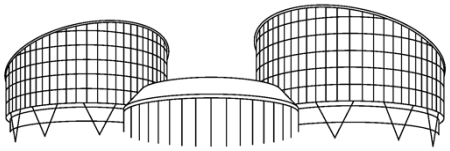

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TUSKIA AND OTHERS v. GEORGIA

(Application no. 14237/07)

JUDGMENT

STRASBOURG

11 October 2018

FINAL

11/01/2019

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Tuskia and Others v. Georgia,

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

Angelika Nußberger, *President,*
Yonko Grozev,
André Potocki,
Síofra O'Leary,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov,
Lado Chanturia, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 18 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 14237/07) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by nine Georgian nationals, ("the applicants") on 16 March 2007.

2. The applicants were represented successively by Ms N. Tuskia, Mr A. Baramidze, and Mr I. Baratashvili, lawyers practising in Tbilisi. The Georgian Government ("the Government") were represented by their successive Agents, most recently Mr B. Dzamashvili, of the Ministry of Justice.

3. The applicants complained, in particular, that the dispersal of their protest at Tbilisi State University on 3 July 2006 and the related administrative proceedings had amounted to an unlawful and disproportionate interference with their freedom of expression and freedom of assembly under Article 10 and Article 11 of the Convention. They furthermore alleged that they had not been given a fair trial, in violation of Article 6 §§ 1 and 3 (d) of the Convention.

4. On 17 October 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

5. The applicants, listed in the appendix, were all professors who at the material time were working at Tbilisi State University ("the University"). They opposed reforms initiated by the new University administration as a part of the nation-wide higher education reform in 2004-2005 and had initiated several court proceedings against the University in that regard. As part of their activities, they also held numerous public meetings at the University, made public statements and wrote to various public officials, denouncing what they called the "destruction" of the University. The applicants, with the exception of Mr Tuskia, Ms Sikharulidze, and Mr D. Bakhtadze (the first, sixth and ninth applicants respectively), were at the material time members of the Grand Academic Council, the highest representative body of the University (composed of seventy-eight members), which operated under the University charter (approved by the President of Georgia on 13 July 2001) and which led the protests against the changes at the University.

6. On 8 June 2005 the President of Georgia issued Presidential Decree no. 473, which, among other measures, repealed the University charter, thus abolishing the Grand Academic Council. The representatives of the Council challenged before the Constitutional Court of Georgia the constitutionality and legality of Presidential Decree no. 473 and several newly amended provisions of the Law on Higher Education. On 25 July 2005 the Constitutional Court rejected the above-mentioned challenge as inadmissible.

7. On 5 April 2006 the President of Georgia appointed Mr G.Kh. as acting Rector („რექტორი") of the University.

B. The events of 19-20 June 2006

8. On 19 June 2006 the already-dissolved Grand Academic Council organised a meeting of University staff. After the meeting, several former members of the Council met the new acting Rector of the University, Mr G.Kh., for the purpose of expressing their concerns to him regarding the changes at the University. The meeting ended without any results and the University employees – among them all of the applicants – decided to stay at the University in one of the lecture halls and to hold a further meeting themselves.

9. According to the applicants, at around 1 a.m. the police arrived at the University. Without giving any explanations or any prior warning, they forced everyone out of the University building. Despite the applicants' repeated requests, the police officers did not show them any order authorising the removal of the people gathered.

10. The next day, the applicants, along with other employees of the University, gathered again in one of the lecture halls of the University. Towards the evening the police allegedly again dispersed their meeting.

C. The events of 3-4 July 2006

11. On 3 July 2006, in response to the request of Mr Sanadze (the fourth applicant), the acting Rector of the University authorised a meeting of University employees in the Grand Hall of the main University building between 3.30 p.m. and 7 p.m. of the same day. In the letter authorising the gathering G.Kh. stressed that the participants of the planned gathering were asked to maintain order and to conclude the meeting before 7 p.m.

12. At the meeting, which started as planned, the already-dissolved Grand Academic Council "elected" the second applicant as the new Rector of the University. Thereafter, a group of about twenty people, including all of the applicants, headed to the office of the acting Rector in order to inform the latter of the Council's decision and to demand his resignation.

13. According to the applicants, they entered the acting Rector's office without using any force and informed him of the Grand Council's decision. They asked G.Kh. to leave the office; the latter, however, refused to do so. While the meeting at the Rector's office continued, the police entered the University grounds. The police officers went straight to the office of the acting Rector, who upon their entrance immediately left the room. Afterwards, the police asked the applicants, along with the other people present, to leave. They left the Rector's office without any resistance and moved to a lecture hall.

14. The Government disputed the applicants' version of events. According to the official version of events, at least twenty people forced their way into G.Kh.'s office, while dozens of others stayed in the reception area and the corridor chanting slogans against G.Kh. The second applicant informed the acting Rector of the former Grand Academic Council's decision and demanded that he leave his office within ten minutes. The University security service was no longer in control of the situation and the functioning of the University administration was disrupted. Given that the applicants and other protesters were refusing to leave, the police were called to restore order. G.Kh. left his office as soon as the police arrived. Then it took more than one hour for the police to negotiate the applicants' removal from the Rector's office.

15. According to the case file, after their removal from the Rector's office, the applicants – together with other protesters (in total, some 400 people) – gathered in one of the lecture halls of the main University building, where they continued their protest. The applicants alleged that at around 11 p.m. the police had closed the doors of the lecture hall and prevented the people inside from leaving it. They had been locked in the lecture hall without access to water, food or toilet facilities until approximately 8-10 a.m. the next day.

D. Subsequent developments

1. Criminal proceedings

16. On 3 July 2006 criminal proceedings were initiated under Article 226 of the Criminal Code of Georgia against unidentified perpetrators in respect of the organisation and participation in group actions violating public order.

17. According to the applicants on 4 July 2006 the Minister of Education held a press briefing denouncing the events that had taken place at the University on the preceding day. He referred to those involved in the 3 July 2006 events as "hooligans" and gave an assurance that they would all bear responsibility for their actions.

18. Over the following several days, twenty witnesses were questioned in connection with the events of 3 July 2006 – among them six police patrol officers, three members of the University security service, and eleven administrative staff members (including the acting Rector, G.Kh., and his deputy). The staff members (eyewitnesses to the events) all identified the applicants as being among those who had forced their way into the Rector's office, insulted him and demanded his resignation. They noted that while there had been no physical confrontation, the group of so-called "protesting professors" had been acting in a highly disrespectful manner, chanting insulting expressions against Mr G.Kh. They also claimed that the University had remained paralysed during the incident with several meetings being disrupted and the Rector and several members of the University administration being prevented from carrying out their duties.

19. The acting Rector testified that around twenty people, among them all the applicants, in disregard of the orders of the security staff, had burst into his office. The second applicant had informed him of the former Grand Academic Council's decision and had "categorically" (კატეგორიულად) demanded that he leave his office, "bag and baggage", (*ბარგი-ბარხანა*) within ten minutes. G.Kh. explained that their meeting had continued against a background of noise and chanting, with the protestors chanting "leave, leave". He had not been personally insulted, although his colleagues had told him that protesters in the corridor adjacent to his office had been

chanting insulting slogans. In reply to a direct question, he explained that no foul language had been used by protesters in his office, either in respect of him or of his colleagues. He remembered, however, Mr Dolidze inciting via cell phone other protesters to join them in the acting Rector's office. Lastly, G.Kh. noted that the incident in his office had lasted for about an hour and a half, paralysing not only his work but the functioning of the whole administration of the University.

20. The security service members, who were also questioned during the pre-trial investigation, claimed that they had been unable to identify the professors involved in the events by name. They confirmed, however, that a large group of about fifty people – in disobedience of the orders given by the security service – had entered the reception area of the office of the Rector by force. Then around fifteen or twenty people had forced their way into the Rector's office, where they had stayed for about two hours and until the police secured their removal from the office.

21. On 5 July 2006 the second, fourth, fifth, seventh and eighth applicants were also questioned as witnesses in the course of the above-mentioned criminal proceedings.

22. On 24 July 2006 several members of the former Grand Academic Council, among them the second, third, fourth, fifth and seventh applicants, sent a letter to the President of Georgia complaining about the events of 19-20 June and 3-4 July 2006. With reference to the events of 3-4 July 2006, they made a particular complaint that they, along with several hundred other people, had been locked in the University lecture hall for the whole night. They alleged that this had amounted to inhuman and degrading treatment, as they had been denied access to drinking water and a toilet and had been left without fresh air. They requested the initiation of criminal proceedings in this regard.

23. A copy of the above-mentioned letter was sent to the Prosecutor General of Georgia. In support of their request, the applicants submitted statements given by fifteen people accounting in detail for the events of 19-20 June and 3-4 July 2006.

24. On 29 July 2006 the relevant prosecutor issued a ruling terminating the criminal proceedings concerning the alleged organisation and participation in group actions violating public order. The prosecutor concluded that the actions of the applicants had not comprised elements of a crime. The ruling read further as follows:

> "They committed offences – namely arbitrary behaviour, a minor violation of public order, and disobeying the lawful instructions of law-enforcement personnel – which constitute administrative offences under Articles 174, 166 and 173 of the Code of Administrative Offences."

25. In the operative part of the prosecutor's ruling, the prosecutor stated that the ruling, along with the case file, was to be sent to the Tbilisi City

Court in order for administrative proceedings to be conducted against the applicants.

26. In the same ruling the prosecutor also decided on the termination of the proceedings that apparently had been opened against the police officers in respect of their alleged unlawful use of force on 3-4 July 2006, finding the complaint lodged by the applicants in that connection unsubstantiated. The decision to discontinue the criminal proceedings provided in its operative part a fifteen-day time-limit for an appeal. The prosecutor's ruling did not mention the applicants' complaint concerning the events of 19-20 June 2006.

27. The applicants were served with a copy of the above-mentioned ruling late in the evening of 29 July 2006. They were told at the same time that a hearing in the administrative proceedings initiated against them had been scheduled for the next day.

2. Administrative proceedings against the applicants

28. On 30 July 2006 a hearing took place at the Tbilisi City Court. The applicants objected that owing to the initiation of the administrative proceedings they could not avail themselves of the opportunity to challenge the prosecutorial ruling of 29 July 2006. They furthermore complained that they had not had sufficient time to acquaint themselves with the relevant material in the case file and to hire a lawyer. The applicants also requested that the acting Rector of the University and the security staff of the University be questioned. The prosecutor, for his part, requested the questioning of three of the police officers involved in the events that had developed in the Rector's office on 3 July 2006. The judge allowed a request lodged by the prosecutor for the three police officers to be examined in court and postponed the hearing until 3 August 2006.

29. At the hearing on 3 August 2006 the applicants reiterated their request for the acting Rector to be examined in court. They furthermore requested that the court hear the deputy Rector of the University and four other eyewitnesses to the events of 3 July 2006, including two journalists who had not been questioned at the pre-trial stage of the discontinued criminal proceedings. The judge granted the applicants leave to question the four new witnesses, while refusing their request for the questioning of the acting Rector and his deputy. In that connection, the court reasoned that those two individuals had already been questioned at the pre-trial stage and observed that their statements had been included in the case file.

30. According to the minutes of the 3 August 2006 hearing, the applicants challenged the factual circumstances of the events of 3 July 2006, as presented by the prosecutor. They maintained that they had not broken into the Rector's office, but rather that they had entered the office and had sat there calmly without using any force; that they had not insulted or threatened the acting Rector, but had simply presented him with the decision

of the Grand Academic Council; and that they had not disobeyed the instructions of the police, but had left the Rector's office within ten or fifteen minutes of being ordered to do so by the police. The second applicant stated that he had been taken out of the office sitting on a chair because he had apparently looked very tired. The applicants' lawyers also argued that the Rector's office did not constitute a public space for the purposes of Article 166 of the Code of Administrative Offences ("CAO") (see paragraph 47 below) and that in any event the applicants had simply been exercising their right to freedom of assembly and freedom of expression, as provided for in the Constitution of Georgia. Lastly, they alleged that the prosecutor had presented the case in a manner suggesting the collective administrative liability of the applicants, as the individual role of each applicant in the events of 3 July 2006 had not been identified.

31. The applicants also reiterated their complaint that they had been locked in the University lecture hall for the night of 3-4 July 2006 without their having access to water or toilets. They tried to put to the prosecutor several questions in this regard but the presiding judge dismissed the questions as irrelevant, having no bearing on the case.

32. During the hearing of 3 August 2006 the following witnesses were questioned. V.J., a member of the University security service, claimed that about fifty people – disregarding his orders and pushing him away – had forced their way to the reception area of the Rector's office. In reply to the judge's question, he said that he could not recall exactly who had pushed him. He furthermore stated that various protesters had been making insulting statements and noise and that as a result the work in the main building of the University had been disrupted.

33. According to the statement given in court by G.Ch., a police patrol officer, at the moment of his arrival at the University there had been around 200 people protesting outside. He had entered the building and had tried to enter the Rector's office, which had been blocked by protestors. After making his way through protesters and entering the office of G.Kh, he had seen around twenty people inside. It had taken him and the other officers about one hour to persuade the protesters to leave the office. In reply to a question he clarified that no one had physically resisted the police, but that the protesters had simply refused to leave the office. He also specified that insulting statements had been made by protestors in the corridor and not in the acting Rector's office.

34. Z.S., another police officer, confirmed that while no force had been used, they had spent an hour persuading a group of about twenty people to leave the Rector's office. He said that Mr Mebonia (the second applicant) had been taken out of the office still sitting on a chair as he had refused to stand up and leave by himself. He added that he recalled all of the applicants, except for Ms Sikharulidze (the sixth applicant), being inside the Rector's office. The third police officer, K.B., who was also questioned in

court, similarly maintained that there had been no physical confrontation inside the office, but that it had taken a while before those inside had agreed to leave.

35. On the same date the Court examined two members of the University staff, who gave evidence similar to their pre-trial statements (see paragraph 18 above). In addition, the court questioned two journalists and two professors, all of whom had been among the group of protesters on 3 July 2006. All four claimed that there had been no confrontation (either physical or verbal) in the office of the Rector, that the group had been simply demanding the resignation of G.Kh., and that they had left the office at the request of the police.

36. By a decision of 4 August 2006 the Tbilisi City Court found the first, second, third, fourth, fifth, seventh and eight applicants guilty of the above-mentioned administrative offences under Articles 166, 173 and 174 of the CAO and imposed a fine of 100 Georgian laris (GEL – approximately 45 euros) on each of them. The court terminated the proceedings concerning the alleged disobeying of a lawful order given by the police (Article 173) with respect to the sixth and ninth applicants, finding that they had left the office of the Rector before the arrival of the police and held them guilty of the administrative offences under Articles 166 and 174 of the CAO only, imposing a fine of GEL 100 on each of them (see paragraph 39 below).

37. In reaching its decision, the Tbilisi City Court concluded that the Grand Academic Council had begun acting unlawfully starting from 8 June 2005, when the old University charter had been repealed by Presidential Decree no. 473. Consequently, the court found that the restoration of the dissolved body, the impugned election of the new University Rector on 3 July 2006, and the subsequent demand for the resignation of G.Kh. in view of the election had been unlawful and constituted the administrative offence arbitrary behaviour within the meaning of Article 174 of the CAO (see paragraph 47 below).

38. In connection with the charge of a minor breach of public order (minor hooliganism), the court established that the applicants had burst into the office of G.Kh., calling for his resignation. They had demanded, in an insulting manner, that he immediately leave his office and take all his belongings with him. The court concluded that given that the applicants had occupied the office of the acting Rector against his will for about two hours and had disregarded his repeated requests for them to leave it in order to allow everyone to resume their work, their behaviour had amounted to insulting harassment (*შეურაცხმყოფელი გადაკიდება*) with respect to G.Kh. as well as the other staff present, and to "other similar action" that had violated public order and peace. The Tbilisi City Court dismissed the applicants' argument that the Rector's office was merely a private working space, reasoning that the presence of the public rendered it a public space for the purposes of the CAO. As to the submission by the defence that the

applicants had simply been exercising their right to freedom of assembly and freedom of expression, as provided in the Constitution of Georgia, the court concluded as follows:

> "The court notes that although a person is entitled to exercise the rights and freedoms enshrined in Articles 19, 24 and 25 of the Constitution, he or she is at the same time obliged, in the process of exercising his or her rights, to abstain from violating others' rights and interests, from encroaching upon [others'] honour and dignity, [and] from violating ... public order ... . [He or she] should not, in exercising his or her constitutional rights, commit acts prohibited by law, which, in the court's view, in fact happened on 3 July 2006 in the office of the Rector ..."

39. As for the charge of disobeying a lawful order given by the police, the court concluded that the sixth and ninth applicants had left the office of G.Kh. before the arrival of the police. They were thus acquitted of the above-mentioned charge. As for the remainder of the applicants, the court established that despite the repeated requests of the police, they had refused to leave the office of the acting Rector. In the court's view, notwithstanding the fact that no physical force had been used, the applicants' refusal for more than an hour to obey the orders of the police had amounted to a breach of Article 173 of the CAO (see paragraph 47 below).

40. The applicants appealed against the first-instance court's decision to the chairwoman of the Tbilisi Court of Appeal. They complained that there had been no record of an administrative offence having been made individually in respect of each of them, that their individual roles in the commission of the impugned administrative offences had not been established, and that the proceedings had been brought in a manner suggesting their collective liability. In that connection, they referred to the statements of witnesses who had noted that there had been two hundred people outside and twenty people inside the acting Rector's office during the events of 3 July 2006 and that it was impossible to identify the individuals who had allegedly insulted the acting Rector and forced their way into his office. The applicants also complained of the failure of the Tbilisi City Court to examine the acting Rector and his deputy in the course of the trial. Lastly, they challenged the categorisation of their actions as administrative offences by the first-instance court, submitting that they had simply been exercising their freedom of expression and freedom of assembly.

41. On 4 September 2006, the chairwoman of the Tbilisi Court of Appeal, sitting privately and without holding an oral hearing, dismissed the applicants' appeal as unsubstantiated. She concluded that the decision of the first-instance court had been lawful and properly reasoned. The operative part of the decision of 4 September 2006 indicated that no further appeal was possible.

E. Television report by the Imedi broadcasting company about the events of 3 July 2006

42. The case file contains a copy of a television report by the Imedi broadcasting company about the events of 3 July 2006. As was shown in Imedi's recording of the events of 3 July 2006, at least twenty people had entered the reception area of the acting Rector's office by force, in disregard of the protests of the security staff and reception staff. Then some of them had walked into the office itself, notifying G.Kh. of the decision of the Grand Academic Council and demanding his resignation. According to the video, dozens of protesters had simultaneously gathered in the corridor adjacent to the acting Rector's office and had chanted "step down!"

43. Imedi also ran an extract from the press briefing held by the Minister of Education on 4 July 2006. While commenting on the events in the University the preceding day, the Minister said the following:

> "Those people, who went beyond all the limits of academia and ethics yesterday, will of course, face responsibility for that."

II. RELEVANT DOMESTIC LAW

44. The relevant Articles of the Constitution of Georgia provide:

Article 24

> "1. Everyone shall be free to receive and impart information, to express and disseminate his/her opinion orally, in writing, or otherwise.
>
> ...
>
> 4. The exercise of the rights listed in the first and second paragraphs of this article may be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of state security, territorial integrity or public safety, to prevent crime, to safeguard rights and dignity of others, to prevent disclosure of information acknowledged as confidential, or to ensure the independence and impartiality of justice."

Article 25

> "1. Everyone, except those serving in the military forces and the Ministry of Internal Affairs, shall have the right to gather publicly, unarmed, both indoors and outdoors, without prior permission.
>
> ...
>
> 3. Authorities may terminate a public assembly or a manifestation only if it assumes unlawful character."

45. The relevant Articles of the Law of Georgia on Assembly and Demonstrations, as worded at the material time, read as follows:

Article 1

"1. The current law regulates the exercise of the right guaranteed by the Constitution of Georgia to gather publicly, unarmed, both indoors and outdoors, without prior permission.

...

3. This law provides the requirement that the authorities be notified if an assembly or a demonstration is due to be held in a public place [or a place through which] transport passes."

Article 9 § 1

"It is prohibited to hold an assembly or a demonstration inside the building of the Parliament of Georgia, the residency of the President of Georgia, the Constitutional Court and the Supreme Court of Georgia, on the premises of courts, prosecutor's offices or of police, penitentiary or military units and sites, [in] railway stations, airports, hospitals or diplomatic missions ([or] within a 20-metre radius thereof), on the premises of governmental institutions [or] local self-government bodies, [or] in the buildings of companies, institutions and organisations [that operate under] special labour security rules or are under armed guard. It is prohibited to fully block the entrance to those sites."

46. Under Article 9 of the Law on the Police, as in force at the material time (it was replaced by a new Act in 2013), the police were responsible, *inter alia,* for dispersing unlawful rallies, demonstrations, pickets and other assemblies that posed a threat to public safety, the lives and health of people, property, and other rights guaranteed by law.

47. The CAO was adopted on 15 December 1984, when Georgia was part of the Soviet Union. Subsequently, numerous amendments were introduced. At the material time the relevant provisions of this Code read as follows:

Article: 166: Minor hooliganism (a minor breach of public order)

"Minor hooliganism, e.g. swearing and cursing in a public place, [causing] insulting harassment to a person, or other similar actions which disturb public order and peace, shall be punishable by a fine in the amount of GEL 100, or – if, in the circumstances of the case and having regard to the offender's personality, this measure is not deemed to be sufficient – with up to thirty days' administrative detention."

Article 173: Disobeying a lawful instruction or order [issued by] law-enforcement or military service personnel

"Maliciously disobeying a lawful instruction or order [issued by] a law enforcement officer ... shall be punishable by a fine amounting to ten times the minimum [monthly] wage, or by one to six months' correctional labour compounded by the withholding of 20% of [the offender's] wages, or – if, in the circumstances of the case and having regard to the offender's personality these measures are not deemed to be sufficient – by up to thirty days' administrative detention."

Article 174: Arbitrary behaviour (თვითნებობა)

"Arbitrary behaviour, i.e. the exercise of a right in violation of a law, which does not cause any significant damage to people, the State or to public bodies, shall be punishable by a warning or a fine of half the minimum [monthly] wage [of the offenders concerned], or – in the case of public officials – with a warning or a fine of one minimum [monthly] wage."

THE LAW

I. *LOCUS STANDI* OF THE FOURTH APPLICANT'S WIFE

48. On 15 December 2011 the fourth applicant passed away. On 10 May 2012 his wife, Ms A. Davituliani, expressed her wish to pursue the case before the Court. The Government submitted no comments on the *locus standi* of Ms A. Davituliani.

49. The Court notes that, where the original applicant has died after lodging the application, the Court normally permits the next-of-kin to pursue an application, provided he or she has a legitimate interest (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000 XII; see also *Murray v. the Netherlands* [GC], no. 10511/10, § 79, ECHR 2016, with further references, and *Paposhvili v. Belgium* [GC], no. 41738/10, § 126, ECHR 2016). Having regard to the subject matter of the application and all the elements in its possession, and without prejudice to its decision on the objection relating to non-exhaustion of domestic remedies, the Court considers that the fourth applicant's wife has a legitimate interest in pursuing the application and that she thus has the requisite *locus standi* under Article 34 of the Convention (see *Dalban v. Romania* [GC], no. 28114/95, §§ 38-39, ECHR 1999-VI; *Çakar v. Turkey*, no. 42741/98, §§ 18-21, 23 October 2003; and *Ahmet Sadık v. Greece*, 15 November 1996, §§ 24-26, *Reports of Judgments and Decisions* 1996-V).

50. For practical reasons, Mr T. Sanadze will continue to be called "the fourth applicant" in this judgment, even though Ms A. Davituliani should now be regarded as such.

II. ALLEGED VIOLATION OF ARTICLES 3, 5, 10 AND 11 OF THE CONVENTION

51. The applicants complained that their peaceful protests at the University over the period of 19-20 June and 3-4 July 2006 had been violently dispersed and that the prosecuting authorities had failed to initiate an investigation against the responsible authorities. They also denounced the imposition of administrative fines on them in connection with the events

of 3 July 2006. They relied on Article 3, Article 5, Article 10 and Article 11 of the Convention, which in their relevant parts read as follows:

Article 3

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

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law ..."

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 ... public safety, for the prevention of disorder ..., for the protection of health or morals, for the protection of the reputation or rights of others...."

Article 11

"1. Everyone has the right to freedom of peaceful assembly ...

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 ... public safety, for the prevention of disorder ..., for the protection of health or morals or for the protection of the rights and freedoms of others. ..."

A. Admissibility

1. The parties' submissions

52. The Government submitted that the applicants' various complaints with respect to both of the alleged instances of the dispersal of the protest at the University were inadmissible owing to their having been lodged out of time. They claimed in this connection that an inquiry initiated on the basis of the applicants' complaint of 24 July 2006 had been discontinued on 29 July 2006. This had been the final domestic decision for the purposes of the calculation of the six-month time-limit, given that the subsequent administrative proceedings had been limited to the examination of the applicants' "guilt" only. There had been no basis for the applicants, in the Government's view, to expect their allegations of violence against police to be addressed within the scope of the administrative proceedings conducted exclusively against them. Therefore, the applicants' complaints with respect

to the events of 19-20 June and 3-4 July 2006 should be declared inadmissible, in accordance with Article 35 § 1 of the Convention.

53. The Government, in addition, claimed that the first, fifth, sixth, eighth and ninth applicants had failed to exhaust the available domestic remedies, as they had not been part of the group of professors who had written and sent the criminal complaint of 24 July 2006 to the Prosecutor General (see in this respect paragraph 22 above).

54. The applicants disagreed with the Government's objection. They maintained that they had expected their allegations to be addressed within the scope of the administrative proceedings conducted against them. Accordingly, the point of departure for the calculation of the six-month time-limit should have been 21 September 2006, the date on which the decision of the Tbilisi Court of Appeal had been served on one of the applicants. As regards the non-exhaustion argument, they submitted (following the same line of reasoning) that the complaints of all the applicants, notwithstanding whether they had personally signed the criminal complaint of 24 July 2006 or not, had been dealt with by the national courts in the course of the relevant administrative proceedings.

2. The Court's assessment

55. The Court finds it appropriate to consider separately the objections raised by the Government in connection with the events of 19-20 June 2006 and of 3-4 July 2006 at the University.

(a) The events of 19-20 June 2006

56. As regards the events of 19-20 June 2006, the Court notes the following: the prosecutor's ruling on the termination of the criminal proceedings into the applicants' allegations of violence on the part of the police made no reference to the events of 19-20 June 2006 at all (see paragraphs 24 and 26 above); and the domestic courts in the course of the subsequent administrative proceedings only examined the events of 3 July 2006, disregarding the events of 19-20 June 2006 (see paragraphs 37-39 above). The applicants themselves in their appeal to the chairwoman of the Tbilisi Court of Appeal made no reference to the events of 19-20 June 2006 (see paragraph 40 above).

57. In such circumstances the Court finds unconvincing the applicants' argument that they had been expecting the domestic courts to address their allegations concerning the events of 19-20 June 2006 in the course of the administrative proceedings conducted against them. There was neither legal nor factual foundation for such an expectation. It follows accordingly that as regards the alleged events of 19-20 June 2006, the last domestic decision for the purposes of the calculation of the six-month time-limit was the prosecutorial ruling of 29 July 2006 in which the applicants' complaints regarding the events of 19-20 June 2006 had been disregarded. The

applicants failed to appeal against that ruling. Therefore, without even addressing the Government's non-exhaustion plea, and in view of the fact that the current application was lodged on 16 March 2007 – that is to say almost eight months after the above-mentioned triggering date – the Court concludes that the applicants' various complaints concerning the events of 19-20 June 2006 are inadmissible, in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) The events of 3-4 July 2006

58. As to the events of 3-4 July 2006, the Court notes the following: the alleged violation of the applicants' rights under Article 10 and Article 11 of the Convention was at the centre of the administrative proceedings conducted against them. Notably, the national courts were to assess two sides of the same coin – on the one hand, the alleged breach of public order; on the other hand, the applicants' exercise of their rights to freedom of expression and freedom of assembly.

59. By contrast, the applicants' grievances *vis-à-vis* the police concerning their alleged ill-treatment and the unlawful restriction of their liberty over the night of 3-4 July 2006 fell beyond the scope of the impugned administrative proceedings (see paragraphs 24 and 26 above). According to the relevant court minutes, the domestic courts did not examine the applicants' allegation that they had been locked into a lecture hall during the night of 3-4 July 2006 (see paragraph 31 above). Had the applicants been willing to pursue this aspect of their grievances under Article 3 and Article 5 of the Convention they should have followed up and appealed against the prosecutorial ruling of 29 July 2006 dismissing their allegations as unsubstantiated (see *Identoba and Others v. Georgia*, no. 73235/12, §§ 104-15, 12 May 2015; see also, *Smirnova v. Russia* (dec.) [Committee], no. 37267/04, §§ 45-49, 8 July 2014).

60. In the light of the foregoing, the Court considers that the applicants' complaints under Article 10 and Article 11 of the Convention concerning the events of 3 July 2006 are admissible, while their complaints under Article 3 and Article 5 of the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Merits

1. The parties' observations

(a) The applicants

61. The applicants claimed that the University was not "private property", which the Respondent State had a duty to protect. Rather, it was their workplace, which they had the right to enter freely any time they wanted. They dismissed in this connection the Government's argument

about the exclusive role of the University in the field of educational services and submitted that they had a right to discuss various issues concerning the University not only outside its premises but also inside them (see the Government's argument in paragraph 63 below).

62. The applicants furthermore maintained that physical force had been used against them by police, and that that force had not been necessary in a democratic society and had in any event been disproportionate to whatever legitimate aim the Government had claimed to be pursuing. While reiterating the Court's reasoning in the case of *Bukta and Others v. Hungary* (no. 25691/04, § 37, ECHR 2007-III), they submitted that the public authorities should have shown a certain degree of tolerance towards their peaceful gatherings at the University. Lastly, in their view, the imposition of administrative fines had only served to punish them for their having exercised their rights under Article 10 and Article 11 of the Convention and had been intended to have a "chilling effect" upon anyone who might have been willing to protest against the Government's reforms in the educational sphere.

(b) The Government

63. The Government submitted that the right to hold demonstrations inside the premises of public institutions was not unlimited (see *Appleby and Others v. the United Kingdom*, no. 44306/98, § 47, ECHR 2003-VI). They referred in this connection to Article 9 § 1 of the Law on Assembly and Demonstrations, which provided that no assembly or demonstration could be held, *inter alia,* in a building of a governmental institution (see paragraph 45 above). They stated that there had been alternative venues at the disposal of the applicants and their supporters, such as the courtyard of the University, where they could have organised their protest. They stressed in this connection the idea that a university, being an educational establishment, was exclusively devoted to providing educational services; therefore, if the Government were to allow unrestricted demonstrations on its premises it would put a disproportionate burden on the educational establishment, jeopardising its proper functioning. They thus maintained that in the instant case, no interference with the applicants' right to freedom of expression and peaceful assembly had taken place at all.

64. In the alternative, the Government submitted that the interference had been justified under the second paragraphs of Article 10 and Article 11 of the Convention. In particular, the interference had been based on the internal regulations of the University, which explicitly provided that, prior to the organising of an assembly on the premises of the University, authorisation from its Rector was required. The applicants had been well aware of the requirement of prior notification and authorisation, as they had obtained it for a meeting scheduled to take place in the Grand Hall between 3.30 p.m. and 7 p.m. of 3 July 2006 (see paragraph 11 above). The

interference had also been based on Article 9 § 1 of the Law on Assembly and Demonstrations, which prohibited gatherings on the premises of certain institutions (see paragraph 45 above). The Government maintained in this connection that the University was a legal entity of public law that functioned under the umbrella of the Ministry of Education, which meant that it was a public institution for the purposes of the above-mentioned regulations. Lastly, the Government also relied on Article 9 § 1 (e) of the Law on the Police. The latter authorised the police to interfere with a demonstration that violated public order and the rights of others.

65. As to the aim pursued, the Government submitted that the dispersal of the protest had served the purpose of protecting the interests of others. The decision to engage the police had been taken only after it had become obvious from the statements and actions of the applicants that they would not leave the office of G.Kh. until the latter resigned from his position as acting Rector. In support of this argument, the Government submitted a copy of a letter signed by G.Kh. and apparently sent to the head of the district police department on behalf of the University after the applicants had burst into G.Kh.'s office. In that letter G.Kh. had noted that at around 4:30 p.m. members of the former Grand Academic Council had forced their way into his office, insulting him and other employees of the University. The situation was further described as follows:

> "Over two hours the acting Rector and his deputy requested them to leave the office, [and] to observe order, and expressed on behalf of the University administration readiness to engage in subsequent dialogue. Notwithstanding that, they stayed in the office, insulting the Rector, announcing that they would take over the management of the University, and inciting via cell phones the people [who had remained] in the courtyard of the University and in the corridors to burst [into the Rector's office] and to participate in the forceful expulsion of the [acting] Rector."

66. At the end of the letter G.Kh. had requested the police "to take the measures provided for by law." In the Government's view, that letter and other evidence made it clear that the intervention of the police had been absolutely necessary and proportionate, given that the administration building of the University had been seized by protesters (including the applicants) for several hours, and that their actions had impeded the proper functioning of the University and had prevented students from enjoying their rights at the University.

67. The Government further stressed that no force had been used against the applicants, and that none of them had been arrested. They noted that the applicants had not been locked up in the Grand Hall, as the back door had remained open. Hence, they could have easily exited the University (without the possibility, however, of returning). Lastly, they had been fined not for holding an assembly but for violating specific provisions of the CAO.

2. The Court's assessment

(a) The general principles

68. Freedom of expression, as secured in paragraph 1 of Article 10, 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, 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 which offend, shock or disturb; such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society" (see, e.g., *Oberschlick v. Austria* (no. 1), 23 May 1991, § 57, Series A no. 204). Although freedom of expression may be subject to exceptions, they "must be narrowly interpreted" and "the necessity for any restrictions must be convincingly established" (see, e.g., *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216). Furthermore, the Court stresses that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on the debate of questions of public interest (see, e.g., *Feldek v. Slovakia*, no. 29032/95, § 74, ECHR 2001–VIII, and *Sürek v. Turkey* (no. 1) [GC], no. 26682/95, § 61, ECHR 1999–IV).

69. 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 *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III, and *Barraco v. France*, no. 31684/05, § 41, 5 March 2009). It should be emphasised that Article 11 of the Convention only protects the right to "peaceful assembly", a notion which does not cover a demonstration where the organisers and participants have violent intentions. The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (see, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 92, ECHR 2015, with further references therein).

70. The Contracting States have a margin of appreciation in making the proportionality assessment under the second paragraph of Article 10 or 11. However, that goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, the Court being empowered to give the final ruling on whether a "restriction" is reconcilable with Convention rights. The expression "necessary in a democratic society" in Article 10 § 2 or 11 § 2 of the Convention implies that the interference corresponds to a "pressing social need" and, in particular, that it is proportionate to the legitimate aim pursued. The Court also notes at this juncture that, whilst the adjective "necessary", within the meaning of Article 10 § 2 or 11 § 2 is not synonymous with "indispensable", it remains

for the national authorities to make the initial assessment of the reality of the pressing social need implied by the notion of "necessity" in this context (see *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

71. 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 10 or 11 the decisions that they delivered. This does not mean that it has to confine itself to ascertaining whether the respondent 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 was proportionate to that aim and whether the reasons adduced by the national authorities to justify it are "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 *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, Reports of Judgments and Decisions 1998-I).

72. Lastly, the right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11 (see *Sáska v. Hungary*, no. 58050/08, § 21, 27 November 2012). At the same time and notwithstanding the acknowledged importance of freedom of expression, Article 10 does not bestow any freedom of forum for the exercise of that right. In particular, that provision does not require the automatic creation of rights of entry to private property, or even, necessarily, to all publicly owned property, such as, for instance, government offices and ministries (see *Appleby and Others*, cited above, § 47).

(b) Application of those principles to the present case

73. The Court notes at the outset that in relation to the same facts the applicants relied on two separate Convention provisions: Article 10 and Article 11 of the Convention. It further notes that it has already considered a number of cases where protests took place on either private or State property under Article 10 of the Convention, read in the light of Article 11 (see *Taranenko v. Russia*, no. 19554/05, § 69, 15 May 2014, and *Açık and Others v. Turkey*, no. 31451/03, § 36, 13 January 2009; see also *Angirov and Others v. Russia* [Committee], no. 30395/06, § 34, 17 April 2018). In the current case, the thrust of the applicants' complaint was their allegedly forceful removal from the office of the acting Rector and the imposition of administrative fines for their role in the events of 3 July 2006. They claimed that these measures had amounted to an interference with their peaceful protest. In such circumstances, the Court is of the opinion that

Article 11 is to be regarded as a *lex specialis* and that it is unnecessary to take the complaint under Article 10 into consideration separately (see, in this connection, *Primov and Others v. Russia*, no. 17391/06, §§ 91-92, 12 June 2014, where the Court noted that in the exercise of the right to freedom of assembly the participants would not only be seeking to express their opinion, but to do so together with others). At the same time, notwithstanding its autonomous role and particular sphere of application, Article 11 must, in the present case, also be considered in the light of the principles developed under Article 10 of the Convention (see *Kudrevičius*, cited above, §§ 85-86, with further references therein).

(i) Whether there has been an interference with the exercise of the right to freedom of peaceful assembly

74. The Government submitted that there had been no interference with the applicants' rights guaranteed by Article 11 of the Convention. The Court observes in this connection that the applicants had permission to organise a meeting on the premises of the University on 3 July 2006 and that they had availed themselves of that opportunity. During the first phase of their protest on that day they gathered, as duly authorised by the University administration, in one of the lecture halls (see paragraph 11 above). They moved, however, soon afterwards to the acting Rector's office, protesting against the ongoing University reform and demanding his resignation. The events which developed subsequent to their unauthorised entry to the Rector's office do not represent, in the Court's view, a standard situation of a "peaceful assembly" within the meaning of Article 11 of the Convention. As noted in *Kudrevičius and Others*, although not an uncommon occurrence in the context of the exercise of freedom of assembly in modern societies, physical conduct purposely obstructing the ordinary course of life in order to seriously disrupt the activities carried out by others is not at the core of that freedom as protected by Article 11 of the Convention (cited above, paragraph 97; see also *Annenkov and Others v. Russia*, no. 31475/10, §§ 123-128, 25 July 2017). Nevertheless, the Court notes that the applicants were not held responsible for using violence. While the events at issue happened in a situation of tension, the applicants' conduct was not established to have been of a violent nature. The Court thus does not consider that the applicants' protest on 3 July 2006, viewed as a whole, was of such a nature and degree as to exclude them from the scope of protection under Article 11 of the Convention, read in the light of Article 10.

75. The Court, hence, concludes that the applicants were entitled in the course of their protest at the University to invoke the guarantees of Article 11 of the Convention. It further notes that the applicants were removed by police from the office of the acting Rector of the University. Subsequently, they were charged and found responsible for several administrative offences in connection with what had happened in the

University. It thus concludes that their removal and administrative responsibility constituted an interference with their right to freedom of assembly (see *Açık and Others*, cited above, § 40).

(ii) Whether the interference was prescribed by law, pursued a legitimate aim and was necessary in a democratic society

76. The Court finds it appropriate to assess separately the lawfulness, necessity and proportionality of each instance of the alleged interference with the applicants' rights under Article 11 of the Convention.

(α) The applicants' removal from the office

77. The Government claimed that the applicants' removal with the involvement of the police had had a legal basis in the Law on the Police and the Law on Assembly and Demonstrations, and had been aimed at preventing further disruption to public order, as well as the protection of the rights of G.Kh. and others. The Court accepts that the impugned interference had a basis in domestic law. It notes that the police acted at the request of the acting Rector of the University (see paragraph 65 above). The removal was preceded by G.Kh. and other administrative staff members, and then by the police, explicitly and repeatedly asking the applicants to leave the acting Rector's office. It therefore finds that the requirement of lawfulness is satisfied.

78. As to whether the interference in question had a legitimate aim, the Court accepts the Government's argument that given the circumstances of the current case, the impugned interference pursued the legitimate aims of preventing public disorder and protecting the rights of others. It notes in this connection the national court's conclusion according to which on 3 July 2006, after the impugned "election" of the second applicant as the new Rector of the University, the situation at the University escalated, with the applicants entering by force the office of the acting Rector and many more protesters chanting anti-G.Kh. slogans in the corridor of the University and in its courtyard (see paragraph 42 above). Although the parties disagree as to the extent of the disruption that the applicants' protest caused to the University, the Court is of the opinion that in view of the scale and duration of the protest, also having regard to the content of the video recording at the disposal of the Court, the disruption to the work of the University was noticeable. As the Tbilisi City Court concluded, the behaviour of the applicants − intensified by the number of protesters in the corridors of the building – intimidated the employees and students and disrupted the normal functioning of the educational establishment. At the same time, the applicants' protest at the very least impeded the work of the acting Rector and his immediate colleagues for about two hours. Against this background, the Court accepts the domestic court's conclusion that the decision of the police to remove the applicants and other protesters from G.Kh.'s office was

justified by the demands of public order and the interests of others (see *Taranenko*, *and Açık and Others,* both cited above, §§ 78-79 and § 45 respectively; see also *Steel and Others v. the United Kingdom*, 23 September 1998, § 97, *Reports of Judgments and Decisions* 1998-VII).

79. As to the necessity in a democratic society of the interference at issue, it is true that the applicants by means of their protest wished to draw the attention of the University staff and the general public to their disapproval of the ongoing reforms at the University and their demand for the resignation of G.Kh. This was a topic of public interest at the material time and there was little scope under Articles 10 § 2 and 11 § 2 of the Convention for restrictions on debate relating thereto (see *Taranenko*, cited above, § 77, and *Murat Vural v. Turkey*, no. 9540/07, § 52, 21 October 2014). The Court notes, however, that the applicants were allowed to proceed, uninterruptedly, with a pre-authorised gathering in the Grand Hall of the main University building on the very same day for several hours (see paragraph 11 above). Subsequently, they had protested for about two hours in the office of the acting Rector, and the administration of the University (including the acting Rector) − and subsequently the police − showed the necessary tolerance (compare *Kakabadze and Others v. Georgia*, no. 1484/07, § 88, 2 October 2012; *Açık and Others,* cited above, § 46; and *Oya Ataman v. Turkey*, no. 74552/01, §§ 41-42, ECHR 2006-XIV). No physical force was used by the police against the applicants. Instead, as established in the course of the domestic proceedings, police officers negotiated with the applicants for more than an hour for their peaceful removal from G.Kh.'s office (contrast *Açık and Others*, cited above, § 46). Moreover, after their removal from the office of the acting Rector, they were allowed to stay on the premises of the University and continue with their protest.

80. In view of the above, and given the margin of appreciation applicable in such cases, the Court considers that the removal of the applicants from the acting Rector's office in order to achieve the legitimate aims pursued was not disproportionate.

(β) The applicants' administrative responsibility

81. For the purposes of the discussion in respect of Article 11 of the Convention, seen in the light of Article 10, the Court will focus on the administrative penalty imposed on the applicants in respect of the charges of a minor breach of public order under Article 166 and resistance to the police under Article 173 of the CAO.

82. The domestic courts found in the context of Article 166 that the conduct of the applicants had amounted to the insulting harassment of the acting Rector and of other representatives of the University administration who had been present, as well as to "other similar action" that had violated public order and peace (see paragraph 38 above). As to the allegations of

insulting harassment, the national courts established that the applicants had forced their way into G.Kh.'s office, calling for his resignation and demanding in an insulting manner that he leave his office, "bag and baggage" (see *ibid.*). In the Court's view, in calling for the resignation of a public official the applicants were exercising their right to freedom of expression (see, in this connection, *Kandzhov v. Bulgaria*, no. 68294/01, § 70, 6 November 2008). Their call for the acting Rector's resignation could not in and of itself have been deemed to be insulting. The domestic courts did not identify any specific insulting phrases that the applicants had used with respect to G.Kh. or his colleagues (compare *Skałka v. Poland*, no. 43425/98, §§ 26-27, 27 May 2003; *Janowski v. Poland* [GC], no. 25716/94, § 32, ECHR 1999-I; and *Kakabadze and Others,* cited above, §§ 88-89). In this connection the Court finds noteworthy the pre-trial statement of the acting Rector himself, who noted that he had not been personally insulted and that no foul language had been used by protesters in his office, either with respect to him or to his colleagues (see paragraph 19 above).

83. The Court notes that in its reasoning the Tbilisi District Court also concluded that the conduct of the applicants had disturbed public order and peace (see paragraph 38 above). Indeed, Article 166 of the CAO, along with "[causing] offensive annoyance to a person", refers to other similar actions which disturb public order and peace (see paragraph 47 above). The Court accepts in this connection the conclusion of the domestic courts that any place, whatever its legal status or function, may become by virtue of the presence of a group of persons a public space within the meaning of Article 166 of the CAO (see paragraph 38 above). Furthermore, the Court cannot overlook the fact that the applicants' conduct did indeed disrupt public order on the premises of the University (see the conclusion of the Court reached in paragraph 78 above). The Court is thus of the opinion that the interpretation of this provision given by the domestic courts in the present case was not arbitrary, and that the applicants could have foreseen, to a degree reasonable in the circumstances, that their actions entailing disruption to the functioning of the University, could have been deemed to amount to a minor breach of public order attracting the application of Article 166 of the CAO.

84. As for the resistance mounted by the applicants, the Court notes that in the course of the domestic proceedings it was established that although they encountered no physical resistance, it took the police about one hour to negotiate the applicants' removal from G.Kh.'s office (see paragraph 39 above). The refusal for about one hour of the applicants to obey the police officers' reiterated requests was deemed by the domestic court to have constituted resistance to a lawful order issued by the police within the meaning of Article 173 of the CAO, notwithstanding the fact that at the end of those negotiations the applicants left the office voluntarily.

85. Mindful of the Court's supervisory role, according to which it is not for the Court to take the place of the competent national authorities but rather to review the decisions taken by the latter, pursuant to their power of appreciation, the Court considers that the interference by way of imposing administrative sanctions in the current case was prescribed by law. The Court furthermore notes that, as already established above, the legitimate aim of the interference was the prevention of disruption to public order and to the interests of others. It remains to be seen whether the interference in the light of the case as a whole was proportionate to the legitimate aim pursued and whether the reasons adduced by the national authorities to justify it were relevant and sufficient.

86. The Court notes in this connection that the criminal proceedings for breach of public order were discontinued (see paragraph 24 above). The administrative proceedings conducted against the applicants resulted in the imposition of fines in the amount of GEL 100. None of the applicants were arrested or detained. The foregoing, in view of the overall context of the events − in particular the fact that the applicants were allowed to protest against the ongoing University reform for months, by, among other ways, holding meetings on the premises of the University, and in view of the nature of the protest on 3 July 2006 which culminated with the forceful entry of the applicants into the Rector's office, the disruption to the work of the University administration, and the refusal to obey explicit and reiterated requests of the police for them to leave the office of G.Kh.− is sufficient for the Court to conclude that the interference with the applicants' rights under Article 11 of the Convention read through the prism of Article 10 was proportionate to the legitimate aim pursued and necessary in a democratic society (see the overview of the Court's relevant case-law in *Taranenko*, cited above, §§ 81-89).

87. There has accordingly been no violation of Article 11 of the Convention read in the light of Article 10.

III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1, 2, and 3 (d) OF THE CONVENTION

88. The applicants complained that the administrative proceedings conducted against them had been unfair. Notably, they argued that the decisions had been manifestly unreasonable and written in a manner suggesting their collective administrative liability, and that the domestic courts had failed to question in court the acting Rector and his deputy. They also alleged that the Minister of Education had acted in violation of the presumption of their innocence. The applicants relied on Article 6 §§ 1, 2 and 3 (d) of the Convention, which reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charges with a criminal offence has the following minimum guarantees:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

A. Admissibility

89. The Government submitted that the applicants' complaint under Article 6 § 2 of the Convention was inadmissible for non-exhaustion of domestic remedies. In particular, they referred to Article 18 § 2 of the Civil Code of Georgia, which stipulated that "a person is entitled to demand in court the retraction of information that defames his honour, dignity, privacy, personal inviolability or business reputation." Apart from failing to use the above-mentioned remedy, the applicants, according to the Government, had raised the issue of the alleged violation of the principle of presumption of innocence for the first time only before the Court. Therefore, according to the Court's well-established practice, the applicants' complaint under Article 6 § 2 of the Convention should be declared inadmissible.

90. The applicants argued, in reply, that any action on their part in this regard would have been futile and inefficient.

91. The Court reiterates that the purpose of the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court. Consequently, States do not have to answer for their actions before an international body before they have had an opportunity to put matters right through their own legal system (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, with further references therein). The Court notes that in the current case the applicants did not even once at the domestic level voice their grievances concerning the press conference given by the Minister of Education. They could have done so within the context of the impugned administrative proceedings (see, for example, *Fatullayev v. Azerbaijan*, no. 40984/07, § 153, 22 April 2010) or, as proposed by the Government, by lodging a civil complaint (see, for example, *Martin Babjak and Others v. Slovakia* (dec.), no. 73693/01, 30 March 2004). While it is true that in the absence of any domestic case-law concerning Article 18 § 2 of the Civil Code, the Court is not in a position to conclude that that remedy was indeed available and effective in practice, it still finds unacceptable the applicants' failure to complain at the domestic level about the alleged violation of the principle of the presumption of innocence. By not giving the Government an opportunity to address this complaint at the domestic level,

the applicants in the Court's view did not meet the requirements of Article 35 § 1 of the Convention. Their complaint under Article 6 § 2 of the Convention is therefore inadmissible owing to their failure to exhaust domestic remedies.

92. As regards the applicants' remaining complaints under Article 6 §§ 1 and 3 (d) of the Convention, the Court notes that they are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor are they inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicants

93. The applicants maintained their complaint that the decisions of the national courts had not been adequately reasoned as regards their individual administrative responsibility. In connection with the allegations under Article 6 § 3 (d) of the Convention, they submitted − citing the relevant case-law of the Court − that they had been deprived of the possibility to challenge key witnesses in court. Whatever the content of G.Kh.'s and his deputy's pre-trial statements, that failure had in the applicants' view a detrimental effect on their defence and their position *vis-à-vis* that of the administrative authorities.

(b) The Government

94. Without challenging the applicability of Article 6 of the Convention to the impugned administrative proceedings, the Government submitted that the decisions of the national courts had been adequately and sufficiently reasoned both in general and in particular as regards the individual responsibility of each and every applicant. Thus, the decisions were adopted on the basis of a comprehensive and in-depth examination of all the evidence submitted to the courts. The administrative offence of a minor breach of public order was confirmed with respect to the applicants on the basis of the statements of more than eight eyewitnesses. The Government submitted, with reference to the relevant evidence, that all the applicants involved had been individually identified as being among those people who had burst into G.Kh.'s office and insulted him.

95. As regards the administrative offence of arbitrary behaviour (Article 174 of the CAO), the Government stressed that the Grand Academic Council had ceased to exist by virtue of Presidential Decree no. 473. Therefore, the line of reasoning of the domestic courts − according to which the election of the second applicant as Rector of the University by a dissolved body had been arbitrary and unlawful − could not have been

unreasonable. The fact that the first, sixth and ninth applicants had not participated in the above-mentioned process (that is to say the process of electing the second applicant as Rector) could not absolve them, in the Government's view, of their share of responsibility for the subsequent unlawful developments at the University. As to disobedience with respect to the unlawful instructions given by the police, the fact that the sixth and ninth applicants had not been found responsible on those counts was in itself an indication, according to the Government, of the well-foundedness and accuracy of the reasoning of the national courts and of the individual approach taken in respect of the administrative responsibility of each and every applicant involved.

96. In connection with the applicants' complaint under Article 6 § 3 (d) of the Convention, the Government submitted that given all the circumstances of the case, the refusal of the Tbilisi City Court to examine in court the acting Rector of the University and his deputy had not affected the applicants' defence rights to an extent incompatible with Article 6 of the Convention. They claimed that having regard to the Court's "sole or decisive test" and to the fact that the Tbilisi City Court had more than twenty witness statements at its disposal, the reliance on the pre-trial statements of G.Kh. and his deputy had not affected the overall fairness of the trial.

2. The Court's assessment

(a) The general principles

97. The Court reiterates that Article 6 of the Convention guarantees the right to a fair hearing, and the Court's task is to ascertain whether the proceedings as a whole, including the way in which evidence was obtained and heard, were fair – in particular, whether the applicant was given the opportunity of challenging the evidence and of opposing its use, and whether the principles of adversarial proceedings and equality of arms between the prosecution and the defence were respected (see *Bykov v. Russia* [GC], no. 4378/02, §§ 88, 90, 10 March 2009, and *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, § 60, ECHR 2000-II).

98. The Court reiterates that, as the requirements of paragraph 3 of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1, it often examines the complaints under both provisions taken together (see, among many other authorities, *Lucà v. Italy*, no. 33354/96, § 37, ECHR 2001-II; *Krombach v. France*, no. 29731/96, § 82, ECHR 2001-II; and *Poitrimol v. France*, 23 November 1993, § 29, Series A no. 277-A). Moreover, where the applicant complains of numerous procedural defects, the Court may examine the various grounds giving rise to the complaint in turn in order to determine whether the proceedings,

considered as a whole, were fair (see *Insanov v. Azerbaijan*, no. 16133/08, §§ 159 et seq. 14 March 2013, and *Mirilashvili v. Russia*, no. 6293/04, §§ 164 et seq., 11 December 2008).

99. Article 6 § 3 (d) enshrines the principle that, before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when that witness makes his statement or at a later stage of the proceedings. Thus, when a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence may be restricted to an extent that is incompatible with the guarantees provided by Article 6 (see *Blokhin v. Russia* [GC], no. 47152/06, §§ 200-202, ECHR 2016, with further references therein).

100. In *Schatschaschwili v. Germany* ([GC], no. 9154/10, § 111-31, ECHR 2015) the Grand Chamber confirmed that the absence of good reason for the non-attendance of a witness could not of itself render a trial unfair, although it remained a very important factor to be weighed in the balance when assessing the overall fairness of a trial, and one which could tip the balance in favour of a breach of Article 6 §§ 1 and 3 (d). Furthermore, given that the Court's concern is to ascertain whether the proceedings as a whole were fair, it must review the existence of sufficient counterbalancing factors not only in cases in which the evidence given by an absent witness was the sole or the decisive basis for the accused's conviction. It must also do so in those cases where it finds it unclear whether the evidence in question was the sole or decisive basis but is nevertheless satisfied that it carried significant weight and that its admission may have handicapped the defence. The extent of the counterbalancing factors necessary in order for a trial to be considered fair will depend on the weight of the evidence of the absent witness. The more important that evidence, the more weight the counterbalancing factors will have to carry in order for the proceedings as a whole to be considered fair (see *Seton v the United Kingdom*, no. 55287/10, § 59, 12 September 2016).

(b) The application of those principles in the current case

101. The Court confirms, at the outset, having regard to its earlier case-law concerning administrative offences punishable by detention, that the criminal limb of Article 6 of the Convention is applicable to the impugned administrative proceedings in the current case (see, among many other authorities, *Karelin v. Russia*, no. 926/08, § 42, 20 September 2016, with further references therein; see also *Mikhaylova v. Russia*, no. 46998/08,

§§ 70-74, 19 November 2015, and *Nicoleta Gheorghe v. Romania*, no. 23470/05, §§ 25-26, 3 April 2012). In view of the fact that the applicants' complaint under Article 6 of the Convention consisted of two main limbs: firstly, the alleged manifestly arbitrary reasoning in the decisions suggesting the collective criminal liability of all the applicants; and secondly, the violation of the defence rights of the applicants on account of the failure to examine G.Kh. and his deputy in court – the Court will address them in turn.

(i) The allegedly arbitrary reasoning

102. The Court notes, having regard to all the case material before it, that the main issue that it has to address in this connection is whether the national courts sufficiently and adequately reasoned their decisions so as to indicate and specify the extent of the individual involvement of each and every applicant in the commission of the three impugned administrative offences. Starting with the administrative offence of resistance to the police, the Court notes that Ms Sikharulidze and Mr Bakhtadze (the sixth and ninth applicants) were acquitted of that offence since it was established that they had left the office of the acting Rector before the arrival of the police (see paragraph 39 above); the remaining applicants never challenged the official version of events regarding their encounter with the police officers in G.Kh.'s office – they merely maintained that there had been no physical confrontation. However, the domestic courts concluded that even in the absence of a physical confrontation, those of the applicants who had remained in the Rector's office had refused to obey the official orders of the police, and that refusal had amounted to the offence of resisting the police (see paragraph 39 above). The Court sees no issue of arbitrariness arising with respect to the above-mentioned conclusion (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, §§ 83-85, 11 July 2017).

103. As to the administrative offence of minor breach of public order, as concluded above, the national court had failed to establish the specific offensive and insulting words and remarks that the applicants had apparently individually used with respect to G.Kh. (see the Court's conclusion in paragraph 82 above). However, the administrative offence in question was found to have been committed by the applicants not exclusively on account of their alleged insulting of G.Kh. but also on account of their being involved in a protest that had caused disruption to the University and violated public order and the rights of others (see paragraph 38 above; see also the Court's conclusion in paragraph 78 above). While the reasoning of the national courts in this regard is not entirely careful or detailed, it is not in question that the applicants were part of a group of protesters that forced their way into the office of G.Kh., demanding his resignation and stayed there for at least two hours, disrupting

the work of the University. In such circumstances, the Court does not see that any issue arises under Article 6 § 1 of the Convention.

104. Lastly, as regards the offence of arbitrary behaviour, the Court notes that all the applicants, with the exception of Mr Tuskia, Ms Sikharulidze, and Mr Bakhtadze (the first, sixth and ninth applicants respectively), confirmed in the course of the domestic proceedings that they had participated in the "elections" organised by the dissolved Grand Academic Council. They furthermore never contested the fact that as a part of a protest group they had demanded the resignation of G.Kh. The three above-mentioned applicants alleged, on account of their non-involvement in the elections, that they could not have been held responsible under Article 173 of the CAO. The Court notes, however, that they did not pursue this argument before the domestic courts.

105. In view of the above, the Court finds the reasoning of the domestic courts sufficient and adequate to meet the requirements of Article 6 § 1 of the Convention.

(ii) The failure to question G.Kh. and his deputy in court

106. As regards the applicant's complaint under Article 6 § 3 (d) of the Convention, the Court finds it appropriate to address this aspect of the trial separately, within the context of each and every administrative charge of the applicants. Thus, the charge of arbitrary behaviour referred exclusively to the episode of the allegedly unlawful election of the second applicant as Rector by a dissolved body. The applicants' line of argument was that the election had been lawful. In this connection, the national courts examined carefully the relevant legislative acts and concluded that the Grand Academic Council was an unlawful body. While G.Kh. and his deputy could have shed light on this matter, the main issue pending before the national courts within this context was purely legal – whether or not the old charter of the University was still valid (see, in this connection, paragraph 6 above). The Court is, thus, of the view that the evidence of G.Kh. and his deputy could not have been considered to constitute the sole or decisive evidence for the purposes of establishing the legal status of the Grand Academic Council and the impugned election.

107. Turning to the second episode, for which all of the applicants were found responsible − the allegedly forceful entrance of a group of around twenty people, including the applicants, into the office of G.Kh. and its unlawful occupation for about two hours − in this connection the national courts relied on the statements of more than ten eyewitnesses. While the applicants denounced the legal characterisation of their actions, never did they challenge the fact of entering the office of G.Kh., requesting the latter's resignation, and staying there for about two hours as such. In view of the above, the Court is of the view that the pre-trial statements of G.Kh. and his

deputy constituted neither the sole nor the decisive piece of evidence against the applicants.

108. As to the offence of disobeying orders given by police officers, the Court notes that neither G.Kh. nor his deputy could have provided any information in this regard, as by the time of the arrival of the police, both of them had left the Rector's office (see paragraph 13 above). The decisive evidence in this regard was provided by those who had stayed in the room, including the police officers and the applicants themselves.

109. Thus, despite the failure to examine G.Kh. and his deputy in court, and while assessing the overall fairness of the proceedings conducted against the applicants, the Court finds that the applicants' defence rights were not restricted to an extent incompatible with the guarantees provided by Article 6 of the Convention. Accordingly, it finds no violation of Article 6 §§ 1 and 3 (d) of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

110. The applicants also alleged a violation of Article 13 of the Convention and Article 1 of Protocol No. 1 on account of the administrative proceedings conducted against them. In view of all the materials in its possession, and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. *Holds* that the fourth applicant's widow has standing to continue the proceedings in the present case in his stead;

2. *Declares* the complaints under Article 6 §§ 1 and 3 (d) of the Convention and Articles 10 and 11 of the Convention concerning the events of 3 July 2006 admissible and the remainder of the application inadmissible;

3. *Holds* that there has been no violation of Article 11 of the Convention read in the light of Article 10;

4. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

Done in English, and notified in writing on 11 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President

APPENDIX

Nº.	First name Last name	Birth date
1.	Vakhtang TUSKIA	21/12/1935
2.	Jemal MEBONIA	29/06/1939
3.	Maia NATADZE	27/05/1929
4.	Tengiz SANADZE	30/01/1930
5.	Giorgi GOGOLASHVILI	24/07/1948
6.	Medea SIKHARULIDZE	03/01/1955
7.	Avtandil ARABULI	24/03/1953
8.	Gela DOLIDZE	16/06/1963
9.	Demur BAKHTADZE	16/05/1939