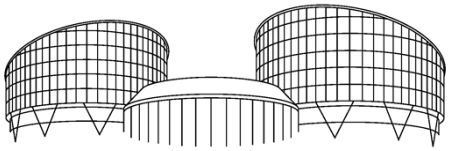

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ASHLARBA v. GEORGIA

(Application no. 45554/08)

JUDGMENT

STRASBOURG

15 July 2014

FINAL

15/10/2014

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

In the case of Ashlarba v. Georgia,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 24 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 45554/08) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Mr Izet Ashlarba ("the applicant"), on 22 April 2008.

2. The applicant was represented by Mr G. Zirakishvili and Ms M. Pkhaladze, lawyers practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr L. Meskhoradze, of the Ministry of Justice.

3. The applicant alleged, in particular, that Article 223(1) § 1 of the Criminal Code of Georgia, under which he was convicted of the offence of being a member of the "thieves' underworld", had not been precise and foreseeable enough for him to regulate his conduct accordingly.

4. On 3 January 2012 the application was communicated to the Government under Article 7 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in the village of Angisa, Ajarian Autonomous Republic ("the AAR"), Georgia.

A. The origins of the criminal proceedings against the applicant

6. On 15 February 2006 a criminal investigation was launched by the Ministry of the Interior of the AAR into the activities of a Mr A.K., on account of his alleged association with the criminal underworld, under Article 223(1) of the Criminal Code. Notably, he was suspected of being a "thief in law" (for an exact definition of this term, see paragraphs 18-20 below) who ran criminal syndicates and participated in the settlement of various private disputes through criminal actions. In the course of the investigation, a number of relevant witnesses were questioned – the officers of the prisons where Mr A.K. had served his previous prison terms, his family members and other close persons, all of whom confirmed that Mr A.K. had indeed obtained, through the criminal ritual of "baptism", the title of a "thief in law" in 1999. Since then he had participated in management of the "thieves' underworld" (a well-organised network of criminal syndicates; for more details see paragraphs 21-22 below), in accordance with the special rules regulating the conduct of members of the criminal underworld.

7. On 5 March 2006 a search warrant was issued in respect of Mr A.K., who was living at that time in either Ukraine or Russia. According to the findings of that investigation, the fugitive suspect had been in regular telephone contact with other purported criminal leaders in the AAR, instructing them on how to settle various private disputes in the region. The subsequent judicially authorised tapping of Mr A.K.'s telephone conversation showed that one of the persons who had been receiving regular instructions from the "thief in law" was the applicant. Consequently, the criminal probe was expanded to include the latter's activities.

8. On 31 July 2006 the applicant and another person, Mr Y.A., were arrested on suspicion of being members of the "thieves' underworld", an offence punishable under Article 223(1) § 1 of the Criminal Code. When questioned on the same day, the applicant confirmed that he had already known Mr A.K. for thirty years and was aware that he possessed the criminal title of a "thief in law". The applicant added that a thief in law was, in his opinion, "a righteous man (კარი კაცობა)".

9. On 29 September 2006 the criminal investigation against Mr A.K., the applicant and Mr Y.A., was terminated, and the case was transmitted by the prosecution service to a trial court.

B. The trial and the applicant's conviction

10. By a judgment of 27 March 2007, the Batumi City Court convicted the applicant and Mr Y.A. of being members of the "thieves' underworld" (Article 223(1) § 1 of the Criminal Code), sentencing them to seven and five years' imprisonment respectively, whilst Mr A.K. was convicted of being a

"thief in law" (Article 223(1) § 2 of the Criminal Code) and sentenced to ten years in prison.

11. The activities imputed to the applicant were described by the court, in general terms, as follows:

> "Acknowledging and giving recognition to the thieves' underworld, [the applicant] has publicly expressed his support for it through his own lifestyle, and has been actively involved in achieving the goals of this underworld... by obtaining profits for its members and for other persons, and by terrorising and exercising coercion with respect to ordinary individuals; [the applicant] has disseminated the special rules of the thieves' underworld through his own actions, and by assisting the thief in law in running this underworld."

12. More specifically, the finding of the applicant's guilt was based on the following three episodes, the reality of which had been confirmed by statements from numerous pertinent witnesses, examined during both the investigation stage and the trial, and evidence obtained by tapping the telephone lines of the applicant, the other convicts and other relevant persons.

13. Firstly, the City Court established that Mr A.K., generally acknowledged to be one of the most authoritative criminal bosses in the region, had requested the applicant to settle a dispute over an apartment between his mother-in-law and another individual. The court accused the applicant of accepting that task and becoming involved, between 24 June and July 2006, in unofficial adjudication of the dispute, using Mr A.K.'s criminal authority. In reply, the applicant unsuccessfully argued that he had merely wished to help the woman, who was his close acquaintance, to have the dispute settled by friendly agreement, as indeed the parties had been invited to do during a civil court hearing of their case at the relevant time; he had been unaware that such ordinary conduct was a criminal offence. He did not contest that he had indeed been asked by Mr A.K., his old friend, to look into the dispute.

14. Secondly, the City Court established that the same co-accused "thief in law", Mr A.K., had requested the applicant, on 24 July 2006, to establish the whereabouts in Batumi of two young men, aged 20-25 years, who had refused to pay a fare to a private taxi driver. The applicant was asked to persuade the young men, using his own authority as a senior member of the criminal world, and the authority of the more influential Mr A.K., to settle the debt towards the driver. Implicitly acknowledging that he had indeed been requested to look into this second private dispute by Mr A.K., the applicant unsuccessfully argued that he had not taken any action in practice and thus could not understand why he should be held responsible for something which had not occurred.

15. Lastly, the City Court relied on the fact that on 8 July 2006 the applicant, when visiting an imprisoned acquaintance who was considered by members of the "thieves' underworld" to be a promising young man, that is,

a future "thief in law", the applicant, in addition to discussing financial issues relating to the kitty (*obshyak*), the common fund belonging to the "thieves' underworld", had also informed him that the Minister of the Interior might soon lose his post, which would then naturally lead to reinforcement of the authority of "thieves' in law" and of the relevant rules of conduct in the criminal world. With respect to this third episode, the applicant unsuccessfully argued before the court that he had merely expressed his opinion about the personality of the Minister of the Interior and that he should not be punished for that.

16. On 10 July 2007 the Kutaisi Court of Appeal, dismissing the applicant's appeal in which he reiterated all of his previous arguments, fully upheld his conviction of 27 March 2007.

17. By a decision of 29 February 2008, the Supreme Court of Georgia rejected the applicant's cassation appeal as inadmissible, thus terminating the criminal proceedings against him.

II. RELEVANT DOMESTIC LAW AND COMPARATIVE STUDY

A. Legislation concerning the institution of "thieves' underworld"

18. Article 223(1) of the Criminal Code, a provision which was introduced to the Code by an Amendment of 20 December 2005, reads as follows:

> **"Article 223(1): Being a member of the thieves' underworld. Being a thief in law"**
>
> "1. Being a member of the thieves' underworld is punishable by 5 to 8 years' imprisonment, with or without a fine.
>
> 2. Being a thief in law is punishable by 7 to 10 years' imprisonment, with or without a fine."

19. The Amendment of 20 December 2005, which was initiated by the President of Georgia, was accompanied by an official explanatory memorandum which described the rationale behind the criminalisation of the above-mentioned two offences in the following terms:

> "The current legislation already contains a number of legal mechanisms for fighting against organised crime. However, these mechanisms are not sufficient for specifically addressing the activities of criminal syndicates, the so-called "thieves' underworld", and racketeering.
>
> Currently ... there still exist in the country various well-organised groups which act according to a special set of rules. As a result of the study of the goals and functioning methods of those groups, it can be ascertained that those groups identify themselves with the "thieves' underworld". The existence of the latter underworld comes into conflict with the public interests."

20. Apart from Article 223(1) of the Criminal Code, another related legislative novelty was approved by Georgian Parliament on 20 December 2005. Notably, a Law on Organised Crime and Racketeering was adopted, section 3 of which explained several major notions relating to the institution of "thieves in law" and "thieves' underworld":

> **Section 3 – Thieves' underworld – A member of the thieves' underworld – A thief in law.**
>
> 1. Thieves' underworld (*ქურდული სამყარო*) – any type of group of people who act in accordance with the special set of rules adopted or cherished by them and whose aim is to gain profit either for themselves or others by means of intimidation, threat, coercion, the rule of silence, "settlement of disputes using the authority of a thief in law" (*ქურდული გარჩევა*), inducing young people into illicit activities, committing or encouraging others to commit offences.
>
> 2. A member of the thieves' underworld (*ქურდული სამყაროს წევრი*) – any person who recognises the special rules of the thieves' underworld and is actively engaged in furtherance of the goals of that underworld.
>
> 3. Settlement of disputes using the authority of a thief in law (*ქურდული გარჩევა*) – resolution of a private dispute between two or more ordinary individuals by a member of the thieves' underworld which is accompanied by threat, coercion, intimidation or other illicit conduct.
>
> 4. Thief in law (*კანონიერი ქურდი*) – a member of the thieves' underworld who, using any type of methods, directly runs or coordinates the running of the thieves' underworld according to the [above-mentioned] special set of rules."

B. The institution of "thieves' underworld"

21. There exist a number of socio-legal studies of the phenomena of "thieves in law" and "thieves' underworld", a number of which were referred to by the Government in their submissions. An aggregate summary of the most relevant findings from those studies presents the following picture.

22. The so-called "thieves' underworld" ("*ქურდული სამყარო*" in Georgia, and "*воровской мир*" in Russian) is considered to be the backbone of the contemporary organised crime structure across the entire post-Soviet territory, including Georgia. This professional criminal underworld has its own recognised leaders, elaborate initiation rituals and a code of conduct. It has a particularly well-organised power structure, a strict system of subordination and control over its (criminal) members, but sometimes also over various different sectors of society. The history of the Soviet-era institution of "thieves' underworld" dates back to Imperial Russia. The traditional structure of a Soviet criminal syndicate, beginning from the time of the 1917 Revolution, was built upon the ideas of hierarchy and strict obedience to the "Thieves' Code" ("*ქურდული კანონი*" in Georgian, and "*Воровской Закон*" in Russian – the special set of rules regulating the

conduct of members of the underworld). Members of those criminal organisations were at that time fervently anti-communist, and for the most part were required to lead modest, non-materialistic lives. However, as the Soviet era progressed, new types of criminals and criminal structures began to emerge, which were in reality concerned only with accumulating wealth and power. These individuals broke with the traditional visions of the "thieves' underworld" and formed new gangs based on purely materialistic interests. It has also been argued that the Soviet State contributed to the dismantlement of the traditional structure of the criminal underworld which in its turn resulted in the elevation of the "thieves in law" to mythical status (bibliography: L.D. Newman, *Rico and the Russian Mafia: Toward a New Universal Principle Under International Law*, 9 Ind. Int'l & Comp. L. Rev. 225, 1998-199, at p. 231, with further relevant bibliography cited therein; Y. Glazov, *"Thieves" in the USSR – A Social Phenomenon*, Survey, in M. Galeotti (Ed.), Russian and Post-Soviet Organised Crime (2002); F. Varese, *The Society of the Vory-v-Zakone, 1930s-1950s*, Cahiers du monde russe, in M. Galeotti (Ed.), Russian and Post-Soviet Organised Crime (2002), at p. 515).

23. "Thieves in law" ("*კანონიერი ქურდები*" in Georgian, and "*воры в законе*" in Russian) are the most powerful criminals, who are obeyed by other fellow criminals, and enjoy unchallenged authority and high-ranking status within the criminal underworld in the countries previously forming the Soviet Union. They are the elite of the organised crime underworld, equivalent to the rank of "Godfather" in the Italian Mafia. The title of "thief in law" is usually conferred upon the criminal by a more senior "thief in law", through a criminal ritual known as "baptism". Holders of this title are considered to be guardians of the "Thieves' Code". A "thief in law" would rarely commit a crime himself. One of the most notable features of the control exerted by "thieves in law" is their reputation-based authority in criminal circles. Thus, physical presence is by no means a determining factor in the power and authority of those criminal bosses. Instead, a well-developed network of communications and a positive public perception of the criminal bosses ensure their influence in the criminal world. In general terms, "thieves in law" have to fulfil four basic functions in order to maintain effective leadership in the criminal underworld: (1) an informational function (that is, the collection, analysis and evaluation of information on a wide range of topics, including those regarding specific individuals and events); (2) an organisational function (that is, planning of various specific activities and delegation of responsibilities to other members of the criminal underworld); (3) a normative-regulatory function (that is, dissemination of criminal ideology, romanticising of criminal life, recruitment of youth, maintenance of the Thieves' Code within the criminal community); and (4) a decision-making function (directing and coordinating the activities of other affiliated organised criminal group, such as

housebreakers, racketeers, robbers, pickpockets, vehicle hijackers, kidnappers). Furthermore, one of the most important tasks assumed by a "thief in law" was that of administering the common monetary fund of the criminal underworld, or the "kitty" (*obshyak*). It should also be stressed that "thieves in law" had control and authority not only over criminals, but also over sectors of society in general. In the past, they were considered to be respectable social authorities, and were frequently used as dispute resolution facilitators. They were held up as models for young people, due to their enormous wealth and authority. Indeed, the significance of the affiliations and overlaps between the social and criminal elites has often been noted as one of the most vivid features of the institution of "thieves in law" (bibliography: Joseph D. Serio and V. S. Razinkin, *Thieves Professing the Code: The Traditional Role of "Vory v Zakone" in Russia's Criminal World and Adaptations to a New Social Reality*, Low Intensity Conflict & Law Enforcement; L. Shelley, *Post-Soviet Organised Crime and the Rule of Law*, 28 J. Marshall L. Rev. 827 1994-1995, at p. 827; Sharon A. Melzer, *Russian and Post-Soviet Organised Crime*, by Mark Galeotti (Ed.), Book Review, International Criminal Justice Review).

24. All these developments deeply influenced the formation of criminal power structures in Georgian civic society and the prison world, starting in Soviet times. Furthermore, Georgian "thieves in law" were considered to be one of the most powerful and influential ethnic groups among their peers in the criminal elite throughout the Soviet Union (in terms of statistics, Georgian "thieves in law" made up 31.6% of the overall number of criminal bosses, and were the second largest ethnic group after the Russian "thieves in law", who made up 33.1% of that population). Decisions by Georgian "thieves in law" traditionally carried particular weight for criminals of similar or lower ranks. In 1985 the Central Committee of the Georgian Communist Party ordered the law-enforcement bodies to crack down on the country's "thieves in law". To emphasise the importance of this mission, the Central Committee made it clear that officials failing to carry out the assignment would be treated as lawbreakers themselves and be dealt with accordingly. By 1986, 52 Georgian "thieves in law" had been arrested. However, the domestic courts imposed the lightest possible sentences. This was partly explained by the absence of a relevant legislative basis for effective prosecution of organised crime (there was no law at the relevant time proscribing the fact of being a criminal boss). Thus, four "thieves in law" were imprisoned for violating rules on probation, nine for being vagrants and leading other forms of "parasitic lifestyles", fourteen for illegal possession or storage of firearms and ammunition, and nineteen for drug dealing, and the remaining six "thieves in law" were imprisoned for various illegal activities of a minor nature. In any event, it remained difficult to prevent in any effective way the imprisoned "thieves in law" from plying their trade, since they could easily continue to run the criminal underworld

from their prison cells (bibliography: V. Davis Nordin and G. Glonti, *Thieves of the Law and the Rule of Law in Georgia*, Caucasian Review of International Affaires, Vol. 1 (1) – Winter 2006; L. I. Shelley, *Post-Soviet Organised Crime, Problem and Response*, European Journal on Criminal Policy and Research, Vol. 3-4, at p. 8).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

25. The applicant complained that Article 223(1) of the Criminal Code was not precise and foreseeable enough for him to appreciate what kind of conduct could be regarded as relating to the membership of the criminal underworld and thus be punishable. He relied on Article 7 of the Convention which reads, in its relevant part, as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.

A. Admissibility

26. The Government have not submitted any objection as to the admissibility of this complaint.

27. 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

28. The Government, referring to an extensive bibliography of the relevant socio-legal research (see paragraphs 22-24 above), invited the Court to take note of the social phenomenon of the "thieves' underworld" run by titular mafia bosses, also known as "thieves in law", in Georgia. They emphasised that the informal authority of such criminal bosses extended well beyond the criminal underworld, and also contaminated numerous facets of ordinary public life. Thus, young people strove to resemble the criminal rulers, many high-ranking public officials were also known to have cooperated with and supported those rulers, and they received financial support "donated" to them by business circles. This

undue influence resulted, among other things, in the total control of prisons by "thieves in law". Through threats, coercion, and co-optation, criminal bosses exerted tremendous influence over other prisoners and the prison authorities, and non-compliance with the imposed rules imposed by them, including failure to contribute to their common purse (*obshyak*) might result in severe punishment, including death.

29. The Government submitted that for many years there had been no real fight against the rule of "thieves in law" and their criminal syndicates, due to the absence of genuine political will. It was only after the change of Government in November 2003 that the State started to take legislative and other measures aimed at challenging the power of the criminal bosses. In particular, on 20 December 2005 an amendment was made to the Criminal Code of Georgia, adding Article 223(1), which penalised two separate criminal offences – (i) being a member of the "thieves' underworld" and (ii) being a "thief in law". The criminalisation of these offences was based on the State authorities' thorough knowledge of the specific features of the institution of "thieves in law", and of the various special rules of conduct in the "thieves' underworld". For instance, Article 223(1) was intended to cover the generally acknowledged phenomenon whereby "thieves in law" did not commit crime personally, but managed various criminal activities via criminal syndicates acting under their direct or indirect subordination. One of the most notable features of the "thieves'" power was their reputation-based authority in criminal circles, which meant that, even if they were physically absent from the country, they could still pose, through a network of committed criminals, a threat to public order.

30. The Government also submitted that the above-mentioned Amendment to the Criminal Code of 20 December 2005 was accompanied by the official explanatory memorandum, which, in addition to setting out the rationale for the legislative amendment, also conveyed certain constituent elements of those offences (see paragraph 19 above). Furthermore, the Amendment constituted only one element of a wider legislative package aimed at intensifying the fight against the criminal syndicates. The other piece of legislation, adopted on the very same day, was the Law on Organised Crime and Racketeering, section 3 of which comprehensively explained to the public the definition of such terms as "thieves' underworld", "being a member of the thieves' underworld", "settlement of disputes using the authority of a thief in law", "being a thief in law" and so on. As a result of the legislative package of 20 December 2005, the Georgian State was able to criminally prosecute and convict more than 180 criminal bosses, twenty of whom were found guilty of being "thieves in law". Furthermore, some of the most powerful "thieves in law" had been able to flee Georgia and had found shelter either in the Russian Federation, in Ukraine, or even in the countries of Western Europe. The most important result of this efficient anti-criminal campaign was, however,

significant progress in eradicating the social influence of criminal bosses over the public at large, thus diminishing their privileged societal position.

31. The Government thus argued that the above-mentioned legislative package of 20 December 2005 was more than sufficient for the applicant to have a clear idea that his association with the "thieves' underworld" would necessarily have attracted criminal responsibility under Article 223(1), and he should have thus regulated his conduct accordingly.

32. In reply, the applicant, without submitting any new arguments, merely expressed his discontent with the Government's position and maintained that he had been unable to foresee which of his actions could have attracted responsibility under Article 223(1) of the Criminal Code. He claimed that he had not known what concepts such as "thieves' underworld" or "settlement of disputes using the authority of a thief in law" could possibly mean.

2. The Court's assessment

(a) General principles

33. Article 7 § 1 of the Convention goes beyond prohibition of the retrospective application of criminal law to the detriment of the accused. It also sets forth, more generally, the principle that only the law can define a crime and prescribe a penalty. While it prohibits, in particular, extending the scope of existing offences to acts which previously were not criminal offences, it also lays down the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy. It follows that offences and the relevant penalties must be clearly defined by law. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable. When speaking of "law", Article 7 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises statute law as well as case-law and implies qualitative requirements, including those of accessibility and foreseeability (see *Cantoni v. France*, 15 November 1996, § 29, Reports of Judgments and Decisions 1996‑V; *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 145, ECHR 2000‑VII; and *Sud Fondi S.r.l. and Others v. Italy*, no. 75909/01, §§ 107 and 108, 20 January 2009).

34. As a consequence of the principle that laws must be of general application, the wording of statutes is not always precise. That means that many laws are inevitably couched in terms which, to a greater or lesser extent are vague, and their interpretation and application depend on practice. Consequently, in any system of law, however clearly drafted a legal provision, including a criminal law provision, may be, there is an inevitable

element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. Whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. A law may still satisfy the requirement of "foreseeability" where the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Achour v. France* [GC], no. 67335/01, § 54, ECHR 2006−IV, and *Huhtamäki v. Finland*, no. 54468/09, § 44, 6 March 2012).

(b) Application to the present case

35. Returning to the circumstances of the present case, the Court notes that the applicant was convicted of being a member of the "thieves' underworld" under Article 223(1) of the Criminal Code. Thus, the essence of the dispute between the parties is whether the meaning of that particular offence was clear and foreseeable enough in order for the applicant to regulate his conduct in advance.

36. The Court observes that being a member of the "thieves' underworld", an offence proscribed under the first paragraph of Article 223(1) of the Criminal Code, is closely linked to the offence of being a "thief in law", which is prosecuted under the second paragraph of the same criminal provision; both offences reflect a well-known institution of the organised crime, and were targeted by the wider legislative package adopted by the Georgian Parliament on 20 December 2005 for the purpose of intensifying the fight against criminal syndicates (see paragraphs 18-20 above). The Court's attention has previously been drawn to the functioning of that dangerous criminal community, and its vindictive rules, in the context of the Georgian prison sector (see *Tsintsabadze v. Georgia*, no. 35403/06, §§ 61, 66-69 and 87-92, 15 February 2011). Now, in the context of the present case, the findings of several socio-legal studies on the impact of the criminal institution of "thieves' underworld" on Georgian society at large were explained in detail before the Court (see paragraphs 21-24 above). In consequence, and drawing parallels with the recognised social blight represented by other mafia-type organisations (see, for instance, *Raimondo v. Italy*, 22 February 1994, § 30, Series A no. 281-A), the Court notes the rationale behind the respondent State's decision to create, on 20 December 2005, a legislative basis in order to combat that criminal activities more effectively.

37. Indeed, the relevant studies showed that the existence and functioning of the "thieves' underworld" had contaminated not only the prison sector but also the public at large in Georgia, including its most vulnerable members, namely young people, long before the adoption of the anti-criminal legislative package of 20 December 2005 (see paragraphs 24

and 28 above). Having regard to these studies and to the Government's submissions, the Court observes that this criminal phenomenon was already so deeply rooted in society, and the societal authority of "thieves in law" was so high, that among ordinary members of the public criminal concepts such as "thieves' underworld", "a thief in law", "settlement of disputes using the authority of a thief in law ", "*obshyak*", and so on, were matters of common knowledge and widely understood (see also *Tsintsabadze*, cited above, §§ 61 and 66-69).

38. Consequently, the Court considers that, by introducing on 20 December 2005 two new offences, namely that of being a member of the "thieves' underworld" and that of being a "thief in law", the Georgian legislature merely criminalised concepts and actions relating to a criminal ("thieves'") subculture, the exact meaning of which were already well known to the public at large. Interestingly enough, the Georgian legislature opted to maintain colloquial language in the legal definition of those offences; in the Court's view, this was apparently done to ensure that the essence of the newly criminalised offences would be grasped more easily by the general public. That being the case, the Court is not convinced by the applicant's attempts to present himself as a person to whom the concepts concerning that criminal subculture were entirely foreign, especially given that he explicitly suggested the contrary in his depositions to the domestic investigation. Thus, the applicant stated that he knew that Mr A.K. possessed the special status of "thief in law" and that, in general, a "thief in law" was, in his opinion, "a righteous person" (see paragraph 8 above). Furthermore, when visiting his imprisoned acquaintance, a candidate for "baptism" as a "thief in law", the applicant, as well as discussing financial issues relating to management of the common fund of the thieves' underworld (the kitty, or *obshyak*), also expressed opinions which clearly confirmed his interest in the fate of the relevant criminal subculture, the "thieves' underworld", and his understanding of the special set of rules governing it. Further, when willingly becoming involved in the unofficial adjudication of two private disputes, the applicant did not hesitate to use his own authority as a senior member of the thieves' underworld, and that of his boss, the titular "thief in law" Mr A.K., as a means of persuasion (see paragraphs 13-15 above).

39. Most importantly, the Court observes that the introduction of Article 223(1) to the Criminal Code, which clearly outlawed two separate offences related to the institution of "thieves' underworld", was only part of the wider legislative package of 20 December 2005, the aim of which was to intensify the fight against organised crime. The other major piece of legislation, enacted on the very same date, was the Law on Organised Crime and Racketeering, section 3 of which comprehensively explained to the public the definition of such already colloquial terms as "thieves' underworld", "being a member of the thieves' underworld", "settlement of

disputes using the authority of a thief in law", "being a thief in law", and so on. In consequence, the Court considers that Article 223(1), when read in conjunction with the legal definitions contained in section 3 of the Law on Organised Crime and Racketeering (compare with *Kasymakhunov and Saybatalov v. Russia*, nos. 26261/05 and 26377/06, § 82, 14 March 2013), conveyed for the attention of an ordinary person all the necessary constituent elements of the two criminal offences relating to the functioning of the "thieves' underworld".

40. Accordingly, the Court concludes that, after the criminalisation on 20 December 2005 of the offence of being a member of the "thieves' underworld", the applicant, if not through common knowledge based on the progressive spread over decades of the subculture of the "thieves' underworld" over the public at large, then by reference to section 3 of the Law on Organised Crime and Racketeering and, if need be, with the assistance of appropriate legal advice (see *Del Rio Prada v. Spain* [GC], no. 42750/09, § 79, ECHR 2013), could easily have foreseen which of his actions would have attracted criminal responsibility under Article 223(1) § 1 of the Criminal Code.

41. There has therefore been no violation of Article 7 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

42. The applicant, citing Articles 6 §§ 1 and 3, 8 and 10 of the Convention, also contested the outcome of the criminal proceedings conducted against him, claiming his innocence.

43. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares*, unanimously, the complaint under Article 7 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, unanimously, that there has been no violation of Article 7 of the Convention.

Done in English, and notified in writing on 15 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	Ineta Ziemele President