



Initially justified pre-trial detention of former PM of Georgia later unduly used as a means to exert pressure on him

The case of [Merabishvili v. Georgia](#) (application no. 72508/13) concerned the arrest and pre-trial detention of a former Prime Minister of Georgia, Ivane Merabishvili, and his complaint that there had been ulterior purposes behind these measures. Mr Merabishvili namely alleged that the arrest and the pre-trial detention had aimed to remove him from the political scene, and that the Chief Public Prosecutor – by having him covertly removed from his cell late at night several months after his arrest to question him – had attempted to use his detention as leverage to pressure him to provide information about the foreign bank accounts of the former President of Georgia Mikheil Saakashvili and about the death in 2005 of the former Prime Minister of Georgia Zurab Zhvania.

In today's **Grand Chamber** judgment¹ in the case 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 with regard to Mr Merabishvili's arrest or his pre-trial detention;

unanimously, that there had been **no violation of Article 5 § 3 (entitlement of a detainee to trial within a reasonable time or to release pending trial)** with regard to his initial placement in pre-trial detention;

unanimously, that there had been **a violation of Article 5 § 3** in that, at least from 25 September 2013 onwards, his pre-trial detention had ceased to be based on sufficient grounds; and

by nine votes to eight, that there had been **a violation of Article 18 (limitation on use of restrictions on rights) taken in conjunction with Article 5 § 1**.

The Court came to the conclusion that it had not been established that Mr Merabishvili's pre-trial detention had principally been meant to remove him from Georgia's political scene. However, the Court found his allegations concerning his covert removal from his prison cell and his late-night questioning during his pre-trial detention sufficiently convincing and therefore proven.

The Court considered that the restriction of Mr Merabishvili's right to liberty had amounted to a continuous situation. It came to the conclusion – bearing in mind all the circumstances – that the predominant purpose of that restriction had changed over time. While in the beginning that purpose had been the investigation of offences based on a reasonable suspicion, later on the predominant purpose became to obtain information about Mr Zhvania's death and Mr Saakashvili's bank accounts. It was thus chiefly meant for an ulterior purpose not prescribed by the Convention.

In its judgment, the Court took the occasion to clarify the principles to be applied in cases where an alleged breach of Article 18 of the Convention was at issue.

Main facts

The applicant, Ivane Merabishvili, is a Georgian national born in 1968. He is currently serving a prison sentence in Tbilisi.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Before the parliamentary elections of October 2012, which resulted in a change of power, Mr Merabishvili, one of the leaders of the then ruling party, the United National Movement (UNM), was a member of the Georgian Government: from 2005 to 2012 he was Minister of Internal Affairs and then, from July to October 2012, Prime Minister. After the political coalition Georgian Dream had won the parliamentary election of October 2012 and formed a new Government, Mr Merabishvili was elected Secretary General of the UNM, which became the main opposition party in Georgia.

Mr Merabishvili was arrested on 21 May 2013 following the institution against him of two sets of criminal proceedings. The first charge against him was that between July and September 2012 he had devised a scheme creating fictitious public-sector jobs for over 20,000 people whereby they had unduly been paid the equivalent of more than two million euros for carrying out campaign work for UNM ahead of the October 2012 elections. According to the authorities, he had thus bought votes, misappropriated property and abused his power as a public official. The second charge was that he had systematically used a private house in a resort on Georgia's Black Sea coast, which belonged to a company under investigation by the Ministry of Internal Affairs, for holidays with his family, and that he had used public funds for renovation works on that house. According to the authorities, he had thus infringed the inviolability of property and had misappropriated property, both by using an official position.

On 22 May 2013 the Kutaisi City Court followed a request by the district prosecutor's office of Western Georgia to place Mr Merabishvili in pre-trial detention on the grounds that there was a risk that he would flee or obstruct the gathering of evidence. As to the risk of flight, the prosecutor had notably referred to the fact that Mr Merabishvili, having held public offices for several years, had many contacts abroad, that his wife had left Georgia right after he had been summoned for questioning, that a search of his flat had revealed large sums of cash and that it had been found that he had a fake passport. Mr Merabishvili's appeal against that decision was rejected on 25 May 2013.

During a pre-trial session on 25 September 2013, Mr Merabishvili requested to be released from pre-trial detention, noting in particular that before his arrest he had always duly appeared for questioning and that he had been abroad many times, having always returned as scheduled. He also offered to hand in his passport. He moreover pointed out that the investigation had already been concluded and all witness and other evidence had been secured, therefore there was no longer any risk of his influencing witnesses. The prosecution argued, among other things, that there was still a risk of his influencing witnesses, referring in particular to an incident in November 2012, when he had been stopped at Tbilisi airport attempting to cross the border with a fake passport and had subsequently threatened the head of the Border Police, trying to keep him from investigating the incident. The prosecution also pointed to the fact that the witnesses were still due to testify at trial. The Kutaisi City Court examined Mr Merabishvili's request on the same day and rejected it without further explanation.

When his trial started, on 7 October 2013, Mr Merabishvili again requested to be released from pre-trial detention. The trial court again dismissed the request, noting that he had failed to point to new circumstances calling for reconsideration. The fact that the trial had already started had no bearing on the justification for his detention.

In February 2014 Mr Merabishvili was convicted of the majority of the charges against him, including vote-buying, misappropriation of property and breach of the inviolability of another person's home. The charge of abuse of authority was dismissed as superfluous. He was sentenced to five years' imprisonment and banned from holding public office for one and a half years. The judgment was upheld on appeal.

Mr Merabishvili was subsequently convicted in three additional sets of criminal proceedings for offences involving abuse of official authority when he was Minister of the Interior.

According to Mr Merabishvili, while in pre-trial detention, in the early hours of 14 December 2013 he was covertly removed from his cell and taken by car, while having his head covered, for a meeting with the Chief Public Prosecutor, O.P., and the head of the Penitentiary Department, D.D. The two officials threatened him in order to obtain information about the bank accounts of the former President of Georgia Mikheil Saakashvili, who had left the country in October 2013, and about the death in 2005 of the former Prime Minister, Zurab Zhvania. The death of Mr Zhvania, who, according to the official version of the events, had died accidentally from carbon monoxide poisoning, was still a subject of heated debate, and the party Georgian Dream had made it one of their campaign promises to elucidate its circumstances.

Mr Merabishvili voiced his allegations about the incident at a hearing on his case on 17 December 2013, which was broadcast live on television. He called upon the authorities to verify his allegations by, in particular, examining video footage from the surveillance cameras of the prison where he was held.

On 20 December 2013 the Ministry of Prisons' General Inspectorate opened an internal inquiry into Mr Merabishvili's allegations. During the inquiry, the Penitentiary Department's deputy head informed the General Inspectorate's deputy head that his request for a copy of the footage from the surveillance cameras of the prison and the Penitentiary Department building for the relevant period could not be complied with, since that footage was kept only for 24 hours and was then deleted. Inspectors reviewed footage from surveillance cameras belonging to facilities such as petrol stations along the road supposedly taken by the car transporting Mr Merabishvili during the night in question; they noted that nothing of interest could be seen. The inquiry was terminated in January 2014 with a report concluding that Mr Merabishvili's allegations had not been confirmed.

After the European Court of Human Rights' Chamber judgment in the case had been delivered, the Chief Public Prosecutor's Office, on 21 June 2016, opened a criminal investigation in relation to Mr Merabishvili's allegations. Among other witnesses, both the then former Chief Public Prosecutor O.P. and the then former head of the Penitentiary Department D.D. were interviewed for the first time in September 2016. They both denied the allegations. In February 2017 a prosecutor from the Chief Public Prosecutor's Office closed the investigation, concluding that Mr Merabishvili's allegations had not been confirmed.

Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1, 3 and 4 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial / right to have lawfulness of detention decided speedily by a court) of the European Convention on Human Rights, Mr Merabishvili complained: that his arrest and pre-trial detention had been unlawful and unjustified; that the domestic courts had not given a specific time limit for his detention; that the courts had not given relevant and sufficient reasons for his pre-trial detention; and that the court decision of 25 September 2013 rejecting his request for release had not contained any reasons.

Further relying on Article 18 (limitation on use of restrictions on rights) taken in conjunction with Article 5 § 1, Mr Merabishvili alleged that the purpose behind the criminal proceedings against him and his pre-trial detention had been to remove him from the political scene and to prevent him from standing in the 2013 presidential elections in Georgia. In his observations in reply to those of the Government he further alleged that on 14 December 2013 the Chief Public Prosecutor had attempted to use his detention as a leverage to pressure him to provide information about Mr Saakashvili's bank accounts and about Mr Zhvania's death.

The application was lodged with the European Court of Human Rights on 20 November 2013.

In its Chamber judgment of 14 June 2016, the Court concluded in particular that Mr Merabishvili's pre-trial detention had been lawful and based on reasonable grounds but had also been used as a

means to exert pressure on him. In particular, it held, unanimously, that there had been: no violation of Article 5 §§ 1 and 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial) of the European Convention as concerned the lawfulness of and grounds for the court decisions of May 2013 ordering Mr Merabishvili's pre-trial detention; a violation of Article 5 § 3 as concerned the court decision of 25 September 2013 reviewing Mr Merabishvili's pre-trial detention; and, lastly, a violation of Article 18 (limitation on use of restrictions on rights) taken in conjunction with Article 5 § 1.

On 17 October 2016 the Grand Chamber Panel accepted the Georgian Government's request that the case be referred to the Grand Chamber. A Grand Chamber hearing was held on 8 March 2017.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido Raimondi (Italy), *President*,
Angelika Nußberger (Germany),
Linos-Alexandre Sicilianos (Greece),
Ganna Yudkivska (Ukraine),
Robert Spano (Iceland),
Nona Tsotsoria (Georgia),
Işıl Karakaş (Turkey),
Kristina Pardalos (San Marino),
Faris Vehabović (Bosnia and Herzegovina),
Ksenija Turković (Croatia),
Jon Fridrik Kjølbro (Denmark),
Yonko Grozev (Bulgaria),
Georges Ravarani (Luxembourg),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),
Lətif Hüseynov (Azerbaijan),

and also Søren Prebensen, *Deputy Grand Chamber Registrar*.

Decision of the Court

[Article 5 § 1](#)

The Court found that there had been no violation of Article 5 § 1 either as regards Mr Merabishvili's arrest or his pre-trial detention in itself. It noted in particular that he had not claimed that his arrest and pre-trial detention had not been based on a reasonable suspicion of his having committed the offences in question.

Nothing in the material in the case file cast any doubt on the reasonableness of the suspicion against Mr Merabishvili. There was moreover nothing to suggest that at the time of his arrest there was no intention of bringing him before a court. Indeed, he had been brought before a court on the day following his arrest.

Noting that Mr Merabishvili took issue with the trial court's failure to fix the duration of his pre-trial detention, the Court considered that this omission did not raise an issue under the Convention. It observed in particular that under the Georgian Code of Criminal Procedure it was not possible to keep him in custody for more than nine months in connection with the charges against him. There had therefore not been any uncertainty about the rules governing his pre-trial detention or a risk that it would last indefinitely, and he had been convicted eight months and 27 days after being arrested.

Article 5 § 3

The Court found that there had been no violation of Article 5 § 3 as regards Mr Merabishvili's initial placement in pre-trial detention in May 2013. It noted that the trial court had given relevant reasons to place him in pre-trial detention, namely the risk that he would flee and would influence witnesses. While that court had not strongly substantiated the risk of his influencing witnesses, the risk of flight had been established in more concrete terms.

The prosecution had notably referred to the fact that his wife had left Georgia right after he had been summoned for questioning, that a search of his flat had revealed large sums of cash and that he still had a fake passport. Those facts, amplified by the seriousness of the punishment he could expect if convicted, suggested that at that time, immediately after he had been charged, the risk of his fleeing abroad could be seen as sufficiently real and incapable of being averted by a less restrictive measure.

However, the Court found a violation of Article 5 § 3 as regards the continued justification of Mr Merabishvili's pre-trial detention.

When he had first challenged his detention in September 2013, four months after his arrest, the parties had essentially repeated their arguments about the risk of flight and the risk of influencing witnesses. Although by their nature those reasons which at first had justified his placement in pre-trial detention could change over time and thus required a fresh examination, the trial court had omitted to give any reasons for its decision to continue the measure. In its subsequent decision of October 2013 that court had briefly noted that Mr Merabishvili had not pointed to any new facts or evidence. It had thus entirely disregarded the passage of time and had made it clear that it was for Mr Merabishvili to show that his detention was no longer justified. However, under Article 5 § 3 it was the responsibility of the authorities, not of the detainee, to establish that reasons persisted to justify continued pre-trial detention. The reasons given by the trial court had therefore not been sufficient to justify its decision to continue the measure.

Article 5 § 4

Having regard to its findings under Article 5 § 3, the Court did not consider it necessary to examine the same issue under Article 5 § 4.

Article 18 in conjunction with Article 5 § 1

The Court first dismissed a preliminary objection by the Government to the effect that Mr Merabishvili had failed to raise his allegations about the meeting with the Chief Public Prosecutor within six months of that alleged meeting and had therefore failed to comply with the six-month time-limit under Article 35 § 1 of the Convention. The Court observed that those allegations had indeed been duly raised more than six months after the alleged meeting and after his lawyer had been informed that the inquiry into the matter had been completed. If those allegations were to be seen as a separate complaint they had been out of time. However, the Court found that they were simply a further aspect, or a further argument in support of, the complaint already set out in the application, namely that the restriction of Mr Merabishvili's right to liberty had been applied for a purpose not prescribed by the Convention. It followed that the Court was not precluded from dealing with those allegations.

Principles

In its judgment, the Court provided an overview of the existing case-law on Article 18,² observing that the examination of Mr Merabishvili's case had brought to light the need to clarify that case-law.

2. See paragraphs 265 to 281 of the judgment.

The Court pointed out that Article 18 did not have an independent existence; it could only be applied in conjunction with an Article of the Convention or the Protocols thereto which set out or qualified the rights and freedoms guaranteed by it. Its wording complemented that of clauses, such as the second sentence of Article 5 § 1 and the second paragraphs of Articles 8 to 11 of the Convention (right to respect for private life; freedom of religion; freedom of expression; freedom of assembly and association), which permitted restrictions to those rights and freedoms.

However, Article 18 also expressly prohibited member States from restricting the rights and freedoms guaranteed by the Convention for purposes not prescribed by the Convention itself, and to that extent it was autonomous. Therefore, there could be a breach of Article 18 even if there was no breach of the Article in conjunction with which it applied.

Furthermore, the mere fact that a restriction of a Convention right did not meet all the requirements of the clause that permitted it did not necessarily raise an issue under Article 18. Separate examination of a complaint under Article 18 was only warranted if the claim that a restriction had been applied for a purpose not prescribed by the Convention was a fundamental aspect of the case.

As to situations where a right or freedom was restricted for a **plurality of purposes** – both for an ulterior purpose and a purpose prescribed by the Convention – the Court took the view that the mere presence of a purpose which did not fall within the restriction clause of the Article concerned could not of itself give rise to a breach of Article 18. Conversely, a finding that a restriction pursued a purpose prescribed by the Convention did not necessarily rule out a breach of Article 18.

Therefore a restriction could be compatible with the substantive Convention provision authorising it but still infringe Article 18 because it was chiefly meant for another purpose not prescribed by the Convention. What mattered was whether that other purpose was predominant. In continuing situations, it could not be excluded that the assessment of which purpose was predominant might vary over time.

As to the required **standard of proof**, the Court considered that there was no reason to restrict itself to direct proof in relation to complaints under Article 18, or to apply a special standard of proof. Instead, it was to adhere to its usual approach to proof. While it relied on the evidence submitted by the parties, it also routinely asked the parties of its own motion to provide material which could corroborate or refute the allegations made before it. If the respondent Government did not respond to such a request, the Court could draw inferences, especially in situations where the State alone had access to the relevant information. Furthermore, the standard of proof had to be beyond reasonable doubt. Such proof could follow from the coexistence of sufficiently strong, clear and concordant inferences. Information from reports by international observers, non-governmental organisations or the decisions of other national or international courts were often taken into account when making inferences about the events in question.

Application to Mr Merabishvili's case

As to the first aspect of Mr Merabishvili's complaint under Article 18, the Court came to the conclusion that it had not been established that his pre-trial detention had principally been meant to remove him from Georgia's political scene. Although his pre-trial detention had taken place against the background of bitter political antagonism between UNM and Georgian Dream, Mr Merabishvili's submissions were not sufficient to show that the predominant purpose of that detention had been to hinder his participation in Georgian politics.

Notably, while the fact that there had been criminal prosecutions against a number of other former high officials from UNM could suggest an intention to harm that party, it could equally reflect the aim to deal with alleged wrongdoings under a previous government whose members could not be held to account while in power. There was no evidence that the courts were not sufficiently independent from the executive authorities. Furthermore, the manner in which the criminal proceedings against Mr Merabishvili had been conducted did not reveal a predominantly political

purpose behind his pre-trial detention either: The duration of the trial had not been unreasonably long, and the fact that it had taken place in Kutaisi rather than Tbilisi did not indicate forum shopping by the prosecuting authorities – as had been suggested by Mr Merabishvili – given that in separate criminal proceedings a court in Tbilisi had also ordered his pre-trial detention.

As to the second aspect of Mr Merabishvili's complaint under Article 18, the Court found his allegations concerning his covert removal from his prison cell on 14 December 2013 – which had been fully disputed by the Government – sufficiently convincing and therefore proven. Notably, his account of the way in which he had been taken out of prison and to the meeting with the Chief Prosecutor had been detailed and specific and had remained consistent throughout.

While there was no direct evidence of Mr Merabishvili's account, he had hardly been in a position to provide such evidence, being in the custody of the authorities. His assertions were, however, corroborated by several indirect elements. Notably, two witnesses interviewed during the investigation by the Chief Public Prosecutor's Office had stated that they had on several occasions heard the head of the special forces of the Ministry of Prisons at the relevant time say that he had been one of the persons who had transported Mr Merabishvili to the late-night meeting with the Chief Public Prosecutor. While that was hearsay evidence by two witnesses who had previously been subordinates to Mr Merabishvili, that factor was somewhat offset by the fact that one of the witnesses had previously been dismissed by Mr Merabishvili; he had therefore had no reason to bend the truth in Mr Merabishvili's favour. Furthermore, a senior official at the Penitentiary Department had twice stated in interviews given to the media that Mr Merabishvili had been taken to the meeting in question with the Chief Public Prosecutor, and that senior official had shortly after that been dismissed from her post.

Moreover, there were several elements calling the Government's assertions into question. Most importantly, they had claimed that the footage from the surveillance cameras in the prison and in the Penitentiary Department building – which could have conclusively proved or disproved Mr Merabishvili's allegations – was automatically deleted after 24 hours. That claim was doubtful, having regard to the fact that two officials – the Minister of Prisons and the deputy head of the General Inspectorate of the Ministry of Prisons – appeared to have been unaware of that practice, as evidenced by the statement of the former in response to the allegations and the request of the latter, during the inquiry by the Ministry of Prisons' General Inspectorate, to obtain a copy of the footage. Moreover, the method used to examine footage from private surveillance and road traffic cameras – which had revealed nothing of interest, according to the Ministry's inspectors – remained unclear, and that footage had not been made available to Mr Merabishvili's lawyer. Finally, there was no significant value to witness statements during the inquiry by people as the prison governor, who were subordinates of the alleged perpetrators. The two alleged perpetrators themselves, the Chief Public Prosecutor and the head of the Penitentiary Department, had not been interviewed until September 2016 during the second investigation opened following the Chamber judgment in the case. The Court considered that it could draw inferences from the material and the authorities' conduct.

There was no evidence that until 14 December 2013, nearly seven months after Mr Merabishvili's arrest, the authorities had attempted to use his pre-trial detention as a means to pressure him into providing information about Mr Zhvania's death or Mr Saakashvili's bank accounts. However, the Court considered that the restriction of Mr Merabishvili's right to liberty had amounted to a continuous situation. It came to the conclusion – bearing in mind all the circumstances – that the predominant purpose of that restriction had changed. While in the beginning that purpose had been the investigation of offences based on a reasonable suspicion, it later on became to obtain information about Mr Zhvania's death and Mr Saakashvili's bank accounts, as shown by the incident of 14 December 2013.

The Court noted in particular that by that time, the reasons for keeping Mr Merabishvili in pre-trial detention had receded, which had led the Court to find a violation of Article 5 § 3. Moreover, both issues on which he was questioned were of considerable importance for the authorities at that time, when Mr Saakashvili – who had become the target of several criminal investigations – had just left the country following the end of his presidency, and the investigation into Mr Zhvania’s death, which had been renewed in late 2012, had not made significant progress.

The Court concluded that there had been a violation of Article 18 in conjunction with Article 5 § 1.

Just satisfaction (Article 41)

The Court held, by nine votes to eight, that Georgia was to pay Mr Merabishvili 4,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judges Yudkivska, Tsotsoria and Vehabović expressed a joint concurring opinion. Judge Serghides also expressed a concurring opinion. Judges Raimondi, Spano, Kjølbros, Grozev, Ravarani, Pastor-Vilanova, Poláčková and Hüseyinov expressed a joint partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.