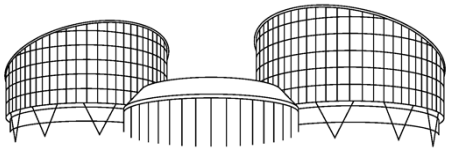

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF CHKHARTISHVILI v. GEORGIA

(Application no. 31349/20)

JUDGMENT

Art 11 read in the light of Art 10 • Domestic courts' failure to adduce sufficient reasons to justify proportionality of custodial sentence imposed on activist following arrest at a peaceful demonstration and conviction for administrative offences

STRASBOURG

11 May 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Chkhartishvili v. Georgia,

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

Georges Ravarani*, President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lado Chanturia,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 31349/20) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Mr Lasha Chkhartishvili ("the applicant"), on 19 June 2020;

the decision to give notice to the Georgian Government ("the Government") of the complaints under Article 5 § 1, Article 6 §§ 1 and 3 (b) and (c), and Articles 10 and 11 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 14 March and 11 April 2023,

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

INTRODUCTION

1. The present case primarily concerns the applicant's complaint that his arrest at a demonstration and the imposition of a custodial sanction in respect of administrative offences had amounted to an interference with his rights to freedom of expression and freedom of assembly, in breach of Articles 10 and 11 of the Convention.

THE FACTS

2. The applicant was born in 1980 and lives in Tbilisi. He was represented before the Court by Mr I. Chitashvili, a lawyer practising in Tbilisi.

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

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

I. BACKGROUND TO THE CASE

5. The applicant is a civil society activist. He has been a member of the Georgian Labour Party since 2019. According to the applicant, fourteen sets of administrative-offence proceedings were instituted against him throughout the course of his activism, including the one at the heart of the present application.

II. APPLICANT'S ARREST AND DETENTION

6. On 29 November 2019 a demonstration was held in front of the National Parliamentary Library of Georgia. It was part of a series of protests about the Parliament's failure to adopt amendments to the Constitution of Georgia meant to facilitate the transition of the parliamentary electoral system from a "mixed-member" system to one of proportional representation (see *Makarashvili and Others v. Georgia*, nos. 23158/20 and 2 others, §§ 5-6, 1 September 2022) and was attended by opposition politicians, civil society activists and ordinary citizens. The location of the demonstration was apparently chosen because the Minister of Justice had been scheduled to give a speech there. The exact number of participants in the demonstration remains unclear but the video material relating to the event shows a couple of hundred individuals and a large number of police officers gathered at the site. The Minister of Justice entered the building with the help of the police cordon. The video coverage of the event shows that the demonstrators attempted several times to break through the cordon and force their way to the entrance of the building while the Minister was there. It also shows that the pavement and narrow road leading to the entrance were largely occupied by people who had gathered at the demonstration, including police officers. The footage shows the police telling the demonstrators that their actions were contrary to the law and that they could not block the entrance to the building or the road. Some demonstrators are seen yelling inaudible phrases at the officers while the latter remain calm. Six individuals, including the applicant, were arrested that day on various grounds. It does not appear that the demonstration was dispersed.

7. At some point during the above-mentioned events the applicant turned towards the police officers (allegedly in response to the police calls to clear the road), holding beans in his hand and shouting loudly that beans used to be "gruel for slaves". According to the case file, he then threw the beans at the officers, crying out "slave gruel for the police". The video footage available in the case file shows that the applicant was arrested immediately. The arrest took place at 11.45 a.m. The applicant was escorted to the Tbilisi police station for having allegedly committed offences under Articles 166 and 173 of the Code of Administrative Offences ("the CAO" – see paragraphs 27-28 below).

8. According to the administrative-offence report, the applicant had blocked the road, breached public order, resisted the police, insulted the police officers and disobeyed their lawful orders. The administrative-arrest report indicated Articles 166 and 173 of the CAO as the provisions relevant to the applicant's arrest and noted as follows:

> "On 29 November 2019 Lasha Chkhartishvili [the applicant] blocked the road beside the Public Library located on Purtseladze Street in Tbilisi[;] insulted and harassed [members of the public;] despite multiple instructions to stop doing so he continued in defiance of the law and after the police had ordered him to desist he became more aggressive and threw [dried] beans at them[;] insulted them and called them slaves[.] He was arrested for minor hooliganism and disobeying police orders."

III. ADMINISTRATIVE-OFFENCE PROCEEDINGS AGAINST THE APPLICANT

9. On the same day – 29 November 2019 – the applicant was brought before the Tbilisi City Court. The trial started at 3.32 p.m. At the outset, the parties were warned that they must observe order and comply with judicial instructions. Contempt of court would entail sanctions.

10. The applicant requested the judge's recusal, stating that it was always that judge who presided over administrative-offence cases relating to arrests at demonstrations and that the applicant's case had been scheduled for immediate consideration while older administrative-offence cases had still been pending. This, in the applicant's opinion, indicated that the judge was biased and that he must have been following some instructions coming from outside the courtroom. The judge responded that the applicant's request was unsubstantiated as it did not demonstrate the existence of any grounds provided for by the law for his recusal. The judge stated that he was on duty that day, which had been the reason for the applicant's case having been assigned to him.

11. While the judge was speaking the applicant interrupted, in a louder voice, repeating that all politically sensitive cases had been assigned to this judge. The judge asked the applicant to calm down, to show respect towards the court and to allow the case to proceed. The applicant responded that he was calm, and that it was the judge who had to worry because he would be held accountable before the law for all the politically motivated prosecutions. The judge explained that he was not interested in any political party, to which the applicant responded: "we can see that". The judge asked the applicant to calm down, failing which he would be removed from the courtroom and the trial would proceed without his attendance or participation. The applicant repeated that the judge would be held accountable before the law. The applicant received a fine of 300 Georgian laris (GEL, approximately 120 euros (EUR)) for the offence of contempt of court. The applicant was notified that the decision could be appealed against.

12. The applicant continued, in a calm voice, to accuse the judge of wrongdoing, interrupting him. The applicant was warned that continued disorderly conduct would result in his removal from the courtroom. He replied: "remove me, no problem" and made some inaudible remark. The judge ordered the applicant's removal. In response the applicant started yelling that "slaves" of B.I. (the chairman of Georgian Dream, a political party that at the time in question held an absolute majority in Parliament), like the judge in question, would end up in prison. He was then removed from the courtroom.

13. After the removal, addressing the applicant's argument regarding the allegedly irregular sequence of processing cases, the judge stated that, unlike the other cases the applicant had referred to, his case had involved the element of administrative arrest, rendering the consideration of the case a matter of urgent priority.

14. The judge continued to hear the case in the applicant's absence. The applicant's defence lawyer requested that the trial be adjourned, stating that she needed time to familiarise herself with the administrative case file and to collect the evidence. The lawyer also stated that she had not been able to meet with the applicant prior to the trial and alleged that the police had concealed the applicant's whereabouts until his eventual transfer to the courtroom. The judge granted the request and adjourned the hearing for three hours and ten minutes. In response to the complaint that the police had obstructed the lawyer's attempts to meet with the applicant, she was told that a separate complaint should have been lodged if she believed that the authorities had committed any unlawful actions.

15. Once the hearing resumed, the defence lawyer made the following applications. She requested that the applicant be questioned as a witness, since she had not had time to consult him; that the trial be postponed again, as she needed additional time to obtain some video recordings in respect of the events complained of; and that the applicant be released from detention. She also complained that the police had exceeded their powers during the applicant's arrest.

16. The trial judge rejected the applications. He reasoned that the applicant's own behaviour had caused his removal from the courtroom after unheeded warnings and that his appearance as a witness was not justified in such circumstances. As regards the video evidence which the lawyer had apparently sought to obtain, it was noted that this material had been widely disseminated by the media and the lawyer was free to show those recordings to the court in addition to the material already available in the case file, without the need for further adjournment. The judge additionally noted that the applicant's detention meant that the conduct of the trial had to be especially expeditious. Another adjournment was not therefore considered necessary.

17. During the hearing before the trial court the author of the administrative-offence report stated, among other things, that the applicant had a history of committing administrative offences and disobeying police orders. It was noted in that context that on at least two previous occasions – in 2008 and 2014 – the applicant had been ordered to pay administrative fines. The officer in question requested, in view of that information, that the trial court apply a stricter sanction as a deterrent for the future. The applicant's representative contested the officer's submission as unsubstantiated, unclear and irrelevant.

18. On the same day – 29 November 2019 – the Tbilisi City Court acquitted the applicant of any offence under Article 166 of the CAO but found him guilty of insulting the law-enforcement officers and disobeying their lawful orders, in breach of Article 173 of the CAO (see paragraph 28 below). The applicant was sentenced to eight days' administrative detention. The judgment was based on the following evidence: the administrative-offence and arrest reports of 29 November 2019; internal reports of the police; a document entitled "information regarding the accused" (reflecting the fact that the applicant had been charged with administrative offences in the past); the parties' submissions; witness statements (including the officers' explanation that beans had been thrown in their faces); and the video footage relating to the applicant's arrest.

19. The court articulated the view that statements of police officers would, in principle, be sufficient to shift the burden of proof onto a person accused of committing an administrative offence because of the expertise of the police and the fact that they carried out their professional duties in line with the domestic legislation. As to explanations given by persons alleged to have breached administrative rules and regulations, it was noted that their statements could not, unless supported by other evidence, be regarded as constituting irrefutable evidence in respect of determining the circumstances of a case given that the individuals in question were interested parties and that information provided by them could be aimed at covering up an offence and avoiding sanctions.

20. Relying on the evidence available in the case file, the court established the following:

> "The court notes that the case file material ... confirms that the person charged with the administrative offence [showed] disobedience towards the lawful demands of the police and insulted the police officers. This conduct falls within the scope of Article 173 of the [CAO]. No other evidence which could lead the court to conclude otherwise has been presented in the present case. ...
>
> After studying the case file material and the parties' submissions, the court considers that [the applicant] has not engaged in conduct proscribed under Article 166 of the [CAO]. There is no evidence [before the court] which could incontrovertibly confirm the commission of conduct contrary to Article 166 of the [CAO]; namely, the facts of cursing at the site of a public gathering [and] of a breach of public order have not been established. ...

In the present case, on 29 November 2019 a demonstration was being held along the site of the public library in Tbilisi, on Purtseladze Street. Police officers were ensuring the peaceful conduct of the demonstration and the implementation of the constitutionally guaranteed rights of citizens. They were enforcing security, protecting the rights of the participants in the demonstration and ensuring citizens' constitutionally guaranteed right to freely move along Rustaveli Avenue and the adjacent streets, which constituted sufficient grounds for the officers – who are obliged to ensure that breaches of the law are [prevented] – to implement appropriate measures provided for by law.

The evidence presented in the present case, the parties' explanations and the video material all confirm the police officers' instructions [მოწოდება] and the disobedience [to such instructions] of the person charged with the administrative offence, as well as the fact of his insulting the officers. Specifically, the representatives of the law-enforcement authority called on the individual in breach of the law to leave the road [and] that request was left unheeded. The court considers it established that the law-enforcement authorities gave instructions to preserve order and that the instructions were lawful and aimed at achieving the legitimate goal of safeguarding individuals and public order. Accordingly, the person in breach of the law disobeyed multiple legitimate orders. He should have anticipated the risks which could follow [such disobedience]. The court clarifies that calling the police officers 'slaves' amounts to behaviour which insulted and degraded the honour and dignity of the police officers and constitutes a sufficient basis for the [applicant's] actions to fall within the scope of Article 173 of the [CAO].

As concerns the explanation given by the representative of the person charged with the administrative offence, namely that throwing beans into the air constituted a means of expressing protest ..., the court points to ... the Freedom of Speech [Act] ... which accepts and protects the freedoms of speech and expression as eternal and supreme human values. ... At the same time, section 8 of the very same Act provides for grounds for limiting [these freedoms] only if such limitations are provided for by law in a clear and foreseeable manner and when the advantage achieved by a limitation exceeds the damage inflicted by it.

In the case at hand, the evidence presented [to the court], the parties' submissions and the video material confirm that the individual charged with the administrative offence called the police officers 'slaves' and threw beans at them, stating that it had been gruel for slaves. The court notes that section 48(3) of the Police [Act] provides that insulting the honour and dignity of police officers who are on duty will incur liability under Georgian legislation, while Article 173 of the [CAO] expressly defines liability for disobeying the lawful orders of the police officers ..., verbally insulting them and/or carrying out insulting actions towards them... Accordingly, the court considers that actions insulting the dignity of police officers – calling them 'slaves' and throwing beans at them while noting that beans used to be gruel for slaves – cannot be considered a form of protest.

The court additionally refers to section 11^1(1) of the Assemblies and Demonstrations [Act], which authorises [the police] to clear the road ... in the event of the partial or full blocking of a road ... by the participants in an assembly or a demonstration if the number of the participants allows the holding of [those events without blocking the road]. ...

The court considers, from a combined analysis of the parties' explanations, video recordings and other evidence available in the case, that a need to block the road has not been demonstrated in the present case. Accordingly, the individual charged with the administrative offence did not have a right to occupy it and ... the police officers'

repeated requests to have the road cleared to allow [cars] to circulate were lawful [but] not complied with ..."

21. As regards the sanction of the eight-day custodial sentence imposed on the applicant, the court cited Articles 33 and 35 of the CAO (see paragraph 25 below) and reasoned that "in view of the applicant's personality and the degree [of seriousness] of his actions", the imposition of a fine or a verbal reprimand would not ensure the attainment of the objectives of punishment.

22. On 1 December 2019 the applicant lodged an appeal against the Tbilisi City Court's decision. Among other things, he complained that the trial court had relied exclusively on the police officers' account and that any doubt should have benefited him, according to the principles applicable in criminal proceedings. He also stated that it remained unclear what lawful orders he had disobeyed and noted that in circumstances where the trial court had acquitted him of the charge under Article 166 of the CAO, his arrest and conviction for the breach of Article 173 of the CAO had been devoid of justification. The applicant submitted in this regard that it had been the police who had blocked the road and that he physically could not have blocked it and that he had not insulted the officers. The applicant also stated that he had been unable to meet with his lawyer before the court hearing despite the lawyer's attempt to secure a meeting through the bailiff of the court (no evidence appears to have been presented on that account). The applicant did not complain about his removal from the courtroom.

23. On 2 December 2019, in a final decision (served on the applicant on 19 December 2019), the Tbilisi Court of Appeal rejected the applicant's appeal as inadmissible. The appellate court found that the parties to the proceedings had been given the opportunity to argue their case and the trial court had correctly assessed all the relevant evidence. It thus upheld the lower court's findings, stating that the applicant had not adduced any evidence or referred to newly discovered circumstances surrounding his administrative-offence case which would have warranted the re-examination of his case on the merits.

RELEVANT LEGAL FRAMEWORK

I. ASSEMBLIES AND DEMONSTRATIONS ACT

24. Section 9(3) of the Act provides as follows: "the blocking of entrances to buildings ... during an assembly or a demonstration shall be prohibited." Section 11(2)(e) provides that it is "prohibited ... to deliberately obstruct traffic". Section 11^1 provides that in the event of participants in a demonstration partially or completely blocking a road used by cars, the police have the right to decide to clear the road and/or restore the movement of

vehicles if blocking the road "is not made necessary by the number of participants in an assembly or a demonstration."

II. CODE OF ADMINISTRATIVE OFFENCES

25. Article 33 of the Code of Administrative Offences (CAO) provides that the nature of the offence, the personalities of the offenders, the degree of blame to be ascribed to the latter, their financial status and any extenuating and aggravating circumstances are to be taken into account at the sentencing stage.

26. Article 35 §§ 1 and 2 of the CAO lists, among the possible aggravating circumstances to be taken into account at the sentencing stage, "the continuation of unlawful conduct in the face of demands by authorised officials to cease" and "the commission of a similar (ერთგვაროვანი) offence during the year following conviction for an administrative offence [or] the commission of an offence by an individual who had previously been convicted of a crime (წინათ დანაშაულის ჩამდენი პირის მიერ)".

27. Article 166 of the CAO, as worded at the material time, defined disorderly conduct ("minor hooliganism") as "swearing and cursing in a public place, [causing] harassment of a person by means of insults, or other similar actions that disturb public order and peace". It was punishable by a fine and/or up to fifteen days' administrative detention.

28. Article 173 of the CAO, as worded at the material time, provided that "disobeying a lawful instruction or order [issued by] a law-enforcement officer on duty ... or insulting [the latter]" was punishable by a fine of a minimum of GEL 1,000 and a maximum of GEL 4,000, or up to fifteen days' administrative detention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

29. Relying on Article 6 §§ 1 and 3 (b) and (c) of the Convention, the applicant complained that his right to a fair trial had been breached on account of his removal from the courtroom and the resulting inability to defend himself in person and because he had been unable to consult a lawyer of his choice either before or during the trial. He also complained that the trial court had primarily relied on the police officers' statements. Article 6 of the Convention, in so far as relevant, provides as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...

(b) to have adequate time and facilities for the preparation of his defence; ...

(c) to defend himself in person or through legal assistance of his own choosing ..."

A. The parties' submissions

30. The Government did not raise an objection regarding the exhaustion of domestic remedies. They submitted that, in so far as the applicant's contact with the defence lawyer was concerned, the applicant had failed to present any evidence that such contact had been attempted or that the police had refused to allow the lawyer's access to the applicant, in breach of the domestic legislation. As for the applicant's removal from the courtroom, the Government stated that it had been his own unruly and disrespectful behaviour towards the judge, in the face of multiple warnings by the latter, that had been the reason behind his removal for contempt of court. Any restriction related to his absence from the proceedings had therefore been attributable to the applicant himself. The Government also stated that the domestic courts had based their findings on multiple items of evidence, including the video material depicting the incident, giving sufficient reasons for the applicant's conviction.

31. The applicant reiterated his complaints (see paragraph 29 above).

B. The Court's assessment

32. The relevant general principles have been summarised in the cases of *Idalov v. Russia* ([GC], no. 5826/03, § 176, 22 May 2012), *Huseynli and Others v. Azerbaijan* (nos. 67360/11 and 2 others, §§ 110-12 and 125-27, 11 February 2016) and *Makarashvili and Others v. Georgia* (nos. 23158/20 and 2 others, § 57, 1 September 2022).

33. Turning to the circumstances of the present case, the Court observes that the applicant did not submit, even in response to the Government's objection to that effect, any proof other than the account of the lawyer representing him at domestic level indicating that she had attempted to visit and consult with the applicant and that the authorities had hindered her access. Nor does such evidence appears to have been made available at domestic level. Specifically, while the applicant's lawyer noted at domestic level that she had been unable to meet the applicant prior to the trial as she had been unaware of his place of detention until the moment the police had brought the applicant before the court, that hearing was adjourned for more than three hours and she was free to visit the applicant in detention. However, once the trial resumed, the lawyer continued to maintain that she had been unable to meet with the applicant, without providing a plausible explanation or submitting any proof of an unsuccessful attempt to meet with him (see paragraphs 14-15 above). Nor did she lodge a complaint in that respect, despite the trial judge's direction (see paragraph 14 above). In such

circumstances, without needing to examine whether the applicant has exhausted domestic remedies in respect of this complaint, the Court does not find it established that the authorities hindered contact between the applicant and his representative.

34. In so far as the applicant complained that his removal from the courtroom had hindered his ability to effectively participate in the proceedings, the Court has held that if an accused disturbs order in the courtroom, the trial court cannot be expected to remain passive and to allow such behaviour. It is a normal duty of the trial panel to maintain order in the courtroom, and the rules envisaged for that purpose apply equally to all present, including the accused (see *Marguš v. Croatia* [GC], no. 4455/10, § 90, ECHR 2014 (extracts)). In the present case, the Court accepts that the applicant's behaviour (see paragraph 9 above) was of such a nature as to amount to a flagrant disregard by a defendant of elementary standards of proper conduct (see *Idalov*, cited above, § 176).

35. Furthermore, the Court takes note of the multiple warnings given to the applicant and his continued unruly behaviour towards the judge. In particular, before removing the applicant from the courtroom the judge explicitly warned him, on three occasions, of the consequences his conduct would entail (see paragraph 9 above). The applicant, declaring that he did not mind those consequences, can be considered to have waived his right to be present at the trial. The Court, therefore, does not consider that the applicant's removal from the courtroom lacked reasonable justification. Additionally, the applicant's representative remained in the courtroom, successfully argued for the postponement of the trial to better prepare the defence, and made submissions on the applicant's behalf once the trial resumed. Accordingly, and considering the applicant's behaviour, the Court does not find that any unjustified restrictions were placed on the applicant's right to participate effectively in the proceedings and to receive practical and effective legal assistance during the first-instance court's hearing.

36. As concerns the availability of adequate time to prepare the defence, as noted above, the trial court granted the request to postpone the trial. While it rejected the second application, for a further extension, the judge duly gave reasons for his approach (see paragraph 15 above).

37. Lastly, as regards the complaint that the domestic courts relied only on the statements of the police officers, the Court notes the domestic courts' suggestion that the police officers' accounts could be sufficient to shift the burden of proof onto the applicant (see paragraph 19 above). The Court has already dealt with a similar argument in the case of *Makarashvili and Others* (cited above, §§ 61-64), including the Supreme Court's criticism of that approach as a matter of principle (ibid., §§ 44 and 62). In this connection, regardless of the problematic nature of the statement, the Court does not consider that the burden of proof was effectively shifted to the applicant in the particular circumstances of the present case. Specifically, one of the

charges against him was dropped apparently for lack of evidence, despite the police officers' statements. As regards the applicant's conviction, there was evidence other than the police officers' accounts in the case file, including video-recordings of the applicant's arrest. The Court does not, therefore, find that the trial court's reasoning as regards its approach to evidence in practice shifted the burden of proof onto the applicant (ibid., § 63). By contrast, as concerns the related but distinct question as to whether the reasons adduced by the domestic courts in support of the applicant's conviction were in line with Convention standards in the context of justifying an interference with his rights under Articles 10 and 11 of the Convention, the matter – which was not in any event formulated as a separate complaint under Article 6 of the Convention – will more appropriately be dealt with in the context of the applicant's complaints under Articles 10 and 11 (see paragraphs 39-62 below).

38. In the light of the foregoing, the Court concludes that the proceedings against the applicant were conducted in compliance with the requirements under Article 6 §§ 1 and 3 (b) and (c) of the Convention. The Court finds the applicant's related complaints manifestly ill-founded.

This part of the application must therefore be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

39. The applicant argued that his arrest at a demonstration and the imposition of a custodial sanction in respect of administrative offences had amounted to an interference with his rights to freedom of expression and freedom of assembly, in breach of Articles 10 and 11 of the Convention. The relevant provisions, in so far as relevant, read as follows:

Article 10

"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 ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others ...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others ..."

A. Admissibility

40. The Government submitted that the applicant had failed to institute civil proceedings against the police.

41. The applicant stated that the remedy in question had been redundant.

42. As regards the exhaustion of domestic remedies, the Court observes that the applicant did, in the course of the administrative-offence proceedings against him, raise a complaint – in substance – regarding his right to freedom of expression. The trial court expressly addressed the matter and the appellate court endorsed the lower court's findings (see paragraphs 17 and 23 above). The applicant was not therefore required to institute separate civil proceedings following the rejection of his arguments in the administrative-offence proceedings against him (see *Makarashvili and Others*, cited above, § 70). The Government's objection in this regard should therefore be rejected.

43. The Court additionally notes that this complaint is not manifestly ill-founded or inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

44. The Government submitted that there had been no breach of the provisions relied on by the applicant. In this connection, the Government noted that Article 11 of the Convention constituted a *lex specialis* to Article 10 in the context of arrests made during demonstrations. They stated that the interference with the applicant's rights had been based on the law, had pursued the legitimate aims of preventing disorder and protecting the rights of others, and had been necessary in a democratic society. The Government noted that the domestic courts had carefully assessed the circumstances of the case, relying on various items of evidence including the video material, and had established that the applicant had blocked the road and that, rather than comply with lawful orders of the police, he had become aggressive, insulting them. As regards the proportionality of the interference, the Government stated that the administrative sanction of eight days' detention had been a proportionate measure given the gravity of the administrative offence committed by the applicant and the fact that he had had a prior record of administrative offences.

45. The applicant stated that his complaints should be examined under Article 11 of the Convention, taking into account Article 10, considering the two provisions to be complementary where the expression of political protest was concerned. He noted that he had been arrested "after he staged his political performance", which had consisted in throwing beans "into the air". The applicant submitted that his performative and verbal protest had not been directed at particular police officers but had been concerned with any police officer who acted unlawfully – a form of expression protected under the right to freedom of speech. He also contested the domestic courts' findings that he had blocked the road during the protest and that the officers' request to clear it had been lawful. The applicant stated that the interference with his rights protected under the Convention had not been prescribed by law, had not pursued a legitimate aim and had not been necessary in a democratic society.

2. The Court's assessment

(a) Legal classification of the applicant's complaints

46. The applicant relied on both Articles 10 and 11 of the Convention in relation to the same set of facts and allegations, namely that he had been arrested and punished for his conduct at a demonstration. In such circumstances, the Court considers that the applicant's complaints should be examined under Article 11 alone, which must, however, be considered in the light of Article 10. In that connection, the Court reiterates that the protection of personal opinions under Article 10 of the Convention is one of the objectives of freedom of peaceful assembly, as enshrined in Article 11 (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 86, ECHR 2015).

(b) General principles

47. The right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (see *Kudrevičius and Others*, cited above, § 91, and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 98, 15 November 2018).

48. An interference with the right to freedom of peaceful assembly will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of the aim or aims in question (see *Kudrevičius and Others,* cited above, § 102, and *Laguna Guzman v. Spain*, no. 41462/17, § 44, 6 October 2020).

49. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they took. This does not mean that it has to confine itself to ascertaining whether the State exercised its discretion reasonably, carefully and in good faith; it must look at the interference

complained of in the light of the case as a whole and determine, after having established that it pursued a "legitimate aim", whether it answered a "pressing social need" and, in particular, whether it was proportionate to that aim and whether the reasons adduced by the national authorities to justify it were "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Kudrevičius and Others*, cited above, § 143, and *Körtvélyessy v. Hungary*, no. 7871/10, § 26, 5 April 2016).

50. The proportionality principle demands that a balance be struck between the requirements of the purposes listed in paragraph 2 on the one hand, and those of the free expression of opinions by word, gesture or even silence by persons assembled on the streets or in other public places, on the other (see *Kudrevičius and Others*, cited above, § 144).

51. The nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued. Where the sanctions imposed on the demonstrators are criminal in nature, they require particular justification. A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction, and notably to deprivation of liberty. Thus, the Court must examine with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence (see *Kudrevičius and Others*, cited above, § 146, and *Chernega and Others v. Ukraine*, no. 74768/10, § 221, 18 June 2019).

52. As regards the relevant principles under Article 10 of the Convention, the Court has consistently held that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As enshrined in Article 10, freedom of expression is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 101, ECHR 2012; *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 88, ECHR 2015 (extracts); and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 124, 27 June 2017).

53. The limits of acceptable criticism in respect of public officials exercising their powers may admittedly in some circumstances be wider than in relation to private individuals. However, it cannot be said that officials knowingly lay themselves open to close scrutiny of their every word and deed

to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to criticism of their actions. Moreover, officials must enjoy public confidence in conditions free of undue disruption if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty (see *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I; *Nikula v. Finland*, no. 31611/96, § 48, ECHR 2002-II; and *Lešník v. Slovakia*, no. 35640/97, § 53, ECHR 2003-IV). Being a part of the security forces of the State, the police should display a particularly high degree of tolerance to offensive speech, unless such inflammatory speech is likely to provoke imminent unlawful actions in respect of their personnel and to expose them to a real risk of physical violence (see *Savva Terentyev v. Russia*, no. 10692/09, § 77, 28 August 2018, with further references).

(c) Application of these principles to the present case

54. Turning to the circumstances of the present case, the Court considers that the interference at issue resulted from the applicant's arrest at a demonstration and his subsequent conviction of administrative offences leading to a sanction of eight days' detention. The interference in question was "prescribed by law" as it was based on Article 173 of the CAO (see paragraph 28 above). The Court further accepts that, in the circumstances of the present case, the interference pursued the legitimate aim of preventing disorder and protecting the rights of others. Therefore, the Court's task is to determine whether the interference with the applicant's right to freedom of assembly, considered in the light of the right to freedom of expression, answered a "pressing social need" and was "proportionate to the legitimate aim pursued."

55. At the outset, and as regards the general context of the demonstration of 29 November 2019, the Court notes that it was part of a series of protests against Parliament's failure to approve electoral reform as previously planned (see paragraph 6 above; see also *Makarashvili and Others*, cited above, §§ 5-6). By participating in the demonstration in question the applicant wished to express his disapproval of what he considered to be the authorities' failure to enhance the country's democratic process. This was a matter of public interest and contributed to the ongoing debate in society. Accordingly, very strong reasons would be required to justify the restriction on the applicant's expression of his opinions during the demonstration (compare *Bumbeș v. Romania*, no. 18079/15, § 92, 3 May 2022).

56. Against this background, the Court emphasises the fact that the applicant was able to express his protest without any impediment, even as he had apparently blocked the road in that process, until the moment he threw beans at the police officers, telling them it had been "gruel for slaves" (see paragraph 7 above). His conduct appears to have implied that the officers were "slaves". In this regard, the Court reiterates that public servants acting

in an official capacity are subject to wider limits of acceptable criticism than ordinary citizens and a certain degree of immoderation may fall within those limits (see, for instance, *Gül and Others v. Turkey*, no. 4870/02, § 41, 8 June 2010, and *Stomakhin v. Russia*, no. 52273/07, § 106, 9 May 2018).

57. However, even assuming that within the broader context of the demonstration (see paragraph 55 above) the applicant's conduct had implied that the police served those in power instead of merely upholding public order, the Court cannot overlook the fact that his conduct was not limited to verbal expression and involved physically throwing objects – in this case dried beans – at the police officers. Although the police officers must have been trained on how to respond to such behaviour, the contested conduct took place in public, in front of a group of bystanders, while the officers were carrying out their duties (see also *Janowski*, cited above, § 34). In this regard, the Court considers that the principle that public servants should be protected from offensive and abusive verbal attacks when on duty (ibid., § 33) is even more relevant in cases such as the present one, which go beyond verbal expression and involve, as noted above, physically throwing objects at the police, even if throwing these objects was not aimed at endangering the targets.

58. Against this background, the Court takes note of the fact that, in addition to his behaviour towards the police officers, the domestic courts' judgments also related to the applicant's disobedience in respect of the order to move away from the road at the demonstration site (see paragraph 20 above). However, bearing in mind that the police arrested the applicant only after his contested conduct (see paragraph 56 above), which furthermore appears to have been at the core of the domestic proceedings against him, the Court considers that the sanction of eight days' administrative detention principally concerned the expressive conduct directed against the police officers, which – notwithstanding the disturbance caused by it – fell within the scope of Article 10 of the Convention.

59. In this connection, the Court reiterates that the Contracting States' discretion in punishing illegal conduct relating to expression or association, although wide, is not unlimited, and it must examine with particular scrutiny cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence (see *Taranenko v. Russia*, no. 19554/05, § 87, 15 May 2014). This is because the imposition of a sanction, however lenient, on a person expressing his or her opinion can have an undesirable chilling effect on public speech (see, *mutatis mutandis*, *Makarashvili and Others*, cited above, § 103, with further references; see also *Bumbeș*, cited above § 101). Within this context, the Court cannot overlook the fact that the primary reason for the applicant's attendance at the demonstration was to protest against Parliament's failure to adopt important legislative reforms. His actions were neither violent nor did they cause any injuries to the police officers and could hardly be aimed at causing physical harm to

them. Additionally, the conduct in question did not result in any escalation of the circumstances on the ground (compare and contrast *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, ECHR 2001-X). Furthermore, the demonstration itself was peaceful, with a great number of people participating. With his contested conduct the applicant – a politician – was seemingly conveying his opinion that the police officers had supported the ruling party which had been at the source of the failed reform (see paragraphs 55 and 57 above). While the Court's reasoning should not be taken as an approval of the manner in which the applicant expressed his views, it must be recalled that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed (see *Gül and Others*, cited above, § 41).

60. Accordingly, even if the applicant's conduct could justify an intervention by the authorities (see paragraph 57 above), they must have borne in mind that the custodial sanction in the present case was being applied in the context of the exercise of a fundamental freedom, thus calling for a particularly careful approach. By contrast, none of the elements identified above were addressed as part of the domestic courts' reasoning regarding their decision to impose the custodial sanction. Additionally, the Court does not consider that the grounds cited in the trial court's judgment – the applicant's "personality" and the "seriousness" of the conduct attributed to him – were sufficient, without further elaboration, to render a sanction of eight days' administrative detention proportionate. Specifically, while the reference to the applicant's "personality" may have concerned his history of administrative-offence convictions and the related argument made before the trial court (see paragraph 17 above), it does not appear that the conditions provided for by law for treating such considerations as an aggravating factor had been met as the applicable legal provisions did not allow taking into account previous administrative sanctions older than one year (see paragraph 26 above). Accordingly, this element alone was not, without appropriate reasoning, sufficient to justify the imposition of a custodial sanction for the applicant's non-violent, even if disruptive, conduct. As regards the "seriousness" of the applicant's conduct, this appears to refer to the necessity of punishment in general rather than the proportionality of the chosen measure and cannot therefore be considered sufficient to justify the imposition of a custodial term, however short, in the context of the applicant's exercise of his rights to freedom of expression and assembly.

61. Having regard to the foregoing, the Court concludes that the domestic courts failed to adduce sufficient reasons to justify the proportionality of the interference in the present case.

62. There has therefore been a violation of Article 11 of the Convention read in the light of Article 10.

III. THE REMAINDER OF THE APPLICATION

63. The applicant complained under Article 5 § 1 (c) of the Convention that his administrative arrest and detention on 29 November 2019 had been unlawful and arbitrary.

64. The Court observes, even assuming that the applicant did not have at his disposal effective remedies regarding the lawfulness of his arrest, that the detention complained of ended on 29 November 2019 (see paragraph 18 above) and that the application was not lodged until 19 June 2020, which is more than six months later.

65. Accordingly, the Court finds that this part of the application was lodged outside the six-month time-limit and must therefore be rejected as inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. Article 41 of the Convention provides:

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

67. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. He did not submit a claim in respect of costs and expenses.

68. The Government submitted that the requested sum was excessive.

69. The Court, ruling on an equitable basis, awards the applicant EUR 1,200 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 10 and Article 11 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 11 of the Convention read in the light of Article 10;

3. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,200 (one thousand two hundred euros), in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 11 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Georges Ravarani President