CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 1704/06
by Shalva RAMISHVILI and Davit KOKHREIDZE
against Georgia

The European Court of Human Rights (Second Section), sitting on 27 June 2007 as a Chamber composed of:

Mrs F. TULKENS, *President,*
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs D. JOČIENĖ, *judges,*
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 9 January 2006,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the initial observations submitted by the respondent Government on 30 June 2006 and by the applicants in reply on 29 August and 19 September 2006,

Having regard to the additional observations submitted by the Government and the applicants on 9 November and 2 December 2006 respectively,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Shalva Ramishvili and Mr Davit Kokhreidze, are Georgian nationals who were born in 1971 and 1961 respectively and are detained in Rustavi No. 6 Prison. The applicants' initial representatives, Mr A. Baramidze and Mr Hans von Sachsen-Altenburg, were replaced on 23 February 2007 by Ms L. Mukhashavria and Mr V. Vakhtangadze, lawyers practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr M. Kekenadze of the Ministry of Justice.

A. The circumstances of the case

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

1. As the case stood prior to its communication on 3 April 2006

The applicants were co-founders of and shareholders in a private media company ("the media company") which owned the television channel "TV 202" ("the channel"), broadcasting in Tbilisi. The first applicant, as an anchorman of the popular talk show "Debatebi" (*Debates*), often addressed politically sensitive issues, criticising the Government.

Under a service agreement of 25 April 2005, the applicants' company undertook to air several documentary films made by "Studio Reporter", a private film-production company ("the production company"). Consequently, in May 2005, the latter started working on a documentary concerning certain business activities of Mr B., a parliamentarian from the presidential political party ("the ruling party"), which held at that time the majority of seats in Parliament. The object of the documentary was to expose Mr B.'s allegedly illegal commercial activities. According to the Government, except for the applicants, nobody within the media company knew about the making of the compromising film.

After Mr B. had tried in vain to persuade the journalists of the production company to drop the project, he contacted the first applicant. From May to August 2005 the parliamentarian placed numerous telephone calls, asking Mr Ramishvili to block the film. Eventually, they agreed to meet and discuss the issue.

During their first meeting, which took place in the morning of 26 August 2005, an agreement was reached whereby the first applicant would not allow the airing of the film on his channel in exchange for USD 100,000 (EUR 84,337). Immediately after this meeting, Mr B. complained to the Minister of the Interior that the first applicant had been blackmailing him. He reported to the authorities that, in the event of the compromising film

being aired, it could have disastrous consequences not only for him personally but also for the image of the ruling party.

The same day, the Ministry of the Interior initiated criminal proceedings on suspicion of extortion for the purpose of gaining vast profits. Later that day, Mr B. met the first applicant again. They agreed that the latter would accept the sum in two instalments: USD 30,000 and 70,000 (EUR 25,297 and 59,000).

In the morning of 27 August 2005, Mr B. informed the prosecution service that he would hand over the first instalment to the first applicant around noon. The 100 US dollar notes were consequently processed with invisible chemicals and marked with a special pencil, while their serial numbers were recorded by the investigation authorities. The Prosecutor General's Office ("the PGO") issued a ruling, dated 27 August 2005, at 11.00 a.m., authorising the secret videoing of the meeting without a court order, due to "urgent necessity". The camera was hidden on the parliamentarian's person.

The meeting during which Mr B. handed over the money to the first applicant took place on 27 August 2005 at noon, in the apartment of a mutual friend of theirs. It was also attended by the second applicant. The conversation and the handing over of the money were videoed secretly ("the video recording of 27 August 2005") by the parliamentarian. When the applicants left the meeting and got into the second applicant's car, they were arrested and searched. USD 30,000 and the car in which the money was found were seized. On the same day the Tbilisi City Court legalised the secret video recording.

On 28 August 2005 Mr B. was recognised by the investigation as a victim and both applicants were charged with conspiracy to commit extortion. They pleaded "not guilty" and refused to testify at that time.

On 29 August 2005 the Tbilisi City Court granted the prosecutor's motions and remanded the applicants in custody for three months. The order noted that the collected evidence – the parliamentarian's statements, the results of the on-the-spot search of the applicants, the seized materials and the secret video recording of 27 August 2005 - substantiated the suspicion that the applicants had committed the offence with which they had been charged. The court dismissed the prosecutor's argument that the applicants might abscond in view of the gravity of the charge as unsubstantiated. However, it endorsed the fear that they could interfere with the establishment of the truth by exerting pressure on those witnesses who were under their hierarchical authority in the media company.

On 31 August 2005 the applicants appealed against this decision, complaining that their detention was not lawful within the meaning of Article 5 of the Convention, since the prosecution had failed to prove the reasonableness of the imposition of such a measure. They complained in particular that, apart from the parliamentarian's statements, the prosecution

had not submitted any other evidence substantiating the suspicion that a crime had been committed. Further, they alleged that, contrary to Article 18 of the Convention, they had been detained not for the purpose of bringing them before the competent legal authority but in order to silence their television channel.

On 31 August 2005 the investigator issued a ruling, incorporating as evidence into the criminal case file the seized US dollar notes, the second applicant's car and the traces of chemicals found there, as well as the applicants' fingerprints and some other results of their search and arrest on 27 August 2005.

In September 2005 the "TV 202" channel aired the impugned documentary about Mr B.'s involvement in private business. Subsequently, Parliament established an *ad hoc* committee to investigate the parliamentarian's commercial activities.

On 2 September 2005 the Tbilisi Regional Court dismissed the applicants' appeal at an oral hearing (described below).

The decision of 2 September 2005 endorsed the reasoning of the lower court concerning the applicants' managerial positions in the media company as a ground supporting the risk that they might influence the witnesses. It reiterated that the collected evidence (the parliamentarian's statements, the results of the on-the-spot search of the applicants and the secret video recording of 27 August 2005) indicated "with a high degree of probability" that the applicants had committed the crime. However, the decision noted that, in so far as the criminal case file did not contain either a copy of that recording or its verbatim transcript, it was impossible to assess whether the handover of the money by the parliamentarian to the applicants could be qualified as extortion. The operative part of the decision mentioned that, pursuant to Article 243 §§ 1 and 3 of the Code of Criminal Procedure (the "CCP"), the decision was final and no appeal lay against it.

On 6 September 2005 the investigator incorporated the video recording of 27 August 2005 and its verbatim transcript as evidence into the criminal case file. On 29 September 2005 the investigator presented the transcript to the applicants. Calling its authenticity into question, the applicants requested leave to watch the recording.

On 19 October 2005 the investigator informed the applicants in writing that the preliminary investigation had been terminated. On 11 November 2005 the case materials were presented to the applicants in prison. However, because at that time no appropriate equipment had been provided, it was only on 14 and 16 November 2005 that the applicants, in the presence of their advocates, watched the video recording of 27 August 2005 for the first time. The second applicant, claiming that some scenes had been edited, requested a copy so that an alternative expert could examine it. The investigator, reasoning that the procedural legislation did not provide for a

copy of video materials to be transmitted to the accused, dismissed that request on 17 November 2005.

On 22 November 2005 the prosecutor sent the criminal case, along with the bill of indictment of 19 November 2005, to the Tbilisi City Court for trial.

On 27 November 2005 the three month pre-trial detention period expired without the court ordering its extension.

On 6 December 2005 the applicants filed a complaint with the Tbilisi City Court, demanding their immediate release. They claimed that they had been deprived of their liberty in breach of Article 159 of the CCP and Article 5 of the Convention, since no judicial decision had authorised their detention since 27 November 2005. No immediate response from the court was forthcoming.

On 11 January 2006 the administration of Tbilisi No. 5 Prison, where the first applicant was provisionally detained, transferred the latter from his ordinary cell to the punishment cell (*karzer*), which measured 4 to 5 square metres and was intended for solitary confinement, as a disciplinary punishment for using a mobile telephone. In Soviet times, this type of cell was used for the confinement of those on death row. There was another person sharing the cell with the applicant ("the second inmate").

On 13 January 2006, the applicants were taken to the admissibility hearing before the Tbilisi City Court. Their advocates had only been notified of the hearing on 11 January 2006. The City Court decided to commit the applicants for trial under Article 417 § 1 of the CCP. In addition, it rejected their motion of 6 December 2005 to be released or to have their detention pending trial replaced by a more lenient measure of restraint, ruling in the following terms:

> "The defence incorrectly alleges a violation of the Convention as regards the fact that, after the three month detention period expired, [the applicants] were not immediately brought before a court. [In fact] the criminal procedural law does not require that, once the case is referred to the court for a hearing on the merits, any procedural decision be taken on the measure of restraint applied to the accused. According to the Convention, the [national] court ought to decide on a case within a reasonable period of time. 'Reasonable period of time' is defined by Article 680(4) § 8 of the CCP as follows. 'In the course of the hearing of a criminal case by a District (Regional) Court, the period of detention must not exceed 12 months from the date on which the case is sent to the court.' Consequently, the [applicants'] detention pending trial has not exceeded its legal term."

In the resolution part of the decision of 13 January 2006, it was noted that there was no appeal possible.

The applicants complained, supporting their submissions with photographs, that they had been kept in a barred dock during the hearing of 13 January 2006 and that there were security guards armed with machineguns and wearing hood-like black masks in the courtroom.

On 14 January 2006 at about 11.00 p.m., some toxic smoke (later explained by the authorities to have been caused by the burning of a mattress in the adjacent cell) leaked into the first applicant's punishment cell. Owing to the lack of ventilation, the smoke filled the cell quickly, causing the applicant and the second inmate to suffer from smoke inhalation, an inability to breathe and eye watering. According to the first applicant, they shouted and knocked on the door for half an hour before the prison guard opened the door and let both inmates out until the smoke was gone.

On 15 January 2006 the first applicant was returned from the punishment cell to his ordinary cell.

On 19 January 2006 the second applicant, also provisionally detained in Tbilisi No. 5 Prison, was moved from his six-bed cell, with six inmates in it, to another cell with 12 beds, where 29 prisoners were kept. The inmates were obliged to take turns to sleep.

On 20 January 2006 the first applicant filed a complaint with both the PGO and the Ministry of Justice ("the MJ"), the authority in charge of the penitentiary system, challenging the conditions in the punishment cell and the lawfulness of his confinement there. According to the complaint, the punishment cell had no window or ventilation and was extremely damp. Tap water ran non-stop and noisily 24 hours a day. A narrow pipe in the corner, located just one metre away from the bed, was designated as a toilet. It was so narrow that it was difficult for the inmates to pass urine and excrement straight into the hole; there was no partition separating "the toilet" from the rest of the cell and a stench hung in the air all the time. One inmate could not avoid seeing what the other was doing. The cell was infested with cockroaches and rats occasionally ran through it. The only bed, infested with vermin, was not wide enough to accommodate two persons.

In such conditions, the first applicant claimed that he had not been able either to have any normal sleep or to eat properly. During the whole period of his confinement in the punishment cell, he was never let out for a walk or other physical exercise. He alleged that he was never visited by a doctor or provided with any other care.

From 20 January 2006 hearings were held almost daily. In the hearing rooms, the applicants were always kept in the same conditions as those on 13 January 2006: being displayed to the public in the barred dock, in the presence of hooded guards with machineguns.

On 17 February 2006 the *ad hoc* committee of Parliament made public its findings regarding Mr B.'s commercial activities. It is not clear from the case file whether anything incriminating against him was reported. On the following day, Mr B. announced his resignation from his position as a member of parliament.

At the hearing on 23 February 2006, the second applicant announced that he had been continuously deprived of necessary medical care and of drinking water in prison. He declared that he intended to begin a hunger strike. The judge did not give any reply. Shortly afterwards, six more inmates were placed in the second applicant's already overcrowded 12-bed cell, increasing the total number of prisoners there to 35.

On 25 February 2006 the PGO informed the first applicant that it had taken note of his complaint of 20 January 2006. It also advised him that, according to the MJ Penitentiary Department, the conditions in the punishment cell fully complied with "international standards".

On 27 February 2006, after the prosecution had finalised its submissions before the court, the applicants requested, on the basis of Article 140 § 17 of the CCP, that their detention pending trial be replaced by a more lenient measure of restraint in view of newly discovered circumstances. In that connection the applicants referred to the fact that none of the witnesses questioned by the prosecution appeared to be under their hierarchical authority, but were rather co-founders of the media company. The Tbilisi City Court dismissed that request on the same day. The judge acknowledged that this fact was indeed "a newly-discovered circumstance...", but ruled that it was "not a significant new circumstance which could justify revision of the imposed restraint measure". The judge went on to say, "This is especially true since the accused have not yet presented their submissions and have not been examined; nor has the collected evidence been assessed..."

The applicants then challenged the judge for bias, questioning her impartiality, but this challenge was dismissed as unsubstantiated by the same judge of the Tbilisi City Court that same day. An appeal against both decisions of 27 February 2006 lay only in connection with an appeal against the final verdict.

On 29 March 2006 the Tbilisi City Court, convicting them of conspiracy to commit extortion, sentenced the first applicant to four and the second applicant to three years in prison. The verdict noted that the second applicant's car, being material evidence in the criminal case, would be returned to the owner after the termination of the proceedings.

On 30 June 2006 the Tbilisi Appellate Court upheld the verdict and also noted that, on account of certain changes in the criminal procedural legislation, the lower court's order to return the car should be enforced immediately.

On 29 August 2006 the second applicant gave a relative written authority to claim back his car from the authorities. On 26 September 2006 the car was returned to the applicant's relative.

After conviction the applicants were transferred from Tbilisi No. 5 Prison to the recently built Rustavi No. 6 Prison.

The applicants challenged the appellate decision of 30 June 2006 in the cassation court. However, the case file does not disclose whether the Supreme Court has reached a decision yet.

2. Subsequent developments in the case, as disclosed by the parties' observations

(a) Proceedings with regard to the first applicant's confinement in the punishment cell

On 3 July 2006 the PGO informed the first applicant that on 18 May 2006 it had opened a criminal case with regard to his complaint of 20 January 2006 concerning his confinement in the punishment cell but, after a preliminary investigation, had decided on 26 June 2006 to close it as no elements of a crime had been disclosed.

The PGO decision of 26 June 2006 noted that the first applicant's transfer to the punishment cell had been, under Rule 22 § 1 (b) of the Prison Rules, a lawful disciplinary punishment for the use of a mobile telephone, such an act representing a grave violation of detention rules. Based on the statements of the administrative staff of Tbilisi No. 5 Prison, as well as the prison doctor and the second inmate, the decision stated that the first applicant had been visited by the doctor daily and offered food identical to that provided in the ordinary cells. It noted however that, according to the first applicant's statements, he had refused to consume the food due to the unsanitary conditions in the punishment cell. As to the fire incident created by the inmate in the adjacent cell on 14 January 2006, the PGO, relying on witness testimonies, stated that the first applicant had immediately been taken out of his cell until the smoke was gone and that there had been no danger to his life.

The Government submitted the minutes of the interview with the second inmate on 21 May 2006. The latter specifically mentioned that the food in the punishment cell had been of a satisfactory quality and that, in any case, he and the first applicant had had ample supplies because of their relatives' food parcels, which they had brought with them from their ordinary cells.

Relying on the examination of the punishment cell carried out by an investigative commission on 23 May 2006, the PGO's decision of 26 June 2006 further stated that the cell had been equipped with an appropriate system of double "air filtration" and inside lighting, and that there had been a decent toilet, partitioned by a special wall from the rest of the cell.

According to the minutes of the punishment cell examination of 23 May 2006, submitted by the Government, it was conducted without the first applicant or his advocates' participation. They further disclosed that the punishment cell had been located in the basement of Tbilisi No. 5 prison, its length and width being 276 cm by 205 cm, and the bed had been 120 cm wide.

With due regard to the above findings, the PGO decided on 26 May 2006 that the prison officials had not exceeded or abused their powers when transferring the first applicant to the punishment cell.

On 18 July 2006 the first applicant filed a complaint against this decision, claiming that the investigation had not been effective or objective. He complained that, whilst he had filed his complaint on 20 January 2006, the PGO had opened proceedings only five months later on 18 May 2006. This lapse of time, in his view, had been more than sufficient for the prison administration to renovate the cell completely with a view to hiding the appalling conditions in which he had been held. In this regard, he challenged the PGO's failure to enquire as to when exactly the ventilation, lighting and the toilet partition had been installed in the punishment cell. The first applicant further complained that the PGO had inexplicably disregarded his assertions that none of the above-mentioned conditions had existed during his confinement and had arbitrarily endorsed those of the prison staff who, being potential suspects in the case, could not be said to have been impartial witnesses. He challenged the fact that, despite his statement that he had never been provided with medical care, the PGO had trusted the statements of the prison doctor, another potential suspect, without having examined any other source of information (i.e. the relevant prison logbook of medical visits). He further claimed that the second inmate, being under the complete control of the authorities who were well-known for abuses in prisons, might easily have been threatened or forced to make false statements. Finally, the first applicant complained that he and his advocates had learnt about the initiation of the criminal proceedings against the prison administration only after they were terminated on 26 June 2006. Consequently, they had not been given a chance to participate in the investigation so as to ensure its objectivity.

On 24 July 2006 the first applicant's complaint of 18 July 2006 was dismissed by the Tbilisi City Court. In reply to his complaint that the criminal proceedings had commenced only four months after his complaint of 20 January 2006 had been lodged, the decision noted that "the case materials do not support the suspicion that the cell has been renovated since the proceedings were opened on 18 May 2006." It further stated that the PGO had duly assessed the witnesses' statements, including those of the prison staff and the first applicant, and that nothing in the case file suggested that the second inmate might have been forced to testify against the first applicant.

The decision of 24 July 2006 was adopted without an oral hearing and pronounced *in absentia*. An appeal lay against it within 10 days (see the parties' arguments below).

(b) Hearing of 2 September 2005

i. The video recording submitted by the Government

The Government submitted a video recording of the proceedings concerning the applicants' appeal against their detention on remand held at the Tbilisi Regional Court on 2 September 2005. The applicants replied that this recording did not include the scenes of greatest turmoil and had been considerably edited to portray a more favourable image of the hearing, excluding, for example, images of armed men inside the courtroom. They agreed however that this recording should be accepted and relied on as a source of information about the hearing. The applicants additionally provided annotations to some of the scenes.

The opening scenes of the Government's recording showed an overcrowded court room before the start of the hearing. A large number of media personnel and cameras on tripods were situated in the middle of the room. The dock was a metal cage with a barred ceiling, separated from the rest of the courtroom. The audience was comprised of civilians, with a large number of women, most of whom could be identified as the applicants' supporters. However, there were some 15 men in plain clothes who were undercover police agents, according to the applicants. Moreover, many of those men were openly identified as agents by the applicants' supporters on the spot. The supporters engaged in heated argument with several men in plain clothes, complaining about the lack of space and the State's inability to provide a larger courtroom for the hearing.

The four uniformed guards and several men in plain clothes escorted the handcuffed applicants into the courtroom. When the judge was seated, the crowd was still pressing into the room. The entrance door was blocked by the plain-clothes men from inside, while several hooded and armed guards could be seen forcing the door closed from the outside. The judge requested the people in the room to calm down. The judge specifically reproached the media representatives for their disorderly behaviour.

The general noise level in the court room remained unabated even after the hearing was declared open. The judge offered the applicants the possibility of conducting the hearing *in camera* but they refused. Loud male voices could be heard in the court room bitterly arguing and uttering vulgar curses. The body language of the judge betrayed resignation and frustration, as he was unable to establish order.

The advocates made their statements with camera flashes and halogen camera lights less than one meter from their eyes. During their speech there were continual interruptions by the judge and the public, and relentless banging on the entrance door from the outside, as well as the sound of construction works nearby. Now and then mobile telephones rang and persons conducted conversations. Communication between the defence, the prosecution and the judge, constantly hampered by the unsolicited

interruptions of journalists, was only made possible by repeatedly requesting other people to move aside or sit down on the floor. The temperature in the court room was obviously high, given the sweat on people's faces. The persons presumed to be undercover agents, and some court personnel, could be seen constantly entering and leaving the judge's deliberation room.

In order to see what was happening, respond to the judge or be heard, the applicants had to stand on the chair in the barred dock, hanging on to the metal side bars, and shout. They repeatedly asked the judge and the prosecutors to speak louder as they could not hear them. When answering one of the judge's questions, the first applicant, hanging on the bars and grimacing as if to emphasise by body language his resentment in the situation, made the following remark:

> "...The Government might have something against me...this I can [more or less understand]...but [I cannot] understand why it is necessary to detain [the second applicant] ... [unless,] of course, the Government wish to fill up the prisons [*cixeebi*]!...[Well,] I have been there [in the prison]; unimaginable things happen there!...There is no need for [the second applicant]...no place for him to be with me, here, in this cage! [*galiaSi*]...This is my declaration!"

The immediate proximity of the prosecutor to the judge presented no obstacle of audibility for them. The dialogue of questions and answers between judge and prosecutor was unaffected. Several persons alleged to be undercover agents in plain clothes were shown behind the prosecutor and investigator.

There were episodes when the prosecutor refused to reply to the second applicant's questions regarding specific circumstances of the case, and instead made fun of him. Thus, for example, when the second applicant asked the exact time of his arrest, the prosecutor answered: "How should I know?!...I was not there when they arrested you!" To another question of the second applicant, the prosecutor answered: "That is a ridiculous question...go and ask the parliamentarian about that!", and the question is then dismissed by the judge.

In another episode, when the second applicant asked, "Could you, please, indicate the page and the paragraph in the case materials which prove that the parliamentarian...has testified against me?", the prosecutor started laughing in reply and answered in a sarcastic tone, "Which case materials?! Which page?! Which paragraph?!" and then murmured "This man is not sane..." The judge intervened and rephrased the question as follows, "Do the parliamentarian's testimonies incriminate [the second applicant]?" The prosecutor's "yes" was endorsed by the judge as a reply to the question.

In some episodes, when the applicants or their advocates asked questions which perplexed the prosecutor, the judge either directly replied instead (i.e. by locating the necessary pieces of evidence in the case file) or rephrased the questions in a leading manner, thereby suggesting a suitable

answer for the prosecutor. Thus, one of the advocates asked the prosecutor why it was necessary to impose detention on remand for three months, when there were only 8-12 witnesses who remained to be examined. As the prosecutor was unable to answer, the judge interrupted with, "[Because] the criminal procedural legislation does not envisage the imposition of detention for a lesser term".

As the judge retired for deliberations, the public were ushered out of the courtroom by the guards and plain-clothes men. After the deliberations, the room contained many fewer people than before. The composition of the public had changed to an almost all-male audience, avoiding the camera by ostentatiously turning their backs towards it and the judge. As the judge read the decision, the plain-clothes men stood next to him. Strangers constantly entered and left the judge's deliberation room. There were brief glimpses of one or two guards wearing black hood-like masks inside the court room in front of the closed door.

The closing scenes briefly showed the large number of presumably undercover plain-clothes agents leaving the courtroom, not hiding their irritation when filmed. A few of the applicant's supporters, readmitted to the room after the deliberations, complained that the agents had occupied almost all of the seats. They asked the cameraman to film the presence of the agents. The first applicant then stated, "Look, there they are ...the agents (*TanamSromlebi*)!" and pointed to the plain-clothes men. The following remarks could be heard: "Their presence was overwhelming! ...More agents than family or friends!"

In the last scene, a hooded, armed man inside the courtroom nodded to the cameraman, apparently requesting the latter to stop recording.

ii. The video recording submitted by the applicants

The case file also contained a video recording, submitted by the applicants, showing how around 30-34 plain-clothes men, identified in the Government's video as undercover agents, attending the hearing of 2 September 2005, left the Tbilisi City Court through the same backdoor exit as the handcuffed applicants. The agents were shown being greeted with familiarity in the backyard by the special security forces waiting for the applicants. Some of the undercover agents were filmed changing from their civil clothes into police jackets. The applicants were escorted from the courthouse in the presence of a great number of guards carrying machine guns and wearing black, hood-like masks.

3. The situation in the judiciary, according to the applicants

The applicants commented on the current situation in the judiciary in Georgia, which they described as critical. They considered that the following circumstances supported their complaints.

In December 2005 three judges of the criminal cassation chamber of the Supreme Court of Georgia announced publicly that they had been pressurised by the Chairman of the Supreme Court and, even more so, by the PGO, as different deputy prosecutors sought to influence their judgments. During press conferences and in their public statements, the judges repeatedly told of interference in person and by telephone, and reported prolonged and continuous psychological terror applied to judges in all districts and at all levels.

According to the applicants, the president of the cassation chamber, Judge M.T. had announced in one of his media statements, "The independence of the judiciary in Georgia has declined to zero". His colleague, Judge N.G., added, "The Supreme Court has become a mere appendage to the prosecutor's office". Following those events, Judge M.T. and three other judges of the Supreme Court were disciplined and dismissed from office.

As evidence of the groundlessness of the disciplinary proceedings conducted against most of the Supreme Court judges, sitting in criminal, as well as in civil and administrative panels and chambers, the applicants referred to the resolution adopted by the European Judges and Public Prosecutors for Democracy and Fundamental Rights ("Magistrats européens pour la Démocratie et les Libertés – MEDEL") in Prague on 16 and 17 June 2006 and the statement of the Chairman of MEDEL made on 11 July 2006.

The relevant passages from that statement read as follows:

> "One of the worst exaggerations [of the arbitrary dismissal of judges] has been on trial for several weeks now: four Supreme Court judges [of Georgia] are facing dismissal as a disciplinary sanction. They are being prosecuted for having allowed a woman who had lived for 6 years in a common law marriage the same procedural privileges as the wife of a registered marriage. This sanction for such "misinterpretation" is an obvious pretext for dismissing judges who otherwise cannot be dismissed because they have been elected for 10 years and cannot be blamed for any professional failure...
>
> Their [the four Supreme Court judges'] cases however are just the tip of the iceberg, hiding many more arbitrary dismissals of judges who are not allies of the Government majority, both on the Supreme Court level and in lower courts."

Certain selected passages of the MEDEL resolution read as follows:

> "A. Whereas the Government of Georgia fired the majority of judges in the country without appeal in order to recruit new judges, close allies to the Government; the Government suggested to those who were upset that they had better retire and accept continued pensions until the end of their term rather than risk disciplinary action under the pretext of any alleged infringement;
>
> B. Whereas the Government present the arbitrary dismissal of judges as their fight against corruption in the judiciary, although it is precisely such action which in fact leaves judges scared and obediently compliant with Parliament's, the Government's, and prosecutors' wishes;

C. Whereas the European Parliament refers to improper influence being brought to bear on judges by officials belonging to the Council of Justice and the Prosecutor General's Office...

E. Whereas the suspension of four judges of the Supreme Court of Georgia, not for corruption but for their opposition to their dismissal, hints at a real breach of the Constitution, unveiling the failure of judicial reform in Georgia; in fact their suspension was decided pursuant to a disciplinary procedure on the grounds of an alleged misinterpretation of a criminal procedure rule...

2. Insists that justifying disciplinary prosecution for misinterpretation of a procedural rule infringes the principle of appropriate action and the independence and impartiality of judges..."

The applicants also submitted an open letter from Human Rights Watch ("HRW"), dated 27 June 2006, containing the following passage:

"Constitutional amendments in early 2004 increased the Georgian President's authority to dismiss and appoint judges. The Government then began an effort to address corruption in the judiciary, but the processes for removing allegedly corrupt judges have lacked transparency and due process. For example, 21 of the 37 Supreme Court judges resigned in 2005, many of them under pressure. Nine judges who had been pressured to resign chose to stay in office, but they soon were the subject of disciplinary proceedings and were suspended from office. Six judges have appealed against the disciplinary proceedings which addressed matters related to the judges' interpretation of the law rather than issues of ethics or conduct subject to disciplinary evaluation. These steps have had a chilling effect on new and remaining judges, who recognise their positions as tenuous and their decisions subject to the approval of the executive."

B. Relevant domestic law

1. The Constitution

Article 18 § 2

"Deprivation of liberty or other restriction of personal liberty without a court decision shall be impermissible....

2. The Code of Criminal Procedure ("CCP"), as it stood at the material time

Article 12 § 7 "Security of the person, respect for human dignity..."

"In the course of an investigative or judicial action, it is prohibited to exert upon a person physical or psychological pressure...or to subject a detained person to conditions that encroach upon his or her human dignity."

Article 110 §§ 1 and 3 "The notion of evidence"

"1. Evidence is the lawfully obtained information...on the basis of which the parties defend their rights and legal interests, whilst the prosecutor, investigator and court establish whether the [relevant] circumstances... exist...

3. The information obtained or submitted by a party shall be incorporated into the criminal case file...Only the evidence admitted to the case file may be relied on...in a court decision."

Article 140 § 17 "Judicial imposition of a measure of pre-trial restraint"

"Before the end of the investigation the parties have the right to lodge an application with the court which has imposed a measure of pre-trial restraint ... requesting its annulment or modification ... The parties may exercise this right only when newly discovered circumstances of a substantial character, which were not known to the judge at the time of the imposition of the pre-trial restraint measure, require that the reasonableness of that measure be reviewed."

Article 151 §§ 1, 2, 3 and 4 "Basis and objectives of the imposition of a restraint measure"

"1. A measure of restraint shall be applied to ensure that the accused cannot avoid preliminary investigation and trial, that his or her further criminal activity is prevented, that he or she cannot interfere with the establishment of the truth in a given criminal case and that the court's sentence is executed. Pre-trial detention or any other measure of restraint may not apply to the accused if a more lenient measure of restraint can ensure the attainment of the goals envisaged in this section.

2. The application of a measure of restraint may be based on the substantiated assumption that the person will abscond or fail to appear in court, destroy evidence, threaten parties to the proceedings, or commit a new crime.

3. When presenting its motion for the application of a measure of restraint, the prosecution has to substantiate the need for the measure of restraint requested and the impossibility of using a more lenient measure of restraint; furthermore, while requesting the extension of the previous term of pre-trial detention, the prosecution must prove the necessity of the requested extension period.

4. The court may apply pre-trial detention as a measure of restraint...only when the goals envisaged in the first paragraph of the present article cannot be attained by using a more lenient measure of restraint."

Article 159 §§ 1 and 2 "Detention"

"1. No one may be arrested without a court order or other judicial decision.

2. Courts, prosecutors and investigators are obliged to immediately release any person who is detained unlawfully."

Under Article 230 §§ 1 and 3, a party to criminal proceedings could file motions for a procedural decision or measure to be taken. Article 230 § 2 required a motion to be introduced before the State official or agency who was immediately responsible at that time for the examination or decision-making on a given criminal case. Under Article 231 § 2 motions could be submitted either orally or in writing.

By virtue of Article 242 §§ 1 (a), 2 and 3, the investigator's or prosecutor's decision to close criminal proceedings could be judicially challenged by any person concerned. Under Article 242 § 4, the time-limit for lodging the relevant complaint before a first instance court was 15 days from the moment the plaintiff learned about the impugned decision. In the

event of non-compliance with that statutory time-limit for a legitimate reason, the court could allow more time. The first-instance court was obliged to review the complaint within 15 days of its registration.

Under Article 242 § 5, where the first-instance court annulled a decision to terminate criminal proceedings, it had to remit the case file to the relevant prosecution authorities with the instruction to conduct a further preliminary investigation.

Under Article 242 §§ 5 and 6, where the first-instance court dismissed a complaint against the termination of criminal proceedings, that decision could be challenged further before an appellate court within 10 days. Unlike the provision concerning the proceedings at first instance (Article 242 § 5), Article 242 § 6 did not specify exactly when the 10 days allowed for lodging an appeal began to run.

Under Article 243 §§ 1 and 10, a first-instance court order authorising pre-trial detention could only be appealed once and the appellate court's decision was final.

Article 290 § 2 provided for the possibility of conducting an urgent investigative measure without a court warrant, providing it was submitted to judicial scrutiny within the following 24 hours. The court then had to assess whether the circumstances of the case justified the urgent imposition of that measure and could either decide to validate it or not.

Article 290 § 4 of the CCP clarified under which circumstances an action could legitimately be termed "urgent".

Article 417 §§ 1 and 3 "Committal for trial"

"1. Where there is a sufficient basis for hearing the case, the judge (court), without prejudging the merits of the case, shall commit the accused for trial...

3. During the admissibility hearing, in addition to deciding whether to commit the accused for trial..., the judge (court) shall decide whether to impose a measure of restraint on the accused."

Article 419 "Time-limits for committal decisions"

"The judge (court) shall decide whether to commit the accused for trial within 14 days or, in complicated cases, within a month of the date of delivery of a final judgment on the last criminal case registered with the same judge (court)."

Article 437 §§ 2 and 3 provided that the presiding judge was the authority in charge of a hearing. He or she was responsible for maintaining order in the courtroom and carried out all kinds of procedural actions envisaged by the Code. In addition, Article 442 stated that, during a hearing, the judge had to abide by all the general legal principles contained in Chapter II of Part I of the Code, of which Article 12, cited above, formed a part.

By an amendment of 28 April 2006 to Article 468, the accused party became entitled to request the first-instance court, during the preparatory

hearing on the merits, to release him or her from detention in the event of significant new circumstances arising in the case.

Article 532 stated that the procedure under Article 468 could be used at the preparatory stage of the appellate proceedings on the merits. Articles 547 and 553 § 2 regulated the procedure for filing appeals and interlocutory appeals before the cassation court.

3. The Criminal Code

Article 181 § 1 "Extortion"

"Extortion is claiming another person's object or property right or property use under threat of using violence against the victim, or the victim's close relative, destroying or damaging the object, or of making public information which may impair the victim's reputation, or of spreading such information as may substantially prejudice the victim's rights..."

4. The Prison Rules, adopted by Order No. 367 of 28 December 1999 (as it stood at the material time)

Under Rule 29 § 3 of the Prison Rules, in the event of a violation of prison regulations, a detainee could be subjected by the prison administration to disciplinary sanctions. Rule 29 § 8 listed, in increasing order of severity, the disciplinary sanctions as follows:

(a) a warning;
(b) a reprimand;
(c) a short-term or long-term ban on visits;
(d) confinement from 3 to 20 days in a punishment cell;
(e) prohibition to receive parcels.

Rule 30 § 1 explicitly prohibited detainees from taking food to a punishment cell from their ordinary cells.

Under Addendum No. 1 to the Prison Rules, detainees were forbidden to use telephones in prison.

C. Relevant international documents

1. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT")

The Report of 30 June 2005 (CPT/Inf (2005) 12) on the visit to Georgia carried out by the CPT from 18 to 28 November 2003 and from 7 to 14 May 2004.

"**a. Prison No. 5, Tbilisi**

67. At the end of the visit in 2001, the CPT's delegation asked the Georgian authorities to take out of use all cells located in the basement of the main detention block (i.e. quarantine, transit and disciplinary cells). This measure was reportedly taken soon after the 2001 visit. However, as a result of the increasing number of prisoners sent to Prison No. 5, it became necessary to start using the basement cells

again. In May 2004, some 170 prisoners were being held in the basement... The cells were dark, badly ventilated, damp and disgustingly filthy. Further, in some cells, prisoners were sharing beds.

68. Conditions on the other levels of the main detention block remained extremely poor. Many of the dormitories were grossly overcrowded, with as little as 1 m² of living space per prisoner. The number of inmates often exceeded the number of beds, thereby compelling prisoners to sleep in two and occasionally even three shifts (for example, 46 prisoners in a cell measuring 45 m² which was equipped with 28 beds). The situation was exacerbated by poor ventilation and lack of natural light...The sanitary arrangements were also completely inadequate: up to 50 prisoners might be sharing the same dilapidated and generally filthy toilet facility inside a dormitory. Further, there was no heating, and exposed electrical wires throughout the accommodation areas created a high risk of accidents...

...

72. The situation with regard to food had not changed since the 2001 visit; in practice, prisoners relied to a great extent on food parcels from their families.

Further, as in 2001, prisoners did not receive any personal hygiene items and there were no laundry facilities. The prison had relinquished responsibility for providing prisoners with bedding and many prisoners slept in what could only be described as rags...

74. ...at the end of the visit in November 2003 the delegation made three immediate observations in respect of Prison No. 5 in Tbilisi, requesting the Georgian authorities to: ...(ii) definitively take out of service all cells located in the basement of the main detention building (including the isolation and "*karzer*" cells); (iii) ensure that all prisoners, including those in the "quarantine" section and disciplinary isolation cells, are guaranteed outdoor exercise of at least one hour per day.

In view of the deteriorated situation observed in May 2004, the delegation reiterated the above-mentioned immediate observations...

75. At the end-of-visit talks in May 2004, the Minister of Justice acknowledged that Prison No. 5 was substandard in all the key aspects...

...

c. Discipline

138. ...At Prison No. 5 in Tbilisi, the disciplinary cells criticised in the report on the visit in 2001 had been taken out of service and replaced with nine other cells, located in a different part of the basement of the main detention block. Admittedly, the cells in question were larger and equipped with sleeping platforms. However, the cells were substandard in all other respects; in particular, they had no access to natural light and were unventilated, humid and dilapidated...

139. During the second periodic visit, the delegation was concerned to note that prisoners undergoing disciplinary confinement in the establishments visited were still not offered outdoor exercise ... at the end of the visit in November 2003, the delegation made an immediate observation, requesting the Georgian authorities to ensure that inmates placed in disciplinary cells in all penitentiary establishments in the country are guaranteed at least one hour of outdoor exercise per day...The CPT reiterates [that] recommendation..."

2. Human Rights Watch Report "Undue Punishment: abuses against prisoners in Georgia." (Volume 18, No. 8(D) September 2006)

"...The space allocated for prison cells in Georgia—both in law and in practice—is significantly less than that required by regional human rights standards... In its 2001 recommendations to the Georgian government, the CPT lowered this standard suggesting, "A standard of 4 m² per prisoner should be aimed at." Georgia's Law on Imprisonment requires that the living space for each convict in the cells of the Penitentiary Department must be not less than two square meters. Detainees should each be provided with a separate bed...

Tbilisi Prison No. 5 dates from 1912...In many parts of Tbilisi Prison No. 5, the walls and floors are crumbling and in a state of disrepair. Electrical wires are exposed in the cells and corridors. The regular detention cells are filled with as many two-tier metal bunk beds as the rooms will hold. There were no tables or chairs in the rooms at the time of Human Rights Watch's visit. Detainees must sit on beds or on the floor when they are not sleeping. The toilets are partitioned from the rest of the cell by only a short wall or sometimes with a piece of fabric or shower curtain that the inmates have put up themselves. This design allows for very little privacy for those using the sanitary facilities. Because of the overcrowding, beds are often placed very close to the toilets. The toilets are decaying and filthy. In several cells Human Rights Watch found piles of garbage near the door. Human Rights Watch considers the conditions in which detainees are housed in this facility violate the prohibition on inhuman or degrading treatment.

All of the cells in Tbilisi Prison No. 5 visited by Human Rights Watch smelled strongly of human sweat, human excrement, and cigarette smoke. Detainees spend consecutive days and weeks in these cells without being allowed outside... The cells were also unreasonably hot, due to the overcrowding and lack of ventilation. Many prisoners were reduced to wearing very little clothing in an effort to stay cool...

Human Rights Watch found the most appalling conditions to be in the basement "quarantine" cells in Tbilisi Prison No. 5...The cells visited by Human Rights Watch had no natural light or ventilation, owing to their location in the basement, and only one tiny window covered with screens. Artificial light was provided by a bright light over the door. There was no running water in the sinks. There was standing water on the floor in one cell. The bed frames consisted of bare iron planks, and there were no mattresses and only a few tattered blankets...

The deputy director of Tbilisi Prison No. 5 claimed that detainees "wash once per week." However, detainees stated that they do not shower once per week because "[t]here are too many people."...

In Tbilisi Prison No. 5, Human Rights Watch found the kitchen building to be decaying. Water was overflowing some of the food preparation containers resulting in standing water on the floor..."

COMPLAINTS

Under Article 3 of the Convention, the applicants complained about the conditions of their pre-trial detention in Tbilisi No. 5 Prison. The first applicant complained of his confinement in the punishment cell. The second applicant complained of the overcrowding and lack of medical care in his ordinary cell. They also submitted that their treatment in the courthouse – being kept in "metal cages", surrounded by intimidating, hooded, armed guards, being exposed to an independent observer as "criminals" – had been degrading.

Under Article 5 § 1 (c) of the Convention, the applicants asserted that there was no reasonable suspicion that they had committed an offence. They also challenged the lawfulness of their detention after the detention order expired on 27 November 2005.

Under Article 5 § 3, the applicants claimed that insufficient reasons had been given for the court decisions of 29 August and 2 September 2005.

They further alleged that the judicial review of the lawfulness of their detention, conducted on 29 August and 2 September 2005 and 13 January 2006, had breached the guarantees afforded by Article 5 § 4. In particular, they complained that the principle of equality of arms was violated on 29 August and 2 September 2005, since the prosecution did not make available to their lawyers the main evidence in the case: a copy of the secret video recording of 27 August 2005. Specifically referring to the manner in which the hearing of 2 September 2005 had been held, assessing it against the situation in the judiciary obtaining in the respondent State at that time (see the Facts above), the applicants asserted that the issue of their detention had not been the subject of a fair hearing by a competent and independent tribunal. As to the review of 13 January 2006, they complained that it was not a speedy reply to their complaint of 6 December 2005 and that their advocates had been notified about the hearing only two days in advance, thus lacking time to prepare the defence. The applicants also alleged that, having been placed in "metal cages" during the reviews of their detention on 29 August, 2 September 2005 and 13 January 2006, they would have been presumed guilty on the basis of their appearance by any independent observer. Moreover, the judge could hardly have stayed impartial in the presence of such a high number of undercover agents and hooded, armed men in the courthouse.

Under Article 6 §§ 1 and 3 and of the Convention, the applicants reiterated their complaints under Articles 5 §§ 1, 3 and 4. Under the same provisions, the first applicant also challenged his placement in the punishment cell.

Under Article 8 of the Convention, the applicants complained that the secret video recording had been effected on 27 August 2005 without a court order. Under Article 10 of the Convention, they complained that their

journalistic freedom had been restricted. In support of the last complaint, they referred to various instances, unrelated to their case, of alleged violations of freedom of expression in Georgia. They also claimed that the Government had intentionally created problems for the company in the media market by discouraging potential sponsors from placing advertisements on their television channel.

The applicants asserted that since the judiciary was influenced by the prosecution in Georgia, the courts could not provide an effective domestic remedy, within the meaning of Article 13 of the Convention. The first applicant submitted the same argument with regard to the authorities' alleged disregard for his complaint about the conditions of detention.

Under Article 14 in conjunction with Articles 5 and 6 of the Convention, the first applicant alleged that, whilst other prisoners were usually permitted to use mobile telephones, he was punished for the same conduct in order to prevent his communication with his lawyers before the trial.

Invoking Article 18 in conjunction with Article 5 of the Convention, the applicants complained that their detention served to silence their television channel and its criticism of the Georgian leadership. In support of this argument, they referred to various instances, unrelated to their case, of alleged abuses of power by different State agencies.

Under Article 1 of Protocol No. 1, the second applicant complained about the seizure of his car.

THE LAW

A. Alleged violations under Article 3 of the Convention

The applicants complained of various violations of their rights under Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

1. The first applicant's confinement in the punishment cell

(a) The parties' arguments

In their initial observations of 30 June 2006, the Government submitted that the first applicant had not exhausted domestic remedies. In particular, they claimed that, if he had disagreed with the termination of the investigation, the first applicant could have appealed against the impugned PGO decision of 26 June 2006 before a court, as provided for by Article 242 §§ 1 and 2 of the CCP.

The Government further submitted that the first applicant's confinement in the punishment cell had been a lawful disciplinary sanction under Rule 29 §§ 3 and 8 of the Prison Rules and Addendum I thereto. They claimed that the prosecution authorities had opened a criminal case on 18 May 2006 and conducted a comprehensive preliminary investigation, the conclusions of which, based on the statements of the prison staff and the second inmate (see the Facts above), showed that the conditions in the punishment cell were fully satisfactory. The Government consequently contended that the first applicant's complaint was manifestly ill-founded.

The first applicant replied that the authorities' investigation could not be regarded as "effective" because it had only been launched four months after his complaint of 20 January 2006, and after the Court had given notice of his application to the Government. The fact that the investigation was terminated on 26 June 2006, that is shortly before the Government had submitted their first observations on the admissibility and merits of the application, on 30 June 2006, proved that the prosecution authorities had been guided not by the duty of due diligence to provide the first applicant with a reasonable possibility of redress, but rather to equip the Government with an additional argument in the proceedings before the Court. The first applicant further stated that, owing to the belated nature of the investigation, the prison administration had had plenty of time to improve the conditions in the punishment cell. Referring to the fact that neither he nor his advocates had participated in the relevant criminal proceedings, and that the prosecution authorities had relied only on the statements of the prison administration and the second inmate – whose impartiality could be reasonably questioned – the first applicant claimed that the investigation had not been objective.

The first applicant further submitted that the PGO decision of 26 June 2006, terminating the disputed investigation, had been delivered to him on 3 July 2006 and that he had challenged it in the Tbilisi City Court on 18 July 2006. He claimed to have done so to prove the impracticality of resorting to the domestic courts. Referring to the fact that, at the time when he filed his reply to the Government's observations with the Court on 29 August 2006, the Tbilisi City Court had not yet reacted to his complaint, which meant that it had failed to comply with the statutory time-limit laid down by Article 242 § 4 of the CCP, the first applicant submitted that a judicial appeal for his complaint under Article 3 of the Convention could not be regarded as an effective remedy.

In their additional observations of 9 November 2006, the Government submitted a copy of the Tbilisi City Court decision of 24 July 2006, according to which the first applicant's appeal of 18 July 2006 had been dismissed as unsubstantiated (see the Facts above).

On 2 December 2006 the first applicant replied that he and his representatives had learnt about the Tbilisi City Court's examination of his

complaint only from the Government's additional observations. He had been prevented from appealing the decision of 24 July 2006 since neither he nor his lawyer had ever been served by the authorities with a copy of the decision of 24 July 2006 pronounced *in absentia*.

The Government did not comment on this point.

(b) The Court's assessment

i. As to the objection of non-exhaustion

The Court reiterates that in the area of exhaustion of domestic remedies the burden of proof is on the Government to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success. Once this burden of proof is satisfied, it falls to the applicant to show that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate or ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (see, for example, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1211, § 68).

Referring to its extensive case-law in this regard, the Court notes that the problems under Article 3 of the Convention associated with detention issues may be classified as those resulting from specific acts or omissions by the State agents in charge of the detained applicants (e.g. torture by police officers or prison staff) and those conditioned by general problems in the penitentiary sector (e.g. poor prison conditions such as overcrowding, a lack of ventilation and natural light, restrictions on freedom of movement, etc.). With respect to the former, a complaint with an aim to hold individual perpetrators criminally liable would be, in the normal course of events, an effective remedy (see, amongst many others, *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003; see also *Medvedev v. Russia* (dec.), no. 26428/03, 1 June 2006). The structural nature of the latter problem, however, usually renders the filing of a separate complaint to a court or a prosecutor against individual officials ineffective and redundant (see *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006; *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004). However, in the latter situation, at least one of the responsible State agencies – the authority in charge of the penitentiary system, the courts, the prosecution, etc. – have still to be informed of the applicant's subjective assessment that the conditions of detention constitute a lack of respect for, or diminish his or her human dignity.

The Court observes that, in the case at hand, the placement of the first applicant in the punishment cell represented a disciplinary sanction taken by

officials of the prison administration who could, in principle, be amenable to individual criminal responsibility for that act. However, the subject matter of the first applicant's complaint under Article 3 of the Convention is not an abuse of power by the prison staff, nor is the lawfulness of the imposition of that disciplinary sanction in issue, but rather the compatibility of the general conditions in the punishment cell of Tbilisi No. 5 Prison with the requirements of Article 3. After all, a measure of solitary or disciplinary confinement is not in itself in breach of those requirements. It is rather the conditions of that confinement which may be questionable under that provision (see *Rohde v. Denmark*, no. 69332/01, § 96, 21 July 2005).

The first applicant challenged the conditions of his detention – the lack of hygiene, privacy, space, ventilation, light and physical exercise, etc – which, according to Human Rights Watch and the CPT Reports (cited above), were apparently of a systematic nature and did not only concern his personal situation.

Consequently, in view of the fact that the applicant had made the hierarchical, prosecution, and even judicial authorities, fully aware of his grievances about the conditions in the punishment cell (his complaints of 20 January and 18 July 2006), the Court considers that he was absolved from meticulously following all the exhaustion formalities, as suggested by the Government (cf., *mutatis mutandis*, *Mamedova* and *Moiseyev,* decisions cited above; *Belevitskiy v. Russia*, no. 72967/01, § 71, 1 March 2007). In the particular circumstances of the present case, the Court finds that the applicant did everything that could reasonably be expected of him to exhaust domestic remedies and that there is no place for excessive formalism here (see *Akdivar and Others* cited above, § 69; *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2432, § 77).

However, whilst most of the first applicant's complaints under Article 3 of the Convention are, as found above, of a general nature, that concerning the alleged inactivity of the prison staff when a mattress was burning is more specific. In respect of this complaint, the Court accepts the Government's argument that the investigation, leading to the possible criminal responsibility of the prison guards in charge, was an effective remedy. The Court would further agree with the Government that the possibility of appeal to a court, against the prosecution authority's decision to terminate criminal proceedings, was a remedy clearly available under Article 242 §§ 1 (a), 2 and 3 of the CCP. Considering that, under Article 242 § 5 of the CCP, the first-instance court had competence to instruct the prosecution authorities to recommence a preliminary investigation, as well as its power to annul a previous decision terminating criminal proceedings, there were certain safeguards in place against an arbitrary exercise of powers by the prosecution authority (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). However, the Court recalls that only public and adversarial proceedings before an independent tribunal, called upon to

assess whether the applicant has a *prima facie* case of ill-treatment, can be considered a truly effective remedy (see *Belevitskiy*, cited above, § 61).

In the present case, the Tbilisi City Court heard the applicant's complaint of 18 July 2006 *in camera* on 24 July 2006, without an oral hearing or a transparent adversarial procedure in writing. The first applicant and his lawyer had never been notified about the examination of the complaint in advance and only learnt about the outcome through the Government's observations of 9 November 2006.

In these circumstances, the Court finds that the first applicant's resort to the first-instance court cannot be considered to have been an effective remedy. It further considers that, in the absence of a copy of the first-instance decision, he cannot be criticised for not having pursued the matter any further by applying, under Article 242 § 5 of the CCP, to an appellate court (see *Chitayev and Chitayev v. Russia*, no. 59334/00, §§ 139 and 140, 18 January 2007).

In the light of the foregoing, the Court dismisses the Government's objection of non-exhaustion with regard to the first applicant's complaint about the conditions of his detention in the punishment cell.

ii. As to the objection that the complaint is manifestly ill-founded

As to the Government's argument that, in view of the findings of the internal investigation, the first applicant's complaints about the punishment cell are manifestly ill-founded, the Court considers that the examination of this issue is closely linked to the merits of the case.

In view of the above, the first applicant's complaints under Article 3 of the Convention cannot be rejected as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The second applicant's complaints about the conditions of detention

Despite the Court's request, the Government have not submitted observations on the second applicant's complaints under Article 3 of the Convention.

(a) Lack of medical care

The Court notes that no specific evidence in support of the second applicant's complaint about the lack of medical care exists. He never informed the Court what kind of treatment he had been provided with during his detention on remand, or what was requested but withheld from him. The case file does not disclose any instance where the applicant applied for particular medical treatment while in prison but was refused it (cf. *Galuashvili v. Georgia* (dec.), no. 40008/04, 24 October 2006).

Consequently, the Court concludes that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) Overcrowding

The second applicant submitted that on 19 January 2006, while detained in Tbilisi No. 5 Prison, he was moved from his six-bed cell, with six inmates in it, to another cell with 12 beds, where 29 prisoners were kept. The inmates were obliged to take turns to sleep.

The Government did not dispute the second applicant's submission that, after he had complained during the court hearing of 23 February 2006 about the poor conditions of detention, the authorities responded by placing six more inmates in his already overcrowded cell with 12 beds, thus bringing the total number of prisoners there to 35.

In such circumstances, the Court considers that the complaint about overcrowding, which is of a systematic nature and affects the prison population in general, was sufficiently made known to the authorities Consequently, no issue of exhaustion of domestic remedies arises (*Belevitskiy*, cited above, § 71).

Moreover, in view of the undisputed facts mentioned above, the second applicant's complaint about the conditions of his detention under Article 3 of the Convention cannot be rejected as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. The treatment in the courthouse

Although invited to do so, the Government did not comment on the manner of the applicants' treatment in the courthouse and their placement in an allegedly cage-like dock during the public hearings.

The Court has no doubt that, in view of the applicants' submissions and the Government's video recording of the hearing of 2 September 2005, the complaints about the treatment in the courthouse are not manifestly ill-founded within the meaning of Article 35 § 1 of the Convention.

As to other criteria of admissibility, the Court observes that on 2 September 2005 the first applicant had made the presiding judge aware of this grievance (see the Facts above). It notes in this regard that, under Articles 230 § 1 and 231 § 2 of the CCP, the first applicant was procedurally entitled to make a declaration on the subject orally and that Article 230 § 2 required the presiding judge to take it into account and, if necessary, take appropriate action.

The Court notes that the relevant domestic law apparently did not contain a remedy for the specific complaints about the caged dock or the presence of armed men and undercover agents in the courthouse. In any case, the Government did not refer to any existing, effective domestic remedies

which the applicants should have tried, and so have not discharged their burden of proof in this respect (*Akdivar and Others*, sited above, § 68). The Court observes that, pursuant to Articles 437 §§ 2 and 3 and 442 of the CCP, read in conjunction with Article 12, the presiding judge was the sole authority able to protect the applicants from the allegedly degrading treatment in the courthouse. Consequently, there could hardly have been any need for the applicants to file a separate complaint with another authority.

In the light of the foregoing, the Court concludes that there are no grounds for declaring this part of the application inadmissible.

B. Alleged violations under Article 5 of the Convention

The applicants allege various violations of their rights under the provisions of Article 5 §§ 1 (c), 3 and 4 of the Convention, which, in so far as relevant, read as follows:

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

1. The Government's arguments

1. The Government submitted that if the applicants considered that their detention between 27 November 2005 and 13 January 2006, on the basis of the fact that their case had been transmitted to the court, violated the requirement of lawfulness under Article 5 § 1 (c) of the Convention, they should have applied to the Constitutional Court of Georgia, requesting the abrogation of the disputed provisions of the CCP on the basis of Article 18 § 2 of the Constitution. The Government maintained that an appeal to the Constitutional Court could be considered an effective remedy.

2. The Government further submitted that the applicants had not exhausted domestic remedies for their complaints about the existence of "a reasonable suspicion" and the reasonableness of detention under Article 5 §§ 1 (c) and 3 of the Convention, in so far as they had not requested the first-instance court, hearing their criminal case on the merits, to release them from detention under Article 468 of the CCP. The Government further

maintained that the applicants could have gone even further, by requesting the appellate court to change their measure of restraint during the appellate hearing on the merits, under Article 532 of the CCP, or before the cassation court, under Articles 547 and 553 § 2 of the CCP.

3. The Government contended that the complaint under Article 5 § 1 (c) of the Convention about the inexistence of any reasonable suspicion for the extortion offence, was manifestly ill-founded, in so far as the evidence – the parliamentarian's testimonies, the video recording of 27 August 2005 and the results of the search on the spot at the time of arrest – were more than enough for the Tbilisi City and Regional Courts to authorise the applicants' detention on remand on 29 August and 2 September 2005 respectively.

As to the disputed period of detention between 27 November 2005 and 13 January 2006, the Government submitted that the fact of terminating the investigation and sending the case to a court represented in itself a lawful ground for the applicants' detention pending committal for trial under Articles 417 and 419 of the CCP.

4. Under Article 5 § 3 of the Convention, the Government submitted that the above-mentioned court decisions were properly reasoned and that the relevant complaint was thus manifestly ill-founded. In particular, the disputed court decisions of 29 August and 2 September 2005 specifically referred to the reasonable fear that, if released, the applicants could have influenced the witnesses, who were under their hierarchical authority in the media company.

5. With regard to the complaints under Article 5 § 4 of the Convention, the Government submitted that the judicial review of 29 August 2005 had been conducted within the statutory time-limit of 72 hours following the applicants' arrest on 27 August 2005. Consequently, the proceedings were speedy. As to the review of 13 January 2006, the fact that the Tbilisi City Court heard the applicants' complaint of 6 December 2005 satisfied, in the Government's view, the requirements of Article 5 § 4.

They added that the principle of the equality of arms during the judicial reviews of detention on 2 August 2005 and 13 January 2006 had been respected, and that the applicants' complaint was thus manifestly ill-founded. In support of this assertion, the Government claimed that the applicants had not asked to be allowed to see the video recording of 27 August 2005 during their detention on remand. They further submitted that the applicants were given access to the verbatim transcript of that recording on 29 September 2005, watched the recording itself on 16 November 2005 and that, in any case, the video was shown to the parties during a hearing on the merits.

The Government further submitted a video recording of the judicial review of detention of 2 September 2005 (see the Facts above) in support of the assertion that there had been only four uniformed guards in the courtroom, excluding the presence of any hooded, armed men. They

claimed that the presence of four guards had been necessary to secure order and did not render the proceedings unfair. With regard to the overcrowding and turmoil in the courtroom that day, the Government noted that the judge had offered the applicants the possibility of conducting the hearing *in camera* but they had refused. The Government added that the authorities were not under an obligation to provide a larger courtroom. Noting that the hearing had been broadcast live throughout the country, the Government stated that the principle of publicity had been respected.

2. The applicants' arguments

1. The applicants replied that an appeal to the Constitutional Court, in view of the latter's procedure and decision making powers, would not have been an effective remedy.

2. They maintained that the decisions of 2 September 2005 and 13 January 2006 were, under the domestic law, final and not subject to appeal. As to the possibilities of requesting release before the first-instance, appeal or cassation courts, under Articles 468, 532, 547 and 553 § 2 of the CCP, they submitted that those provisions did not offer remedies against the final decisions of 2 September 2005 and 13 January 2006, but rather independent remedies to secure release, contingent upon the existence of "significant new circumstances". They submitted that they could not invoke these provisions of the CCP, for the simple reason that no "new" circumstances had arisen in their case. The applicants concluded that the remedies suggested by the Government were thus irrelevant and ineffective for their complaints under Article 5 §§ 1 (c) and 3 of the Convention.

3. With regard to the alleged absence of "a reasonable suspicion" under Article 5 § 1 (c) of the Convention, they submitted that, when the Tbilisi City Court remanded them in custody on 29 August 2005, the criminal case file did not contain evidence substantiating a reasonable suspicion that they had committed extortion.

They further maintained that in the period from 27 November 2005 to 13 January 2006 their detention on remand had not been authorised by a court order and was therefore unlawful within the meaning of the above provision.

4. With regard to the justification of their detention under Article 5 § 3 of the Convention, the applicants submitted that the witnesses questioned afterwards appeared not to be under their "hierarchical authority" but were instead either co-founders of the media company or journalists of the production company.

5. As regards the substantive and procedural guarantees under Article 5 § 4 of the Convention, the applicants submitted that the Government's own video recording proved the fact that on 2 September 2005 they had been denied a fair hearing by an independent and impartial tribunal. As to the hearing of 13 January 2006, even though their complaint of 6 December

2005 was heard, it could not nevertheless be said to constitute a speedy reply and was likewise not protected by the safeguards of a fair hearing.

3. The Court's assessment

(a) As to the non-exhaustion plea with regard to the complaint about unauthorised detention

The Court recalls that the current system of individual constitutional complaint in Georgia has already been found to lack effective mechanisms offering direct and specific redress for particular instances of human rights violations. This conclusion was based on the observations that the Constitutional Court was not empowered to set aside individual decisions of public authorities or courts which directly affected the complainant's rights, and that a declaration that a statute or another normative act was unconstitutional could not result in the quashing of the judicial decisions already taken on the basis of the impugned act (*Apostol v. Georgia*, no. 40765/02, §§ 38-47, ECHR 2006-...).

In the case at hand, it is not clear how upholding a constitutional complaint from the applicants – by repealing the criminal procedural provisions – would have offered direct and speedy redress for their allegedly unlawful detention from 27 November 2005 to 13 January 2006, since the Georgian Constitutional Court lacked the power to order the applicant's immediate release. Assessed against what was at stake for the applicants – their physical liberty – the cumbersome and "theoretical" system of constitutional complaint was clearly an ineffective remedy for the applicants' complaints under Article 5 of the Convention (*Apostol*, cited above, § 44).

Finally, the Court notes that, as in the case of *Apostol*, the Government have failed to refer to any decisions or judgments of the Constitutional Court providing, on the basis of Article 18 § 2 of the Constitution, protection against arbitrary detention comparable to that under Article 5 § 1 (c) of the Convention.

The first plea of non-exhaustion should accordingly be dismissed.

(b) As to the non-exhaustion plea with regard to the existence of a reasonable suspicion and the reasonableness of detention

As regards the Government's reference to Articles 468, 532, 547 and 553 § 2 of the CCP, the Court considers that none of those remedies could offer relevant and effective redress for the applicants' complaints under Article 5 § 1 (c) of the Convention, for the following reasons.

The Court notes that the subject matter of the applicants' complaints under Article 5 of the Convention is their detention on remand falling under the exception of Article 5 § 1 (c). That detention ended when the Tbilisi City Court convicted the applicants at first instance on 29 March 2006 (see,

amongst many other authorities, *Davtian v. Georgia* (dec.), no. 73241/01, 6 September 2005). The Court reiterates, in this connection, that retrospectively seeking a ruling as to whether an already terminated period of detention on remand was lawful or justified is not an effective and relevant remedy (cf. *mutatis mutandis*, *Baranowski v. Poland*, no. 28358/95, Commission decision of 8 December 1997). As detention after conviction falls instead under Article 5 § 1 (a) of the Convention, the possibilities for release during that period have nothing to do with the already extinct detention on remand and the associated complaints about its lawfulness and reasonableness and judicial reviews under Article 5 §§ 1 (c), 3 and 4. Consequently, Articles 532, 547 and 553 § 2 of the CCP, regulating the filing of requests and appeals before the appellate and cassation courts, could not offer even a theoretical possibility of effective redress given their inappropriateness (cf., *mutatis mutandis*, *Ioseliani v. Georgia* (dec.), no. 64803/01, 6 September 2005).

As to Article 468 of the CCP, the reference to this provision in the present case is also irrelevant, as the amendment authorising the accused to request release at the preparatory hearing on the merits before a first instance court was introduced on 28 April 2006, i.e. after the applicants' conviction on 29 March 2006.

In the light of the foregoing, the Court dismisses the Government's second objection of non-exhaustion.

(c) As to whether the complaint under Article 5 § 1 (c) of the Convention about the existence of a reasonable suspicion is manifestly ill-founded

The applicants alleged that they were arrested in breach of Article 5 § 1 (c) of the Convention, in so far as there was no reasonable suspicion that they had committed the offence.

The Court recalls that having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned might have committed the offence (*see Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 16, § 32). Moreover, facts which raise a suspicion need not be of the same level of certainty as those necessary to justify a conviction or even the bringing of a charge, which comes at a later stage of the process of criminal investigation (see *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27, § 55).

In the present case, the Court notes that the applicants were caught red-handed with the parliamentarian's money. This fact alone was sufficient to raise a reasonable suspicion that extortion had been committed.

As to the applicants' argument that no evidence against them was available in the criminal case file when the court issued the detention order on 29 August 2005, the Court notes that this order was not the final decision in the *habeas corpus* procedure. Subsequently, when the necessary evidence

– the US dollar banknotes, the results of the search, the second applicant's car, fingerprints, etc. – had been formally incorporated into the case file on 31 August 2005, the Tbilisi Regional Court reviewed the lawfulness of the applicants' detention and confirmed the order of 29 August 2005 in its final decision of 2 September 2005.

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

(d) As to the whether the complaint under Article 5 § 3 of the Convention is manifestly ill-founded

Under Article 5 § 3 of the Convention, the applicants claimed that the justification for their detention in the decisions of 29 August and 2 September 2005 was insufficient.

The Court recalls that, even if there is a reasonable suspicion that the person arrested has committed an offence, the domestic courts are under an obligation to demonstrate other "relevant" and "sufficient" grounds to justify the deprivation of liberty (see, amongst other authorities, *Punzelt v. the Czech Republic*, no. 31315/96, § 73, 25 April 2000, unreported). The Court reiterates that it falls in the first place to the national judicial authorities to examine the circumstances for or against the existence of such an imperative interest, and to set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions, and of the facts established by the applicant in his or her appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Stašaitis v. Lithuania*, no. 47679/99, § 82, 21 March 2002). In exercising this function, the Court has to ensure that the domestic decisions were not in stereotypically worded or summary form (see *Panchenko v. Russia*, no. 45100/98, § 107, 8 February 2005) and that the reasoning was not of a declaratory nature, general or abstract (see *Nikolov v. Bulgaria*, no. 38884/97, § 73, 30 January 2003; *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX (extracts)).

In the present case, the Court observes that, when substantiating the need for the imposition of detention on remand, the prosecutors referred to the risk of absconding in view of the gravity of the charge and that of influencing the witnesses.

The Court is satisfied that the decision of 2 September 2005 dismissed the prosecutor's first argument, by noting that the severity of the sentence could not *per se* substantiate the risk of absconding (see, *a contrario*, *Khudoyorov v. Russia*, no. 6847/02, § 181, ECHR 2005-... (extracts)).

As to the second argument, on which the domestic courts eventually grounded the imposition of detention on remand, the Court considers that it was sufficiently linked to the particular circumstances of the case. Specifically, the court decisions of 29 August and 2 September 2005

reasoned that, since the witnesses were under the applicants' hierarchical authority in the media company, there was a legitimate doubt that the latter could influence them. In view of the fact that the applicants were accused of extortion committed in their position as managers of the media company and of what that implied as regards their relations with the production company, the Court does not consider the above reasoning, responding to the specific circumstances of the case, to be manifestly unreasonable or irrelevant. As to the applicants' argument that none of the witnesses questioned afterwards were found to be under their direct authority, this fact could not have been known to the domestic courts at the start of the prosecution and cannot, in the Court's opinion, render their reasoning wrong *ex post facto*.

In such circumstances, the Court sees no reason to disagree with the Tbilisi Regional Court's decision of 2 September 2005, the latter being *res judicata* in the *habeas corpus* procedure. It follows that the complaint under Article 5 § 3 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(d) As to whether the complaints under Article 5 §§ 1 (c) and 4 of the Convention are manifestly ill-founded

With due regard to the parties' submissions, the Court considers that the complaints under Article 5 §§ 1 (c) and 4 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

C. Alleged violations under Articles 6, 8, 10, 13, 14 and 18 of the Convention and Article 1 of Protocol No. 1

1. The complaints under Article 6

The Court observes that under Article 6 §§ 1 and 3 of the Convention the applicants challenged the lack of sufficient reasons for the imposition of their detention on remand and the absence of safeguards for a fair hearing during the judicial reviews of 29 August and 2 September 2005 and 13 January 2006. The first applicant also challenged his detention in the punishment cell.

In so far as in matters of detention Article 5 of the Convention is the *lex specialis* (see, *Shamayev and Others v. Georgia and Russia*, no. 36378/02, §§ 16 and 435, ECHR 2005-...), the Court considers that it is not necessary to examine the same issues under Article 6 of the Convention. The same is true with regard to the first applicant's complaint about his detention in the punishment cell, the examination of which falls entirely under Article 3 of the Convention.

2. The complaint under Article 8 of the Convention

The applicants complained that the secret video recording of their conversation with Mr B. on 27 August 2005 violated their rights under Article 8 of the Convention, which reads, in its relevant parts, as follows:

> "1. Everyone has the right to respect for his private...life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime, ..."

The Court considers that the secret recording in the present case was nothing other than surveillance carried out in the course of a criminal investigation and thus constituted an interference with the applicants' rights to respect for their private life (see, amongst other authorities, *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28, p. 21, § 41).

However, the Court observes that Article 290 §§ 2 of the CCP directly envisaged the possibility of carrying out an urgent investigative measure without an initial court warrant, providing that it was submitted for judicial scrutiny within the following 24 hours. With due regard to the circumstances surrounding the initiation of the criminal proceedings in the present case, the Court considers that there existed sufficient grounds for carrying out the secret recording as "an urgent measure", without the court's initial authorisation. The fact that the video was submitted to judicial scrutiny within the statutory time-limit, coupled with the scope of the domestic court's competence under Article 290 §§ 2 and 4 of the CCP, warrant the conclusion that there existed adequate, speedy and effective guarantees against any abuse by the investigative authorities (see *Klass and Others*, cited above, § 50). In the light of the foregoing, the Court considers that the above-mentioned procedure for carrying out surveillance as "an urgent measure" and its *ex post facto* judicial supervision was compatible with the lawfulness requirement of Article 8 § 2 of the Convention.

In so far as the secret video recording was conducted in order to find evidence relevant for the criminal proceedings, the Court finds that it pursued the legitimate aim of the prevention of crime. There is no evidence in the case file which could suggest that the interference might have been unnecessary or, at least, disproportionate (cf. *Webora v. Austria* (dec.), no. 3763/96, 19 January 1999).

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

3. The complaint under Article 10 of the Convention

The applicants claimed that their journalistic freedom was restricted by the criminal proceedings against them. Article 10 of the Convention, in so far as relevant, provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers..."

The Court notes that the criminal proceedings were initiated not on account of the applicants' journalistic activities but rather on suspicion that they had committed extortion. Admittedly, the applicants alleged that the proceedings had been fabricated as retribution for their critical opinions about the Government. Yet, they have not corroborated this allegation with any specific evidence, relevant to their criminal case, except referring to various alleged violations of freedom of speech, unrelated to their case, in the respondent State. Nor have they provided any *prima facie* evidence that the Government had been creating problems for their company in the media market.

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

4. The complaints under Articles 13 and 14 of the Convention

Alleging that the domestic courts lacked independence and impartiality, the applicants complained, under Article 13 of the Convention, that there was no effective remedy against their detention on remand. The first applicant submitted the same argument with regard to his confinement in the punishment cell.

Under Article 14 of the Convention, the first applicant claims that he was singled out and punished for using a mobile telephone in the prison.

As to the complaint under Article 13 of the Convention about the independence and impartiality of the tribunal reviewing the detention issues, the Court notes that Article 5 § 4 is the *lex specialis* in this regard (see *Shamayev and Others*, cited above, §§ 16 and 435).

The first applicant's complaint concerning his confinement in the punishment cell falls within the ambit of Article 3 of the Convention, and the Court considers that no separate issue arises under Article 13 of the Convention.

As to the complaint under Article 14 of the Convention, the Court observes that the use of mobile telephones was prohibited by Addendum I to the Prison Rules. The first applicant violated that regulation and was, consequently, punished pursuant to Rule 29 §§ 3 and 8 of the Prison Rules. The case file does not disclose any evidence of discrimination against him.

It follows that the complaints under Articles 13 and 14 of the Convention are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

5. The complaint under Article 18 of the Convention

The applicants alleged that they had been detained for the purpose of silencing their television channel, in violation of Article 18 of the Convention. That provision provides as follows:

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

The Government submitted that there were no indications in the present case that the applicants had been detained for any purpose other than to bring them before the competent authority on a reasonable suspicion of having committed an offence. They claimed that the applicants had failed to put forward any specific arguments in support of their complaint of an ulterior motive. They pointed to the fact that, even after the applicants' detention, their channel, "TV 202", continued to broadcast.

The applicants disagreed with the Government, arguing that their case was similar to that of *Gusinskiy v. Russia*, where the Court found a violation of Article 18 in relation to Article 5 § 1 (c) of the Convention *(Gusinskiy v. Russia*, no. 70276/01, §§ 73-78, ECHR 2004-IV). In support of the allegation that the State's main purpose was to intimidate the applicants' critical channel, they referred to various instances unrelated to their case of alleged human rights violations in Georgia and abuses of power by State agencies.

The Court recalls that Article 18 of the Convention does not have an autonomous role. It can only be applied in conjunction with other Articles of the Convention. However, a violation of Article 18 in connection with another Article may be found although there is no violation of the latter taken alone. Furthermore, it follows from the terms of Article 18 that a violation can only arise where the right or freedom concerned is subject to restrictions permitted under the Convention (see *Kamma v. the Netherlands*, no. 4771/71, Commission's report of 14 July 1974, Decisions and Reports 1, p. 4, and *Oates v. Poland* (dec.), no. 35036/97, 11 May 2000).

The Court firstly observes that the complaint under Article 18 of the Convention was made with regard to a period of detention on remand falling under Article 5 § 1 (c). Consequently, only those circumstances of the case which took place during that period could give rise to a violation of Article 18 of the Convention.

The Court notes that the applicants were detained in the course of criminal proceedings initiated not on account of their journalistic activities but, rather, on suspicion that they had committed extortion. The Court observes that, apart from referring to general human rights problems in the respondent State, the applicants did not point to specific facts in their particular case supporting the allegation that the main purpose of their detention was to put an end to their critical journalistic opinions. The Court

also notes that their channel continued to broadcast even after their detention.

The case file discloses that the controversial documentary about the parliamentarian, which happened to be at the core of the applicants' criminal prosecution, was aired on their channel even after the applicants were detained. Moreover, Parliament conducted its own investigation into the parliamentarian's commercial activities, after which he resigned. In these circumstances, the Court cannot assume that the purpose of the applicants' detention was to save the reputation of the parliamentarian or that of the ruling party.

The Court notes that, unlike the situation in the *Gusinskiy* application, in the present case the Government did not offer the applicants during their detention on remand any kind of bargain in exchange for discontinuing the proceedings. The Court concludes, therefore, that the applicants' claim is unsubstantiated (cf. *Gusinksiy*, cited above, §§ 75 and 76).

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

6. The complaint under Article 1 of Protocol No. 1

The second applicant complained about the seizure of his car under Article 1 of Protocol No. 1, which reads, in so far as relevant, as follows:

> "Every natural...person is entitled to the peaceful enjoyment of his possessions...
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest..."

The Government submitted that the temporary seizure of the second applicant's car amounted to a control of the use of property which was justified under the second paragraph of Article 1 of Protocol No. 1, as it represented an important piece of evidence in the criminal proceedings. They further pointed to the fact that, following the Tbilisi Regional Court's order of 30 June 2006, the car was returned on 26 September 2006 to the owner's family.

The second applicant replied that it took the Government almost three months to implement the court's final, enforceable order to return the car.

The Court agrees with the Government's argument that the second applicant's car, where the US banknotes and traces of chemical substances were found, was a relevant piece of evidence in the criminal proceedings. The Government could consequently legitimately control its use by the second applicant by virtue of the second paragraph of Article 1 of Protocol No. 1. It cannot be said that taking it provisionally, pending the investigation of the case, was disproportionate to the pursued aim of the prevention of crime (see *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-A, § 27).

As to the complaint that it took the Government almost three months to enforce the court order of 30 June 2006, the Court first notes that, as disclosed by the case file, part of this delay was attributable to the fact that the second applicant transferred the ownership of the car to his relative. In so far as the necessity of the said formality, which took place on 29 August 2006, has never been called into question by the second applicant, the Court considers that the remaining period of less than a month cannot, in the particular circumstances of the present case, raise an arguable issue under Article 1 of Protocol No. 1.

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

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits,

- the first applicant's complaint concerning his confinement in the punishment cell,

- the second applicant's complaint about overcrowding in the prison,

- both applicants' complaints about their treatment in the courthouse,

- the complaint about the lawfulness of the applicants' detention between 27 November 2005 and 13 January 2006 under Article 5 § 1 (c) of the Convention, and

- the fairness and speediness of the judicial proceedings bearing on the detention issues under Article 5 § 4 of the Convention;

Declares inadmissible the remainder of the application.

S. DOLLÉ
Registrar

F. TULKENS
President