention in another criminal case ... has to be taken into consideration ...
>
> 35. Accordingly, it is not permissible to apply detention ... in a specific criminal case if a person, after being indicted in that case, has already spent (for any criminal case) nine months in pre-trial detention. Obviously, this standard does not exclude the possibility of the repeated imposition of detention with respect to an offence which a person commits after the imposition of [the first] detention. The repeated imposition of nine months of pre-trial detention may also be constitutional where the basis for

indicting a person for a crime that he had committed before [his pre-trial] detention only became known to the prosecution after he was put in pre-trial detention in the first case. Nevertheless, in both examples, the imposition of pre-trial detention shall be against the requirements of the Constitution if bringing charges and/or requesting the imposition of detention is artificially delayed and aimed at artificially extending the period of pre-trial detention, for example, in a case where the investigation knew certain facts and/or information, which served as a basis for initiating new criminal proceedings, and which provided a sufficient basis for bringing charges, but nevertheless chose not to bring such charges [promptly].

36. ... The Constitutional Court considers that Article 18 § 6 of the Constitution together with [Article 18 § 1] prohibits any manipulation of the nine-month period of pre-trial detention, the artificial continuation of that period by using various formally lawful methods or grounds, as [this type of continuation] is contrary to the interest which Article 18 § 6 of the Constitution aims to safeguard.

...

The Constitutional Court of Georgia finds

... 2. The normative substance of Article 205 § 2 of the Criminal Code of Procedure ... shall be declared unconstitutional in relation to Article 18 §§ 1 and 6 of the Constitution ... in so far as it allows for the detention of a person charged in a criminal case, if at the time he is indicted in that case or sufficient grounds for indicting him are identified, he has already spent nine months [in pre-trial detention] in connection with any other criminal case pending against him."

49. On 17 September 2015 the applicant, referring to the Constitutional Court's ruling on his case, requested the Tbilisi City Court to release him from pre-trial detention. On the same date the court granted his request, noting that the applicant had already spent fifteen months in pre-trial detention and that his further detention, in view of the Constitutional Court's recent ruling, was impermissible.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of 1995 (as in force at the material time)

50. Article 18 § 1 of the Constitution states that the human liberty shall be inviolable. Under Article 18 § 6, the maximum period of pre-trial detention is nine months.

B. Code of Criminal Procedure (as in force at the material time)

1. Provisions governing arrest and pre-trial detention

51. Under Article 171 § 1 of the Code of Criminal Procedure, an arrest must be based on a judicial warrant. Sub-paragraphs (a) to (f) of Article 171 § 2 set out the situations in which an arrest may, by way of exception, be

made without a warrant. The relevant one in this case is sub-paragraph (e), which provides that a warrant is not necessary if there is a risk of flight. Article 171 § 3 lays down a further requirement for an arrest without a warrant: that the relevant risk cannot be prevented by an alternative measure proportionate to the circumstances of the alleged offence and the accused's personal character.

52. As regards pre-trial detention, Article 205 of the Code of Criminal Procedure reads as follows:

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 or interfering with the administration of justice;

(b) hampering the obtaining of evidence;

(c) reoffending.

2. The overall length of the accused's pre-trial detention shall not exceed nine months. After the expiry of that period, the accused shall be released. The period starts to run from the time of arrest of the accused ... and ends with the delivery of a judgment by a first-instance trial court.

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."

53. Under Article 206 §§ 2, 3 and 6 of the Code of Criminal Procedure, the prosecutor's initial request for a preventive measure such as detention must be submitted to a judge within forty-eight hours of the arrest of the accused and must always be examined in the presence of all the parties at a fully adversarial oral hearing. The judge must then deliver a reasoned written decision, and the accused has the right to lodge an appeal against the decision to a higher court (Article 207).

2. Provisions concerning judicial review

54. Article 194 § 1 of the Code of Criminal Procedure, a provision which forms part of a chapter setting out general rules for the conduct of oral hearings, states that if a court makes a decision in the course of a hearing, that decision can be pronounced orally, and must be recorded in the minutes of the hearing. Article 194 § 2 specifies that all oral decisions must be reasoned.

55. Under Article 206 §§ 1 and 8 of the Code of Criminal Procedure, the accused may, at any stage of the proceedings, including at the pre-trial conference, request that the preventive measure to which he or she has been subjected be varied or set aside. Within twenty-four hours, the court must review the request without a hearing, checking whether new circumstances

have emerged in the meantime and deliver a written decision on admissibility or inadmissibility. If it finds the request admissible, it must then examine it at an oral hearing. Article 206 § 9 provides that, in such proceedings, the burden of proof lies with the prosecution. Under Article 206 § 6, the court's decision on the request must set out the circumstances on the basis of which the court deems it necessary to apply, vary or set aside a preventive measure.

THE LAW

I. PRELIMINARY OBJECTION

56. On 25 April 2017 the Government informed the Court that on 6 January 2017, by virtue of a judgment of the Tbilisi Court of Appeal, the applicant had been released from prison (see paragraph 9 above). They alleged that by failing to inform the Court of this new important development in his case, the applicant had acted in breach of Rule 47 § 7 of the Rules of Court. This amounted, in their view, to an abuse of the right of individual application under Article 35 § 3 (a) of the Convention.

57. The applicant disagreed, claiming, *inter alia*, that his release from prison had no bearing whatsoever on the case pending before the Court.

58. The Court notes that an application may be rejected as an abuse of the right of application under Article 35 § 3 (a) of the Convention if it was knowingly based on untrue facts (see, among other authorities, *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014) or if incomplete and/or misleading information was submitted to the Court (see *Bekauri v. Georgia* (preliminary objection), no. 14102/02, § 21, 10 April 2012, with further references, and *Saakashvili v. Georgia* (dec.), nos. 6232/20 and 22394/20, § 64, 1 March 2022). The Court notes that the subject matter of the present case is limited to the allegedly unlawful and arbitrary nature of the applicant's pre-trial detention, whereas his release from prison followed the serving of his prison sentence. Given the subject matter of the applicant's complaints, the impugned delay in submitting the information in question cannot be seen as an attempt on his part to conceal from the Court any essential information that would be relevant for its decision (compare *Gafà v. Malta*, no. 54335/14, § 62, 22 May 2018).

59. The Court therefore rejects the Government's objection that there has been an abuse of the right of application.

II. ALLEGED VIOLATIONS OF ARTICLE 5 § 1 OF THE CONVENTION

60. The applicant complained that his arrest and pre-trial detention between 3 July 2014 and 17 September 2015 had been contrary to domestic

law and arbitrary. He relied on Article 5 § 1 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so."

A. Admissibility

61. The Government did not raise any objection as to the admissibility of the applicant's complaints under Article 5 § 1 of the Convention. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Alleged violation of Article 5 § 1 of the Convention regarding the period between 3 July 2014 and 2 April 2015

(a) The parties' submissions

62. The applicant submitted that, contrary to what the Government were asserting, he had informed the relevant investigative authorities, personally and through various media sources, of his travel plans on 3 July 2014. They had also been informed of his decision to shorten his trip to Kyiv in order to return to Georgia on 4 July 2014 to take part in the planned investigative measure. This, coupled with his overall diligence *vis-à-vis* the investigation, including his repeated appearances before the investigating authorities and his public pledge to cooperate with them, had been sufficient to exclude any risk of his fleeing. There had therefore been no need to detain him without a judicial warrant.

63. The applicant further claimed that the so-called warning issued on 30 June 2014 by the investigator in charge of the third criminal case requesting him not to leave Georgia had, in the absence of a relevant court order, been unlawful and thus invalid. This was so particularly because on 2 July 2014 a trial judge had rejected, in the very same criminal case, the prosecution's request for him to surrender his ID card and passport. He also submitted, contrary to what the Government were submitting, that the only obligation he had had under Article 94 of the Code of Criminal Procedure had been to appear before the investigative authorities upon being summoned. He

had had no obligation to keep them informed of his travel plans, even if he had done so of his own free will.

64. The Government submitted, with reference to Articles 170, 171, 174, 198, 205, 206 and 230 of the Code of Criminal Procedure, that the relevant judicial practice at the material time concerning a person's arrest and subsequent pre-trial detention was sufficiently clear and foreseeable, leaving no room for any arbitrariness or uncertainty. They claimed that the applicant had been inconsistent in his actions *vis-à-vis* the investigation. Despite being summoned on 2 July 2014 to participate in an investigative measure to be held on 4 July 2014, he had attempted to leave Georgia on 3 July 2014 and had accordingly been arrested at Tbilisi International Airport. His arrest had fully complied with Article 171 of the Code of Criminal Procedure, itself fully in line with Article 5 § 1 of the Convention. The arrest had been made owing to the risk of flight. That risk had been corroborated by his failure to keep the investigator informed of his intention to leave the country. Furthermore, as shown by the decision of 4 July 2014 of the Tbilisi City Court ordering the applicant's pre-trial detention, the arrest had been based on a reasonable suspicion that he had committed the offences with which he had been charged in the fourth criminal case; and in the months before the arrest the prosecution authorities had obtained ample evidence supporting those charges. The Tbilisi City Court, whose decision had been upheld by the Tbilisi Court of Appeal, had reviewed the prosecution's assessment of the evidence and had been satisfied that there existed a reasonable suspicion.

65. As to the reasonableness of the applicant's pre-trial detention, it had been justified in view of the risk of his absconding and failing to appear before the investigative and/or judicial authorities, the risk of his obstructing the proceedings and the risk of his reoffending. In relation to his release on 2 July 2014, the Government submitted that the lawfulness of his pre-trial detention ordered on 4 July 2014 had to be assessed only in view of the particular circumstances of the fourth criminal case pending against him and the relevant arguments advanced by the prosecutor. The factual circumstances, particularly the grounds relied on by the prosecution in the fourth case, had been different and had thus led to a different decision by the national courts. The Government pointed to three developments which had taken place between 2 and 4 July 2014 and which could explain the difference in approach of the domestic courts: (i) the applicant's attempt to leave Georgia on 3 July 2014; (ii) his attempt to influence a witness, G.K., which had become known to the prosecution on 2 July 2014; and (iii) the bringing of new charges against him on 4 July 2014 in connection with crimes which he had allegedly committed during his release on bail. The above-mentioned circumstances had clearly warranted the imposition of pre-trial detention with respect to him.

(b) The Court's assessment

(i) General principles

66. The relevant general principles relating to Article 5 § 1 of the Convention were most recently summarised by the Court in *S., V. and A. v. Denmark* ([GC], nos. 35553/12 and 2 others, §§ 73-77, 22 October 2018; see also *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 222-25, 28 November 2017; *Magnitskiy and Others v. Russia*, nos. 32631/09 and 53799/12, §§ 198-200, 27 August 2019; and *Selahattin Demirtaş v. Turkey* (no. 2) [GC], no. 14305/17, §§ 311-21, 22 December 2020).

(ii) Application of those principles

67. The Court notes that the applicant did not claim that his arrest and pre-trial detention had not been based on a reasonable suspicion of his having committed the offences in relation to which he was taken into custody, and that the Government gave a detailed account of the incriminating material obtained by the authorities before the arrest. Nothing in that material appears to cast doubt on the reasonableness of the suspicion against the applicant, either on the facts or as a matter of criminal law (see *Merabishvili*, cited above, § 187, with further references therein). The Court is thus satisfied that the material put forward by the prosecution authorities and relied upon by the Tbilisi City Court to confirm the arrest and order the pre-trial detention the applicant was sufficient to persuade an objective observer that he might have committed the offences with which he had been charged. Moreover, the intention was to bring the applicant before a competent legal authority, which happened the next day (see paragraphs 27 and 29 above).

68. As to whether the arrest was "lawful" and "in accordance with a procedure prescribed by law", the Court observes that the domestic courts referred to Article 171 § 2 point (e) of the Code of Criminal Procedure, according to which a warrant can be dispensed with if there is a risk of flight (see paragraph 51 above). Given that the applicant was arrested at the airport when trying to board a flight to Kyiv, the Court finds relevant the Government's argument that there was such a risk (compare *Magnitskiy and Others*, cited above, § 202, and contrast *Korban v. Ukraine*, no. 26744/16, §§ 146-48, 4 July 2019). When deciding the next day whether or not to place the applicant in pre-trial detention, the Tbilisi City Court also examined, albeit briefly, the lawfulness of his arrest (see paragraph 29 above), and its decision was upheld by the Tbilisi Court of Appeal (see paragraph 32 above). The Court sees no basis on which to depart from the domestic courts' findings on the application of domestic law (see *Mikhaniv v. Ukraine*, no. 75522/01, § 83, 6 November 2008).

69. What remains to be ascertained is whether there was anything arbitrary in the way the applicant was subsequently remanded in custody on 4 July 2014. Detention will be "arbitrary" where, despite complying with the

letter of national law, there has been an element of bad faith or deception on the part of the authorities (see *S., V. and A. v. Denmark*, cited above, §§ 75-76, with further references therein; see also *Mooren v. Germany* [GC], no. 11364/03, §§ 77-79, 9 July 2009; *Magnitskiy and Others*, § 198 and *Korban*, § 145, both cited above). The thrust of the applicant's complaint in this regard is the fact that he was remanded in custody despite being allowed to remain at liberty without bail just two days before, that is, on 2 July 2014 (see paragraph 17 above).

70. The Court starts by noting that whether the Tbilisi City Court paid enough heed to the applicant's personal situation and, more generally, whether the reasons that it gave for placing him in pre-trial detention were relevant and sufficient, falls more properly to be examined under Article 5 § 3 (see *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 44, Series A no. 77; *Khodorkovskiy v. Russia*, no. 5829/04, §§ 161 and 163, 31 May 2011; *Mikiashvili v. Georgia*, no. 18996/06, § 94, 9 October 2012; and *Vaščenkovs v. Latvia*, no. 30795/12, § 42, 15 December 2016). Consequently, this issue will be examined in detail later (see paragraphs 100-105 below). In view of the Court's relevant case-law, it cannot be said that the reasons given by that court for placing the applicant in pre-trial detention suffered from such shortcomings as to call into question its lawfulness within the meaning of Article 5 § 1 (contrast *Lutsenko v. Ukraine*, no. 6492/11, §§ 67-72, 3 July 2012, and *Tymoshenko v. Ukraine*, no. 49872/11, §§ 269-70, 30 April 2013; see also *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, § 74, 13 January 2009).

71. In particular, the Court notes that while the decision of 2 July 2014 by which the Tbilisi City Court decided that the applicant could remain at liberty without bail and did not need to surrender his ID card and international passport preceded his arrest by only one day (see paragraph 17 above), the applicant did not argue that the charges in both cases were similar (compare *Mikhaniv*, cited above, § 85; contrast *Dubinskiy v. Russia*, no. 48929/08, § 43, 3 July 2014; *Korban*, cited above, § 149; *I.E. v. the Republic of Moldova*, no. 45422/13, §§ 64-65, and 67, 26 May 2020; and *Cosovan v. the Republic of Moldova*, no. 13472/18, § 99, 22 March 2022). At the same time, the Court finds relevant the Government's argument that at least three new factual circumstances concerning the applicant had emerged in the period between the two court decisions that could be perceived as substantially altering his personal situation, and that the national courts indeed relied on those circumstances (see paragraphs 29-32 above). A witness claimed that the applicant had tried to influence him (see paragraph 22 above), new charges were brought against him in the fourth criminal case (see paragraph 24; contrast *Korban*, cited above, §§ 148-49), and he tried to leave the country despite being summoned by an investigator (ibid. §§ 41-42; see also *Mikhaniv*, cited above, §§ 81-89).

72. The Court considers that it is not its task to assess the strategy chosen by the prosecution authorities in the criminal proceedings, even if it raises certain questions as to its reasonableness. The Court does not find that the situation described above demonstrates that the new charges brought against the applicant in the fourth criminal case were solely used as a pretext to circumvent the effects of the domestic court's decision of 2 July 2014 ordering his release (contrast *Korban*, cited above, § 150). The Court does not consider, therefore, that the decision of 4 July 2014 to remand the applicant in custody was taken in bad faith (compare *Khodorkovskiy*, cited above, §§ 142-43).

73. In view of all the foregoing, the Court finds that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's arrest and subsequent pre-trial detention during the period from 3 July 2014 until 2 April 2015.

2. Alleged violation of Article 5 § 1 of the Convention on account of the applicant's pre-trial detention from 2 April until 17 September 2015

(a) The parties' submissions

74. The applicant submitted that his pre-trial detention after 2 April 2015, that is, after the expiry of the statutory maximum time-limit of nine months for such detention, had been unlawful and arbitrary. He stressed that while the relevant charges in the fifth case had been brought against him on 28 July 2014, the prosecution authorities had not sought his remand in custody in relation to those charges until 13 March 2015, that is, with a delay of almost eight months. They had hence manipulated the various criminal proceedings pending against him in order to arbitrarily keep him in continued pre-trial detention beyond the maximum time-limit of nine months. In support of his argument, he referred to the Constitutional Court's decision of 15 September 2015 (delivered on 17 September 2015), by which the "normative content" of Article 205 § 2 of the Code of Criminal Procedure had been declared unconstitutional for being insufficiently precise and unforeseeable (see paragraphs 47-48 above).

75. The Government submitted that it had been fully consistent with the relevant domestic law and practice for the applicant, who had been accused of multiple criminal offences in separate but parallel criminal proceedings, to have been held in pre-trial detention on the basis of consecutive detention orders, each authorising his detention for the maximum statutory time-limit of nine months in the relevant individual criminal cases. Article 205 of the Code of Criminal Procedure had never excluded the imposition of pre-trial detention on the same person more than once, provided that that person had been accused in separate criminal cases. On the contrary, according to the Government, there had been a well-established judicial practice at the time of the applicant's pre-trial detention, according to which pre-trial detention, as

a preventive measure, could be applied more than once to the same person if he or she was being prosecuted separately in parallel or consecutive criminal cases. They submitted several judicial decisions in support of their argument.

76. As to the judgment of the Constitutional Court, the Government submitted that the court had not declared Article 205 of the Code of Criminal Procedure unconstitutional but had rather considered that the manner of its interpretation and application by the domestic courts at the relevant time had to be improved. At the same time, it had noted that the imposition of the second pre-trial detention on the applicant had been in line with the domestic judicial practice at the material time and had not considered it to be unlawful *per se.*

(b) The Court's assessment

77. The Court notes that the gist of the applicant's complaint is that his detention in connection with the fifth criminal case after 2 April 2015, and more precisely from 2 April to 17 September 2015, was "unlawful", because, as alleged, it did not comply with "a procedure prescribed by law" and, alternatively, was arbitrary because the procedure itself was not sufficiently precise and foreseeable.

78. The Court starts by noting that in its recent decision in the case of *Akhalaia v. Georgia* ((dec.), nos. 30464/13 and 19068/14, § 46, 7 June 2022), which concerned pre-trial detention of the applicant in two consecutive criminal proceedings between March 2013 and October 2014, when domestic law was the same as in the present case, it found that the practice of remand in custody under Article 205 § 1 of the Code of Criminal Procedure for the statutory duration of nine months separately in parallel or consecutive criminal proceedings was as such in line with the relevant domestic law and judicial practice at the material time. It notes, however, that the Constitutional Court found in the applicant's case that the provisions of the Code of Criminal Procedure on which the applicant's detention was based had to be interpreted in the light of the Constitution, which prohibited any manipulation of the nine-month maximum period of pre-trial detention and its artificial continuation by using formally lawful grounds. The example of unjustified delaying of bringing of additional charges was cited (see paragraphs 47-48 above). The Court also notes that the Tbilisi City Court eventually released the applicant on 17 September 2015 finding that the Constitutional Court's interpretation of the law meant that his further detention was impermissible (see paragraph 49 above).

79. While the above mentioned decision of the Tbilisi City Court could be understood as implying that the applicant's pre-trial detention after 2 April 2015 ran contrary to the principles underlying the relevant domestic law, in the particular circumstances of the present case the Court considers that the gist of the issue before it concerns not so much lawfulness under domestic law but rather the question whether the applicant's continued pre-trial

detention was in keeping with the purpose of Article 5 § 1 of protecting him from arbitrariness. As already noted above, the notion of arbitrariness in that provision extends beyond the question of conformity with national law (see paragraph 69 above).

80. The Court observes in this regard that while charges in the fifth criminal case against the applicant had already been brought against him on 28 July 2014 (see paragraph 37 above), his pre-trial detention in connection with those charges was only requested on 14 March 2015 (see paragraph 40 above), that is, after about eight months into the investigation and shortly before the moment when the maximum detention period applied in connection with the fourth criminal case was about to expire (see paragraph 29 above; compare *I.E. v. the Republic of Moldova*, cited above, § 66; contrast *Merabishvili*, cited above, § 203; and compare and contrast *Akhalaia*, cited above, paragraph 47 *in fine*). The Government failed to adequately explain this timing despite the Constitutional Court's judgment in the applicant's case pointing to the timing of the detention order as an important element that might lead to the conclusion that there had been manipulation of the maximum lawful period of detention, contrary to the prohibition of arbitrariness.

81. In particular, the Constitutional Court stated that in view of the importance of the right to liberty and having regard to the related concept of "prompt justice", the period that a person has already spent in pre-trial detention, whichever criminal case, had to be taken into consideration when imposing another period of pre-trial detention. In its decision of 17 September 2015, the Tbilisi City Court read the Constitutional Court's ruling as preventing the applicant's continued pre-trial detention (see paragraph 49 above).

82. Between 28 July 2014 and 2 April 2015, when the investigation in both sets of criminal proceedings was being conducted in parallel the applicant was in detention and, accordingly, the investigation authorities were expected, in view of the restriction of his liberty, to display "special diligence" (see *Idalov v. Russia* [GC], no. 5826/03, § 133, 22 May 2012). The Government's argument that a fresh detention order had become necessary because a certain number of investigative measures had been taken in the period in question leading to amended charges having been brought against the applicant on 13 March 2015 (see paragraph 38 above) does not find support in the text of the decisions of the Tbilisi City Court and the Tbilisi Court of Appeal of 15 and 20 March 2015 respectively (see paragraphs 42 and 43 above). It is evident that those courts did not deal with the question whether the timing of the request for a fresh detention order was justified by genuine developments in the criminal investigation. Furthermore, the courts failed to address the applicant's arguments pointing to the absence of any justification despite the fact that what was at stake was the *de facto* prolongation of pre-trial detention beyond the nine-month period fixed by the

Constitution, which, accordingly, in view of the exceptional nature of the measure, called for particular diligence on the part of the domestic authorities (see *Šebalj v. Croatia*, no. 4429/09, §§ 192-98, 28 June 2011). The Court considers that in the circumstances of the case the domestic courts were required to ensure that a detailed and sufficient justification was advanced before granting any further order permitting pre-trial detention, which they failed to do.

83. In view of all the above mentioned and having particular regard to Article 205 of the Code of Criminal Procedure, as interpreted by the Constitutional Court, the Court finds that the applicant's pre-trial detention between 2 April and 17 September 2015 was in breach of Article 5 § 1 of the Convention in that the authorities acted in a manner which did not ensure protection from arbitrariness.

3. Alleged violation of Article 5 § 1 of the Convention on account of the failure to fix the time-limit for detention in the decisions of 4 July 2014 and 15 March 2015

84. The applicant submitted that neither period of his pre-trial detention had complied with the principle of legal certainty because the relevant court decisions had not specified the duration of the imposed detention.

85. The Government submitted various examples of similar detention orders which had not fixed any time-limit for the imposed pre-trial detention, maintaining that it had been a well-established practice of the national courts at the material time. They claimed that the relevant judicial practice of not fixing an explicit time-limit in court decisions ordering pre-trial detention was not in itself incompatible with the Court's case-law.

86. The Court notes that it has already examined the above practice in *Merabishvili* (cited above) and found it, in the context of the relevant Georgian procedural law and practice at the material time, to be compatible with Article 5 § 1 of the Convention (ibid. §§ 197-201; see also *Oravec v. Croatia*, no. 51249/11, § 55, 11 July 2017, with further references therein). The only circumstance that differentiates the present case from that of *Merabishvili* as far as the above complaint is concerned is the fact that the applicant in the present case was placed in pre-trial detention twice in connection with two separate criminal cases. That issue, however, has already been fully dealt with by the Court (see paragraphs 77-83 above).

87. The Court accordingly finds, in view of its established case-law, that there has been no breach of Article 5 § 1 of the Convention on account of the lack of a fixed period of detention in the detention orders of 4 July 2014 and 15 March 2015.

III. OTHER ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

88. The applicant alleged that no relevant and sufficient reasons had been given in the detention decision of 4 July 2014, and that the Tbilisi City Court's decision of 18 February 2015 upholding his continued detention had been given orally and had not contained sufficient reasons. In addition, he alleged that the decision of 15 March 2015 had also failed to give relevant and sufficient reasons for his pre-trial detention. The applicant further complained that he had been prevented from effectively defending his interests during the detention hearing of 4 July 2014 because he had been refused access to a lawyer immediately after his arrest and in view of the delayed access to the criminal case file. He relied on Article 5 §§ 3 and 4 of the Convention, the relevant parts of which read as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

89. The Government did not raise any objection as to the admissibility of the applicant's various complaints under Article 5 §§ 3 and 4 of the Convention. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Scope of the complaints and their legal classification

90. Insofar as the complaints concern the applicant's detention after 2 April 2015, noting that his deprivation of liberty during that period was already found to have been in contravention of Article 5 § 1 of the Convention (see paragraph 83 above), the Court considers it unnecessary to examine whether it involved breaches of other Article 5 guarantees (see *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, §§ 102, 22 May 2014, and *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 135, 17 March 2016).

91. The Court further notes that the detention hearing before the Tbilisi City Court on 4 July 2014, when the applicant was "brought before a judge" and his first pre-trial detention was ordered, falls to be examined under Article 5 § 3 of the Convention (see, in this regard, *Lebedev v. Russia*, no. 4493/04, § 74, 25 October 2007). Furthermore, the thrust of the

applicant's complaint concerning the decision of 18 February 2015 relates to a lack of written reasoning therein, an issue which is related to the justification for the continued detention and also falls to be examined under that provision (see *Merabishvili*, cited above, § 240). Being the master of characterisation to be given in law to the facts of the case (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 145, ECHR 2017), the Court will accordingly consider the applicant's above complaints under Article 5 § 3 of the Convention only.

2. The parties' submissions

92. The applicant argued that the court decision of 4 July 2014 had not contained relevant and sufficient reasons for his remand in custody. The decision, according to him, had been phrased in an abstract and standardised way, disregarding his individual circumstances, and the Tbilisi City Court had shifted the burden of proof on him by requesting him to prove that he warranted release. He also alleged that there had been a delay in providing him with access to the case file in respect of evidence on which the prosecution had relied in the proceedings requesting his remand in custody, which had prevented him from adequately preparing for the detention hearing. He submitted that the case file had contained 211 pieces of evidence, most of which had not been given to him until early in the morning of 4 July 2014, the same date as the detention hearing. Moreover, certain pieces of evidence, including the statement of a witness, G.K., had not been made available to his defence team until later that day, just a few hours before the hearing. As a result, the defence had not had sufficient time to prepare written submissions for the detention hearing.

93. The applicant further submitted that he had been prevented from seeing his lawyer immediately after the arrest, which had also adversely affected his preparation for the hearing when he was brought before a judge. In reply to the Government's allegation concerning his being accompanied by a lawyer at the time of his arrest at the airport (see paragraph 96 below), he claimed that the person in question had not been acting as his representative in the fourth criminal case. This explained, in his view, the fact that the record of his arrest had not borne that person's signature.

94. In connection with the judicial review of 18 February 2015, the applicant complained that the decision rejecting his request to lift his pre-trial detention had been given orally and insufficiently reasoned. He submitted in this regard that the trial judge, despite being expected under Article 194 § 1 and Article 206 §§ 1, 8 and 9 of the Code of Criminal Procedure to issue a written reasoned decision, had failed to do so.

95. The Government submitted that the grounds for the applicant's pre-trial detention had been justified, that the reasons cited by the domestic courts had been adequate and sufficient, and that his detention had in general been lawful. They argued that it had been necessary to place the applicant in

pre-trial detention because of the apparent risk of his fleeing, perverting the course of justice, by, *inter alia*, influencing witnesses and tampering with evidence, as well as in view of the risk of his reoffending. Those risks had been examined in detail by the Tbilisi City Court in its decision of 4 July 2014. In particular, the court had referred in its reasoning to a number of specific factual circumstances to substantiate the above-mentioned risks: the fact that the applicant had had connections abroad, including with his purported accomplices, who had fled Georgia in the face of the criminal investigation initiated against them and another important witness; the fact that despite being summoned for an interview on 4 July 2014, he had attempted to leave Georgia on 3 July 2014; the fact that he had allegedly attempted to threaten a witness, G.K., in his case; and the fact that new charges had been brought against him in connection with the events that had occurred in April to June 2014 while he had been released on bail.

96. As to the allegations of a breach of defence rights, the Government dismissed them as unsubstantiated. They submitted that the applicant had been arrested on 3 July 2014 at 5.57 a.m. in the presence of his lawyer, G.G. He had been immediately informed of the fresh charges brought against him and of his rights and obligations. At 6.41 a.m. he had been taken to the premises of the investigative department of the Ministry of Finance, before being transferred to the temporary detention centre at 8.45 a.m. Within half an hour of his arrival, he had been allowed to see a lawyer. The Government stressed that in the period between the applicant's arrest and his seeing his lawyer, no investigative measures had been undertaken. As to access to the case material, they submitted that as soon as the prosecution authorities had received the lawyer's request for the case file, they had started preparing a copy. They had informed the applicant's lawyer of the availability of a copy at 10 p.m., but he had not gone to pick it up until 1 a.m. on 4 July 2014. The Government thus maintained that the prosecution authorities had taken every reasonable step to provide the applicant with timely and adequate access to the evidence.

97. As to the judicial review of 18 February 2015, the Government contended that the court had made its decision after fully adversarial proceedings and taking into consideration all arguments put forward by the parties in those proceedings. Its oral ruling had not breached the Code of Criminal Procedure.

3. The Court's assessment

98. The applicable general principles under Article 5 § 3 of the Convention are summarised in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 84-102, 5 July 2016) and *Merabishvili* (cited above, §§ 222-25; see also *Hasselbaink v. the Netherlands*, no. 73329/16, §§ 69-73, 9 February 2021).

99. As regards the period to be taken into consideration for the purposes of Article 5 § 3, the Court notes that the complaints relate to the first period of the applicant's pre-trial detention which commenced on 3 July 2014, with his arrest. The Court is called upon to examine the observance of the applicant's Article 5 § 3 rights until the moment when, on 2 April 2015, his detention became contrary to Article 5 § 1 (see paragraph 90 above). The period to be examined is therefore nine months in total.

100. In the present case, the Court has already found that sufficient facts and information that could give rise to a suspicion justifying the applicant's first pre-trial detention were put forward to the Tbilisi City Court (see paragraph 67 above) and that there was therefore a reasonable suspicion that he had committed the offences in question. In addition to the existence of a reasonable suspicion against him, in its detention decision, upheld by the Tbilisi Court of Appeal, the authorities referred to three grounds, namely (i) the risk of his absconding, given the serious nature of the charges and the severity of the possible penalty; (ii) the risk of his reoffending in view of, among other things, the fact that he had committed another offence while under investigation in a separate criminal case; and (iii) the risk of his obstructing the proceedings. In the latter regard, the court noted that the risk of his tampering with evidence and influencing witnesses was real in view of his character and social status, and the fact that he had already once attempted to put pressure on one of the witnesses.

101. It is true that the Tbilisi City Court did not set out all the arguments cited by the prosecution in relation to those matters. It did, however, expressly refer to the prosecution's submissions. By doing so, it made it clear that it had taken into account the specific points put forward by the prosecution and had found them sufficient to justify placing the applicant in pre-trial detention. Whilst more detailed reasoning would have been desirable, the Court is satisfied that this was enough in the circumstances, and that it could have regard to those specific points. As repeatedly noted by the Court, nothing precludes the national judicial authorities from endorsing or incorporating by reference the specific points cited by the authorities seeking the imposition of pre-trial detention (see, among other authorities, *Merabishvili*, cited above, § 227).

102. The Court considers, having regard to the case file, that the decision of 4 July 2014 contained references to the specific facts and the applicant's personal circumstances justifying his detention. The flight risk was thus substantiated in concrete terms. The prosecution referred, generally, to the applicant's character and wide network of contacts abroad. They also referred specifically to the fact that he had been arrested at the airport when trying to board a flight to Kyiv. The Tbilisi City Court found in this respect that the applicant had failed to provide the investigator in charge of the fourth criminal case with updated information about his trip to Kyiv (see paragraph 31 above). Those facts, amplified by the seriousness of the

punishment which awaited him if convicted, suggest that at the relevant time, the risk of his fleeing abroad could be seen as sufficiently real and incapable of being averted by a less restrictive measure.

103. The Court further agrees that the risk of the applicant obstructing the investigation by attempting to influence a witness was also substantiated. On top of the fact that he allegedly exercised considerable influence in the political and economic sectors of Georgian society, there was allegedly a specific incident in which he tried to influence a key witness in those proceedings (see paragraph 22 above).

104. As to the risk of reoffending, the court referred to the fact that the new charges had been brought against the applicant in connection with the events that had allegedly taken place while he was on bail in relation to another criminal investigation (see paragraph 24 above).

105. The Court considers, in view of all the foregoing, that, cumulatively, the grounds referred to by the Tbilisi City Court in its decision of 4 July 2014, constituted relevant and sufficient reasons for his remand in custody in the initial period.

106. As regards the question whether the applicant's detention continued to be justified after the passage of time, the Court first notes the applicant's argument that the judge gave only orally the reasons for refusing his request for release on 18 February 2015. Whilst the applicant claimed that the trial judge had been required to give reasons for her decision on paper, in line with Article 206 of the Code of Criminal Procedure, the Government argued that giving an oral decision had been fully in line with the relevant judicial practice at the material time.

107. The Court notes that the Government provided a copy of the audio recording of the 18 February 2015 hearing fully capturing the trial judge's examination of the applicant's application for release. In such circumstances and contrary to *Merabishvili*, where no reasons had been given at all (cited above, § 233), it is in a position to assess the relevance and sufficiency of the reasons as provided by the trial judge for the justification of the applicant's continued detention, even if only orally. Having regard to the fact that the applicant and his lawyers could have access to and use in further proceedings the audio recording, from which the grounds which, in the eyes of the trial judge, justified the applicant's pre-trial detention were clearly discernible, the Court accepts, in the particular circumstances of the present case, the Government's contention that the depth of the courtroom discussions, reflected in the audio recording of the hearing concerned, could compensate for the lack of a written decision.

108. Turning the substance of the grounds given for refusing the applicant's request for release, the Court starts by noting that in their submissions before the Tbilisi City Court, the applicant and the prosecution essentially repeated the arguments about the three particular risks – flight, interference with the course of justice and reoffending – that they had already

made on 4 July 2014 (see paragraphs 33-34 above). The only new argument by the prosecution appears to have been that the risk of the applicant influencing witnesses had increased because the prosecution witnesses had been identified and confirmed for examination in court. On the applicant's side, the main new argument appears to have been that the investigation had already been concluded. All those arguments had a bearing on the continued justification for his pre-trial detention, and none of them was entirely devoid of merit. Even if most of them were identical to those made in July 2014, that is, seven months previously, they all required fresh examination, since by their very nature reasons given at first justifying the imposition of pre-trial detention can change over time (see *Merabishvili*, cited above, § 232, with further references therein).

109. As the Court has already found above, the risks referred to by the prosecution, in view the seriousness of the charges against the applicant, were relevant and sufficient to justify his initial pre-trial detention (see the Court's reasoning in paragraphs 100-105 above). However, the applicant argued that with the passage of time the reasons for him to abscond, for example, became less relevant, because of his family situation and his history of cooperating with the authorities (compare *Darvas v. Hungary*, no. 19547/07, § 27, 11 January 2011). The Tbilisi City Court, however, remained silent as to why the risk of absconding could not be offset by other means of ensuring his appearance at trial, including, for example, by seizing his passport in order to prevent him from leaving the country (see *Magnitskiy and Others*, cited above, § 219, with further references therein; see also *Cosovan*, cited above, § 98).

110. Furthermore, the finding that if released, the applicant would take action to prejudice the administration of justice merited new analysis in view of new pertinent factors, such as the advancement of the investigation (see *Darvas*, cited above, § 26, where the Court considered that the risk of collusion must be regarded as significantly less relevant once the evidence had been gathered, the investigation terminated, and an indictment preferred). The Tbilisi City Court only made a mere reference to the reasons set out in the decision given on 4 July 2014. The Court notes that it was not sufficient to refer to a previous decision ordering pre-trial detention, since the previous decision did not take into account new information on which a fresh application to lift the applicant's pre-trial detention had been based. The Court is ready to accept the argument that the risk of influencing witnesses existed at least until those witnesses testified in court (see, for example, *Khodorkovskiy*, cited above, § 192). However, the Tbilisi City Court relied on the above-mentioned argument, without substantiating it by any relevant factual circumstances, implying indirectly that accused persons should be held in detention until all prosecution witnesses are heard in court.

111. Furthermore, the Tbilisi City Court inverted the presumption in favour of release (see *Buzadji*, cited above, § 89) by stating that in the absence

of new circumstances, the pre-trial detention should remain unchanged (see paragraphs 35-36 above). By overturning the rule enshrined in Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases, they shifted the burden of proof to the applicant, the detained person. This practice has already been criticised by the Court in a number of judgments, including against Georgia (see, for example, *Merabishvili*, § 234, and *Magnitskiy and Others*, § 22, with further references therein, both cited above; see also *Komarova v. Ukraine*, no. 13371/06, § 79, 16 May 2013).

112. To sum up, the Court considers that the Tbilisi City Court did not pay enough heed to the passage of time and made it clear that it was for the applicant to show that his detention was no longer justified. The reasons given by it on 18 February 2015 did not suffice to justify the continuation of his pre-trial detention. In the light of the foregoing, the Court concludes that from 18 February 2015 onwards, the applicant's first pre-trial detention in the fourth criminal case ceased to be based on sufficient grounds, in breach of Article 5 § 3 of the Convention.

113. In view of this conclusion, it is not necessary to examine the remaining allegations of the applicant.

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

114. The applicant complained that his pre-trial detention in two different sets of criminal proceedings had served the sole purpose of excluding him from political life in Georgia and curtailing his political activity. He relied on Article 18 of the Convention, which provides:

> "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

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

B. Merits

1. The parties' submissions

116. The applicant considered his complaint under Article 18 of the Convention taken in conjunction with Article 5 to constitute a fundamental aspect of his case. He submitted that his continued pre-trial detention had

served the purpose of preventing him from participating in political life in Georgia. In connection with the first pre-trial detention, he specifically claimed that it had been aimed at preventing him from leading the election campaign for the UNM candidate for Tbilisi mayor's office. As to the second pre-trial detention, relying on the judgment of the Constitution Court of 15 September 2015, he argued that the finding that the pre-trial detention had been arbitrary *de facto* implied that his detention had served an ulterior purpose. The applicant submitted that his situation was similar to the cases of *Lutsenko* (cited above, §§ 104-10), *Tymoshenko* (cited above, §§ 294-301) and *Ilgar Mammadov* (cited above, §§ 137-44), and in support relied on statements from, *inter alia*, various international organisations which, in his view, were official documents representing the position of high-ranking European officials concerning the prosecution of members of the UNM.

117. The applicant also submitted newspaper articles containing interviews with high-ranking government officials at the relevant time, including the Prime Minister, which in his opinion proved that political persecution had been launched against members of the UNM. Hence, at a press conference on 22 November 2012 Georgian Dream's then leader and Prime Minister of Georgia since 25 October 2012, Mr Ivanishvili, in response to a question whether the recent arrests of several former senior officials would lead to criminal proceedings against others, stated that UNM's "conduct increase[d] the queues at the prosecutors' offices". The applicant further referred to statements of several senior officials describing their reactions after the Tbilisi City Court, having regard to the Constitutional Court's judgment, had ordered his immediate release on 17 September 2015. In those statements, those senior officials predicted the applicant's redetention, noting that he would soon be convicted in one of the criminal cases pending against him. Indeed, on 18 September 2015 the applicant was convicted in the first criminal case and sentenced to imprisonment. The applicant further maintained that the general context of his case was similar to that of *Merabishvili* case (cited above).

118. The Government submitted that the applicant's allegations of politically motivated prosecution were not supported by any evidence and fell short of the threshold applied by the Court in Article 18 cases. They maintained that the restriction of the applicant's liberty had served the sole purpose of bringing him before a competent legal authority on reasonable suspicion of having committed various offences, and that the manner in which his cases had been dealt with at domestic level did not suggest that there had been any ulterior motive on the part of the relevant authorities. The Government claimed that the applicant's reference either to the documents of various international organisations, which belonged to the political rather than the legal domain, or to extradition proceedings involving former senior officials, which were unrelated and thus factually totally different cases, were

wholly irrelevant for the purposes of examining his specific allegations under Article 18 of the Convention.

119. The Government submitted that the applicant's acquittal on one of the counts in the first set of criminal proceedings conducted against him and the repeated refusal of the domestic courts to remand him in custody in the other criminal cases, until the grounds for such a preventive measure had been shown, belied any suggestion that the domestic courts would have detained and/or convicted him, whatever the evidence against him.

2. The Court's assessment

(a) The general principles

120. The relevant general principles are set out in the Court's judgments in *Merabishvili* (cited above, §§ 287-317) and *Navalnyy v. Russia* ([GC], nos. 29580/12 and 4 others, §§ 164-65, 15 November 2018). In particular, the object and purpose of Article 18 of the Convention are to prohibit the misuse of power (see also *Ilgar Mammadov v. Azerbaijan* (infringement proceedings) [GC], no. 15172/13, § 189, 29 May 2019). Article 18 does not serve merely to clarify the scope of the restriction clauses; it also expressly prohibits the High Contracting Parties from restricting the rights and freedoms enshrined in the Convention for purposes not prescribed by the Convention itself, and to this extent it is autonomous (see *Merabishvili*, cited above, §§ 287-88). Indeed, as the Court pointed out in *Merabishvili* (ibid., § 291), the mere fact that a restriction of a Convention right or freedom does not meet all the requirements of the clause that permits it does not necessarily raise an issue under Article 18. Separate examination of a complaint under that Article is only warranted if the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case. There is still a need to examine the question whether – in the absence of a legitimate purpose – there was an identifiable ulterior one (see *Navalnyy*, cited above, § 166). For the same reason, a finding that the restriction pursues a purpose prescribed by the Convention does not necessarily rule out a breach of Article 18 either. Holding otherwise would strip that provision of its autonomous character (see *Merabishvili*, cited above, § 304).

121. A right or freedom is sometimes restricted solely for a purpose which is not prescribed by the Convention. But it is equally possible that a restriction is applied both for an ulterior purpose and a purpose prescribed by the Convention; in other words, that it pursues a plurality of purposes. The question in such situations is whether the prescribed purpose invariably expunges the ulterior one, whether the mere presence of an ulterior purpose contravenes Article 18, or whether there is some intermediary answer (ibid., § 292).

122. Which purpose is predominant in a given case depends on all the circumstances. In assessing that point, the Court will have regard to the nature and degree of reprehensibility of the alleged ulterior purpose, and bear in mind that the Convention was designed to maintain and promote the ideals and values of a democratic society governed by the rule of law. In continuing situations, it cannot be excluded that the assessment of which purpose was predominant may vary over time (ibid., §§ 307-08).

(b) Application of those principles to the circumstances of the current case

123. The gist of the applicant's complaint in the present case is that the two periods of his pre-trial detention targeted his political activism, with the detention measure aimed at curtailing his political life in breach of Article 18 of the Convention in conjunction with Article 5. As the political process and adjudicative process are fundamentally different, the Court must base its decision on "evidence in the legal sense", in accordance with the criteria it laid down in *Merabishvili* (cited above, §§ 309-17) and on its own assessment of the specific relevant facts (see *Khodorkovskiy*, § 259; *Ilgar Mammadov*, § 140; and *Rasul Jafarov*, § 155, all cited above).

124. The Court starts by noting its conclusion concerning the lack of protection against arbitrariness during the applicant's pre-trial detention after 2 April 2015 (see paragraph 83 above). However, whilst the Government failed to substantiate their argument that the above-mentioned period of the applicant's detention was in line with Article 5 of the Convention, this would not by itself be sufficient to conclude that Article 18 has also been violated (see *Merabishvili*, cited above, §§ 303-05; see also *Navalnyy*, cited above, § 166, and *Kavala v. Turkey*, no. 28749/18, §§ 218-19, 10 December 2019). There is still a need to examine the question whether there was an identifiable ulterior purpose.

125. Starting with the period 3 July 2014 – 2 April 2015, the Court observes that is has accepted that the applicant was arrested and detained on "reasonable suspicion" of having committed the impugned criminal offences (see paragraph 67 above). In other words, the applicant was deprived of his liberty for a purpose prescribed by Article 5 § 1 (c) of the Convention. In examining the applicant's complaint under Article 18, the Court must hence examine whether the restriction in question also pursued an ulterior purpose, which was not prescribed by Article 5 of the Convention, and if so, whether that ulterior purpose was the predominant purpose of the restriction of his right to liberty (see *Merabishvili*, cited above, §§ 318-54). In this regard, the Court reiterates that there is no reason for it to restrict itself to direct proof in relation to complaints under Article 18 of the Convention or apply a special standard of proof to such allegations (see *Merabishvili*, cited above, § 316), as depending on the circumstances of the case, an ulterior purpose cannot always be proved by pointing to a specific piece of evidence which clearly reveals an actual reason (for example, a written document, as in the case of

Gusinskiy v. Russia (no. 70276/01, ECHR 2004-IV), a specific isolated incident as in the case of *Merabishvili* (cited above), or the fact that the applicant was interviewed in connection with events not related to the ongoing criminal case (see *Kavala,* cited above)).

126. In the present case the Court finds it difficult to accept the applicant's argument that the timing of his initial arrest and pre-trial detention could be interpreted as possible indications of an ulterior purpose. He was placed in pre-trial detention immediately after the charges had been brought against him. From this perspective, there appears to be nothing untoward in the timing of his detention (contrast *Kavala*, § 225-28, and *Korban*, § 218, both cited above). The lapse of time between the commission of the impugned offences and the opening of the criminal investigation in the course of which the applicant was placed in pre-trial detention was not excessive (see *Ahmet Hüsrev Altan v. Turkey*, no. 13252/17, § 242, 13 April 2021). As to the possible link between his detention and the upcoming elections, the Court notes that the fact that the applicant himself did not stand as a candidate render the argument less convincing, particularly in view of the specific circumstances of his arrest at the airport.

127. The applicant further referred to certain speeches of high-ranking public officials which would suggest an ulterior purpose for his detention. The Court is prepared to accept that statements made in public by members of the Government concerning criminal proceedings against applicants could, in some circumstances, constitute evidence of an ulterior purpose behind a judicial decision (see *Kavala,* § 229 and *Merabishvili,* § 324 both cited above; and *Tchankotadze v. Georgia,* no. 15256/05, § 114, 21 June 2016). However, such statements can only be seen as proof of ulterior purpose behind a judicial decision if there is evidence that the courts were not sufficiently independent from the executive authorities (see *Merabishvili,* § 324; see also *Batiashvili v. Georgia*, no. 8284/07, § 102, 10 October 2019). No such evidence has been put forward in this case. The impugned statements of various public officials did not directly precede the applicant's arrest and his pre-trial detention (contrast *Kavala v. Turkey*, no. 28749/18, § 229, 10 December 2019). The same court, which ordered the applicant's pre-trial detention, had previously released him on three occasions in relation to other pending criminal cases (see paragraphs 8, 11, and 17 above). Lastly, the very same court ordered the applicant's immediate release once the Constitutional Court ruled in a favourable manner on his case (see paragraph 49 above).

128. The applicant also invited the Court to consider the facts surrounding his political party, that is, the former ruling party and the criminal prosecution of its various leading members. The Court has already had an opportunity in *Merabishvili* to assess the general political context prevailing in the respondent State following the parliamentary elections of October 2012, in which the ruling party UNM lost its majority in Parliament for the first time since 2003, and it found that, although the applicant in that case had been

detained against the backdrop of bitter political antagonism between the UNM and the new ruling power, Georgian Dream, the general context was not sufficient to show that the predominant purpose of his detention had been to hinder his participation in Georgian politics (for a detailed analysis of the context, see *Merabishvili,* cited above, §§ 320-32; see and compare with *Azizov and Novruzlu v. Azerbaijan*, nos. 65583/13 and 70106/13, § 76, 18 February 2021). In view of the applicant's arguments and having regard to the particular circumstances of his arrest and pre-trial detention, the Court has no basis to arrive at a different conclusion. It reiterates in this connection that any person in the applicant's position would be able to make similar allegations and that high political status does not grant immunity (see *Khodorkovskiy*, cited above, § 258*)*. While the combination of factors in the present case might have given rise to suspicions that the applicant's detention was driven by the desire to remove him from the political scene, the Court is not convinced that the applicant has substantiated concrete elements leading to any other interpretation of the events than that the predominant purpose of placing him and keeping him in detention for the period between 3 July 2014 and 2 April 2015 was to ensure the smooth conduct of the criminal investigation.

129. As regards the period after 2 April 2015, when the applicant's detention was contrary to Article 5 § 1 of the Convention (see paragraph 83 above), the applicant's argument was that by pointing to the possibility that his second pre-trial detention might have been arbitrary, the Constitutional Court had implicitly found an ulterior purpose behind it. The Court finds it difficult to accept the applicant's interpretation of the Constitutional Court's ruling. The latter only ruled on the compliance of the relevant provisions of the Code of Criminal Procedure with the Constitution, without addressing in any way the actual circumstances and purpose of the applicant's detention as such (see the relevant ruling, cited in paragraph 48 above).

130. The Court does not lose sight of the fact that the second pre-trial detention of the applicant was requested only about eight months into the investigation of the fifth criminal case and shortly before the expiration of the maximum detention period in the fourth criminal case (see paragraph 80 above). Nevertheless, it notes that the application of pre-trial detention for a duration of nine months separately in parallel criminal proceedings was established practice (see paragraph 78 above) until and to the extent the Constitutional Court declared it unconstitutional in the applicant's case (see paragraph 48 above). Having regard to the nature of the charges against the applicant, which appeared genuine and not overtly political, and were based on a "reasonable suspicion" within the meaning Article 5 § 1 (c) (see and compare *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, § 209, 20 September 2018), the Court does not find sufficient elements to conclude, that with the above the authorities pursued an ulterior purpose of removing the applicant from the political scene. The mere fact that the applicant was

placed in pre-trial detention, even if in part arbitrarily, does not automatically indicate that the aim pursued by this measure was to remove him from Georgia's political scene (compare *Merabishvili*, cited above, §§ 323-32).

131. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 18 of the Convention taken in conjunction with Article 5 § 1 as far as the applicant's pre-trial detention after 2 April 2015 is concerned.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

133. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

134. The Government submitted that his claim was exorbitant and excessive and invited the Court to reject it. As an alternative, they invited the Court to award him an amount reasonable under the circumstances of the case.

135. The Court considers that the applicant must have suffered a certain amount of stress and anxiety as a result of the violations of Article 5 §§ 1 and 3 of the Convention in his case, which concern part of the period complained of. Deciding on an equitable basis, it awards him EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

136. The applicant claimed 31,336.5 United States dollars (USD) in respect of Mr Kakhidze fees for 160.7 hours of work on the case, at USD 195 per hour; he also claimed 2,025 pounds sterling (GBP) in respect of Mr Leach's fees for 13.5 hours of work on the case, at GBP 150 per hour; and USD 600 and GBP 148 in respect of translation and clerical expenses in Georgia and the United Kingdom respectively. In support of that claim, the applicant submitted time sheets for Mr Kakhidze and Mr Leach and two schedules of administrative expenses.

137. The Government submitted that the applicant had not produced any evidence, such as a legal contract between himself and his representatives or receipts, to show that he had actually paid or was legally bound to pay them any fees for their work. They also questioned the need for the service of more than one representative. In connection with the Georgia-based lawyer, they

also claimed that the hourly rates and the number of hours that he was said to have spent on the case had been excessive.

138. As to clerical expenses, the Government submitted that those incurred in the United Kingdom had not been necessary, while those incurred in Georgia were not supported by a single piece of evidence.

139. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's arrest and subsequent remand in custody during the period between 3 July 2014 and 2 April 2015;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's pre-trial detention between 2 April and 17 September 2015;

4. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the lack of a fixed period of detention in the detention orders of 4 July 2014 and 15 March 2015;

5. *Holds* that there has been a violation of Article 5 § 3 of the Convention in that, from 18 February 2015 onwards, the applicant's pre-trial detention ceased to be based on relevant and sufficient grounds;

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

7. *Holds*,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 9 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Georges Ravarani President