



## No ulterior motive behind Georgian court's decision to detain an opposition leader

In today's Chamber judgment<sup>1</sup> in the case of [Melia v. Georgia](#) (application no. 13668/21) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights, and**

**no violation of Article 18 (limitation on use of restrictions on rights) of the Convention.**

The applicant is an opposition politician who, at the time of the events, was a member of Parliament and one of the leaders of the United National Movement (UNM). He was fitted with an electronic tag in 2019 when released on bail while awaiting trial for his alleged role in organising and participating in an attempted violent storming of the Parliament building on 20-21 June 2019.

The case before the European Court concerned the decision ordering his pre-trial detention after he refused to pay increased bail for having removed the electronic tag in November 2020 while giving a speech in front of the Parliament building. He was arrested in February 2021 but released in May 2021 when the European Union posted bail for him as a way out of the political standoff which had followed the 2020 elections and the opposition boycott of Parliamentary business, and had apparently been aggravated by his arrest.

The Court found in particular that, the trial court's decisions had been adopted within the framework of the criminal proceedings pending against him, to make sure, among other things, that he appeared at trial. Mr Melia's apparent expectation that despite failure to comply with preventive measures they would be annulled altogether, because of the passage of time, was inconsistent with the spirit of the Convention and the principle of the rule of law underlying Article 5 § 1.

The Georgian courts, relying on the importance of protecting Mr Melia's right to liberty and security, had initially rejected the prosecutor's application to have pre-trial detention imposed. He had not been restricted in carrying out his parliamentary mandate, engaging with the media and the public, and carrying out a pre-election campaign which had earned him a renewed seat in Parliament. In fact, it appeared that the criminal proceedings against him had been suspended to allow him to participate properly in the parliamentary elections. Accordingly, the Court did not consider that through the mere fact of charging him as part of criminal proceedings against him, the authorities had had the ulterior motive of removing him from the national political scene. Also, although his detention had been ordered against the backdrop of political tensions, the various points cited by Mr Melia did not add up to a finding that his detention had gone against the provisions of the Convention.

### Principal facts

The applicant, Nikanor Melia, is a Georgian national who was born in 1979 and lives in Tbilisi. He is an opposition politician.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

In June 2019 a criminal case was opened against Mr Melia, at the time a member of Parliament and one of the leaders of the United National Movement (a political party which ran the country between November 2003 and October 2012), for his alleged role in organising and participating in an attempted violent storming of the Parliament building on 20-21 June 2019. On 26 June 2019 the Parliament granted a request from the Prosecutor General of Georgia for Mr Melia's parliamentary immunity to be lifted. The next day the Tbilisi City Court found that a real risk of absconding, tampering with evidence and reoffending existed in his case but considered that pre-trial detention requested by the prosecution would have been a disproportionate measure. Instead, bail subject to several conditions was applied. On 2 July 2019 the Tbilisi Court of Appeal additionally ordered that he be fitted with an electronic tag. On 15 July 2019 Mr Melia posted bail.

On 1 November 2020, while giving a speech in front of the Parliament building contesting the outcome of the recent Parliamentary elections, Mr Melia took the electronic tag off and tossed it away, calling it a "symbol of injustice." On 3 November 2020 the Tbilisi City Court considered that Mr Melia's removing the electronic tracking bracelet had been in breach of his bail conditions and increased the amount of bail, which he refused to pay. The trial court ordered his remand on 17 February 2021. He was arrested the following week, which triggered opposition protests and the resignation of the then Prime Minister. He was released in May 2021 when the European Union posted bail for him as a means to find a way out of the political standoff which had followed the 2020 elections and had apparently been aggravated by the applicant's arrest.

## Complaints, procedure and composition of the Court

Relying on Article 5 (right to liberty and security) and Article 18 (limitation on use of restrictions on rights), Mr Melia alleged that the courts' decision ordering his pre-trial detention had been unjustified and unnecessary for the purposes of the criminal proceedings against him, and that the only purpose of his pre-trial detention had been to restrict him in his political activities and to punish him for the opposition's boycott of parliamentary business.

The application was lodged with the European Court of Human Rights on 1 March 2021.

Judgment was given by a Chamber of seven judges, composed as follows:

Georges **Ravarani** (Luxembourg), *President*,  
Lado **Chanturia** (Georgia),  
Carlo **Ranzoni** (Liechtenstein),  
Mārtiņš **Mits** (Latvia),  
Stéphanie **Mourou-Vikström** (Monaco),  
Mattias **Guyomar** (France),  
Mykola **Gnatovskyy** (Ukraine),

and also Martina **Keller**, *Deputy Section Registrar*.

## Decision of the Court

### Article 5 § 1

The Court agreed with the Georgian courts' reasoning that when the criminal investigation had been opened, the material available in the case file had supported a "reasonable suspicion", within the meaning of Article 5 of the Convention, that Mr Melia might have committed a criminal offence. The reasons why it was necessary to apply preventive measures to prevent his absconding, tampering with evidence or reoffending had been covered fully in the court decisions of 27 June and 2 July 2019. The relevant national law provided for the conversion of bail into pre-trial detention in situations of non-compliance with a bail order.

The Court did not consider unreasonable the trial court's inference, based on different elements contained in the latter's reasoning, that the risks cited in the decisions of 27 June and 2 July 2019 had still persisted at the time of the decision on 17 February 2021, justifying the conversion of bail into pre-trial detention. That detention had been ordered as a last resort, following Mr Melia's explicit refusal to comply with the bail order and only after the time-limit to post the increased amount of bail had expired.

The Court understood that Mr Melia's conduct may well have been situated within the broader context of the apparently tense political environment in the country at the time, his status as a politician and his right to freedom of expression. However, it appeared that, rather than face any legal consequences for non-compliance with the bail order, Mr Melia had expected, given the lapse of a year and a half since the opening of the criminal investigation, that the preventive measures would be annulled altogether. However, the Court found that such an interpretation of the national law and the Convention was inconsistent with the spirit of the Convention and the principle of the rule of law underlying Article 5 § 1 and found no violation of that Article.

The Court considered that no separate issue arose under Article 5 § 3.

### Article 18

The Court took note of the apparent political tensions in Georgia between 2019 and 2021, the nature of the offence with which Mr Melia was charged, and the fact that his arrest and pre-trial detention had taken place after the contested elections of 31 October 2020, the related boycott of Parliament by the opposition parties, and his election as chairman of the UNM.

The Court observed that when the criminal investigation had been opened, the material available in the case file concerning Mr Melia had pointed to a possible criminal offence, and it did not appear, contrary to Mr Melia's submission, that he had been the only person investigated in connection with the events of 20-21 June 2019.

As regards the allegation that the authorities had wished to remove Mr Melia from the political scene in Georgia, the Court could not overlook the fact that the Georgian courts, relying on the importance of protecting Mr Melia's right to liberty and security, had initially rejected the prosecutor's application to have pre-trial detention imposed. The authorities had not restricted him in carrying out his parliamentary mandate, engaging with the media and the public, and carrying out a pre-election campaign which had earned him a renewed seat in Parliament. In fact, it appeared that the criminal proceedings against him had been suspended in order to allow him to participate properly in the parliamentary elections. The trial court had also granted his application to have identity documents returned to him for that purpose. Accordingly, and emphasising that the case did not concern the criminal proceedings pending against the applicant, the Court did not consider that by merely charging him as part of criminal proceedings against him, the authorities had had the ulterior motive of removing Mr Melia from the national political scene.

As concerns the applicant's detention ordered on 17 February 2021, the Court emphasised, among other things, that it had been implemented for a purpose provided for under Article 5 § 1 (c) of the Convention. It had not been argued that the measure in question had constituted a restriction of any other rights under the Convention. The Court took note, among other elements, of the fact that the implementation of the decision of 17 February 2021 had triggered the resignation of the then Prime Minister because the latter had considered it badly timed, from the perspective of the political tensions in the country, and various statements had been made by the representatives of the ruling party. The detention order and the arrest process had also been criticised by various individuals and organisations. However, these elements could not be indicative, within the meaning of the standard of proof used by the Court, of an ulterior motive on the authorities' part, whether that of removing Mr Melia from the political scene or that of punishing him for his political activities.

The Court concluded that although the applicant's detention had been ordered against the backdrop of political tensions in the country, the various points cited by the applicant, taken separately or in combination with each other, did not form a sufficiently homogenous whole to find that the applicant's detention had gone against the provisions of the Convention.

There had therefore been no violation of Article 18.

*The judgment is available only in English.*

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