



## Pre-trial detention of former PM of Georgia was lawful and based on reasonable grounds but was also used as a means to exert pressure on him

In today's Chamber judgment<sup>1</sup> in the case of [Merabishvili v. Georgia](#) (application no. 72508/13) concerning the pre-trial detention of a former Prime Minister of Georgia, the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 5 § 1 (right to liberty and security)** of the European Convention on Human Rights as concerned the lawfulness of the court decisions of 22 and 25 May 2013 ordering Mr Merabishvili's pre-trial detention;

**no violation of Article 5 § 3 (entitlement to trial within a reasonable time or to release pending trial)** of the Convention as concerned the grounds for the court decisions of 22 and 25 May 2013 ordering Mr Merabishvili's pre-trial detention;

**a violation of Article 5 § 3** as concerned the court decision of 25 September 2013 reviewing Mr Merabishvili's pre-trial detention; and,

**a violation of Article 18 (limitation on use of restrictions on rights)** taken in conjunction with Article 5 § 1 on account of the fact that Mr Merabishvili's pre-trial detention had also been used by the prosecuting authorities as an opportunity to obtain leverage in another unrelated investigation, namely into the death of the former Prime Minister, Zurab Zhvania, and to conduct an enquiry into the financial activities of the former President of Georgia.

### Principal facts

The applicant, Ivane Merabishvili, is a Georgian national who was born in 1968 and is currently detained in a prison in Tbilisi pending criminal proceedings against him for a number of offences including vote-buying and misappropriation of property.

Prior to the parliamentary elections of October 2012, which resulted in a change of power, Mr Merabishvili, one of the leaders of the then ruling party, the United National Movement (UNM), exercised, for several months in 2012, the function of Prime Minister of Georgia. After the political coalition Georgian Dream had won the parliamentary election of October 2012 and formed a new government, Mr Merabishvili was elected Secretary General of the UNM, which became the major opposition force in the country.

Mr Merabishvili was arrested on 21 May 2013 following the institution against him of three sets of criminal proceedings for using an allegedly fake passport, embezzlement and abuse of authority. On 22 May 2013 an initial court decision, based on Article 205 of the Code of Criminal Procedure, was taken remanding Mr Merabishvili in custody on the grounds that there was a risk that he might abscond or interfere with the investigation. This decision was confirmed on appeal on 25 May 2013. Subsequently, during a pre-trial session on 25 September 2013, he asked for his pre-trial detention

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

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

to be replaced by a non-custodial measure of restraint. This request was examined and rejected on the same day, without explanation, in a brief statement given by the trial court judge.

Mr Merabishvili was convicted in February 2014 of the majority of the charges against him, including vote-buying, misappropriation of property and breach of the inviolability of another person's home and sentenced to five years' imprisonment. The charge of abuse of authority was dismissed. Mr Merabishvili's appeal on points of law is currently still pending before the Supreme Court.

Four additional sets of criminal proceedings for various offences involving abuse of official authority when he was Minister of the Interior between 2005 and 2012, launched against him between May 2013 and July 2014, are also currently pending against him.

## Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1, 3 and 4 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial / right to have lawfulness of detention decided speedily by a court), Mr Merabishvili alleged that the decisions of 22 and 25 May 2013 ordering his pre-trial detention had been based on unclear legal rules – notably in that they had not given a specific time-limit for his detention – and lacked reasonable grounds and that the courts had failed to carry out a proper judicial review of his request for release in its decision of 25 September 2013.

Further relying on Article 18 (limitation on use of restrictions on rights) taken in conjunction with Article 5 § 1, he alleged that the initiation of criminal proceedings against him and his arrest had been used by the authorities to exclude him from the political life of the country, resulting in the weakening of his party, UNM, and preventing him from standing as a candidate in the presidential election of October 2013. He further alleged that that persecution continued during his pre-trial detention when, on 14 December 2013, he had been removed from his cell and taken for a late-night meeting with the Chief Public Prosecutor and the head of the prison authority who had threatened him in order to obtain information about the death of the former Prime Minister, Zurab Zhvania, and about secret offshore bank accounts of the former President of Georgia. He further claimed that, despite having informed the authorities of that incident at the first opportunity at a hearing on his case on 17 December 2013, calling upon them to examine video footage from the prison surveillance cameras, no objective or thorough criminal investigation had ever been launched into his allegations. Lastly, he emphasised that the international community had expressed concerns over the initiation of criminal proceedings against the leaders of the opposition party, including himself.

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

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

András Sajó (Hungary), *President*,  
Vincent A. de Gaetano (Malta),  
Boštjan M. Zupančič (Slovenia),  
Nona Tsotsoria (Georgia),  
Paulo Pinto de Albuquerque (Portugal),  
Egidijus Kūris (Lithuania),  
Iulia Motoc (Romania),

and also Marialena Tsirli, *Section Registrar*.

## Decision of the Court

### Article 5 §§ 1, 3 and 4 (right to liberty and security)

First, the Court pointed out that it should not have been difficult for Mr Merabishvili, who had been assisted by lawyers, to understand the legal basis for his pre-trial detention. His detention had been based on Article 205 of the CCP, which clearly stated in its second paragraph that the maximum length of detention permissible should not exceed nine months. Indeed, it had been commonplace for the criminal courts at the time to refer in their detention orders to Article 205 of the CCP, rather than to cite the statutory length or to indicate any other time-limits, and Mr Merabishvili's lawyers, as qualified legal professionals, should normally have been aware of that judicial practice. Moreover, Article 206 of the CPP had clearly allowed Mr Merabishvili to request at any stage of the proceedings pending trial that his initial detention be altered or cancelled; and he had, in actual fact, resorted to that remedy on 25 September 2013. The Court was therefore unable to accept that the court decisions of 22 and 25 May 2013 had resulted in the deprivation of Mr Merabishvili's liberty for an unlimited or unknown period of time, without any possibility of judicial review, or had otherwise placed him in a state of legal uncertainty pending the pre-trial proceedings. There had therefore been **no violation of Article 5 § 1** of the Convention.

Second, the Court did not consider that the grounds for the court decisions of 22 and 25 May 2013 ordering Mr Merabishvili's pre-trial detention, namely the risk of absconding or interfering with the investigation, as linked by the prosecutor to the specific factual circumstances of the case and then endorsed by the national courts in their decisions, to have been irrational or irrelevant at the relevant time. More specifically, there was a risk that Mr Merabishvili could have interfered with the investigation by using his authority as a former high-ranking State official to influence the witnesses, who were mostly former or current State officials. As concerned the risk of absconding, it had been linked to Mr Merabishvili having in his possession a number of international passports, his wife's hasty departure from the country on the day of his being summoned by the investigating authority and the discovery of large sums of cash in his apartment arguably suggestive of ongoing preparations for flight. Consequently, the Court did not find that the initial imposition of the pre-trial detention was unreasonable and therefore concluded that there had been **no violation of Article 5 § 3 of the Convention on account of the court decisions of 22 and 25 May 2013**.

Third, the Court found that the judicial review of Mr Merabishvili's request for release on 25 September 2013 had been superficial. Notably, when confirming Mr Merabishvili's detention on 25 September 2013 without issuing a written decision, or at least orally pronouncing its reasons, the national court had failed to establish convincingly the existence of new concrete facts justifying his continued detention or to consider alternative non-custodial pre-trial restraint measures, despite the fact that four months had elapsed since the initial authorisation of the detention measure. There had accordingly been **a violation of Article 5 § 3 of the Convention on account of the court decision of 25 September 2013**. Given that finding, the Court considered that there was no need to examine Mr Merabishvili's complaint under Article 5 § 4.

### Article 18 (limitation on use of restrictions on rights)

The decision to detain Mr Merabishvili had to be seen in the broader political context and in particular of his high political profile at the time. Moreover, many international observers, including various high-ranking political leaders of foreign States and international organisations, had expressed concerns over the possible use of criminal proceedings against Mr Merabishvili for an improper, hidden political agenda on the part of the regime.

That general political context aside, however, the Court looked at the concrete facts of the case and more particularly the incident of 14 December 2013, when Mr Merabishvili had, according to his submissions, been removed from his prison cell for a late-night meeting with the Chief Public

Prosecutor and the head of the prison authority. Mr Merabishvili's account had been particularly credible and convincing, as he had been able to recall clearly and coherently the sequence of the events, the time when those events had occurred, the names of the persons involved, the various distinguishing details concerning his night-time removal from the prison, and his talk with the Chief Public Prosecutor and the head of the prison authority. He had informed the authorities of the circumstances of the incident at the very first opportunity, publicly expressing his readiness to cooperate with any investigation and calling upon the authorities to examine the video footage from the prison surveillance cameras as a proof of his allegations. Significantly, the prison authority had been clearly reluctant to provide access to that video footage and the authorities, notably the Prime Minister, the Minister of Prisons, and the Chief Public Prosecutor, had been unmistakably opposed to the calls for an objective and thorough investigation repeatedly launched by Mr Merabishvili, the public and even certain senior high-ranking State officials. Nor had the Government, in their submissions before the Court, provided any meaningful explanation for the incident, apart from making a brief reference to the very vague internal probe conducted by the Ministry of Prisons, in relation to which not even the slightest piece of information had been shared with the Court.

Therefore the Court found that Mr Merabishvili's pre-trial detention had been used not only for the purpose of bringing him before the competent legal authority on reasonable suspicion of abuse of official authority and other offences in public office with which he had been charged, but had also been treated by the prosecuting authority as an additional opportunity to obtain leverage in another unrelated investigation, namely into the death of the former Prime Minister, Zurab Zhvania, and to conduct an enquiry into the financial activities of the former President of Georgia, two aims wholly extraneous to the European Convention. Indeed, the prospect of detention could not be used as a means of exerting moral pressure on an accused. There had accordingly been a violation of Article 18 of the Convention taken in conjunction with Article 5 § 1.

#### Article 41 (just satisfaction)

The Court held that Georgia was to pay Mr Merabishvili 4,000 euros (EUR) in respect of non-pecuniary damage and EUR 8,000 for costs and expenses.

*The judgment is available only in English.*

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