FIFTH SECTION

**CASE OF MINDADZE AND NEMSITSVERIDZE v. GEORGIA**

*(Application no. 21571/05)*

JUDGMENT

STRASBOURG

1 June 2017

FINAL

01/09/2017

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

In the case of Mindadze and Nemsitsveridze v. Georgia,

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

Angelika Nußberger, *President,* Nona Tsotsoria, André Potocki, Yonko Grozev, Mārtiņš Mits, Gabriele Kucsko-Stadlmayer, Lәtif Hüseynov, *judges,*  
and Milan Blaško, *Deputy* *Section Registrar,*

Having deliberated in private on 2 May 2017,

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

PROCEDURE

1.  The case originated in an application (no. 21571/05) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Georgian nationals, Mr David Mindadze (“the first applicant”) and Mr Valerian Nemsitsveridze (“the second applicant”), on 9 May 2005.

2.  The applicants were represented by Ms T. Gabisonia and Ms M. Gioshvili, 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 first applicant had been subjected to ill-treatment by the police upon his arrest, that the conditions and a period of both applicants’ pre-trial detention had been, respectively, poor and unlawful, that certain detention orders had lacked adequate reasons and that the criminal proceedings against both applicants had been unfair.

4.  On 17 November 2009 the Court adopted a partial inadmissibility decision, giving notice of the remaining complaints to the Government.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  The applicants were born in 1977 and 1979 respectively and live in Tbilisi and Tskaltubo.

A.  The applicants’ arrest and initial investigative actions

6.  On 20 January 2004 criminal proceedings were brought against unidentified people following an armed attack on K.G., a member of the Georgian Parliament (“the member of parliament”).

7.  On 4 February 2004 the victim was questioned for the first time by an investigator. A photofit image of the attacker was created with the help of the victim’s description, but the member of parliament also added that he did not know who the attacker was.

8.  On 25 February 2004 the investigator drew up a report on the handing in to the police of a PSM pistol, equipped with a silencer, by a woman and her child. Notably, according to the report, the child had found the weapon while playing with his mother in the back yard of their house, close to where the member of parliament had been attacked. The report on the handing in of the gun was also signed by two taxi drivers and an interpreter.

9.  On 13 May 2004, at around 10 a.m., the first applicant, who had two convictions for robbery and drugs offences, was arrested in the street in connection with the above-mentioned criminal case on suspicion of attempted murder. He was searched in the presence of two witnesses at the time of his arrest, which revealed that he was in possession of a Browning pistol.

10.  The applicant was taken under arrest to Tbilisi police headquarters and put in an office to be questioned by a police officer, D.Ch. He confessed during the interview to conspiring with the second applicant to murder the member of parliament. In particular, as noted in the police report of 13 May 2004, the first applicant stated that he had been contacted by the second applicant in the autumn of 2003 and offered 10,000 United States dollars (USD) to kill a man whose identity was not specified at the time. The second applicant had therefore driven him to the building where the victim lived, without explaining the reasons for the murder. He had furnished him with a PSM pistol, which had been loaded and fitted with a silencer. From that date onwards the first applicant had regularly gone to the building, however, he had not tried to kill the victim on those occasions. The second applicant had telephoned him and insisted that he carry out the plan. On 19 January 2004, the first applicant had successfully entered a garage at the same time as the victim, had fired shots at him until he had run out of ammunition and then fled. Later that evening, the second applicant had called him to express his discontent because the victim, although seriously injured, had survived. A few days later, the first applicant had learnt from the television that the man he had tried to kill was a member of parliament.

11.  According to the record of the questioning of 13 May 2004, the first applicant had been feeling remorse and had wanted to give himself up to the police for some time. He told the investigator that his confession was sincere, that he regretted committing the crime and was relieved to have been arrested. The first applicant had no lawyer present during the questioning and did not sign the record of it. As subsequently explained by P.B., an investigator in charge of the applicant’s case from the Tbilisi City public prosecutor’s office (“the investigator”), the reason the applicant did not sign the record was that he had lost consciousness several times during the interview and had had to be brought round with cold water.

12.  At 5.15 p.m. that day, 13 May 2004, the investigator formally charged the first applicant with attempted murder, based on his confession, and, without informing the latter of his right to call in a lawyer of his own choice, assigned a public defence lawyer to him; according to the case materials, that public lawyer was dismissed by the applicant on 4 June 2004 (see paragraph 23 below), and, in general, the latter replaced his defence lawyers several times as the criminal proceedings unfolded. The first applicant was taken to the scene of the crime for a reconstruction of the events, and asked to repeat his confession there, which he did in the presence of the public defence lawyer and two independent witnesses. The applicant repeated his confession word for word, again implicating the second applicant and adding that he hoped that his sincere confession would be taken into account as a mitigating circumstance. The statements given during the reconstruction were recorded in writing, with the written record bearing the signatures of both the first applicant and the lawyer appointed for him.

13.  Later the same day, the first applicant was brought face-to-face with the victim in a formal confrontation. He was lined up with three other people in front of the member of parliament, who, after some hesitation, identified him as the attacker. After the identification parade, the member of parliament asked to speak privately with the first applicant and was allowed to do so. No one else was present during their talk.

14.  The investigator then showed the first applicant the PSM pistol and silencer which had been handed in to the police by the two independent witnesses on 25 February 2004 (see paragraph 8 above). The applicant stated that he recognised the gun as the one he had used to attack the victim. The identification procedure was recorded in writing and was signed by the first applicant’s public defence lawyer.

15.  On 13 May 2004 the second applicant was also arrested and charged with attempted murder. A public defence lawyer was assigned to him. The charges stated that he had wanted to kill the member of parliament, who was a distant relative. As the founder of a bank which had employed the second applicant’s brother, the member of parliament had demanded that the applicant and his brother repay USD 700,000, which had been found missing by an internal audit (see also paragraph 62 below).

16.  On 14 May 2004, the first applicant met the second applicant in a formal confrontation and accused him in accordance with his previous confession. According to a written report on the formal confrontation, the second applicant was assisted by the public defence lawyer.

17.  On 15 May 2004 the first applicant was charged in connection with the discovery of the Browning pistol on his person when he was arrested with an additional offence of illegally carrying a weapon.

18.  On 16 May 2004 the Vake-Saburtalo District Court ordered at a public hearing that the two applicants be held in pre-trial detention for three months, until 13 August 2004. After reviewing the criminal case material and hearing the parties’ oral submissions, the court confirmed the existence of a reasonable suspicion that the offences in question had been committed. A further main justification for the imposition of pre-trial detention was the assumption that the accused might abscond, in view of the severity of the possible sentence.

19.  According to statements subsequently given to the investigative authorities by the first applicant’s wife, she attended the hearing on 16 May 2004 and noticed that her husband’s nails had been bitten down and were blackened and that he had bandages on his wrists which he attempted to hide under his pullover.

20.  On the same day, 16 May 2004, the first and second applicants were transferred from Tbilisi police headquarters, where they had been held since their arrest, to, respectively, Prison no. 7 and Prison no. 1 in Tbilisi. They remained in those prisons for the whole of their pre-trial detention, until their conviction at first instance (see paragraph 73 below).

21.  Upon his admission to Prison no. 7 on 16 May 2004, the first applicant was examined by the prison doctor, who noted in a report that there were no marks of violence on his body.

22.  On 27 May 2004 the Tbilisi Court of Appeal dismissed an appeal by the applicants and upheld the reasons given in the detention order of 16 May 2004.

B.  Subsequent pre-trial developments in the criminal case against the applicants

23.  On 4 June 2004, immediately after, a private lawyer, had been hired for the first applicant by his family (“the private lawyer”), the first applicant submitted a complaint to the investigator, alleging that he had given his confession of 13 May 2004 as a result of torture, and that those statements had not been true. The first applicant asked to be questioned again. He alleged that he had been subjected to electrical shocks and severe beatings on 13 May 2004 and requested that a comprehensive medical examination be conducted for the purposes of establishing the exact nature of the injuries he had received.

24.  On 24 June 2004 the investigator ordered an expert medical report on the applicant’s physical condition, which was only produced three months later (see paragraph 35 below).

25.  On 15 June 2004 the first applicant made a submission to the Tbilisi City public prosecutor in charge of his case (“the city prosecutor”), asserting his innocence. He specified that his first lawyer, appointed by the State, had been assigned to him by the investigator without his consent (see paragraph 12 above), that he had done nothing to defend him, and that he had not even been offered the possibility of appointing another lawyer, one of his own choice, at that time. The first applicant alleged that before being questioned on 13 May 2004 he had been beaten with a square iron padlock, which had caused him to have seizures, and a doctor had had to be called.

26.  On 17 June 2004 the first applicant submitted a complaint to the city prosecutor about threats he had received in Prison no. 7. Notably, he had been threatened by unidentified people that his family would suffer if he did not stand by his confession.

27.  On 22 June 2004 the first applicant submitted an alibi to the investigator, citing the names of six people he had been with on 19 January 2004, when the member of parliament had been injured. He requested that those people be questioned as witnesses.

28.  On 28 June 2004 the investigator rejected the first applicant’s request of 22 June 2004 on the grounds that his guilt had been established by his own, very detailed, confession, which he had repeated in the presence of a lawyer during the reconstruction of events at the crime scene. The investigator noted that, in addition, when confronted with the second applicant, the first applicant had accused him of being the instigator of the crime. Furthermore, the first applicant had been identified by the victim. There was therefore no reason to check his alibi.

29.  On 14 July 2004 the first applicant’s lawyer submitted written statements to the investigator from the six witnesses concerned (see paragraph 27 above), supporting the alibi and stating that on 19 January 2004 the first applicant had been at a church wedding ceremony and subsequent reception until 2 a.m. The lawyer repeated his request for those people to be questioned. For his part, the second applicant stated his interest in having the first applicant’s alibi verified. On 24 July 2004 the investigator again rejected the request, using the same grounds as on 28 June 2004.

30.  On 13 July 2004 the second applicant informed the Chief Public Prosecutor’s Office (“the CPPO”) that the member of parliament had clandestinely visited the first applicant in prison at 9 p.m. on 25 June 2004 to demand that he stand by his confession. In exchange, he had offered him money. The member of parliament’s visit to the prison had not been officially registered, but could be confirmed by prison staff. The second applicant also complained of the fact that the expert medical report on the first applicant had still not been produced and that the people who were capable of confirming his alibi had not been questioned.

31.  Between July and August 2004 the second applicant lodged several more complaints with the city prosecutor about the investigator’s repeated refusals to check the first applicant’s alibi. The complaints were rejected on 3 and 7 August, the city prosecutor considering that there was no need to take the first applicant’s alibi into account, given that he had freely confessed to the crime, and that there was no evidence in the record of his interview of 13 May 2004 that he had alleged that he had been subjected to ill-treatment.

32.  On 2 August 2004 the first applicant submitted a written request to the investigator to replace his private lawyer who had been hired by his family and had been in charge of his defence since 4 June 2004 (see paragraph 23 above), with a new lawyer, Sh.Dz. The applicant added that he wished to be “questioned again with a view to a confession” and “arranging a plea bargain” with the prosecution in the presence of this new public defence lawyer.

33.  On 5 August 2004 the investigator and the newly appointed lawyer Sh.Dz. went to the prison hospital to attend the questioning of the first applicant, as he had requested on 2 August 2004. The applicant, however, refused to be questioned, without providing any explanation.

34.  On 11 August 2004 the Tbilisi Regional Court granted an application by the prosecutor to extend the applicants’ pre-trial detention to 13 November 2004.

35.  On 13 September 2004 an expert from the Ministry of Health commissioned by the investigator on 24 June 2004 (see paragraph 24 above) issued a report on the applicant’s physical condition. It appeared that the expert had not examined the applicant in person but had asked the investigator to provide him with X-rays of his head and body. Two X-rays had been sent by the investigator to the expert as late as 8 September 2004. Notably, an X-ray of his head, taken only from one side, and an X-ray of his thorax showed that at that time he bore no signs of lesions on those parts of the body.

36.  On 27 September 2004 the second applicant’s mother lodged a criminal complaint with the CPPO, alleging that the member of parliament had visited the first applicant in prison in July 2004 and had offered him 30,000 Georgian lari (GEL) (approximately 13,000 euros (EUR)) to stand by his confession. The investigator had then put pressure on the first applicant’s wife to convince her husband to accept the offer. She further alleged that after the member of parliament’s visit, criminal bosses had been allowed to enter the applicant’s cell on 2 August 2004 in order to pressure him to testify as the member of parliament wished.

37.  On the same day, 27 September 2004, the first applicant’s wife lodged the same complaint as the second applicant’s mother with the CPPO. She added that in exchange for the money offered by the member of parliament, her husband had been expected to dismiss the private lawyer hired by his family, stand by his confession and ask for a plea bargain with the prosecution. The member of parliament had given her an advance payment of USD 1,500 to convince her husband. However, when on 5 August 2004 the first applicant had refused to make a statement confirming his confession in the presence of the investigator and the newly appointed public lawyer Sh.Dz. (see paragraph 33 above), the investigator had left the hospital and K.K., a “mafia boss” whose criminal case had been investigated by the same investigator, had been allowed into the first applicant’s cell. K.K. had threatened the applicant with death if he refused to cooperate with the investigator, giving him two days to think about it. The first applicant’s wife added that she had received threats since 19 August 2004 that her child would be killed if she dared to speak about the above-mentioned events with the authorities.

38.  The allegations of the second applicant’s mother were subsequently confirmed by a journalistic investigation into the events in question (see paragraphs 83-85 below).

39.  On 1 October 2004 the city prosecutor replied to the first applicant’s wife and the second applicant’s mother that their complaints of 27 September 2004 were manifestly ill-founded for the same reasons given in the replies to the first applicant’s repeated requests to have his alibi checked.

40.  At the beginning of October 2004 the first applicant dismissed Sh.Dz. and reappointed his private lawyer (see paragraph 23 above).

41.  On 8 October 2004 the first applicant’s lawyer wrote to the Tbilisi city prosecutor requesting, among other things, that secret recordings of various meetings between the first applicant’s wife and the member of parliament’s lawyer (see the details of the journalistic inquiry at paragraphs 83‑85 below) be obtained from the investigation into the ill‑treatment case (see paragraphs 46‑53 below) and added to the applicants’ criminal case file. That request was rejected on 12 October 2004.

42.  On 21 October 2004 the first applicant’s lawyer informed the investigator that his client wished to be questioned again. The investigator questioned the first applicant the same day and he repeated all the factual details concerning his allegations of ill-treatment on 13 May 2004, gave the names of the police officers involved and detailed the threats made against him. He complained of having been coerced into accepting Sh.Dz. as his lawyer and that his sole purpose had been to sign witness statements for the investigator.

43.  On 5 November 2004 the prosecutor applied for an extension of two months to the applicants’ pre-trial detention, until 13 January 2005. By a decision of 10 November 2004, a judge at the Supreme Court, after reviewing the application in the presence of the prosecution and the applicants’ lawyers, granted the extension. As grounds for that decision he noted that the applicants had been accused of particularly serious crimes and that the “circumstances of the case” gave reason to believe that if they were released the accused would attempt to impede the establishment of the facts and evade justice. In his view, a request by the applicants to be released on bail had to be rejected for the same reasons. No reference to any specific, factual circumstances of the case was given in the decision of 10 November 2004.

44.  On 30 December 2004 the investigation was completed, a bill of indictment was approved by the prosecutor and the case was sent for trial to the Tbilisi Regional Court.

45.  On 7 June 2005 the Tbilisi Regional Court held a pre-trial conference hearing in the case, ruling to commit the applicants for trial as defendants. The decision was rendered in a standard, template form with pre-printed reasoning. The judge simply added in the blank spaces a brief statement of the facts, the names of the accused, the definition of the impugned offence and the measure of pre-trial restraint. As regards the confirmation of the latter, the printed standard phrase read as follows:

“The measure of pre-trial restraint – detention – has been chosen correctly.”

C.  Investigation into the first applicant’s allegations of ill-treatment

46.  On 7 September 2004 the first applicant lodged a criminal complaint with the Chief Public Prosecutor’s Office, alleging that he had been subjected to ill-treatment on 13 May 2004 and requesting an investigation. He specified that at around 10 a.m. he had been taken to police headquarters in Tbilisi and placed in a room on the twelfth floor. He had been given electric shocks and beaten. The surname of the officer who had held a weapon to his head and forced him to sign a pre-prepared confession was D. K. Two other officers, K. Ch. and D. En., had also participated. Other police officers had also been involved, and while the applicant did not recall their names, he stated that he would be able to identify them if confronted with them. He had also been beaten on the neck with a square padlock. He had passed out while being given the electric shocks and the police officers had poured water on his head to bring him around. When he had regained consciousness, a doctor had been there who had said that he needed an injection of a sedative, but the doctor’s recommendation had been ignored. The first applicant had then been told by the police officers that his flat had already been visited, drugs had been planted there, and that his wife could easily be arrested. Upon his transfer to Tbilisi’s Prison no. 7 on the night of 16 to17 May 2004, the prison doctor had asked him, in the presence of the police officers, if he had been beaten, but he had denied it for fear that the ill-treatment would resume.

47.  On 9 September 2004 the CPPO referred the complaint of 7 September 2004 to the Tbilisi city prosecutor and the investigator in person, asking them to take action and to inform the Chief Prosecutor of their response. On 5 October 2004 the investigator replied to the first applicant directly, informing him that his criminal complaint about ill‑treatment had been rejected as unsubstantiated as the applicant had not supported it with evidence.

48.  On 8 October 2004 the first applicant’s wife complained to the Inspectorate General of the CPPO and the Inspectorate General of the Ministry of the Interior that her husband had been ill-treated by police officers and that there had been a lack of response by the investigator and the Tbilisi city prosecutor to her various previous complaints. She asked for the investigator to be removed from the case and for those who had carried out the ill-treatment to be identified and punished. In support of her request, she attached a copy of a report dated 29 September 2004 on an examination of the applicant conducted at her request, and with the prison authority’s permission, by private medical experts. That report showed that three medical specialists – a psychiatrist, a neurologist and a trauma specialist – had examined the first applicant in prison, using the medical equipment available in the prison hospital, in the course of several visits. They first noted that the first applicant had repeated the statements he had made in his complaint of 7 September 2004. The medical experts also observed that the applicant suffered from epileptic fits, and that, according to the applicant himself, the first fit had occurred on 22 July 2004. Their view, on the basis of ultrasound and computed tomography (CT) scans, was that the applicant suffered from epileptic fits which had been caused by a traumatic head injury. The CT scan also showed a scarred lesion in the area of the joint at the nape of the neck, and signs of intracranial hypertension syndrome. A poorly healed fracture of the zygomatic bone and the left of the upper jaw was also detected. In the experts’ opinion, the physical and psychological problems that had been revealed could well have been caused, in principle, by the type of ill-treatment complained of by the first applicant.

49.  On 12 October 2004 the Inspectorate of the CPPO asked the investigations department of the Tbilisi city prosecutor’s office to set up a meeting with the first applicant for 13 October 2004 with a view to checking the wife’s allegations. The Inspectorate General of the Ministry of the Interior, for its part, replied to the first applicant’s wife that the criminal complaint made by the applicant had already been examined and dismissed as unsubstantiated.

50.  When questioned by an investigator of the Inspectorate General of the CPPO on 13 October 2004, the first applicant stood by his allegations that he had been tortured by the police officers on 13 May 2004.

51.  Following a request by the Inspectorate General of the CPPO, on 19 October 2004 State experts drew up another medical report on the first applicant. The experts noted a wound at the nape of the neck, which was at an advanced stage of scarring and had been caused by a hard, blunt object; various cuts on the stomach, some of which measured 18 by 0.1 cm and 16 by 0.1 cm; and several cuts on his left forearm. The scar on the head was old and it could not be said exactly when the injury had been sustained. However, it could have been caused between April and July 2004.

52.  Between late October and early November 2004, the Inspectorate General of the CPPO questioned a number of potential witnesses to the first applicant’s alleged ill-treatment: P.B., the investigator in the applicant’s case; M.S., a Ministry of the Interior camera operator who had recorded the applicant’s confirmation of his initial confession at the crime scene; the public defence lawyer who had been assigned to the applicant after his arrest and first interview; G.B., the judge who had ordered the applicant’s pre-trial detention on 16 May 2004; two relatives of the first applicant who had attended the above-mentioned hearing; and the doctor from Prison no. 7 who had carried out a visual examination of the applicant at the time of his admission to prison. None of those people said they had seen marks of ill-treatment on the first applicant. In addition, all three police officers accused by the first applicant of ill-treatment denied those accusations when questioned by the Inspectorate General of the CPPO.

53.  On 15 November 2004 another medical expert examined the first applicant at the request of the Inspectorate General of the CPPO. As well as confirming the findings of the previous expert report (see paragraph 51 above), he added that the zygomatic bone surrounding the left eye was deformed.

54.  On 17 November 2004 the Inspectorate General of the CPPO, on the basis of the statements given by the various witnesses as well as the medical reports of 19 October and 15 November 2004, decided not to institute proceedings in relation to the first applicant’s alleged ill-treatment.

55.  The Krtsanisi-Mtatsminda District Court quashed that decision on 23 December 2004. The court found that the investigation carried out by the prosecution authority had not been comprehensive enough, and ordered the Inspectorate General to undertake further investigative actions aimed at re‑examining the well‑foundedness of the serious allegations made by the first applicant. On 8 February 2005 that decision was upheld at final instance by the Supreme Court, and on 24 February 2005 criminal proceedings were initiated in the case under Article 126 § 1 of the Criminal Code (torture).

56.  After the reopening of the investigation the prosecutorial authority questioned the same people who had already been questioned in October‑November 2004. The applicant was also examined again in April 2005. A report issued on 27 April 2005 suggested that the deformation of the zygomatic bone surrounding the applicant’s left eye could not be said with certainty to have been caused by a traumatic injury from a dense or blunt object in 2004.

57.  According to the case file as it stands, including the parties’ most recent factual addendums, the relevant authorities never took a definitive decision in relation to the investigation of the applicant’s torture case under Article 126 § 1 of the Criminal Code.

D.  Trial

58.  On 14 September 2006 a trial started at the Tbilisi Regional Court.

59.  The first applicant, who was represented by the private lawyer, pleaded innocent, making particular reference to the ill-treatment he had been subjected to in order to obtain a confession. He complained that despite repeated requests the contents of the criminal file opened by the Inspectorate General of the CPPO with respect to his alleged torture had not been added to the file in the criminal case against him and the other applicant (see paragraph 41 above). He insisted that the outcome of the criminal investigation into his ill-treatment would be of decisive importance for the assessment of the well-foundedness of the criminal charges against him and the second applicant. The first applicant also underlined the fact that he had an alibi.

60.  The second applicant also pleaded innocent. His lawyer applied to have the record of the member of parliament’s identifying the first applicant on 13 May 2004 declared inadmissible as tainted by irregularities. In that connection, he maintained that on 4 February 2004 the victim had said he was unable to identify his attacker while the photofit image created with his help had not resembled the first applicant. Later, however, he had stated that he was able to identify his attacker, and did so on 13 May 2004 on the basis of the first applicant’s “general appearance”. In addition, the first applicant had been lined up in front of the victim with three other people who had looked totally different from him (see also paragraphs 64 and 65 below). The second applicant’s lawyer also applied to have the record of the formal confrontation between the first and second applicants, dated 14 May 2003, declared inadmissible as tainted by irregularities. Notably, the report contained the name of a public defence lawyer who had supposedly assisted the second applicant at the time. However, in actual fact the second applicant had been alone during the confrontation. Indeed, according to a letter from the Ministry of the Interior, between 13 and 17 May 2004 the public defence lawyer officially assigned to the second applicant on 14 May 2004 had not possessed a badge allowing him to enter the main police station in Tbilisi. Both applications were rejected by the trial court on the same day as ill-founded.

61.  When questioned by the trial court, the woman and son who had allegedly handed in the weapon used to commit the crime to the police on 25 February 2004, according to the official version of events contained in the case file (see paragraph 8 above), stated that they had never handed in such a gun to the police. On the contrary, it had been the police who had suddenly come to her house, and had searched for and found the PSM pistol in the yard. She added that the gun that the police had found had not been equipped with a silencer.

62.  Among other statements concerning a possible motive for the attack allegedly perpetrated by the applicants, the member of parliament told the court that as one of the founders of the bank and one of its largest shareholders, he had recommended the second applicant’s brother for the post of manager of the bank’s Batumi branch (see also paragraph 15 above). However, the two brothers had abused his trust. They had taken certain items of gold belonging to clients and a large sum of money and had disappeared in October 2003. Three days later, as a result of efforts made by the family, the brothers’ uncle had returned the objects and the money to the bank. Some months earlier, an internal audit of the branch in question had uncovered considerable losses there. The second applicant and his brother had put pressure on the members of the audit committee to not inform headquarters in Tbilisi. Following internal discussions in which the member of parliament had been involved in person, it had been agreed that the two brothers would by 25 January 2004 at the latest repay the USD 750,000 they had embezzled by various means. The member of parliament also told the trial court that he had easily identified the first applicant on 13 May 2004. He confirmed that he had approached the applicant after the identification parade, with the investigator’s consent, and had asked him why he had tried to kill him. During their private talk the first applicant had allegedly replied that he had not wanted to kill him but had been acting on the second applicant’s orders (see paragraph 13 above).

63.  When questioned by the trial court, the two witnesses to the reconstruction of the crime on 13 May 2004 stated that they had been stopped by police officers in the vicinity of the main police station. The officers had asked them to go with them to assist in an investigative procedure and added that they would be arrested if they refused. At the station, the witnesses had seen the first applicant who, despite it being a warm day in May, had been wearing a woollen hat. He had also had a deep bruise around one of his eyes. The investigator had asked the first applicant one or two questions but he had remained silent for much of the time. When asked by the investigator about the place in question being the scene of the crime, he had simply nodded. The reconstruction had lasted between ten and fifteen minutes, at the end of which the two witnesses had signed a record of the procedure, without reading its contents. No pressure had been put on the first applicant in their presence.

64.  One of the men who took part in the identification parade where the first applicant had been identified by the victim on 13 May 2004 told the court that he had been approached at random in the street by the police to take part in the line-up. He stated that, with the exception of the first applicant, all three members of the identification parade, including himself, had been clean-shaven. Another clearly distinguishing feature had been that of the four men in the line-up, only the first applicant had been bald. The applicant had looked exhausted and had had a deep bruise around one eye. There had therefore been a considerable difference in appearance between the first applicant and the others.

65.  Another participant in the identification parade, who had also been approached in the street to take part, gave the same version of events, including regarding the bruise. He added that the first applicant had been the only one not wearing a belt and without shoelaces. When the victim had identified him as the one who had shot at him, the first applicant had exclaimed that it was not him.

66.  When questioned by the trial court, the two taxi drivers who had signed the report of 25 February 2004 on the handing in of the PSM pistol by the woman and her son stated that they had been taken to the main police headquarters under coercion, on pain of having their driving licences confiscated by the police, in order to take part as witnesses in an investigative procedure. They were told by an officer that a woman and a child were going to bring in a weapon, and they would have to confirm that fact by signing a record. They had waited in vain for an hour and a half for the woman and child to arrive. The two policemen had then taken a weapon equipped with a silencer out of a drawer in a table, explaining to the taxi drivers that it was the weapon in question. The police officers had drawn up a report saying that a woman and child with non-Georgian names had brought the weapon to the station. The two taxi drivers had signed the fabricated document in order to get their driving licences back and leave the premises as soon as possible.

67.  The interpreter whose signature was appended to the bottom of the same record of 25 February 2004 stated before the trial court that she had not acted as an interpreter in the investigative procedure in question for a woman and child who did not speak Georgian. She alleged that her signature had been forged.

68.  Four people who had attended the wedding party of 19 January 2004 also attended the hearing and confirmed the applicant’s alibi by stating that they had seen him at the party, that he had stayed until late in the evening, and definitely until after 9 p.m.

69.  A member of an independent human rights organisation told the trial court that at the time of the events she had had official permission from the State to visit prisoners who had allegedly been subjected to abuse. Following a series of complaints by the family, she had visited the first applicant two weeks after his arrest. She had seen that he had a head wound, cuts on his face and had been in a generally poor condition. The first applicant had also complained to her of a fracture of the bone surrounding his eye. He had subsequently spent time in the prison hospital but had requested to be transferred back to prison because various people, including the member of parliament’s lawyer, had been able to visit him in the hospital and disturb him. The first applicant had given the human rights activist the name of a police officer, a certain K., saying he had been one of the men who had tortured him on 13 May 2004 at Tbilisi main police station. She had immediately informed the Ministry of the Interior and the Chief Prosecutor’s Office of the applicant’s allegations, but neither of them had reacted.

70.  The first applicant’s wife told the court that she had visited her husband in prison on 2 June 2004. She had been able to see through the glass between them that he was wearing a woollen hat, under which a plaster was visible. He had had dark circles under his eyes and his nails were blackened. She also confirmed the facts relating to her meetings with the parliamentarian’s lawyer.

71.  On application by the defence, the secret recordings of the two meetings between the first applicant’s wife and the victim’s lawyer were played to the trial court (see details of the journalistic investigation at paragraphs 83‑85 below).

E.  The applicants’ conviction

72.  On 21 February 2007 the Tbilisi Regional Court ruled that the following pieces of evidence were inadmissible owing to significant procedural shortcomings in the way they had been obtained:

(i)  the first applicant’s confession at his first interview on 13 May 2004 (see paragraphs 10 and 11 above);

(ii)  the record of 25 February 2004 of the woman and her son handing in the PSM pistol at the police station (see paragraph 8 above);

(iii)  the record of 13 May 2004 of the first applicant identifying the PSM pistol (see paragraph 14 above).

73.  On 26 February 2007 the Tbilisi Regional Court gave judgment. It first held that it was undeniable that the first applicant had had various injuries on his body, as confirmed by the various expert reports. However, the time, place or circumstances of sustaining the injuries had not been established.

74.  The first applicant was found guilty of attempted murder with aggravating circumstances, on account of his attack on the member of parliament on 19 January 2004, and illegal possession of a weapon, owing to the Browning pistol that had been found on him when he had been arrested. His guilt related to the Browning had been proved, according to the court, by the record of the body search after his arrest and the record of the seizure of the weapon thus discovered.

75.  The court found that the charge of attempted murder had been proved by the following items of direct evidence, which it considered to have been obtained without any major irregularities:

(i)  the written record of the first applicant’s confession given during the reconstruction at the scene of the crime on 13 May 2004 (see paragraph 12 above);

(ii)  the record of his identification by the member of parliament on the same day (see paragraph 13 above);

(iii)  the member of parliament’s statements concerning the private talk he had had with the first applicant on 13 May 2004 (see paragraph 13 above).

76.  The second applicant was also found guilty of attempted murder with aggravating circumstances and of the illicit possession of a weapon on account of his role in planning to kill the member of parliament by hiring the first applicant and providing him with a firearm. He was additionally found guilty of embezzlement on account of his complicity with his brother in misappropriating the bank’s assets (see paragraphs 15 and 62 above). In the trial court’s opinion, the same evidence as used against the first applicant had proven the charge of attempted murder against the second applicant (see the preceding paragraph):

(i)  the written record of the first applicant’s confession during the reconstruction at the scene of the crime on 13 May 2004; and

(ii)  the member of parliament’s statements concerning the private talk he had had with the first applicant on 13 May 2004.

77.  As to the defence’s arguments concerning the lawfulness of the various records mentioned above, the trial court conceded that there had been a series of irregularities in the course of the investigative procedures in question, but they had not been such as to render the evidence inadmissible.

78.  Both applicants appealed.

79.  With respect to the conviction for attempted murder, the first applicant reiterated his complaints about the absence of a lawyer of his own choice at the first interviews, his ill-treatment and forced confession. According to him, numerous witnesses questioned by the judges had raised a reasonable doubt that he had been able to participate properly in the confirmation of his confession during the reconstruction of the events at the scene of the crime on 13 May 2004. Nevertheless, the record of that procedure had been considered a key piece of evidence in establishing his guilt. The second piece of evidence used to establish his being guilty of attempted murder – the record of his identification by the victim – had also been tainted by irregularities. In fact, contrary to the requirements of Article 347 of the Code of Criminal Procedure, the other men who had lined up with him had all looked healthy, had had full heads of hair, had been clean‑shaven and had been wearing belts and shoes that had been laced up. He, on the other hand, was partially bald, had been injured and looked tired, had not been able to shave for several days and had had no belt or laces. The first applicant also referred to the secret recordings of the meetings between his wife and the member of parliament’s lawyer (see paragraphs 83‑85 below). Those recordings had been played to the trial court judges, but they had chosen not to mention them in their judgment or take them into consideration in any way.

80.  The second applicant’s appeal had similar arguments as regards the conviction for attempted murder. He specifically complained that while the trial court judges had confirmed his guilt by reference to the record of the confirmation of the first applicant’s confession during the reconstruction at the scene of the crime on 13 May 2004, that specific item of evidence had clearly been tainted by the ill-treatment the first applicant had suffered at the hands of the police.

81.  On 17 July 2007 the Criminal Affairs Chamber of the Supreme Court dismissed the applicants’ appeals. As far as the alleged ill‑treatment was concerned, the criminal chamber affirmed that it was not in dispute that the first applicant had had marks of violence on his person. Nevertheless, the circumstances under which the injuries had been sustained and who had caused them were not known. The court held that the guilty verdict against both applicants had to be upheld in its entirety. The first and second applicants were convicted, respectively, to twenty-one and sixteen years’ imprisonment.

F. Video recording contained in the case file

82.  The cassette contains a recording of the investigative journalism programme *60 minutes*. The recording in question is about the applicants’ case and is entitled “Contract murder, or rigged investigation?”

83.  Amongst other details, the programme aired secret video-recordings of two meetings between the first applicant’s wife and the member of parliament’s lawyer.

84.  At the first meeting, which took place a few days before 2 August 2004, the lawyer offered an advance payment to the first applicant’s wife to ensure that her husband replaced the lawyer he had chosen with Sh.Dz., who was trusted by the member of parliament. It was with the help of that new lawyer that the applicant was expected by the member of parliament to stand by his initial confession. The first applicant’s wife replied that her husband’s lawyer could do the job just as well, but the member of parliament’s lawyer stated that that lawyer could not be trusted in such dealings.

85.  The secret recording of the second meeting showed how Sh.Dz., by then appointed as the first applicant’s lawyer on the advice of the member of parliament’s lawyer, handed over USD 1,500 to the first applicant’s wife on behalf of the member of parliament (see also paragraph 37 above).

II.  RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

A.  The Code of Criminal Procedure, in force at the material time

86.  The most relevant provisions from the Code of Criminal Procedure of 20 February 1998, which was in force at the material time of the events, read as follows:

Article 69, as amended on 16 December 2005

“A victim ... has the right to: ...;

i) participate in investigative procedures carried out at his or her request;

k) acquaint him or herself with a copy of the whole criminal case file and with the evidence after the case has been sent for trial. ...”

Article 111 § 1 (c)

“Evidence shall be declared inadmissible if ... it has been obtained in violation of the procedure established by law or through the use of violence, dishonesty, threats, blackmail, humiliation or any other means forbidden by law.”

Article 163 § 2

“2. A court has a statutory period of five days for the examination of an application submitted by a prosecutor for an extension of the initially imposed period of pre-trial detention. This period starts to run from the moment of receipt of such an application by the court. The relevant judicial review should be conducted at an oral hearing, attended by both parties ...”

Article 347 § 3

“3. The person to be identified shall be presented to the person called upon to make the identification with three other persons of the same sex who are not markedly different in terms of their appearance or clothing.”

B.  Report of the United Nations (UN) Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

87.  In his annual report to the 62nd Commission on Human Rights, published in September 2005 following a mission to Georgia, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, declared:

“... torture and ill-treatment by law enforcement officials still exist in Georgia ... the methods of torture included beatings with fists, butts of guns and truncheons and the use of electric shocks, and cigarette burns; injuries sustained by the victims included, among other things, broken bones, cigarette burns, scars, as well as neuropsychological changes.”

88.  During a mission to Georgia which took place between 19 and 25 February 2005, the Special Rapporteur met several detainees and concluded from the interviews that they had been ill-treated to obtain confessions. He stated:

“... their injuries were still visible at the time of the meetings, and had been well documented by independent forensic experts. As was evident to the Special Rapporteur from meetings, these persons continued to suffer from the effects of torture and were in need of appropriate medical treatment and rehabilitation, which they were not receiving.”

89.  Amongst ten cases documented by the Special Rapporteur, the following abstract concerned the first applicant’s situation:

“[The first applicant], aged 27 ... was arrested on 13 May 2004 on suspicion of attempted murder. He was brought to the Tbilisi Head Department of Internal Affairs... He refused to confess, and the policemen began to beat him with truncheons, hit him with an iron lock in the face, and applied electric shocks to his legs and feet ... The Deputy Minister of Internal Affairs, an investigator of the Public Prosecutor’s Office and a lawyer also participated in the beatings. Among his injuries were a fractured temporal bone and upper jaw. He subsequently developed epilepsy, and he suffers from disturbed sleep, flashbacks, blackouts, loss of vision, memory difficulties, headaches and tremors. On 16 May 2004, he was remanded in pre-trial detention. Upon his transfer, he did not indicate to the doctor at the prison the nature of his injuries because he was afraid and exhausted. At the request of his lawyer, a criminal case into the torture claim was initiated by the Public Prosecutor’s Office and in November 2004, the Office reported that there was no evidence of torture. On appeal, the Tbilisi District Court upheld the appeal, which was confirmed by the Supreme Court in February 2005, and the case was returned to the Public Prosecutor to reinvestigate the torture claim. ...”

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

90.  Both applicants complained that the conditions of their pre-trial detention in the relevant prisons had been poor. They did not specify what exactly had been deficient in their respective cells from their point of view, and in support of their general grievances made reference to a number of reports issued by various international and national prison monitoring bodies on the situation in the Georgian prison system at the material time.

91.  The first applicant further complained that he had been subjected to ill-treatment by police officers while in custody at Tbilisi police headquarters on 13 May 2004 and that the relevant domestic authorities had failed to investigate the incident.

92.  The applicants cited Article 3 of the Convention, which reads as follows:

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

A.  Admissibility

1.  As regards the prison conditions

(a)  The parties’ arguments

93.  The Government submitted that apart from a general reference to various reports issued by international and domestic human rights observers on the situation in Georgian prisons at the material time, the applicants had not provided individual accounts of what exactly the material conditions of their detention in the relevant prisons had been. Accordingly, they had not specified in exactly which cells they had been detained, whether those cells had been deficient from a hygiene point of view or overcrowded, whether they had lacked access to fresh air, sunlight or physical exercise, whether they had been denied their right to family visits, and so on.

94.  In contrast, the Government submitted letters dated 18 March 2010 from the governors of Prison no. 7 and no. 1, where the first and second applicants had been held, respectively, between 16 May and 26 February 2004. Those letters, giving the identification numbers of the cells in which the applicants had been detained, provided a detailed description of the material conditions therein at the time of the applicants’ detention. In that regard, the first applicant’s cell had had a window providing access to natural light and fresh air, had been clean and had had a toilet in an acceptable state of repair and cleanliness and which had been duly isolated from the living area. The first applicant had had the opportunity to take a shower once a week, had been served a meal three times a day, the quality of which had never been contested by him or any other prisoner, and had benefited from an hour’s daily walk, as provided for by law. The second applicant had been placed in identical conditions. It was additionally noted that the latter’s cell had measured 12 square meters, and that he had had an opportunity to have a conjugal visit once a month.

95.  In reply, the applicants maintained, in general terms, that they had been detained in conditions which were not compatible with their human dignity. They did not provide a detailed individual account of the material conditions of their cells, but referred to two reports on visits to Georgia by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 2001 and 2007 as well as to the Public Defender of Georgia’s Report on the Monitoring of Georgian Prisons of the second half of 2005.

(b)  The Court’s assessment

96.  Referring to its relevant case-law in respect of the conditions of detention in Georgian custodial institutions at the material time, the Court reiterates the rule that whenever an applicant wished to challenge allegedly poor material conditions of detention in a Georgian prison, even if such complaints did not call for the full and meticulous exhaustion of any specific criminal or civil remedies (see, for comparison, *Goginashvili v. Georgia*, no. 47729/08, §§ 54 and 57, 4 October 2011, and *Aliev v. Georgia*, no. 522/04, § 62 and 63, 13 January 2009), it was still required, at the very minimum, that at least one of the responsible State agencies must have been informed of the applicant’s subjective assessment that the conditions of the detention in question constituted a lack of respect for, or diminished, his or her human dignity. Without such basic conduct at the domestic level by a person who wished to challenge the conditions of his or her detention in Strasbourg, the Court would necessarily have difficulty in evaluating the credibility of an applicant’s allegations of fact in that respect (see *Janiashvili v. Georgia*, no. 35887/05, § 70, 27 November 2012, and *Ramishvili and Kokhreidze v. Georgia* (dec.), no. 1704/06, 26 June 2007).

97.  Having regard to the material available in the case file, the Court notes that neither of the two applicants ever informed any of the relevant authorities of their dissatisfaction with any particular aspect of the material conditions of their pre-trial detention in the cells of Prison no. 1 or no. 7 in Tbilisi. Nor in the proceedings before the Court did the applicants refer to any specific aspect of their detention which could arguably have constituted a lack of respect for their human dignity, apart from citing *in abstracto* the findings of international and domestic prison monitoring bodies. It was the Government alone which submitted documents showing that a number of specific aspects of the applicants’ detention were of an adequate standard, evidentiary submissions which were left undisputed by any evidence to the contrary or even by any detailed individual accounts of the exact conditions in which the applicants had been held in their respective prison cells (compare, amongst other authorities, with *Muršić v. Croatia* [GC], no. 7334/13, § 127, ECHR 2016; *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 122, 10 January 2012; *Janiashvili*, cited above, § 71; *Ildani v. Georgia*, no. 65391/09, §§ 26 and 27, 23 April 2013; *Visloguzov v. Ukraine*, no. 32362/02, § 45, 20 May 2010; *Shkurenko v. Russia* (dec.) no. 15010/04, 10 September 2009, and also *Ukhan v. Ukraine*, no. 30628/02, § 65, 18 December 2008).

98.  In view of the foregoing, the Court considers that the applicants’ complaints about the material conditions of their detention in Prison no. 1 and no. 7 have not been properly substantiated. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2.  As regards the first applicant’s alleged ill-treatment

99.  The Government did not submit any objection to the admissibility of the first applicant’s complaint of ill-treatment on 13 May 2004.

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

B.  Merits

1.  The parties’ arguments

101.  The Government submitted that the first applicant’s allegation of ill-treatment at the hands of the police on 13 May 2004 at Tbilisi police headquarters had not been proved beyond a reasonable doubt owing to the absence of relevant medical certificates or other evidence that confirmed with certainty the existence of marks of the purported physical violence on the applicant. They continued by saying that it was the first applicant’s own fault that he had not requested a medical examination in the immediate aftermath of the alleged ill-treatment. He had also not reported the ill‑treatment to the public defence lawyer appointed for him on 13 May 2004 or to the doctor at Prison no. 7 upon his transfer there on 16 May 2004. As regards the domestic authorities’ positive obligations under Article 3 of the Convention, the Government submitted that as soon as the applicant’s wife had complained for the first time to the prosecution authority about her husband’s ill-treatment on 8 October 2004, the investigation had been launched immediately. They referred to the comprehensive investigative actions the authority had undertaken (see paragraph 52 above). The results of the latter examination had led to the decision of 17 November 2004 to close the case for lack of established facts that were arguably constitutive of a criminal offence. It was in the light of those findings that the relevant investigative authority had not deemed it necessary to involve the applicant in the investigation by granting him victim status.

102.  The first applicant replied that as soon as he had appointed a lawyer of his own choice on 4 June 2004 he had immediately informed the relevant authorities of the ill-treatment he had suffered on 13 May 2004 and requested a medical examination. He had then many times repeated those complaints to the prosecution authority. He had been consistent in all those complaints in describing the factual circumstances surrounding the incident. The first applicant then highlighted the statements given during the trial by various witnesses, which had confirmed the existence of physical injuries on his body, and that those statements had then been endorsed by the domestic courts in their decisions. As regards the deficiency of the investigation initiated on the basis of his wife’s criminal complaint of 8 October 2004, the first applicant submitted, firstly, that that investigation had already been delayed at the time, and that his previous complaints, which had originated as early as on 4 June 2004, should instead have been treated by the investigative authorities with the due diligence. The first applicant also criticised the fact that he had never had the status of a victim or been involved in the investigation. Lastly, referring to the fact that the criminal investigation was still ongoing at the domestic level, the applicant concluded by saying that the failure of the authorities to arrive at any definite findings was the main indicator of its inadequacy.

2.  The Court’s assessment

(a)  General principles

103.  The Court reiterates that even in the most difficult circumstances, such as the fight against terrorism and organised crime, Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Bouyid v. Belgium* [GC], no. 23380/09, § 81, ECHR 2015). Where allegations are made under Article 3 of the Convention, the Court must conduct a particularly thorough scrutiny and will do so on the basis of all the material submitted by the parties. In assessing evidence, the Court has adopted the standard of proof “beyond reasonable doubt”. Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Furthermore, where the events at issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim (see *Bouyid*, cited above, §§ 82‑83).

104.  Whenever an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. Such an investigation should be capable of leading to the identification and punishment of those responsible (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (*ibidem*). Any investigation into serious allegations of ill-treatment must be both prompt and thorough. That means that the authorities must always make a serious attempt to find out what has happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis for their decisions. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 183, ECHR 2012).

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

105.  At the outset, and in reply to the Government’s argument that the first applicant was at fault for not complaining about the alleged police abuse and failing to obtain a medical certificate in a more timely manner (see paragraph 101 above), the Court observes that it was not until 4 June 2004 that the applicant was able to benefit from legal assistance from someone he could really trust from his own perspective, that is, a lawyer appointed for him by his family (see paragraph 12 above). Consequently, it is plausible that prior to that date he was discouraged from making any complaints as he had been left alone in the hands of police officers whom he directly accused of torture and of prison staff who, in his opinion, might have had close official links with the presumed perpetrators, all the time without any meaningful assistance from the outside world (compare, for instance, with *Dvalishvili v. Georgia*, no. 19634/07, §§ 44 and 47, 18 December 2012; *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 153, 21 April 2011, and *Nadrosov v. Russia*, no. 9297/02, § 33, 31 July 2008). On the other hand, the Court observes that as soon as he had a lawyer of his own choice, on 4 June 2004, the first applicant immediately informed the relevant authorities of the ill‑treatment he had suffered on 13 May 2004. He then repeated those complaints to the prosecution authority on 15 and 18 June, 7 September, and 8 and 21 October 2004 (see paragraphs 23, 25‑26, 42, 46 and 48 above). In all those complaints the first applicant remained particularly consistent in describing the exact factual circumstances surrounding the incident. On each occasion he named the police officers involved in the ill‑treatment, including K.Ch., D.E., and D.K., and described the exact form of physical ill‑treatment – electric shocks and beatings on the neck with a square iron padlock. In addition, he described consistently how the police officers had threatened his wife with death and had forced him into signing the confession at gunpoint.

106.  The Court further observes that at the very first opportunity, on 4 June 2004, the lawyer he had chosen requested a medical examination for the purposes of recording the marks of ill-treatment on the first applicant. Despite that early request, the authorities did not arrange the examination until three months had gone by (see paragraph 35 above). The Government did not provide an explanation for why it took the relevant State expert so long to conduct the examination and why it eventually turned out to be superficial. In particular, the Court observes that the State expert did not even take the trouble to visit the first applicant and examine him in person but limited his scrutiny to viewing two X-rays, one of the applicant’s thorax and the other of one side of his head (see paragraph 35 above). In those circumstances, the Court concludes that the failure of the relevant State medical personnel to ensure that the applicant’s injuries were examined and documented in a timely and adequate manner deprived the applicant of an important safeguard against a breach of Article 3 of the Convention (compare, *mutatis mutandis*, with *Zayev v. Russia*, no. [36552/05](http://hudoc.echr.coe.int/eng#{"appno":["36552/05"]}), §§ 85‑86, 16 April 2015; *Davitidze v. Russia*, no. [8810/05](http://hudoc.echr.coe.int/eng#{"appno":["8810/05"]}), § 95, 30 May 2013; *Barabanshchikov v. Russia*, no. [36220/02](http://hudoc.echr.coe.int/eng#{"appno":["36220/02"]}), § 46, 8 January 2009, and *Dvalishvili*, cited above, § 48).

107.  Despite those circumstances, even the belated examination of the first applicant, conducted by private experts at the request of his family on 29 September 2004, involving for the first time a comprehensive examination of the applicant in person, still revealed the existence of physical and psychological effects which could have been caused by the type of ill-treatment complained of (see paragraph 48 above). Those medical findings were then mostly confirmed by the reports of 19 October and 15 November 2004 of two additional medical examinations of the first applicant conducted by State experts and were even endorsed by the domestic courts as proof of traces of physical abuse calling for the need to conduct an adequate investigation (see paragraph 51 above). The Court also notes that the various relevant witnesses who had seen the first applicant either on the day of or shortly after the alleged ill-treatment, stated before the trial court that they had noticed signs of physical injury on him (see paragraph 63 above). Furthermore, the Government themselves never gave any alternative explanation to the Court for the possible origin of the signs of ill-treatment on the applicant, which makes the applicant’s consistent allegations look all the more convincing. The Court also takes cognisance of the fact that the UN Special Rapporteur met a number of detained people, including the first applicant, and acknowledged, in general, that the practice of ill-treatment of suspects and accused people by law enforcement officials as a means to obtain confessions still existed in the country at the material time (see paragraphs 87‑89 above, and compare, *mutatis mutandis*, with *Nechiporuk and Yonkalo*, cited above, § 158; *Tarasov v. Ukraine*, no. 17416/03, § 63, 31 October 2013, and *Zamferesko v. Ukraine*, no. 30075/06, § 48, 15 November 2012).

108.  As regards the question of whether the criminal investigation conducted by the domestic authorities could be said to have been adequate, the Court first reiterates its finding about the relevant authorities’ unexplained omission in failing to arrange for an examination of the applicant immediately after he had complained of the alleged ill-treatment (see the preceding paragraph). That particular shortcoming undoubtedly has damaging implications for both the substantive and procedural limbs of the respondent State’s international obligations under Article 3 of the Convention. Secondly, the Court finds it difficult to understand why the first applicant, despite having complained of a serious criminal offence against him, was never declared a victim in the course of the ensuing criminal investigation. He thus could not benefit from the exercise of a number of major procedural rights pertaining to that status (see Article 69 of the CCP cited at paragraph 86 above), without which he was unable to participate in the investigation (see *Denis Vasilyev v. Russia*, no. [32704/04](http://hudoc.echr.coe.int/eng#{"appno":["32704/04"]}), § 126, 17 December 2009). The domestic courts acknowledged themselves in December 2004 and February 2005 that the criminal investigation into the applicant’s allegations of ill-treatment had been defective and that there was a need for another investigation. However, despite the clear instructions of the courts to carry out an adequate investigation into the allegations of ill‑treatment, it does not appear from the case file that any definite results have ever been reached by the investigative authorities, with the relevant criminal proceedings currently still ongoing (see paragraph 57 above).

109.  All in all, the Court finds it sufficiently established that the first applicant bore on his person traces of the type of ill-treatment that he consistently described and complained of at the national level. The domestic authorities clearly failed to conduct a thorough and prompt investigation of his complaints (see the preceding paragraph), and the Government did not even attempt to provide an alternative, plausible explanation for the origins of those traces of ill-treatment. In such circumstances, the Court, bearing in mind the authorities’ obligation to account for injuries caused to persons within their control in custody (see *Shlychkov v. Russia*, no. 40852/05, § 68, 9 February 2016, and *Ryabtsev v. Russia*, no. 13642/06, § 71, 14 November 2013), finds it to have been proved beyond a reasonable doubt that the first applicant was subjected to police brutality after his arrest on 13 May 2004 at Tbilisi police headquarters. Having regard to the specific type of ill‑treatment perpetrated by trained police officers with the sole aim of obtaining a confession from the first applicant – the administration of electric shocks and beating with an iron padlock – the Court considers it to be a serious abuse of the applicant’s physical integrity and dignity, which thus falls to be characterised as torture within the meaning of Article 3 of the Convention (see *Pomilyayko v. Ukraine,* no. 60426/11, § 51, 11 February 2016; *Myumyun v. Bulgaria*, no. [67258/13](http://hudoc.echr.coe.int/eng#{"appno":["67258/13"]}), § 62, 3 November 2015; *Grigoryev v. Ukraine*, no. [51671/07](http://hudoc.echr.coe.int/eng#{"appno":["51671/07"]}), § 64, 15 May 2012, and *Polonskiy v. Russia*, no. [30033/05](http://hudoc.echr.coe.int/eng#{"appno":["30033/05"]}), § 124, 19 March 2009).

110.  There has therefore been a violation of Article 3 of the Convention under both its substantive and procedural limbs.

II.  ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

111.  Citing Article 5 § 1 of the Convention, both applicants complained that their detention from 13 January 2005, the date of the expiry of their judicially authorised eight-month detention period, to 7 June 2005, the date of their committal for trial, had been unlawful. That provision of the Convention reads, in so far as relevant, as follows:

Article 5

“1.  ... No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

(c)  the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence ...;”

A.  Admissibility

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

B.  Merits

113.  The Government submitted that in accordance with the relevant provisions of the CCP in force at the material time the fact that the case had been transmitted to the trial court had sufficed for the detention to fall under “judicial scrutiny”. They added that such a practice had already been ended.

114.  In reply, the applicants maintained that their detention between 13 January and 7 June 2005 had been unlawful because it had not been covered by a valid court decision.

115.  The Court notes that it has already found a violation of Article 5 § 1 of the Convention in a number of cases, including those directed against Georgia, concerning the practice of holding defendants in custody without a court order, solely on the basis of the fact that a bill of indictment has been filed with a trial court (see, amongst many other authorities, *Khudoyorov v. Russia*, no. 6847/02, §§ 146-147, ECHR 2005‑X (extracts); *Baranowski v. Poland*, no. 28358/95, §§ 53-58, ECHR 2000-III; *Ječius v. Lithuania*, no. 34578/97, §§ 60‑64, ECHR 2000‑IX; *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, § 106‑111, 27 January 2009, and *Gigolashvili v. Georgia*, no. 18145/05, §§ 32-36, 8 July 2008).

116.  The Court notes that the present application is no different from the *Ramishvili and Kokhreidze* or *Gigolashvili* cases cited above as it involves the same deficiencies in Georgian criminal procedural law and practice that existed at the material time. Hence, for four months and twenty-five days, between 13 January and 7 June 2005, there was no judicial decision authorising the applicants’ detention (see paragraph 111 above). The fact that the criminal case file and the bill of indictment had been sent to the trial court did not render the remaining period of detention “lawful” within the meaning of Article 5 § 1 of the Convention (see *Gigolashvili*, cited above, § 36).

117.  There has thus been a violation of Article 5 § 1 of the Convention in respect of that period of detention.

III.  ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

118.  The applicants complained that the court decisions extending their pre-trial detention from 10 November 2004 onwards lacked proper reasoning. They relied on Article 5 § 3 of the Convention which reads, in its relevant part, as follows.

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A.  Admissibility

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

B.  Merits

1.  The parties’ arguments

120.  The Government admitted that at the material time of the events in question the relevant judicial practice had not been focused on providing case-specific arguments in favour of the authorisation of detention on remand. However, the frequent lack of specific arguments in detention orders had been counterbalanced by the fact that parties would normally have made all their relevant arguments before the domestic courts orally. The Government added that such a practice already belonged to the past and that domestic courts had started providing relevant, case-specific reasons in their detention orders.

121.  The applicants maintained that the domestic courts had omitted to provide any concrete reasons why their continued detention had been strictly necessary in the particular circumstances of their case. That omission had amounted to a breach of Article 5 § 3 of the Convention.

2.  The Court’s assessment

122.  The Court notes that the reasonableness of a detention period cannot be assessed *in abstracto*. Rather, it is essentially on the basis of the reasons given in the national judicial authorities’ relevant decisions and the arguments made by applicants in their applications for release that the Court is called upon to decide whether or not detention on remand was justified under Article 5 § 3 of the Convention. Those decisions must contain “relevant” and “sufficient” reasoning and address specific features of the given case in order to justify the deprivation of liberty (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 87, ECHR 2016 (extracts); *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000‑XI, and *Michta v. Poland*, no. 13425/02, §§ 45 and 46, 4 May 2006).

123.  The Court observes that the applicants were taken into custody on 13 May 2004 and convicted at first instance on 26 February 2007. Hence, the total period of detention for the purposes of Article 5 § 1 (c) of the Convention is thirty-three months and thirteen days. The applicants’ pre‑trial detention was initially authorised by court decisions of 16 May and 27 May and 11 August 2004, fixing 13 November 2004 as the date for the termination of the preventive measure in question. The applicants, however, call into question the extension of their detention beyond the latter date, which occurred on the basis of the court decisions of 10 November 2004 and 7 June 2005 (see paragraphs 43 and 45). The Court is therefore called on to address only the reasons given in those two decisions.

124.  With respect to the decision of 10 November 2004, the Court observes that the Supreme Court judge justified the need for keeping the applicants in continued detention by noting (i) that the severity of their possible sentence substantiated the risk of absconding and (ii) that the case material showed that the applicants could hinder the investigation. However, a risk of absconding cannot be gauged solely on the basis of the severity of an eventual sentence and must be assessed with reference to a number of other relevant factors (see *Letellier v. France*, 26 June 1991, § 43, Series A no. 207, and *Khudoyorov*, cited above, § 181), which was not done in the decision of 10 November 2004. As to the risk of hampering the establishment of the truth, and although that risk may be a relevant element in assessing the reasonableness of a deprivation of liberty, the Court reiterates that it cannot be established on the basis of abstract statements, unsupported by any arguments (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX (extracts)). In the decision of 10 November 2004, however, that risk was just bluntly stated, without any relation to the specific circumstances of the case (compare with *Farhad Aliyev v. Azerbaijan*, no. 37138/06, § 192, 9 November 2010; Panchenko v. Russia, no. 45100/98, § 107, 8 February 2005, and *Rokhlina v. Russia*, no. 54071/00, § 68, 7 April 2005).

125.  The Court is particularly concerned by the manner in which the Tbilisi Regional Court, when committing the applicants for trial, reviewed and extended their detention on remand in its decision of 7 June 2005. Instead of showing an even higher degree of “special diligence” in the face of a period of detention which had already lasted more than twelve months (compare with *G.K. v. Poland*, no. 38816/97, § 84, 20 January 2004), the domestic court issued a standard, template decision. Rather than fulfilling its duty to establish convincing grounds justifying continued detention (ibid.), it relied on a pre-printed form and abstract terms (see paragraph 45 above). Even assuming that specific, relevant facts warranting the applicants’ continued deprivation of liberty may have existed in the present case, they were not set out in the domestic decision in question, and it is not the Court’s task to take the place of the national authorities and establish such facts in their stead (see *Nikolov v. Bulgaria*, no. 38884/97, § 74, 30 January 2003, and *Panchenko*, cited above, § 105).

126.  Having regard to the above considerations, the Court finds that by failing to address the specific facts of the applicants’ case and by relying essentially on the gravity of the charges, the domestic courts maintained the applicants’ pre-trial detention in the decisions of 10 November 2004 and 7 June 2005 on grounds which, even if “relevant”, cannot be regarded as “sufficient”.

127.  Consequently, the Court concludes that there has been a violation of Article 5 § 3 of the Convention.

IV.  ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

128.  The applicants complained that the prosecutor’s application of 5 November 2004 to extend their detention on remand had not been transmitted to them in advance of the judicial examination of that application on 10 November 2004. They cited Article 5 § 4 of the Convention which reads as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

Admissibility

1.  The parties’ arguments

129.  The Government submitted that although the prosecutor’s application to extend the applicant’s detention on remand had not been communicated to them in advance, the relevant judicial review of that application had been conducted at an oral, adversarial hearing, in the presence of the applicants’ lawyers, on 10 November 2004. Consequently, the applicants had had ample opportunity to submit their arguments to the relevant domestic court.

130.  The applicants replied that since the judicial examination of the prosecutor’s application to extend their detention had taken place five days after the application had been lodged with the relevant domestic court, there had not been sufficient time to ensure a prior exchange of the parties’ written comments on the matter. Had the applicants’ lawyers learnt of the arguments in the prosecutor’s application earlier, they would have been better prepared for the oral hearing of 10 November 2004.

2.  The Court’s assessment

131.  The Court reiterates that by virtue of Article 5 § 4 an arrested or detained person is entitled to bring proceedings for the review by a court of the procedural and substantive conditions which are essential for the “lawfulness”, in the sense of Article 5 § 1, of his or her deprivation of liberty. Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and give to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question. In order to determine whether proceedings provide the “fundamental guarantees of procedure applied in matters of deprivation of liberty” regard must be had to the particular nature of the circumstances in which such proceedings take place (see, for instance, *Stanev v. Bulgaria* [GC], no. 36760/06, § 171, ECHR 2012, and *Włoch v. Poland*, no. 27785/95, § 125, ECHR 2000-XI).

132.  The Court observes that under Georgian criminal procedural law proceedings bearing on pre-trial detention issues were urgent and had to be dealt with speedily (see *Patsuria v. Georgia*, no. 30779/04, § 51, 6 November 2007). Notably, in order to ensure that decisions on applications for an extension of initial periods of detention were taken expeditiously under Article 163 § 2 of the CCP, the domestic courts had a statutory period of only five days for the examination of such applications (see paragraph 86 above). In view of that requirement of speed, which is moreover one of the core principles of Article 5 § 4 of the Convention, the Court considers that the Tbilisi Regional Court, when examining the issue of the applicants’ detention on remand on 10 November 2004, was not obliged to have ensured the previous exchange of all the parties’ documents by post as that could have complicated its task of taking a decision within the statutory time-limit of five days (compare, *mutatis mutandis*, with a similar situation in *Patsuria*, cited above, § 52, and also *Yavuz v. Austria* (dec.), no. 32800/96, 18 January 2000). That situation was, in any case, palliated by the fact that the judicial review of the prosecutor’s application to extend the applicant’s detention took place on 10 November 2004 at an oral hearing attended by the applicants and their lawyers, who thus had ample opportunity to obtain knowledge of and comment on the prosecutor’s submissions during the hearing itself (see again *Patsuria*, cited above, § 52).

133.  In those circumstances, the Court considers that the complaint under Article 5 § 4 of the Convention concerning the fairness of the judicial review of 10 November 2004 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V.  ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

134.  Both applicants complained that the criminal proceedings against them had been unfair on account of the extraction of a confession and related statements from the first applicant by torture and their inability to benefit from the assistance of lawyers of their own choice at the early stages of the proceedings. They relied on Article 6 § 1 of the Convention, which in so far as relevant provides:

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

A.  Admissibility

135.  The Court notes that these complaints are not manifestly ill‑founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. The complaints must therefore be declared admissible.

B.  Merits

1.  The parties’ arguments

136.  The Government maintained their argument that the first applicant had not suffered ill-treatment during the questioning on 13 May 2004 (see paragraph 101 above). Accordingly, they stated that the first applicant had chosen to confess about his and the second applicant’s involvement in the attempted murder of his own free will. The Government emphasised that the admissibility of evidence was primarily a matter for regulation under national law, and that the applicant had been given an opportunity to challenge the evidence against him in adversarial proceedings with the benefit of legal advice. Having heard his arguments in that respect, the trial court had declared certain pieces of evidence inadmissible, whilst confirming that the remaining evidence had not been tainted by any major irregularity (see paragraphs 72 and 75 above). The Government maintained that the reasons given by the domestic courts for his conviction had been sufficient, and that it had not been necessary for them to answer all of the applicants’ defence arguments, including those relating to the first applicant’s purported alibi.

137.  The Government stressed that although the first applicant’s initial confession had been obtained by the investigator in the absence of a lawyer, those statements had then been declared inadmissible by the trial court. The applicant had confirmed his previous statements during the reconstruction at the scene of the crime and those second statements had been made in the presence of the public defence lawyer. The identification parade, in which the victim had pointed out the first applicant, and which was, according to the Government, one of the major investigative measures in the case, had similarly been attended by the first applicant’s public defence lawyer. The first applicant had been fully satisfied with the quality of the services provided by that lawyer until 4 June 2004. On that date, however, his request to have a lawyer chosen by his family had immediately been accommodated. The same held true with respect to the second applicant, who had not initially requested a lawyer of his own choosing, and who therefore had had a public defence lawyer appointed for him by the State upon his arrest.

138.  The applicants submitted that since the first applicant’s initial confession had been extracted through torture and had been made in the absence of a lawyer – evidence that had subsequently been declared inadmissible by the trial court for being irregular – it was even more difficult to understand why the domestic courts had chosen to rely on those statements when they had been repeated during the reconstruction of the events at the scene of the crime. The applicants also reiterated that the procedure in which the victim had identified the first applicant had been conducted with serious procedural deficiencies. The applicants further complained that the domestic courts had failed to give any meaningful answer to the first applicant’s arguments that he had had an alibi. The second applicant also maintained that although he had formally been assigned a public defence lawyer, that lawyer had never actually taken part in any of the early investigative measures at Tbilisi police headquarters.

2.  The Court’s assessment

(a)  General principles

139.  The Court reiterates that it is not its role to determine, as a matter of principle, whether particular types of evidence may be admissible. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the unlawfulness in question and, where the violation of another Convention right is concerned, the nature of the violation found (see *Allan v. the United Kingdom*, no. 48539/99, § 42, ECHR 2002-IX). Furthermore, different considerations apply in respect of the use in criminal proceedings of evidence recovered by a measure found to be in breach of Article 3. The admission into the case file of statements obtained as a result of a violation of Article 3 renders the proceedings as a whole automatically unfair, in breach of Article 6 (see *Harutyunyan v.* *Armenia*, no. 36549/03, § 63, ECHR 2007-VIII; *Jalloh v. Germany* [GC], no. 54810/00, §§ 99 and 105, ECHR 2006-IX, and *Fidancı v. Turkey*, no. 17730/07, § 34, 17 January 2012). This rule applies irrespective of the probative value of the statements and of whether their use has been decisive in securing a conviction (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 166-167 and 173, ECHR 2010, and *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 254, ECHR 2016). The same rule also holds true with respect to the use of real evidence obtained as a result of an act of ill-treatment which is serious enough to be described as torture (*Gäfgen*, cited above, § 173). The use in a trial of evidence obtained by torture would amount to a flagrant denial of justice not only where the victim of the treatment contrary to Article 3 is the actual defendant but also even where the person from whom the evidence had been thus extracted is a third party (see *El Haski v. Belgium*, no. 649/08, § 85, 25 September 2012). The Court further reiterates that early access to a lawyer is a procedural guarantee of the privilege against self-incrimination and a fundamental safeguard against ill-treatment (see, in a similar vein, *Salduz v. Turkey* [GC], no. 36391/02, §§ 54 and 55, 27 November 2008, and *Ibrahim*, cited above, § 255).

(b)  Application of those principles to the circumstances of the case

140.  The Court has found in the present case that the first applicant’s initial confession, whereby he also implicated the second applicant in the commission of the crime, was extracted from him in the absence of a lawyer and by ill-treatment amounting to torture within the meaning of Article 3 of the Convention (see paragraph 109 above). Those statements were eventually removed from the case file by the trial court and were not used to convict the applicants. However, that fact could not sufficiently remedy the problems of criminal proceedings which had been undermined by the use of interrogation methods prohibited under Article 3 and which had led to the first and most decisive piece of evidence for the purposes of further investigative actions being obtained (compare, *mutatis mutandis*, with *Stanimirović v. Serbia*, no. 26088/06, § 52, 18 October 2011, and *Shishkin v. Russia*, no. 18280/04, § 150-152, 7 July 2011). Indeed, prior to the formal removal of that initial confession from the case file, the investigating authorities had placed heavy reliance on it to counter the applicants’ numerous attempts to build and develop their defence strategy. For instance, it was mainly on the grounds of that confession that the investigative authorities refused to undertake actions aimed at verifying the first applicant’s alibi (see paragraphs 28, 29, 31 and 39).

141.  After being tortured and questioned at Tbilisi police headquarters, the first applicant was immediately taken by those same officers to a reconstruction of the events at the scene of the crime, where he repeated his initial confession word for word, including the reference to the involvement of the second applicant. That second confession was then directly used in the conviction as one of the major incriminating elements against both applicants (see paragraphs 75 and 76 above). Despite the fact that a public defence lawyer had already been assigned to the first applicant by that time and attended the reconstruction, it does not appear from the case file that the first applicant was ever able to consult that lawyer prior to repeating his confession. Furthermore, the fact that the first applicant was made to confirm his statements in the presence of the very same police officers whom he had accused of torture and was expected to return to Tbilisi police headquarters after the reconstruction, definitely added to his feeling of insecurity and helplessness. In those circumstances, the Court considers that the restatement of the confession during the reconstruction was equally tainted by the previous acts of torture and could not constitute a valid piece of evidence. The domestic courts should have shown the utmost care by subjecting those repeated statements to the very strict scrutiny prior to accepting them (compare with, *mutatis mutandis*, *Harutyunyan*, cited above, § 65; *Hajnal v. Serbia*, no. 36937/06, § 114, 19 June 2012; *Stanimirović*, cited above, § 52, and also *Nechiporuk and Yonkalo*, cited above, § 265). In other words, it cannot be said that there was a break in the causal chain leading from the prohibited method of the first questioning at Tbilisi police headquarters to the reiteration by the first applicant of his confession at the scene of the crime which was then directly used to secure the conviction of the applicants and provided a base for their sentence (compare and contrast with *Gäfgen*, cited above, § 180).

142.  The above findings are of themselves sufficient for the Court to conclude that the police’s use of torture on the first applicant during the first questioning in the absence of a lawyer had an irretrievably prejudicial impact on the outcome of the criminal trial, and rendered the proceedings against both applicants unfair as a whole (compare with *Kaçiu and Kotorri* *v. Albania*, nos. 33192/07 and 33194/07, §§ 118, 122 and 128-29, 25 June 2013, for a similar situation, where the use of torture to extract incriminating statements against the applicant from a co-accused rendered the proceedings against the applicant unfair). However, the Court still wishes to address the statements of the victim, the member of parliament, which were also used by the domestic courts to secure the applicants’ conviction (see paragraphs 75 and 76 above). Notably, the victim identified the first applicant as the assailant during the identification parade on 13 May 2004. He then stated that he had had “a private talk” shortly after the identification parade, when the first applicant had reportedly confessed to him and implicated the second applicant.

143.  Firstly, the Court must note that the identification parade was conducted in manifest disregard of the procedural requirement contained in Article 347 § 3 of the CCP. Notably, whilst that provision clearly stated that a suspect had to be presented with three other people “who are not markedly different in terms of their appearance or clothing”, the very opposite happened in the present case. Indeed, there was a considerable difference in appearance between the first applicant and the other participants in the identification parade, a fact which was acknowledged several times by various people during the domestic proceedings and which remained uncontested by the Government in the proceedings before the Court. Both applicants raised that major argument in their defence before the domestic courts, but they provided no response to it in their decisions (compare, *mutatis mutandis*, with *Laska and Lika v. Albania*, nos. 12315/04 and 17605/04, §§ 65-71, 20 April 2010, and *Popov v. Russia*, no. 26853/04, § 181, 13 July 2006, for situations where the conduct of identification parades in breach of the relevant domestic requirements, either on their own or in tandem with other arguments, led the Court to find a breach of the right to a fair trial).

144.  Secondly, the Court considers that the victim’s statement that the first applicant had confessed to him during their “private talk”, which was not attended by a lawyer or an independent witness, had no probative value for the same reasons as those outlined above – notably, the lasting physical and mental effects of the torture to which the first applicant had been subjected a few hours earlier (see paragraph 141 above, with other references mentioned there). Lastly, the Court observes that there existed the required minimum evidence to support a reasonable suspicion that the victim, the member of parliament, had stood behind several attempts to coerce the first applicant into standing by his initial confession (see paragraphs 26, 36‑38, 41 and 70 above). Despite the fact that the applicants had duly voiced all those serious grievances to the investigative, prosecution and judicial authorities, and even played a secret recording of an attempt to bribe the first applicant’s wife to the trial court (see paragraph 71 above), the authorities remained conspicuously indifferent to what were well‑documented allegations of the victim’s perverting the course of justice.

145.  Since the domestic authorities failed to react adequately, by launching, for instance, an investigation into the applicants’ serious allegations about interference with their defence rights and the threats and bribery attempts orchestrated by the victim, who was indeed a powerful public person at the time, the Court is of the opinion that the probative value of the victim’s statements to the trial court was manifestly low. It was thus hardly appropriate for the domestic courts simply to accept those clearly tainted statements for conviction (see, *mutatis mutandis*, *Grigoryev v. Ukraine*, no. 51671/07, §§ 86, 15 May 2012).

146.  In the light of the foregoing considerations, the Court concludes that all the above-mentioned serious procedural irregularities rendered the trial against the applicants unfair as a whole. There has accordingly been a breach of Article 6 § 1 of the Convention.

VI.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

147.  The first applicant reiterated his complaint about the ill‑treatment on 13 May 2004 and the lack of an adequate investigation under Article 13 of the Convention. Both applicants further complained that the criminal proceedings against them had been unfair in their entirety on account of the first applicant’s inability to benefit from the assistance of a lawyer of his choice during his first questioning and subsequent detention in Tbilisi police headquarters. They cited, in this respect, Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1.

148.  The Government disagreed.

149.  Having regard to the facts of the case, the submissions of the parties and its findings under Articles 3 and 6 § 1 of the Convention, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the admissibility and merits of the remaining complaints (see, among many other authorities, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. [47848/08](http://hudoc.echr.coe.int/eng#{"appno":["47848/08"]}), § 156, ECHR 2014, with further references, and also *Mitrov v. the former Yugoslav Republic of Macedonia*, no. 45959/09, § 58, 2 June 2016 ).

VII.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

150.  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

151.  The first and second applicants claimed, respectively, EUR 150,000 and EUR 60,000 (EUR) in respect of non-pecuniary damage.

152.  The Government submitted that those amounts were excessive.

153.  The Court notes that it has found a combination of violations in the present case and accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations as such. The Court therefore finds it appropriate to award EUR 28,000 and EUR 16,000 to the first and second applicants respectively.

154.  Furthermore, given the Court’s findings regarding the unfairness of the domestic proceedings which resulted in the applicants’ conviction for attempted murder, and having regard to the circumstances of this case, the Court considers that a retrial, which Georgian law duly envisages as a possibility (see *Taktakishvili v. Georgia* (dec.), no. 46055/06, §§ 22 and 23, 16 October 2012), could represent, if requested, an appropriate way of redressing the violation under Article 6 § 1 of the Convention (compare with *Nechiporuk and Yonkalo*, cited above, § 297; *Hajnal*, cited above, § 150; and *Levinţa v. Moldova*, no. 17332/03, § 113, 16 December 2008).

B.  Costs and expenses

155.  Each of the applicants claimed EUR 2,400 in respect of their representation before the Court by their two representatives. In support of this claim, they submitted two separate legal service contracts dated 20 April 2005, signed by the applicants and the two lawyers. According to the terms of that contract, each of the applicants was expected to pay the lawyers the above-mentioned amounts in the form of a legal fee in the event of a successful outcome in the proceedings before the Court. The contracts specified that the legal fees were to cover all types of expense, such as those related to translation and postal services, faxing, the copying of materials, the lawyers’ possible travel costs and so on.

156.  The second applicant additionally claimed EUR 890 to reimburse his family for the cost of arranging a comprehensive examination of his health by private medical experts in 2008.

157.  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 documents in its possession and the above criteria, the Court firstly rejects the second applicant’s claim for the reimbursement of the cost of the medical examination in 2008. On the other hand, taking into account the complexity of the present case as well as the quality and volume of the legal work carried out, the Court considers it reasonable to award the applicants jointly the claimed amount of EUR 4,800 for the proceedings before the Court.

C.  Default interest

158.  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* admissible the complaints under Article 3, Article 5 §§ 1 and 3 and Article 6 § 1 of the Convention concerning the following issues:

(i)  the first applicant’s ill-treatment by the police on 13 May 2004,

(ii)  the unlawfulness of both applicants’ pre-trial detention between 13 January 2005 and 7 June 2005,

(iii)  the absence of sufficient reasons in the detention orders of 10 November 2004 and 7 June 2005, and

(iv)   the unfairness of the criminal proceedings against the applicants;

2.  *Declares* inadmissible the complaints under Article 3 and Article 5 § 4 of the Convention concerning both applicants’ conditions of detention in the relevant prisons and the fairness of the judicial review of 10 November 2004;

3.  *Holds* that there has been a violation of Article 3 of the Convention under both its substantive and procedural limbs on account of the first applicant’s torture by the police on 13 May 2004;

4.*Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the unlawfulness of the applicants’ pre-trial detention between 13 January 2005 and 7 June 2005;

5.*Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the absence of sufficient reasons in the detention orders of 10 November 2004 and 7 June 2005;

6.  *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the unfairness of the criminal proceedings against the applicants;

7.  *Holds* that it is not necessary to examine the admissibility and merits of both applicants’ complaints under Article 6 § 3 (c) taken in conjunction with Article 6 § 1 as well as of the first applicant’s complaint under Article 13 of the Convention;

8.  *Holds*

(a)  that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts,to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i)  EUR 28,000 (twenty-eight thousand euros) and EUR 16,000 (sixteen thousand euros) to the first and second applicants respectively, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii)  EUR 4,800 (four thousand eight hundred euros) to the applicants jointly, plus any tax that may be chargeable to them, in respect of costs and expenses;

(b)  that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9.  *Dismisses* the remainder of the applicants’ claim for just satisfaction.

Done in English, and notified in writing on 1 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Angelika Nußberger  
 Deputy Registrar President