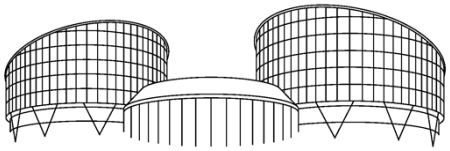

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KADAGISHVILI v. GEORGIA

(Application no. 12391/06)

JUDGMENT

Art 3 (material) • Degrading treatment • Poor conditions of detention • Overcrowding Art 3 (material) • Inhuman and degrading treatment • Inadequate medical supervision and treatment while in prison Art 6 §§ 1 and 3 (criminal) • Fair hearing • Adversarial trial • Witness • Conviction based on witness statements including people not part of the plea-bargaining process and various other evidence • Domestic courts' fair treatment of the applicants' application regarding admissibility of evidence and questioning of witnesses • No consequences on the fairness of the expulsion from the courtroom and the inability to make closing statements in person Art 6 § 1 (criminal) • Access to court • Refusal of the Supreme Court to consider the case on its merits not disproportionate to the legitimate aim pursued • Very limited reasoning of the refusal satisfying the requirements of Art 6 in absence of legal grounds for accepting the case Art 7 • Absence of retroactive application of a penalty • No far-reaching detriment with the application of a law inexistent at the time of committal of the crimes Art 34 • Hinder the exercise of the right of application • State failure to comply with interim measure indicated by the Court under Rule 39

STRASBOURG

14 May 2020

FINAL

14/08/2020

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

In the case of Kadagishvili v. Georgia,

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

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
André Potocki,
Mārtiņš Mits,
Lado Chanturia,
Anja Seibert-Fohr, *judges,*
and Victor Soloveytchik, *Deputy Section Registrar,*

Having deliberated in private on 23 April 2020,

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

PROCEDURE

1. The case originated in an application (no. 12391/06) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Georgian nationals, Mr Amiran Kadagishvili ("the first applicant"), Ms Nana Kadagishvili ("the second applicant"), and Mr Archil Kadagishvili ("the third applicant"), on 3 April 2006.

2. The applicants were represented by Ms L. Mukhashavria, Mr V. Vakhtangidze, and Mr V. Imnaishvili, lawyers practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr L. Meskhoradze of the Ministry of Justice.

3. The applicants alleged, in particular, that the criminal proceedings against them had been unfair and that they had been deprived of access to the Supreme Court, in breach of Article 6 of the Convention. The applicants also submitted that their property had been confiscated by means of a retroactive application of a criminal sanction, contrary to Article 1 of Protocol No. 1 to the Convention. Relying on Article 3 of the Convention, the first and the third applicants also complained of the inadequate conditions of detention, and the inadequacy of medical care in prison. They further complained under Article 34 that the Government had failed to comply with the interim measure indicated to them by the Court under Rule 39 of the Rules of Court.

4. On 22 August 2007 the Court, acting pursuant to a request by the applicants, advised the Government, under Rule 39 of the Rules of Court, in the interests of the parties and the proper conduct of the proceedings before the Court, to transfer the first and the third applicants to a medical

establishment capable of dispensing adequate medical treatment for each of their diseases.

5. On 6 December 2010 notice of the application was given to the Government. The Court, of its own motion, categorised the applicants' complaint relating to Article 1 of Protocol No. 1 under Article 7 of the Convention, and also notified the Government thereof. On the same day the Court discontinued the indication made to the Government under Rule 39.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1949, 1947, and 1978 respectively, and live in Tbilisi. The first and the second applicants are husband and wife. The third applicant is one of their two sons.

A. Criminal proceedings against the applicants

1. Investigation stage

7. On 20 July 2004 the first applicant and the third applicant were arrested on suspicion of having committed various financial crimes, including money laundering, during the period between October 2000 and July 2004. The suspicion was based on the preliminary findings of the head of the Financial Monitoring Service ("the FMS"), an agency in charge of tracking money laundering, and related to the activities of Gammabank, a Tbilisi-based joint-stock company established by the first applicant. According to the charges brought against the two applicants, on an unspecified date the first applicant resigned from his position as deputy chairman of the bank's supervisory board and appointed his son, the third applicant, as chairman of that board. The first applicant also appointed his second son, G.K., to various positions in the bank, and ultimately as its director general. In practice, the first applicant continued to be the primary manager of the bank and its operations, together with his family. The suspicion of the commission of financial crimes also related to the activities of three companies which were alleged to have been fictitiously created in order to cover up acts of fraud and money laundering committed through Gammabank ("the three shell companies") as well as the bank's cooperation and transactions made in respect of various offshore companies. The Prosecutor General's Office ("the PGO") conducted, as an urgent measure, a search of the offices of Gammabank, seizing numerous financial records and other types of documents, seals and letterheads of various companies,

and electronic files. The company's assets and the two applicants' personal bank accounts were frozen. On 21 September 2004 the second applicant was arrested, also as a suspect in the case in relation to her role as a consultant to the bank in 2000-03, and her subsequent involvement in its activities, and aiding the first applicant.

8. On an unspecified date at the end of July 2004, the daily news programme of Rustavi 2, a private television channel, reported about the investigation into the case. The anchor of that programme made the following statement:

> "[The first applicant] is one of those people who were involved in financial scheming [in the nineties] owing to which he had to flee his homeland. But as it appears, he has settled the problems with the previous Government and returned to Georgia with a new scheme. This time [it's] Gammabank – the place where 10 billion euros [EUR] were laundered in one day. ... The Gammabank case may enter the history of Georgian law as "the Kadagishvili case". [The first applicant] and [the third applicant] who were arrested ... for money laundering [are] detained in Tbilisi prison no. 5 ..."

9. The anchor's comments were followed by excerpts from interviews with the PGO's investigator in charge of the applicants' case, and with the head of the FMS. The investigator stated, without further elaboration, that the investigation had established the act of transferring 10 billion euros (EUR) through Gammabank accounts. As to the head of the FMS, he spoke briefly about difficulties associated with investigating the activities of offshore companies in general, without relating his comments to the applicants' case.

10. Between 2 August and 7 December 2004 an audit report was prepared by financial, economic, and tax experts appointed by the PGO to carry out an examination in respect of Gammabank's activities. The audit was carried out by six experts from the National Bank of Georgia, the Revenue Service, the Ministry of the Interior, and the State Audit Office of Georgia, and concerned the period from 1 January 2000 to 1 July 2004. The experts assessed various documents seized from Gammabank's offices. The examination was attended and assisted by Gammabank's Deputy Director General M.Kh., Deputy Accounts Director M.K., and Director of the Correspondent Accounts Department N.P. The experts concluded that Gammabank owed the State 11,717,378.3 Georgian laris (GEL – approximately EUR 5,326,115) in damages for various unpaid financial dues. It further noted that the case-file material, including the links between various companies (subsequently found to have been the applicants' shell companies) and the bank and its personnel, required further investigation. They further noted that the administrative procedures at the bank were in violation of various regulations on processing and storing relevant documents and correspondence. It also noted that an investigation needed to determine the real scope of the legal relationship between Gammabank and

General Charter Bank (registered in Montenegro), the latter apparently benefiting from free services from the former without a clear explanation. The report also noted that General Charter Bank had purchased a building from Gammabank on 26 February 2001. Furthermore, a number of loans had been apparently issued without complying with relevant regulations on documenting all the details of the transactions. The report further noted the need to investigate the reasons behind the transfer of several large amounts across various accounts via Gammabank, currency conversions of those amounts, and their subsequent return to the original source. Various large transactions were made without indicating their purpose.

11. As it transpires from the case-file material, on 19 November and 24 December 2004 a judge allowed the prosecutor's applications for a preliminary injunction to freeze the applicants' personal bank accounts as well as the accounts and property belonging to various allegedly fictitious companies listed in the charges. The respective judicial orders relied on Article 190 of the Code of Criminal Procedure, and stated that a reasonable suspicion existed that the property in question had been obtained through criminal means ("CCP", see paragraph 90 below).

12. On 18 December 2004 and 12 October 2005 G.T., an internal auditor of Gammabank and the deputy chairperson of the bank's supervisory board, stated that he had known the first applicant since 1989 and had started working at Gammabank at the latter's suggestion. Subsequently, he had been appointed director of the Georgian branch of General Charter Bank, a bank registered in Montenegro, at the first applicant's suggestion. Subsequently, General Charter Group had also been created which in turn had been a parent company of other smaller companies. G.T.'s duties had included supervising all these organisations. G.T. stated that he had never had any direct contact with the headquarters of General Charter Bank, and in practice he had reported to the first applicant. G.T. signed a sales contract between Gammabank and General Charter Bank concerning an office building in February 2001 at the first applicant's request. The contract had been aimed at shielding Gammabank from its financial obligations and the potential seizing of that building in order to cover its debts. He noted that he had had some doubts about the activities of General Charter Bank, and he had ultimately quit that position while retaining his post at Gammabank. He also noted that he had signed various documents following requests by the first applicant.

13. In January 2005 the following ten employees of Gammabank were charged with money laundering, business fraud and other financial offences, and were remanded in custody:

(i). Mr Z.G., Director, member of the supervisory board, and Director of the Internal Audit Service;

(ii). Ms I.K., First Deputy Director General of Gammabank in 2000-02, acting Director General between February 2002 and March 2004;
(iii). Ms M.G., Accounts Director;
(iv). Ms M.K., Deputy Accounts Director;
(v). Ms Ts.M., accounts specialist,
(vi). Ms M.Kh., Director of the Loans Department
(vii). Mr N.B., specialist at the Correspondent Accounts Department;
(viii). Ms M.M., Gammabank's registrar in charge of keeping the registry of securities, Director of one of the shell companies allegedly owned by the applicants;
(ix). Mr S.J., Director of the Credit Card and Securities Department; and
(x). Ms N.P., Director of the Correspondent Accounts Department.

14. The PGO proposed plea-bargaining agreements, which the above-mentioned ten accused employees of Gammabank accepted. In January 2005 the ten individuals thus confessed in the presence of their lawyers, as part of separate proceedings in respect of each, to money laundering and other financial crimes in exchange for a prosecutorial recommendation of a lighter penalty. The individuals concerned also incriminated the applicants, and explained, amongst other things, that the profits from several financial dealings had mostly accumulated in the applicants' personal bank accounts. All the accused stated that they fully understood the nature of the charges to which they were confessing, and their legal implications. The respective agreements were confirmed by the Didube-Chughureti District Court in Tbilisi during the hearing held on 21 February 2005 as the basis for their convictions. The ten individuals in question testified to the absence of any pressure to enter into those agreements. They were all given non-custodial sentences (fines varying from GEL 1,000 to 2,000 (approximately EUR 450 to 900).

15. On 15 February 2005 the second applicant was released on bail of GEL 85,000 (approximately EUR 38,600).

16. On 14 March 2005 the PGO transferred the bill of indictment against the applicants, together with the list of evidence gathered in what appears to have been 118 volumes to a court for their trial. According to the case file, the first applicant had familiarised himself with the first twelve volumes between 18 February and 7 March 2005. The respective report signed by the applicant contained a note made by the latter that the material he had seen had included documents in Russian and English, which he spoke.

2. Judicial proceedings at first instance

(a) Trial

17. The trial of the applicants initially commenced before the Tbilisi Regional Court, sitting as a court of first instance, but sometime in 2005 it was taken over by the newly established Tbilisi City Court, apparently as a result of a reform of the judicial system.

18. On 9 June 2005 the first applicant applied to be allowed to have a small table in the barred dock or to be seated beyond the metal bars, next to his lawyer, at the latter's table. The court granted the request and allowed him to be seated outside the dock, next to his lawyer.

19. On 9 June 2005 Ms I.K., First Deputy Director General of Gammabank in 2000-02 and Acting Director General between February 2002 and March 2004 (see paragraph 13 above), was examined by the court. She stated that her appointment had been a formality, and the first applicant had acted as a *de facto* manager of the bank. She noted having acted on the first applicant's instructions on several occasions, and described the processes related to the currency trading operations and transfers of money to General Charter Bank in order to conceal certain funds. She further confirmed having issued loans to fifteen non-resident legal entities at the first applicant's instructions, the latter guaranteeing to her that the companies would repay. I.K. explained that on several occasions she had been assisted in her tasks by M.Kh. She also stated that as she was not a lawyer, she could not give a legal assessment of the described actions. When examined by the trial court again on 6 and 10 January 2006, I.K. stated that she had not known that she had been contributing to money laundering by her activities at Gammabank and that she had agreed to plead guilty because the commission of the offences had been established by the investigation. She noted that she had never been subjected to any form of undue pressure by the prosecution.

20. On 9 June 2005 Ms M.G., Gammabank's Accounts Director (see paragraph 13 above), was examined. She noted that in practice it had been the first applicant who had owned and managed the bank, and confirmed having made several transfers to General Charter Bank instead of the State budget at the first applicant's instruction. The sums transferred to that bank would sometimes end up in the accounts of some of the bank personnel who never withdrew it despite signing documents of having done so. M.G. noted that it had not been her duty to check the provenance of sums of money incoming to a client's account. She did not know who had laundered money. She also stated that she agreed with the results of the audit report (see paragraph 10 above). M.G. also confirmed having issued a false certificate of a deposit in favour of an insurance company owned by the applicants following the first applicant's order so that the company would obtain a state license; having determined, at the third applicant's instruction,

special tariffs in respect of two of the three alleged shell companies mentioned in the charges; and having discovered various errors in currency trading operations carried out by the bank, which had been detrimental to the bank's financial interests. M.G. stated that the bank's office was sold in 2001. M.G. repeated her statement before the trial court on an unspecified date in 2006.

21. As the case-file material suggests, some of the witnesses who were to be examined as part of the proceedings on 9 June 2005 were not isolated from each other in the courtroom. However, the exact number and identities of such witnesses are unclear. The applicants and their lawyer apparently protested against that manner of witness examination, arguing that, in such conditions, the witnesses could easily be influenced by the events occurring and information disclosed during the trial and that their statements could thus lack reliability. It does not appear that their objection was addressed by the trial court, or that the applicants pursued the matter before the appellate and cassation courts.

22. On 15 June 2005 Ms M.K., Gammabank's Deputy Accounts Director (see paragraph 13 above), was examined. She gave information regarding the fact that currency conversion operations had resulted in financial losses for the bank. She noted that she had carried out M.G.'s orders in respect of various financial operations, and noted that tariffs for various organisations, including those connected to the applicants, had been determined by the first and the third applicants. In response to the second applicant's question, M.K. noted that the second applicant had not been involved in those transactions but had been in contact with lawyers. M.K. confirmed her statement on 18 January 2006.

23. On 29 August 2005 Mr N.B., a specialist at the Correspondent Accounts Department of Gammabank (see paragraph 13 above), stated that he had been on friendly terms with G.K, the first and the second applicants' second son. N.B. noted that he had never suspected that his activities, including currency trading at Gammabank, as well as subsequent transfers to various companies, including the three shell companies connected to the applicants, could have constituted a criminal offence. His explanation as to the reasons for agreeing to conclude a plea-bargaining agreement was that he had wanted to avoid "a further protraction of the proceedings". N.B. also stated that the prosecution had never used any coercion against him but that his right not to incriminate himself had not been explained to him. On 12 September 2005 the PGO opened a criminal case against Mr N.B. for "impeding the administration of justice" by giving inconsistent witness statements (the obstruction-of-justice proceedings). The final outcome of the proceedings against N.B. is unclear. On the following day, 13 September 2005, the applicants challenged before the trial court the initiation of criminal proceedings against Mr N.B., seeing those measures as an attempt at intimidation of all the witnesses in their case. On 18 January

2006 N.B. was heard by the Tbilisi City Court. He confirmed his earlier statements and stated that at Gammabank he had been tasked with managing the accounts of three shell companies established by the applicants, and he had made various currency-exchange operations.

24. On 29 August 2005 Ms M.Kh., the Director of the Loans Department (see paragraph 13 above), was examined. She noted the absence of any undue pressure to testify and gave her description of the processes related to the issuance of loan contracts to fifteen non-resident companies, together with I.K., and her own role in creating false letterheads, and preparing the relevant documentation. She noted that the credit committee had not met but the loans had been issued anyway, and she had signed the relevant documentation because it had been so decided. She did not know whether those loans had actually been transferred to those companies. M.Kh. confirmed never having met representatives of any of those companies, as well as having witnessed the seizure from the bank's offices of various seals belonging to those companies. M.Kh. averred that she had not known whose money had been laundered, nor about the applicants' "pre-existing conspiracy" to commit crimes. M.Kh. repeated her statement before the trial court on an unspecified date in 2006.

25. On 29 August 2005 Ms M.M. (see paragraph 13 above) stated that she was the second applicant's cousin. According to her, she had worked as Gammabank's securities registrar, and at the second applicant's initiative had been appointed Director of one of the shell companies which, according to M.M., was owned by the applicants. She had not been aware of any activities of that company, had had no seal, and had signed some documents drafted in English, out of trust towards the Kadagishvili family, even though she did not speak the language. She had put signatures to various documents, including those brought to her on the second applicant's orders, out of trust towards the applicants. M.M. confirmed the contents of the plea-bargaining agreement but noted that she was not exactly sure of the charges, and that she had not had a prior agreement with the applicants to commit crimes. Ms M.M. also mentioned that while in pre-trial detention she had written a letter to the applicants from prison to apologise for having incriminated them. That letter was admitted into evidence by the trial court, at the applicants' request. In the letter the witness had apologised to the applicants and had written that the deposition had been drafted by the investigator while she was giving information regarding the documents presented before her and bearing her signature, and that in her weakened condition she had felt psychological pressure to sign the deposition. During the trial M.M. explained that she had written that letter because she had felt remorseful for testifying against her cousin and the Kadagishvili family. She also told the trial court that the second applicant had told her to implicate a dead employee instead of her, but that she had not felt able to do so. On an

unspecified date in 2006 M.M. confirmed the content of her statement of 29 August 2005 before the trial court.

26. On 29 August 2005 and 18 January 2006 another employee of Gammabank, Mr S.J., the director of the bank's credit card and securities department (see paragraph 13 above) was examined. Noting that he could have been involved in certain financial irregularities, the witness stated that his actions had not been deliberate. He confirmed having been designated as director of one of the shell companies registered by the applicants, without having had anything to do with it in practice. In particular, he noted that he had even forgotten about the existence of that company, which had been managed by the first applicant, whom he trusted, and that he had not had the seal of that company; all financial transactions to and from the shell company had apparently been made by the first applicant. He noted that there had been no contract underlying those financial transactions. He did not know whose money had been laundered.

27. On 13 September 2005, Ms N.P., Director of the Correspondent Accounts Department (see paragraph 13 above), was examined by the trial court. She described, among other things, her functions at the bank, testified to the fact that it had been the first applicant who had managed the bank, and described transfers made to General Charter Bank and subsequent transactions that had been made to the accounts owned by the applicants, as well as certain irregularities in granting loans to various clients without adequate documentation. As to pleading guilty as part of the plea-bargaining procedure, she stated "I [had] pleaded so because the investigation had established that I had committed an unlawful act". The presiding judge enquired into whether the witness had come under any undue pressure to testify, and whether she had been warned that the conclusion of a plea-bargaining agreement would not exempt her from civil liability. N.P. confirmed the absence of pressure, and that she had been given the relevant warning regarding the civil liability, as well as having given her statements in the presence of her lawyers. N.P. confirmed her statement before the trial court on an unspecified date in 2006.

28. On 13 September 2005 Mr A.J., the second applicant's cousin and the Director of General Charter Group – one of Gammabank's shareholders allegedly owned by the applicants and used for various illegal transactions mentioned in the charges – was examined by the first-instance court. He noted that the company in question had not carried out any actual activities, had not had an office, and its seal had been stored in the office of the first applicant's second son (G.K.). A.J. confirmed that he had signed various documents and financial transactions at the first applicant's request. He noted in respect of another company allegedly owned by the applicants and mentioned in respect of the various episodes that he had also been designated as its director, at the request of the first applicant, but that in practice he had not acted as one.

29. On 27 September 2005 Mr D.M., a former accountant and credit officer at Gammabank, was examined as a witness. He confirmed having had a personal account at the bank, but noted that he had never utilised it, and had not had any money in it. When confronted with records of various incoming and outgoing sums of money in respect of that account, he partly modified his pre-trial statement in which he had incriminated the second applicant. D.M. confirmed having signed blank cashier's checks in respect of withdrawals of various amounts of money from his personal account in the bank which he had not himself used, but unlike the statement given at the investigation stage, noted that he did not remember at whose instructions he had signed the orders. When confronted with his pre-trial statement implicating the second applicant as the one who had given him the orders, he explained that those had been different documents. During his subsequent examination in court on 6 October 2005, D.M. noted having been charged with obstruction of justice on account of giving inconsistent witness statements, but he had not considered that to be a form of undue pressure by the prosecution. On 13 December 2005 D.M. gave his statement to a prosecutor as part of the obstruction-of-justice proceedings. He noted having met the second applicant after implicating her, and that the second applicant had rebuked him for naming her, and causing her to be placed in pre-trial detention. That, according to D.M., had been the reason for altering his statement as he had felt sorry for the second applicant. The case-file material contains no information regarding the final outcome of the obstruction-of-justice proceedings. Subsequently, on 6 February 2006 D.M. was examined anew before the Tbilisi City Court. He responded to the parties' and the judge's questions and maintained his initial statement implicating the second applicant in ordering him to sign blank cashier's orders, noting that no undue pressure had been exerted upon him by the prosecution. Noting that he had changed the emphasis in his earlier statement in which he had not explicitly pointed at the second applicant, D.M. stated that his latest statement implicating her was to be considered as the authentic and sincere one. In that connection, the applicants applied to the trial court to have a secret recording of a conversation between D.M. and the second applicant admitted into evidence. D.M. stated that he had not been aware of the conversation having been filmed. The application was dismissed on the grounds that the second applicant had not been a victim of a crime, and her version as to the recording having been made by accident had not been convincing to the court.

30. On 6 October 2005 R.S., a former lawyer of the bank noted that signatures in respect of several documents issuing loans had not belonged to her, and she had never seen those documents before. Another former employee of the bank, G.K., Head of the Audit Service, confirmed having had a personal account at the bank, but noted that he had not utilised it for himself, but had signed a withdrawal order in respect of 12,000 United

States dollars (USD) at the first applicant's request, without withdrawing any money. He also confirmed that he had had several seals made at the first applicant's request. On the same day S.K., the former Director General of the bank, was also examined. He stated that in reality it had been the first applicant who had managed the bank. S.K. explained that he had quit the bank over discovering that certain sums of money to be paid to the State had been relayed to another destination, and generally after developing certain doubts about the legality of various transactions, including those involving General Charter Bank, which had been a foreign bank.

31. On 6 October 2005 Mr Z.G., Gammabank's former director, member of the supervisory board, and director of the internal audit service (see paragraph 13 above) was examined. He noted that certain sums had been diverted to General Charter Bank's account instead of the state budget. The witness confirmed having issued various guarantees on behalf of the bank following the first applicant's instructions.

32. On 18 January 2006 Ms Ts.M., an accounting specialist of Gammabank (see paragraph 13 above) was examined. She confirmed having made transfers to the General Charter Bank's account and from the latter to the applicants' accounts in a converted form.

33. On 14 February 2006 the first-instance court dismissed an application by the applicants that a certain financial expert be questioned in respect of the validity of the financial obligations imposed upon the applicants (see paragraph 10 above). The judge reasoned that the defence had only presented a certificate that the named individual had been a qualified auditor. However, the expert in question had no connection to the criminal case, and had not participated in any procedures related to it either as a specialist or an expert, as required by the domestic legislation.

34. On 6 March 2006 the applicants applied to have the trial court include in the case file a number of different documents which, they believed, could support their arguments. The court allowed that application in part, only accepting copies of documents that had been duly certified and were relevant to the applicants' charges, and rejecting the remainder for failure to comply with those two criteria of certification and relevance. The court also allowed the applicants' request to have certain documentation retrieved from the bank.

35. On 6 March 2006 the applicants applied to have D.M.'s statements declared as inadmissible evidence on account of being contradictory. The application was dismissed on the grounds that the witness statements had not, in the court's opinion, been "diametrically opposed" and therefore substantially inconsistent.

(b) Conviction of 18 April 2006

36. On 18 April 2006 the Tbilisi City Court convicted the applicants of the commission, as an organised criminal group, of various crimes imputed to them.

37. The trial court found that the first applicant had created an organised criminal group with the aim of laundering money and carrying out other illegal actions. The group had comprised the first applicant's wife and two sons (the third applicant and the second son who was at large), and had subsequently involved the employees of Gammabank. Among other things, the first-instance court found that the criminal group had acted in the following manner: various sums of money had flowed from foreign accounts into Gammabank or its correspondent accounts in various banks in Georgia and Russia, allegedly for the purpose of "contributing to the authorised share capital" (*საწესდებო კაპიტალის შევსება)* or with the source's alleged intentions to carry out investment activities. Following one of such wire transfers (in the amount of USD 1,230,244) allegedly for the purpose of "contributing to the authorised share capital", various transfers were made across accounts in January 2004 and subsequently fictitious loan contracts were drawn up in respect of false entities, without those loans actually having been issued, while the money was split into fifteen different amounts, and was eventually returned to the original source in "laundered" form. The documentation seized from the bank pointed to various procedural irregularities in issuing those fictitious loans. The criminal group also used various schemes of money laundering through the shell companies created by it, as well as by means of another bank – General Charter Bank – registered in Montenegro, which had had its licence revoked on 1 August 2002, but the first applicant had illegally used its name, as the criminal group had possessed falsified seals and letterheads in respect of that institution. Some of the laundered money would be accumulated in personal accounts of the employees of the bank which would then be withdrawn by the applicants. In one of the episodes concerning the period between 1 January and 13 July 2004, three companies registered in Russia transferred, through Gammabank's correspondent account in a Russian bank, 2,095,679,603 Russian rubles (RUB, approximately EUR 58,618,500) to an account in Gammabank in respect of a company registered in the United States of America. The criminal group had owned a false seal of the mentioned American company which was retrieved as a result of the search of the bank's office. The criminal group made foreign-exchange trades in respect of the sum received in respect of that American company – which were otherwise detrimental to the bank's interests – with the purpose of laundering and returning money to its original source after various transactions. The thus converted sum was wired to the shell companies owned by the applicants, including the one mentioned in M.M.'s statement (see paragraph 25 above), and was further relayed by means of 2659 wire

transfers. Furthermore, certain amounts due to be paid to the State budget were first relayed to the General Charter Bank, converted into foreign currency, wired to another account, finally to be transferred to the applicants' personal accounts and the shell companies connected to their activities. Certain sums of money were also accumulated in some of the bank employees' personal accounts, later retrieved by the applicants. The first applicant had also committed insurance fraud in favour of one of the shell companies. As confirmed by the results of the search and seizure of Gammabank's offices, the group used various falsified letterheads, electronic signatures, and seals of various companies in order to achieve their aims. The court relied on witness statements of former managers of the shell companies, who had been friends or relatives of the applicants, to conclude that it had been the applicants who had set up and managed those companies in order to commit various illegal transactions. The first-instance court, having applied an Amnesty Act in respect of a part of the charges relating to the period before 1 January 2004, found that out of the total of GEL 11,717,378.03 (approximately EUR 5,326,115) dues and damage to the State only GEL 2,919,882.58 (approximately EUR 1,327,228) was to be considered as having been inflicted and payable.

38. The first applicant was found guilty of all charges related to money laundering, business fraud, embezzlement, forgery of various financial documents and abuse of power. He was also convicted, together with the third applicant, of unlawful possession of a gun, which had been discovered by the police during a search of the applicants' home, and breach of public order. The latter two charges were based on the statements of several witnesses, including two former security guards at the office of the Gammabank. The second and the third applicants were convicted of money-laundering, embezzlement, forgery of various financial documents, and abuse of power in respect of episodes concerning the issuance of the false loans; currency trading and the use of shell companies to conceal the true source, location, movement, and owner of the converted sums; appropriation and laundering of money owed to the State; manufacturing and using of forged seals, signatures, letterheads. The second and the third applicants were acquitted of all charges related to the episodes of insurance fraud, reduction of dues payable to the National Bank, and avoidance of payment in respect of a certain amount to the state budget. The third applicant was also acquitted of the charges concerning the acquisition and storage of firearms.

39. The first applicant was sentenced to eleven years in prison. The second applicant was given a five-year prison sentence suspended on probation. The third applicant was sentenced to nine years in prison.

40. The conviction was primarily based on the statements of sixteen employees of Gammabank, including those of the ten employees who had been convicted of the same financial crimes on the basis of their

plea-bargaining agreements with the prosecution. The Tbilisi City Court additionally noted that the convictions of those ten people had the force of binding precedent, in so far as those final judicial decisions had already established the existence of money laundering and other financial offences committed in direct complicity with the applicants. The court also based its findings on other material, such as the financial and other documents retrieved from the first applicant's second son's (G.K.'s) personal computer and those seized from Gammabank, an expert examination apparently carried out in respect of the relevant documents, and a report obtained from the United States Department of the Treasury ("contained in volume 12 of the case file"). The content of the latter and its relevance to the determination of the applicants' charges was not explained.

41. The conviction of 18 April 2006 also contained a confiscation order in respect of various properties. The Tbilisi City Court ordered, under Article 52 § 3 of the Criminal Code ("CC", see paragraph 88 below), confiscation of those assets, together with any accrued interest, "which [had been] obtained as a result of the criminal activities". The list of confiscated property comprised the following items: all property belonging to the shell companies and other companies indicated in the charges that had been contributed to Gammabank's share capital, sums of money in the applicants' accounts in Gammabank, as well as in the accounts of the impugned companies, and all those companies' movable and immovable assets. The confiscation order also concerned the building where Gammabank's offices had been located, but which, according to the court, "[had been] fictitiously sold to General Charter Bank".

42. Lastly, the City Court also allowed a civil action of the Ministry of Finance, which had joined the criminal proceedings as an injured party, ordering the applicants to compensate the State for pecuniary damage amounting to GEL 2,919,882.58 (approximately EUR 1,327,228).

3. Appellate proceedings

43. On an unspecified date the applicants appealed against their conviction of 18 April 2006.

44. In their submissions, the applicants called into question various findings of fact and law of the Tbilisi City Court, the court's assessment of witness evidence, and reliance on the statements of witnesses who had concluded plea-bargaining agreements with the prosecution, as well as the trial court's statement that the plea-bargaining agreements had had the force of binding precedent. The applicants applied to the Tbilisi Court of Appeal to have some documents concerning Gammabank's activities seized from the National Bank of Georgia. The applicants also claimed that the statements of Mr D.M., Ms M.M., Mr Z.G., and Ms N.P., should be excluded from the case file on account of their incoherence. In addition, they complained that Mr D.M. had been forced to testify against the second

applicant on account of the obstruction-of-justice proceedings against him. The applicants also brought the appellate court's attention to Ms M.M.'s letter in which she had, in the applicants' opinion, acknowledged that she had been induced to testify against them. The applicants further complained that the confiscation order had been a penalty applied to their case retroactively, in so far as its legal basis – Article 52 § 3 of the CC – had been enacted on 28 December 2005, that is to say after the impugned offences had taken place. The applicants also complained that the lower court had failed to establish a link between their activities at Gammabank and the origin of the confiscated property.

45. As disclosed by the case-file material, the appellate court responded to the applicants' arguments regarding the admissibility of evidence that while D.M. had altered his statement on one occasion, he had subsequently explicitly confirmed his pre-trial statement before the trial court. Similarly, M.M., had given a pre-trial statement, and then an identical statement to the trial court in which she adequately explained why she had written a letter to the applicants, and confirmed the correctness of her statements. Two other witness statements challenged by the applicants (Z.G. and N.P.) had also been sufficiently consistent. Therefore, no grounds existed for exclusion of those items of evidence. Regarding the retrieval of certain documents, the appellate court responded that the defence had failed to explain the reason behind lodging such a belated application in respect of facts which had been known at the trial stage, and the relevance of the requested documents had been insufficiently explained.

46. In the course of the appellate proceedings, the first hearing being held on 21 July 2006, the applicants requested that a number of agents from the GPO, who had been involved in the investigation, be examined on suspicion of fabricating the case against them. Noting that their case represented the first case involving the charge of money-laundering, they requested that high-level officials from the FMS and the National Bank of Georgia, who could provide their expert knowledge concerning the elements of that particular financial offence, be examined by the appellate court. These requests were rejected by the Tbilisi Court of Appeal as having no importance for deciding the matter in view of the evidence available in the case file.

47. On 19 September 2006 the applicants requested to admit into evidence a secret recording involving the second applicant and D.M. (see paragraph 29 above). The prosecutor argued that, among other grounds, the recording should be declared inadmissible as it violated the privacy of the witness D.M. and the latter had opposed its release. The applicants' application was dismissed by the appellate court, which noted that it agreed with the lower court's findings in that regard (ibid).

48. As further disclosed by the case-file material relating to the appellate proceedings, the first applicant was placed in a dock situated near the

judges' bench. The dock had glass partitions with several openings (and without a ceiling), with one side being adjacent to the table assigned to the defence counsel. The first applicant asked the presiding judge to allow him to have a small table inside the dock. He explained that he had needed extra space in order to arrange the material necessary for his defence. As disclosed by the case-file material, it was indicated to the applicant that the space in the dock did not allow for the placing of a table therein.

49. On 26 October 2006, during the last hearing before the appellate court, the first applicant exclaimed "whose hands are we in?!" The presiding judge found that expression to be in contempt of court and, noting that the applicant had been previously warned on several occasions in respect of various statements made by him, ordered the first applicant's expulsion from the courtroom. Towards the end of the hearing that day, the lawyer applied to allow the first applicant's return to the courtroom, so that the latter could make his closing statements, but that application was dismissed on the grounds that the first applicant had been given multiple warnings before being expelled, and he would continue his disruptive behaviour if returned to the courtroom. The defence lawyer made closing statements, and a written copy of the applicant's statement was included in the case file.

50. At the same final appellate hearing of 26 October 2006 the applicants' lawyer stated that he needed to familiarise himself with the investigative document obtained from the United States Department of the Treasury mentioned in the lower courts' judgments. The prosecutor noted that the material had been included in the case file. It does not appear that the request was addressed by the court.

51. On 27 October 2006 the Tbilisi Court of Appeal delivered a judgment, dismissing the applicants' appeal and upholding their convictions and sentences. Noting that no new evidence had emerged at the appellate level, the court fully subscribed to the lower court's factual assessment of the case and to its legal considerations. As regards the confiscation order, the appellate court reasoned that, whilst admittedly Article 52 § 3 of the CC had come into force after the offences had been committed, the provision could nevertheless apply retroactively, in so far as the issue of an additional penalty did not affect the scope of the applicants' criminal liability as such.

4. Appeal-on-points-of-law proceedings

52. On an unidentified date the applicants lodged an appeal on points of law against the Tbilisi Court of Appeal's judgment of 27 October 2006. In their appeal the applicants primarily contested the lower courts' findings of fact and their assessment of the evidence and the relevant domestic law. The applicants also complained about the lower courts' decision to admit into evidence the witness statements given by M.M. and D.M., the appellate court's refusal to admit into evidence the video recording provided by the second applicant in respect of D.M., the potential negative impact that the

obstruction-of-justice proceedings may have had upon D.M.'s decision to testify, the first applicant's expulsion from the courtroom by the appellate court, and the legality of the confiscation order and the fines imposed upon the applicants. The appeal on points of law also called into question the severity of the applicants' sentences compared to those individuals who had concluded plea-bargaining agreements with the prosecution. The applicants requested examination on the merits based on the importance of their case as the first case involving the offence of money laundering in Georgia.

53. On 2 February 2007 the Supreme Court rejected the applicants' appeal on points of law as inadmissible. The court stated, without elaborating, that "the case [was] not important for the development of the law and coherent judicial practice; the [contested] decision [did] not differ from the Supreme Court's existing practice in such matters, and the appellate court [had] not examine[d] the case with major procedural flaws which could have significantly affected the outcome of that examination."

5. Subsequent developments

54. On 18 April 2009 the third applicant was pardoned and released from prison.

55. On 10 November 2012 the first applicant was released from prison, apparently as a result of having been granted conditional early release.

56. As it transpires from the case-file material, sometime in 2015 the Chief Prosecutor's Office opened an investigation into exceeding official powers as part of the criminal investigation carried out in the applicants' case. The investigation appears to be ongoing.

B. Conditions of the applicants' detention and their health problems

1. As regards the first and the third applicants

(a) Conditions of detention and medical care at various prison institutions

57. After their arrest on 20 July 2004, the first and the third applicants were placed in a short-term remand prison belonging to the State Security Service.

58. On 20 July 2004 the first applicant was seen by a doctor who noted that he had had type II diabetes since 1994, and had undergone spinal surgery. The doctor concluded that the first applicant was fit to participate in further investigative measures. The first applicant's other health problems, such as the ischemic disease of the heart, cardiac insufficiency, and arterial hypertension (high blood pressure), were noted on a related medical chart.

(i) Tbilisi prison no. 5

59. On 23 July 2004 the first and the third applicants were transferred to cell no. 88 of Tbilisi prison no. 5 ("Tbilisi prison"). According to the applicants, the cell was severely overcrowded, with approximately forty-eight inmates sharing the cell that measured approximately 50 sq. m. They had to take turns sleeping. There was no natural light in the cell, nor air circulation, as the window was covered by external metal shutters. The shutters heated up in summer making it harder to breathe. There was a makeshift shower and toilet inside the cell which was not isolated and therefore made it impossible to use the toilet when someone was eating, and generally rendered the conditions in the cell even more unpleasant. The cell was infested with lice, various insects, and mice. The applicants were not allowed to have outside walks during their detention.

60. On 7 August 2004 the first applicant was transferred from cell no. 88 of Tbilisi prison to the prison hospital. On 14 August 2004 the third applicant was also transferred from cell no. 88 of Tbilisi prison to the prison hospital. The case-file material does not contain information regarding the conditions at the prison hospital or the treatment administered to the first and the third applicants at that institution.

61. According to the case-file material, on 18 September 2004 the third applicant was returned to Tbilisi prison. As it appears from the case-file material, he was placed on the medical ward of that prison. On 16 October 2004 the first applicant was also returned to Tbilisi prison. As it appears from the case-file material, he was placed in cell no. 130 (see paragraph 63 below) until 19 October 2004 – the date of his transfer to the medical ward of the prison in question. The case-file material does not contain information or the applicants' account regarding the conditions at the medical ward of the Tbilisi prison.

62. On 27 October 2005 the first applicant was returned from the medical ward of Tbilisi prison to cell no. 130. He stayed there until 29 November 2005 (with the exception of days spent at a private clinic between 22 and 25 November 2005). The third applicant was also placed in cell no. 130 between 25 October and 25 November 2005.

63. According to the two applicants, cell no. 130 was infested with lice and various insects. It did not have a toilet inside it, and access to the one located outside was limited to three times a day at specific timeslots, which was not sufficient, in particular for the first applicant in view of his diabetes. The cell was neither ventilated in summer nor heated during the winter. It lacked daylight and was filthy. The two applicants shared that cell, which measured 10 sq. m, with four other inmates who were heavy smokers. The applicants were not allowed to have outside walks during their detention. No medical records appear to have been made during the first and the third applicants' placement in cell no. 130.

64. In so far as the first applicant's health condition and medical treatment administered to him in the medical ward are concerned, the relevant medical documentation reveals that the first applicant had complaints in respect of general weakness, headaches, dizziness, pain in the chest area, dry mouth, weight loss, and joint weakness. His condition was monitored by the duty doctor, and various medications were prescribed. He was also seen by an endocrinologist and a cardiologist on several occasions. Between 22 and 25 November 2005 the first applicant was placed in an endocrinology department of a civilian clinic. His diagnosis of type II diabetes since 1994, ischemic disease of the heart, cardiac insufficiency, and high blood pressure was confirmed. He was prescribed treatment with various medications and a special diet.

65. On 2 December 2005 a medical report was issued by a private expert in the field of endocrinology in respect of the first applicant's state of health following a request by the latter. According to the expert opinion based on the first applicant's medical history, various health issues, including liver and kidney problems, from which the first applicant was suffering developed "probably owing to irregular treatment of the [applicant's] diabetes". The expert recommended that the first applicant start insulin therapy under the supervision of an endocrinologist.

66. Several medical notes made on various subsequent dates indicate that the first applicant was following a diabetic diet, without providing any further details. The first applicant also appears to have started receiving insulin injections sometime in the first half of 2006. His blood-sugar levels were monitored regularly.

67. As to the third applicant's health condition and medical treatment administered to him in the medical ward, he was diagnosed with a (pre-existing) pituitary adenoma (a benign brain tumour) and made complaints of weakness, insomnia, and permanent headaches. The third applicant's condition was monitored by a duty doctor. He also appears to have been seen by a neurosurgeon on several occasions. A medical report dated 25 October 2005 mentioned the recommendation of the neurosurgeon that computed tomography (a CT scan) be carried out, but added that "it ha[d] been impossible to implement" the recommendation, without elaborating on the possible reasons. On 29 November 2005 a report drawn up following direct observation by a neurosurgeon, an ophthalmologist, and an endocrinologist, and the results of a computer tomography, the third applicant's condition was assessed as "approaching a satisfactory level". The medical experts concluded that it was necessary to administer prolonged conservative therapy under the supervision of an endocrinologist, neuropathologist, and an ophthalmologist, and necessary to periodically perform a brain scan.

(ii) Rustavi prison no. 2

68. On 7 December 2006 the first and the third applicants were transferred to an ordinary prison cell in Rustavi prison no. 2. The general living conditions – personal space, hygiene, daylight, ventilation, heating and so on – were, as acknowledged by the applicants, better than in the prison in Tbilisi. The two applicants were allowed to take outdoor walks in the yard of Rustavi prison no. 2 every day, between 11 a.m. and 6 p.m., and to receive family visits once a month. The change of bedlinen was infrequent, but the inmates had washing facilities at their disposal. However, the quality of the food they received was, according to the applicants, wholly unsatisfactory, especially in view of their health problems.

69. On 14 December 2006 the first applicant complained to the management of Rustavi prison no. 2 that insulin injections had been administered to him with two-hour delays in the course of the preceding week and that this irregularity might have had a harmful effect on his health. He also denounced the fact that the prison had not been providing him with the requisite diabetic diet. The applicant stated that if the prison management was unable to procure the required products, his family should be granted leave to post the necessary food to him. It does not appear that the applicant received a reply.

70. In so far as the first applicant's medical treatment at Rustavi prison no. 2 is concerned, no medical history appears to have been drawn up in respect of his placement at the prison in question. According to several individual medical notes available in the case file, the first applicant was seen by doctors on some occasions. In particular, on 18 December 2006 the first applicant had a near-hypoglycaemic coma and was seen by a duty doctor of the prison who gave him certain medication to that end. The hypoglycaemic episode repeated itself on 20 January 2007. The duty doctor noted the need to prescribe a diabetic diet. On 5 April 2007 the first applicant had another hypoglycaemic episode and was given a dose of sugar by the duty doctor. On 20 April 2007 the first applicant requested that he be seen by an endocrinologist in view of the impossibility for him to regulate the sugar level in his blood. On 6 June 2007 the first applicant was seen by a doctor who gave him medication for high blood pressure. It was noted that the applicant continued to receive treatment in accordance with his prescriptions, without elaborating further. It is unclear whether the doctor in question was an endocrinologist. On 14 July 2007 the applicant complained to the prison management that because of the lack of fresh air and unbearable heat in his cell, he had suffered cardiac arrest during the previous night. He requested an urgent cardiological examination, including electrocardiography. It does not appear that the letter was answered by the relevant authorities. It is unclear whether the applicant was seen by a cardiologist. No information is available as to the prescriptions mentioned

in the duty doctor's notes, how frequently the medication was administered, to what extent the applicant was supervised, and what the treatment plan had been.

71. As regards the third applicant, a medical note regarding an examination carried out on 8 February 2007 at a private clinic disclosed that in addition to the original diagnosis of a benign brain tumour, he also had stones in the gallbladder, a gastric ulcer, and inflammation of the upper part of the small intestine. No medical history or information is available as to whether these diagnoses were followed up on, what treatment was made available to the third applicant, or if there was any treatment plan in place in his regard.

72. On 9 July 2007 the applicants' representatives before the Court ("the representatives") asked the management of Rustavi prison no. 2 to provide them with a copy of the first and the third applicants' medical files recording the treatment provided to them in prison. The representatives also enquired as to whether the first applicant had been regularly examined by an endocrinologist and provided with the requisite diet. They brought the prison management's attention to the fact that the third applicant had been known to have been suffering from pneumonia and severe kidney pain for two months, thus also requiring a special diet in that regard.

73. On 12 and 13 July 2007 the second applicant asked the prison authority to grant various medical specialists leave to enter Rustavi prison no. 2 in order to conduct comprehensive medical checks and laboratory tests on her husband and son with the aim of developing their treatment plan. She specified that she was ready to cover the costs of that treatment. It does not appear that the letter was answered by the relevant authorities.

74. In a letter dated 24 July 2007, the management of Rustavi prison no. 2 replied to the representatives' letter dated 9 July 2007, stating that the state of health of the first and the third applicants was admittedly of concern, but nevertheless was stable, and that they had benefited from medical care on an outpatient basis from the date of their arrival at that prison. It was noted that the applicants had been regularly provided with the relevant drugs and symptomatic treatment. As regards the first applicant's situation, he had had episodic worsening of his health which had been addressed with symptomatic treatment. The letter acknowledged that the prison management's medical staff did not include an endocrinologist. Yet, the first applicant had still benefited, on one occasion, from an examination by such a specialist, who had been called in from a civil hospital. The endocrinologist did not recommend any adjustment to the conventional outpatient treatment which had already been provided to the first applicant in prison. A specialist would see the first applicant again, should the group of medical experts of the Prison Service visit the prison again. As concerns the third applicant, he had been treated for pneumonia, of which he had

complained on 5 July 2007, and the results of the medical examination of 8 February 2007 (see paragraph 71 above) were reported.

75. The prison management expressly acknowledged in its letter dated 24 July 2007 that the prison had been unable to provide the first and the third applicants with diets necessary for their conditions, and the question of diet remained "an issue". As to the representatives' request for a copy of the applicants' medical files, it was left unanswered.

76. On 7 August 2007 the representatives requested that the Ministry of Justice, the authority in charge of prisons, conduct a comprehensive medical examination of the first and the third applicants, with the participation of the relevant medical specialists, at the State's expense. The representatives also reiterated their request for a copy of the applicants' medical files. The request appears to have been left unanswered.

77. On 14 August 2008 the first applicant complained to the management of Rustavi prison no. 2 of delays in his mealtimes. He specified that, as part of his insulin treatment, it was of vital importance for him to receive meals at the same fixed hours, shortly after receiving insulin injections. The content of his complaint disclosed that Rustavi prison no. 2 had granted, as of March 2007, leave to his family members to procure him products for his diet. However, the applicant was complaining of the prison management's refusal of 14 August 2008 to let the applicants receive the products procured by his family. It does not appear that the applicant received a reply to his complaint regarding mealtimes.

(b) Proceedings before the Court concerning the applicants' state of health

78. On 15 August 2007 the representatives informed the Court that the first and the third applicants' states of health had further deteriorated, given the lack of adequate treatment and requisite diet in Rustavi prison no. 2.

79. On 22 August 2007 the President of the Section advised the Government of Georgia, under Rule 39 of the Rules of Court, in the interests of the parties and the proper conduct of the proceedings before the Court, to transfer the first and the third applicants to a medical establishment capable of dispensing adequate medical treatment for each of their diseases. The President also invited the Government, under Rule 54 § 2 (a) of the Rules of Court, to provide the Court, by 12 September 2007, with detailed facts and figures concerning the financing of the two applicants' medical treatment in prison.

80. On 12 September 2007 the Government submitted, as regards the first applicant, that there was no need for his placement in a medical establishment, even a prison hospital, as he had already been moved to the recently refurbished Rustavi prison no. 2, where the conditions of detention fully corresponded to the relevant international standards. The Government added that Rustavi prison no. 2 had had a medical wing which had consisted of three patient rooms and that the prison's medical staff had been

composed of eight doctors (one surgeon and seven general practitioners) and a dentist. The first applicant was placed there following the indication of the interim measures by the Court on 22 August 2007. No medical documentation was submitted in respect of the first applicant's stay at the medical wing of Rustavi prison no. 2. The Government also informed the Court that, given the first applicant's advanced stage of diabetes, a special medical panel set up by an order dated 11 September 2007 of the Minister of Justice had convened and prescribed him with the special diet, low in fat and carbohydrates. The Government stated the first applicant would immediately be placed in a medical establishment in case of need. The Government also submitted a medical note dated 7 September 2007 by the duty doctor of Rustavi prison no. 2 in respect of the first applicant which mentioned that the latter was an insulin-dependent chronic patient with type II diabetes, ischemic disease of the heart, and high blood pressure. He was, according to the note, under permanent ambulatory medical supervision from the date of his placement at the institution in question, and was provided with the medication prescribed in respect of his diseases.

81. With respect to the third applicant, the Government informed the Court that on 1 September 2007 he had been placed in the prison hospital, where, as confirmed by the submitted medical file, he had started to receive the requisite treatment for his gastric and other disorders. The Government also stated that the costs of the adequate and sufficient treatment of the two applicants had been fully covered by the prison authority.

82. On 18 September 2007 the third applicant refused to undergo an open surgery to remove the gallbladder, offered free of charge at the prison hospital. Instead, on 30 October 2007 the third applicant underwent a laparoscopic removal of the gallbladder at his own expense.

83. On 24 December 2008 the applicants complained before the Court of the Government's failure to submit detailed data concerning the financing of the first and the third applicants' treatment in prison, contrary to what had been requested from them by the President of the Section on 22 August 2007. That fact, according to them, proved that the majority of the costs of the two applicants' treatment had been incurred by their family. They submitted copies of the first applicant's reiterated complaints addressed to the medical staff of Rustavi prison no. 2 in which he had asked the prison authority to provide him, free of charge, with fourteen different types of medication allegedly prescribed to him by a medical panel. They also submitted to the Court a copy of receipts from pharmacies in support of the claim that the costs of the relevant drugs and medical examinations had been incurred by the second applicant.

84. On 23 February 2009 the Government reiterated that the first applicant had been provided with adequate medical care from the very beginning of his detention without submitting any new documents in support of their claim.

85. On 28 October 2010 the first applicant was placed in the prison hospital. On an unspecified date he was transferred to Rustavi prison no. 17 following repeated requests on his part to that end. The Government's subsequent submissions suggested that the first applicant had not complied with the diabetic diet in September and October 2011.

2. As regards the second applicant

86. After her arrest on 21 September 2004 the second applicant was initially placed in a short-term remand prison belonging to the State Security Service. On 24 September 2004 she was transferred to Tbilisi prison no. 5, remaining there until 15 February 2005, the date on which she was released on bail. On 18 April 2006 she received a non-custodial sentence (a five-year prison sentence suspended on probation - see paragraph 39 above).

II. RELEVANT DOMESTIC LAW AND PRACTICE

87. Article 52 of the CC (confiscation of an object or an instrument of a crime), as in force at the time of the commission of the crimes that the applicants were convicted of, provided as follows:

> "1. Confiscation of an object or an instrument of a crime shall mean the confiscation, without compensation, of an item owned or rightfully held by a convicted person [which was] used to commit an intentional crime.
>
> 2. Confiscation of an item shall be decided by a court. Such a measure may be applied on the basis of the State and public necessity or for the protection of the rights and freedoms of individuals or in order to prevent the commission of a new crime."

88. Following the amendments on 28 December 2005, Article 52 of the CC provided as follows:

> "1. Confiscation of property shall mean the confiscation without compensation in favour of the State of the object and/or instrument of the crime or of the article intended for the commission of a crime, and/or of property acquired through criminal means.
>
> 2. Confiscation of the object and/or instrument of the crime, or of the item intended for the commission of a crime shall mean the confiscation without compensation in favour of the State of property owned or rightfully held by the accused or convicted person, which was used for the commission of an intentional crime or of property that was in any form intended for this purpose. The object and/or instrument of the crime, or the item intended for committing a crime shall be confiscated by a court for the commission of all intentional crimes provided for by this Code, when the object and/or the instrument of the crime or the item intended for committing a crime is available and its confiscation is necessary due to public and social interest or for protecting the rights and freedoms of individuals or for preventing new crimes.
>
> 3. Confiscation of property acquired through criminal means shall mean the confiscation without compensation from the convicted person in favour of the State of the property (all property and intangible assets as well as title deeds to property)

acquired through criminal means, also of any proceeds derived from such property or the property of the equivalent value. The court shall order the confiscation of property acquired through criminal means for all intentional crimes provided for in this Code, if it is proved that such property has been acquired by means of a crime."

89. Article 194 of the CC, as it stood at the material time, defined money laundering as "giving a legal form to money or other property, as well as the concealment [of] the source, location, placement, allocation, [or] movement of illicit income, real owner or possessor of property, or [of] a property right".

90. The Code of Criminal Procedure (1998) ("the CCP"), as it stood on 1 January 2004, provided as follows:

Article 113 § 3 [Circumstances established without proof. *Res judicata* effect]

"Facts to which a *res judicata* [quality is attached] can be rebutted by one of the parties to the proceedings, a judgment, or a decision, if such facts are inconsistent with the evidence assessed before a court and go against the judges' inner conviction."

Article 121 (material evidence)

"1. Material evidence includes any item which, owing to its nature and features, provenance, place and time of discovery, [or] traces left on it, is linked to the factual circumstances of a case and which may aid in the finding of truth.

2. Material evidence is an instrument of a crime, object of the criminal action or a trace left on it, criminally obtained money and valuable items, as well as any other item which may be a means of the discovery of a crime, perpetrator, or a means to refute the charges ..."

Article 124 (decision concerning material evidence upon the completion of proceedings)

"In a judgment, [a] decision ... concerning the termination of proceedings the question of material evidence shall be decided as follows:

(a) if an instrument of a crime has no value, it shall be destroyed, if it has value, it shall be subjected to procedural confiscation; ...

(d) Money and valuable items obtained through criminal means shall be used to compensate for the damage inflicted by the crime, [or] transferred to the State if the person to whom the damage was inflicted is not known."

Article 190 (object and grounds for a preliminary injunction to freeze assets)

"1. In order to guarantee a civil lawsuit, monetary sanctions, as well as procedural confiscation and criminal compulsory measures, a court may issue a preliminary freezing order in respect of property, including bank accounts, belonging to a suspect, accused, or a person standing trial, [or] a person materially responsible for his or her actions, if there is information, that the property will be hidden or spent, or that the property had been obtained through criminal means. ..."

Article 201 (return of property upon rehabilitation)

"If an accused or a sentenced person has been rehabilitated, the frozen property ... shall be returned *in natura,* or, if this is impossible, in monetary form, based on the average market price as assessed on the day of rehabilitation."

91. The following provisions were added to the CCP as per amendments of 13 February 2004:

Article 44 (definition of terms)

"...

49. Confiscation of property acquired through criminal means – confiscation of property, as well as income, shares derived from such property, or monetary means equivalent to such property."

Article 509 (resolutive part of a conviction)

"1. The resolutive part of a conviction shall indicate: ...

(n) [a] decision on the forfeiture of property acquired through criminal means and procedural confiscation."

92. In a case concerning the retroactive application of Article 52 of the Criminal Code, the Supreme Court's decision of 2016 (Supreme Court, Chamber of Criminal Cases, Supervisory Decision, no. 17ავ.-2016, 12 July 2016) contains the following quote:

"The Cassation Chamber does not agree with the position that the criminal-case file does not contain a single item of evidence which would confirm that [the author of the appeal on points of law] acquired property by criminal means, and a legislative amendment which worsened his/her legal position had been applied in respect of the confiscation of property (reference was made to Article 52 of the Criminal Code which was amended on 28 December 2005), as it considers that the property was confiscated [by the first-instance court's judgment] not as an additional penalty, but as illicitly obtained, which had been treated as material evidence ..."

93. In a case concerning the application of the principle of *res judicata* in criminal proceedings (Supreme Court, Chamber of Criminal Cases, no. 2კ-76კოლ.-02, 25 December 2001), the Supreme Court noted that according to Article 113 of the Code of Criminal Procedure, facts established in a final judgment could be reviewed in a different set of criminal proceedings if contested by one of the parties to the latter set of proceedings. Such facts would not have a *res judicata* quality if they were found to be inconsistent with the evidence examined as part of the latter proceedings and went against the relevant judges' inner conviction. The Supreme Court thus refused to accept facts established by a final judgment in proceedings to which the person concerned had not been a party as having a *res judicata* quality in the case before it, reasoning that the person in question had consistently contested such facts, and the prosecution had failed to adduce any other evidence to prove his guilt as part of the criminal proceedings against him.

94. The relevant domestic legal provisions concerning plea-bargaining agreements, as in force at the material time, were set out by the Court in the case of *Natsvlishvili and Togonidze v. Georgia* (no. 9043/05, § 49, ECHR 2014 (extracts)).

III. RELEVANT INTERNATIONAL DOCUMENTS

95. The relevant parts of the Report of 30 June 2005 (CPT/Inf (2005) 12) on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ("the CPT") from 18 to 28 November 2003 and from 7 to 14 May 2004, and of the Report of 25 October 2007 (CPT/Inf (2007) 42) on the visit to Georgia carried out by the CPT from 21 March to 2 April 2007 were summarised in the cases of *Ramishvili and Kokhreidze v. Georgia* (no. 1704/06, § 70, 27 January 2009) and *Ghavtadze v. Georgia* (no. 23204/07, § 56, 3 March 2009).

96. The relevant parts of the Human Rights Watch Report "Undue Punishment: abuses against prisoners in Georgia." (Volume 18, No. 8(D) September 2006) were summarised in the case of *Ramishvili and Kokhreidze* (cited above, § 71).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

97. The first and the third applicants complained that they had not received adequate medical care in prison. They further submitted that the conditions of their detention had been contrary to the standards established under Article 3 of the Convention, which reads as follows:

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

98. The Government contested that argument.

A. Admissibility

1. The parties' submissions

99. The Government submitted that the first and the third applicants had failed to exhaust domestic remedies in respect of their complaints concerning the alleged inadequacy of the medical treatment received in prison. In particular, one of the potential courses of action that the applicants could have taken had been to institute judicial proceedings and

request performance of an action by a State agency. They submitted one illustrative case of a first-instance court dated 12 February 2010 which had granted an inmate's request to have certain medical procedures carried out in a private clinic; decisions of first-instance and appellate courts from 2007 and 2008 which had granted an inmate's request not to be transferred to a high-security prison; and a set of judgments from 2007 in respect of internally displaced people in which the Ministry of Labour, Health, and Social Protection had been obliged to take various actions in favour of plaintiffs. The second remedy that the applicants could have pursued had been to institute proceedings for damages in relation to the allegedly inadequate medical care received in prison. That remedy was, according to the Government, still open to the applicants to pursue.

100. The two applicants submitted that the remedies used in the various individual cases referred to by the Government were ineffective in practice and irrelevant in the context of healthcare complaints in prison. The Government had failed, according to the applicants, to demonstrate that the illustrative decisions had ever been enforced. Furthermore, the Penal Code, as it stood at the material time, did not provide for clear guidelines regarding the complaints procedure. Nevertheless, the applicants did complain, on various occasions, to the relevant prison authorities, but to no avail.

2. The Court's assessment

(a) Medical care in prison

101. The relevant general principles regarding the rule of exhaustion of domestic remedies are set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014), among other authorities.

102. Turning to the circumstances of the present case, the Court agrees with the applicants that the Government had failed to demonstrate that the illustrative decisions referred to by it had ever been enforced. Furthermore, the Court has already assessed the effectiveness of the remedies referred to by the Government (see *Goginashvili v. Georgia*, no. 47729/08, §§ 51-61, 4 October 2011). In this connection, the core of the first and the third applicants' complaint relates to the period prior to 1 October 2010, the date when the Penal Code entered into force and established a clear complaints procedure (ibid., §§ 58 and 60). Considering that the applicants alerted the prison authorities to their health-related issues and needs, and their dissatisfaction with the care that had been made available to them (see paragraphs 64-65, 67, 69-70, and 72-77 above), the Prison Service was well aware of the first and the third applicants' medical conditions necessitating treatment and of their complaints in that connection (see *Melnik v. Ukraine*, no. 72286/01, § 70, 28 March 2006; *Sławomir Musiał v. Poland*,

no. 28300/06, § 74, 20 January 2009; and *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 92, 29 November 2007).

103. Therefore, the first and the third applicants' complaint regarding the alleged inadequacy of medical care in prison is not inadmissible under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies. Nor is it manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

(b) Conditions of detention

104. The Court has already considered that it has jurisdiction to apply the six-month rule of its own motion even if the Government have not raised that objection (see *Assanidze v. Georgia* [GC], no. 71503/01, § 160, ECHR 2004-II; *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 29, 29 June 2012; and *Fábián v. Hungary* [GC], no. 78117/13, § 90, 5 September 2017). It will therefore assess the first and the third applicants' compliance with that rule in respect of their complaints concerning conditions of detention at various prison institutions.

(i) Short-term remand prison

105. The Court observes that the first and the third applicants' complaints concerning their detention conditions at the short-term remand prison belonging to the State Security Service was submitted outside the six-month time-limit. In particular, the two applicants were placed in the mentioned institution upon their arrest on 20 July 2004, and were transferred to Tbilisi prison no. 5 on 23 July 2004 (see paragraphs 57 and 59 above). By contrast, the application was lodged with the Court on 3 April 2006. This part of the first and the third applicants' complaints under Article 3 must therefore be rejected under Article 35 §§ 1 and 4 of the Convention.

(ii) Tbilisi prison no. 5

106. As regards the first and the third applicants' placement in Tbilisi prison no. 5 between 23 July 2004 and 7 December 2006, the Court will consider whether their detention in that facility can be considered continuous (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 71-78, 10 January 2012) in view of their temporary stays at the prison hospital and the medical ward of that prison (see paragraphs 60-61 above).

107. The Court notes that the first and the third applicants were initially placed in cell no. 88 which had allegedly been severely overcrowded and had had various problems related to hygiene (see paragraph 59 above). However, in August 2004 they were transferred to the prison hospital. The first applicant spent slightly more than two months and a week there, while

the third applicant stayed at the prison hospital for slightly more than one month (see paragraphs 60-61 above). While both applicants were subsequently returned to Tbilisi prison, the first applicant was placed in ordinary prison cell no. 130 only for three days before being transferred to the medical ward of that prison on 19 October 2004, and the third applicant was immediately placed on the medical ward on 18 September 2004 (see paragraph 61 above). It was only in October 2005, approximately a year after their placement at the medical ward, that the two applicants were transferred to ordinary prison cell no. 130 (see paragraphs 61-63 above). Considering that the applicants' detailed account of the allegedly unfavourable prison conditions only concerns ordinary cells no. 88 and no. 130, and given the difference between the detention regimes of an ordinary prison cell and that of a medical wing of a prison, the Court considers that the applicants' lengthy stay at the medical ward ended, for the purposes of the calculation of the six-month time-limit, the "continuous situation" in respect of the conditions of their detention in ordinary prison cells in July-August and October 2004 (see *Ananyev and Others,* cited above, § 77, *in fine*).

108. Accordingly, as the application was lodged with the Court on 3 April 2006, the first and the third applicants' complaints regarding the prison conditions at ordinary prison cells in July-August and October 2004 were submitted more than six months after the respective detention periods had ended and such complaints must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

109. As concerns the applicants' complaints concerning the conditions of detention during their stay in cell no. 130 in October and November 2005, these complaints were submitted within the six-month time-limit. The latter complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

(iii) Rustavi prison no. 2

110. Considering the above-noted date of lodging of the present application with the Court and the first and the third applicants' placement in Rustavi prison no. 2 on 7 December 2006, their complaints in respect of that prison were also submitted within the six-month time-limit.

111. However, the Court notes that the core of the two applicants' complaints with respect to the conditions of detention at Rustavi prison no. 2 concerned the allegedly poor diet at that prison given the two applicants' health conditions (see paragraph 68 above and paragraphs 114-115 below). This aspect of their submissions will therefore be addressed as part of their complaints relating to the adequacy of medical treatment in prison (see paragraphs 125 and 129 below).

112. As to the conditions of detention at Rustavi prison no. 2, the applicants admitted to a marked improvement compared to the conditions at Tbilisi prison no. 5 (see paragraph 68 above). The Court takes note of the description of those conditions given by the two applicants (see paragraph 68 above) and the absence of a detailed and substantiated complaint on their part (see paragraph 118 below), and considers that no arguable issue arises under Article 3 of the Convention in that regard. This part of the application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(c) Conclusion regarding admissibility of complaints relating to the conditions of detention

113. In the light of the foregoing, the Court declares admissible the first and the third applicants' complaints concerning the conditions of detention during their stay in cell no. 130 of Tbilisi prison no. 5 in October and November 2005.

B. Merits

1. The parties' submissions

(a) Medical care in prison

(i) The first and the third applicants

114. As regards the medical treatment in prison, the first applicant submitted that, especially between the years 2004 and 2007, he had not been provided with adequate care in respect of his diabetes – with which he had been diagnosed before incarceration – as well as various other health issues of his. Daily insulin injections had been routinely administered with a delay of thirty to sixty minutes. Those injections, as well as other medication and examinations for his various health conditions, had been, according to the first applicant, provided to him by his family rather than the State. Until the indication of an interim measure by the Court, the first applicant had been checked by a doctor on several occasions only. The first applicant further maintained that he had not received the special diet required by his health condition as prescribed by a specialist doctor.

115. The third applicant submitted that his state of health had deteriorated during the time spent in prison and that the Government had failed to administer the necessary treatment and a special diet, as expressly admitted by the prison authorities. He also submitted that he had refused to undergo surgery offered to him by the Government following the indication of interim measures by the Court as the Government had failed to provide him with a less painful but more expensive procedure which he eventually

underwent at his own expense. In any event, that procedure was, according to the third applicant, belated.

(ii) The Government

116. The Government maintained that the two applicants had been provided with adequate medical treatment at all times. In particular, in so far as the first applicant was concerned, the insulin injections, while brought into prison by the first applicant's family, were given to the latter as part of the Government's anti-diabetes program. Furthermore, all the necessary medication prescribed by relevant doctors had been provided to the applicant by the State. The first applicant's family had been able to supplement the medication as and when they had chosen. The receipts submitted in support of their claim regarding the availability of medication did not reveal who it had been purchased by or for whom. As regards the first applicant's special diet, it had been provided following a recommendation of a panel of experts on 11 September 2007 and administered accordingly, even though the first applicant's shopping history in prison suggested, according to the Government, that he had not complied with the diet in September and October 2011. As regards the third applicant, his state of health was monitored adequately, and treatment provided in accordance with the doctors' recommendations.

117. In support of their argument, and in so far as the two applicants' stay at Tbilisi prison no. 5 was concerned, the Government referred to the applicants' medical history relating to their time in the medical ward of that prison. As concerns the applicants' placement in Rustavi prison no. 2, the Government relied on a medical note issued by a duty doctor of that prison, and four medical notes made in respect of the first applicant throughout his stay at the prison in question. As concerns the surgery referred to by the third applicant, the Government submitted that it had been the third applicant's choice to have opted for an expensive procedure rather than the standard surgery offered by the Government at the expense of the State.

(b) Conditions of detention

118. The first and the third applicants submitted that the conditions of detention, and especially the severe overcrowding, in cell no. 130 of Tbilisi prison no. 5 had been wholly inadequate.

119. The Government submitted that the conditions of detention in all the relevant penal institutions had been satisfactory, without elaborating on the conditions of detention in Tbilisi prison no. 5.

2. The Court's assessment

(a) Medical care in prison

120. The relevant general principles concerning the adequacy of medical treatment in prisons were summarised by the Court in the cases of *Blokhin v. Russia* ([GC], no. 47152/06, §§ 135-40, ECHR 2016, with further references), *Goginashvili* (cited above, §§ 69-70), *Jeladze v. Georgia* (no. 1871/08, §§ 41-42, 18 December 2012) and *Irakli Mindadze v. Georgia* (no. 17012/09, §§ 39-40, 11 December 2012).

(i) The first applicant

121. Turning to the circumstances of the present case, the Court notes that the first applicant's complaint in relation to the healthcare received in prison concerns the inadequacy of the medical care in respect of his diabetes and the related health issues, the alleged delay in the administration of insulin injections, the failure of the prison authorities to provide him with the necessary special diet, and the supplementation of his medication and medical care by his family.

122. The Court takes note of the Government's submission that the insulin injections, while brought into the prison by the first applicant's family, were provided to them by the State as part of its anti-diabetes program. The first applicant did not dispute being part of that program. Nor did he argue that his family had not obtained the insulin injections through that program. As concerns the allegation that the second applicant had to provide the first applicant with medications, the receipts submitted in support of the claim are not indicative of the buyer or the receiver of that medication (see paragraph 83 above). The Court cannot therefore speculate as to their provenance or relevance to the first applicant's complaint.

123. As to the adequacy of the medical supervision and care administered in respect of the first applicant's health issues, the Court notes that his diagnosis of diabetes and other health conditions were known to the relevant authorities from the time of his initial detention (see paragraph 58 above). While the medical history relating to the first applicant's treatment at the medical ward of Tbilisi prison no. 5 shows that his condition was under constant supervision by a duty doctor of that establishment, and that he also consulted an endocrinologist and a cardiologist on several occasions (see paragraph 64 above), the Court cannot overlook the findings of a private medical expert examining the applicant in December 2005 that the first applicant's health had deteriorated "probably owing to irregular treatment of [his] diabetes" (see paragraph 65 above). In addition, no medical records were established in respect of the first applicant's time in ordinary prison cells of Tbilisi prison no. 5 (see paragraphs 59-63 above).

124. Furthermore, and in any event, the Court notes that no medical history appears to have been drawn up in respect of the first applicant

during his placement at Rustavi prison no. 2 between 7 December 2006 and his transfer to the medical wing of that prison following the Court's indication of interim measures under Rule 39 of the Rules of Court on 22 August 2007. A generic note of the duty doctor, and records of four medical assessments of the first applicant apparently made in response to his hypoglycaemic episodes (see paragraphs 70 and 81 above) cannot be taken as proof of the Government's argument regarding the consistency and adequacy of the medical care administered to the first applicant. On the contrary, the medical notes indicate that the first applicant had crises which were only addressed symptomatically, and do not disclose how the overall situation was managed, if at all. Nor does it appear that during his time in Rustavi prison no. 2 the applicant was regularly seen by an endocrinologist, as had been previously recommended (see paragraph 65 above), except for one occasion (see paragraph 74 above). Furthermore, no record exists in respect of the insulin injections administered to the first applicant at Rustavi prison. The Court hence considers that the Government failed in discharging their burden of proof concerning the availability of adequate medical supervision and treatment to the first applicant in prison (see *Irakli Mindadze*, cited above, § 47, with further references).

125. The situation is aggravated by the inability of Rustavi prison no. 2, as expressly admitted by the relevant authorities, to provide the first applicant with the requisite diabetic diet (see paragraph 75 above) prescribed to him in November 2005 (see paragraph 64 above). The need to provide the first applicant with the special diet was also flagged as an issue by the duty doctor of Rustavi prison no. 2 on 20 January 2007 (see paragraph 70 above). While the authorities appear to have allowed the first applicant's family to provide him with the relevant products as of March 2007 (see paragraph 77 above), his complaint of August 2007 discloses that the products may not have always been let through (ibid.). Therefore, there is no indication that the first applicant's environment in detention was adapted to his state of health (see *Yunusova and Yunusov v. Azerbaijan*, no. 59620/14, § 147, 2 June 2016). This finding cannot be offset by the first applicant's seeming disregard of the diabetic diet four years later, in 2011 (see paragraphs 85 and 116 above).

126. The foregoing considerations are sufficient for the Court to conclude that there has been a violation of Article 3 in so far as the first applicant's medical treatment in prison is concerned.

(ii) The third applicant

127. The third applicant also complained about the inadequacy of medical care in respect of his health issues, and the failure of the prison authorities to provide him with the special diet. Against this background, the Court notes that his diagnosis of a pituitary adenoma (a benign brain tumour) and complaints of weakness, insomnia, and permanent headaches

became known to the prison authorities soon after his placement in detention (see paragraph 67 above). While the medical history relating to the third applicant's treatment in the medical ward of Tbilisi prison no. 5 shows that his condition was under the constant supervision of doctors at that facility, no such history was compiled in respect of his time in ordinary prison cells (see paragraphs 59-63 above). Furthermore, while a medical expert had recommended treating the third applicant by means of conservative therapy under the supervision of an endocrinologist, a neuropathologist and an ophthalmologist, as well as periodically performing brain MRIs (see paragraph 67 above), it is unclear to what extent he was provided with such treatment in the mentioned prison, or what the overall strategy of his treatment was, if any.

128. The Court notes that following his placement in the prison hospital on 1 September 2007, the third applicant was provided with various examinations and treatment, and surgery was proposed (see paragraphs 80, 82, and 84 above), even if the third applicant opted to undergo a more expensive surgical procedure at his own expense (see paragraph 82 above). However, and by contrast, no medical history appears to have been established in respect of the third applicant during his placement in Rustavi prison no. 2 between 7 December 2006 and his transfer to the prison hospital on 1 September 2007 based on the Court's indication of interim measures under Rule 39 of the Rules of Court on 22 August 2007. A record of a medical examination implemented at a private clinic on 8 February 2007 reveals that the third applicant had various health issues (see paragraph 71 above). However, no medical documentation was furnished by the Government to support their argument that the third applicant had been provided with adequate medical supervision and care either in respect of his initial diagnosis and the relevant recommendations (see paragraph 67 above), or in relation to the diagnosis made on 8 February 2007 (see paragraph 71 above). The Court therefore considers that the Government failed in discharging their burden of proof concerning the availability of adequate medical supervision and treatment to the third applicant in prison prior to 1 September 2007 (see *Irakli Mindadze*, cited above, § 47, with further references).

129. The Court is further mindful of the express acknowledgment of the relevant authorities of Rustavi prison no. 2 that they had been unable to provide the third applicant with a diet necessary for his condition (see paragraph 75 above). While the documents do not contain an indication as to whether, or when, the third applicant was prescribed a special diet, the authorities appear to have been well aware of the need to provide him with one. In this connection, there is no indication that the third applicant's environment in detention was adapted to his state of health (see *Yunusova and Yunusov*, cited above, § 147).

130. The foregoing considerations are sufficient for the Court to conclude that there has been a violation of Article 3 in so far as the third applicant's medical treatment in prison is concerned.

(b) Conditions of detention

131. The relevant general principles are set out in *Muršić v. Croatia* ([GC], no. 7334/13, §§ 96-101 and 136-41, 20 October 2016).

132. Turning to the circumstances of the present case, the Court has established on several occasions that the conditions of detention at the material time, especially prison overcrowding, in Tbilisi prison no. 5 were not compatible with Article 3 of the Convention (see *Aliev v. Georgia*, no. 522/04, §§ 79-84, 13 January 2009; *Ramishvili and Kokhreidze*, cited above, §§ 91-93; and *Ghavtadze*, cited above, § 93). Furthermore, the first and the third applicants' description of the prison overcrowding and various other aspects of their conditions of detention in cell no. 130 correspond to the findings made by the CPT and Human Rights Watch in respect of that prison and relating to the same period (see paragraphs 95-96 above, and *Ramishvili and Kokhreidze*, cited above, §§ 70-71). The Court is also mindful of the fact that the Government did not submit any information to counter the first and the third applicants' detailed account in that regard.

133. In the light of the foregoing, the Court finds that there has been a violation of Article 3 of the Convention, in so far as the conditions of the first and the third applicants' detention in cell no. 130 of Tbilisi prison no. 5 in October and December 2005 are concerned.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

134. All three applicants complained that the criminal proceedings against them had been unfair in several respects, they had been denied access to the Supreme Court, and their right to be presumed innocent had been infringed by the manner in which their arrest was covered in the media, and statements made in that context by the investigating authorities. They relied on Article 6 §§ 1, 2, and 3 (d) of the Convention. The first applicant also complained, under Article 6 § 3 (b)-(c) of the Convention, that he had not been given adequate facilities to defend himself on account of being placed in a barred dock during the appellate proceedings, and that he had been expelled from the courtroom at the appellate stage. The provision in question, in so far as relevant, 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 charged with a criminal offence has the following minimum rights:

...

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

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(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

1. The parties' submissions

135. In so far as the right to be presumed innocent was concerned, the Government submitted that the statements of the investigator and the head of the Financial Monitoring Service had been factual and had not even referred to the applicants. As regards the other statements and information aired by the private television channel that the applicants were challenging, those were not attributable to the State, and the applicants had failed to institute civil proceedings under Article 18 of the Civil Code, which provided that "a person is entitled to demand in court the retraction of information that defames his or her honour, dignity, privacy, personal inviolability or business reputation."

136. The applicants submitted that the investigator had mentioned "EUR 10 billion", which had been undoubtedly linked to the applicants. Furthermore, as the news programme in question had used the video material of the search and seizure at Gammabank's offices, such material must have been provided to it by a State agency. They further submitted that the statements of the journalist which they had denounced as a violation of their right to be presumed innocent had to be attributed to the State in view of the fact that the television channel had been, according to the applicants, widely known to have been a supporter of the ruling party at the time. As concerns the remedy under Article 18 of the Civil Code, the applicants submitted that it had been without practical application and, in any event, as it concerned the honour and dignity of a person rather than the presumption of innocence, should be resorted to only after an acquittal.

2. The Court's assessment

137. The Court need not address the Government's objections as to the applicants' complaint concerning their right to be presumed innocent as the complaint in question is in any event inadmissible on another ground.

138. In particular, it is undisputed that the applicants did not raise the matter before the domestic courts – either during their criminal trial or in the course of separate proceedings. Thus, even assuming that no relevant or

effective remedy was available to them, the Court notes that this complaint was raised before it on 3 April 2006, while the event complained of occurred at the end of July 2004 (see paragraphs 8-9 above). Accordingly, this complaint has been introduced out of time and must be rejected, in accordance with Article 35 §§ 1 and 4 of the Convention.

139. As concerns the remainder of the applicants' complaints under Article 6 of the Convention, the Court finds that these complaints 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' submissions

(a) The applicants

140. The applicants complained that the domestic courts' admission in evidence of witness statements of the ten former employees of the bank who had concluded plea-bargaining agreements with the prosecution had been unfair. In particular, they submitted that the plea-bargaining procedure had been implemented in violation of domestic law, had had prejudicial effect, and some of the persons concerned seemed to have misunderstood what their crimes had been, or what the plea-bargaining procedure had meant. The applicants also complained that some of the witnesses had been present at the trial and had been able to witness the proceedings and hear each other's statements, negatively influencing them and the applicants' rights under the Convention.

141. The applicants furthermore complained of the domestic courts' refusal to declare the allegedly inconsistent evidence, such as the statements given by D.M. and M.M., inadmissible, and to examine witnesses on their behalf, including financial experts of their choosing. Furthermore, the initiation of obstruction-of-justice proceedings against witnesses who had retracted their statements in court had constituted undue pressure on them, and had been unfair. The applicants also complained that certain financial documents and a video recording of a conversation between the second applicant and D.M. – the applicants' former colleague who had testified against the second applicant and had allegedly confirmed having been forced to do so – had not been admitted as evidence in court. The applicants also disagreed, in general, with the assessment made by the domestic courts of the facts of the case, the evidence admitted in the case, and the applicable legal provisions.

142. The applicants also submitted that they had not had access to the document obtained from the United States Department of the Treasury,

which had been one of the elements on which their conviction had been based.

143. The first applicant also complained that he had been seated in a barred dock in the courtroom of the appellate court which had not constituted adequate facilities in which to prepare and make his case. Given the absence of a table in that dock, he had been unable to arrange documents and work on the case-file material to efficiently defend himself during the appellate proceedings in a financial case which had required his specialist knowledge. Furthermore, his eventual expulsion from the courtroom had deprived him of an opportunity to deliver his closing statements in person.

144. The applicants furthermore complained of the Supreme Court's refusal to admit their appeal on points of law for examination, stating that their case had been the first of its kind and no relevant precedent had existed, rendering the Supreme Court's consideration of the matter all the more necessary.

(b) The Government

145. The Government submitted that the plea-bargaining procedure had been attended by relevant procedural standards through which the applicants' former colleagues could have given fully informed consent, and the witnesses denied having been subjected to any pressure. Furthermore, the ten witnesses had all attested to the different roles they had played in the criminal schemes employed by the applicants; and their statements had been consistent with those given at the pre-trial investigation stage. While some had been unable to give the legal definition of "money laundering" and "fraud", it had not been their role as witnesses to have done so. Even accepting that some of the witnesses had not been aware of the ultimate goal of their otherwise illegal actions, such a lack of knowledge could not have altered the nature of the criminal activities or the culpability of those involved. In any event, in the Government's submission, the witness statements had constituted only one part of the evidence on which the applicants' conviction rested. The evidence had also included the results of the searches of Gammabank's offices, falsified letterheads, seals, and facsimiles, payment orders in respect of the fictitious companies, documentation obtained from personal computers, documentation received from the United States Department of the Treasury, the Act of Revision, and other items.

146. As concerns the applicants' argument concerning the failure to isolate witnesses and the possible negative impact upon their trial, the Government submitted that while some witnesses may not have been isolated during the hearing of 9 June 2005, the witnesses in question had already given their statements to the investigating authorities, as well as during the court hearing of 21 February 2005 in respect of the plea-bargaining procedure, and subsequently in January 2006 when they had

confirmed their statements in the proceedings against the applicants. Therefore the non-isolation of those witnesses on 9 June 2005 could not have negatively affected the criminal proceedings against the applicants. In any event, the applicants had failed to duly complain about that fact before the Court of Appeal and the Supreme Court.

147. As to the domestic courts' refusal to admit into evidence the covert recording of the conversation between Mr D.M. and the second applicant made by the latter, the Government submitted that matters relating to admissibility of evidence were for the national courts to assess. The domestic courts' refusal to admit the recording in question had been duly reasoned. Furthermore, D.M. had explained to the prosecutor as part of the obstruction-of-justice proceedings on 13 December 2005 that no undue pressure had been exerted on him, and that he had altered the statement out of pity for the second applicant. He had confirmed that position before the trial court in the applicants' case on 6 February 2006. In any event, the applicants' convictions had been based on a body of evidence rather than one statement. As to the institution of the obstruction-of-justice proceedings against two witnesses, that could not have had a negative impact on the criminal proceedings against the applicants owing to the fact that the witnesses in question had been re-heard in the applicants' presence, and the applicants' conviction was based on a body of consistent evidence.

148. The Government also submitted, in so far as admission of new evidence, questioning of witnesses and experts was concerned, that both the prosecution and the defence had been obliged to substantiate the relevance of their applications. Against this background, the applicants had failed to demonstrate the relevance of their applications, as confirmed by the reasoned refusals by the domestic courts. As concerns the applicants' access to the document obtained from the United States Department of the Treasury, the first applicant had duly acquainted himself with volume 12 of the criminal-case-file material, which had contained the document in question.

149. The Government also submitted, in so far as the first applicant's placement in the dock and his subsequent expulsion from the courtroom was concerned, that the first applicant had been permitted to sit at the defence table together with his lawyer and participate in the proceedings before the first-instance court. As for the appellate proceedings, the first applicant had asked to have a small table placed in the dock for him to organise the relevant documents better, but the request had been dismissed owing to the lack of space in the dock. Assessing the proceedings in their entirety, this fact alone could not have led to a violation of his rights under Article 6 of the Convention, considering that the first applicant had been assisted by defence counsel at all times during those proceedings. The latter had defended his interests even after the first applicant had been expelled from the courtroom during the last hearing of the appellate court, several months

after the appellate hearings had started on 21 July 2006, and following six prior warnings given to the first applicant in respect of his behaviour. As the personal attendance of a defendant did not have the same significance for an appellate hearing, the applicant's expulsion, following multiple warnings not to interfere in the administration of justice, had not, in the Government's submission, been in breach of Article 6 of the Convention.

150. The Government further submitted that the Supreme Court, as a court of cassation which did not assess a case on its merits, was a body determining judicial policy of the country and whether a case had important precedential value. Therefore, the Supreme Court's decision to declare the applicants' appeal on points of law inadmissible despite their argument concerning the importance of their case for the development of the Supreme Court's case-law, had been in compliance with their right of access to a court under Article 6 of the Convention.

2. The Court's assessment

(a) General principles

151. Pursuant to Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting States to the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I; *Perez v. France* [GC], no. 47287/99, § 82, ECHR 2004-I; and *Gäfgen v. Germany* [GC], no. 22978/05, § 162, ECHR 2010). While Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Jalloh v. Germany* [GC], no. 54810/00, §§ 94-96, ECHR 2006-IX, and *Erkapić v. Croatia*, no. 51198/08, § 70, 25 April 2013, with further references).

152. The Court's task under the Convention is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among other authorities, *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V).

153. The Court will not, in principle, intervene, unless the decisions reached by the domestic courts appear arbitrary or manifestly unreasonable and provided that the proceedings as a whole were fair, as required by Article 6 § 1 (see *Ilgar Mammadov v. Azerbaijan (no. 2)*, no. 919/15, § 205, 16 November 2017, with further references).

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

154. As the requirements of Article 6 § 3 of the Convention are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 of the Convention (see, among many other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 49, *Reports of Judgments and Decisions* 1997-III), the Court, where appropriate, will examine the applicants' complaints under those two provisions taken together.

(i) Fairness of the criminal proceedings

(α) Plea-bargaining procedure and the domestic courts' treatment of the related witness statements

155. The Court notes that the applicants principally challenged the very fact of the domestic courts' reliance on witness statements given to the trial court in the proceedings against the applicants by those individuals who had concluded plea-bargain agreements with the prosecution, arguing that the plea-bargaining procedure had been implemented in violation of domestic law, had had prejudicial effect, and some witnesses seemed to have misunderstood what their crimes had been, or what the plea-bargaining procedure had meant. Furthermore, some of those witnesses had not, according to the applicants, been isolated during the trial and could have been influenced by the proceedings that they had witnessed.

156. As regards the use of the plea-bargaining procedure, the Court notes that it is a common feature of European criminal-justice systems and, if applied correctly, it can be a successful tool in combating corruption and organised crime (see, among other authorities, *Natsvlishvili and Togonidze*, *v. Georgia* (no. 9043/05, § 90, ECHR 2014 (extracts)). In this context, the plea-bargaining agreements in respect of the ten witnesses were concluded with the participation of their lawyers, all agreements were confirmed by a court, and all ten individuals concerned testified to the absence of any pressure to enter into those agreements (see paragraph 14 above). The procedure was therefore carried out in accordance with the domestic law applicable at the time, and was accompanied by adequate judicial review, with the relevant parties' participation (see *Natsvlishvili and Togonidze*, cited above, §§ 94-95). As regards the applicants' argument that while reaching the plea-bargaining agreements some of these individuals appeared to have been unaware of the legal classification of their actions, the Court notes that such ignorance of the law, even if true, did not render the impugned agreements and their subsequent statements unreliable. In particular, the Court affords importance to the fact that the aforementioned ten individuals each gave statements to the trial court in the applicants' case, and the latter had ample opportunity to cross-examine them. The majority of the witnesses repeatedly confirmed their statements, and gave detailed and consistent information regarding their own role in the crimes with which the

applicants had been charged (see paragraphs 19-20, 22-27, and 31-32 above).

157. Furthermore, while the trial court noted – after reviewing the witness evidence examined before it – that the plea-bargaining agreements concluded with the ten witnesses had had the force of binding precedent (see paragraph 40 above), the Court does not lose sight of the fact that no finding of fact in that procedure was admitted in the applicants' case without full and proper examination at the applicants' trial (contrast and compare *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, § 105, 23 February 2016). Moreover, the domestic legislation and judicial practice, while accepting the potential *res judicata* effect of facts established in final judgments, provided for the verification of the admissibility and credibility of such facts at the request of the parties to the proceedings, and the domestic courts were free not to accept such facts as established if the evidence available in the case-file material before them so warranted (see paragraphs 90 and 93 above). In such circumstances, reference by the trial court to the precedential value of the plea-bargaining agreements confirmed in another set of proceedings did not, in and of itself, have a prejudicial effect on the fairness of the criminal proceedings against the applicants (contrast and compare with *Navalnyy and Ofitserov*, cited above, §§ 107-108). What is more, while the Supreme Court was an effective forum for addressing any such negative impact (see paragraph 93 above), the applicants' cassation appeal did not raise the question of possible prejudicial effect or other impact the plea-bargaining agreements may have had upon the fairness of the criminal proceedings, save for challenging the difference in the respective sentences (compare paragraphs 52 and 93 above).

158. The Court further takes note of the applicants' contention that the alleged non-isolation of some witnesses during one of the hearings negatively influenced the trial (see paragraph 21 above). It remains unclear how many witnesses were present at the trial court's hearing of 9 June 2005. In any event, it does not appear that the applicants duly raised the matter before the appellate and cassation courts in accordance with the applicable procedure. In such circumstances, the Court does not find this aspect of the applicants' complaint to be sufficiently substantiated.

159. Furthermore, and in any event, in finding that the fairness of the proceedings had not been undermined, the Court pays particular regard to the fact that the applicants' conviction was based on a body of evidence including witness statements given by other employees of the bank who had not been part of the plea-bargaining process (see paragraphs 12, 28, and 30 above), and various items of evidence, including false seals and letterheads seized from the bank, financial records, documents retrieved from the first applicant's second son's personal computer, and other evidence (see paragraphs 36-40 above).

160. In the light of the foregoing considerations, and bearing in mind that the applicants had the benefit of adversarial proceedings, the Court finds that no issue arises under Article 6 of the Convention in respect of this aspect of the applicants' complaint concerning the fairness of criminal proceedings.

(β) The domestic courts' treatment of the applicants' applications regarding admissibility of evidence and questioning of witnesses

161. Turning to the applicants' complaints regarding the domestic courts' refusal to admit certain financial documents and a video recording of a conversation between the second applicant and D.M. – their former colleague who had implicated the second applicant and had allegedly admitted having been forced to do so – into evidence, the Court reiterates the general principles established under Article 6 of the Convention whereby it is not the Court's task to substitute its assessment for that of the domestic courts (see paragraphs 151-152 above).

162. Against this background, the Court considers that the applicants' respective applications were duly addressed by the domestic courts. In particular, the domestic courts' refusal to admit into evidence a secret video recording of the second applicant's conversation with D.M. was reasoned on the grounds that the second applicant had not been a direct victim of a crime, and that the second applicant's version as to the provenance of the video recording had not been convincing (see paragraphs 29 and 47 above). As concerns the applicants' arguments concerning the alleged pressure exerted upon the witness M.M., it was also answered by the domestic courts which noted that the witness in question had satisfactorily explained that no pressure had been exerted on her (see paragraphs 25 and 45 above).

163. As regards the applicants' complaint regarding the retraction of statements by two witnesses and the initiation of obstruction-of-justice proceedings against them, such proceedings were instituted in respect of two witnesses – N.B. and D.M. (see paragraphs 23 and 29 above). However, the Court observes that the applicants' complaint before the domestic courts was maintained only in respect of D.M. (see paragraph 52 above). While the domestic courts relied on the statements given by him at the pre-trial stage as well as those given after the initiation of the impugned proceedings, the Court notes that where the domestic judicial authorities are confronted by several conflicting versions of truth offered by the same person, their final preference for a statement given to the investigating authorities over one given in an open court does not in itself raise an issue under the Convention where this preference is substantiated and the statement itself was given of the person's own volition (see, among other authorities, *Lutsenko v. Ukraine*, no. 30663/04, § 49, 18 December 2008, and *Doorson v. the Netherlands*, 26 March 1996, § 78, *Reports* 1996-II).

164. In this connection, the domestic courts, which are normally best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case (see *Karpenko v. Russia*, no. 5605/04, § 80, 13 March 2012), addressed the applicants' related requests to have D.M.'s statements declared inadmissible and took into account D.M.'s arguments concerning the absence of coercion (see paragraphs 35 and 45 above). In addition, the Court particularly notes the fact that the witness in question was re-examined by the trial court after he retracted the initial statement, in the applicants' presence, and the latter were afforded an opportunity to put questions to the witness (contrast and compare *Cabral v. the Netherlands*, no. 37617/10, §§ 10, 13, and 34-37, 28 August 2018, and *Bondar v. Ukraine*, no. 18895/08, §§ 75-82, 16 April 2019).

165. As concerns the applicants' other requests, including those relating to the calling of certain witnesses and admission of certain documents into evidence, they were duly addressed (see paragraphs 33-34 and 45-46 above) by the first-instance court and the Court of Appeal. In the light of the general principles concerning the calling of defence witnesses (see *Murtazaliyeva v. Russia* [GC], no. 36658/05, §§ 150-168, 18 December 2018), the Court does not consider that the trial and appellate courts' refusal to question certain witnesses on the applicants' behalf had a negative impact upon the overall fairness of the proceedings in the applicants' case. Furthermore, and in any event, the Court emphasises the fact that the applicants did not pursue the matter before the Supreme Court (see paragraph 52 above).

166. Additionally, the Court reiterates that the applicants' conviction was based on a large body of corroborating evidence (see paragraph 159 above). The applicants having had the benefit of adversarial proceedings, the Court finds that no issue under Article 6 of the Convention arises on account of the domestic courts' treatment of the applicants' applications regarding admissibility of evidence and questioning of witnesses.

(γ) Access to evidence

167. The Court observes that the applicants' defence lawyer requested access to the investigative document obtained from the United States Department of the Treasury at the final hearing of the appellate court (see paragraph 50 above). However, the first applicant appears to have familiarised himself with the part of the case file which had included the impugned document (compare paragraphs 16 and 40 above), and that document had been included in the list of evidence sent to the trial court (see paragraph 16 above). In the absence of the applicants' complaints regarding the matter either before the first-instance court or the appellate court at an earlier stage of the proceedings, and given that the applicants failed to raise this issue before the Supreme Court (see paragraph 52 above),

the Court does not find the applicants' complaint regarding the limited access to the impugned document to be sufficiently substantiated.

168. Therefore no issue arises under Article 6 of the Convention in this connection.

(δ) The first applicant's placement in a dock during the appellate proceedings, and his subsequent expulsion from the courtroom

169. The Court reiterates that a measure of confinement in the courtroom may affect the fairness of a hearing guaranteed by Article 6 of the Convention. In particular, it may have an impact on the exercise of an accused's rights to participate effectively in the proceedings and to receive practical and effective legal assistance (see *Yaroslav Belousov v. Russia*, nos. 2653/13 and 60980/14, § 149, 4 October 2016).

170. Turning to the circumstances of the present case, the Court affords particular importance to the fact that the first applicant was not placed in a barred dock during the proceedings before the first-instance court, and the applicant was able to fully participate in those proceedings while seated next to his lawyer (see paragraph 18 above, contrast and compare with *Yaroslav Belousov*, cited above, §§ 151-52). The disputed measure was used only at the appellate level and, contrary to the first applicant's submissions referring to a barred dock, he was placed in a dock with glass partitions (see paragraph 48 above). While, in principle, such an arrangement could have had an impact on his powers of concentration and mental alertness, he benefited from the assistance of his defence lawyer throughout the appellate proceedings. Nothing suggests that the applicant's placement in the dock made it impossible for him to communicate confidentially and freely with his lawyer or to communicate freely with the court. The applicant himself did not make such allegations either (see *Ashot Harutyunyan v. Armenia*, no. 34334/04, § 138, 15 June 2010). The Court therefore concludes that the first applicant was able to put his case effectively and it cannot be said that the measure in question placed him at a substantial disadvantage *vis-à-vis* the prosecution.

171. As concerns the first applicant's expulsion from the courtroom of the Tbilisi Court of Appeal, the Court reiterates that the personal attendance of the defendant does not take on the same crucial significance for an appeal hearing as it does for the trial hearing according to the relevant general principles under the Convention (see *Hermi v. Italy* [GC], no. 18114/02, § 60, ECHR 2006-XII, with further references). It particularly notes the fact that the first applicant was expelled after having been given prior warnings (see paragraph 49 above; contrast and compare with *Idalov v. Russia* [GC] no. 5826/03, §§ 176-178, 22 May 2012), and only during the last hearing before the appellate court. Furthermore, the first applicant was duly represented by his defence lawyer who made closing statements, and the first applicant's statement was added by the court to the case file (see

paragraph 49 above). In such circumstances, the Court does not consider that the first applicant's expulsion from the courtroom and his inability to make closing statements in person had been in breach of the requirements under Article 6 of the Convention.

172. In the light of the foregoing, the Court concludes in the circumstances of the present case that there has been no unfairness in respect of the first applicant in the course of the appellate proceedings.

(ε) Conclusion regarding the applicants' complaints concerning the fairness of the criminal proceedings under Article 6 of the Convention

173. In the light of the foregoing considerations, the Court finds that the overall fairness of the proceedings was not undermined in the particular circumstances of the present case. Accordingly, there has been no violation of Article 6 §§ 1 and 3 (b)-(d) of the Convention in respect of the three applicants.

(ii) Access to the Supreme Court

174. The Court reiterates that the "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 33, *Reports* 1997-VIII; *Nersesyan v. Armenia* (dec.), no. 15371/07, § 21, 19 January 2010; and *Kuparadze v. Georgia*, no. 30743/09, § 76, 21 September 2017).

175. The Court has found on several occasions that the introduction and application of admissibility requirements in respect of appeals on points of law lodged with courts of cassation pursue a legitimate aim in the interests of good administration of justice (see *Tchaghiashvili v. Georgia* (dec.), no. 19312/07, § 34, 2 September 2014; *Nersesyan*, cited above, § 22, 19 January 2010; and *Borisenko and Yerevanyan Bazalt Ltd v. Armenia* (dec.), no. 18297/08, 14 April 2009). The Court observes that the Supreme Court of Georgia, unlike the lower courts, does not carry out a full review of a case, such as the assessment of facts and evidence relied on by the former, and the scope of its consideration is limited to specific legal matters (see *Kuparadze*, cited above, §§ 41 and 76). In such circumstances, the Court does not consider that the cassation court's decision not to admit the appeal was disproportionate to the legitimate aim pursued. Furthermore,

as far as the reasoning of the Supreme Court's decision is concerned, the Court reiterates that where a cassation court refuses to accept a case because the legal grounds for it have not been made out, very limited reasoning may satisfy the requirements of Article 6 of the Convention (see *Jaczkó v. Hungary*, no. 40109/03, § 29, 18 July 2006, and *Kuparadze*, cited above, § 76).

176. As regards the applicants' argument concerning the potential precedential value of their case (it was allegedly the first case addressing the crime of money laundering), the Court notes that the question fell within the domestic judicial policy and it was within the Supreme Court's remit to decide whether or not their case had indeed such a value.

177. In the light of the foregoing, the Court finds that there has been no violation of Article 6 § 1 of the Convention on account of the refusal of the Supreme Court to consider the case on its merits.

III. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

178. The applicants complained of the fact that their property had been confiscated as a result of a retroactive application of a criminal sanction. They relied on Article 1 of Protocol No. 1 to the Convention. The Court, of its own motion, categorised the complaint under Article 7 of the Convention, and also notified the Government thereof. The provisions in question read as follows:

Article 7

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

179. Being the master of the characterisation to be given in law to the facts of a case, the Court is not bound by the characterisation given by an applicant or a Government. By virtue of the *jura novit curia* principle, it

has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by the parties. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Molla Sali v. Greece* [GC], no. 20452/14, § 85, 19 December 2018, with further references). Since the main focus of the present case is the retroactive application of a criminal sanction rather than the deprivation of property as such, the Court will consider the case solely under Article 7 of the Convention.

A. Admissibility

180. The Court observes at the outset that the confiscation order concerned several properties (see paragraph 41 above). Among other things, it concerned the building where Gammabank's offices had been located, but which, according to the court, "[had been] fictitiously sold to General Charter Bank". In that connection, the Court takes note of the fact that the building and its supposed ownership was mentioned during the criminal proceedings against the applicants on several occasions (see paragraphs 10, 12, and 20 above). Even though the domestic courts found the selling of that property to have been a sham transaction, and even assuming that it had been indeed owned by the bank, the applicants – who had not been the *de jure* owners of that bank – failed to substantiate their individual titles to that property in order to demonstrate the extent to which they had been affected by the confiscation measure. As concerns the shell companies and the related confiscated property, the applicants had maintained throughout the proceedings the absence of any links to those companies. While the domestic courts established that the applicants had been the *de facto* owners or managers of those companies for the purposes of carrying out various illicit transactions, the Court does not find the applicants' individual titles to the property of such companies sufficiently established in order for the Court to assess the extent to which the confiscation order affected the applicants. This part of their complaint must therefore be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

181. By contrast, the Court will address the application of the confiscation order to the applicants' personal bank accounts. The Court finds that this aspect of the applicants' complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

182. The applicants submitted that their property had been confiscated as a result of a criminal sanction which had been introduced into the law subsequent to the commission of the crimes for which they had been convicted. That had resulted in an application of a more severe penalty than would otherwise have been the case.

183. The Government submitted that domestic legislation had contained various provisions authorising confiscation of illicitly obtained property or instruments of a crime which had predated the applicants' commission of the crimes in question and the impugned legislative amendments of 28 December 2005. Therefore, when engaging in criminal activities, the applicants could have foreseen the possibility of having the property in question confiscated in accordance with the law. In that regard, the amendments of 28 December 2005 had been a mere elaboration of a general rule on confiscation of property that had existed in the Criminal Code and the procedural confiscation rules provided for in the existing Code of Criminal Procedure.

2. The Court's assessment

184. The Court reiterates that according to its well-established case-law, offences and the relevant penalties must be clearly defined by law. This requirement is satisfied where the individual can know from the wording of the relevant provision, if need be with the assistance of the courts' interpretation of it and after taking appropriate legal advice, what acts and omissions will make him criminally liable and what penalty he faces on that account. The Court must therefore verify that at the time when an accused person performed the act which led to his being prosecuted and convicted there was in force a legal provision which made that act punishable, and that the punishment imposed did not exceed the limits fixed by that provision (see *Berardi and Mularoni v. San Marino*, nos. 24705/16 and 24818/16, §§ 40-41, 10 January 2019; see also *Coëme and Others v Belgium*, nos. 32492/96 and 4 others, § 145, ECHR 2000-VII; *Achour v. France* [GC], no. 67335/01, § 43, ECHR 2006-IV; and *Del Río Prada v. Spain* [GC], no. 42750/09, § 80, ECHR 2013).

185. Turning to the circumstances of the present case, the Court notes that the essence of the applicants' argument is that the application of Article 52 § 3 of the Criminal Code, as amended on 28 December 2005 – that is to say subsequent to the commission of the crimes for which they had been convicted – had constituted a retroactive application of a more severe penalty than would otherwise have been the case.

186. In this context, the Court observes that Article 52 § 3 of the Criminal Code did not exist at the time the crimes imputed to the applicants were committed (compare the pre- and post-28 December 2005 versions of the said provision in paragraphs 87-88 above). Assuming that the confiscation order constitutes a penalty according to Article 7, the CCP had provided for the courts' jurisdiction to confiscate property obtained through illegal means well before the impugned amendments were enacted (see paragraphs 90-91 above). In particular, the CCP, as it stood before 1 January 2004 – the date which was taken by the domestic courts as the starting point for the applicants' criminal responsibility in view of an Amnesty Act applied to their case (see paragraph 37 above, *in fine*) – provided for the confiscation of property obtained through criminal means on different grounds.

187. Firstly, under Articles 121 and 124 of the CCP, if such property had been viewed as material evidence, it could have been subjected to confiscation following a conviction (see paragraphs 90 and 92 above).

188. Alternatively, and more importantly, Article 190 of the CCP provided, among other things, for the application of an injunction order to freeze assets which "had been obtained through criminal means", the return of which was foreseen by Article 201 of the CCP only in cases of rehabilitation (see paragraph 90 above), that is to say that confiscation of such assets would have been effected in case of a conviction. In this connection, the Court notes that the applicants' bank accounts had been frozen under Article 190 of the CCP (see paragraph 11 above). Furthermore, the Court does not lose sight of the fact that when convicting the applicants the domestic courts established that illicit sums of money had been transferred to the applicants' personal bank accounts (see paragraphs 37 and 51 above). Accordingly, in view of the above-noted legal provisions which had been relied on when freezing the applicants' assets, the applicants' conviction would have resulted in the loss of the property concerned even in the absence of Article 52 § 3 of the Criminal Code.

189. In the light of the foregoing, the Court finds that the application of Article 52 § 3 of the Criminal Code to the applicants, even if adopted subsequent to the commission of the crimes in question, did not amount, in substance, to the retroactive application of a penalty. The confiscation of criminally obtained property would have taken place in any event, even if based on the provisions of the Code of Criminal Procedure rather than the Criminal Code. In such circumstances, the applicants did not face a more far-reaching detriment than they would have, had the provision in question not been applied (see *Rohlena v. the Czech Republic* [GC], no. 59552/08, § 69, ECHR 2015 and contrast *Welch v. the United Kingdom*, 9 February 1995, § 34, Series A no. 307-A).

Therefore, there has been no violation of Article 7 of the Convention in the particular circumstances of the present case.

IV. COMPLIANCE WITH ARTICLE 34 OF THE CONVENTION

190. The applicants complained that the Government had failed to comply with the letter and spirit of the interim measure indicated by the Court under Rule 39 and had thus violated their right of individual application. The first applicant also complained, without providing a detailed account or evidence, that his representatives had been prevented on two occasions to enter the prison hospital to finalise the response to the Government's observations. They relied on Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' submissions

191. The Government submitted that they had complied with the interim measure indicated by the Court by transferring the third applicant to the prison hospital and administering the requisite examinations and treatment to him. As concerns the first applicant, there had been no need to place him in the prison hospital as Rustavi prison no. 2 had been recently refurbished, with a medical ward in which the first applicant had been subsequently placed.

192. The first applicant reiterated his complaint that the Government had failed to abide by the interim measures of 22 August 2007 by failing to place him at the prison hospital until 28 October 2010. He further noted that he should have been placed in a civilian hospital rather than the prison hospital. As concerns the third applicant, the prison hospital had not been an adequate medical facility. The first applicant also submitted that on 21 July and 15 August 2011 his representatives before the Court were prevented from meeting him in prison to discuss his position in respect of the Government's observations before the Court.

B. The Court's assessment

193. The relevant general principles have been summarised in, among other authorities, *Yunusova and Yunusov* (cited above, §§ 109-12).

194. Turning to the circumstances of the present case, the Court notes that the first applicant's complaint concerning the inability to meet his representatives on two occasions to discuss his position in respect of the Government's observations before the Court lacked further elaboration and

was unsupported by any evidence. Therefore the Court does not consider it to have been sufficiently substantiated to warrant consideration.

195. By contrast, on 22 August 2007 the Court advised the Government of Georgia, under Rule 39 of the Rules of Court, in the interests of the parties and the proper conduct of the proceedings before the Court, to transfer the first and the third applicants to a medical establishment capable of dispensing adequate medical treatment for each of their diseases.

196. Following the indication of the interim measure, on 12 September 2007 and 23 February 2009 the Government provided the Court with letters containing an overview of the two applicants' medical conditions. The letters indicated that the third applicant had been placed in the prison hospital, and the relevant medical documentation demonstrated that he had received various medical examinations and treatment. As concerns the first applicant's state of health, the Government submitted that it had been stable and had not required his transfer to a medical facility, in view of the fact that Rustavi prison no. 2 had been a newly refurbished prison with a medical ward in which the first applicant had been placed (see paragraphs 80 and 84 above). However, no medical documents were attached in support of the argument except for a generic note of a duty doctor of Rustavi prison no. 2 stating that the first applicant had been a chronic diabetic patient and had been receiving adequate treatment (see paragraph 81 above). It was only on 28 October 2010, more than three years following the indication of the interim measures to the Government that the first applicant was placed in the prison hospital (see paragraph 85 above). However, given the considerable gap of time between the two events, the Court considers that such placement did not follow the interim measures of 22 August 2007 but constituted a separate action falling beyond the scope of the interim measure in question.

197. In this connection, the Court observes that the Government did not dispute their obligation under Article 34 of the Convention to comply with the interim measure indicated by the Court. Rather, they disputed the applicants' submissions and insisted that they had complied with the interim measure in its entirety.

198. The Court will address the situation of the two applicants in turn.

199. In so far as the first applicant is concerned, the Court cannot accept the Government's submissions that all the material relevant to the first applicant's state of health and medical treatment were submitted to the Court, and that the existing case-file material demonstrated the absence of the need to place him in a medical establishment. The Court has already found that no medical history existed in respect of the first applicant's time in Rustavi prison no. 2 (see paragraph 124 above). Against that background, the provision of a generic note of a duty doctor of that prison, stating that the first applicant's condition was stable and that he had been provided with adequate treatment on the medical ward of the prison cannot suffice to

support the Government's argument that there was no need to place him at an external or dedicated prison medical facility.

200. In this connection, the Court reiterates that whilst the formulation of an interim measure is one of the elements to be taken into account in the Court's analysis of whether a State has complied with its obligations under Article 34, the Court must have regard not only to the letter but also to the spirit of the interim measure indicated (see *Paladi v. Moldova* [GC], no. 39806/05, § 91, 10 March 2009, and *Patranin v. Russia*, no. 12983/14, § 52, 23 July 2015) and, indeed, to its very purpose. The Court notes in this respect that the main purpose of the interim measure in the present case – and the Government did not claim to be unaware of this – was to prevent the applicants' exposure to inhuman and degrading suffering in view of their poor health. In its interim measure the Court therefore advised the Government to transfer the applicants to a medical establishment capable of dispensing adequate medical treatment for each of their diseases. The applicants contest to have been transferred to the proper establishments and to have received the adequate treatment. In these circumstances, it is crucial for the Court to be provided information by the Government concerning the applicants' state of health supported by the relevant medical documents, without which the Court would not be able to assess the quality of the treatment the applicants received and the adequacy of the conditions of their detention for their medical needs.

201. The Court thus considers that the Government's failure to provide the Court with the relevant medical documents and its insistence that there was no need to place the first applicant in an external or dedicated prison medical establishment, without demonstrating that the facility (medical ward of Rustavi prison no. 2) where the first applicant was placed had been able to provide him with the adequate treatment for each of his diseases, impaired the content and purpose of the interim measure. Accordingly, in so far as the first applicant is concerned, the Government failed to demonstrate to the Court that the interim measure was complied with.

202. By contrast, and in so far as the third applicant is concerned, having regard to the information and the medical documentation provided to it by the Government (see paragraph 80 above), the Court is satisfied that by placing the third applicant at the prison hospital the Government complied with the interim measure indicated by the Court.

203. In the light of the foregoing, and in so far as the first applicant is concerned, the Court concludes that the respondent State has failed, in the present case, to comply with the interim measure indicated under Rule 39 of the Rules of Court, in breach of its obligation under Article 34 of the Convention. By contrast, the Government complied with the interim measure indicated by the Court in so far as the third applicant is concerned.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

204. Relying on Article 3 of the Convention, the second applicant complained of the inadequacy of prison conditions during her detention. However, the Court notes that the second applicant was released on 15 February 2005 (see paragraph 86 above). As the application was submitted to the Court on 3 April 2006, this complaint was introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

205. As to the applicants' remaining complaints, the Court finds that, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

206. 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

207. The applicants claimed 8,289,648.62 euros (EUR) jointly and EUR 150,000 each in respect of pecuniary and non-pecuniary damage, respectively.

208. The Government submitted that the applicants' claim in respect of pecuniary damage was unsubstantiated and not supported by any evidence. As regards the claims in respect of non-pecuniary damage, the requested sum was highly excessive.

209. The Court, on the one hand, does not discern a causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the first and the third applicants must have suffered distress on account of the violations found. Therefore the Court, ruling on an equitable basis, as required by Article 41 of the Convention, awards the first and the third applicants EUR 12,000 each in respect of non-pecuniary damage.

B. Costs and expenses

210. The applicants also claimed a total of EUR 13,174 for legal costs and other expenses incurred before the Court.

211. The Government contested the claim as unsupported by evidence.

212. 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 above criteria and the absence of relevant documents, the Court decides that no award shall be made under this head.

C. Default interest

213. 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, UNANIMOUSLY,

1. *Declares* the complaints under Article 3 of the Convention concerning the first and the third applicants' conditions of detention in cell no. 130 of Tbilisi prison no. 5, and their complaints in respect of the medical treatment in prison; the complaints under Article 6 §§ 1 and 3 of the Convention concerning the fairness of the criminal proceedings against the three applicants and their right of access to a court, as well as the three applicants' complaints under Article 7 of the Convention concerning the imposition of a confiscation order in respect of their personal bank accounts admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first and the third applicants' conditions of detention at Tbilisi prison no. 5;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first and the third applicants' medical treatment in prison;

4. *Holds* that there has been no violation of Article 6 §§ 1 and 3 of the Convention in respect of the fairness of the criminal proceedings;

5. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the right of access to a court;

6. *Holds* that there has been no violation of Article 7 of the Convention;

7. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention in respect of the first applicant;

8. *Holds* that the respondent State has not failed to comply with its obligations under Article 34 of the Convention in respect of the third applicant;

9. *Holds*
(a) that the respondent State is to pay the first and the third applicants each, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve 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;

10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Síofra O'Leary
Deputy Registrar	President