

**IN THE EUROPEAN COURT OF HUMAN RIGHTS
FOURTH SECTION
BETWEEN:**

BRACHVELI and ROMANADZE

Applicants

- v -

GEORGIA

Respondent

**SUBMISSIONS OF THE BAR HUMAN RIGHTS COMMITTEE
OF ENGLAND AND WALES**

A. Introduction

1. These submissions are filed on behalf of the Bar Human Rights Committee of England and Wales (“BHRC”), in accordance with the leave granted by Deputy Section Registrar, Simeon Petrovski, pursuant to Rule 44(3) of the Rules of Court, for BHRC to make written submissions in this case.
2. BHRC is the independent international human rights arm of the Bar of England and Wales.¹ It is an independent and non-political body with a membership made up of barristers, law academics and students called to the Bar of England and Wales. BHRC works to defend the rule of law and internationally recognised legal standards relating to human rights. Promoting and upholding the right to protest is central to its mission.
3. This case raises important legal issues in respect of alleged interferences with the rights under Articles 10 and 11 of the Convention. The case concerns the administrative arrest and detention of the Applicants and the imposition of fines for disorderly conduct in a public square after they displayed banners during a peaceful street demonstration on 2 June 2023. The banners contained an inscription that likened the spelling of the then Prime Minister of Georgia’s first name to an obscene slang term for the human penis.² Questions arise as to whether the Applicants’ speech (including the banner content)

¹ See <https://barhumanrights.org.uk/about/>.

² See Subject Matter of the Case (12 May 2025).

falls within the ambit of Articles 10 and/or 11, and, if it does, whether any interferences with their speech were lawful.

4. These submissions address the three issues referred to in BHRC's request for leave to intervene dated 1 August 2025, all of which come within the scope of Question 2 posed by the Court — namely:
 - (a) The various forms in which State measures short of prosecution for a criminal offence may nonetheless constitute interferences with rights under Articles 10 and 11 of the Convention (see **Section B** below);
 - (b) The particular considerations under Articles 10 and 11 attaching to expressions which are deemed obscene or vulgar (see **Section C** below); and
 - (c) The circumstances in which administrative arrests and detentions of protestors can constitute particularly grave violations of Articles 10 and 11, undermining the conditions necessary for a democratic society, when forming part of a wider pattern of arrests and detentions (see **Section D** below).

B. Modes of interference with rights under Articles 10 and 11

5. Whilst a complaint about an arrest in the context of a demonstration falls to be examined under Article 11 (on the basis that Article 10 is to be regarded as *lex generalis* in relation to Article 11, which is a *lex specialis*),³ the Court recognises that the guarantees of Articles 10 and 11 are complementary.⁴ Notwithstanding the “autonomous role” of Article 11, it must also be considered in light of Article 10, particularly when the interference with the exercise of freedom of assembly is in reaction to views held or statements made by participants.⁵
6. The alleged interferences with Articles 10 and 11 of the Convention in this case concern the Applicants' arrest during a public demonstration, being coercively removed from the demonstration by the police, subsequent detention, conviction for an administrative offence of disorderly conduct, and the imposition of fines. It is well established that all these actions are capable of constituting interferences with Articles 10 and 11.⁶

³ *Ezelin v France*, App No. 11800/85 (26 April 1991), para. 35.

⁴ *Primov and Others*, App No. 17391/06 (12 June 2014), para. 92; *Navalny v Russia*, App. Nos. 29580/12 and 11252/13 (15 November 2018), para. 102.

⁵ *Kudrevičious and Others v Lithuania*, App No. 37553/05 (15 October 2015), para. 86; *Navalny v Russia*, App. No. 29580/12 and 11252/13 (15 November 2018), para. 102.

⁶ See, e.g., *Mzhavanadze and Rukhadze v Georgia*, App Nos. 29760/21 and 33931/21, para. 73; *Peradze and Others v Georgia*, App. No. 5631/16 (15 December 2022), paras. 38-40.

C. Freedom of expression and obscene speech

7. In this case, the Applicants held up a banner that authorities in Georgia deemed to be insulting to a neutral observer.⁷ A key issue is the extent to which Articles 10 and/or 11 of the Convention protect speech which is capable of being characterised as obscene or vulgar.⁸
8. It is a fundamental principle, long established in the Court's jurisprudence, that the Convention applies "not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population".⁹ This bedrock principle has informed the Court's approach in previous cases to ascertaining whether speech deemed obscene, vulgar or more generally offensive has fallen within the Convention's protection, and whether specific interferences with such speech have been proportionate. The following principles have arisen.
9. First, under Articles 10 and 11 there is little scope for restrictions on: (i) political speech; or (ii) debates on questions of public interest.¹⁰ It has been the Court's consistent approach to require "very strong reasons" for justifying restrictions on political debate,¹¹ and to allow a "particularly narrow" margin of appreciation for interferences with speech concerning matters of public interest.¹² More specifically:
 - (a) The Court has clarified that 'public interest' relates to "matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community", and encompasses "matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about".¹³
 - (b) In the particular context of domestic authorities taking action against an individual exercising his/her right to freedom of assembly under Article 11, the Court has confirmed that the authorities must act with "due recognition of the

⁷ *Brachveli v Georgia*, App. No. 20789/24, Application, Statement of the Facts, para. 17 (referring to an "objective, neutral evaluator"); *Romanadze v Georgia*, App. No. 21462/24, Application, Statement of the alleged violations of the Convention, p. 8 (referring to an "objective observer").

⁸ See Questions to the Parties (12 May 2025), Question 2.

⁹ *Handyside v United Kingdom*, App. No. 5493/72 (7 December 1976), para. 49.

¹⁰ *Peradze and Others v Georgia*, App. No. 5631/16 (15 December 2022), para. 37; *Mortensen v Denmark*, App. No. 16756/24 (21 October 2025), para. 44; *Baldassi v France*, App. No. 15271/16 (11 June 2020), para. 78.

¹¹ *Bumbeș v Romania*, App. No. 18079/15 (3 May 2022), para. 92; *Chkhartishvili v Georgia*, App. No. 31349/20 (11 May 2023), para. 55.

¹² *Sanchez v France*, App. No. 45581/15 (15 May 2023), para. 146; *Mortensen v Denmark*, App. No. 16756/24 (21 October 2025), para. 44.

¹³ *Hurbain v Belgium*, App. No. 57292/16 (4 July 2023), para. 223.

privileged protection under the Convention of political speech, debate on questions of public interest and the peaceful manifestation on such matters”.¹⁴

- (c) This heightened protection reflects the fact that “the promotion of free political debate is a very important feature of a democratic society”,¹⁵ and the Court has observed that “broad restrictions imposed in individual cases” would “undoubtedly affect respect for the freedom of expression in general in the State concerned”.¹⁶

10. Second, and as a more specific manifestation of the first principle, particular scrutiny will be applied if there is an interference with speech arising in the context of discourse regarding the alleged involvement of authorities in “silencing and oppressing” critical figures,¹⁷ or otherwise in the context of criticism regarding the State’s failure to “enhance [a] country’s democratic processes”.¹⁸
11. Third, and as a further specific manifestation of the first principle, the limits of acceptable criticism of a politician (such as a Prime Minister) are wider than in relation to a private individual.¹⁹ The Court has observed that a politician “inevitably and knowingly” lays “himself open to close scrutiny of his every word and deed” by “the public at large”.²⁰ The requirement that politicians show a high degree of tolerance towards speech which is disparaging towards them is all the more pertinent where the politician makes public statements that may give rise to criticism.²¹
12. Fourth, and significantly, it is critical that the use of obscene or vulgar phrases not be “dissociated from its context and apparent goal”; an interference cannot be justified with reference solely to the “form” of the expression.²² The broader context may well include the fact that the speech is political and/or relates to a matter of public interest. More specifically:
 - (a) There must be a holistic assessment that takes into account factors beyond the fact that an obscenity was used. As the Court has stated, “[i]t is only by a careful examination of the context in which the offending, insulting or aggressive words

¹⁴ [Navalny v Russia](#), App. No. 29580/12 and 11252/13 (15 November 2018), para. 133. On the relevance of the peaceful nature of a demonstration, see further the seventh principle identified below.

¹⁵ [Sanchez v France](#), App. No. 45581/15 (15 May 2023), para. 146.

¹⁶ [Bumbeș v Romania](#), App. No. 18079/15 (3 May 2022), para. 92.

¹⁷ [Savva Terentyev v Russia](#), App. No. 10692/09 (28 August 2018), para. 70. In that case, even an expression which was found to have used “vulgar, derogatory and vituperative terms” (and being “particularly aggressive and hostile in tone”) was found to have been the subject of an unlawful interference because it was intended to be “a scathing criticism of the current state of affairs in the Russian police”: paras. 67, 71-72.

¹⁸ [Chkhartishvili v Georgia](#), App. No. 31349/20 (11 May 2023), para. 55.

¹⁹ [Tuşalp v Turkey](#), App. No. 32131/08 and 41617/08 (21 February 2012), para. 45; [Dickinson v Turkey](#), App. No. 25200/11 (2 February 2021), para. 51.

²⁰ [Index.Hu.Zrt v Hungary](#), App. No. 77940/17 (7 September 2023), para. 36; [Artun v Turkey](#), App. No. 75510/01 (26 June 2007), para. 26.

²¹ [Mladina d.d. Ljubljana v Slovenia](#), App. No. 20981/10 (17 April 2014), para. 40.

²² [Peradze and Others v Georgia](#), App. No. 5631/16 (15 December 2022), para. 45. See also [Savva Terentyev v Russia](#), App. No. 10692/09 (28 August 2018), para. 82.

appear that one can draw a meaningful distinction between shocking and offensive language which is protected by Article 10 of the Convention and that which forfeits its right to tolerance in a democratic society”.²³

- (b) In *Sokolovskiy v Russia*, the domestic courts had fallen into error in determining whether certain speech criticising religious institutions should be punished because they had not attempted to place the statements in question within the context of the relevant discussion or to ascertain the ideas they were intended to promote.²⁴
 - (c) In *Tagiyev and Husyenov v Azerbaijan*, the domestic courts similarly failed to comply with Article 10 when they punished speech they deemed offensive but “examined the impugned remarks detached from the general context and content of the article, without assessing the author’s intention, the public interest of the matter discussed and other relevant elements”, including with respect to whether “the public interest and the intention of the author of the impugned article justified the possible use of a degree of provocation or exaggeration”.²⁵
13. Fifth, speech may fall outside the Convention’s protection if it amounts to “wanton denigration” or the sole intent behind it is to insult.²⁶ However, previous judgments of the Court reveal that the threshold that speech meets these descriptions is a high one. For example:
- (a) In *Uj v Hungary*, the Court held that offensive speech was entitled to protection because the applicant’s “primary aim was to raise awareness about the disadvantages of State ownership [of a company] rather than to denigrate the quality of the products of the company in the minds of the readers”.²⁷
 - (b) *Oberschlick v Austria (No. 2)* concerned an insult levelled by the applicant against a prominent political figure, which the respondent government had contended was not related to the content of any criticism and instead was simply “an insult used to denigrate and disparage an individual in public”, thus making “no positive contribution to the political development of society”.²⁸ The Court rejected this argument, stating that the insulting speech needed to be considered against “the circumstances in which it was written”, and the fact that the offensive word used, while arguably “polemical”, “did not on that account

²³ *Savva Terentyev v Russia*, App. No. 10692/09 (28 August 2018), para. 69.

²⁴ *Sokolovskiy v Russia*, App. No. 618/18 (4 June 2024), paras. 106-107, 109 and 111. On the importance of social context, see also *National Youth Council of Moldova v Moldova*, App. No. 15379/13 (25 June 2024), para. 78.

²⁵ *Tagiyev and Husyenov v Azerbaijan*, App. No. 13274/08 (5 December 2019), para. 48.

²⁶ *Peradze and Others v Georgia*, App. No. 5631/16 (15 December 2022), para. 37; *Sokolovskiy v Russia*, App. No. 618/18 (4 June 2024), para. 101.

²⁷ *Uj v Hungary*, App. No. 23954/10 (19 July 2011), para. 23.

²⁸ *Oberschlick v Austria (No. 2)*, App. No. 20834/92 (1 July 1997), para. 28.

constitute a gratuitous personal attack” on the public figure in the course of a broader political discussion.²⁹

14. Sixth, consistent with the fourth and fifth principles above, the mere fact that speech involves vulgar phrases is not sufficient to establish that it falls outside the protection of the Convention or that an interference with it is justified, because the vulgarity may serve a stylistic purpose, and speech is protected as regards both its content and its style.³⁰ More specifically:
- (a) The use of a common vulgarity may constitute “a forceful part of the form of expression”;³¹ and a “provocative metaphor” may be significant in expressing a perspective vigorously.³² For example, in *Peradze and Others v Georgia*, a “lewd word was used by the applicants as a stylistic tool for expressing the very high degree of their disapproval” for a project of “considerable public interest”.³³
 - (b) Where an expression is used to express a “value judgment or opinion”, it is more likely to attract protection than “a defamatory statement of fact”.³⁴
 - (c) Moreover, the Court should assess whether an expression amounts to a “satirical denouncement”,³⁵ or is a vehicle for conveying a “sceptical and sarcastic point of view” regarding State authorities.³⁶ For example, in *Sokolovskiy v Russia* provocative metaphors were seen as a tool for communicating a critique about the role of the church in society.³⁷ The Court has noted that “it is in the nature of political speech to be controversial”³⁸ and satire is, by its nature, intended to provoke and stir up debate.³⁹
15. Seventh, in considering whether a restriction on obscene speech complied with Articles 10 and/or 11, the Court will take into account the extent to which the speech (in particular as part of a political protest) caused “disruption of ordinary life”.⁴⁰ Notably:
- (a) In *Peradze and Others v Georgia* the Court found that an interference in the form of an arrest and administrative penalty was disproportionate, particularly

²⁹ *Oberschlick v Austria (No. 2)*, App. No. 20834/92 (1 July 1997), paras. 31, 33.

³⁰ *Uj v Hungary*, App. No. 23954/10 (19 July 2011), para. 20; *Chkhartishvili v Georgia*, App. No. 31349/20 (11 May 2023), para. 59.

³¹ *Uj v Hungary*, App. No. 23954/10 (19 July 2011), para. 24.

³² *Savva Terentyev v Russia*, App. No. 10692/09 (28 August 2018), para. 72.

³³ *Peradze and Others v Georgia*, App. No. 5631/16 (15 December 2022), para. 45.

³⁴ *Sokolovskiy v Russia*, App. No. 618/18 (4 June 2024), para. 101; *Uj v Hungary*, App. No. 23954/10 (19 July 2011), para. 23.

³⁵ *Uj v Hungary*, App. No. 23954/10 (19 July 2011), para. 23.

³⁶ *Savva Terentyev v Russia*, App. No. 10692/09 (28 August 2018), para. 71.

³⁷ *Sokolovskiy v Russia*, App. No. 618/18 (4 June 2024), para. 107.

³⁸ *Baldassi v France*, App. No. 15271/16 (11 June 2020), para. 79.

³⁹ *National Youth Council of Moldova v Moldova*, App. No. 15379/13 (25 June 2024), para. 74.

⁴⁰ *Peradze and Others v Georgia*, App. No. 5631/16 (15 December 2022), para. 42.

as the applicant's conduct had been "peaceful and passive", involving calmly holding banners without any aggression towards the police or passers-by.⁴¹

- (b) More generally, the Court has paid particular attention to whether the speech in question is likely to incite imminent unlawful actions, create a real threat of physical violence or otherwise "provoke any harmful consequences".⁴²

16. Finally, the principles addressed above apply to speech which is deemed offensive because it includes "expressions with sexual references".⁴³ Reflecting in particular the first and fourth principles identified above, for such speech the context remains key with an important question being whether the provocative expression "contributed to debates on topics of public interest".⁴⁴ Consistent with this approach:

- (a) In *Mătăsarv v the Republic of Moldova*, which concerned a political protest outside a public official's office during which the applicant displayed sculptures representing genitalia, the Court affirmed the applicability of Article 10 to the applicant's conduct and found that the domestic courts had imposed unnecessary restrictions on the applicant's freedom of expression.⁴⁵
- (b) In *Bouton v France*, in finding that the sanctioning of the applicant who had appeared partially nude in a church violated Article 10, the Court had regard to the fact that the applicant's "sole purpose" was to "contribute, by way of a deliberately provocative performance, to the public debate on women's rights".⁴⁶

D. Grave violations of Articles 10 and 11

17. It is important that the Court consider the specific facts of this case against the broader context in Georgia, as well as the fact that the Applicants allege that they gathered in front of the Parliament building in solidarity protest against the arrest and detention of "Sh.T", a lawyer and activist, who earlier that same day had displayed a banner criticising the Prime Minister which the authorities deemed to be insulting to a neutral observer.⁴⁷

18. A key issue in this case is whether the arrest and detention of protestors, when forming part of a wider pattern of suppression of freedom of expression, may constitute

⁴¹ *Peradze and Others v Georgia*, App. No. 5631/16 (15 December 2022), paras. 38, 43.

⁴² *Savva Terentyev v Russia*, App. No. 10692/09 (28 August 2018), paras. 78, 82-85. See also *Sokolovskiy v Russia*, App. No. 618/18 (4 June 2024), para. 111; *National Youth Council of Moldova v Moldova*, App. No. 15379/13 (25 June 2024), para. 69.

⁴³ *Peradze and Others v Georgia*, App. No. 5631/16 (15 December 2022), para. 45.

⁴⁴ *Peradze and Others v Georgia*, App. No. 5631/16 (15 December 2022), para. 45.

⁴⁵ *Mătăsarv v the Republic of Moldova*, App. Nos. 69714/16 and 71685/16 (15 January 2019), paras. 6-7, 35-36.

⁴⁶ *Bouton v France*, App. No. 22636/19 (13 October 2022), para. 53.

⁴⁷ *Brachveli v Georgia*, App. No. 20789/24, Application, Statement of the Facts, paras. 3-4; *Romanadze v Georgia*, App. No. 21462/24, Application, Statement of the Facts, paras. 4-5.

particularly grave violations of Articles 10 and/or 11, undermining the conditions necessary for a democratic society.

19. The Court has repeatedly emphasised the importance of Articles 10 and 11 to the foundations of a democratic and plural society. The protection of freedom of expression in Article 10 constitutes “one of the essential foundations of [democratic] society, one of the basic conditions for its progress and for the development of every man”.⁴⁸ Further, the protection of freedom of expression is one of the objectives of freedom of association protected under Article 11.⁴⁹ Notably, the health of the democracy in a country “can be gauged by the way in which this freedom is secured under national legislation and in which the authorities apply it in practice.”⁵⁰
20. As to the significance of the broader context in a State in which an interference with freedom of expression has occurred, the following principles have arisen.
21. First, in considering the proportionality of a measure which gives rise to an interference with Article 10 and 11 rights, the Court must take into account the broader chilling effect on the exercise of those rights.⁵¹ In the context of protests, a wide range of enforcement measures, including arrest, detention and administrative convictions, may have a chilling effect on future participation in assemblies.⁵²
22. Second, in assessing any individual alleged violation of the Convention, it is also critical to look at the broader context within a respondent State. For example:
 - (a) In *Ismayilova v Azerbaijan*, the Court took into consideration evidence regarding the general situation in the respondent State concerning the freedom of expression and safety of journalists in making findings whether there was a wider environment which may produce a grave chilling effect on freedom of expression which informed the treatment of the alleged violation in the specific case.⁵³ In *Haji and Others v Azerbaijan* the Court similarly had regard to the “general situation regarding freedom of expression” in the respondent State in assessing the lawfulness of a specific interference with speech.⁵⁴
 - (b) In *Navalny v Russia*, the Court found that the repeated arrests of the applicant had disclosed “a persistent failure” by the authorities to show tolerance towards

⁴⁸ *Handyside v United Kingdom*, App. No. 5493/72 (7 December 1976), para. 49; *Sanchez v France*, App. No. 45581/15 (15 May 2023), para. 145.

⁴⁹ *Gorzelik and Others v Poland*, App. No. 44158/98 (17 September 2004), paras. 90-91.

⁵⁰ *Gorzelik and Others v Poland*, App. No. 44158/98 (17 September 2004), para. 88; *Sidiropoulos and Others v Greece*, App. No. 26695/95 (10 July 1998), para. 40.

⁵¹ See *Mzhavanadze and Rukhadze v Georgia*, App. Nos. 29760/21 and 33931/21 (15 July 2025), para. 81; *Ismayilova v Azerbaijan*, App. Nos. 65286/13 and 57270/14 (10 January 2019), para. 159.

⁵² *Kudrevious and Others v Lithuania*, App. No. 37553/05 (15 October 2015), para. 100.

⁵³ See *Ismayilova v Azerbaijan*, App. Nos. 65286/13 and 57270/14 (10 January 2019), para. 161, where the Court considered that the general situation in Azerbaijan concerning freedom of expression and safety of journalists “may produce a grave chilling effect”.

⁵⁴ See, e.g., *Haji and Others v Azerbaijan*, App. No. 3503/10 (1 October 2020), para. 225.

unauthorised but peaceful gatherings in breach of the principles embodied in Article 11.⁵⁵ The Court concluded that the chilling effect of a pattern of arrests, detentions and administrative convictions discouraged the applicant and others from engaging actively in opposition politics.⁵⁶

23. In the present case, the BHRC submits that it would be appropriate for the Court to take into account the general situation in Georgia, including the following:

- (a) The Court has in recent times repeatedly found violations of Article 10 and 11 in relation to interferences with protestors participating in peaceful demonstrations in Georgia, including in *Makarashvili and Others v Georgia*,⁵⁷ *Peradze and Others v Georgia*,⁵⁸ and *Mzhavanadze and Rukhadze v Georgia*.⁵⁹
- (b) Further, there is evidence from authoritative and independent international observers regarding the deterioration of freedom of expression, including in the context of peaceful political protest, in Georgia. For example, the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, assessed the situation of human rights defenders in Georgia and observed that there were reported concerns regarding “an overall deteriorating environment for the exercise of freedom of assembly in the country. Human rights defenders and others cited the misuse of articles 166 and 173 of the Administrative Offences Code to criminalise peaceful protest, coupled with what was described as the systematic issuing of fines by administrative courts, often based solely on police statements...”⁶⁰ Further, on 13 December 2024, a joint statement was issued by the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Gina Romero and the Special Rapporteur on the right to freedom of opinion and expression, Irene Khan. The joint statement condemned a “pattern of repression and human rights violations” as the Government sought to “supress spontaneous, popular protests in the country.”⁶¹

24. It is within this context that the response to the Applicants’ protest should be assessed, including the allegation that the protest was carried out in response to the arrest and detention of another protester.

⁵⁵ [Navalny v Russia](#), App. Nos. 29580/12 and 11252/13 (15 November 2018), para. 148.

⁵⁶ [Navalny v Russia](#), App. Nos. 29580/12 and 11252/13 (15 November 2018), para. 152.

⁵⁷ [Makarashvili and Others v Georgia](#), App. Nos. 23158/20, 31365/20 and 32525/20 (1 September 2022).

⁵⁸ [Peradze and Others v Georgia](#), App. No. 5631/16 (15 December 2022).

⁵⁹ [Mzhavanadze and Rukhadze v Georgia](#), App. Nos. 29760/21 and 33931/21 (15 July 2025).

⁶⁰ Visit to Georgia, [Report of the Special Rapporteur on the situation of human rights defenders](#), Mary Lawlor, A/HRC/55/50/Add.2 (19 March 2024) at para. 23.

⁶¹ UN HRC, [Georgia: UN Experts concerned by widespread human rights violations amid ongoing protests](#), 13 December 2024.

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30 October 2025