



Unjustified custodial sentence for non-violent conduct during a demonstration

In today's **Chamber judgment**¹ in the case of [Chkhartishvili v. Georgia](#) (application no. 31349/20) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 11 (freedom of assembly) read in the light of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the applicant's arrest in 2019 at a demonstration for disobeying police orders to move off the road and throwing beans at the police, shouting that beans used to be "gruel for slaves". The demonstration in Tbilisi was part of a series of protests about Parliament's failure to approve electoral reform. Mr Chkhartishvili was brought before a judge and found guilty of insulting and disobeying lawful police orders. He was sentenced to eight days' administrative detention.

The Court found that Mr Chkhartishvili had been given a custodial sentence mainly because of the way he had expressed his views, rather than for disobeying police orders to move off the road. It did not consider that the grounds cited in the trial court's judgment were sufficient in themselves to render the sanction proportionate. In particular, it did not appear that the conditions provided for by law for counting the applicant's previous administrative-offence convictions as an aggravating factor had been met. The Court held that, in the absence of appropriate reasoning, a custodial sanction for the applicant's non-violent – even if disruptive – conduct had not been justified.

Principal facts

The applicant, Lasha Chkhartishvili, is a Georgian national who was born in 1980 and lives in Tbilisi (Georgia). He is a civil-society activist and member of the Georgian Labour Party.

On the morning of 29 November 2019, Mr Chkhartishvili took part in a demonstration in front of the public library in Tbilisi, where the Minister of Justice was scheduled to give a speech. The demonstration, attended by a couple of hundred protesters, was one in a series of protests about Parliament's failure to approve electoral reform. The video coverage of the event shows the police telling them not to block the road or the entrance to the building. At some point, Mr Chkhartishvili can be seen throwing beans at the police and shouting that beans used to be "gruel for slaves". He was arrested immediately and escorted to the Tbilisi police station for having allegedly committed offences under two articles of the Code of Administrative Offences. According to the administrative-offence report, the applicant had blocked the road, breached public order, insulted the police and disobeyed their orders.

He was brought before a judge that afternoon. After criticising and interrupting the judge loudly several times, Mr Chkhartishvili was fined 300 Georgian laris (GEL) for contempt of court. After a further warning, he was removed from the court and the case was heard in his absence.

Mr Chkhartishvili's defence lawyer requested that the trial be adjourned, stating that she had not been able to meet with him prior to the trial and that she needed time to familiarise herself with the case file and to collect evidence. The judge granted the request and adjourned the hearing for three

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

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

hours and ten minutes. Once the hearing resumed, he rejected the defence lawyer's further requests for Mr Chkhartishvili to be questioned as a witness, for the trial to be postponed again, and for Mr Chkhartishvili to be released from detention.

During the hearing the officer who wrote the administrative-offence report stated, among other things, that on at least two previous occasions – in 2008 and 2014 – Mr Chkhartishvili had received administrative fines. The officer requested that the trial court apply a stricter sanction as a deterrent for the future. Mr Chkhartishvili's representative contested the officer's submission as unsubstantiated and irrelevant.

That same afternoon, the Tbilisi City Court found Mr Chkhartishvili guilty of insulting and disobeying police orders. He was sentenced to eight days' administrative detention. The court clarified that calling the police officers 'slaves' was insulting and degrading and incurred liability under Georgian legislation. It held that such actions could not be considered as a form of protest.

A subsequent appeal lodged by Mr Chkhartishvili – who complained that the trial court had relied exclusively on the police officers' account, that it was not clear which lawful orders he had disobeyed and that his arrest and conviction were not justified – was rejected as inadmissible.

Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair hearing), Article 10 (freedom of expression) and Article 11 (freedom of assembly), the applicant complained that he had not had a fair hearing, and that his arrest and the custodial sentence had amounted to an unjustified interference with his rights. The applicant also complained under Article 5 § 1 (c) (right to liberty and security) that his administrative arrest and detention on 29 November 2019 had been unlawful and arbitrary.

The application was lodged with the European Court of Human Rights on 19 June 2020.

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

Georges **Ravarani** (Luxembourg), *President*,
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Lado **Chanturia** (Georgia),
María **Elósegui** (Spain),
Kateřina **Šimáčková** (the Czech Republic),
Mykola **Gnatovskyy** (Ukraine),

and also Victor **Soloveytchik**, *Section Registrar*.

Decision of the Court

Article 6

The Court did not find it established that the authorities had hindered contact between Mr Chkhartishvili and his representative. It observed that although the hearing had been adjourned for more than three hours, his lawyer had continued to maintain that she had been unable to see him. However, she had provided no plausible explanation or proof and had not lodged a complaint.

In response to Mr Chkhartishvili's complaint that his removal from the courtroom had prevented him from being able to participate effectively in the proceedings, the Court held that it was a normal duty of the trial panel to maintain order in the courtroom, and the rules applied equally to everyone. It acknowledged that Mr Chkhartishvili's behaviour had amounted to flagrant disrespect of elementary standards of proper conduct and noted that the judge had warned him that he would be

made to leave the room if he did not stop interrupting. With his saying that he did not care, he could be considered to have waived his right to be present. Moreover, his representative had remained in the courtroom and had made submissions on his behalf.

Lastly, as regards his complaint that the national courts had relied only on the statements of the police officers, the Court did not consider that the burden of proof had been shifted to the applicant, as one of the charges against him had been dropped for lack of evidence, despite the police officers' statements. There were also video-recordings of the event in the case file.

The Court concluded that the proceedings against the applicant had been conducted in compliance with the requirements under Article 6 §§ 1 and 3 (b) and (c) of the Convention. It found the applicant's related complaints ill-founded and rejected this part of the application.

Article 11 read in the light of Article 10

The Court examined the complaints regarding Mr Chkhartishvili's arrest and custodial sentence under Article 11 alone, considered in the light of Article 10.

The interference with Mr Chkhartishvili's right to freedom of peaceful assembly had been based on Article 173 of the Code of Administrative Offences, with the legitimate aim of preventing disorder and protecting rights of others. It was necessary to determine whether the interference, considered in the light of the right to freedom of expression, was proportionate and answered a "pressing social need", taking into account the nature and severity of the penalties imposed.

The Court noted that the demonstration of 29 November 2019 had been part of a series of protests against Parliament's failure to approve electoral reform as previously planned. That matter was of public interest and contributed to the ongoing debate in society. Very strong reasons were therefore needed to justify the restriction on Mr Chkhartishvili's expression of his opinions during the demonstration.

On the one hand, the Court noted that public servants acting in an official capacity are subject to wider limits of acceptable criticism than ordinary citizens and a certain degree of immoderation may fall within those limits. On the other hand, the Court could not overlook the fact that Mr Chkhartishvili had thrown dried beans at the police in public while the officers had been doing their job. Nevertheless, the Court took note of the fact that the applicant had not been violent, and the beans had not injured anyone or led to an escalation of violence. Indeed, the demonstration itself had been peaceful, with a large number taking part. By saying what he had said when throwing the beans, Mr Chkhartishvili – a politician – could have been conveying the opinion that the police officers supported the ruling party which had been at the source of the failed reform. The Court recalled that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed. Accordingly, even if the applicant's conduct might have justified an intervention by the authorities, they must have known that the custodial sanction was being applied in the context of the exercise of a fundamental freedom, thus calling for a particularly careful approach.

The Court considered that Mr Chkhartishvili had been given an eight-day administrative detention mainly because of the way he had expressed his views, rather than for not moving off the road. However, the domestic courts' reasoning regarding their decision to impose the custodial sanction did not address the broader context behind the applicant's conduct. Additionally, the Court did not consider that the grounds cited in the trial court's judgment were sufficient in themselves to render the sanction proportionate. Namely, it did not appear that the conditions provided for in the law for counting his previous administrative-offence convictions had been met, as they had happened well in the past. In the absence of appropriate reasoning, and in a context of exercising rights to freedom of expression and assembly, a custodial sanction for the applicant's non-violent – even if disruptive – conduct was not justified. The Court concluded that there had therefore been a violation of Article 11 of the Convention read in the light of Article 10.

Article 5

As Mr Chkhartishvili's pre-trial detention had ended on 29 November 2019, the Court found that this part of the application had been lodged outside the sixth-month time-limit and rejected it as inadmissible.

Just satisfaction (Article 41)

The Court held that Georgia was to pay the applicant 1,200 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.