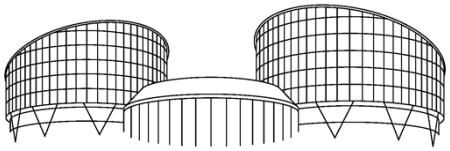

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF GELENIDZE v. GEORGIA

(Application no. 72916/10)

JUDGMENT

Art 6 § 1 and Art 6 § 3 (a) and (b) • Criminal proceedings • Fair hearing • Equality of arms • Information on nature and cause of accusation • Preparation of defence • Appellate court's arbitrary requalification of offence

STRASBOURG

7 November 2019

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 Gelenidze v. Georgia,

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

Angelika Nußberger, *President,*
Gabriele Kucsko-Stadlmayer,
André Potocki,
Yonko Grozev,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 24 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 72916/10) 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, Ms Manana Gelenidze ("the applicant"), on 5 November 2010.

2. The applicant was represented by Ms R. Gabodze, a lawyer practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr B. Dzamashvili of the Ministry of Justice.

3. The applicant alleged in particular that the legal requalification by an appeal court of her acts under the Criminal Code after the decriminalisation of the initial offence of which she had been convicted had breached her rights under Article 6 §§ 1 and 3 (a) and (b) and Article 7 of the Convention.

4. On 14 March 2016 the Government were given notice of the above complaints under Article 6 §§ 1 and 3 (a) and (b) and Article 7 of the Convention, and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Tbilisi. At the material time she was a judge at the Tskaltubo District Court.

6. On 27 June 2005 a preliminary investigation was initiated under Article 336 § 1 of the Criminal Code of Georgia into circumstances whereby the applicant had allegedly delivered an unlawful court decision in her capacity as a judge. According to official charges brought against her by the Chief Prosecutor of Georgia on 26 October 2005, the applicant had delivered a judgment miscalculating the prison term of a person whom she had convicted. Thus, he had been sentenced to one year and ten days in prison, but he had left prison fifteen days before he should have done. The applicant fled Georgia and took refuge in Kazakhstan.

7. On 8 August 2006 the Tskaltubo District Court convicted the applicant of the offence under Article 336 § 1 of the Criminal Code (Delivery of an unlawful judgment or other court decision) *in absentia*. She was sentenced to two years' imprisonment. The first instance court concluded that she had deliberately miscalculated the start date of the prison term of the person concerned, which had led to his early release from prison. The reasoning of the first instance court was reviewed and fully upheld by the Kutaisi Court of Appeal on 30 November 2006. On 11 July 2007 the Supreme Court of Georgia rejected an appeal on points of law by the applicant as inadmissible. At the same time it was noted in the inadmissibility decision that, when arrested, the applicant could file an appeal against her conviction.

8. In the meantime, on 4 July 2007 the Parliament of Georgia annulled Article 336 § 1 of the Criminal Code (see the relevant explanatory note in paragraph 18 below).

9. On 27 July 2009 the applicant was arrested upon her arrival at the Tbilisi International Airport. Following her arrest she appealed, requesting the quashing of her conviction in view of the fact that the offence of which she had been convicted had been decriminalised.

10. The appeal proceedings started on 8 October 2009 at the Kutaisi Court of Appeal. The proceedings were adjourned three times at the prosecutor's request. Eventually, at the hearing on 30 October 2009 the prosecutor asked the Kutaisi Court of Appeal to requalify the applicant's offence as abuse of office, an offence under Article 332 of the Criminal Code. The prosecutor submitted that although Article 336 had been decriminalised, the act of delivering an unlawful court decision had not lost its criminal nature and was detrimental to public interests. The prosecutor emphasised that the two offences at issue had key elements in common, such as abuse of power by a public official and damage caused as a result. Thus, the act falling under the scope of the former Article 336 § 1 had constituted a *lex specialis* to the offence under Article 332 § 1, and therefore had not been decriminalised as such.

11. In reply, the applicant claimed that the prosecution's application was unlawful, as the proposed requalification of her acts amounted to new charges and went beyond the scope of the case presented before the Kutaisi

Court of Appeal. She emphasised that such a course of action had no basis in law, particularly because the appeal proceedings had been triggered by her own appeal and not that of the prosecution. She further reiterated that the proceedings against her ought to have been discontinued, in view of the decriminalisation of Article 336 of the Criminal Code and having regard to the requirements of Article 28 of the Code of Criminal Procedure (see paragraph 20 below).

12. On the same date, while rejecting the applicant's appeal, the Kutaisi Court of Appeal amended her conviction, finding her guilty of abuse of office, an offence under Article 332 § 1 of the Criminal Code. The appeal court fully accepted the prosecution's argument that neither the criminal nature of the act previously criminalised under Article 336 of the Criminal Code nor the risk which it posed to society had disappeared as a result of the decriminalisation of the acts the subject to that provision. The relevant paragraphs of the decision read as follows:

> "On 4 July 2007 an amendment was introduced into the Criminal Code of Georgia, according to which Article 336 of the ... Code (delivery of an unlawful judgment or other court decision) was repealed. While it is true that the current version of the Criminal Code no longer incorporates the specific elements of the offence provided for in the [above] provision, this does not imply that the criminal nature of the act [as such] or the danger it posed to society has disappeared, since the act provided for in the first paragraph of Article 336 is in fact currently covered by the relevant provisions incorporating public office offences.
>
> In the present case the criminal act committed by the convicted person M. Gelenidze – the delivery of an unlawful judgment or other court decision – qualified under Article 336 § 1 of the Criminal Code, comprises all the features of an offence provided for in Article 332 of the Criminal Code, notably: the abuse of office by a public official, the damage caused, [and] the substantive breach of legal interests of the State. Accordingly, the act [committed] by M. Gelenidze ... corresponds in substance to Article 332 § 1, and thus merits requalification under the first paragraph of Article 332 ... the sentence should remain the same."

13. In the resolution part of its decision the Kutaisi Court of Appeal ruled to amend the decision of the Tskaltubo District Court of 8 August 2006, by reformulating the legal qualification of the acts committed by the applicant from Article 336 § 1 of the Criminal Code under Article 332 § 1. It thus convicted the applicant of an offence under Article 332 § 1 of the Criminal Code and sentenced her to two years' imprisonment.

14. The applicant filed an appeal on points of law. She claimed that the decision of the Kutaisi Court of Appeal was unlawful: firstly, the court did not have jurisdiction to requalify her offence; secondly, the new legal qualification of her acts had been proposed by the prosecutor at the final stage of the proceedings, and she had been deprived of the opportunity to defend herself *vis-à-vis* the new charges; and lastly, the *de facto* outcome of the second set of proceedings had been her conviction for acts which had in the meantime been decriminalised.

15. By a decision of 7 May 2010 the Supreme Court of Georgia rejected the applicant's appeal on points of law as inadmissible.

II. RELEVANT INTERNATIONAL INSTRUMENTS

16. For a summary of the relevant international texts and documents on the principle of *lex mitior* see the case of *Scoppola v. Italy (no. 2)* ([GC], no. 10249/03, §§ 35-41, 17 September 2009).

III. RELEVANT DOMESTIC LAW

A. The Criminal Code of Georgia

17. The relevant provisions of the Criminal Code of Georgia, as in force at the time of the applicant's conviction *in absentia* on 8 August 2006 read as follows:

Article 3. Retroactive application of a criminal law

"1. A criminal law that decriminalises an act or reduces a sentence shall have retroactive application. A criminal law that criminalises an act or introduces a heavier sentence, shall not have retroactive application.

..."

Article 332. Abuse of office

"1. Abuse of office by an official or person of equivalent status, to the detriment of public interests and in order to gain any personal benefit or privilege, or any benefit or privilege for another person, which has substantially affected the rights of a natural or legal person, or the legal interests of society or the State, shall be punishable by a fine or a term of up to three years' imprisonment, and a bar on holding public office or engaging in professional activities for a period of up to three years.

..."

Article 336. Delivery of an unlawful judgment or other court decision

"1. Delivery of an unlawful judgment or other court decision shall be punishable by a fine or prison term of four to six years, and a bar on holding public office or engaging in professional activities for a period of up to three years.

..."

18. On 8 June 2007 the legal committee of the Parliament of Georgia initiated a draft law proposing to decriminalise Article 336 of the Criminal Code. According to the explanatory note of the draft law, the purpose of the decriminalisation was to reinforce the principle of judicial independence. The note provided for the rationale of the proposed amendment in the following terms:

"The draft law envisages the decriminalisation of an offence provided for by the Criminal Code of Georgia. In particular, Article 336, which criminalises the delivery of an unlawful judgment or other court decision, shall be removed from the Code. We consider that the examination of the lawfulness of a judgment or another court decision is the prerogative of a higher judicial court, and should not serve as a basis for initiating criminal proceedings against a judge. The adoption of the current draft law shall contribute to the strengthening of judicial independence."

19. The Parliament of Georgia adopted the above amendment on 4 July 2007, with immediate effect.

B. The Code of Criminal Procedure

20. The relevant provisions of the Code of Criminal Procedure of Georgia ("the CCP"), as in force at the material time, read as follows:

Article 24. Public criminal prosecution

"...

8. ...When amending charges in court, the prosecutor is obliged to submit a new formulation of charges in written form."

Article 28. Grounds for terminating [a] criminal prosecution and [a] preliminary investigation

"1. [A] criminal prosecution shall not commence, or [an] already initiated prosecution and preliminary investigation shall be discontinued:

(a) if the act is not provided for by criminal law;

(b) if the act is not wrongful;

(c) if a new law decriminalises the act;

...

4. If the circumstances provided for in points (a) and (b) of the first paragraph of this Article are revealed at the stage when a court is examining a case, the court shall conclude the examination of the case and deliver an acquittal.

...

6. In the circumstances provided for in point (c) ... of the first paragraph of this Article, the criminal prosecution and/or pre-trial investigation shall not be discontinued if the accused is against it. In such a case, the criminal prosecution and/or pre-trial investigation shall continue in a standard way and will end with either an acquittal or a conviction, and the convicted person shall be released from serving a sentence."

Article 285. Amending and dropping charges

"1. When modifying or supplementing charges brought at the pre-trial investigation stage, a prosecutor, or an investigator with the consent of a prosecutor, is authorised to bring a new charge against a person in accordance with the rules provided for in ... the current Code. ... When there is a need to modify or supplement charges brought at the pre-trial investigation [stage], the prosecutor shall include the new charge directly in

the bill of indictment, in accordance with the rule provided for in Article 415 of the current Code.

..."

Article 450. The scope of court examination

"The examination of a case in a court shall only be conducted within the scope of the charges brought against the accused, unless a prosecutor has amended a charge in favour of the accused."

Article 490. Parties' oral submissions

"...

3. During their oral submissions, parties have a right to express their position regarding the guilt or innocence of the defendant, the qualification of an action, the [relevant] sanction, or any other issue that is to be decided by a judgment."

21. Article 540 of the Code of Criminal Procedure, as in force at the material time, provided for a prohibition of any change to an appellant's circumstances for the worse (*reformation in peius)* in the following terms:

Article 540. Prohibition of *reformatio in peius*

"1. An appeal court may not deliver a judgment of conviction instead of a judgment of acquittal, apply a stricter provision of the Criminal Code, impose a heavier sentence, increase the value of a civil claim, or take any other decision that is more unfavourable to the convicted person, if a review of the case is carried out based on an appeal lodged by the convicted person ... and in the absence of an appeal lodged by a prosecutor, a victim, or any other person representing the prosecution."

2. ...An appeal court may not to go beyond the scope of the charges brought against the defendant during the pre-trial investigation and maintained in the first-instance court proceedings."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

22. The applicant complained that the criminal proceedings against her had been unfair and in violation of the principle of equality of arms. In particular, she claimed that the prosecutor and the appeal court respectively had acted unlawfully when proposing and accepting a new qualification of the acts, the subject of the initial conviction, during the appeal proceedings, and that the requalification by the appeal court of the offence which she had allegedly committed had prevented her from properly exercising her defence rights. She relied on Article 6 §§ 1 and 3 (a) and (b) of the Convention, the relevant parts of which read as follows:

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

...

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

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

..."

A. Admissibility

23. The Court notes that the applicant's above complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

24. The applicant maintained that the requalification of the offence of which she had been convicted after its decriminalisation had been an unlawful act. In reply to the Government's observations (see paragraph 26 below), she submitted that Article 285 of the CCP only concerned the pre-trial stage of proceedings, and was thus irrelevant to her case. Article 490 of the CCP, which did concern the trial proceedings, provided for the right of parties to submit arguments concerning the legal qualification of charges, but within the scope of the charges confirmed in the bill of indictment, while Article 24 § 8 of the CCP simply reaffirmed the requirement that amendments to charges had to be filed in written form by a prosecutor. The applicant also emphasised that the amended legal qualification of her acts had been proposed by a district prosecutor in the absence of consent from a superior prosecutor, in violation of the relevant procedural rules.

25. The applicant further maintained that she had had no time to adjust her defence to the new charges, as the application to requalify the offence of which she had been convicted had been submitted by the prosecutor on the last day of the appeal proceedings. She could not have expected such a requalification, as the offence of which she had been convicted had been decriminalised. Lastly, by rejecting her appeal on points of law as inadmissible, the Supreme Court of Georgia had failed to remedy the above omissions.

26. The Government submitted that the prosecutor's application to modify the legal qualification of the applicant's acts had had its basis in Article 285 of the CCP. According to the Government, the prosecutor's discretion also derived from Article 490 § 3 of the CCP, which allowed parties to express their position regarding, *inter alia*, the legal qualification of an offence at issue at the stage of oral submissions. Lastly, Article 24 § 8, as in force at the material time, also implied that an offence could be requalified, given that it provided for a prosecutor's obligation to submit an adjusted formulation of charges in writing. In such circumstances, the Government alleged that the application for requalification had been lawful under the domestic law.

27. As to the second aspect of the complaint, the Government submitted a twofold argument. Firstly, according to them, the requalified charges had comprised exclusively the intrinsic elements of the original charge, thus the description and nature of the charge initially brought against the applicant had not been altered, and no issue arose under Article 6 § 3 (a) of the Convention as a result of the mere change of an Article of the Criminal Code. In support, the Government referred to a decision of the Supreme Court of Georgia, dated 10 October 2007, according to which Article 336 § 1 of the Criminal Code was a *lex specialis* to Article 332. Secondly, in view of all the above-mentioned factors, the new criminal qualification proposed by the prosecution implied only a change of Article. The applicant had been given time to comment on the requalified charges. She had had an opportunity to ask for an adjournment, but she had failed to do so. In her final statement before the Kutaisi Court of Appeal she had only voiced her concerns concerning the alleged unlawfulness of the requalification, while failing to mention her concerns regarding having insufficient time to adjust her defence. Stressing further the fact that the applicant was a former judge, the Government maintained that she had had various effective tools to defend herself, in full compliance with the requirements of Article 6 §§ 1 and 3 (a) and (b) of the Convention.

2. The Court's assessment

(a) General principles

28. The Court reiterates at the outset that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to interpret and apply domestic law. Therefore, it is not for the Court to deal with alleged errors of law and fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention, for instance where, in exceptional cases, such errors may be said to constitute "unfairness" incompatible with Article 6 of the Convention (see *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, § 83, 11 July 2017). Furthermore, a domestic judicial

decision cannot be qualified as arbitrary to the point of prejudicing the fairness of proceedings unless no reasons are provided for it or if the reasons given are based on a manifest factual or legal error committed by the domestic court, resulting in a "denial of justice" (see ibid., § 85).

29. The Court also reiterates that the fairness of proceedings is assessed with regard to the proceedings as a whole (see, among many others, *Miailhe (no. 2) v. France*, 26 September 1996, § 43, Reports of Judgments and Decisions 1996-IV, and *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275). It notes that sub-paragraphs (a) and (b) of Article 6 § 3 are connected, and that the right to be informed of the nature and cause of an accusation must be considered in the light of the accused's right to prepare his or her defence (see *Pélissier and Sassi v. France* [GC], no. 25444/94, §§ 52-54, ECHR 1999-II).

30. In assessing the fairness of criminal proceedings, the Court has accepted that requalification of an offence will not impair the rights of the defence if the accused, in review proceedings, had a sufficient opportunity to defend himself (see *Dallos v. Hungary*, no. 29082/95, §§ 47-53, 1 March 2001, and *Sipavičius v. Lithuania*, no. 49093/99, § 30, 21 February 2002).

(b) Application of the above principles to the present case

31. The applicant's complaint under Article 6 of the Convention is twofold: firstly, the application of the prosecution and the ensuing decision of the appeal court to amend the legal qualification of the offence of which she had been convicted were arbitrary; and secondly, the applicant was not given adequate time to adjust her defence to the new, requalified charges.

32. With regard to the first limb of the applicant's complaint, the Government relied on a number of legal provisions in their observations, in particular Article 24 § 8, Article 285, and Article 490 § 3 of the CCP, in accordance with which, they claimed that at the appeal stage of the proceedings the prosecution had been authorised to request that the applicant's offence be requalified as abuse of office instead of delivery of an unlawful court decision. The applicant challenged as erroneous the interpretation of the above provisions proposed by the Government. The Court is not in a position to act as a court of fourth instance and provide its own interpretation of the provisions in question. However, it does consider necessary to point out the following: the Kutaisi Court of Appeal left the applicant's pertinent argument about the wrongfulness of the prosecutor's application unanswered (see paragraphs 11-13 above). This argument merited a thorough consideration given that Article 540 § 1 of the CCP (prohibition of *reformatio in peius*) limited the authority of an appeal court to take any decision that was more unfavourable to the convicted person within the scope of the appeal initiated by the latter (see paragraph 21 above). In this connection, paragraph 2 of the same provision added that the scope of the examination by the court of appeal was limited to the charges

brought against a defendant at the pre-trial investigation stage and subsequently maintained in the first-instance proceedings (ibid.). The Court observes that this complaint was also explicitly voiced by the applicant in her appeal on points of law (see paragraph 14 above). However, the Supreme Court of Georgia rejected her appeal as inadmissible, thus failing to fill the gap in the reasoning of the appeal court.

33. In their observations the Government argued that Article 336 was a *lex specialis* in relation to Article 332 of the Criminal Code. Thus, from their perspective, there had been no requalification of the offence *stricto sensu*, and no overstepping of the scope of the initial charges. The Court cannot accept this argument. First of all, it is in conflict with the rationale of the decriminalisation bill prepared and adopted by the legislature. Notably, the explanatory note of the relevant bill made it explicit that the purpose of the proposed amendments was to remove criminal responsibility from the act of delivering an unlawful court decision and/or judgment (see paragraph 18 above). Furthermore, the Court notes that the only charge brought against the applicant in the prosecutorial decision of 26 October 2005 committing her for trial before a criminal court was delivery of an unlawful court decision (see paragraph 6 above). No reference was made to other potential charges or the *lex specialis* nature of Article 336 *vis-à-vis* Article 332. Thus, the investigation conducted with respect to the applicant was confined to the offence of delivery of an unlawful court decision. The same holds true for the subsequent court proceedings conducted against the applicant *in absentia*. The wording of the relevant judgments indicates that the issue of the applicant possibly being convicted of abuse of office in the alternative was not aired at all (see paragraph 7 above). Against this background, following the appeal lodged by the applicant, the Kutaisi Court of Appeal simply replaced one offence with another. It did so without considering the evident differences between the definitions of the two offences under the Georgian law (see Article 332 and 336 as cited in paragraph 17 above). Thus, the *corpus delicti* of the offence under Article 336 was the delivery of an unlawful judgment or court decision without any element of improper motive, which was, however, an element intrinsic to the offence of abuse of office under Article 332 (see ibid.).

34. This line of reasoning of the appeal court is particularly striking in the Court's view, as Article 3 of the Criminal Code explicitly provided for the retrospective application of a decriminalising criminal law (see paragraph 17 above). Article 28 of the CCP also provided for the compulsory termination of proceedings in the event of an act being decriminalised, unless the accused was willing to proceed with the trial (see paragraph 20 above). Even in such a case, the law provided that, if convicted, that person had to be released from serving a sentence (ibid.). By simply omitting the above provisions from its reasoning and by failing to examine their applicability to the particular circumstances of the applicant's

case, the appeal court, with the silent *post factum* approval of the Supreme Court, rendered its decision procedurally and substantially unfair.

35. This brings the Court to the second limb of the applicant's complaint under Article 6 of the Convention which is the breach of her defence rights on account of the manner her offence was requalified. The Court recalls that the right of an accused person to prepare his or her defence implies the right to be informed not only of the cause of the accusation but also of the legal characterisation given to acts he or she is alleged to have committed (see *Dallos,* cited above, § 47; see also *I.H. and Others v. Austria*, no. 42780/98, § 34, 20 April 2006, and *Penev v. Bulgaria*, no. 20494/04, § 42, 7 January 2010). In the present case the new qualification, which was proposed by the prosecution during the appeal proceedings, was aired for the first time at the concluding hearing of the appeal proceedings in circumstances impairing the applicant's chances to defend herself in respect of the new charge. Thus, the court of appeal did not warn the applicant that her offence could be requalified (see*, a contrario, Ujlaki and Piscóti v. Hungary* (dec.) [Committee], no. 6668/14, §§ 19-20, 26 February 2019). The hearing was not adjourned for further argument and the elements of the new offence were not debated in court (see *Penev,* cited above, § 41). In any event, as already noted above, the prosecutor's proposal for the requalification was flawed from the procedural point of view, a point duly noted by the applicant in the course of the proceedings. In such circumstances it cannot be said that the applicant should have anticipated the requalification of her offence.

36. The Court cannot speculate as to the merits of the defence the applicant could have relied on had she had an opportunity to make targeted submissions on the offence which she was eventually found guilty of. However, given the differences between the definitions as already noted above (see paragraph 33 above), the Court considers that the defence would have been different from the defence lodged in her appeal against the conviction under Article 336 of the Criminal Code.

37. To sum up, the Kutaisi Court of Appeal did not afford the applicant the possibility of adjusting her defence to the new charges. As for the Supreme Court, which was able to review the case in full, it failed to cure the defects of the appeal proceedings by rejecting the applicant's appeal on points of law as inadmissible.

38. In view of the above findings, the Court concludes that the manner in which the applicant's offence of which she had been initially convicted was requalified by the appeal court was arbitrary and in violation of the principle of equality of arms (see, albeit in a different context, *Anđelković v. Serbia*, no. 1401/08, §§ 26-27, 9 April 2013). The Supreme Court failed to remedy the arbitrary decision taken by the appeal court. The Court therefore concludes that there has been a violation of Article 6 §§ 1 and 3 (a) and (b) of the Convention in the present case.

II. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

39. The applicant complained that her amended conviction for abuse of office had been fabricated so that she could be kept in prison, despite the decriminalisation of the offence set out in Article 336 of the Criminal Code, in breach of Article 7 of the Convention.

40. The Court notes that this complaint is linked to the one examined above, and must therefore likewise be declared admissible.

41. Having regard to the nature of its finding of a violation of Article 6 of the Convention above (see paragraph 38 above), the Court considers that there is no need to examine this complaint separately.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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."

A. Damage

1. Pecuniary damage

43. The applicant claimed 328,600 Georgian laris (GEL – approximately 130,000 euros (EUR) at the relevant time) in respect of lost salary for the period between her removal from judicial office in October 2006 and October 2016, when her ten-year judicial tenure would normally have expired. She also claimed GEL 20,000 (approximately EUR 7,500) in respect of the living expenses she had had to incur during her period of asylum in Kazakhstan between December 2006 and July 2009, and GEL 1200 (approximately EUR 450) in respect of the costs of her time in prison.

44. In support of her claim concerning salary arrears, the applicant referred to relevant extracts from the domestic legislation concerning judges' remuneration for all the relevant periods of time.

45. The Government submitted that the applicant's claim in respect of pecuniary damage was vague and unsubstantiated. Her claim in respect of lost income was of an entirely speculative nature and had no causal link with the violations alleged before the Court. Further, the applicant had failed to provide any documentary evidence concerning her stay and related living expenses in Kazakhstan. As for the expenses related to her time in prison, they were also unjustified and unrelated to the subject matter of the application.

46. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

2. Non-pecuniary damage

47. The applicant claimed GEL 2,000,000 (approximately 950,000 EUR) on account of the psychological and physical suffering she had experienced, including damage to her reputation as a result of what she called unlawful persecution. In this context, she also referred to the poor prison conditions in which she had had to serve her prison sentence.

48. The Government noted that the applicant had failed to submit medical or any other evidence in support of the physical and psychological pain and suffering she had allegedly endured. In this regard, they referred to the Court's well-established case-law, according to which certain distress resulting from detention was an inevitable part of detention. They also submitted that the applicant's claim in respect of non-pecuniary damage was in any event highly excessive.

49. The Court, having regard to the nature of the violations found and ruling on an equitable basis, awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

50. The applicant also claimed GEL 3,100 (approximately EUR 1,200) for the costs and expenses incurred before the domestic courts and the Court. She failed to submit any documents or other financial evidence to support her claim.

51. The Government submitted that the applicant's claim for costs and expenses was unsubstantiated and also excessive.

52. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the lack of financial documents in its possession and the above criteria, the Court cannot accept the applicant's claim. It thus dismisses it.

C. Default interest

53. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares,* unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 6 §§ 1 and 3 (a) and (b) of the Convention;

3. *Holds*, by five votes to two, that there is no need to examine the complaint under Article 7 of the Convention;

4. *Holds*, unanimously,
   (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 5,000 (five thousand euros), plus any tax that may be chargeable, 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;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 November 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President