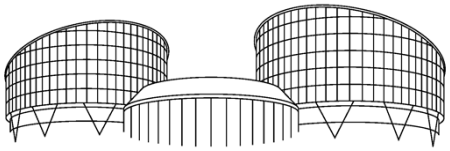

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF MAMASAKHLISI AND OTHERS v. GEORGIA AND RUSSIA

(Application nos. 29999/04 and 41424/04)

JUDGMENT

Art 1 • Jurisdiction of Russia and Georgia over Abkhazia • Effective control and decisive influence exercised by Russia over Abkhaz territory in view of political, economic and financial support as well as dissuasive military involvement • Responsibility of Russia for acts of Abkhaz authorities in relation to detained applicants • Positive obligations of Georgia with regard to Abkhazia, a part of its territory over which at the time it had no control • No responsibility on the part of Georgia for acts as positive obligations discharged
Art 3 • Inhuman or degrading treatment • Ill-treatment during interrogation, inadequate conditions of detention and lack of adequate medical treatment
Art 5 § 1 (a) and (c) • Unlawful arrest and detention • No information as to applicable laws and scarcity of official sources of information concerning legal and court system in Abkhazia • Court not in a position to verify whether *de facto* Abkhaz authorities and courts fulfilled Art 5 requirements • No basis for assuming existence of system in the region reflecting a judicial tradition compatible with the Convention
Art 6 § 1 (criminal) and 6 § 3 (c) • Lack of fair hearing by an independent and impartial tribunal established by law • *De facto* Abkhaz courts could not qualify as a "tribunal established by law" • No real opportunity to organise defence and effectively benefit from the assistance of a lawyer throughout proceedings

STRASBOURG

7 March 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

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In the case of Mamasakhlisi and Others v. Georgia and Russia,

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Egidijus Kūris,
Pauliine Koskelo,
Lado Chanturia,
Lorraine Schembri Orland,
Diana Sârcu*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

application no. 29999/04 against Georgia and the Russian Federation 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 Levan Mamasakhlisi ("the first applicant") and Ms Dinara Mamasakhlisi ("the second applicant"), on 3 August 2004;

application no. 41424/04 against Georgia and the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Grigol Nanava ("the third applicant"), on 19 November 2004;

the decision to give notice to the Georgian and Russian Governments ("the respondent Governments") of the two applications;

the decision of 29 August 2006 by a Chamber of the Second Section of the Court to indicate, as an interim measure under Rule 39 of the Rules of Court, to both respondent Governments to use all means available, without delay, to provide adequate medical treatment for the first applicant who was in prison at the time;

the decision of 13 March 2012 by the President of the Third Section to lift the interim measure of 29 August 2006 under Rule 39 of the Rules of Court, in the light of the latest developments of the case;

the consolidated observations submitted by the respondent Governments and by the applicants;

the observations in reply submitted by the respondent Governments and the applicants;

the comments submitted on 16 August 2007 by the former Council of Europe Commissioner for Human Rights ("the Commissioner"), who had been invited by the President of the Second Section to intervene in the context of application no. 29999/04;

Having deliberated in private on 7 February 2023,

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

INTRODUCTION

1. Application no. 29999/04 was communicated to the two respondent Governments – respectively the Governments of Georgia and the Russian Federation – on 29 August 2006.

2. The two respondent Governments were given notice of application no. 41424/04 on 27 November 2006.

3. The applications concern the following complaints by the first and third applicants: (under Article 3 of the Convention) their alleged ill-treatment during their questioning in Abkhazia, the allegedly inadequate conditions of their subsequent detention and the failure to provide them during their detention with any appropriate medical care; (under Article 5 §§ 1, 3 and 4) their allegedly unlawful detention; (under Article 6 §§ 1 and 3(c)) a breach of their right to a fair trial by an independent and impartial tribunal, and the failure to provide them with legal assistance of their choosing; and (under Article 2 of Protocol No. 7 to the Convention) the lack of any possibility for them to appeal to a higher tribunal against their sentences. The Court notes that the term "Abkhazia" refers to the region in Georgia which is currently outside the *de facto* control of the Georgian Government.

4. All three applicants, who had been granted legal aid, also complained under Article 8 of a breach of their right to respect for family life as a result of the lack of any possibility for the first and second applicants to meet with each other, or for the third applicant to meet with his wife; they also complained of the fact that they had had no effective remedies at their disposal (under Article 13) in relation to those complaints.

5. Following an exchange of observations, the Georgian Government withdrew their observations in their entirety in 2008.

6. On 15 September 2016 the parties were invited to submit their consolidated position on the admissibility and merits of the application, in the light of the questions that had been put to them in 2006 or 2007, taking into account possible subsequent factual and legal developments in the case.

7. The first applicant, Mr Levan Mamasakhlisi, is a Georgian national who was born in 1980 in Gagra, in the Autonomous Republic of Abkhazia ("Abkhazia"), Georgia.

8. The second applicant, Ms Dinara Mamasakhlisi, was a Georgian national born in 1938 in the Khobi District, Georgia. She was first applicant's grandmother; she died in November 2011. On 19 July 2012 the first applicant expressed a wish to continue the application on her behalf, as her next of kin, as well as on his own behalf. He did not submit a certificate showing that he is her heir.

9. The third applicant, Mr Grigol Nanava, was a Georgian national who was born in 1922. He died on 6 December 2006. On 3 July 2007, a Chamber of the Second Section decided to allow the applicant's wife, Ms Gogona Todua, to pursue the application in her late husband's stead.

10. In a letter of 5 April 2022 the third applicant's representative informed the Court that Ms Gogona Todua had passed away on 1 August 2021 and relayed the request of her grandson, Mr Saba Tordia (born Saba Nanava), to continue pursuing the case. The representative submitted a death certificate for Ms Gogona Todua, an heirs' certificate indicating Mr Saba Tordia as her only heir (Mr Saba Tordia's father, Gocha Nanava, having passed away), as well as Ms Gogona Todua's will expressing a wish that the examination of the case continues.

11. The applicants were represented before the Court by Mr P. Beria, Ms N. Katsitadze, Mr V. Vakhtangadze and Mr G. Mitrtskhulava, lawyers practising in Tbilisi; they were joined later by Mr Jarlath Clifford, Mr Philip Leach, Ms Joanne Sawyer and Mr Jeff Gavron, lawyers from the European Human Rights Advocacy Centre ("EHRAC").

12. The Georgian Government were, successively, represented by their Agents, Ms E. Gureshidze, Ms I. Bartaia, Mr D. Tomadze, Mr L. Meskhoradze and Mr B. Dzamashvili, of the Ministry of Justice.

13. The Russian Government were, successively, represented by their Agents, Mr P. Laptev, Ms V. Milinchuk, Mr G. Matyushkin and Mr M. Galperin, Representatives of the Russian Federation at the European Court of Human Rights.

14. On 16 March 2022 the Committee of Ministers of the Council of Europe, in the context of a procedure launched under Article 8 of the Statute of the Council of Europe, adopted Resolution CM/Res(2022)2, by which the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022.

15. On 22 March 2022 the Court, sitting in plenary session in accordance with Rule 20 § 1, adopted the "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights". It stated that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022.

16. On 5 September 2022 the Plenary Court took formal notice of the fact that the office of judge with respect of the Russian Federation would cease to exist after 16 September 2022. This, as a consequence, entailed that there was no longer a valid list of *ad hoc* judges who would be eligible to take part in the consideration of cases where the Russian Federation was the respondent State.

17. By a letter of 8 November 2022, the Russian Government were informed, *inter alia*, that the Court intended to appoint one of the sitting judges of the Court to act as an *ad hoc* judge for the examination of applications against that State that the Court remained competent to deal with (applying by analogy Rule 29 § 2 of the Rules of Court). The Russian

Government were invited to comment on that arrangement by 22 November 2022 but they did not submit any comments.

18. Accordingly, in the present case the President of the Chamber decided to appoint an *ad hoc* judge from among the members of the composition, applying by analogy Rule 29 § 2 (b).

THE FACTS

19. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND

20. The Democratic Republic of Georgia, which was established in 1918 as an independent State, became the Georgian Soviet Socialist Republic ("the GSSR") as a result of the military occupation by the Russian Soviet Army in February 1921. In 1936, the GSSR became part of the USSR, as one of its separate constituent entities. In the meantime, in 1931, Abkhazia was defined as an Autonomous Republic within the GSSR.

21. According to the USSR census of 1989, the population of Abkhazia was approximately 525,100 people. Of those, 45.7% were Georgians, 17.8% Abkhazians, 14.6% Armenians, 14.2% Russians, 2.8% Greeks, 2.2% Ukrainians and 0.1% Belorusians, Jews and others.

22. On 9 April 1991 Georgia declared independence from the USSR within the territorial borders of the former GSSR.

23. On 8 December 1991, the Minsk Agreement was signed, which declared the end of the Soviet Union's existence and set up the Commonwealth of Independent States ("the CIS"). Georgia joined the CIS in December 1993.

24. On 6 July 1992 Georgia became a member State of the United Nations, with its internationally recognised sovereign territory encompassing Abkhazia.

25. Abkhazia spans 3,300 square miles (about 8,500 square kilometres) on Georgia's northwest coast, sharing a border with the Russian Federation to the north, and the Samegrelo-Zemo Svaneti Region (within Georgia) to the south. Some three-quarters of Abkhazia's land is mountainous.

26. By 1992 ethnic tensions between Abkhazia and the rest of Georgia were increasing. Abkhazia declared its independence from Georgia on 23 July 1992.

27. On 14 August 1992, Georgian government forces entered Abkhaz territory. The Georgian armed forces proceeded to Sukhumi, the Abkhaz capital, where they attacked Abkhaz government buildings. Thereafter, a violent conflict erupted between Abkhaz forces and the central government of Georgia. The Abkhaz fought for independence from Georgia; the Georgian

government sought to maintain control over its territory. Intensive fighting took place on land, air and sea. Several thousand people were killed and many more wounded on both sides; hundreds of thousands of people were displaced from their homes. The Abkhaz forces were supported by fighters from the North Caucasus region of the Russian Federation.

28. On 24 August 1993 (in Resolution 858) the UN Security Council established a United Nations Observer Mission to Georgia (UNOMIG). UNOMIG also encompassed the Human Rights Office in Abkhazia (HROAG), which was established in December 1996, under Security Council Resolution 1077.

29. The fighting did not come to a halt, and in September 1993 the Abkhaz forces, with armed support from outside Abkhazia, took full control of the disputed territory. The conflict led to the almost complete devastation of large areas and a massive displacement of people. A UN fact-finding mission, dispatched by the UN Secretary General in October 1993, reported that both Georgian government forces and Abkhaz forces, as well as irregulars and civilians cooperating with them, had been responsible for serious human rights violations. Similar findings were contained in a report by Human Rights Watch dated 1 March 1995.

30. Numerous international sources have described the violence as "ethnic cleansing" against the Georgian population of Abkhazia. It was also reported that Abkhaz were particularly targeted by violence in areas controlled by Georgian government forces in the first four months after August 1992.

31. On 14 May 1994 the Georgian and Abkhaz parties signed, in Moscow, an Agreement on a Ceasefire and Separation of Forces ("the Ceasefire Agreement"). The parties agreed to the deployment of a CIS Collective Peacekeeping Force ("the CIS CPF") to monitor compliance with the Agreement.

32. The Ceasefire Agreement established a security zone between Georgian-controlled territory and Abkhazia, in which no armed forces or heavy military equipment were to be permitted. A perimeter was defined on each side of the security zone, which was to be a restricted-weapons zone where no heavy military equipment was to be permitted. The security and restricted-weapons zones ran along the Enguri River, coinciding with the Georgian-Abkhaz administrative boundary. The local civil authorities were to function in the security zone and the restricted-weapons zone. Any movement of the CIS CPF and of the international observers outside the security zone was to be subject to the agreement of the parties.

33. A protocol to the Ceasefire Agreement defined the mandate of the CIS CPF. In particular, the parties agreed that its function was to maintain the ceasefire and to prevent the resumption of hostilities in the conflict area by disengaging the armed groups of the opposing parties from each other. In carrying out its mission, the peacekeeping force was to enjoy freedom of

movement within the security zone and the restricted-weapons zone, and freedom of communications and other facilities needed to fulfil its mission.

34. In a document issued on 22 August 1994 and entitled "Decision by the Council of Heads of State of the CIS", it was determined that the CIS CPF would number about 1,500 to 3,000 people and would mainly be comprised of the Russian military personnel already stationed in the conflict zone, and that the (already deployed) representative of the Russian Armed Forces in the conflict zone would be appointed as commander of the CIS CPF. Beginning in June 1994, Russia deployed some 3,000 peacekeepers under the CIS CPF banner to demine the conflict zone. From 15 November 1994 onwards, the duration and mandate of the CIS CPF were extended about every six months, until 2003.

35. The Council of Heads of State of the CIS adopted a decision on 19 January 1996 entitled "On measures for the settlement of the conflict in Abkhazia, Georgia" ("the 1996 CIS decision"), agreeing that CIS member State would be banned from affording military assistance, from providing or selling military equipment to the Abkhaz authorities and from carrying out economic, trade, financial, transport or other operations with the Abkhaz authorities without the agreement of Georgia. States also undertook to prevent the recruitment of their citizens to fight in the conflict zone and not to enter into official contacts with representatives or officials of Abkhazia. In March 2008 Russia unilaterally withdrew from this agreement, arguing that it prevented the realisation of socio-economic programmes.

36. A formal agreement on the commencement of the withdrawal of the Russian forces and weapons from military bases in Georgia was reached at the OSCE Istanbul Summit in 1999.

37. Following a March 2003 working meeting between the then Russian and Georgian Presidents, the Council of the Heads of State of the CIS decided on 19 September 2003 to extend the mandate of the CIS CPF until such time as either of the opposing sides asked that it be terminated. The decision stated that, if a request to that effect were to be made by either side, then the termination of the peacekeeping operation would be automatic and the commander of the CIS CPF, in coordination with the Georgian side, would ensure that the force left, together with any military equipment and arms, within a one-month period. The decision reiterated that Abkhazia constituted an inherent part of Georgia and provided that the UN Security Council was to be informed of the decision.

II. THE EVENTS RELATING TO THE FIRST APPLICANT, MR L. MAMASAKHLISI

A. The explosion and related detention according to the applicant

38. On 7 August 2001, an explosive device exploded in the first applicant's hands, blowing off his right hand and three fingers of his left hand and injuring his chest, abdominal area and both eyes. The device was a hand-made grenade which the applicant had intended to use for killing fish. At the time of the incident he was in his mother's apartment in Pitsunda, Abkhazia.

39. His right hand and three fingers on his left hand were operated on and amputated in Gagra Hospital.

40. According to the applicant, when he recovered consciousness after the operation, he could hear, but not see, representatives of the *de facto* Abkhaz security forces. They repeatedly intimidated him and threatened to let him die if he did not confess that he had been intending to blow up certain targets in the city. The applicant kept denying any such intentions. With the assistance of his mother, he was visited by a lawyer of Georgian origin who promised to help him but who did not reappear thereafter. The applicant was told by his mother that the lawyer had been intimidated by the Abkhaz security forces, as a result of which he had ended his representation of the applicant. The security forces visited the applicant every day in hospital and threatened him with the death penalty if he did not confess.

41. On 10 August 2001 the applicant was transferred from Gagra Hospital to Sukhumi Hospital, despite his very poor condition. On 12 August 2001 he was moved to a temporary detention facility ("IVS") of the *de facto* Security Service of Abkhazia in Sukhumi ("the Security Service IVS" – see the description of that establishment given by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") in the relevant parts of its report on its visit to Abkhazia in 2009 in the "Relevant legal framework" section below). He was physically supported by three officers of the Security Service IVS, as he was unable to walk unassisted.

42. In the detention cell, he was kept isolated in complete darkness and was given insufficient food, of poor quality and repulsive taste. There was no drinking water in the cell. He was given water by the prison guards – sometimes a bottle a day, sometimes nothing at all, depending on the will of the guard. There was only an iron bed in his cell, without linen or a mattress. There was no heating and it felt freezing in the winter. The cell was infested with cockroaches. He could not take a shower or change his clothes. No medication was provided to him.

43. The first three months were especially difficult for the applicant as he could not see anything as a result of the explosion and could not take care of

himself. His eyes ached a lot. He was in solitary confinement and was not allowed to leave the cell or to contact anyone. At times, he heard desperate screams for help from other prisoners who he believed were being tortured. He could hear questioners shouting slurs at them and yelling "Don't let him lose consciousness! Don't you dare pass out!". During that period, he lost all track of time until he was visited by representatives of the International Committee of the Red Cross (ICRC) about two and a half months after he had been placed in detention. He was experiencing severe asthma attacks at the time of the ICRC's visit, and his wounds had started to fester by that point. His bandages were cleaned and his injuries treated for the first time only after an intervention by the ICRC, about three months after he had been detained.

44. During the first three months of his detention, he was questioned every day, away from his cell, for a few hours at a time. During the questioning he was threatened with being shot, beaten or left to rot in his cell. His questioners also repeatedly humiliated him and slapped him on the head. He was told that Abkhazia was not his homeland and that he should have stayed away like the rest of the Georgians; he was also told that all Georgians should be killed, as they had fought against the Abkhaz people. Five or six times he was subjected to mock executions. He was also wakened up every night and made to say his own name. In addition to the investigator and an assistant, a high-ranking military officer was present during the questioning.

45. No legal assistance was provided to him and he was not in a condition to request it. The security forces twice brought a person who was introduced as his lawyer. However, that person did nothing but intimidate the applicant and tell him to confess or face severe consequences. The applicant could not see him but could feel a gun touch his skin during one of those meetings.

46. He was deprived of contact with his relatives. On one occasion, he was beaten severely after he attempted to speak to the detainee in the cell next to his.

47. Some months into his detention, in order to survive, the applicant confessed to everything he had been asked. The confession was recorded with a video recorder. He had no recollection of having signed any document.

48. An article in the 19 October 2001 edition of the Russian newspaper *Trud* reported on the contents of a video recording of the applicant's questioning following the above incident. While the article indicated that the authenticity of the recording was impossible to establish, it stated that the applicant had confessed that he had been recruited by the Georgian secret services in order to place bombs in the town of Pitsunda, Abkhazia, in order to scare Russian tourists away.

B. The judgment sentencing the applicant

49. The applicant's case was heard on 15 February 2002 by the *de facto* Abkhazia Military Court, sitting as a single judge. The hearing took place at

the headquarters of the Ministry of the Interior in Sukhumi, in the presence of a prosecutor and a woman, whose name the applicant did not know. The woman was introduced to him as his lawyer and remained silent during the whole of the proceedings. According to the applicant, the trial lasted for about two hours, was held behind closed doors and only his mother and brother were allowed to attend. Several witnesses were heard. One of them, whom the applicant had met before but whose name he could not remember, stated that he knew about the applicant's secret cooperation with the security services of Georgia and about his intentions to blow up targets in Abkhazia. The applicant himself was not asked any questions and did not use the opportunity to make a closing statement. After the end of the trial the judge left the room for about two minutes, following which he returned and announced the verdict.

50. On 15 February 2002 the *de facto* Abkhazia Military Court found the applicant guilty of the following offences under the Criminal Code of the *de facto* Republic of Abkhazia: high treason (Article 65); attempted sabotage (Articles 17-69); the illegal carrying, keeping, obtaining, production or installation of military equipment and explosive devices (Article 238(I)(II)); and illegally crossing the border of and entering the Republic (Article 84(II)). The court sentenced him to twelve years' imprisonment.

51. According to the judgment, on 9 July 2001 the applicant had unlawfully crossed the border of Abkhazia from Georgia and arrived at his mother's residence in the town of Pitsunda (also known as Bichvinta), Gagra District, in order to perform acts of sabotage. On 23 July 2001 he had allegedly collected nine explosive devices with a high destructive capability from a hiding place in the main cemetery in the town of Gagra, located close to Pitsunda. He had then stored the explosive devices in the bathroom of his mother's flat, hiding them from her and his close relatives.

52. On 7 August 2001, he had begun assembling the devices and switching them to operational mode in preparation for placing them in locations where he intended them to explode; one such scheduled explosion was planned for the Pitsunda health resort. At about 11.15 a.m., in the course of switching on the ninth explosive device, it had detonated spontaneously. As a result he had suffered fragmentation wounds and had then been taken to Gagra Central Republican Hospital. He had thus failed to realise his criminal plan owing to circumstances beyond his control. He had been subsequently arrested by the *de facto* Abkhaz state security service.

53. When examined by the Abkhazia Military Court during the trial, he had made a full confession and had provided detailed explanations regarding how, since 1996, he had been cooperating with a named agent of the Georgian State Security Service. In particular, he had been collecting information of a military-political and economic nature which had then been used by the Georgian authorities to the detriment of the national security of Abkhazia. More specifically, between 1996 and 2000, he had repeatedly unlawfully

crossed the State border into Abkhazia and had gathered information about the number of buildings used as holiday accommodation and their capacity to accommodate people, as well as about the quantities of wood destined for export and the construction of a docks area for shipping. He had passed that information on in writing to his handler in Tbilisi. He had admitted that he had pursued this activity out of a personal need for revenge for his father's killing during the Georgian-Abkhaz war in the early 1990s. In May 2001 he had attended a specialised camp close to the "Tbilisi sea" (an artificial lake in the vicinity of Tbilisi that serves as a reservoir) in order to learn how to handle explosives.

54. The *de facto* Abkhazia Military Court found that, in addition to his own confession, a number of witnesses (named in the judgment) had confirmed the applicant's guilt in relation to treason, sabotage, the unlawful keeping and transportation of explosives, and the unlawful crossing of the State border. A forensic technical examination of the explosives had established that they had been produced in a factory and had been designed to allow for a delayed explosion of up to seven hours.

55. The text of the judgment read that a forensic medical examination had determined that the applicant had suffered second-degree haemorrhagic shock. His right hand had been blown off, and so had two fingers of his left hand. He had also received shrapnel wounds to his chest, face and both hips. The bodily injuries, the amputation of his right hand and the broken bones on his left hand had "corresponded to the category of less severe injuries". According to a forensic psychiatric report, the applicant had been mentally fit to stand trial, and he had not required any "medical intervention".

56. The text of the judgment indicated that it was possible to lodge an appeal with the criminal section of the Supreme Court of Abkhazia within seven days of its delivery.

57. According to the first applicant, he was not informed at any time of the possibility to appeal. He only saw for the first time the lawyer that had been appointed by the *de facto* authorities to represent him at the court hearing and had no contact with her before, during or after that hearing.

58. According to the Russian Government, the applicant became aware of the contents of the judgment on the same day that it was delivered by the Abkhaz Military Court (15 February 2002) on account of its public pronouncement.

59. The Government of Georgia did not challenge the facts as set out by the applicant. The Russian Government submitted that the applicant's allegations were unfounded and not supported by evidence (see also paragraphs 243 and 285 below).

60. On 26 August 2002 the ICRC certified that the first applicant had been included in the ICRC's list of detainees since 18 September 2001 and had been visited while in detention by members of that organisation.

C. Subsequent developments

61. One week after the trial, the first applicant was taken to a cell in the building of the *de facto* Abkhaz ministry of the interior in Sukhumi ("the Sukhumi IVS"); he remained in that building for the following two years. (At the time in question the *de facto* Abkhaz ministry of the interior and the security service shared the same building.) According to the applicant, the light in his cell was permanently turned on, so he could barely sleep for the first three months of his detention. The cell was full of cockroaches and rodents, and very dirty. He developed eczema, which was diagnosed by a doctor provided to him by the ICRC. The same doctor established that a fragment of explosive remained lodged in one of his eyes. He also had a skin rash all over his body. During the whole period of his time in detention the authorities provided him with no medication. Representatives of the ICRC gave him some medicine on several occasions but could not do so on a regular basis.

62. On 31 March 2004 the applicant was transferred to Dranda Prison (see also paragraphs 67 and 73 below). He was placed in a cell with many other prisoners. The conditions were slightly better than in the previous establishment. His health continued to be poor. He suffered from eczema; to treat it he used medicine sent by his grandmother. He also suffered serious attacks of bronchial asthma as a result of the excessive humidity in the cell, and the medicine to treat that (also sent by his grandmother about once every two months) was at times insufficient. The only person who provided him with medicine during the entire period of his detention in Dranda Prison was his grandmother. The medical personnel in the prison told him that they only had medication for headaches, such as aspirin. Some of them acknowledged that they had no medical qualifications whatsoever.

63. The applicant suffered from ongoing stress due to tensions among the inmates. On one occasion, when the Abkhaz prisoners were celebrating the 1994 Abkhaz victory over the Georgians, he was verbally abused by a group of the Abkhaz prisoners, who shouted: "Here comes the Georgian! Let's kill him! Happy victory day, you loser!". He was not permitted to see his grandmother, with whom he had always been very close, and had only written contact with her, which was facilitated by the ICRC. He could not meet any other person from outside Abkhazia's *de facto* borders.

64. Since they were unable to travel to Abkhazia, the applicants' representatives managed to obtain the first applicant's signature on the powers of attorney to be lodged with the Court only with the help of HROAG. Because of the situation in Abkhazia, they had no opportunity to meet or to talk with him and to obtain detailed information about his detention, until his release on 14 February 2007 (see paragraph 72 below).

65. In February 2005, the Georgian Minister for Conflict Resolution wrote to the head of UNOMIG stating that, according to information received

from HROAG and OSCE, the state of health of the first applicant was problematic. He asked for assistance in handing the applicant over to the Georgian authorities or, failing that, to a civilian hospital without delay.

66. In April 2005, a human rights commission of the *de facto* parliament of Abkhazia forwarded information about the applicant's state and the circumstances of his detention to the Georgian-Abkhaz Coordination Council, a body which liaised between the Georgian and Abkhaz sides and which had offices in both Tbilisi and Sukhumi.

67. According to that information, which had been provided by the governor of Dranda Prison, on 31 March 2004 the applicant had been placed in a cell in the main building of that establishment with detainees of different nationalities. His cell was generally well-ventilated and had satisfactory access to daylight. Tap water was available without limitation. The detainees walked in the open air daily, for approximately two hours. The first applicant showered in accordance with an established schedule. His health was regularly checked, as was that of all other detainees. He was regularly visited by UN and ICRC delegates, according to whom he had stated that he was being treated well. During his period of detention in Dranda Prison, he had lodged minor complaints regarding his health on a couple of occasions. At the same time, during his detention he had made a negative impression on staff and was considered to be inclined towards committing illegal acts, having actively contributed to a group escape attempt.

68. Attached to the above-mentioned information (see paragraph 67 immediately above) was an "excerpt from the applicant's illness report", comprising a few lines spread over two pages. According to it, he had been wounded in an explosion in August 2001 and still displayed signs of the trauma that he had experienced as a result of the explosion. At the time of a medical check-up carried out on him by a doctor on 18 March 2005, his state of health had been satisfactory.

69. On 30 October 2006, the head of HROAG informed the UN Special Representative of the Secretary General that the HROAG office had been monitoring the first applicant's case closely. In particular, its representatives had repeatedly requested the *de facto* authorities in writing to allow an independent medical examination of the applicant by a qualified medical practitioner and his transfer to an appropriate medical establishment. The HROAG office had informed the Georgian authorities on 5 March 2003, 17 February 2005 and 18 March 2005 that they had been regularly visiting the applicant in Dranda Prison. During those visits he had confirmed that, occasionally, he did not feel well and had been taking medicine sent to him by his grandmother through the ICRC office in Sukhumi. In October 2005 he had stated that he had not asked for medical assistance since he was neither complaining of nor suffering from symptoms of tuberculosis or asthma. In the first half of 2006 he had stated that he had been suffering from eczema for three years and that he was periodically examined by a dermatologist.

70. The head of HROAG added that his organisation had facilitated the handing over of parcels, containing medicines and personal hygiene items, from the applicant's mother and grandmother. During the visits, the first applicant had told human rights officers that he did not need emergency medical treatment besides the medication he was receiving from his relatives.

71. Also in 2006, HROAG informed the Ombudsman of Georgia that, according to information received from the *de facto* minister of interior of Abkhazia, the first applicant was being provided with medical attention by medical staff in the prison and by doctors from international organisations. Furthermore, according to the prison doctors who had examined him, apart from the injuries sustained by him during the 2001 explosion, he "had no other surgical pathology". The ICRC had informed the Ombudsman in 2005, following his request for information, that they were aware of the history of the first applicant and of his situation at the time, and that they had been keeping his grandmother – who had been sending him medicine and food parcels via the ICRC – informed about it. The first applicant's health, conditions of detention and his treatment had continually remained the subject of their utmost concern and, should the need arise, they would raise the issue directly with the authorities who were detaining him.

D. The first applicant's release

72. The applicant was released on 14 February 2007, upon the intervention of the Commissioner. As can be seen from the Commissioner's report, which was submitted to the Court as part of his third-party intervention, he had met with the applicant in Dranda Prison. He had been struck by the state of exhaustion and apparent weakness of the applicant, who had looked much older than his twenty-five years of age. The applicant had told him that he did not feel well, and that he was at the end of his strength.

73. The two had met outside the applicant's cell. The conditions of detention in Dranda Prison had been clearly difficult, as in the majority of the prisons in Georgia. In particular, the general state of repair had been poor and urgent repair work had been needed; the cells had been humid and overpopulated, and there had been no appropriate heating system. The applicant had told the Commissioner that he had not been treated differently from the other prisoners, who had been helping him with daily life, in the light of his physical disability.

74. The Commissioner noted that on 13 February 2007, he had also met with Abkhazia's *de facto* president, Sergey Bagapsh, and had asked him to pardon the applicant on humanitarian grounds. Mr Bagapsh had agreed to pardon him and to hand him over to the Commissioner the following day on the bridge over the Enguri River. A member of the Commissioner's office had personally informed the applicant of the decision to release him on the

following day. The applicant had stated that he did not take medication that could prevent his immediate release.

75. The applicant was handed over to the Commissioner on 14 February 2007, as agreed. After spending the night in Zugdidi, the applicant and the Commissioner flew to Tbilisi, where the applicant was reunited with his grandmother and his friends.

E. Subsequent medical examination

76. After his release, the first applicant made a statement which his representatives lodged with the Court, the content of which is summarised in paragraphs 38-47 above.

77. On 19 February 2007, the applicant went to a specialised medical centre in Tbilisi – the EMPATHY Psycho-Rehabilitation Centre for Victims of Torture, Violence and Pronounced Stress Impact – for an outpatient medical and psychological examination and treatment. A medical certificate, issued to him by that facility on 21 February 2007, recorded "post-amputation condition of the right forearm on the "mid-third" level; post-amputation condition of the second, third and fourth fingers of the left hand on the mid-third level of the main phalanxes, flexion contracture of the fifth finger of the left hand, [and] scars resulting from multiple shrapnel and post-operative wounds". According to the certificate, the applicant showed symptoms of post-traumatic stress disorder and major depression. The preliminary data showed that he had been subjected to systematic torture and inhuman treatment, both physical and psychological. For years he had been held in inhuman and degrading conditions characterised by the absence of medical services, restrictions on his biological and physical needs, and severe sleep deprivation, which had caused him to become temporally disoriented, and had given rise to continuous feelings of fear and a constant expectation of death and torture. The report also stated that the applicant was not in possession of any document or certificate of a medical nature.

78. A final medical report was issued to him by the same facility on 18 February 2008, following a series of medical examinations carried out between 19 February 2007 and 31 August 2007. That report confirmed that he was suffering from post-traumatic stress disorder, which was consistent with the long-lasting stress experienced by him in detention, compounded by his lasting fear of being executed. The applicant was not stable, displayed mood changes and, at times, agitation or euphoria, or a tendency to self-isolate; he had problems with his memory and concentration, showed a lack of trust in his interlocutors and had difficulties communicating. His condition stemmed from trauma experienced in detention and was consistent with his description of having been subjected to systematic torture and inhumane treatment inflicted in both a physical and psychological manner.

79. In addition, he was diagnosed with intracranial hypertension (intracranial pressure), "post lump state" of the macula lutea of the right eye, light hypermetropia of the left eye, otitis media purulenta chronica (right ear), otitis externa (left ear), cochlear neuritis, post-pubertal gynecomastia, and seborrheic eczema (seborrheic dermatitis). A definite causal link between those conditions and his ill-treatment in detention could not be established; however, owing to the fact that the applicant had not received adequate medical treatment for years, the conditions had worsened.

F. Investigation carried out by the Georgian authorities into the first applicant's detention

80. After the respondent Governments were given notice of application no. 29999/04 (see paragraph 1 above), the Office of the Prosecutor General of Georgia opened an investigation into the applicant's detention. At the end of October 2006, the Ministry of the Interior and the relevant units of the Office of the Prosecutor General managed to establish contact with members of the applicant's family. According to the information that was provided by them and obtained from other sources, the alleged perpetrators of crime were: A.B., the head of the *de facto* Security Service of Abkhazia in Sukhumi; his deputy, V.U.; and V.N.-O., a prosecutor.

81. Thereafter, an investigative unit from the Samegrelo-Zemo Svaneti regional prosecution service, citing Articles 126 § (2) (d) (g) (torture) and 143 § 2 (a) (g) (unlawful imprisonment) of the Criminal Code of Georgia, opened criminal case no. 8305915 in respect of several individuals who had conspired to illegally deprive the applicant of his liberty by using force (or by threatening to use such force against him), endangering his life and limb.

82. On 1 and 3 November 2006, respectively, A.B., V.U. and V.N.-O. were charged by the prosecution, and on and 3 November 2006 the Zugdidi District Court authorised their detention as a preventive measure. An order was issued for their arrest but could not be implemented. The Prosecutor General of Georgia also contacted Interpol, asking that "red notices" be issued in respect of the three individuals.

83. In the course of the investigation it was established that A.B. and V.U. had gone to the hospital in Gagra, Abkhazia. The first applicant had been undergoing treatment there for the serious injuries caused to him by an accident on 7 August 2001, when a handmade grenade had exploded accidentally in his hands while he had been at his mother's apartment. A.B. and V.U. had illegally deprived the first applicant of his liberty by means of violence (and the threat of violence), beating, humiliation and torture; moreover, they had asserted that he was an undercover agent of the Georgian security forces and had committed high treason, terrorist acts, and the crimes of illegally holding and transporting arms and ammunitions, and of illegally crossing the "state border". They had threatened to lock him in prison if he

refused to plead guilty. They had convinced the applicant that they would not allow him any medical assistance in prison and that he would therefore die. They had not provided him with access to a doctor but had "interrogated him under pressure", threatening him with violence and with being shot.

84. V.N.-O. had acted as prosecutor in the applicant's trial in Abkhazia.

85. Within the proceedings (conducted in Georgia) the applicant was recognised as a victim as well as a civil party, but he chose not to lodge a civil claim for compensation. He was nonetheless entitled to seek compensation in separate proceedings at the domestic level.

86. On 10 March 2008 the Sukhumi District and City Court (a legitimate court of the Autonomous Republic of Abkhazia, located outside of Abkhaz territory) found the accused persons guilty of torturing and illegally imprisoning the applicant. They were given prison sentences of fourteen and eight years respectively.

87. The judgment was sent to the relevant Georgian authorities and international organisations operating in the conflict region. A circular letter was also sent to the head of the OSCE mission in Georgia, the Special Representative of the Council of Europe in Georgia, the ICRC delegation to Georgia and the UN mission to Georgia. The Georgian Government stated that, owing to its lack of effective control over the territory and over the *de facto* officials in question, the judgment lacked practical force. They considered nonetheless that it constituted a manifestation of the determination of Georgia to do its utmost to honour its international obligations throughout the whole of its territory.

88. Separate criminal proceeding were opened against unknown officials of the Security Service IVS and of Dranda Prison. Owing to a lack of necessary information – including the failure to properly identify those officials – the criminal proceedings in question were suspended. According to the Georgian Government, this was the usual practice in investigations opened by the Georgian authorities into alleged human rights violations in Abkhazia, since the Georgian authorities had extremely limited scope for carrying out investigative measures and obtaining evidence thereby.

III. THE EVENTS RELATING TO THE SECOND APPLICANT, MS D. MAMASASHKILI

89. According to the second applicant, she had no relatives other than her grandson (the first applicant), with whom she had strong emotional ties. After learning of her grandson's arrest in September 2001, she contacted all the relevant Georgian central authorities and asked them to help to secure his release, to arrange for a letter to be sent to him, to facilitate a meeting or simply to obtain some news of him. The Ministry of State Security and the Ministry of Justice (which was in charge of overseeing prisons) informed her that they had no information about persons being held in Abkhazia. Only in

2002 did the second applicant, with the help of the ICRC, manage to obtain some information about her grandson. She then approached various Georgian central authorities to complain of the unlawful detention of the first applicant, but to no avail. Between 2001 and October 2005 no one helped her to purchase the medicine, food and other essential personal items that she was sending to the first applicant. In October 2005 the Office of the Public Defender of Georgia began providing her free of charge with the medicines that the first applicant required.

IV. THE EVENTS RELATING TO THE THIRD APPLICANT, MR G. NANAVA

90. On 29 June 2003, the third applicant was arrested in the Gulripshi District by the *de facto* Abkhaz security forces for illegally crossing the border between Abkhazia and the rest of Georgia. He was accused of wearing an explosives belt and was allegedly threatened with death if he did not confess (to wearing such a belt). According to him, he was also beaten about the head.

91. The applicant was held in a temporary detention facility run by the *de facto* Abkhaz security forces until his conviction on 23 September 2003. In September 2003 he was tried for terrorism by the Abkhazia Military Court and sentenced to six years' imprisonment. Despite a long series of requests lodged by the applicant's representatives, the international organisations present in Abkhazia failed to obtain a copy of the judgment from the Abkhaz authorities. On 31 May 2017 the Russian Government submitted a barely legible copy to the Court with their observations. The text of the judgment indicated that any appeal against it should be lodged within seven days with the Supreme Court of Abkhazia.

92. According to the applicant, at no stage in the proceedings was he given access to a lawyer of his own choosing. The defence lawyer appointed by the Abkhaz authorities did not provide him with any effective assistance. When the applicant's representative before the Court contacted her, she refused to send them the judgment by which the applicant had been convicted.

93. According to the applicant, in the course of his detention he was refused any medical care, despite his state of health and advanced age.

94. With the help of the ICRC, the applicant was able to send and receive letters, although the confidentiality of the correspondence was allegedly not respected. The ICRC also helped to arrange for him to have two meetings with his wife, respectively in December 2003 and July 2004, as confirmed by her in a statement of 20 January 2017 lodged with the Court by the third applicant's representative. According to her statement, the applicant was brought to the meetings by several people as he was unable to walk without assistance. He looked sick, had difficulties speaking and complained of headaches and heart pain, and of poor conditions in his cell. Specifically,

there was no ventilation, the light was on throughout the night, there was no separate toilet and at times the cell was overcrowded. He had not been given any medical care since he had been detained. He told his wife about having been subjected to physical and psychological pressure by *de facto* Abkhaz officials (see paragraph 90 above).

95. The applicant's representatives before the Court were not authorised to visit him in prison. He served his sentence in Dranda Prison in Sukhumi, until 5 May 2005. He was released on that date after he was granted a pardon by the *de facto* president of Abkhazia.

96. In the meantime, on 22 April 2005 the applicant's representatives informed the Court of his critical state of health: in particular, he was no longer able to walk and required the help of fellow prisoners to move around. The prison administration had refused to transfer him to hospital.

97. Abkhazia being part of Georgia, the Court invited the Georgian Government, pursuant to Rule 54 § 2 (a) of the Rules of Court, to submit information on the applicant's safety, state of health and conditions of detention, following its receipt of information provided to it by his representatives.

98. On 23 May 2005 the Georgian Government replied that they had no control whatsoever over Abkhazia. They had not been allowed to visit the applicant in prison, which is why they were unable themselves to provide the information required by the Court.

99. Representatives of HROAG met with the applicant on several occasions after 15 July 2003. According to them, he had had no complaints in relation to the food given to him and had told them that a lawyer had been provided to him from the moment of his detention. The conditions of his detention were better than average in Abkhazia. As regards his state of health, HROAG had conveyed its concerns to the Abkhaz authorities, which were particularly serious, given the applicant's advanced age. He had experienced difficulties in expressing himself clearly and had been unable to read documents shown to him. HROAG representatives had not seen any signs of ill-treatment, nor had the applicant complained of any such treatment; they had helped him to draft his request for a presidential pardon in March 2005.

100. According to the Georgian Government, the *de facto* Abkhazia Military Court refused to authorise a medical examination of the applicant. He was released on 5 May 2005 and he left Abkhazia with the help of the ICRC in order that he could be reunited with his family in the neighbouring region of Semegrelo.

101. On 24 June 2005 the applicant informed the Court that he maintained his complaints, despite the fact that he had been released, and that he wished his representatives to continue to act on his behalf. He also stated that following his release he had been taken to a hospital in Zugdidi, where he had been given the following diagnoses: hypertension (morbus hypertonicus III), ischemic heart disease (morbus ischemieus cordis), cardiosclerosis, cardiac

insufficiency (insuffitientio cordis II), cardiac cirrhosis (cirrhosis cardiale) and bilateral pneumonia (pneumonia bilaterale).

V. RELATIONS BETWEEN THE RESPONDENT GOVERNMENTS AND THE ABKHAZ *DE FACTO* AUTHORITIES

A. Relations between the Russian Federation and the Abkhaz *de facto* authorities

1. Submissions by the applicants and the Government of Georgia

102. The applicants and the Government of Georgia submitted extensive documentation and statements. The information received is summarised below, in so far as it is considered relevant by the Court.

(a) Military aspects

103. The applicants referred to the submissions by the Georgian Government to the Court, according to which the conflict in Abkhazia was provoked and orchestrated by the Russian Federation, with support from the Abkhaz separatists. Moreover, according to the Georgian Government's submissions, the Abkhaz army was created in 1991 with Russian military support. Russia furthermore supplied the separatists with tanks, armoured personnel carriers, artillery, mortars, anti-aircraft systems, military ordnance, military weapons, defence technology, ammunition, and other military equipment. During the hostilities in 1992 the Georgian side faced well-trained and well-equipped military units comprised of Russian citizens of different ethnicities, such as Russians, Chechens, Adygeyans, Kabardinians and Cossacks. There were centres for the recruitment of mercenaries in different cities in Russia, and Russian army officers provided their training. Moreover, Abkhaz military personnel were undergoing training in Russian military academies and institutions.

104. In August 1992, the 345th airborne regiment of the Ministry of Defence of the Russian Federation was transferred from the town of Gandja (in the Republic of Azerbaijan) to the military airport of Gudauta, Abkhazia. The 345th airborne regiment – which comprised 1,800 military staff and was equipped with two SU-27 fighter aircraft, four SU-25 fighter aircraft and three MI-24 helicopters – participated in military operations on the side of the Abkhaz separatists. They were aided by ships of the Russian Navy – namely, the Bezukoriznenniy, VTN-38 and KIL-25. In particular, the Bezukoriznenniy was tasked with stopping the Georgian side from reaching Pitsunda from the sea, using weapons if necessary; warning shots were fired from the ship on three occasions. The 345th regiment remained in the conflict region in 1994. According to operational video material, in 1994 the regiment held a training exercise in the territory of Abkhazia. In the same year the regiment's commander ordered it to march towards the Gudauta, Tsirkha,

Upper Eshira, Sukhumi, and Gali Regions. In Gudauta, on 27 December 1994, the regiment celebrated the fiftieth anniversary of its founding. During the ceremony the regiment gave a demonstration of its powerful military capacity.

105. In addition, the 643rd anti-aircraft regiment and the 5482nd military regiment (both Russian) participated in military operations on the side of the Abkhaz separatists. On 14 August 1992, when the conflict began, the 5482nd military regiment of Russia supplied the Abkhaz side with 984 sub-machine-guns, 267 pistols, eighteen machine guns, more than 500 hand grenades and 500,000 bullets of different types, as well as military vehicles, military uniforms and food. On the same day, Russia supplied Abkhaz separatists with fifteen armoured troop-carriers. On 22 December 1992 twenty-two railroad cars loaded with armaments were dispatched from Sochi (Russia) to Gudauta (Abkhazia). During the period March-August 1992 Colonel A.D., head of the 96th air-raid division of the Ministry of Defence of the Russian Federation, deployed in Gudauta, Abkhazia (and later a member of the Russian State Duma) – supplied the Abkhaz separatists with military hardware, armaments and ammunition. Similarly, a Russian admiral, I.K., delivered 500 rifles to the Abkhazians in the spring of 1992. The military takeover of Gagra by Abkhaz forces in the autumn of 1992 was achieved with the support of Russian armed forces.

106. Furthermore, on 20 February 1993 the Russian Defence Ministry dispatched an SU-25 fighter-bomber to attack Sukhumi. An American journalist who was in the area at the time wrote that there had in fact been no absolute evidence to back up the belief – shared by everyone in Sukhumi that he had spoken with – that the attack had been unleashed by Russians or that the plane had belonged to the Russian air force. The journalist wrote that the Russian Defence Minister at the time had initially denied that there had been any raid, only to admit later that a Russian attack had taken place. The attack had been in response to the shelling by Georgia of areas close to Eshira, a Russian defence research centre and military base not far north of the Gumista River.

107. On 19 March 1993 the Georgian authorities shot down an SU-27 fighter-bomber plane. The Russian Defence Minister stated that the downed plane had been one of five such planes that were owned by Georgia, but had been painted with Russian markings. According to American journalist Thomas Goltz, who was on the ground at the time, a UN military observer inspected the plane but could not categorically state that the pilot, who had been identified as a major in the Russian air force, had been operating under the orders of the Russian Ministry of Defence.

108. In 1994 the Russian Ministry of Defence provided fourteen fighter aircraft to the Abkhaz separatists. Several commercial firms were set up by Russian special forces for the purpose of supplying military equipment to the separatists. That supply was coordinated by an officer of the Russian army

who later became a general in the Abkhaz armed forces. Plans to storm and occupy towns in Abkhazia were drawn up and approved in Moscow.

109. According to the Georgian Government, the Russian peacekeeping forces comprised, *inter alios*, mercenaries who had taken part in the Chechen wars. Between 1994 and 2006 representatives of the peacekeeping forces and Abkhaz "militia men", acting either independently of each other or together, engaged in repeated raids on villages, in the looting, robbing and burning of civilian houses, in occasional indiscriminate shooting in village streets, and in the recurrent threatening, beating, maiming, wounding and murdering of civilians of Georgian ethnicity. Representatives of the CIS CPF also operated checkpoints outside the security zone at their own discretion. Bombings of villages also took place in 1998. Copies were provided to the Court of testimony given by individuals in 1998 to the Georgian prosecution service about their experiences as victims of violence perpetrated by Abkhaz separatists in villages in the security zone within the Gali District at various points in time up to the spring of 1998, which members of the Russian peacekeeping force had allegedly either passively observed or actively participated in.

110. According to the applicants, Russian generals, subordinate to the Russian Ministry of Defence, repeatedly replaced each other on the post of Commander of the CIS CPF since 1994. The CIS CPF consisted solely of Russian military forces and their deployment in the conflict zone depended solely on Russia's decision and will.

111. Furthermore, according to the Georgian Government, in 2005 and 2006, Russian military servants participated in large-scale military manoeuvres held by the separatist forces; likewise, Russian military instructors conducted field exercises on training grounds located in Abkhazia. In 2005 and 2006, Russia delivered armoured vehicles to the Abkhaz authorities, as well as forty cars to the *de facto* ministry of internal affairs and fourteen cars to the Abkhaz navy. In February 2005 renovation and rehabilitation works were carried out on a former military facility in the Gagra District. The same month, two Ural vehicles delivered from Russia to Abkhazia specialised equipment that was installed at the Zarya plant in Thkvarcheli for the purpose of manufacturing land mines.

112. In December 2005 the Russian Ministry of Defence delivered thirteen items of military equipment, including two tanks and one armoured vehicle, to the Abkhaz armed forces. Also in 2005, members of the Russian armed forces installed antennae on the roof of the Central Post Office in Gali that enabled the tapping of all telephone conversations. The *de facto* Abkhaz authorities also purchased twelve tanks and several artillery pieces from Russia in 2006. In July 2006 Russia delivered ammunition, automatic rifles, grenade launchers, bombs, and mines; that equipment was transported into Abkhazia by some thirty-five to forty military trucks that crossed the Psou River from the Russian side.

(i) General military involvement

113. A report by Human Rights Watch (HRW) dated 1 March 1995 stated:

> "The conflict in Abkhazia was heightened by the involvement of Russia, mostly on the Abkhaz side, especially during the war's initial stages. Whereas Russia has endorsed the territorial integrity of the Republic of Georgia, Russian arms found their way into Abkhaz hands, Russian planes bombed civilian targets in Georgian-controlled territory, Russian military vessels, manned by supporters of the Abkhaz side, were made available to shell Georgian-held Sukhumi, and at least a handful of Russian-trained and Russian-paid fighters defended Abkhaz territory in Tkvarcheli.
>
> ...
>
> Throughout the conflict, Moscow maintained official neutrality, condemned human rights violations, and imposed sanctions on both Georgia and Abkhazia in response to their misconduct. It also provided essential humanitarian assistance, such as delivering emergency supplies, particularly to areas where there was a significant Russian minority in jeopardy, and evacuating civilians trapped in the fighting. From the first days of the war, Russia assigned diplomats to facilitate the peace process, and in 1994 deployed peacekeeping troops to enforce the cease-fire. Its military facilities and personnel, stationed in Georgia since before the break-up of the Soviet Union, came under attack and eventually Moscow gave the order to return fire.
>
> ...With the cessation of hostilities, Georgia ... agreed to allow Russia to maintain three military bases in Georgia, and agreed to an open-ended Russian military presence in the form of peacekeepers in the break-away territory of Abkhazia."

114. The 1995 Human Rights Watch report furthermore stated that Russian weapons had found their way into both Georgian and Abkhaz hands. Georgia had inherited some of it at the break-up of the Soviet Union and some of it had been passed on to it by Russia, in compliance with bilateral agreements between Tbilisi and Moscow. In particular, in 1992-1993 the Russian government had proceeded to transfer to the Georgian government extensive military supplies, bases, facilities and transport equipment. Another part of the above-mentioned weapons had been captured during Georgian raids on Russian military bases stationed in Georgia. As to Abkhazia, possible sources of those weapons included raids on Russian facilities in Abkhazia, black market purchases from corrupt Russian sources, supplies and support authorised by commanders of Russian forces based in the Caucasus, and supplies and support authorised by branches of the Russian army or the Russian government in Moscow. Many of the outside fighters who supported the Abkhaz side came from the Confederation of Mountain Peoples of the Caucasus (*Конфедерация горских народов Кавказа*), a loose coalition of ethnic, tribal and regional groups in the Caucasus mountains that was unrecognised by Moscow. A significant number of ethnic Russians had been seen fighting on the Abkhaz side; many of them had appeared to be mercenaries – including Cossacks. The Abkhaz authorities acknowledged that they had received significant financial assistance from the Abkhaz diaspora in Türkiye, Syria and elsewhere, in addition to an unspecified number of essentially mercenary fighters. The report concluded that Human

Rights Watch reached no conclusion as to who might have approved a number of operations undertaken on the ground during the conflict in Abkhazia, except that it believed the evidence suggested that Russian forces had been involved at some level.

(ii) Gudauta military base

115. On 12 November 2001, the Russian Minister for Foreign Affairs informed the then Chairman-in-Office of the OSCE that the Russian authorities had evacuated their military base in Gudauta and that the CIS CPF was using a number of facilities at that former military base in order to provide administrative and transportation services for the peacekeeping operations. A copy of this letter was submitted to the UN General Assembly on 16 November 2001.

116. In December 2001, the OSCE Ministerial Council noted as follows:

> "... The closure of the Russian base at Vaziani and the withdrawal of the equipment from the Russian base at Gudauta were important steps forward. ... We call for the resumption of the Georgian-Russian negotiations concerning the elaboration of appropriate transparency measures with regard to the closure of the base at Gudauta. We hope for an early legal transfer of the infrastructure of the former Russian military base at Gudauta. We also look forward to an early agreement on the duration and modalities of the functioning of the remaining Russian military facilities."

117. A team of four OSCE military experts (from Hungary, Spain and the United States of America) visited the Gudauta base in Abkhazia on 15 June 2002 by way of preparing for an inspection, to be carried at a later date, that would determine whether the military base had indeed been disbanded, in accordance with the agreement reached at the 1999 OSCE Istanbul Summit. The visit was carried out at the invitation of General V.Y., Deputy Commander-in-Chief of the Russian Ground Forces, who was also in charge of the Russian peacekeeping operations. The general informed the OSCE that the arms and equipment belonging to the Gudauta base had been removed, and that practically all paratroopers had left the base and only a contingent of Russian soldiers in charge of providing logistical services to the CIS CPF had stayed behind. Three weeks earlier four UNOMIG officers had paid a two-hour courtesy visit to a logistics unit at the base.

118. The visit on 15 June 2002 was conducted after consultations with Georgian authorities; the Abkhaz side had refused to allow Georgian participation in the visit. The experts were briefed by a Russian colonel (the commander of a security and support group stationed at the Gudauta base), who told them that the tasks of his group were as follows: the provision of material and technical support to the CIS CPF; providing security for and servicing the CIS CPF's helicopter unit; organising and training a military mobile group (of up to battalion strength) to undertake tasks in the security zone; and providing personnel to act as military police on the road between Sukhumi and Adler (a town in Russia).

119. The OSCE experts toured the compound and visited most of the facilities there. The OSCE team noted the presence of cattle and other livestock inside the compound and near the runway. There were also a number of civilians. The team was told that these were former employees of the base living there owing to the shortage of housing facilities in Russia. The team were left with the overall impression that the military unit at the base had apparently been disbanded and that any remaining personnel had been reorganised. The experts noted that the site was generally referred to as "the territory of the CIS CPF" and recommended that further clarification on the status of the site be sought.

120. According to the Georgian Government, Russia was maintaining its military base in Gudauta without Georgia's consent and in contravention of its undertaking to withdraw from the base in 2001. In July and October 2003 the Permanent Representative of Georgia to the United Nations and the Georgian Foreign Minister protested against the continued presence and operation of the Gudauta base.

121. The Georgian Parliament issued numerous resolutions calling for the withdrawal of Russian troops stationed in Abkhazia. In particular, on 10 March 2005 it adopted a Resolution of the Parliament of Georgia on the Military Bases of the Russian Federation Located on the Territory of Georgia, in which it observed that only weaponry and military machinery restricted by the Treaty on Conventional Armed Forces in Europe had been removed from the Gudauta military base by the Russian authorities, but that about 300 soldiers remained there. It had been impossible to carry out a visit to the base in order to verify the situation there owing to a lack of cooperation on the part of the Russian authorities.

122. Replying to questions asked by the RIA Novosti news agency on 2 May 2006, the official representative of the Russian Ministry of Foreign Affairs stated that Russia had fully complied with its obligations stemming from the agreement reached at the 1999 OSCE Istanbul Summit and had withdrawn from its military base in Gudauta. Representatives of the OSCE had visited Gudauta in June 2002 and had observed that Russia had withdrawn its forces from the base.

123. Although the 1999 OSCE Summit statement had not specified a verification mechanism in respect of that withdrawal, Russia had accepted a German initiative to set up an international verification commission. However, owing to obstructive measures on the part of the Georgian central authorities it had not been possible to set up such a commission. The Russian authorities remained open to hosting a visit by such a commission to the premises of the Gudauta former military base (which at that point in time housed Russian peacekeepers) if the Georgian authorities were to show a constructive attitude towards that initiative.

124. On 12 May 2006, an official representative of the Russian Ministry for Foreign Affairs, replying to a question asked by the Russian State-owned

international news agency RIA Novosti, stated that representatives of the NATO Parliamentary Assembly had met with representatives of the CIS CPF during a visit that they had paid to Abkhazia. However, they had failed to specify the aim behind a request that they had lodged to be allowed to visit the base in Gudauta; as a result, no visit had taken place. The Foreign Ministry representative added that the head of the NATO Parliamentary Assembly delegation had stated in an interview that he had given to the Georgian press that his delegation had not been refused permission in early May 2006 to visit the Gudauta base.

125. The EU-Georgia Parliamentary Association Committee issued a Final Statement and Recommendations on 25-26 June 2007, in which it welcomed the closure of the Russian military headquarters in Tbilisi in December 2006 and called on the relevant authorities of the Russian Federation to ensure the closure of the Gudauta military base and to allow proper verification of the state of affairs there by international inspection teams.

(iii) Official statements in support of Russian citizens worldwide

126. At a press conference on 29 November 2003, Russian Foreign Minister Igor Ivanov stated that Russia would provide the maximum possible level of assistance to its citizens in Abkhazia and would not allow that their rights go unrespected. In an interview given to the Russian television channel ORT on 7 February 2006, the Russian Minister of Defence, Sergey Ivanov, stated that Russian soldiers were prepared to assist peacekeeping forces in Abkhazia.

127. In July 2006 the Russian Duma authorised Russian troops to defend Russian citizens worldwide.

128. On 18 July 2006 the Russian Ministry of Foreign Affairs published a statement on its website in connection with a decree issued by the Georgian Parliament on the same day, in which the Georgian Parliament had instructed the Georgian government to start the process of terminating the peacekeepers' operations in Abkhazia and replacing them with an international police force. According to the Russian ministry's statement, Russia considered the Georgian decree to be a provocation. The language of ultimatums employed by Georgia in respect of the Russian peacekeepers was counterproductive. Unilateral decisions could not lead to the termination of existing international agreements. In the preceding years, Russia, together with international partners, had been making efforts for the maintenance of a fragile balance, which had been disturbed by the aggressive rhetoric employed by Georgian politicians and by their attempts to use provocations and military force to solve the problem in Abkhazia. The situation was being kept under control only as a result of the functioning of the current peacekeeping mechanism. Tbilisi's irresponsible actions could cause irreparable damage to the chances of a peaceful solution to the conflict. The Russian side would pursue all

necessary measures in order to ensure compliance with existing international commitments, to prevent a destabilisation of the situation in the region and to protect the rights and interests of the Russian citizens living there.

129. On 20 July 2006, Russian Foreign Minister Sergey Lavrov was cited in Russian media as saying that Georgia was sabotaging the chances of a solution to the Abkhaz conflict. Asked by a journalist whether Russia was ready, as it had repeatedly announced that it was, to protect its citizens in the event of military action on the part of Georgia in Abkhazia, the Russian Foreign Minister said that the Russian side had already confirmed two days earlier that it would protect its citizens by all available means, and he did not recommend to anybody that they encroach on the life and dignity of Russian citizens or of Russian peacekeepers.

130. A day earlier, on 19 July 2006, the *de facto* Abkhaz parliament had issued a statement condemning the Georgian Parliament's resolution calling for the withdrawal of Russian peacekeepers from the conflict zone. The statement warned that their withdrawal would inevitably trigger an escalation of tension in Abkhazia and across the North Caucasus. In the event of the peacekeepers' withdrawal, Parliament would demand that Abkhaz *de facto* president Sergey Bagapsh announce Abkhazia's withdrawal from the peace process. The statement appealed to the international community to make every effort to preserve peace and stability in the region and to thwart the "militaristic plans" of the Georgian leadership.

131. On 13 October 2006 the Russian newspaper *Sputnik* reported a statement by the Commander-in-Chief of the Russian Air Force to the effect that Russia might use its air force in the event of a Georgian attack on Russian peacekeepers stationed, among other places, in Abkhazia.

(iv) Further information from international sources

132. A briefing note dated 17 February 2006 on the "frozen conflicts" in the South Caucasus issued by the Directorate General for External Policies of the European Union stated in respect of the conflicts in Abkhazia and South Ossetia, *inter alia*, the following:

> "... While officially recognising Georgia's territorial integrity, Russia nurtures these regions' secessionist strivings through various kinds of support and the offering to their inhabitants of visa-free entry to Russia, as well as Russian citizenship. Russian peacekeepers are widely regarded as partial.
>
> ...
>
> Abkhazia has enjoyed *de facto* independence since a war in 1992-93 against the central Georgian government in Tbilisi.
>
> ...
>
> Georgia was weakened by other splits and its army was confronted not only with Abkhazians, but also with very significant numbers of fighters from other parts of the Caucasus, as well as Russian troops, when it tried to establish control over the region.

...

It is estimated that around 10,000 people lost their lives in the conflict and that 300,000 became "internally displaced persons" ("IDPs").

The ceasefire was formalised in 1994 in an agreement known as the Moscow Agreement. This also provides the basis for a CIS peacekeeping force – effectively a Russian force – of around 1,800 troops patrolling a buffer zone along the Ingury river, which separates Abkhazia from the rest of Georgia.

Little has changed on the ground since the end of the hostilities.

...

A UN Observer Mission in Georgia (UNOMIG) monitors the ceasefire on the ground."

133. The UN Security Council Report of March 2006 stated:

"There has never been any appetite to truly internationalise peacekeeping in the region, possibly in recognition of the sensitivity of Russian interests towards the former Soviet republics."

134. In its report of September 2009, the Independent International Fact-Finding Mission on the Conflict in Georgia (hereafter "the EU Fact-Finding Mission", or "the IIFFMCG"), which was established by a decision of 8 December 2008 adopted by the Council of the European Union, described relations between Russia and Georgia during the 1990s and 2000s, and in particular as regards the Russian military presence, as follows:

"Since the late 1990s, the Georgian authorities had made new efforts to reduce the Russian military presence in the country. In 1993, Georgia and Russia signed an agreement on the withdrawal of Russian troops from Georgia until 1995, but the agreement did not come into force. In ensuing years, bilateral agreements on the deployment of Russian military bases were signed, the most important one on 15 September 1995. Under this agreement, four Russian bases were deployed in Georgia: in Batumi (Adjara), in Gudauta (Abkhazia), in Akhalkalaki (region of Samtskhe-Javakheti, inhabited by Armenians), and in Vaziani (near Tbilisi). An agreement on the withdrawal of Russian border troops was signed in November 1998 and all Russian border troops left Georgia in 1999. During the Istanbul OSCE Summit in 1999, Russia had committed to dismantling its military bases in Georgia. In 2001 the base in Vaziani was withdrawn and the infrastructure of the base in Gudauta was transferred to the CIS (in fact Russian) Peacekeeping Force in Abkhazia. The dismantling of the two other bases was the subject of difficult negotiations but was eventually implemented in 2007.

Russia, or at least certain forces proceeding from the territory of the Russian Federation (primarily the Confederation of Peoples of the Caucasus), had intervened in Georgia`s conflicts with Abkhazia and South Ossetia from the beginning of the 1990s. The military victory of pro-Abkhaz fighters in their armed conflict with Georgian troops would not have been possible without this interference. But in the early 1990s this Russian involvement had an inconsistent character. The political crisis in Russia itself influenced its policy in the region. Local Russian commanders stationed in Abkhazia actively supported the Abkhaz side. Divisions within the Russian Government may explain why both Georgia and the secessionist forces had been receiving Russian support intermittently.

The ensuing peace processes in Abkhazia and South Ossetia were largely in the hands of Russia. For around 15 years it was possible to preserve a minimum of stability in the region, i.e. to keep larger military operations suspended. The conflicts were in effect frozen ...

... Russia was engaged in these conflicts as the main peacekeeper, as facilitator and as a member of the Group of Friends of the UN Secretary-General, but it was demonstrating a clear bias in favour of the "separatist" parties to the conflict. Its policy toward Georgia was perceived in Tbilisi as "not peacekeeping, but keeping in pieces" ...

... One of most controversial and diversely interpreted subjects concerning the 1992 – 1994 Georgian-Abkhaz armed conflict and its aftermath was Russia's role in the conflict and the responsibility for it. There is agreement among Georgian, Abkhaz and Russian scholars on the inconsistent nature of Russia's involvement. It is widely believed that the political crisis in Moscow – leading to the forcible dissolution of the Parliament by President Yeltsin in October 1993 – ruled out any well-designed, balanced intervention by Russia at its southern border. It seemed that significant elements of the Russian political establishment wanted to uphold the principle of territorial integrity of new post-Soviet States, including those in the Caucasus, but this was not a consensual view, and particularly not the main concern of the Russian military or the local commanders stationed in Abkhazia, who actively supported the Abkhaz side. Divisions between the various factions within the Russian Government further explain why at some points both sides, Georgians and Abkhaz, were receiving substantial Russian support.

International efforts to mediate between the two parties to the conflict continued practically unabated, both during the above-mentioned period of armed confrontation in Abkhazia and afterwards. Many of these efforts were made under the aegis of the United Nations. The Group of Friends of Georgia, created in December 1993 and comprising France, Germany, the Russian Federation, United Kingdom and United States, supported the UN peace efforts.

This was particularly the case after July 1997, when the group was formally included in the UN-sponsored Georgian-Abkhaz peace process and in this connection it was renamed as the Group of Friends of the UN Secretary-General.

An important and in many respects crucial role was played by the Russian Federation, in its capacity as a facilitator of the UN-sponsored peace efforts, as a member of the Group of Friends, and independently (with varying degree of coordination or consultation with the UN).

... There had been five major bombing incidents in Georgia since 2001 and Russia had denied them all. In October 2001, nine unidentified jets bombed areas of the Kodori Valley under Georgian control. ... In March 2007, Mi-24 helicopters bombed the Kodori and Chkhalta Valleys, and the Chuberi Pass. And in April 2008, a MiG-29 fighter was videotaped downing an unarmed Georgian reconnaissance drone over the Gali region. Additionally Georgia claimed that Russia periodically moved military equipment into Abkhazia ... in violation of the ceasefire agreements of 1994 ... In reply to Georgian accusations of military violations by the Russian side the Russian Foreign Ministry reported that in 2007 alone peacekeepers in Abkhazia claimed instances in which Georgian warplanes allegedly flew over the security zone ...

... there are a number of reports and publications, including of Russian origin, indicating the provision by the Russian side of training and military equipment to South Ossetian and Abkhaz forces prior to the August 2008 conflict."

135. In respect of the peacekeeping forces in Abkhazia, the EU Fact-Finding Mission's 2009 report found as follows:

> **The Dispute over Russian Peacekeeping Role in Georgia's Conflict Zones**
>
> Russia's peacekeeping role in Abkhazia and South Ossetia was a fundamental bone of contention in Georgian-Russian bilateral relations, and a focus of Georgia's diplomatic efforts. Georgia increasingly demanded a revision of the existing negotiation formats and the internationalisation of peacekeeping forces in the conflict zones. The existing formats were based on ceasefire agreements ending the 1991 - 1994 armed conflicts between Georgia and both regions ...
>
> ... there was no substantial international pressure for a revision of these Russian-centred peacekeeping formats. Some Western commentaries acknowledged that the peacekeepers blocked the Georgian Government from initiating military actions for the reintegration of the breakaway territories. In the Georgian perception, however, the Russian peacekeepers had become border guards defending the administrative borders of Georgia's breakaway territories.
>
> Georgia's demand to internationalise the peacekeeping formats in Abkhazia and South Ossetia met with restraint in the West. International organisations and Georgia's Western partners conceded the peacekeeping and mediator role to Russia reasoning that Russia recognised Georgian sovereignty at least formally...
>
> ... The EU was not involved in "hard" security issues, as the Russian Federation was not supportive of its more active engagement such as providing peacekeeping troops ...
>
> Georgia's objection to the dominant Russian role in the peacekeeping operation in its conflict zones was motivated mainly by the perception that Russia's contribution to conflict management in the South Caucasus was not "peacekeeping, but keeping in pieces". Russia was seen as the protagonist responsible for keeping the conflicts in the region frozen, in order to maintain a "controllable instability" for the purposes of its own power projection in the South Caucasus. Moreover, Russia was promoting progressive annexation of Abkhazia and South Ossetia by integrating these territories into its economic, legal and security space.
>
> ... In its resolution of 5 June 2008, the EU Parliament stated that the Russian troops could no longer be considered neutral and impartial peacekeepers and that the peacekeeping format should therefore be revised.
>
> Georgia intensified its calls for a change of the peacekeeping format and in particular proposed the replacement of the existing peace operation with a joint Georgian-Abkhaz police force under European Union and OSCE supervision and training, without excluding the possibility that the Russian Federation might play a role. Georgia announced that if a substantial change in the peacekeeping format was not achieved, it was ready to make a formal request for the withdrawal of the CIS PKF."

(v) Events subsequent to the military conflict of August 2008 between Georgia and Russia

136. Following the armed conflict that occurred in August 2008 between Georgia and the Russian Federation, on 26 August 2008 Russia recognised Abkhazia as an independent State.

137. In September 2008 Russia signed a "friendship and cooperation" agreement with Abkhazia, pledging to help to protect its borders. The

agreement provided for the establishment of a military base and the stationing of up to 3,800 Russian soldiers in Abkhazia. In 2009 another agreement was signed between Russia and Abkhazia on "joint efforts for the protection of the State border of Abkhazia". The latter agreement, concluded for an initial period of five years and renewable automatically, provided that Russian Federal Security Service personnel would serve as border guards along the administrative borders of Abkhazia.

138. At a press conference held on 26 August 2009, the then Russian Prime Minister stated that "Russia is going to continue to render all-round political and economic support both to South Ossetia and Abkhazia".

139. In September 2009 Russia and Abkhazia signed an agreement on cooperation in the military sphere. It provided for cooperation aimed at, *inter alia*, the strengthening of military security and confidence-building measures in order to ensure the security and control of air space; interaction in the naval field in order to safeguard maritime communications and ensure maritime security; the training of military personnel in the parties' military educational institutions; the sending of military specialists to train national military and military-technical personnel; cooperation in the field of military communications and automated control systems; cooperation in the field of military intelligence; the securing of interstate military transportation; the provision of meteorological, hydrological and topographical support to troops; and the provision of logistical and technical support to troops.

140. Also in September 2009 Russia and Abkhazia signed an agreement for the promotion and reciprocal protection of investments. The agreement provided that it would apply to all investments made since January 1994 by investors from one of the contracting States in the territory of the other contracting State, under the laws of the latter contracting State.

141. In 2010 Russia and Abkhazia signed an agreement on the establishment of a "joint military Russian base in Abkhazia", valid for an initial period of forty-nine years and renewable for fifteen-year periods thereafter. The agreement (i) stated that it was aimed at implementing the provisions of the above-mentioned "friendship and cooperation" agreement of 2008, (ii) noted that it had been signed in response to an Abkhaz appeal for the stationing on its territory of Russian military units in order to provide military assistance aimed at helping to ensure the sovereignty and security of the Republic of Abkhazia from external and terrorist threats, and (iii) emphasised that the presence of Russian military units on Abkhaz territory was in the interests of maintaining peace and stability in the region, served the long-term strategic interests of both countries, and was defensive in nature. The locations of the joint military Russian base in Abkhazia included, in addition to other technical sites, seven military cantonments (*военный городок*).

142. Furthermore, in 2014 Russia and Abkhazia signed an agreement committing themselves to an alliance and a strategic partnership.

(b) Political connections and economic support

143. In August 1992, the head of the *de facto* supreme council of Abkhazia, V. Ardzinba, informed the Russian authorities (including the Minister of Defence and the First Deputy Prime Minister of Russia) of a decision of the *de facto* supreme council of Abkhazia to take over the different Soviet-era organisations and bodies that had been on Abkhaz territory following the dissolution of the USSR.

144. According to the text of the *de facto* Abkhaz Constitution of 1994, the Russian language is an official State language, along with the Abkhaz language.

145. The Committee on Geopolitics of the Russian State Duma (the lower chamber of Parliament) adopted in 1997 recommendations addressed to the Russian government concerning the relationship between Russia and Abkhazia. The recommendations encouraged the Russian government to modify without delay the border and customs rules so as to ensure the free movement of people and lorries between Russia and Abkhazia, and introduce visa-free arrangements for citizens of Russia and Abkhazia entering and exiting each other's respective territories. The Abkhaz government in turn should be encouraged to create conditions enabling the acquisition by Russian citizens and companies of real estate on the territory of Abkhazia and for Russian citizens and companies to invest in the Abkhaz economy.

146. On 9 September 1999 the government of the Russian Federation repealed its own resolution of 19 December 1994 on measures temporarily limiting the possibility to cross the State border with Georgia. On 25 December 2002 and 10 September 2004, respectively, the rail connections between Sukhumi and Sochi, and between Sukhumi and Moscow, were reopened.

147. The European Parliament, in a resolution of 18 January 2001 on the visa regime imposed by the Russian Federation on Georgia, stated as follows:

> "... noting with deep concern the unilateral imposition of a visa regime on Georgia by the Russian Federation which took effect on 5 December 2000 ...;
>
> ... [Reiterates] that the imposition of visas which respect international law is a matter for the sovereignty of a state, but regards the plans to exempt residents of the secessionist Georgian regions of South Ossetia/Tskhinvali and Abkhazia from the visa regime imposed on Georgian citizens as a challenge to the territorial integrity and sovereignty of Georgia which the Government of the Russian Federation officially supports, and calls on the government of the Russian Federation to reconsider these plans as they would amount to *de facto* annexation of these indisputably Georgian territories;
>
> ... [Reiterates] that a decision on unilateral introduction of a simplified procedure for border-crossing for residents of South Ossetia/Tskhinvali Region and Abkhazia by the Russian Federation would compromise its role as a mediator in the conflicts;
>
> ... Calls on the Russian Federation as a matter of urgency to respect the commitment it made at the OSCE Summit in Istanbul in 1999 to withdraw its troops from Georgian territory."

148. In respect of non-military-related aspects of Russia's involvement in Abkhazia in the relevant period (before the release of the first applicant in 2007), the EU Fact-Finding Mission's 2009 report found as follows:

> ... While Russian citizenship had been conferred in individual cases already at an earlier point in time, the Russian Law on Citizenship which entered into effect in 2002 regulated the acquiring of Russian citizenship via a simplified procedure and thus opened broader avenues soon to be exploited by thousands of new applicants from South Ossetia and Abkhazia...
>
> **"Creeping annexation"**
>
> ...The clearest demonstration of this Russian policy of integrating separatist entities of neighbouring states into its own legal jurisdiction was "passportisation", the awarding of Russian passports and citizenship of the Russian Federation to residents of Abkhazia and South Ossetia. In this context, in 2007 Russia paid residents of Abkhazia a total of 590 million [roubles (RUB)] in the form of pensions.
>
> ... Another aspect of "creeping annexation" was the fact that the separatist governments and security forces were manned by Russian officials. Russia appointed its former civilian and military leaders to serve in key posts in Abkhazia ... including the *de facto* Defence Minister of Abkhazia (Sultan Sosnaliev) ... and the *de facto* Chief of the Abkhaz General Staff (Lieutenant-General Gennadi Zaytsev) ....
>
> ... The effective control of the Abkhaz authorities over the relevant territory and its residents is problematic, because many inhabitants had acquired Russian citizenship and were – from the Russian perspective – under the personal jurisdiction of the Russian Federation. According to the information given by the Abkhaz authorities "practically all the inhabitants of Abkhazia are at the same time citizens of the Russian Federation." Russian passport-holders participated massively in presidential and parliamentary elections in Russia. Russia's control over Abkhazia's security institutions seems to be less extensive than in South Ossetia. Contrary to the situation in South Ossetia, the will to remain independent from Russia has traditionally remained strong among the elites and Abkhaz public opinion. In the "presidential elections" of 2004/05, for instance, Moscow had to acknowledge the defeat of the candidate whom it had openly supported (Raul Khadjimba) and had to accept the victory of Sergey Bagapsh. This means that the Abkhaz institutions were – at least at that particular moment – not completely under control of the Russian Government.
>
> ... One component of sovereignty is the sovereign state's jurisdiction over persons. Large-scale naturalisations of Georgian citizens undermine the personal jurisdiction of Georgia, and to that extent affect Georgian sovereignty as well.
>
> **Conclusion:** The conferral of Russian nationality on a large scale is apt to deprive Georgia of its jurisdiction over persons, forecloses Georgian diplomatic protection for those persons, and may be a basis (or rather a pretext) for military intervention. The more individuals that are removed from the Georgian nation, the more plausible is the qualification of these actions as an infringement of Georgian sovereignty, which encompasses jurisdiction over persons.
>
> The conferral of Russian nationality constitutes interference in the internal affairs of Georgia because Georgia does not allow dual citizenship.
>
> According to information available to the IIFFMCG, the Russian "passportisation" policy was not, in general, based on use of force, but rather on political, economic and social incentives.

Abkhazia justified the Russian naturalisation *en masse* of Georgian citizens living in South Ossetia and Abkhazia by the difficulties encountered by Abkhaz travelling abroad. Indeed, residents of Abkhazia and South Ossetia could not travel abroad with the "passports" issued by the *de facto* authorities, because these documents were not recognised by other states.

Moreover, the Russian "passportisation" policy displays some specific circumstances that have to be taken into account. First, it is performed on a massive scale and concerns people living in breakaway territories in a neighbouring state. The more persons that are affected in number, the more plausible is the existence of an abuse of Russia's right to naturalise persons. Second, the policy was not only implemented during an on-going conflict of secession, but was even intensified at times of rising tensions. Third, it was well planned, organised and implemented. Fourth, the policy has been used as a lever to destabilise an already fragile country. Finally, it has been employed as a rhetorical justification for the use of force.

149. The Russian Ministry of Foreign Affairs published on 5 December 2003 its answers to questions asked by the Russia media concerning arrangements made for Russian citizens living in, *inter alia*, Abkhazia who wished to vote in Russian elections. In particular, the Ministry stated that, by agreement with the authorities of that country, twelve polling stations had been set up at the Russian military bases serving the CIS CPF and other military structures on the territory of Abkhazia. Members of the military and their families, as well as other Russian citizens residing there temporarily or permanently, would be able to vote in the elections to the State Duma of the Russian Federation scheduled to take place on 7 December 2003. Efforts were being made to provide those polling stations with ballot papers issued by the Central Electoral Commission of Russia.

150. The applicants and the Georgian Government pointed to a number of agreements that had been reached (and to efforts to explore the possibility of concluding such agreements in the future) in the period 1997-2006 between, on the one hand, numerous (mostly – but not only – private) Russian companies and Russian regional or municipal entities, and, on the other hand, the Abkhaz authorities or Abkhaz companies. Those agreements and related correspondence, copies of which were provided to the Court, had concerned cooperation in the following fields: tourism; telecommunications (including mobile connectivity installations providing coverage over the entire territory of Abkhazia); the economy, trade and industry; education and culture; and rail and other transport. They also emphasised that, under Article 71 of the Constitution of the Russian Federation, the jurisdiction of the Russian Federation encompassed, *inter alia*, federally-owned power facilities; nuclear power; fission material, federal transport, railways, information and communication, and outer-space activities.

151. Such cooperation included the purchase of immovable property in Abkhazia; the reconstruction of roads and railways in Abkhazia; the renting of technical equipment from the All-Russia State Television and Radio Broadcasting Company for the broadcasting of Russian-language

programmes by the Abkhaz *de facto* state telecommunications company; agreements on the sending of tourists to tourist lodging in various Abkhaz resorts (with payment for such services being in Russian roubles); electrical equipment repairs; the setting-up of periodic fairs, exhibitions, joint markets, conferences and other similar activities aimed at enhancing exchanges and potential exports between the members of the Orlov and Abkhaz Chambers of Commerce and Industry; cooperation between universities (for example, in September 2006 Nizhegorodskiy (Nizhniy Novgorod) State University signed a cooperation agreement with the Abkhaz State University); the provision of medical training to one Abkhaz medical student in Russia (to take place in Russia, with the relevant fees to be paid by the Abkhaz authorities); customs-control installations; the purchase or reconstruction and opening of sanatoria in Abkhazia (following a letter on the subject dated 15 September 2004 from the Prime Minister of the Republic of Tatarstan to the *de facto* prime minister of Abkhazia;) the opening in Abkhazia of camps for children from Moscow; a gift of 13,000 Russian-language textbooks for Russian-language schools in Abkhazia; the creation of joint-venture companies for beer brewing and brick production; barter deals between the Kursk Regional Administration and Abkhazia (under an agreement of 16 September 1998); cooperation between different Russian and Abkhaz banks on the provision of banking services; and a contract for the use of nine satellite communication channels, signed in October 2004, between a Russian State company and the national Bank of Abkhazia.

152. Agreements were also concluded with the Stavropol Region (in the Russian Federation) in the spheres of industry, commerce, culture and education; with the administrative authorities of the Krasnodar Region (in the Russian Federation) regarding the restoration and reconstruction of highways and railways in Abkhazia; and with the Republic of Kabardino-Balkaria regarding the fostering of friendship and co-operation in respect of legal issues. The Russian Federation and the *de facto* government of Abkhazia actively cooperated in the areas of: the exporting and importing of electricity; the joint production of bricks and roofing slate; the construction of a gas-transmitting terminal in the territory of Abkhazia and the exporting of propane through it; the expansion of Russian mobile communications operator services over the whole territory of Abkhazia; television and radio broadcasting; the distribution and realisation of Abkhaz agricultural products on the Russian market; the licensing of Russian fishing ships in Abkhaz waters; and consulting services provided to the Abkhaz authorities by the Moscow authorities in areas such as stock-taking, farming, and legislation. Russian entrepreneurs and entities were engaged in the acquisition of land, real estate and natural resources in Abkhazia. The Ministry of Foreign Affairs of Georgia protested to the Russian authorities about the implementation of trade and economic projects and the conclusion of agreements between Russian entities and the separatist government of Abkhazia.

153. The applicants furthermore referred to numerous exchanges between different Abkhaz and Russian authorities or organisations concerning the financing of various projects in Abkhazia. Such projects included: the reconstruction in 2003 of the Sukhumi Botanical Garden; the provision of marble and other construction material from Abkhazia to a private Russian company in 2003; the sale of vegetables grown in Abkhazia to the Moscow City Council; approval given by the Federal Agency for Agriculture (operating under the Russian Federation Ministry for Agriculture) for the export of ethyl alcohol to an Abkhaz *de facto* state company under an earlier contract; exchanges of correspondence regarding the potential participation of Abkhaz companies in procurement procedures for supplying the Russian federal prison system with tea; the opening of legal consultation offices in Abkhazia by the Voronezh Bar Association.

154. On 6 August 2004 the Russian Ministry of Foreign Affairs issued a press release entitled "Regarding the new threats posed by the Georgian side" in which it referred to warnings made by Georgia in respect of civilian boats passing close to the Abkhaz coast line and to the unsafe conditions faced by Russian tourists in Abkhazia. The press release asserted that if Georgia were to pursue a policy of economic blockade and sanctions against Abkhazia, it would result in a weakening of the Abkhaz economy; it concluded by reassuring Russian citizens holidaying in Abkhazia that Russia would ensure their safety.

155. A 2004 Freedom House country report on Abkhazia described the Abkhaz economy as being heavily reliant on Russia. The Russian newspaper *Lenta* reported on 6 July 2005 that 180 million roubles (RUB) was to be sent from the budgets of the Russian Federation and the Krasnodar Region in support of Russian nationals living in Abkhazia. A change to the budget of the Krasnodar Region in order to accommodate such a provision had already been approved by the Krasnodar Regional Duma (the regional parliament). The head of the finance department of the Krasnodar regional administration specified that the majority of the financial assistance afforded to Russians in Abkhazia was coming from the federal budget, as part of a targeted programme aimed at assisting compatriots.

156. On 14 February 2005, speaking at his own inauguration ceremony, the newly elected *de facto* president of Abkhazia, Sergey Bagapsh, stated that Abkhazia consistently pursued a strategic union with Russia and that the question of integration with Russia was always a pressing one for Abkhazia.

157. In August 2005, the *de facto* president of Abkhazia visited Moscow and met with the Russian capital's mayor, Yuriy Luzhkov. RIA Novosti reported that the two had discussed issues relating to city infrastructure and the possible participation of Russian companies in the Abkhaz agricultural sector. At a news conference given during that visit, the *de facto* president of Abkhazia declared that, within a year, all citizens of Abkhazia would become Russian citizens. He also stated that, at that point in time, 84% of the Abkhaz

population held Russian citizenship and Russian passports and promised to bring that figure up to 100% within six months to a year. He also stated that 70% of retired persons in Abkhazia received pensions from Russia. Furthermore, 70% of Abkhaz military personnel also held Russian citizenship. Mr Bagapsh emphasised that Russia was the main economic partner of Abkhazia, with all the main investments in Abkhazia coming from Russia: "Abkhazia has reached a level of development whereby it does not only ask but is in a position to offer." The Abkhaz army had been hosting Russian specialists – such as vehicle operators, navy officers and border guards – and intended to continue such initiatives in the future. At the same time, he denied that the Abkhaz army was financed by Russia. He emphasised that about 22% of the Abkhaz State budget was allocated to its army, which Abkhazia financed independently. Sponsorship received from friends and allies was welcome but minimal, according to him.

158. Both Radio Free Europe and the newspaper *Nezavisimaya Gazeta* reported on 18 August 2005 that the previous day the *de facto* president of Abkhazia had vowed to strengthen economic ties with Moscow and to bring the legislation of Abkhazia into line with that of Russia.

159. An article published in the online Apsny.ru on 13 November 2006 reported that the head of the Krasnodar Region and the *de facto* president of Abkhazia, accompanied by other high-level officials of the two sides, had been in Krasnodar that day to discuss economic cooperation.

160. In September 2005, an economic adviser of the Abkhaz *de facto* president stated that Abkhazia would continue to "integrate" its economy with that of Russia, a process that he said would be facilitated by the continued use of the Russian rouble as Abkhazia's national currency.

161. The Georgian Government submitted that during the relevant period Abkhaz banks, operating without a licence from the National Bank of Georgia, enjoyed credit and settlement services supplied by Russian banks. Similarly, any sum of money could be freely transferred in either direction between Abkhazia and Russia, using a system of electronic accounting called the "Golden Crown". The so-called National Bank of Abkhazia, as well as Abkhaz state companies, cooperated with the Russian bank Krainvestbank (headquartered in Krasnodar, Russia). Abkhaz state and commercial organisations used the services of at least thirty-three different Russian banks, identified by their name and operating in different locations in Russia.

162. An article published on 16 June 2005 in *Novye Izvestia* concerned an interview with the president of the Georgian national bank in which he raised serious concerns about the fact that many Russian commercial banks had in practice incorporated Abkhaz banks into their electronic settlement networks, as a result of which unlimited sums of money could be transferred between Russia and Abkhazia in either direction.

163. On 9 February 2006 and on 19 May 2006, respectively, the president of the National Bank of Georgia wrote to the chairman of the Financial Action

Task Force (an inter-governmental body established in 1989) and to the head of the Federal Agency for the Financial Monitoring of the Russian Federation. The president of the National Bank of Georgia protested against the close financial relations that Abkhaz state and commercial banks had with Russian banking and financial structures, as that provided grounds for unhampered money laundering, which could not be stopped by the National Bank of Georgia. The letters emphasised that, through the payment systems facilitated by Russian banks, Abkhaz banks could carry out operations practically worldwide, even though Abkhazia lacked effective legislation against money-laundering. Furthermore, Russian commercial and State structures had been providing banks operating on Abkhaz territory with the latest technology and software. The names of Abkhaz companies (and even the numbers of some of the accounts that they held with Russian banks) were listed by the president of the National Bank of Georgia in his protest.

164. The applicants furthermore referred to a video recording, submitted to the Court by the Georgian Government in 2006, of a broadcast on Abkhaz television of a July 2006 visit to Abkhazia by the then mayor of Moscow, Mr Luzhkov. In it Mr Luzhkov expressed support for the Abkhaz people and referred to the support that Russia had provided to Abkhazia in the past. He also spoke about potential future economic cooperation between Russia and Abkhazia (including in the area of farming), as well as in favour of its independence as a State. The Georgian Foreign Ministry lodged a protest with the Russian chargé d'affaires in Georgia regarding Mr Luzhkov's visit, which had not been agreed with the Georgian authorities prior to it taking place.

165. The applicants also pointed to several other reports that had aired on Abkhaz television, which the Georgian Government had lodged with the Court in the form of video recordings in 2006. Those reports showed official visits to Abkhazia by, among others, the following officials. The deputy speaker of the Russian Duma was welcomed by the Abkhaz *de facto* president Sergey Bagapsh in May 2006 and the two discussed future relations between Russia and Abkhazia. Two other Duma members met Mr Bagapsh in August 2006 and expressed their moral support for Abkhazia and its people, stating that they considered Georgia to be the aggressor in the conflict between Georgia and Abkhazia.

166. A delegation from the Republic of Kabardino-Balkaria in Russia was welcomed by Mr Bagapsh in Abkhazia in April 2006, when its representatives pledged support for the Abkhazh people. In an undated clip shown on Abkhaz television, Mr Bagapsh welcomed the rector of the State Technical University in Nizhniy Novgorod and discussed with him the future opening of a representative office of that university on the premises of the Abkhaz State University (ASU) for the purposes of facilitating student exchanges, the teacher-training of ASU staff, and other activities. An agreement subsequently reached between the two universities was based on

a memorandum signed between Abkhazia and the Nizhniy Novgorod Region in Russia.

167. The Russian daily newspaper *Isvestia* reported on 17 October 2006 that, at a meeting with representatives of Abkhaz non-governmental organisations, Abkhaz *de facto* president Sergey Bagapsh had stated that he would do everything possible in order to promote closer ties between the Abkhaz and the Russian peoples. He added that Abkhazia was in a sense already a part of Russia in terms of its currency, language, citizenship status of its population, trade and inward Russian investment.

168. At a meeting in 2006 with a delegation from Ivanovo Region visiting Abkhazia, the *de facto* prime minister said that during the previous year alone total investments from Russia into Abkhazia had amounted to about 20 million US dollars (USD). He added that if that level of investment were to be maintained, that would allow a number of areas of the Abkhaz economy to be restored within a few years.

169. A delegation from the Moscow City Government, welcomed by the *de facto* prime minister of Abkhazia in June 2006, confirmed that the city of Moscow had just sent humanitarian aid to Abkhazia amounting to a total of USD 1 million, and that the mayor of Moscow had formulated plans to build a Russian cultural centre in Abkhazia. The delegation also stated that since December 2003 Russia had paid out pensions to people living in Abkhazia amounting to a total of almost RUB 950,000,000, and that RUB 100,000,000 had been provided the previous year in the form of a grant to Abkhazia by a fund called "Assistance to Compatriots" towards road-repair works. The *de facto* prime minister of Abkhazia also expressed gratitude for the fact that Abkhaz people had received medical treatment in Moscow.

170. The Russian newspaper *Izvestia* also published an interview with the *de facto* Abkhaz prime minister on 20 October 2006 in which he stated that Abkhazia was pro-Russia, because "Russia [had] helped the country survive after the war". He pointed, among other things, to the monthly pensions that Russia was paying to some 25,000 Abkhaz pensioners amounting to RUB 40 million per month. He also stated that in 2006 more than one hundred seriously ill individuals had received medical treatment in Russia and that 200,000 Russian academic textbooks had been delivered free of charge to Abkhazia by Russia.

171. According to a report by the International Crisis Group (ICG) dated 15 September 2006, entitled "Abkhazia Today, Europe Report No 176", the Abkhaz State budget for 2005 was USD 27 million and the 2006 Abkhaz State budget was USD 34 million. In particular, some 51,000 persons received Abkhaz pensions averaging about USD 4 per month, while 27,000 residents of Abkhazia received Russian pensions ranging from USD 48 to USD 64 a month.

172. The same ICG report observed that the *de facto* authorities in Sukhumi did not appear to receive substantial direct budgetary support from

the government of the Russian Federation. Abkhazia did, however, receive in-kind help from Moscow Municipality and the North Caucasus republics. For example, the Governor of the neighbouring Krasnodar Region (in Russia) had donated some sixty vehicles to the Abkhaz police. Buses had been donated to Sukhumi Municipality by the Adygean and other North Caucasus republics. The Moscow Government had provided 200,000 tonnes of bitumen to assist with road construction. At least USD 3.8 million had been provided from Russian sources towards the Sukhumi-Psou road refurbishment. Until recently, the report stated, Abkhazia had received little other international assistance. All international aid went through Tbilisi and most of it was aimed at strengthening Georgian-Abkhaz ties. The EU Commission was the largest donor, with projects worth some 25 million euros (EUR).

173. On 18 November 2006, the *Vzglyad* newspaper reported that not only ordinary people, but also the leaders of the internationally unrecognised republics of Abkhazia, South Ossetia and Transdniestria held Russian citizenship; the newspaper referred a statement recently made by Sergey Bagapsh: "We are all Russian citizens – and we are proud of it."

174. In an interview given by the Abkhaz *de facto* president to journalists from the Noviy Region Information Agency (a Russian news agency) on 31 July 2007, he reportedly stated that while in 2005 external investment into Abkhazia had amounted to USD 40 million, external investment had amounted to USD 90 million in 2006 and was expected to reach USD 200 million in 2007. He specified that much of such investment had been made in exchange for construction material needed to build facilities for the 2014 Olympic Games in Sochi. He noted that Abkhazia was located right next to Sochi and all the material that it had – bricks, cement etc. – was of good quality, and stated that the Olympics' organisers were quite pleased with it. He furthermore stated that Abkhazia wished to build an independent State next to Russia and emphasised the fact that Russian peacekeepers were in Abkhazia, Russian pensions were being paid to people in Abkhazia, and the Russia rouble was used there.

175. The *de facto* deputy prime minister and minister of finance of Abkhazia was reported to have said in 2009 that the internal sources of revenue in respect of the 2004 Abkhaz state budget had amounted to RUB 402 million.

176. According to a 2010 report by the ICG, in 2009 approximately 60% (RUB 1.9 billion, or USD 65.5 million) of the Abkhaz state budget had originated in direct support from the Russian Federation. That included both infrastructure projects and direct budget support. Russia also accounted for 99% of Abkhazia's "foreign investment". In 2008 there had been some trade with Türkiye (metal, lumber exports and fuel imports) and Romania (fuel imports), but Abkhaz officials had given no amounts or monetary value; they had merely estimated that 80% of everything consumed in Abkhazia was imported from Russia.

2. Submissions by the Government of Russia

177. The Government of Russia stated that in terms of international law Abkhazia had been a part of Georgian territory until 2008. They pointed out that this status had been repeatedly confirmed by UN Security Council resolutions.

(a) Military aspects

178. The Russian Government denied all the submissions to the Court made by the applicants and the Georgian Government, as detailed in paragraphs 103-112 and paragraph 120 above, labelling them "false claims" and "unfounded allegations" for which there was no documentary evidence. They insisted that Russia had not taken part on either side in the armed confrontation between the Abkhaz forces and the Georgian army, but had maintained its neutrality, condemned violations of human rights and imposed sanctions "against both belligerents".

179. The Russian armed forces in Abkhazia had initially undertaken the protection and evacuation of Russian citizens who had been caught by the war while holidaying at Abkhaz resorts. Russian servicemen had never supported the separatists. The Russian troops had been caught in a crossfire while defending strategic targets and fighting off attacks by militants who had been trying to seize weapons. In the period between 1991 and 1992, Russian military units deployed in Georgia had been subjected to 600 armed attacks that had left seventy-one servicemen and members of their families dead. Within a period of nine months in 1993, eighty-two attacks had been committed, 267 weapons units and fifty-four items of military equipment had been stolen, and more than ten people had been killed and twenty wounded.

180. As to the events in 1992, it was the Georgian government that had sent about 3,000 troops into Abkhazia on 14 August 1992 under the pretext of chasing groups of supporters of the first elected President of Georgia in the post-Soviet era. Furthermore, between October 1992 and September 1993 Georgian troops had seized the city of Tkvarcheli, where a humanitarian catastrophe had taken place.

181. The Russian Ministry of Foreign Affairs had exercised diplomatic efforts to resolve the conflict peacefully. Those efforts had comprised mediation during negotiations held in September 1992 between Georgia and Russia and attended by the first *de facto* president of Abkhazia, Vladislav Ardzinba. The latter, pressured by Russia, had been forced to sign a document which had authorised the presence of Georgian troops in Abkhazia and which had not made any mention of Georgian federalism.

182. The allegation that armed forces of the Russian Federation had attacked Gagra in the fall of 1992, using state-of-the-art military equipment, tanks and aircraft, was false and no evidence had been presented for it.

183. As to the allegations relating to Russia having purportedly used warships in the attack on Gagra, the Russian Government stated that the ships referred to had been only auxiliary civil vessels and not warships, and information about them was openly available online. As regards, in particular, the allegations that ships of the Russian navy – namely the Bezukoriznenniy, VTN-36 and KIL-25 – had been used, the Russian Government pointed out that: the Bezukoriznenniy was a small patrol boat that had been added in the Black Sea Fleet in 1980, defunct since July 1997, transferred to the naval forces of Ukraine in August 1997 and scrapped in 2001; the VNT-36 was an oil tanker of the Northern Fleet; and the KIL-25 was an anchor-handling tug supply vessel and mooring vessel listed in the books of the Black Sea Fleet (as an auxiliary ship crane used to ensure the environmental safety of operations to raise ships from the seabed).

184. In addition, it was not Russia but Georgia that had actively supported the Chechen militants involved in fighting in Abkhazia, as evidenced by media reports at the time in question and by a report by Human Rights Watch.

185. No Russian forces had been involved in bombings of any territory in Abkhazia.

186. The neutrality of Russia's armed forces had been announced in an official statement by the Russian Ministry of Defence on 17 September 1992.

187. Allegations by the Georgian authorities that in 2001 Russian military personnel had trained specialists at the Sukhumi Higher All-Troops Command College (*Сухумское высшее общевойсковое командное училище*) were not true. Only slightly over the equivalent of a platoon of cadets studied in that college and foreign experts could not be sent to participate in such low-level training. Furthermore, the allegation that large-scale joint Abkhaz-Russian military exercises had taken place in 2005 and 2006 were likewise untrue. On the one hand, the Russian military contingent deployed in Abkhazia in 2005-2006 had not engaged in any large-scale joint military training exercises involving Abkhaz armed units. On the other hand, three major combat training activities had taken place in the autumn of 2006 in Abkhazia; however, they had been organised and carried out by the Abkhaz armed forces on their own, without any support or participation on the part of the Russian military contingent.

188. Similarly, the submissions lodged by the Georgian Government with the Court that in February 2005 renovation and rehabilitation works had been carried out on a former military facility in the Gagra District and that in January 2006 approximately ten Ural and Zil military vehicles had delivered equipment for installation at the facility, were not true. Neither were the above-mentioned allegations that in February 2005 two Ural vehicles had delivered from Russia to Abkhazia special equipment that had been installed at the Zarya plant in Thkvarcheli for the production of land mines. In particular, that equipment had never been registered with the Armed Forces of the Russian Federation. In Russia only industrial enterprises produced

mines and warehouse repair facilities carried out maintenance of engineer ammunition in engineer ammunition warehouses without the use of any special equipment. The rest of the allegations by the Georgian Government, detailed in paragraphs 111 and 112 above, were also not true. Bilateral agreements between Abkhazia and Russia on the delivery of weapons, military equipment or other special equipment designed for military applications had not been concluded. Furthermore, no evidence for those claims had been provided.

189. As to the Russian peacekeeping forces, they had not reported to the Ministry of Defence of the Russian Federation, but to the commander of the CIS CPF, who in turn had been appointed by decisions of the Council of Heads of State of the CIS. On 9 June 1994, a Decree of the President of the Russian Federation had provided for the participation of Russian troops in the CIS peacekeeping operation. On 21 June 1994, Russian peacekeeping forces had been deployed in the region and had begun to fulfil the tasks assigned to them. The decision of 22 August 1994 of the Council of Heads of the CIS States on the use of the CIS CPF (see paragraph 34 above) had served as the basis for building a mechanism for the resolution of ethnic conflicts in the Abkhaz region of Georgia, and their decision to start the peacekeeping operation and approve the mandate for the CIS CPF mission had been adopted on 21 October 1994. The mandate of the CIS CPF had been extended every six months until December 2003 by a decision of the Council of Heads of the CIS States – including Georgia (one of the parties to the conflict). Georgia had made no official attempt to cancel the mandate of the CIS CPF until 2008, thus extending its consent to the CIS CPF remaining in the conflict zone. The activities of the CIS CPF had ended on 10 October 2008 by a decision taken a month earlier by the CIS Heads of State.

190. Peacekeeping units had been deployed in Abkhazia to perform humanitarian functions: they had protected and evacuated civilians, regardless of their nationality. Russian servicemen had never supported the separatists. In their observations of February 2017, the Russian Government submitted that the CIS CPF had not been deployed in the Gagra District of Abkhazia and in Sukhumi, but had been deployed in other areas – namely Gali and Tkvarcheli. In their subsequent observations of May 2017, the Russian Government specified that the Ceasefire Agreement of 14 May 1994 comprised an appendix, containing a map, which map included the site of the CIS CPF headquarters in Sukhumi; therefore, stationing the CIS CPF in Sukhumi had been covered by that agreement. The CIS CPF had had helicopters that had been used to fulfil tasks relating to the air patrolling of the security zone. Facilities for the storage and maintenance of aviation equipment had been available only in Gudauta, for which reason aircraft, crews, operating personnel and security units had been stationed there.

191. Furthermore, the limited military presence of Russian servicemen (as part of the CIS PCF) on part of the territory of Abkhazia had been provided

for in the following international acts: an Agreement on Groups of Military Observers and Collective Peacekeeping Forces in the CIS dated 20 March 1992 (together with protocols thereto dated 15 May 1992 and 4 August 1992) and the relevant decisions of the Council of Heads of the CIS States; a 15 April 1994 Decision of the Council of Heads of the CIS States on the conduct of peacekeeping operations aimed at achieving peace; the 14 May 1994 Georgian-Abkhaz Agreement on Ceasefire and Disengagement of Forces; the 21 October 1994 Resolution of the Council of Heads of the CIS States on the use of collective peacekeeping forces in the area of the Georgian-Abkhaz conflict; the mandate of the CIS CPF, as approved by the Council of Heads of State of the CIS on 21 October 1994 (as subsequently updated); the regulations governing the operations of the CIS CPF, as approved by the Council of Heads of the CIS States on 19 January 1996; and the 19 September 2003 Decision of the Council of Heads of State of the CIS on the presence of the CIS CPF in the conflict area in Abkhazia and measures for the further resolution of the conflict.

192. The Russian Government emphasised that the number of Russian troops forming part of the CIS peacekeeping mission present in the conflict zone had been very low. In particular, it had started with just over 1,800 people (in June 1994) and, over the following fourteen years, had ranged between 1,500 and 2,000 people. It followed that those few Russian peacekeepers dispersed over the CIS CPF's range of operations, which they had not left, could not have physically exercised effective control over the territory of Abkhazia or over its population of about 240,000 people.

193. UNOMIG had monitored the situation in the conflict zone as well as rotations within the CIS CPF. Such rotations of the Russian peacekeeping forces had been carried out only after the Georgian and Abkhaz parties had been notified. The only exception to that (that is to say the only times when any movement on the part of the CIS CPF had not been reported in advance) had been when the peacekeeping forces and the UNOMIG observers had undertaken regular monitoring of the conflict area in order to identify any violations of the existing agreements by either party. Such were the cases which the Georgian Government had referred to and which they had presented as "illegal movements" on the part of the Russian peacekeeping forces.

194. The applicants' assertions that the CIS CPF had performed only one function – that of securing the border between Abkhazia and the rest of Georgia – were not true. The CIS CPF had ensured strict compliance with the ceasefire provisions, preventing a resumption of hostilities in the conflict area by disengaging the armed groups of the conflicting parties. They had also: worked towards creating the necessary conditions for the safe return of people who had left; provided humanitarian assistance; ensured the safety of such vital facilities as the Enguri hydroelectric powerplant; ensured compliance with international humanitarian and human-rights law; carried out demining

operations (with UN assistance and cooperation from the local authorities); worked towards preventing terrorist actions being committed by internal and external armed groups; and ensured the safety of UNOMIG personnel. In 1994, a military prosecutor's office had been established in Gudauta to supervise the observance of laws by the members of the Russian armed forces working within the CIS CPF. During the period of CIS CPF activity from 1994 until 2005, more than 5,000 individuals breaching the law had been detained and disarmed, thousands of small arms and ammunition items had been confiscated, more than 100,000 explosives had been destroyed, and medical assistance had been provided to tens of thousands of civilians.

195. It had to be emphasised that the total area of responsibility of the CIS CPF – that is to say the area in which the latter had carried out the tasks assigned to it – had amounted to around 3,000 square kilometres (about one third of the total territory controlled by Abkhazia – see paragraph 25 above). No special regime had been established in Abkhazia and the civilian population there had not fallen under the jurisdiction of the military courts of Russia. Neither the commander of the CIS CPF nor the CIS CPF joint staff had exercised any influence on the local and central administrations.

196. In respect of the present applications – given that the Gagra and Gulripshi Regions had lain outside the territorial scope of the CIS CPF's responsibility, and given that CIS CPF personnel had not been stationed in those areas – the peacekeepers had not been obliged to assist with the release of the applicants from the penal institutions in which they had been detained. More generally speaking, under the 1994 Ceasefire Agreement, the CIS CPF had had no powers to release detainees from penal institutions in Abkhazia.

197. As regards the military base at Gudauta, Russia had disbanded the base in 2001. While a joint statement by the Russian Federation and Georgia, issued within the context of the OSCE Istanbul Summit in 1999, had not provided a verification mechanism in respect of the withdrawal and dismantling of the base, in June 2002 a group of OSCE representatives had visited Gudauta in order to verify that the base had been withdrawn. In the absence of a formal mandate, however, the group had not formally recorded the closure of the base.

(b) Political connections and economic support

198. The Russian government had consistently adhered to the principle of the territorial integrity of the State and until 2008 had considered Abkhazia to constitute an integral part of Georgia.

199. The reason for the Georgian-Abkhaz conflict had not been the actions of the Russian government or specific officials thereof, but a consistent, purposeful policy on the part of the Georgian authorities aimed at the displacement of the Abkhaz ethnic group from the territory that it had occupied throughout history. That had included such measures as the mass relocation of Georgian settlers to Abkhaz territories, the renaming of Abkhaz

settlements according to Georgian toponomy, and the prohibition of the Abkhaz language. In response, as early as the 1950s, a separatist movement had emerged spontaneously in Abkhazia to form a stable opposition to the central Georgian government; that movement had not been supported from outside. Under such circumstances, the Russian government could not be held responsible for the actions of the Abkhaz opposition, and subsequently the *de facto* Abkhaz authorities.

200. The Abkhaz authorities had not been integrated into the political and legal systems of the Russian Federation, and the Abkhaz government had not reported to the Russian federal authorities. The Russian authorities had not exercised any military, political or legal control over Abkhazia.

201. Concerning the conferring of Russian citizenship on some citizens of Abkhazia, that had been done in accordance with a 2002 federal law. That law provided a simplified procedure for acquiring Russian nationality in respect of all citizens of the former USSR; it did not provide Abkhaz with any privileges in that respect. Russian passports had been issued to people residing in Abkhazia who had applied for them of their own free will; no pressure had been exerted by the Russian Federation. All questions relating to the reasons behind the decision of the Abkhaz population to acquire Russian nationality should be addressed to Georgia.

202. As regards the provision of pensions to Russian citizens residing in Abkhazia, the right of citizens residing abroad to receive retirement pensions had been established by a 2001 federal law. Russian pension benefits had been provided to elderly persons residing in Abkhazia on the basis of their Russian citizenship. The Russian Government specified, without submitting evidence in support, that at the time of the submission of their observations in February 2017, the number of Russian citizens residing in Abkhazia and receiving Russian pensions had amounted to 32,398 people – obviously less than the 70% of the population of Abkhazia (240,000 people) asserted by the applicants.

203. Before 2008 Russia had provided humanitarian assistance to Abkhazia as a part of Georgia. In particular, that assistance had comprised food (1,230 tonnes), wheat (3,918 tonnes), other grains (700 tonnes), sugar (83 tonnes), canned meat (60 tonnes), canned fish (39.6 tonnes), baby food (9.4 tonnes), steel cutlery (2,200 sets), plywood (120 metres), adult and children's clothing (100 sets), folding beds (500), mattresses (500), medical goods (11 tonnes), and blankets (3,700).

204. As regards economic or financial support, according to the Russian Government, the commercial activities of various Russian industrial and financial enterprises in Abkhazia had been primarily prompted by the economic blockade of Abkhazia imposed by Georgia. Prevented from receiving goods from the Georgian side, the breakaway republic had had but one opportunity to ensure its local and economic development and prevent a humanitarian catastrophe: financial and economic integration with its

neighbour, Russia. It had to be particularly emphasised in that regard that such integration had been the result of determined efforts made by Abkhaz leaders to promote foreign investments in the national economy. Furthermore, to ban the activities of Russian legal entities and individuals in Abkhazia would have been in violation of the principle of economic freedom embodied in the Russian Constitution.

205. According to the Russian Government, Türkiye had been another large foreign economic and trade partner of Abkhazia. In particular, Türkiye had been responsible for 62% of Abkhazia's imports and 45% of its exports. If the independent activities of individual businesses in an unrecognised state were within the scope of responsibility of the State in which those businesses had been incorporated, then violations of human rights in Abkhazia had to be equally imputed to Türkiye.

206. In any event, in the economic and financial sectors, Russia had acted in full compliance with the 1996 CIS decision (see paragraph 35 above), which had imposed restrictions on official relations with Abkhazia in the economic, financial, trade, transport and other areas. The examples of Russian-Abkhaz cooperation in the economic and financial areas cited by the applicants only confirmed this, since the subjects of that cooperation had been either municipal or regional structures, or legal entities and individuals with no direct relation to Russia. The 1996 CIS decision had not prohibited activities on the part of the specified category of legal entities and individuals in Abkhazia for humanitarian or commercial purposes.

207. The same applied to Russian financial and investment structures, Russian mobile operators, Russian entrepreneurs, Russian individuals, and so on, whose actions in Abkhazia had not breached international law, since their activities had not been regulated directly by the Russian Federation. This had been the situation until 6 March 2008 when the Ministry of Foreign Affairs of the Russian Federation had sent an official note to the CIS Executive Committee stating that, in view of the changed circumstances, Russia no longer considered itself bound by the 1996 CIS decision.

208. In respect of the restoration of railway, sea and land transportation services, that had only taken place on 25 December 2002 (for the first time since the start of the Georgian-Abkhaz conflict) with the reopening of the railway line between Sukhumi and Sochi. On 10 September 2004, several direct trains had transported passengers between Moscow and Sukhumi (see paragraph 146 above).

209. Lastly, a visa regime with Georgia had been introduced in December 2000 by the Russian Federation in response to the same decision by Georgia *vis-à-vis* Russia. For humanitarian reasons, Russia had established special conditions for crossing the Russia-Georgia border in Abkhazia.

B. Relations between Georgia and the Abkhaz *de facto* authorities

1. Submissions by the applicants

210. The applicants submitted that Abkhazia was an integral part of Georgia under Article 1 § 1 of the Constitution of Georgia. This had been recognised by the international community and reiterated in every international document adopted with regard to Georgia.

211. When Georgia had ratified the Convention on 20 May 1999, it had made no declaration and indicated no reservations under Article 57 of the Convention. However, over the years Georgia had limited itself to making ineffective statements and inconsequential declarations in respect of Abkhazia.

2. Submissions by the Georgian Government

(a) Measures aimed at resolving the conflict and observing human rights in Abkhazia

212. The Georgian Government noted that Georgia had never recognised Abkhazia as an independent state. Since the 1990s the Georgian government had taken a number of measures aimed at declaring the *de facto* Abkhaz authorities illegitimate. In 1994, the Georgian Parliament had declared null and void all legislative acts and agreements, and decisions adopted by ruling bodies which had been at variance with the legislation of Georgia and which had been adopted by structures under the control of the separatist regime. Moreover, Parliament had decreed that the supreme council of Abkhazia and the Cabinet of Ministers located in Tbilisi were the only bodies expressing the interests of the population of Abkhazia.

213. Beginning in the early 1990s, the Georgian government had held talks with the Abkhaz side in Moscow with a view to ending the conflict, but without success. Following the ceasefire in the 1990s, Georgia had repeatedly proposed to the *de facto* government of Abkhazia different approaches to resolving the conflict, all of which had been rejected by those authorities. Since 2005, Georgia's policy towards the resolution of the conflict in Abkhazia had been oriented towards direct dialogue with the Abkhaz side, with the objective of helping Abkhazia to emerge from isolation and preparing the ground for acceptance of the non-resumption of hostilities and the return of IDPs to their homes. The relevant Georgian State authorities continued to work actively at both the domestic and international levels in order to achieve a peaceful resolution to the conflict.

214. Since 1994 the Georgian authorities had appealed to the international community numerous times for support for a peaceful political solution of the conflict, consistently arguing for the internationalisation of the peace process and requesting the withdrawal of Russian military equipment and personnel, and the observance of human rights in the area. In the course of negotiations,

the Georgian government had raised different proposals regarding the status of the Autonomous Republic of Abkhazia in an effort to find a peaceful solution. Georgian officials had made repeated statements at various international forums, stressing the Georgian government's will to resolve the conflict via peaceful means and in a manner that was in compliance with international law. They had also appealed for support to international organisations – namely the UN, the OSCE, the EU and the Council of Europe – urging them to strengthen their respective efforts aimed at facilitating a peaceful political resolution of the conflict.

215. In particular, in his statement during the 1996 UN General Assembly session, the Georgian Foreign Minister had declared his readiness to see a modification of the State structure of Georgia – namely, from that of a unitary to a federal State, granting Abkhazia broader autonomy as a result. In 1997 the Georgian government had distributed a report at the UN General Assembly on the alleged policy of ethnic cleansing being carried out on the territory of Abkhazia against ethnic Georgians and had demanded that those responsible be brought to justice. During a session of the UN Security Council in 1999, the Georgian government had presented a proposal entitled "Basic principles for determining the status of Abkhazia within Georgia"; the proposal had been for a federal structure within which Abkhazia would exercise legislative, executive and judicial powers in areas defined by the constitution of a future federal State. During the UN General Assembly's session the same year, the Foreign Minister of Georgia had called for intensified work within the framework of the Geneva Process on the question of the political status of Abkhazia within Georgia.

216. Furthermore, during the UN General Assembly sessions in 2000, 2002, 2003, 2005 and 2006 the then Minister of Foreign Affairs of Georgia and the Georgian President had called on the UN to take a more active role in the peacekeeping operations in Abkhazia. The reason for that had been that the Russian peacekeepers acting under the umbrella of the CIS CPF had allegedly failed to ensure the level of security necessary for the return of IDPs and refugees, and the Russian-dominated CIS CPF had served to perpetuate rather than resolve the conflict. In June 2006, at a parliamentary session of the Council of Europe, the Georgian President's aide for Abkhaz conflict issues had presented Georgian proposals for a peaceful resolution of the conflict. Also in 2006, the Georgian Minister for Foreign Affairs had made statements to the Permanent Council of the OSCE and at the May session of the Committee of Ministers of the Council of Europe.

217. The Ministry of Foreign Affairs of Georgia had regularly sent notes of protest to its Russian counterpart (on no fewer than seventy occasions in the period between 1996 and 2006) in relation to, *inter alia*: direct contacts and reciprocal visits between Abkhazia and Russia; discussions between Russian officials (representing regional and municipal administrations) and highly-placed Abkhaz authorities; the signing of Russian-Abkhaz agreements

on cooperation in various fields, such as those of economics, science, academia and culture; visits to Abkhazia by delegations of Russian business representatives in order to negotiate joint-investment commercial projects; the inclusion of Abkhazia in an association aimed at economic cooperation among the districts of Russia's Southern Federal Region and at the regular participation of the Abkhaz representative in the association's activities; the recognition by the relevant Russian authorities of secondary and higher education diplomas issued by establishments in Abkhazia; the unilateral reconstruction by Russia of railway sections linking different towns in Russia with Sukhumi and the resumption in the early 2000s of rail transport between them – despite the suspension of such activities that had been in place since 1992; direct postal services between Russia and Abkhazia since at least 2000; the construction in 2003 of a new bridge over the Psou River, which ran along the geographical border between Russia and Abkhazia; the illegal crossing of the border between Russia and Abkhazia on multiple occasions by people, arms and military equipment in the late 1990s and early 2000s; the illegal transportation of various goods across the border between Russia and Abkhazia, despite the existence of a 1996 decree issued by the President of Georgia prohibiting international transport across the Georgian border with Russia where that border coincided with the Russian border with Abkhazia; the unilateral introduction by Russia of a visa-free regime for inhabitants of Abkhazia and the mass conferral on them of Russian citizenship; the purchase of immovable property in Abkhazia by Russian companies and individuals; the continued tourism trips organised by Russian tourist companies to Abkhaz resorts; the joint operation by Russian private companies and Abkhaz companies of mobile telephone networks in Abkhazia, using licences awarded to those Russian companies by the Russian authorities; the sale of fruit by Abkhazia to Russian companies; repeated requests in the mid-2000s lodged by the Russian authorities for the Georgian authorities' permission for the opening of an honorary consulate of the Russian Federation in Sukhumi, Abkhazia; and the apprehension on a few occasions in Abkhazia, either by Russian law-enforcement officers or by the Abkhaz authorities, of individuals suspected of committing crimes in Russia and/or their direct transfer to Russia, without the involvement of the relevant central Georgian authorities.

218. The Georgian government had emphasised in their protests that such actions had constituted a gross interference with Georgia's internal affairs and its sovereignty and territorial integrity. The growing assistance that Russia had been providing to the separatist regime in Abkhazia had had the effect of ensuring the very existence of that regime. That assistance and support from Russia had been at the origin of Abkhaz reluctance to negotiate with Georgia and of the failure of the process aimed at finding a solution to the conflict. The position conveyed by the Russian Ministry of Foreign Affairs in reply had been that the activities of private companies and other legal entities, or physical persons, had not been covered by the decision of

19 January 1996, as they had not constituted direct support by Russia as a State to the authorities in Abkhazia; Russia had firmly supported the territorial integrity of Georgia.

219. In addition, throughout the 1990s and the 2000s the Georgian Parliament had adopted numerous resolutions, decrees, declarations and statements in which it, *inter alia*, had declared that the CIS CPF had failed to prevent the ethnic cleansing of the Georgian population and had instead acted as border guards, thus supporting and strengthening the separatist regime in Abkhazia. As a result, the Abkhaz authorities had refrained from negotiating in good faith and had prevented the return of IDPs to Abkhazia. The Georgian Parliament had repeatedly called on the Georgian President, as well as on all central and local governing bodies, to facilitate the full restoration of Georgian jurisdiction and constitutional order in Abkhazia. It had also called for the withdrawal of the Russian armed forces operating as part of the CIS CPF and their replacement by an internationally-mandated police force. It had condemned the *de facto* annexation of Abkhazia by Russia, as well as Russia's interference in the internal affairs of Georgia. Parliament had also expressed strong disapproval of the elections that had taken place in Abkhazia, stating that it considered them to have been illegitimate.

220. Since 2000, a dedicated ministerial department had been tasked with proposing and coordinating action aimed at regulating conflicts on the territory of Georgia through political and diplomatic means. During the course of 2005 and the first half of 2006, the Georgian law-enforcement authorities had opened thirty-seven criminal investigations into reports of human rights violations on the territory of Abkhazia. One example was the case of a Russian national, V.S., who had complained to the Georgian authorities of having been detained in 2005 in Abkhazia by Russian law-enforcement officers, who had forcibly taken him to Russia. The Georgian authorities had promptly opened an investigation into his complaint. Also, in June and August 2000 the Georgian government had protested against the joint apprehension, by Russian and *de facto* Abkhaz law-enforcement officers without the agreement of the Georgian authorities, of two individuals in Abkhazia suspected of having committed criminal offences.

(b) Individual measures taken by Georgia in order to ensure the first and third applicants' rights under the Convention

221. The Georgian Government submitted that they had taken all available diplomatic, political and other measures in order to secure the applicants' rights under the Convention.

(i) In respect of the first applicant

222. In respect of the first applicant, the Georgian Government submitted that immediately after his conviction and imprisonment, a State commission dedicated to searching for fighters who had disappeared in Abkhazia and to

the protection of the rights of their families, which had been created in 1996 by the President of Georgia, had contacted the head of the Abkhaz Commission in order to negotiate regarding his case. However, the Abkhaz side had refused to provide information about his state of health, other than to say that it was normal.

223. In March 2004 the first applicant's grandmother had contacted the legitimate Ombudsman of the Autonomous Republic of Abkhazia, located outside of Abkhaz territory, alerting him to the grave conditions in which the first applicant was being held in detention. The Ombudsman had followed up on her request without delay by seeking assistance from HROAG (based in Sukhumi), asking it to send its representative to visit the first applicant and to render him such assistance as was necessary.

224. Georgia had included information on the first applicant's case in its reports to various UN bodies on the implementation of different human rights instruments. In 2003 the Ombudsman of Georgia, and several times in 2005 the Ombudsman of Georgia and the Georgian Minister for Conflict Resolution, had written to HROAG and UNOMIG, enquiring about the first applicant's state of health and asking for assistance in affording him adequate medical care. In 2005 the Georgian government had also written to the ICRC to raise the issue of the provision of medication to the first applicant and to request assistance with that. In related correspondence, the Georgian authorities had emphasised their inability to take effective steps in order to ensure the protection of human rights on the territory of Abkhazia.

225. In April 2006, the Georgian government had also asked Human Rights Watch to conduct on-the-spot investigations during a visit paid by its staff to the territory of Abkhazia and to inform the international community of any instances that they found of violations of human rights (including violations of the rights of prisoners).

226. Starting in September 2005, the government of Georgia had provided the second applicant with medication, free of charge, which she had sent to the first applicant, with the help of the ICRC.

227. In October 2006 the Ombudsman of Georgia had asked the head of UNOMIG to ensure the first applicant's access to physicians in order that an objective evaluation of his health could be made and necessary medical treatment and supplies be provided. In September and October 2006 the government of Georgia had written to the head of UNOMIG requesting assistance with the transfer of the first applicant to a medical establishment, where proper medical care could be provided to him. They had also expressed a willingness to send a medical team to the prison where the first applicant was being held in order to give treatment to prisoners who needed it, and had sought UNOMIG's assistance with that.

228. In 2006 the Ministry of Foreign Affairs of Georgia had raised the issue of the need to transfer the first applicant to an adequate medical establishment with the foreign ministries and embassies of the countries in

the Group of Friends of the Secretary General of the United Nations – including with the Ministry of Foreign Affairs of the Russian Federation and the Embassy of the Russian Federation in Georgia. In October 2006, the Georgian authorities had informed the chairperson of the Committee of Ministers of the Council of Europe (who at the time in question had been the Russian representative) that, owing to objective and widely-known obstacles, Georgia's ability to provide help to detainees in Abkhazia was limited and that during the first applicant's period of detention the Georgian side had only once managed to deliver the necessary medicines, with the assistance of the ICRC.

229. In response to the interim measures indicated by the Court on 30 August 2006 to both Georgia and Russia, the Georgian government had pursued various measures, within the practical constraints imposed on them by the fact that they had no access to or control over either Dranda Prison or the first applicant. In particular, the Georgian authorities had requested the Russian government to use its influence with the Abkhaz side in order to ensure the provision of the appropriate medical treatment to the applicant by the Dranda Prison administration and to facilitate the implementation of the interim measures ordered by the Court. In October 2006, the Georgian government had also raised that issue – as well as requesting support for ensuring human rights protection in Abkhazia more generally – in letters addressed to the heads of, respectively, the OSCE Mission to Georgia, the UNDP in Georgia, the Delegation of the European Union to Georgia, and the ambassadors of Italy, Latvia, Lithuania, Poland, the Czech Republic, the Netherlands, France, Germany, Greece, the United Kingdom and the United States of America. The Georgian authorities had emphasised that Georgia lacked the possibility to provide medical care to the first applicant, or to protect his human rights more generally, because it lacked effective control over Abkhazia.

230. Furthermore, the Georgian authorities had referred to the first applicant's detention in Abkhazia in a number of reports that they had submitted to different international bodies. For instance, in their report to the UN Committee Against Torture on the measures taken in 2003-2005 by Georgia to implement the UN Convention Against Torture on the territory of Abkhazia, the Georgian government had submitted that they had no control over that territory and had asked the UN's Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to bring Georgia's concerns to the relevant bodies of the United Nations. Similar submissions had been included in reports produced by the Georgian government for the European Commission Against Racism and Intolerance, the Commissioner and the UN Human Rights Committee.

231. After notice of the application had been given to the Georgian Government in 2006, the Georgian authorities had opened an investigation

into the first applicant's complaints, which had ended in the identification and conviction of the perpetrators (see paragraphs 80-88 above).

(ii) In respect of the third applicant

232. Having received information about the unlawful detention of the applicant, the Georgian government had started, from July 2003, to consistently raise his situation during quadripartite meetings (held in Chuburkhinji, Gali Region, Abkhazia) between representatives of the UN, the CIS CPF, the Abkhaz *de facto* authorities, and the Georgian government. Those meetings had constituted the only opportunity for dialogue between the Georgian authorities and the *de facto* Abkhaz authorities.

233. As could be seen from the minutes of the Chuburkhinji meetings held on 10 and 17 July 2003, the Georgian representatives had asked the CIS CPF to investigate the applicant's arrest and the circumstances surrounding it. They had questioned whether the applicant – eighty-five years old at the time of the events in question – could have committed terrorist acts. They had furthermore requested that a joint investigation be carried out with the participation of UNOMIG and the CIS CPF, and that a lawyer hired by the Georgian government, as well as representatives of various international organisations, be afforded access to him. The reply that they had received from the *de facto* Abkhaz authorities had been that an inquiry was underway and that its findings would be announced in the press. International organisations would have no difficulty in visiting the applicant, and he would be afforded his due process rights. It was not possible for the Georgian authorities to conduct the inquiry, as the events had occurred in the Gulripshi District, which was outside their territorial area of responsibility. As regards the request that the applicant be given the assistance of a lawyer chosen by the Georgian authorities, the head of the *de facto* Abkhaz state security service had responded that the inquiry was being conducted by his staff.

234. On 21 August and again on 4 September 2003, the Georgian government had furthermore requested the *de facto* Abkhaz authorities to send a lawyer to the applicant, but the requests had been refused by those authorities. On 8 October 2003, during a Chuburkhinji high-level meeting that had also been attended by the Special Representative of the Secretary General of the UN for Georgia ("the SRSGG"), the government had condemned both the conviction and sentencing of the applicant to six years' imprisonment and the refusal of the *de facto* Abkhaz authorities to give him access to a lawyer hired for him by the Georgian government. The SRSGG had requested the applicant's release; however, the *de facto* Abkhaz authorities had refused the request.

235. Thereafter, the head of the Human Rights Office of Internally Displaced Persons from Abkhazia had raised the question of the applicant at meetings (held two or three times a year) between him and UN and OSCE representatives. In parallel with the above, throughout 2004 the Georgian

Minister for Conflict Resolution Issues, during unofficial meetings with the *de facto* Abkhaz side, had repeatedly raised the issue of the applicant and had requested his unconditional release. However, since the Minister had only raised that matter during unofficial meetings, the Government of Georgia were unable to present the relevant documentation/minutes in that respect. On 4 May 2005, the Ministry of Justice had sent a letter to the ICRC requesting information on the applicant's state of health, the level of the security afforded to him, the medical treatment that he was receiving, the conditions of his detention, and whether he was able to be in contact with other people. On 5 May 2005 the Georgian government had been informed of the applicant's release on the same day and of his being reunited with his family in Zugdidi.

3. Submissions by the Russian Government

236. The Russian Government did not make specific submissions on this matter.

RELEVANT LEGAL FRAMEWORK

DOCUMENTS OF INTERNATIONAL ORGANISATIONS

Council of Europe

1. Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Georgia, 13 July 2000 (CommDH(2000)3)

"... to conclude on the application of the new human rights legislation in Georgia, I must stress that as things stand, the Georgian authorities cannot impose or guarantee the application of this legislation on the part of Georgian territory over which Tbilisi now has very little or no effective control: I am obviously referring to Abkhazia, whose parliament adopted a unilateral declaration of sovereignty on 23 July 1992, then, at the end of November 1994, a new Constitution presenting Abkhazia as an independent republic and sovereign State ...

... According to other figures (provided in part by the OSCE), the population in Abkhazia now stands at some 225,000 persons (315,000 according to the Abkhaz authorities!), with some 80 to 90,000 Abkhazians (in the past about 18% of the local population), or 35 to 40% of the total ...

I subsequently held talks ... with some 30 Abkhaz parliamentarians ... The main subject of discussion was the 'traditional' issue of the relationship between the exercise of collective rights, in this instance the right to self-determination claimed by the Abkhaz authorities, and the permanent obligation which these authorities have to respect individual fundamental rights, including the human rights of those who are not of Abkhaz ethnic origin. The Abkhaz parliamentarians heavily emphasised the fact that any human rights violations committed on their part in the course of their recent conflicts with the central government in Tbilisi were merely an inevitable direct consequence of the violation by Georgia of the exercise, on the part of the Abkhaz authorities, of their right to self-determination (leading the Abkhaz Parliament, after the

disputed referendum of March 1991, to vote not only in favour of the abolition of the [1978] Georgian Constitution, but also - in response to the moves in Tbilisi towards reducing Abkhazia to its pre-1921 district status - in favour of replacing the 1978 Constitution with the relevant provisions of the 1925 Soviet Constitution."

2. Third General Report [CPT/Inf (93) 12] by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT")

"**a. Access to a doctor**

... 35. A prison's health care service should at least be able to provide regular out-patient consultations and emergency treatment (of course, in addition there may often be a hospital-type unit with beds). ... Further, prison doctors should be able to call upon the services of specialists. ...

Out-patient treatment should be supervised, as appropriate, by health care staff; in many cases it is not sufficient for the provision of follow-up care to depend upon the initiative being taken by the prisoner.

36. The direct support of a fully equipped hospital service should be available, in either a civil or prison hospital. ...

37. Whenever prisoners need to be hospitalised or examined by a specialist in a hospital, they should be transported with the promptness and in the manner required by their state of health."

b. Equivalence of care

38. A prison health care service should be able to provide medical treatment and nursing care ... in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/nurse, etc.).

39. A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment ..."

3. Report [CPT/Inf (2009) 38] on the visit to the region of Abkhazia, Georgia, carried out by the CPT from 27 April until 4 May 2009

"**A. Dranda Prison**

3. Conditions of detention

a. material conditions

13. Material conditions of detention at Dranda Prison were in certain respects satisfactory. In particular, mention should be made of the fact that the prison was not overcrowded at the time of the visit. The cell occupancy rate was reasonable; living space inside the cells ranged on average from 4 to 6 m² per prisoner. Thus, a standard collective cell measuring some 18 m² accommodated in general three or four prisoners.

Naturally, this positive assessment would be modified if the cells in question were occupied at their full capacity of six prisoners.

14. On the whole, the cells had sufficient access to natural light, since all the slatted blinds on the windows had been removed three years earlier. Artificial lighting was also globally satisfactory (see, however, paragraph 16). Each cell was equipped with metal beds (sometimes bunk beds) or wooden platforms (in some cases on two levels) and one or more tables, chairs and sometimes cupboards, but no call system. Bedding (mattresses, blankets, sheets, etc.) was also available. In addition, cells were equipped with a toilet (often a shower/toilet), which was (semi)-partitioned. Communal sanitary facilities (washbasins/showers/toilets) were also available on each floor and accessible during exercise periods. It should also be noted that the use of televisions and radios was permitted in the cells. The fact nonetheless remains that, with a few very rare exceptions, the cells were quite dilapidated and needed considerable refurbishment. More generally, all of the detention areas were lacking in hygiene and cleanliness. One of the reasons for this state of affairs was that the prison apparently provided no products or materials for regular cleaning of the cells and other premises.

The CPT recommends that hygiene products and cleaning materials be regularly supplied to prisoners so that they can maintain satisfactory standards of hygiene and cleanliness in their living space.

15. More generally, the CPT's delegation observed that the material conditions resulted largely from the work and financial contributions of the prisoners themselves. Consequently, it is important to ensure that the available resources are allocated, as a matter of priority, to prisoners who have no resources or receive no family support.

...

4. Health-care services

a. introduction

27. The CPT is aware that, during a period of great economic difficulty such as that currently being experienced in Abkhazia, sacrifices have to be made, even in prisons. However, whatever the difficulties encountered at any given time, the act of depriving a person of his or her liberty always implies an obligation to take responsibility for that person, which encompasses effective health care. An inadequate level of health care may rapidly lead to situations which could be tantamount to inhuman and degrading treatment.

The CPT's delegation noted that, where the most serious pathologies were concerned, it was generally prisoners' relatives or friends who were responsible for supplying the necessary medicines. The CPT recommends that a system be set up without delay to ensure that prisoners without resources and who do not benefit from outside support are able to receive the medication that their condition requires.

28. More generally, and in the light of the facts observed during the visit, the CPT considers it vital to draw up a comprehensive policy on health care in prisons, based on the fundamental principle of equivalence of care and other generally recognised principles, such as patient's consent, the confidentiality of medical information and the professional independence of health-care staff. In this context, it would be useful to refer to the chapter in the 3rd General Report on the CPT's activities entitled "Health-care services in prisons", as well as to Recommendation No. R (98) 7 of the Committee of Ministers of the Council of Europe concerning ethical and organisational aspects of health care in prison.

...

d. medical examination on arrival

It rapidly became apparent that no proper medical examination was carried out when new inmates first arrived at Dranda Prison. Prisoners saw the doctor only if the nurses reported a complaint of a medical nature made by the person concerned or a suspected pathology. There was quite simply no medical examination of the others (i.e. the vast majority of prisoners). A number of prisoners said that they had not had an interview with a nurse on their arrival, or that the nurse had merely put one question to them through the hatch in their cell door: "have you any problems to report?". This state of affairs was also reflected in the individual medical files and nursing registers, which never referred to a medical examination or to the observation of injuries on arrival, a situation which is hardly conducive to the prevention of ill-treatment.

In the opinion of the CPT, it is essential that every newly arrived prisoner benefit from a proper interview with a doctor and receive a medical examination as soon as possible after admission. Other than in exceptional circumstances, this interview/examination should be carried out on the day of admission. The CPT recommends that steps be taken to ensure that this requirement is met without delay at Dranda Prison.

e. medical files and confidentiality

35. Only a few prisoners admitted to the infirmary at Dranda Prison had a medical file containing information about their examination and treatment. For the remaining prisoners (i.e. the great majority of the prison population), there was nothing that deserved to be called an individual medical file. Nor did a retrospective examination of the various nursing registers enable a prisoner's medical history to be reconstructed.

The CPT recommends that an individual and confidential medical file be opened for every prisoner at the time of his medical examination on arrival and that this contain anamnestic and diagnostic information as well as reports on the prisoner's subsequent state of health and treatment, including the specific examinations undergone by him. The prisoner should be allowed to consult his medical file, unless this is contraindicated for therapeutic reasons, and to ask for the information contained therein to be communicated to his family or lawyer. In the event of a transfer, the file should be forwarded to the doctors of the receiving establishment.

36. Medical consultations (and interviews in the infirmary) always took place in the presence of prison officers. This is not acceptable; medical confidentiality in prison should be ensured in the same manner as in the community at large. **The CPT recommends that all medical examinations be conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a particular case – out of the sight of prison officers and other non-medical staff.**

The same should apply to interviews of prisoners by nursing staff.

B. The temporary detention facilities (IVS) at Gali, Sukhumi, Tkvarcheli and of the Security Service

...

48. The CPT was very concerned to learn that some 20 sentenced prisoners were being held at the Sukhumi IVS. Of course, in the absence of another prison in Abkhazia, the CPT can understand that, in particular and duly-justified situations (serious threats to the security of the establishment, threats by another prisoner, risk of escape, etc.), a sentenced prisoner may be temporarily transferred to an IVS; but this should remain exceptional, should only be a measure of last resort and should apply only for a very short period. This did not seem to be the practice followed; indeed, all the sentenced

prisoners in question (including the prisoner under sentence of death) had been held for prolonged periods (i.e. for years) at the Sukhumi IVS.

Such a state of affairs is completely unacceptable. IVS facilities are, by definition, not establishments intended for the accommodation of sentenced prisoners. In particular, their structure and detention regime are not suited to this kind of prisoner. The detrimental effects for all the sentenced prisoners concerned included deprivation of the rights and privileges (such as extended family visits) enjoyed by sentenced prisoners held at Dranda Prison. Further, IVS facilities are not suitable for prolonged.

The CPT recommends that the practice of holding sentenced prisoners at the Sukhumi IVS be brought to an end without delay and that the prisoners in question be transferred to Dranda Prison.

...

3. Conditions of detention

52. Detention conditions in the IVS facilities visited all had deficiencies, to varying degrees. Generally speaking, the least unfavourable conditions were observed at the Gali IVS; conditions at the Sukhumi IVS were worse; they were even harsher at the Security Service IVS ...

53. Where material conditions were concerned, in certain places, such as the Sukhumi and Security Service IVS facilities, some of the prisoners had individual cells of a satisfactory size (approximately 8.5 m²). But this was far from being the case for all. At Sukhumi again, for instance, in one of the multi-occupancy cells which was accommodating women, five prisoners were crammed into 12 m² (see paragraph 59).

54. In all the IVS facilities visited, ventilation of the cells and their access to natural light posed serious problems. Indeed, the windows of many cells were blocked by one or more devices, considerably restricting both access to natural light and ventilation (metal shutters, mesh, bars, etc). In certain cases, the cells were very dark, even in broad daylight, necessitating permanent use of the artificial lighting (which, furthermore, was not very strong). The situation prevailing at the Security Service and Tkvarcheli IVS facilities was particularly poor, the cells not having any electricity supply at all (and therefore no artificial lighting). Ventilation also left much to be desired; many of the cells were stuffy, or even foul-smelling.

55 ... Mention should also be made of the fact that in the facilities visited, with a few very rare exceptions, no personal hygiene products were provided to inmates upon their admission.

56. In the IVS facilities visited, detained persons slept either on narrow bunk beds (Gali and Sukhumi) or on wooden sleeping platforms (Tkvarcheli), both equipped with mattresses. Blankets were available everywhere, but were usually very dirty. Those inmates who had sheets said that these had been supplied by their families...

The cells in the IVS facilities visited were equipped with a table and chairs, with the exception of the Security Service IVS. The CPT recommends that this deficiency be remedied.

57. The cells in the Gali and Sukhumi IVS facilities were equipped with toilets (partitioned by a curtain in the multi-occupancy cells) and had a running water supply, usually operated from outside the cell. Running water and toilets were not available in the cells at the Tkvarcheli IVS; the toilets faced onto the courtyard. Certain of the IVS, at Gali and Sukhumi for instance, had shower facilities, but in all cases they had been

out of order for several months and were awaiting renovation. At the Security Service IVS, the showers had been without hot water for four months.

58. The CPT's delegation also noted some serious deficiencies in the heating of the cells in all of the IVS facilities visited. No central heating system had been installed.

60. All of the facilities visited had some kind of outdoor exercise yard. However, only the outdoor exercise yard at the Gali IVS (36 m²) was satisfactory. The two "exercise yards" at the Sukhumi IVS, located on the third floor of the building, were in fact large cells that had been adapted for this use, with an opening in the wall, fitted with wire mesh and metal shutters, which allowed in some air but very little light. The exercise yard at the Security Service IVS was actually a room with a floor area of about 25 m² and an opening at ceiling level. In both cases, these facilities were not suitable for taking exercise worthy of the name.

62. There were no organised activities in the IVS facilities, except for outdoor exercise. At the Sukhumi IVS, access was apparently allowed for only 10 to 20 minutes per day. At the Security Service IVS, the inmates said they did not know the exercise yard existed.

64. The CPT is also concerned about the food provided to persons detained in IVS facilities. At Gali and Sukhumi (including the Security Service IVS) prisoners received three meals per day (porridge in the morning, vegetable soup at midday and porridge and tea in the evening). Many of the inmates said that they relied on the parcels (in particular food parcels) received from their families during visits to improve their diet, in particular as regards fresh fruit.

65. Persons detained in the IVS facilities could also be made subject to a number of unnecessary restrictions. In particular, at the Security Service IVS, inmates were not allowed to keep their corrective or reading glasses, writing materials (paper, pencil, etc.), photos of their children or religious items. These restrictions, added to many others applied in this IVS (a ban on receiving parcels for the first three months, prohibition of visits, etc.) are clearly a relic of the past. The CPT recommends that the above-mentioned restrictions be removed.

4. Health-care services

66. The healthcare provided to persons detained in the IVS facilities was unsatisfactory. A nurse was present only at the Sukhumi IVS and the Security Service IVS (full-time on working days in the first case and part-time in the second).

In the two IVS where a nurse was present, no medical examination was carried out on admission, and no individual medical file was opened either on admission or later. Some medical information was recorded in a register kept by the nurse. At the Security Service IVS this register could be accessed by the custodial staff; further, medical consultations carried out at an inmate's request (or at the recommendation of a member of the custodial staff) were always conducted in the presence of a member of staff. Access to outside care facilities posed problems due to the need to arrange for prisoners to be escorted.

7. Contact with the outside world

69. Visits by prisoners' close friends and family were organised in all of the IVS facilities, with different rules for sentenced prisoners and those in pre-trial detention. The regulations applicable to sentenced prisoners were the same as at Dranda Prison (apart from longer visits), i.e. a visit lasting one hour per month, which could be doubled by the facility's management.

With regard to correspondence, as at Dranda, incoming and outgoing mail (including letters exchanged with lawyers) was systematically censored. Moreover, for reasons that are hard to understand, letters were sent and received via the Red Cross.

Prisoners in the IVS facilities normally had no access to a telephone. Granting of access depended on the facility's management for sentenced prisoners and the relevant investigator in the case of persons in pre-trial detention."

THE LAW

I. PRELIMINARY ISSUES

237. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a Party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v Russia* [GC], nos. 40792/10 and 2 others, § 73, 17 January 2023, and *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16, 43800/14 and 28525/20, § 389, 25 January 2023).

A. The Court's assessment of the facts

238. The Court reiterates its settled case-law, which holds that under the Convention the establishment and verification of the facts is primarily a matter for the Court. It reiterates that, in assessing evidence, it has adopted the standard of proof "beyond reasonable doubt". It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, for a summary of the Court's approach to the issue of evidence and proof, *Hassan v. the United Kingdom* [GC], no. 29750/09, § 48, ECHR 2014).

239. In the instant case, the Court has assessed the evidence submitted to it with the requisite caution, giving detailed consideration to elements supporting the parties' claims and those casting doubt on their credibility. To the extent possible, official documents produced by different international organisations have served as support for the establishment of the facts.

B. Temporal scope of the case

240. Even though in the present case the alleged violations concern events spanning the period between, on the one hand the apprehension by the *de facto* Abkhaz authorities of, respectively, the first applicant on 7 August 2001 and the third applicant on 29 June 2003, and on the other hand their release on, respectively, 14 February 2007 and 5 May 2005, the Court will consider

the relations between Abkhazia and, respectively, Georgia and the Russian Federation as they were prior to and after those dates, to the extent that those relations would be revealing as regards the question of jurisdiction.

C. Right to pursue the application in the stead of the third applicant

241. The Court observes that, following the third applicant's death, a Chamber of the Court decided to allow his wife, Ms Gogona Todua, to pursue the application in her late husband's stead (see paragraph 9 above). Thereafter, following Ms Gogona Todua's death, Mr Saba Tordia, who is her grandson and her only heir, requested to continue pursuing the case (see paragraph 10 above). The Court notes that the request to pursue the proceedings was submitted by a person who is both a direct heir of Ms Gogona Todua and a very close relative of the deceased third applicant (see paragraph 10 above). Moreover, cases before the Court generally also have a moral or principled dimension, and persons close to an applicant may thus have a legitimate interest in obtaining a ruling even after that applicant's death (see *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 73, ECHR 2012 (extracts)). Bearing in mind the above, as well as the passage of time since the application was introduced before it, the Court finds that, in the circumstances, it would be contrary to the Court's mission if it were to refrain from ruling on the complaints raised by the deceased third applicant just because, owing to their condition and advanced age, neither he nor his late wife had the strength or the time to await the outcome of the proceedings before it (compare, *mutatis mutandis*, with *Hristozov and Others*, cited above, § 73). The Court accordingly allows Mr Saba Tordia to pursue the application in the stead of the third applicant.

II. JOINDER OF THE APPLICATIONS

242. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rule of Court).

III. ADMISSIBILITY ISSUES

243. The Russian Government raised a number of preliminary objections to the admissibility of the applications. In the first place, they stated that the applicants had failed to comply with the six-month time limit. Furthermore, they had failed to exhaust the available domestic remedies, contrary to Article 35 § 1 of the Convention. The applications were likewise manifestly ill-founded, as the applicants had failed to substantiate their allegations or to provide any evidence of Russian involvement in or responsibility for what had happened to them. The applications were also incompatible with the

Convention provisions *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*. Lastly, the Russian Federation exercised no jurisdiction and bore no responsibility for the alleged violations of the Convention.

244. As regards the second applicant, her application had to be declared inadmissible on two counts: she had died and the first applicant had not submitted documents to show his relationship to her; moreover, she had allegedly been the first applicant's grandmother and as such she had not been part of his core family, so her relationship with him was not covered by Article 8 of the Convention.

245. As regards the third applicant, his allegations of a violation of Article 8 of the Convention were likewise utterly unsubstantiated. In particular, he had failed to show that his letters had not been sent by the prison administration, or that his requests to meet with his spouse had been refused.

246. The Government of Georgia did not dispute the admissibility of the first and second applicants' complaints. They argued, however, that the third applicant's application should be declared inadmissible for failure to exhaust the available domestic remedies.

A. Exhaustion of domestic remedies and compliance with the six-month time-limit

1. The parties' positions

(a) Submissions by the Russian Federation

247. The Russian Government stated that the applicants should have exhausted the available domestic remedies in the courts of Abkhazia but that they had failed to do so, either personally or with the help of other individuals, or by mail. They submitted in that regard that decisions taken by the courts of unrecognised regions, including decisions taken by their own criminal courts, might be considered "lawful" for the purposes of the Convention, provided that they met certain conditions – and that in no way implied any recognition of the claims of Abkhazia to independence. The judgments sentencing the first and third applicants had explicitly indicated that they could be appealed against (see paragraphs 56 and 91 above). The allegations that the first and third applicants had failed to obtain copies of the judgments were not supported by any evidence. In any event, they had both been represented by lawyers who could have appealed against the judgments on their behalf. The applicants had also had an opportunity to choose a lawyer. In particular the first applicant had been visited by such a lawyer in prison (see paragraph 40 above). It was clear that the applicants had had the possibility but not the willingness to appeal against the judgments in the face of all the evidence collected against them.

248. While maintaining that Russia had no jurisdiction over the applicants, the Russian Government submitted that, if the applicants had

really considered that their rights had been breached by the Russian authorities, then they had been required to turn to the judicial or administrative bodies of the Russian Federation. The applicants had failed to do so.

249. As regards the six-month rule, the Russian Government stated that, under the well-established case-law of the Court, if the applicants had believed that there had been no effective remedies that could be used domestically, they should have applied to the Court within six months of the acts complained of. It was obvious that that time-limit had not been complied with by either the first or the third applicant.

250. Specifically, the first applicant had been arrested on 7 August 2001, placed in prison on 13 August 2001 and convicted on 15 February 2002 in a judgment against which he had not appealed. His application to the Court had been lodged on 3 August 2004 – that is to say a year and a half after he had been sentenced by the *de facto* Abkhazia Military Court. Furthermore, according to the case file, the first applicant's grandmother had contacted the central Georgian authorities immediately after his arrest. However, she had failed to turn to any courts.

251. Similarly, the third applicant had been arrested by the *de facto* Abkhaz state security service on 29 June 2003 and had been convicted of terrorism on 23 September 2003 and sentenced to six years in prison. He had been provided with a lawyer, as reflected by a UNOMIG representative (see paragraph 99 above). He had only applied to the Court on 19 November 2004 – that is to say more than six months later. At the same time, the first applicant had applied to the Court several years before his release on 14 February 2007; the third applicant had applied to the Court several months before his release on 5 May 2005. That fact demonstrated that each had had access to a lawyer of his own choosing, and that their failure to comply with the six-month time-limit had thus been unjustifiable.

(b) Submissions by Georgia

252. The Georgian Government stated that the third applicant's application had to be rejected as inadmissible for failure to exhaust the available domestic remedies. Specifically, neither the third applicant nor his representative had ever turned to any of the Georgian State authorities – either during his detention or following his release. Similarly, he had not lodged a request with any official State bodies asking them to intervene and to take all available diplomatic, political and judicial measures aimed at protecting his rights. In their observations in reply to the applicant's claim for just satisfaction, the Government stated that, if the applicant believed there had been no effective remedies, he should have applied to the Court within six months of his detention, which he had failed to do.

(c) Submissions by the applicants

253. The applicants submitted that there had been no effective remedies available in the Abkhazian region of Georgia, or Russia in respect of their complaints. This was all the more the case as they had remained in prison, in circumstances rendering them extremely vulnerable. Moreover, neither Georgia nor the Russian Government had given examples of any effective remedies that had been available in either Abkhazia, the rest of Georgia or Russia. Furthermore, given that, by paragraph 8 in resolution 1243 of the Georgian Parliament of 27 December 2001, the Georgian Government had opted out of responsibility for human rights violations in Abkhazia, the third applicant would have had no access to any effective domestic remedies in Georgia. In early July 2003, the third applicant's wife had applied to the police and prosecution in Zugdidi Region, Georgia, asking for an end to the violations of the applicant's rights. The prosecutor had promised that the issue of his unlawful detention would be raised during the Chuburkhinji quadripartite meetings in July 2003. The Georgian Government confirmed that it had received information about the applicant and raised the matter at those meetings (see paragraph 232 above).

254. As regards their delay in applying to the Court, the applicants submitted that, owing to the very specific nature of their circumstances, the six-month period had not started running in the usual way. The applicants argued, in particular, that the first applicant had been severely injured and that the third applicant had been suffering from ill-health, and that both of them had been ill-treated during their interrogation and had been kept in inhuman conditions of detention without being afforded access to medical care. The location of their detention also had to be taken into account within this context, given that they had lived outside Abkhazia for some years before their detention in Abkhazia. Their feelings of fear, anguish and distress owing to the constant intimidation exercised by the *de facto* Abkhaz authorities had led them to believe that any resistance or attempt to oppose the will of their captors would constitute a further threat to their health and even life. They had felt powerless on account of the judicial authorities' failure to react in a manner capable of reassuring them and encouraging them to come forward.

255. They had been imprisoned, without access to the outside world, and had been denied access to a lawyer of their own choosing. While the first applicant, who had been seriously disabled, had been provided with two lawyers by the *de facto* Abkhaz authorities, one of them had pointed a gun at his head on the first of the only two occasions that they had met. He had seen the second lawyer only once, during the court hearing, and he did not know her name. Likewise, the third applicant had had no access to a lawyer of his own choosing. In the circumstances, it had been impossible for them to apply to the Court before 3 August 2004 and 19 November 2004 respectively.

256. Lastly, at the time of their lodging their application with the Court, the first and third applicants had been subjected to ongoing unlawful

detention within the meaning of Article 5 § 1 of the Convention, as well as to inhuman and degrading treatment within the meaning of Article 3. That had constituted a continuing violation of their rights under both Article 5 of the Convention (given that they had remained in detention until the first applicant's release on 14 February 2007 and the second applicant's release on 5 May 2005) and under Article 3 of the Convention (owing to the conditions of their detention and the lack of adequate medical treatment in detention). There was a continuing violation in respect of which no effective remedies were available also in respect of Article 5 §§ 3 and 4, Article 6 §§ 1 and 3(b)(c), Article 8, Article 13 and Article 2 of Protocol No. 7 to the Convention.

2. The Court's assessment

(a) The Court's case-law

257. The Court has set out the general principles pertaining to the exhaustion of domestic remedies in a number of judgments. It has repeatedly held that applicants are only obliged to exhaust the domestic remedies that are available in theory and in practice at the relevant time – that is to say, remedies which are accessible, capable of providing redress in respect of their complaints and offer reasonable prospects of success, and which they can directly avail themselves of (see *Sejdovic v. Italy* [GC], no 56581/00, § 46, ECHR 2006-II, and *Paksas v. Lithuania* [GC], no. 34932/04, § 75, ECHR 2011 (extracts)). In *Chiragov and Others v. Armenia* ([GC], no. 13216/05, § 116, ECHR 2015), the Court restated the general principles, including the exceptions absolving applicants from the obligation to resort to remedies, and the rules regarding the distribution of the burden of proof and the need to account for the general legal and political context in which remedies operate and the personal circumstances of the applicants.

258. It is important to bear in mind that the requirements provided under Article 35 § 1 concerning the exhaustion of domestic remedies and the six-month period are closely interrelated (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 75, 5 July 2016 and *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 130, 19 December 2017), since they are not only set out in the same Article, but are also expressed in a single sentence whose grammatical construction implies such a correlation (see *Gregačević v. Croatia*, no. 58331/09, § 35, 10 July 2012, and the references cited therein).

259. As a rule, the six-month period runs from the date of the final decision in the process of the exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of gaining knowledge of that act or its effect on or prejudice to the applicant, and, where the situation is a continuing one, once that situation ends (see, among other authorities, *Mocanu and Others*

v. Romania [GC], nos. 10865/09 and 2 others, § 259 with further references, ECHR 2014 (extracts); *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 157, ECHR-2009; *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002; *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 54, 29 June 2012, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 136, ECHR 2012). In cases concerning a continuing situation, the period starts to run afresh each day and it is in general only when that situation ends that the six-month period actually starts to run (see *Mocanu and Others*, cited above, § 261).

260. The Court has stressed that there may also exist specific circumstances that might prevent an applicant from observing the time-limit laid down in Article 35 § 1 of the Convention and that such circumstances constitute relevant factors that should be examined by the Court (see *Benzer and Others v. Turkey*, no. 23502/06, § 124 with further references, 12 November 2013). In this regard the Court has acknowledged that the psychological effects of ill-treatment inflicted by State agents may also undermine victims' capacity to complain about treatment inflicted on them, and may thus constitute a significant impediment to the right to redress of victims of torture and other ill-treatment. Such factors may have the effect of rendering the victim incapable of taking the necessary steps to bring proceedings against the perpetrator without delay (see *Mocanu and Others*, cited above, § 274; *Mafalani v. Croatia*, no. 32325/13, § 82, 9 July 2015, and *Gablishvili and Others v. Georgia*, no. 7088/11, § 44, 21 February 2019). In this context, the European Commission on Human Rights has held that any claim which asserts that the six-month limitation period has been suspended or interrupted, must, in order to be successful, be based on clear and conclusive evidence (see *H v United Kingdom and Ireland*, no. 9833/82, §§ 13 and 15, decision of 7 March 1985, in which the Commission, having regard to a medical certificate issued to the applicant, accepted that for a certain time following the death of her daughter the applicant might have been prevented by her state of health from lodging an application under the Convention, and that the running of the limitation period had thus been suspended during this time).

261. The Court has held that delay on the part of applicants in lodging a complaint domestically is not decisive where the authorities ought to have been aware that an individual could have been subjected to ill-treatment – particularly in the case of assault that occurs in the presence of police officers – as the authorities' duty to investigate arises even in the absence of an express complaint (see *Velev v. Bulgaria*, no. 43531/08, §§ 59-60, 16 April 2013). Nor does such a delay affect the admissibility of the application where the applicant was in a particularly vulnerable situation, having regard to the complexity of the case and the nature of the alleged human rights violations at stake, and where it was reasonable for the applicant to wait for

developments that could have resolved crucial factual or legal issues (see *El-Masri*, cited above, § 142).

262. With regard to the duty of the applicant to lodge an application with the Court, the issue of identifying the exact point in time where this stage arises necessarily depends on the circumstances of the case, and it is difficult to determine it with precision (see *Mocanu and Others*, cited above, § 266).

263. With respect to complaints relating to continuing situations, the nature of the situation may be such that the passage of time affects what is at stake (see *Varnava and Others*, cited above, § 161). The Court has held that in cases of complaints about disappearances, applicants are required to become active once it is clear that no effective investigation will be provided (ibid.; see also *Mocanu and Others*, cited above, § 267). General considerations of legal certainty have also been found to be of relevance within the context of complaints about lack of access to one's home (see *Chiragov and Others v. Armenia* (dec.) [GC], no. 13216/05, § 136, 14 December 2011). The Court observes that the situations in *Varnava and Others* and *Chiragov and Others* (both cited above) concerned complaints about continuing violations in a complex post-conflict situation affecting large groups of persons. In such situations there would often be no adequate domestic remedies, or if there were, their accessibility or functioning might be hampered by practical difficulties. It might therefore be reasonable for applicants to wait for the outcome of political processes such as peace talks and negotiations which, given such circumstances, might offer the only realistic hope of obtaining a solution (see *Chiragov and Others* (dec.) [GC], § 136).

264. In a complex disappearance situation within the context of international conflict, relatives could be expected to bring the case within, at most, several years of an incident in respect of which it was alleged that there was a complete absence of any investigation or meaningful contact with the authorities. Where more than ten years had elapsed, applicants would generally have to show convincingly that there was some ongoing, and concrete, advance being achieved to justify further delay in coming to Strasbourg (see *Chiragov and Others v. Armenia* (dec.), no. 13216/05, § 132).

265. When dealing with complaints in relation to conditions of detention that do not simply relate to a specific event, but concern a whole range of problems regarding sanitary conditions, the temperature in the cells, overcrowding, lack of adequate medical treatment and so on, which have affected an inmate throughout his or her incarceration, the Court regards this as a continuing situation, even if the person concerned has been transferred to various detention facilities (see *Seleznev v. Russia*, no. 15591/03, §§ 34-36, 26 June 2008; *Sudarkov v. Russia*, no. 3130/03, § 40, 10 July 2008; and *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 99, 27 January 2015).

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

(i) Exhaustion of domestic remedies

266. The Court observes that the applicants submitted that no effective remedies had been available to them in connection with their complaints. The Russian Government stated that such remedies had indeed been available and that the applicants should have lodged complaints with the courts in Abkhazia or in Russia. The judgments sentencing both applicants had explicitly indicated that they could be appealed against (see paragraphs 56 and 91 above) and the applicants' allegations that they had failed to obtain copies of the judgments were not supported by any evidence. The Government of Georgia stated that the third applicant had omitted to apply for redress to any Georgian State authority in connection with his complaints before the Court.

267. The Court finds that, regarding the question of exhaustion of domestic remedies, it need not determine whether either of the two respondent States, or both, can be considered to have jurisdiction over the area in question and whether such jurisdiction would have an effect on the operation of the domestic remedies available to them regarding the issues raised in the present cases (see, *mutatis mutandis*, *Chiragov and Others*, cited above, § 118). The reasons for this are the following. On the one hand, no evidence has been provided showing that the applicants had been given copies of the above-mentioned 2002 and 2003 judgments . On the other hand, even assuming that the applicants might have been told during the hearings in the cases against them that the judgments could be appealed against, in those proceedings they were represented by lawyers appointed by the same authorities that had detained and sentenced them. The applicants' allegations that those lawyers had not in effect provided them with any legal defence (see paragraph 255 above) have not been refuted. In addition, it has not been advanced before the Court that a potential appeal against the judgments sentencing the first and third applicants could have offered relief in respect of their complaints relating to their alleged ill-treatment during interrogation and the absence of adequate medical care in detention. Lastly, and crucially, the Court finds in this regard that the Russian Government, who argued that the applicants had not exhausted the available remedies (given their failure to appeal against the above-mentioned judgments) have not submitted to the Court examples of case-law where individuals successfully brought such appeals. On the basis of the above, the Court finds that the applicants cannot be reproached for not having attempted to appeal against the judgments.

268. As regards other remedies that the Russian Government asserted had existed and should have been used before the Abkhaz courts, the Russian Government have not shown what those remedies were and how they were capable of providing redress in respect of the applicants' complaints. In that regard, they did not refer to applicable legal provisions or to relevant judicial practice showing that redress had been obtained at the domestic level by

applicants with similar complaints. These same considerations apply in respect of the Georgian Government's submissions that the third applicant had failed to exhaust the available domestic remedies. The Court reiterates that it is incumbent on a Government claiming non-exhaustion to satisfy the Court that a particular remedy was an effective one and was available both in theory and in practice (see paragraph 257 above).

269. Accordingly, the Court considers that both the Georgian and the Russian Governments have failed to discharge the burden of proving the availability to the applicants of a remedy capable of providing redress in respect of their Convention complaints and of offering reasonable prospects of success. The two respondent Governments' objection of non-exhaustion of domestic remedies is therefore dismissed.

(ii) Compliance with the six-month time-limit

270. The Government of the Russian Federation pointed to the applicants' "gross failure" to comply with the six-month period, according to the Court's well-established case-law. The first and third applicants justified their failure to lodge a complaint with the Court earlier than they had by citing their helplessness and continued imprisonment in extremely vulnerable circumstances. They reiterated that their complaints regarding the conditions of their detention and lack of medical care constituted continuing situations that had not come to an end by the time that they had applied to the Court.

271. The Court observes that the first applicant was placed in detention about six days after his right hand and several fingers of his left hand had been ripped off during an explosion. He was allegedly interrogated and threatened by the *de facto* Abkhaz authorities while being held in detention and while he was in a very poor physical and mental state and unable to see (the whole time) as a result of the effects of the explosion. Furthermore, he was allegedly not given access to a lawyer of his own choosing when he was being tried for, *inter alia*, high treason and sabotage. A medical report issued to him in 2008 by the above-mentioned medical centre that had examined him following his release in 2007 attested that he was suffering from post-traumatic stress disorder owing to the treatment to which he had been subjected in detention (see paragraph 78 above).

272. As regards the third applicant (who was aged over eighty at the time of the events), he was allegedly ill-treated by the *de facto* Abkhaz authorities after his arrest with a view to obtaining a confession. Thereafter he complained that he had had no access to a lawyer of his choice when he had been tried for terrorism and had been kept in detention in poor health, without access to medical treatment.

273. Having regard to the exceptional circumstances at stake, the Court is prepared to accept that, after their apprehension in 2001 and 2003 respectively, the first and third applicants were in a situation where it was not unreasonable for them to be passive for a certain period or – bearing in mind

the political and general context following an armed conflict in respect of which no political solution had been reached – to wait for developments that could resolve crucial factual or legal issues (see, *mutatis mutandis*, *Mocanu and Others*, § 275, cited above). This is especially so, given that the applicants' vulnerability and their perception of hopelessness could have reasonably caused them to feel unable to influence what was happening to them.

274. Regard being had to the foregoing, including the absence of effective domestic remedies, the Court considers that the applicants' vulnerability and their feeling of powerlessness amount to a plausible and acceptable explanation for their inactivity between 2001 and 2003, when the events complained of took place, and the dates in 2004, when they lodged their respective applications with the Court. The Russian Government asserted regarding this last point that the fact that the applicants had lodged their respective applications with the Court before their release demonstrated that they had had access to lawyers of their choosing earlier than they had stated and that no exception could therefore be applied to them. The Court finds that the Russian Government did not refute the above-mentioned considerations relating to the applicants' vulnerability and the circumstances of their continued detention, and did not demonstrate that they had been provided with access to lawyers of their own choosing, or had otherwise been able to lodge an application before the Court earlier than they did.

275. The Court notes that the first and third applicants did not lodge with the authorities who had detained and tried them an explicit complaint about having been ill-treated during their respective interrogations. Neither were they informed of any investigation launched *ex officio* by the authorities into the events surrounding their interrogation. It can be concluded, therefore, that, as there was no meaningful contact between the applicants and the authorities regarding any investigation into their alleged ill-treatment in the aftermath of their arrest, they could have been expected to bring the case before the Court within, at most, several years of the incidents in question (see paragraph 264 above). The applicants lodged their respective applications with the Court in August and November 2004, which was, respectively, about three years and one year after the events in question. In the absence of effective domestic remedies, and in view of their vulnerability, they cannot be considered to have waited for too long.

276. The Court furthermore observes that, at the time when they lodged their applications with the Court, the applicants were still detained, allegedly unlawfully and in poor conditions of detention, and lacking adequate medical care. Consequently, as regards those complaints too, their applications were not submitted outside the six-month time-limit, given that the situations complained of had not come to an end.

277. In the light of the foregoing, the Court considers that the applications were not lodged out of time. The Russian and Georgian Governments' related objection must therefore be dismissed.

B. Lack of "victim" status of the applicants as regards their complaint under Article 8

1. The parties' positions

(a) Submissions by the Russian Federation

278. The Russian Government submitted that the first and second applicants could not claim that they had a shared "family life", as they were not part of the same core family. As the first applicant had a mother, his grandmother (the second applicant) could not be considered to be a close relative for the purposes of citing a shared "family life". In addition, it was evident from the documents in the file that the two applicants had not been deprived of the opportunity to communicate with each other, as the second applicant had been repeatedly sending parcels and medicines to the first applicant. Consequently, they invited the Court to reject this complaint as manifestly ill-founded or incompatible *ratione personae* with the Convention.

279. As regards the third applicant, he had not presented any evidence in support of his claim that he had been prevented from meeting his wife or otherwise communicating with her.

(b) Submissions by the applicants

280. The first and second applicants submitted that they had a special relationship. They were sufficiently close to each other for their relationship to fall within the meaning of "family life". By way of illustration, they cited the fact that they had lived together in Tbilisi between 1998 and 2001 during the first applicant's formative years, between the ages of 17/18 and 20/21. The third applicant submitted that he had been denied his right to respect for his private and family life.

(c) Submissions by Georgia

281. The Georgian Government did not dispute the applicants' submissions on this matter.

2. The Court's assessment

282. The Court has previously held that no family life can be claimed between parents and adult children or between adult siblings unless they can demonstrate additional elements of dependence (see *Slivenko v. Latvia* [GC], no. 48321/99, § 97, ECHR 2003-X; see also *Kwakye-Nti and Dufie*

v. the Netherlands (dec.), no. 31519/96, 7 November 2000, and *Anam v. the United Kingdom* (dec.), no. 21783/08, 7 June 2011). In the instant case, even assuming that the first applicant was the second applicant's heir, something which has not been demonstrated by the applicants, the Court finds that the existence of "family life" could not be relied on by the first and second applicants, both of whom were adults at the time of the events. In particular, the first and second applicants did not belong to the same core family, and it has not been shown that either of them had been dependent on the other. With a view to the Court's case-law, the Court therefore considers that no "additional factors of dependence other than normal ties of affection" existed between the first and second applicants, and that there was thus no "family life" between them within the meaning of Article 8.

283. Accordingly, Article 8 of the Convention is not applicable in the case of the first and second applicants. This part of the application must therefore be declared incompatible *ratione materiae* with the provisions of the Convention and, as such, inadmissible, pursuant to Article 35 §§ 3 and 4 of the Convention.

284. As regards the third applicant, the Court finds that the Russian Government's objection is so closely connected to the substance of the complaint that it should be joined to the merits.

C. Lack of substantiation of the remaining complaints of the first and third applicants under Articles 3, 5 § 1, 5 § 3, 5 § 4, 6 § 1, 6 § 3 (c) and 13

1. The parties' positions

285. According to the Russian Government, the complaints of the first and third applicants were unfounded and unsupported by evidence and had to be dismissed as manifestly ill-founded.

286. The applicants disagreed.

2. The Court's assessment

287. On the basis of the available material, the Court considers that the applicants' complaints under the Convention Articles indicated above raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court therefore concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

D. Incompatibility ratione temporis and ratione materiae of the complaints with the Convention provisions

1. The parties' positions

288. The Russian Government submitted that Russia should not be held accountable for alleged violations of those of the applicants' rights protected under the Convention that had occurred before it had ratified the Convention on 5 May 1998.

289. The applicants reiterated their complaints.

2. The Court's assessment

290. The Court finds that given that the facts complained of took place after 5 May 1998, when Russia ratified the Convention, they are not incompatible with the Convention *ratione temporis*. Furthermore, it finds that the first and third applicants' complaints cannot be dismissed as incompatible *ratione materiae* with the provisions of the Convention. Accordingly, the Russian Government's objection of incompatibility *ratione temporis* and *ratione materiae* must be dismissed.

E. Jurisdiction (*ratione personae* and *ratione loci*)

1. The parties' positions

(a) The applicants

(i) The jurisdiction of Georgia

291. The applicants argued that the facts at the origin of their complaints fell within the jurisdiction of Georgia. Abkhazia was an integral part of Georgia, as provided by Article 1 § 1 of the Georgian Constitution and as recognised by the international community. Georgia had ratified the Convention on 20 May 1999 and had thus undertaken the obligation to secure rights provided under the Convention. Georgia was responsible for the acts and omissions of the *de facto* Abkhazian authorities, because Abkhazia was an integral part of Georgian territory. In view of the factual situation, Georgia's jurisdiction had to be considered in the light of its positive obligations towards persons on its own territory.

292. Georgia had failed to comply with its positive obligations to exercise effective control over all of its national territory and to take adequate individual measures within its power in order to secure the applicants' rights under the Convention. The measures undertaken by the Georgian government had been insufficient and manifestly ineffective.

293. In particular, in respect of the first applicant, the government had only turned to Russia for assistance in securing the exercise of his rights once, on 11 October 2006, after the Court had indicated to them an interim measure

and asked them for assistance. The first applicant had been unlawfully detained in Abkhazia from 2001 onwards, and yet although the government had known about his detention since 2001, they had only begun to make appeals for support to the international community in 2003 and to Russia in 2006. Furthermore, they had taken no steps to have his conviction quashed. Lastly, they had not sent any doctors to examine him, and nor had they provided his family members with financial and administrative assistance by way of making it easier for them to visit him.

294. In respect of the third applicant, the government had provided him with no medical assistance, and they had failed to investigate the events relating to his unlawful detention in Abkhazia; he had not been interviewed for the purposes of opening criminal proceedings against the perpetrators, and no steps had been taken to end his unlawful detention, conviction or ill-treatment.

(ii) The jurisdiction of the Russian Federation

295. The applicants submitted that the facts giving rise to their complaints fell within the jurisdiction of the Russian Federation. Since ratifying the Convention on 5 May 1998, Russia had had "effective control or at the very least a decisive influence" over Abkhazia. In particular, Russia had been the only State party to the Convention to have provided military, political, economic and financial support to the secessionist regime. In respect of that support the applicants referred to the detailed submissions made by the Georgian Government before the Court in that regard, which are summarised in the paragraphs immediately below.

296. In the first place, Russia had exercised military control over Abkhazia. This had been accomplished through the provision by Russia of military assistance to the Abkhaz authorities in the form of equipment, ammunition, technology and training, as well as through its armed forces that had served in the CIS CPF, and through the continued use by those forces of the Russian military base in Gudauta. That base had not been dismantled during the relevant period, despite an undertaking given in 1999 by the Russian authorities to that effect. Virtually all control and command in respect of military operations within the context of the Abkhaz conflict had been planned and supervised from the base. Since 1994 the commanders of the CIS CPF had been Russian generals reporting to the Russian Ministry of Defence. The Russian peacekeeping forces had been stationed in Sukhumi and Gudauta, which had lain beyond the limits of the 12-kilometre-radius security zone. Those forces had not respected the principle of neutrality, given that a great proportion of the Abkhaz population had held Russian citizenship. The Russian peacekeepers had not only failed – by ignoring crimes committed in their presence – to comply with their mandate, but they had actively assisted the Abkhaz separatists in carrying out the cleansing of the ethnic Georgian population (see paragraphs 109 and 110 above).

Highly-placed Russian officials had made statements to the effect that in the event of an attack on the CIS CPF, Russia would take all necessary measures, including the use of force, to protect its soldiers (see paragraphs 126, 128, 129 and 131 above). From the beginning of its deployment, the CIS CPF had served to provide military support to the *de facto* Abkhaz authorities and had thus exercised *de facto* control over its territory.

297. Secondly, the Russian Federation had continually provided political support to the *de facto* Abkhaz authorities. This had been accomplished, among other means, through: recurrent statements of diplomatic support made by highly-placed Russian officials; frequent illegal visits made by high-ranking Russian officials to Abkhazia and by Abkhaz officials to Russia; Russia's direct involvement in the *de facto* Abkhaz administration by virtue of Russian nationals occupying key positions in the *de facto* defence, law-enforcement and security authorities; the establishment in 2000 of a visa regime for Georgian citizens, from which Abkhaz residents had been exempt; the granting of Russian citizenship and passports to nearly 90% of the population of Abkhazia; the staging of elections by the Russian Federation in Abkhazia, and the participation of the Abkhaz population in elections for President of the Russian Federation; *de facto* cooperation between Russian and Abkhaz law-enforcement authorities whereby Russian law-enforcement authorities had conducted illegal procedural activities in Abkhazia, such as imposing detention or undertaking searches; the synchronisation of Abkhaz legislation with that of Russia; the recognition by the Russian authorities of educational certificates issued by Abkhaz educational institutions; and the use of the Russian currency, the rouble, as Abkhazia's legal tender.

298. Thirdly, the Russian Federation had provided systematic economic, trade, financial, social and humanitarian assistance to Abkhazia. Agreements had been concluded by the Russian and Abkhaz authorities in the following fields: military; socio-economic; trade; energy; industry; commerce; in respect of the resumption of direct air, auto, sea and rail transport connections between Abkhazia and Russia and the rehabilitation and reconstruction of highways and railways; education; the distribution and realisation of Abkhaz agricultural products on the Russian market; investment into infrastructure projects; the expansion of Russian providers of mobile telephone services, and television and radio broadcasting on the territory of Abkhazia; and the acquisition of property (including land, real estate and natural resources) in Abkhazia. All of the above had substantially assisted the Abkhaz economy. The provision of Russian pensions in an amount equivalent to over half of the annual *de facto* Abkhaz state budget for 2006 alone (see paragraph 170 above) had constituted another element of direct support from Russia. Russian financial assistance and investment, along with the income generated by Russian tourists, had also been essential for Abkhazia's development. The banks operating in Abkhazia had done so without a licence from the National Bank of Georgia, yet they had had close business relations with the banking

and financial institutions of the Russian Federation. They had enjoyed credit and settlement services provided by Russian banks and had thus been able to carry out financial operations worldwide.

299. Russia had acquiesced or connived in acts undertaken by the Abkhaz separatist authorities that had violated the applicants' rights. Russia was responsible under the Convention for those violations; if Russia were not held liable, then there would be a vacuum in the system of human rights protection.

(b) The Georgian Government

(i) The jurisdiction of Georgia

300. The Government acknowledged that the acts allegedly committed on the territory of Abkhazia fell, *prima facie*, within the jurisdiction of Georgia. However, owing to Russia's effective control and continued occupation of the Abkhaz region of Georgia, events taking place in that territory fell beyond the control and authority of the Georgian government. As a result, its scope of jurisdiction was reduced and had to be assessed only in the light of its positive obligations towards persons within its territory to the extent that the State was capable of ensuring respect for the Convention rights. Georgia had taken, to the fullest possible extent, all general measures in its power to peacefully settle the conflict and to ensure the observance of human rights in Abkhazia (see paragraphs 212 to 220 above). It had also ensured respect for the first and third applicants' rights under the Convention (see paragraphs 221-235 above).

(ii) The jurisdiction of the Russian Federation

301. The Government submitted that Russia had exercised effective control over Abkhazia. That control had resulted from the decisive support provided by Russia to the *de facto* Abkhaz authorities, which had also been Russia's *de facto* authorities. The Abkhaz authorities had only been able to resist subordination to the constitutional authority of Georgia's central government thanks to Russian military, political, economic and financial assistance. The Georgian Government made detailed submissions in respect of the support provided by Russia to the *de facto* Abkhaz authorities (the essence of those submissions was reflected in paragraphs 296-298 above).

(c) The Russian Government

(i) Jurisdiction of the Republic of Georgia

302. The Russian Government did not comment on the jurisdictional position of the Republic of Georgia in the present case.

(ii) Jurisdiction of the Russian Federation

303. The Government stated that the Russian authorities had not exercised effective control over Abkhazia. In particular, the Russian armed forces had enjoyed no effective and comprehensive control over that territory. The few Russian peacekeepers who had been present in Abkhazia had not ventured out of the area under the responsibility of the CIS CPF and could not have physically exercised effective control over the territory or extended Russia's jurisdiction.

304. Russia had not taken part (on either side) in the armed confrontation between the Abkhaz defence forces and the Georgian troops; rather, its armed forces had remained neutral. The government had furthermore condemned violations of human rights and had imposed sanctions against the belligerents. The Russian Ministry of Foreign Affairs had exercised diplomatic efforts to resolve the conflict peacefully.

305. The Russian Government furthermore pointed to their submissions in respect of relations between the Russian armed forces to Abkhaz territory and the authorities there (see paragraphs 178-197 above), and insisted that the allegations concerning military assistance allegedly provided by Russia to the *de facto* Abkhaz authorities were false.

306. Pointing to their submissions in respect of political and economic relations between Russia and Abkhazia in the 1990s and 2000s (see paragraphs 198-209 above), they emphasised that the financial and economic integration of Abkhazia with Russia had been the result of an economic blockade by Georgia and parallel efforts by Abkhaz leaders to promote foreign investments in the national economy. Banning the activities of Russian legal entities and individuals in Abkhazia would have been in breach of the principle of economic freedom embodied in the Russian Constitution.

307. Contrary to the applicants' allegations, the Russian government had not undertaken any extraterritorial actions, had not issued any administrative decisions affecting the applicants' rights and freedoms, and had not exercised pressure on the local administrative and judicial bodies for the purpose of depriving the first and third applicants of their liberty.

308. They furthermore emphasised the findings of the International Court of Justice ("the ICJ") in the case of *Nicaragua v. United States of America* (judgment of 27 June 1986) – in particular as regards what constituted "effective control". The ICJ had found the United States not responsible for the actions of the Nicaraguan "contras", despite the fact that the United States had provided them with funds, military training and equipment. That position of the ICJ had been reaffirmed in its judgment in the case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ judgment of 26 February 2007). The Russian Government submitted to the Court that judgments of the ICJ were globally recognised as constituting the most authoritative interpretation of international law. The delivery of

judgments by various international courts that differed in their respective interpretation of international law unavoidably led to uncertainty or even chaos in international relations.

309. In view of the above, the applicants' complaints were incompatible *ratione personae* with the Convention, since the applicants had not been under the jurisdiction of Russia, within the meaning of Article 1 of the Convention.

2. The Court's assessment

(a) General principles relating to the concept of jurisdiction under Article 1 of the Convention

310. The general principles have been summarised by the Court in its judgment in the case of *Georgia v. Russia (II)* ([GC] (merits), no. 38263/08, § 81, with further references, 21 January 2021) and most recently in the case of *Ukraine and the Netherlands v. Russia*, cited above, §§ 547-575. The essence of those principles is that a State's jurisdictional authority under Article 1 is primarily territorial, as well as that there are certain exceptions recognised by the Court as capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries. The two main exceptions established by the Court in this regard are that of "effective control" by the State over an area (the spatial concept of jurisdiction) and that of "State agent authority and control" over individuals (the personal concept of jurisdiction) (ibid., § 115).

311. The principles governing the application of the spatial concept of jurisdiction – already set out in *Al-Skeini and Others v. the United Kingdom* ([GC] no. 55721/07, §§ 138-39 and 142, ECHR 2011) – have been developed in, *inter alia*, *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, §§ 106-07, ECHR 2012 (extracts), and subsequently in *Chiragov and Others* (cited above, § 168) and *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, § 98, 23 February 2016), and reiterated in *Georgia v. Russia (II)* (cited above, § 116). In particular, the exception to the principle that a State's jurisdiction is limited to its own territory arises when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration. In determining whether effective control exists, the Court will primarily have reference to the strength of the State's military presence in the area (see *Catan and Others*, cited above, § 107). Other indicators may also be relevant, such as the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region (ibid.).

312. The principles governing the application of the personal concept of jurisdiction have been reiterated in *Hassan*, cited above, § 74) and *Jaloud v. the Netherlands* [GC] (no. 47708/08, § 139, ECHR 2014).

313. In each case, the question of whether exceptional circumstances exist that require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be determined with reference to the particular facts (see, among others, *Georgia v. Russia (II)*, cited above, § 82).

314. Article 1 of the Convention reads as follows:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

315. It follows from Article 1 that member States must answer for any infringement of the rights and freedoms protected by the Convention committed against individuals placed under their "jurisdiction" (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 311, ECHR 2004-VII). The Court must first determine whether, in respect of the matters complained of, the applicants fell within the jurisdiction of either or both of the respondent States, within the meaning of Article 1 of the Convention (compare *Catan and Others*, cited above, § 82).

(b) Application of these principles to the facts of the case

316. In the present case, issues arise as to the meaning of "jurisdiction" with regard to both territorial jurisdiction (in the case of Georgia) and the exercise of extraterritorial jurisdiction (in the case of the Russian Federation).

(i) The jurisdiction of Georgia

317. The Court must first determine whether the case falls within the jurisdiction of Georgia. It notes that the events about which the applicants complained took place at all times on Georgian territory, after it had ratified the Convention on 20 May 1999. On the basis of all the material in its possession, the Court considers that the Georgian government, the only legitimate government of Georgia under international law, had no authority over Abkhazia during the period during which the events covered by the applications occurred. It has not been argued otherwise by the parties.

318. In earlier cases (see, among others, *Mozer*, cited above, § 99 with further references), the Court held that individuals detained in the territorial State fell within that State's jurisdiction even though it did not have effective control over the region in question. The State's obligation under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the [Convention] rights and freedoms", was, however, limited in the circumstances to a positive obligation to take the diplomatic, economic, judicial or other measures that were both in its power to take and in accordance with international law (see *Ilaşcu and Others*, cited above, § 331).

319. The Court sees no reason to distinguish the present case from those cited above and thus finds that the facts of the applications fell within the jurisdiction of Georgia. Although Georgia had no effective control over the acts of the *de facto* authorities in Abkhazia, the fact that the region is recognised under public international law as part of Georgia's territory gives rise to a positive obligation for that State, under Article 1 of the Convention, to use all the legal and diplomatic means available to it to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention to those living there (see the above-cited cases of *Ilaşcu and Others*, § 333, and *Catan and Others*, § 109). That positive obligation relates both to the measures needed to re-establish its control over Abkhaz territory, as an expression of its jurisdiction, and to measures needed to ensure respect for the individual applicants' rights. The obligation to re-establish control over Abkhazia required Georgia, firstly, to refrain from supporting the separatist regime and, secondly, to act by taking all the political, judicial and other measures at its disposal in order to re-establish control over that territory. The Court will consider below (see paragraphs 398-410, 429 and 441 below) whether Georgia has satisfied this positive obligation.

(ii) The jurisdiction of the Russian Federation

320. The Court must next determine whether the facts complained of by the applicants also fell within the jurisdiction of the Russian Federation. On the basis of the information before it, the Court considers that the situation relating to the circumstances of the applicants did not constitute the exercise of control by agents of the Russian Federation over the applicants. It is indeed the applicants' submission that Russia had "effective control or at the very least a decisive influence" over Abkhazia. Accordingly, the issue to be determined by the Court is whether or not this was the case in the impugned period – namely between August 2001 and July 2007 and whether, as a result, Russia might be held responsible for the alleged violations. The question of whether or not a Contracting State exercises effective control over an area outside its own territory is a question of fact (see paragraph 313 above). The assessment will primarily depend on military involvement, but other indicators, such as economic and political support, may also be of relevance (see *Chiragov and Others*, cited above, § 169, and paragraph 311 above).

321. Even though the applicants were detained in Sukhumi, Abkhazia, the Court finds that in order to determine whether Russia had jurisdiction in the present case, it has to be established whether it exercised effective control or a decisive influence over Abkhazia as a whole (compare *Chiragov and Others*, cited above, § 170). Furthermore, although responsibility for any alleged violations cannot be imputed to Russia in respect of events that took place before 5 May 1998, when Russia ratified the Convention, facts relating to earlier events may still be taken into account as indicative of a continuing

situation that persisted after the respondent State's accession to the Convention (ibid., § 171).

322. With regard to the submissions of the Russian Government in respect of the interpretation by the ICJ of international law (see paragraph 308 above), the Court has repeatedly held that the test for establishing the existence of "jurisdiction" under Article 1 of the Convention has never been equated with the test for establishing a State's responsibility for an act deemed wrongful under international law (see *Mozer*, cited above, § 102, with further references).

(α) Military involvement

323. The Court observes that tensions between Georgians and Abkhazians escalated into full-scale armed conflict in 1992 (see paragraph 26 above). The material available to the Court does not – and could not be expected to – provide conclusive evidence as to the composition of the armed forces that secured control over Abkhazia in September 1993, or the precise type and level of support that they received from external sources, or who exactly the latter were (see paragraphs 27, 29-30, 103-114 and 132-134 above). This is equally true for the period throughout the 1990s. While it can be established that in the early 1990s Russian weapons found their way into Abkhaz hands, that a significant number of ethnic Russians (and others coming from Russia) fought on the Abkhaz side, and that Russian military and Russian commanders stationed in Abkhazia actively supported the Abkhaz side (see paragraphs 113, 114, 132 and 134 above), the evidence available to the Court does not allow it to draw conclusions in respect of allegations that it was the Russian government that authorised the use of such military force and supplied weapons during the 1990s. However, on the basis of the available information, the Court considers that the military victory of pro-Abkhaz fighters in their armed conflict with Georgian troops in the early 1990s would not have been possible without the involvement of at least certain forces and military equipment emanating from the territory of the Russian Federation.

324. The Court furthermore observes that Russian officials at the highest level repeatedly made public statements to the effect that Russia was prepared to send troops to defend its citizens in Abkhazia, and also in the event of a Georgian attack on its peacekeeping forces there (see paragraphs 126, 128, 129 and 131 above). In 2006 the Russian Duma authorised troops to defend Russian citizens worldwide (see paragraph 127 above). According to the Abkhaz *de facto* president in 2005, 70% of the military personnel in Abkhazia held Russian citizenship (see paragraph 157 above). By 2006, the vast majority of Abkhazia's population had become Russian nationals (see paragraphs 148, 157 and 167 above). In the Court's view, the above-noted statements, made within a context in which the majority of the Abkhaz population held Russian nationality, undoubtedly sent a strong signal of

dissuasion against actions of the Georgian government to regain its control over Abkhazia.

325. As regards the peacekeeping forces deployed in the area, it is clear that since 1994 and throughout the period of the applicants' detention, it was Russian troops that staffed the CIS CPF (see paragraphs 34, 113, 132 and 134 above). While the evidence does not allow the Court to rule conclusively in respect of the allegations of numerous offences committed by those forces in the 1990s and the early to mid-2000s, supporting Abkhaz fighters and acting at times outside the security zone (see paragraph 109 above), it notes that the number of peacekeeping forces ranged between 1,500 and 3,000 throughout the relevant period (see paragraphs 34, 132 and 192 above) and that, according to the Russian Government, the area under their responsibility constituted about a third of the overall territory of Abkhazia (see paragraph 195 above). In addition, CIS CPF personnel could be found in Sukhumi and Gudauta (see paragraphs 115 and 190 above), both of which were outside the security zone.

326. The Court furthermore notes that, according to the 2009 EU Fact-Finding Mission report, the peace process in Abkhazia was left largely in the hands of Russia (see paragraph 134 above). For around fifteen years it was possible to keep larger military operations suspended (ibid.). The conflict was in effect frozen (ibid). The EU was not involved in "hard" security issues, as the Russian Federation was not supportive of it becoming more actively engaged – for example, by providing peacekeeping troops (see paragraph 135 above). Furthermore, Russia viewed the Georgian request for the CIS CPF to be replaced by an international police force as a provocation (see paragraphs 128 and 129 above), despite the terms of the 2003 CIS agreement, which stipulated that the mandate of the CIS CPF was to end automatically were a request to that effect to be made by either of the parties to the conflict (see paragraph 37 above).

327. As regards the Russian military base in Gudauta, despite some statements by the Russian authorities (see paragraphs 115, 122 and 124 above) and a non-official visit by OSCE personnel there (see paragraph 117 above), there was no internationally verified confirmation (during the relevant period) of the closure of that base (see paragraphs 121, 125, 134 and 197 above). Effectively, the infrastructure of the base was transferred to the CIS CPF (in fact, Russian) peacekeeping force (see paragraphs 115, 118 and 190 above). According to the explanation submitted by the Russian Government to the Court, facilities for the storage and maintenance of aviation equipment were available only in Gudauta, for which reason aircrafts, crews, operating personnel and security units were stationed there (see paragraph 190 above). Furthermore, the base served, among other things, as a training facility for a mobile military group of up to battalion strength and for the provision of military police on the road between Sukhumi in Abkhazia and Adler in Russia (see paragraph 118 above).

328. In an earlier case against two respondent Governments (see *Catan and Others*, cited above, § 111), in determining the relevant facts pertaining between 2002 and 2004 for the purposes of establishing jurisdiction during that period, the Court referred to a number of developments that had occurred subsequently to that period (see *Mozer*, cited above, § 103). Those included resolutions adopted in 2005 by the legislative and executive authorities, as well as the absence of any verified withdrawal of Russian military equipment since 2004, and the provision of economic aid between 2007 and 2010. Similarly, in *Georgia v. Russia* (II) (cited above, § 171), in reaching its conclusion in respect of jurisdiction during the period between August and October 2008, the Court referred to events that had occurred subsequently to that period. In the present case, the Court notes that, after the period of the first and third applicants' detention (and the whole period ended with the release of the first applicant in 2007), Russia and the *de facto* government of Abkhazia signed a number of agreements on military cooperation. The latter included the establishment of a Russian military base and the stationing of up to 3,800 Russian soldiers in Abkhazia (see paragraphs 137, 139 and 141 above).

329. The Court finds that the above-mentioned combined aspects of Russia's sustained military connection to the region during the relevant period (see paragraphs 323-327 above), and even before and after its end (see paragraphs 323, 325, 326 and 328 above), enables it to conclude that the Russian State wielded sufficient military influence over Abkhaz territory for it to be considered "dissuasive" and as such decisive in practice.

(β) Political, economic and financial support

330. On the basis of the information available to it, the Court finds evidence of a strong degree of political dependence of Abkhazia on Russia during the period. In particular, Russia engaged in a mass policy of "passportisation" following the adoption in 2002 of the Russian law on citizenship, whereby Russian nationality was conferred on people living in Abkhazia. As a result, by 2007 the majority of the Abkhaz population were Russian, in a context where Georgian law did not allow dual citizenship and where Abkhaz identity papers were not a valid travel document in respect of third countries (see paragraphs 148 and 173 above). People in Abkhazia who held Russian passports could in practice vote in elections to Russian political bodies (see paragraph 149 above). Since 2000 those living in Abkhazia had been able to freely travel to Russia under a visa-free regime, while people holding Georgian nationality had to acquire a visa to enter Russia (see paragraphs 147 and 209 above). The Russian language was used as an official language in Abkhazia along with the Abkhaz language (see paragraph 144 above). The Russian rouble was used as the official Abkhaz currency (see paragraph 160 above).

331. Furthermore, during the period in question such dependence was evident also as a result of Russia appointing some of its former civilian and military leaders to serve in key posts in Abkhazia (see paragraph 148 above). In addition, a large number of reciprocal visits took place between highly-placed Russian officials and the *de facto* Abkhaz leadership (see paragraphs 157, 158, 159, 164, 165 and 166 above). Russian officials voiced unequivocal support for Abkhazia, including for its independence, and discussed measures aimed at promoting legal, economic, cultural and other sustained cooperation (see paragraphs 164, 165, 166 above). Diplomas awarded by Abkhaz educational establishments were recognised in Russia (see paragraph 217 above). The *de facto* Abkhaz authorities repeatedly made statements referring to Abkhazia's strong reliance on Russia. Those statements averred that Abkhazia's continued existence was thanks to Russia's unyielding support, which had helped Abkhazia and its people survive after the war; that Abkhazia was to continue to integrate its economy with that of Russia; and that Abkhazia was in a sense already part of Russia in terms of its currency, its language, the citizenship of its population, and Russian trade and investments (see paragraphs 156, 157, 158, 160, 167 and170 above).

332. Furthermore, during the relevant period the Abkhaz economy was heavily reliant on that of Russia, as evidenced by the numerous cooperation agreements that were concluded between Abkhazia and different Russian entities in a vast number of fields (see paragraphs 150, 151, 152 and 153 above). Such agreements involved both private Russian companies and institutions or entities of Russian regional or municipal authorities and companies or institutions that were controlled by the State or whose policy was subject to State authorisation (ibid.). Those agreements were reached during a period when Russia had undertaken, under the 1996 CIS-sponsored agreement, not to engage in any support for or cooperation with the Abkhaz authorities (see paragraph 35 above). The Russian Government did not deny the existence of those agreements, contending that the Russian State was not directly responsible for them (see paragraphs 206 and 207 above).

333. An agreement was signed by Russia and Abkhazia in 2009 concerning investments made by each in the other country since 1994 (see paragraph 140 above). During the period in question telecommunication companies licensed by the Russian authorities operated freely in Abkhazia, providing mobile and other services; road and rail transport between Abkhazia and Russia was functioning (see paragraphs 146, 150, 151, 204, 208 and 217 above). An ongoing process of acquisition of immovable property in Abkhazia by Russian investors was also steadily pursued, as argued by the applicants and Georgia (see paragraphs 151 and 152 above) and not disputed by the Russian Government (see paragraphs 204, 207 and 306 above). The integration of Abkhaz banks into the financial systems of Russian banks was effectively realised (see paragraphs 161, 162 and 163

above), which enabled Abkhazia to conduct unimpeded financial operations worldwide.

334. In that regard, the Russian Government stated that the economic and financial integration of Abkhazia with its neighbour, Russia, had been the result of Abkhaz targeted efforts in order to avoid a humanitarian catastrophe owing to the Georgian blockade (see paragraph 204 above; see, in that connection, also paragraph 218 above).

335. A substantial amount of money was paid monthly by Russia in the form of pensions to residents in Abkhazia (see paragraphs 169, 170 and 148 above). In 2006 alone, the amount paid by Russia to pensioners in Abkhazia amounted to about USD 18 million (see paragraph 170 above); by comparison, in the same year the annual *de facto* Abkhaz state budget reportedly amounted to USD 34 million (see paragraph 171 above). The previous year, 2005 (see paragraphs 169 and 171 above), the amount paid in pensions was over USD 13 million, while the annual *de facto* Abkhaz State budget was reportedly USD 27 million (see paragraph 171 above). In 2007, the amount paid by Russia in pensions to Abkhaz residents was about USD 24 million (see paragraph 148 above). The Court notes that each of the above amounts paid out in pensions by Russia was equivalent to about half the annual Abkhaz state budget for the same respective calendar year.

336. In addition, while there is evidence of only some direct financial support having been contributed to the Abkhaz budget (see paragraphs 155, 169, 172 and 203 above), Russian investments in Abkhazia during the relevant period were significant (see paragraphs 168, 172, 174 and 176 above), and in 2009 a new agreement was signed for the promotion and protection of mutual investments (see paragraph 140 above). In 2005 alone, Russian investments totalled USD 20 million (see paragraph 168 above). It is true that financial assistance to Abkhazia was also provided by other sources (see paragraphs 174, 176 and 205 above), including the EU Commission (see paragraph 172 above). Nevertheless, the figures referred to above show that Abkhazia would not have been able to subsist economically without the substantial support provided by Russia. Economic support of the level and intensity described above was decisive not only for the continued existence of the Abkhaz economy but also for its growth at a steady pace.

337. In the Court's view, Abkhazia was only able to continue to exist – and to resist Georgian and international efforts to resolve the conflict and bring democracy and the rule of law to the region – because of Russia's political, economic and financial support (see paragraphs 330 to 336 above).

(γ) Conclusion

338. The Court reiterates that it is a question of fact whether a contracting State exercises effective control over an area. In addition to the strength of the State's military presence in the area, other indicators may also be relevant, such as the extent to which its military, economic and political support for the

local subordinate administration provides it with influence and control over the region (see the above-cited cases of *Catan and Others*, cited above, § 107, with further references, and *Chiragov and Others*, § 169).

339. On the basis of the available information, the Court finds that *de facto* Abkhazia was only able to survive because of Russia's sustained and substantial political and economic support, and dissuasive military involvement. Abkhazia's high level of dependency on Russian support during the period in question allows the Court to conclude that Russia exercised effective control and decisive influence over Abkhaz territory (compare with *Georgia v. Russia* (II), cited above, § 174, and with *Mozer*, cited above, § 110).

340. It follows that the matters complained of fall within Russia's jurisdiction under Article 1 of the Convention. Consequently the Court dismisses the Russian Government's objections *ratione personae* and *ratione loci*.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

341. The first and third applicants complained that they had been ill-treated during their respective interrogations in 2001 and 2003, and that they had been detained in inhuman and degrading conditions and had not been provided with the medical care that they had needed, in breach of 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

342. The Court has already found above (see paragraph 287 above) that the applicants' complaints under Article 3 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring them inadmissible have been established. They must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The Georgian Government

343. The Georgian Government submitted that, owing to their inability to obtain complete information regarding the factual circumstances of the case because of Russia's continued occupation of Abkhazia, they were not in a position to submit observations on specific aspects of the merits. They specified that they did not challenge the assertions made by the applicants. In particular, they did not dispute that during his interrogation the first applicant

had been subjected to ill-treatment. They also accepted that during his arrest, interrogation and subsequent detention, the third applicant had been subjected to ill-treatment. They pointed out that the Russian Federation bore responsibility for the violation of the applicants' rights by virtue of the continued effective control it had exercised over Abkhaz territory, which had prevented Georgia from fulfilling its obligations under Article 3 of the Convention. All acts committed by the *de facto* Abkhaz authorities had therefore to be attributed *ipso facto* to the Russian Federation.

344. The Georgian Government furthermore stated that they had complied with their positive obligations under Article 3 in relation to the applicants' complaints about ill-treatment. In particular, they pointed to their efforts both in respect of the general human rights situation and Abkhazia (see paragraphs 212-220 above) and in respect of the first and third applicants' rights under Article 3 (see respectively paragraphs 222-231 and paragraphs 232-235 above). As a result, they bore no responsibility for violations that had extended beyond their positive obligations.

(b) The Russian Government

345. According to the Russian Government, the complaints of the first and third applicants were unfounded and unsupported by evidence and, as such, had to be declared inadmissible.

346. As regards the first applicant, his detention conditions and treatment in prison had been comparable to those of other inmates and places of detention (see paragraph 73 above). He had not been treated differently from other prisoners (ibid.).

347. He had not submitted evidence to show that he had not been in poor health prior to his arrest. In any event, his state of health and his disability (namely his missing right hand and three fingers of his left hand, which had been blown off) were the result of his own illegal conduct (that is to say preparing explosives). No medical document confirming that he had been beaten or that he bore any physical signs of ill-treatment had been lodged in the file.

348. As regards the third applicant, the conditions in which he had been detained in Abkhazia had been better than the average detention conditions there (see paragraph 99 above). In addition, the HROAG representatives who had met him on 15 July 2003 had observed no signs of ill-treatment, and nor had he complained of any such treatment (ibid.). Furthermore, the third applicant had been provided with a lawyer who had been at liberty to visit him at any time (ibid.). A senior representative of the Georgian authorities had approached the CIS CPF and UNIMOG with a request for an investigation to be conducted into whether there had been any legal grounds to arrest him on charges of terrorism (see paragraph 233 above). That request had been impossible to meet, given that the third applicant had been arrested

in the Gulripshi District, Abkhazia, which had lain outside the territorial area of the CIS CPF's responsibility and, as such, had not been controlled by them.

349. The mayor of Gali had declared that the third applicant had been arrested on lawful grounds, as he had been wearing a belt with explosives, which he had been transporting from Zugdidi to Gali. The third applicant had acknowledged the truth of this assertion himself.

350. No evidence had been presented to show that the third applicant had not suffered from poor health before his arrest. Similarly, no medical document confirming that he had been beaten or that he had borne any physical signs of ill-treatment was included in the file. The allegations in respect of his having suffered from poor health after his release did not constitute evidence, given that many people of the applicant's age suffered from similar ailments without having been held in detention. The report on his state of health after his release had not mentioned any head injuries, which the applicant had claimed he had sustained as a result of beatings in detention (see paragraph 101 above). He had died a year and seven months after his release, at the age of eighty-four, at a time when the average life expectancy in Georgia had been seventy-two years, and in Abkhazia seventy years.

351. The Russian authorities had had no connection with the applicants' arrest and detention, and nor had they been involved in alleged violations of their Article 3 rights. In particular, both the first and the third applicants had been arrested by the *de facto* Abkhaz state security service in the Gulripshi District, which had lain outside the territorial remit of the CIS CPF.

(c) The applicants

(i) In respect of Georgia's responsibility

352. According to the first applicant, the Georgian government had failed to comply with their positive obligations to exercise effective control over all of its national territory and to take adequate individual measures within their power in order to secure his rights under the Convention. The measures undertaken by the Georgian government had been insufficient and manifestly ineffective.

353. In particular, in respect of the first applicant, the Georgian authorities had only turned to Russia for assistance once (on 11 October 2006, after the Court had indicated to the Georgian Government an interim measure), asking for assistance with his exercise of his rights. He had been unlawfully detained in Abkhazia since 2001, and the government had known about that since 2001, and yet they had only begun to make appeals for support to the international community from March 2003 and to Russia from October 2006. Therefore, they had failed for at least two years (and more plausibly six years) to take adequate measures to ensure his rights.

354. Furthermore, they had taken no steps to quash his conviction. Lastly, they had not sent any doctors to examine him, nor had they provided his

family members with financial and administrative assistance in order to facilitate their visiting him.

355. In respect of the third applicant, the government had provided him with no medical assistance, and they had failed to investigate the events relating to his unlawful detention in Abkhazia; he had not been interviewed for the purposes of opening criminal proceedings against the perpetrators, and no steps had been taken to end his unlawful detention, conviction or ill-treatment.

(ii) In respect of Russia's responsibility

356. The applicants reiterated their complaints and submitted that they had provided *prima facie* evidence of the events that had given rise to them. Those events had lain wholly, or in large part, within the exclusive knowledge of the authorities, and the Russian Government had failed to provide a satisfactory and convincing explanation, or to produce evidence establishing facts casting doubt on the applicants' account of the events in question.

357. In respect of the third applicant, the fact that he had not made any complaints to the HROAG representative who had visited him about two weeks after his arrest (see paragraph 99 above) had been owing to the fact that the applicant had been at his most vulnerable at that time, and not disposed towards making any complaints for fear of the consequences.

2. The Court's assessment

(a) General principles

358. The Court has set out the relevant principles regarding the prohibition on ill-treatment, including conditions of detention and the provision of medical care in prisons, in numerous earlier judgments (see, among many others and as recent authorities, *Gäfgen v. Germany* [GC], no. 22978/05, §§ 87-93, ECHR 2010; *Muršić v. Croatia* [GC], no. 7334/13, § 96-101, 20 October 2016; and *Rooman v. Belgium* [GC], no. 18052/11, §§ 141-148, 31 January 2019).

359. In addition to its absolute prohibition of inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour, Article 3 requires the State to ensure that all prisoners are detained in conditions which are compatible with respect for their human dignity, that the manner of their detention does not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in such a measure and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, their being provided with the requisite medical assistance (see also *Kudła v. Poland* [GC], 2000, § 94; *Paladi v. Moldova* [GC], 2009, § 71; and *Blokhin v. Russia* [GC], 2016, § 136). The Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them

(see *Enache v. Romania*, no. 10662/06, § 49, 1 April 2014; *M.C. v. Poland*, no. 23692/09, § 88, 3 March 2015; and *A.Ş. v. Turkey*, no. 58271/10, § 66, 13 September 2016).

360. The Convention does not contain any provision relating specifically to the situation of persons deprived of their liberty, let alone where they are ill, but it cannot be ruled out that the detention of a person who is ill may raise issues under Article 3 (see *Matencio v. France*, no. 58749/00, § 76, 15 January 2004). In particular, the Court has held that the suffering that flows from naturally occurring illness, whether physical or mental, may in itself be covered by Article 3 where it is, or risks being, exacerbated by conditions of detention for which the authorities can be held responsible (see, in particular, *Hüseyin Yıldırım v. Turkey*, no. 2778/02, § 73, 3 May 2007, and *Gülay Çetin v. Turkey*, no. 44084/10, § 101, 5 March 2013). Hence, the detention of a person who is ill in inappropriate physical and medical conditions may in principle amount to treatment contrary to Article 3 (see *Kudła*, cited above, § 94, and *Rivière v. France*, no. 33834/03, § 74, 11 July 2006).

361. In determining whether the detention of an ill person is compatible with Article 3 of the Convention, the Court takes into consideration the individual's health and the effect of the manner of execution of his or her detention on it (see, among other authorities, the above-cited cases of *Matencio*, §§ 76-77, and *Gülay Çetin*, §§ 102 and 105). It has held that the conditions of detention must under no circumstances arouse in the person deprived of his liberty feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance (see *Selmouni v. France* [GC], no. 25803/94, § 99, ECHR 1999-V).

362. The Court also takes account of the adequacy of the medical assistance and care provided in detention (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 204, ECHR 2012; *Rivière*, cited above, § 63; and *Sławomir Musiał v. Poland*, no. 28300/06, §§ 85-88, 20 January 2009). A lack of appropriate medical care for persons in custody is therefore capable of engaging a State's responsibility under Article 3 (see *Naoumenko v. Ukraine*, no. 42023/98, § 112, 10 February 2004, and *Murray v. the Netherlands* [GC], no. 10511/10, § 105, 26 April 2016).

363. In its assessment of the adequacy of medical assistance provided in prison, the Court is guided by the due diligence test, since the State's obligation to cure a seriously ill detainee is one of means, not of result. The authorities' refusal to allow independent specialised medical assistance to be given to a prisoner suffering from a serious medical condition at that prisoner's request is an element that the Court has taken into account in its assessment of the State's compliance with Article 3 (see *Wenner v. Germany*, no. 62303/13, § 57, 1 September 2016).

364. Undue delays in the establishment of a diagnosis or in the provision of medical treatment can lead to a violation of Article 3 of the Convention (see *Nogin v. Russia*, no. 58530/08, § 97, 15 January 2015, which concerned delays in the provision of surgery to a person suffering from diabetes, and *Kondrulin v. Russia*, 2016, § 59, which concerned delays in the establishment of a diagnosis).

365. As regards the treatment of persons with disabilities, the Court has deemed that when the authorities decide to place and keep a disabled person in continued detention, they should demonstrate special care in guaranteeing conditions corresponding to the special needs resulting from his or her disability (see *Z.H. v. Hungary*, no. 28973/11, § 29, 8 November 2012, and *Grimailovs v. Latvia*, no. 6087/03, § 151, 25 June 2013, with further references).

366. On the whole, the Court reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Blokhin*, cited above, § 137; *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008; and *Patranin v. Russia*, no. 12983/14, § 69, 23 July 2015).

367. In addition, it is not enough for such detainees to be examined and a diagnosis made; instead, it is essential that proper treatment for the problem diagnosed should also be provided (see *Murray*, cited above, § 106), by qualified staff (see *Keenan v. the United Kingdom*, no. 27229/95, §§ 115-16, ECHR 2001-III, and *Gülay Çetin*, cited above, § 112).

368. In this regard, the "adequacy" of medical assistance remains the most difficult element to determine. The Court reiterates that the mere fact that a detainee has been seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance afforded was adequate. The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention (see *Iacov Stanciu v. Romania*, no. 35972/05, §§ 180-186, 24 July 2012), that diagnosis and care are prompt and accurate, and that where necessitated by the nature of a medical condition supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through. Furthermore, medical treatment provided within prison facilities must be appropriate – that is to say, at a level comparable to that which the State authorities have committed themselves to providing to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical

treatment that is available in the best health establishments outside prison facilities (see *Blokhin*, cited above, § 137, with further references).

369. Where treatment cannot be provided in the place of detention, it must be possible to transfer the detainee to hospital or to a specialised unit (see *Raffray Taddei v. France*, no. 36435/07, §§ 58-59, 21 December 2010; also contrast *Kudła*, cited above, §§ 82-100).

370. In *Muršić* (cited above, §§ 127-128), the Court clarified its methodology for assessing cases concerning conditions of detention. In particular, the Court stressed that once a credible and reasonably detailed description of allegedly degrading conditions of detention, constituting a *prima facie* case of ill-treatment, has been made, then the burden of proof shifts to the respondent Government, who alone have access to information capable of corroborating or refuting these allegations. They are required, in particular, to collect and produce relevant documents and provide a detailed account of an applicant's conditions of detention. Relevant information from other international bodies, such as the CPT, on the conditions of detention, as well as from the relevant national authorities and institutions, also inform the Court's decision on the matter.

371. The Convention proceedings do not in all cases lend themselves to a strict application of the *affirmanti incumbit probatio* principle. They should also take into account the specific circumstances of each case, including the nature of the facts at issue and the difficulty for the parties concerned to present evidence in support of their submissions. Where the events at issue lie within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries, damage and death occurring during that detention. The burden of proof in such a case may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV; *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; and *Oleg Nikitin v. Russia*, no. 36410/02, § 45, 9 October 2008). In this case, in the absence of such an explanation the Court can draw inferences that may be unfavourable for the respondent Government (see, for instance, *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002, and *Buntov v. Russia*, no. 27026/10, § 161, 5 June 2012).

372. The Court furthermore reiterates that a threat of conduct prohibited by Article 3, provided it is sufficiently real and immediate, may fall foul of that provision. Thus, to threaten an individual with torture may constitute at least inhuman treatment (see *Gäfgen*, cited above, § 91).

(b) Application of these principles to the present case

(i) As regards the first applicant

373. The Court observes that the first applicant's complaint under Article 3 of the Convention consists of three elements. Accordingly, it will examine each element below.

(α) Lack of adequate medical treatment in detention

374. The Court notes, firstly, that the existence of severe injuries to the first applicant's body resulting from an explosion on 7 August 2001 – just before his apprehension – has not been disputed by the parties (see paragraphs 55, 59, 71, 73, 76, 83 and 347 above). Neither have his submissions that he was treated in two different hospitals during the first six days after the incident, or that he was placed in a detention establishment immediately after that, on 12 or 13 August 2001 (see paragraphs 41, 346 and 347 above). Following the applicant's undergoing a series of medical examinations in Tbilisi, starting immediately upon his release in February 2007, in addition to confirming his disability resulting from the explosion (see paragraphs 77 and 78 above), the doctors' team also diagnosed him with several other medical conditions (see paragraph 79 above).

375. However, comprehensive information of a medical nature has not been provided to the Court in respect of his state of health during the period that he spent in detention. No medical examinations or related reports, or diagnoses and details of prescribed treatment, have been shown to have been drawn up by the relevant authorities either during his initial stay in hospital in 2001 or in detention thereafter. No information has been submitted to the Court (i) about any specific treatment, or the regularity thereof, provided to the applicant by the authorities, or (ii) indicating that the conditions recorded in the above-mentioned medical certificate (see paragraph 79 above) were diagnosed by the medical authorities while he was in detention and appropriately treated. Nor has it been shown that a prison medical file in respect of the applicant was kept. The Court notes in that regard the findings of the CPT, as those relate in particular to the failure to (i) subject new arrivals to a medical examination and (ii) maintain medical files in respect of the detainees at all three establishments in Abkhazia in which the first applicant was held, namely, the Security Service IVS, the Sukhumi IVS and Dranda Prison (see the relevant parts of the CPT report following its visit to Abkhazia in 2009 referred to in the "Relevant legal framework" section above). Those findings corroborate the allegations of the first applicant. Similarly, it has not been suggested that any psychological assistance was provided to him, given his resulting permanent disability from the incident, or that indeed such type of medical care was considered.

376. The first reference to the applicant's state of health provided to the Court is to be found in the judgment convicting the applicant (see

paragraph 55 above), delivered about six months after the incident. According to it, the applicant had suffered a second-degree haemorrhagic shock, his right hand had been blown off, and so had two fingers of his left hand. He had also received shrapnel wounds to his chest, face and both hips. Apart from stating that the bodily injuries, the amputation of his right hand and the broken bones in his left hand corresponded to the category of less severe injuries, no information was included about the treatment that was provided to him, if any. It would appear that the applicant had been found mentally fit to stand trial and, in the words of the judgment, not requiring any medical intervention.

377. The second piece of information on file was provided by the *de facto* Abkhaz authorities to the Georgian Government. It referred to the applicant's state of health and is dated April 2005. In addition to concerning a period of time lasting more than three years and eight months following the moment when the applicant sustained his injuries, that certificate contained only scarce information of a general nature (see paragraph 68 above), as attested by a doctor who had seen him on 18 March 2005. The contents of the accompanying letter (see paragraph 67 above) did not, and could not by themselves, remedy that deficiency.

378. The Court has already held that the mere fact that a detainee was seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that that medical assistance was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The authorities also had to ensure that a comprehensive record was kept concerning the detainee's state of health and his or her treatment while in detention (see *Khudobin v. Russia*, no. 59696/00, § 83, ECHR 2006-XII (extracts)), that diagnosis and care were prompt and accurate (see *Melnik v. Ukraine*, no. 72286/01, §§ 104-106, 28 March 2006), and that where necessitated by the nature of a medical condition supervision was regular and systematic and involved a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis (see *Amirov v. Russia*, no. 51857/13, § 93, 27 November 2014, 2014). The authorities also had to show that the necessary conditions were created for the prescribed treatment to be actually followed through (see *Holomiov v. Moldova*, no. 30649/05, § 117, 7 November 2006). None of the above obligations have been demonstrated to have been met in the instant case.

379. Apparently, ICRC delegates saw the applicant at times and handed over parcels containing medicines sent by his grandmother (see paragraphs 60, 61, 67 and 69 above). Also, HROAG representatives met the applicant several times over the years of his detention and, reportedly, he told them that he had no serious medical complaints (see paragraphs 69, 70 and 71 above). However, no independent medical personnel were allowed at any point to examine the applicant, despite requests to that effect by the Georgian

authorities, which were transmitted to the *de facto* Abkhaz authorities via the HROAG office (see paragraphs 65, 69, 224, 227 and 228 above). Given the circumstances (particularly in view of the applicant's vulnerability due to his continued detention by the *de facto* authorities), the type of offences for which he was sentenced, and his disability resulting from the explosion, the Court finds that the reported absence of complaints by the applicant on those occasions (see paragraph 69 above) cannot be taken to offset the authorities' duty to keep a thorough medical record for the applicant, to supervise his state of health and to establish and react to any medical needs without delay.

380. In the light of the above, even applying to the case of the applicant ample flexibility in respect of the required standard of health care (see paragraph 366 above), the Court is not satisfied that he received adequate medical attention during the whole period of his detention, between 12 or 13 August 2001 and 14 February 2007. Accordingly, there has been a violation of Article 3 of the Convention in respect of the first applicant in this respect.

(β) Inadequate conditions of detention

381. The Court notes that the applicant was transferred from the hospital in Sukhumi to the Security Service IVS on 12 or 13 August 2001 and that he remained there until about the end of February 2002 (see paragraphs 42 and 43 above). Thereafter, he spent the following two years in a cell in the Sukhumi IVS (see paragraph 61 above). From 31 March 2004, he spent the remaining period of his detention in Dranda Prison (see paragraphs 62 and 63 above). None of this has been disputed by the parties.

382. The applicant has provided a detailed account of the conditions in which he was detained in the first two of those three establishments (see paragraphs 42 and 43 above as regards the Security Service IVS, and paragraph 61 above as regards the Sukhumi IVS). His description of the conditions in which he was held in Dranda Prison is less comprehensive (see paragraphs 62 and 63 above). The information provided by the *de facto* Abkhaz authorities (see paragraph 67 above) and the Commissioner (see paragraph 73 above) concerned Dranda Prison. The CPT's report of 2009 contains information about the conditions of detention in all three establishments in which the applicant was held (see the "Relevant legal framework" section above). As regards Dranda Prison in particular, the Court finds that the CPT's findings are indicative of the general material conditions of detention there, yet its findings concerning the level of the prison population in 2009 are not relevant for the period when the applicant was held there. The reason for this is that, as noted by the CPT (in a footnote of the 2009 report), measures taken in 2007 resulted in a substantial decrease in the prison population, and the applicant was detained there for about two years prior to 2007.

383. On the basis of the information available to it, and in particular in the absence of more specific complaints by the applicant in respect of Dranda Prison, the Court finds it difficult to establish that the material conditions in that establishment as such were incompatible with Article 3 of the Convention. However, it has not been shown that the authorities took special care to ensure that the applicant's conditions of detention corresponded to his special needs resulting from his disability. On this last point, the information on file suggests that it was other inmates who assisted the applicant with his daily needs (see paragraph 73 above). The Court finds that it is not necessary to pronounce on whether there has been a violation of Article 3 as a result of the conditions in which the applicant was held in Dranda Prison, because it considers that, in any event, there has been a violation concerning the two other establishments in which the applicant was held before his transfer to Dranda Prison.

384. In particular, the specific complaints about the light having been permanently left on in the cells and the cell being dirty, which the applicant made in respect of the Sukhumi IVS (see paragraph 61 above), were corroborated by the CPT's findings in its 2009 report (see the relevant parts of the CPT report in the "Relevant legal framework" section above). According to the CPT, the conditions of detention were even harsher at the Security Service IVS (ibid.). The specific findings by the CPT as regards the conditions in the Security Service IVS also corroborate the applicant's complaints – in particular about the lack of light in the cells, the absence of any electricity supply at all, poor access to natural light, problematic ventilation, a lack of sheets, the absence of any furniture other than a bed, no possibility to take a shower, poor food, no heating, a lack of any activities (to the extent that inmates did not even know an exercise yard existed). The Court observes that the CPT's 2009 findings as to the conditions of detention correspond to the applicant's complaints made in 2004 to the Court about the material conditions in the same establishments visited by the CPT. In the absence of proof by the respondent governments refuting the applicant's complaints on this point, the Court accepts the description made by him as confirmed by the CPT's findings.

385. The Court has already held that, when assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as of specific allegations made by the applicant. The length of the period during which a person is detained in the particular conditions has also to be considered (see, among many other cases, *Idalov*, cited above, § 94; see also *Orchowski*, cited above, § 121; *Torreggiani and Others*, cited above, § 66; and *Ananyev and Others*, cited above, § 142).

386. The Court notes that, with the exception of the brief information about the conditions of detention in which the applicant was kept in Dranda Prison (see paragraph 67 above), no information has been provided by the *de facto* authorities as regards the detention conditions in the Sukhumi IVS and

the Security Service IVS. The CPT's findings in respect of those establishments corroborate the complaints of the applicant. In addition, it has not been shown that the authorities took special care to ensure that the applicant's conditions of detention corresponded to his special needs resulting from his disability. While it appears that in Dranda Prison it was other inmates who assisted him with his daily needs (see paragraph 73 above), even such assistance has not been shown to have been available to the applicant in the other two establishments, in which he was apparently kept alone.

387. Assessing the above-described conditions as a whole, the Court finds that they were in breach of Article 3 of the Convention in respect of the first applicant also in this respect.

(γ) Ill-treatment during the interrogation

388. The applicant complained about having been ill-treated during his interrogation in the initial months after his apprehension, including by having been subjected to mock executions and being threatened that he would be left to rot in his cell or given the death penalty.

389. The Court notes that, immediately upon his release and in the several months that followed, the applicant was examined by a team of doctors in a medical centre specialising in rehabilitation for victims of torture and violence, and was diagnosed with post-traumatic stress disorder (see paragraphs 76 and 79 above). According to the doctors, his state was the result of prolonged exposure to stress experienced by him in detention as a result of torture, comprising, *inter alia*, a lasting fear of being executed (ibid.). This is consistent with the complaints made by the applicant. The Court has already emphasised the importance of independent and thorough examinations of persons on release from detention (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 118, ECHR 2000-X). It has also referred in this regard to the CPT's standards in respect of medical examinations as such being an essential safeguard against ill-treatment of persons in custody. In particular, such examinations have to be carried out by a properly qualified doctor (out of the hearing and sight of non-medical staff), and the report on it has to include not only details of any injuries found, but the explanations given by the patient as to how they occurred and the opinion of the doctor as to whether the injuries are consistent with those explanations (see *Akkoç*, cited above, § 118; *Mehmet Eren v. Turkey*, no. 32347/02, § 40, 14 October 2008, and *Zalyan and Others v. Armenia*, nos. 36894/04 and 3521/07, § 260, 17 March 2016). Cursory examinations undermine the effectiveness and reliability of this safeguard (ibid.).

390. The Court accordingly finds that, in view of the conclusions in the medical reports drawn up in respect of the applicant by an independent specialised medical centre, it is incumbent on the detaining authorities to provide a plausible explanation of how the mental harm recorded in the report

was caused to the applicant and to produce evidence casting doubt on the veracity of his allegations (compare *Volkan Özdemir v. Turkey*, no. 29105/03, § 35, 20 October 2009).

391. However, no information has been provided to the Court that would dispel the applicant's complaints or the findings in the report drawn up upon his release. It is true that, as no medical report was drawn up upon the applicant's being taken into custody, there is no evidence to show that the applicant had not already been suffering from post-traumatic stress disorder before his arrest. Regarding this point, the Court refers to its repeated emphasis on the crucial importance within this context of opening and maintaining medical records upon the admission of persons into custody (see *Kaçiu and Kotorri v. Albania*, nos. 33192/07 and 33194/07, § 96 with further reference, 25 June 2013). It reiterates that, while it is for the applicant to make a *prima facie* case and adduce appropriate evidence, if the respondent Government in their response to his allegations fail to disclose crucial documents in order to enable the Court to establish the facts or in order to provide a satisfactory and convincing explanation of how the events in question occurred, strong inferences can be drawn (see *Varnava and Others*, cited above, § 184; *Kadirova and Others v. Russia*, no. 5432/07, § 94, 27 March 2012; and *Aslakhanova and Others*, cited above, § 97).

392. As established above, it has not been shown that a medical file for the applicant was drawn up upon the applicant's admission to detention or that such a file was kept during the period that he spent in detention. The Court is accordingly prepared to draw inferences from this conduct and in particular from the total failure to present evidence of any kind to the Court in connection with the applicant's allegations of ill-treatment during his interrogation. Accordingly, the Court finds that there are inferences, based on the absence of concrete elements, on which it may be concluded beyond reasonable doubt that the applicant was ill-treated as alleged.

393. Accordingly, there has been a violation of Article 3 of the Convention in respect of the first applicant also in this respect.

(i) As regards the third applicant

394. The Court observes that the third applicant was aged 81 at the time of his arrest in 2003 (see paragraph 9 above). He complained that he had been beaten about the head and threatened with the death penalty when he was interrogated following his apprehension by the *de facto* Abkhaz authorities, as well as that he had not received adequate medical care and had been kept in inhuman and degrading conditions for the whole period of his detention.

395. The Court finds that the elements on file do not enable it to draw a conclusion in respect of whether he was ill-treated as alleged by him during his interrogation. In particular, unlike the first applicant, he has not shown a medical certificate issued to him upon his release having recorded mental

harm as a likely result of his having suffered ill-treatment (see paragraph 101 above).

396. However, like in respect of the first applicant, it has not been shown that a medical file was drawn up upon the third applicant's admission in detention, or that such a file was kept during the period he spent in detention. Upon his release, the applicant was diagnosed with several serious medical conditions of a chronic nature (see paragraph 101 above). No medical examinations and related reports, diagnoses and prescribed treatment, have been shown to have been drawn up by the relevant authorities at any point in time. No information has been provided about any specific treatment, or its regularity, provided to him by the authorities, or that the conditions featuring in the medical certificate (see paragraph 101 above) had been diagnosed by the medical authorities in detention and treated accordingly.

397. In the light of the above, even applying to the case of the third applicant ample flexibility in respect of the required standard of health care (see paragraph 366 above), the Court is not satisfied that he received adequate medical attention during the whole period of his detention, between 29 June 2003 and 5 May 2005. Accordingly, there has been a violation of Article 3 of the Convention in respect of the third applicant. In view of this finding, the Court finds that it is not necessary for it to pronounce on whether the conditions in which the third applicant had been detained in Dranda Prison were compatible with Article 3 (see paragraph 99 above).

3. Responsibility of the respondent States

(a) As regards Georgia

398. The Court must next determine whether Georgia fulfilled its positive obligations to take appropriate and sufficient measures to secure the applicants' rights under Article 3 (see paragraph 319 above; see also *Mozer*, cited above, § 151). In doing so, the Court will have regard to measures taken before the date of the ratification of the Convention by Georgia and use them for comparative purposes when assessing Georgia's efforts after its ratification of the Convention (compare *Ilaşcu and Others*, cited above, § 338).

399. As regards the first aspect of Georgia's positive obligation (that is to say the need for Georgia to re-establish control), Georgia was required, firstly, to refrain from supporting the *de facto* authorities of Abkhazia and, secondly, to take all political, judicial and other measures at its disposal to re-establish its control over that territory. It is not for the Court to indicate the most appropriate measures that Georgia should have taken or should take to that end, or whether such measures were sufficient. It only has to verify Georgia's will, expressed through specific acts or measures, to re-establish its control over Abkhaz territory (compare *Ilaşcu and Others*, cited above, § 340).

400. The Court observes that Georgia has never recognised Abkhazia as an independent State (see paragraph 212 above), nor has any material been submitted to the Court to show that Georgia has ever provided support to the *de facto* Abkhaz authorities. In addition, starting from 1994 the Georgian authorities repeatedly appealed to the international community – namely to various international organisations and to numerous individual States – for support for a peaceful political solution of the conflict, for observance of human rights in the area and for assistance in bringing about the withdrawal of Russia's peacekeeping forces from Abkhaz territory (see paragraphs 214-216 above). Furthermore, the Georgian Government regularly approached the Russian authorities, protesting against actions taken by Russia that Georgia considered a gross interference with its internal affairs, sovereignty and territorial integrity (see paragraphs 217 and 218 above). The Georgian Parliament adopted numerous resolutions and issued statements calling for the replacement of the Russian peacekeepers with an international force and for the full restoration of Georgian jurisdiction and constitutional order over Abkhaz territory (see paragraph 219 above). Similarly, in 2005-2006 Georgian law-enforcement officers opened criminal investigations into reports of human rights violations on Abkhaz territory (see paragraph 220 above). In the light of the above, the Court considers that Georgia deployed sufficient efforts to re-establish its authority over the Abkhaz region of Georgia, Georgian authorities having continued to assert their sovereignty over Abkhaz territory, both before and after Georgia's ratification of the Convention, and both internally and internationally.

401. As regards the second aspect of the positive obligation – namely to ensure respect for the applicants' rights – the Court observes as follows. The Georgian authorities employed considerable efforts in pursuing a panoply of measures, throughout the relevant period and to the extent that it was within their powers, aimed at securing the applicants' rights.

402. Specifically, in respect of the first applicant, they contacted the *de facto* authorities, and turned to the Russian Federation's authorities as well as recurrently to numerous international organisations and bilateral foreign partners, raising the first applicant's situation and seeking related assistance (compare with *Ivanţoc and Others*, cited above, § 109; *Vardanean v. the Republic of Moldova and Russia*, no. 22200/10, § 42, 30 May 2017; *Mozer*, cited above, § 153; *Turturica and Casian v. the Republic of Moldova and Russia*, nos. 28648/06 and 18832/07, § 53, 30 August 2016; *Ilaşcu and Others*, cited above, § 347, last sentence). In particular, in the immediate aftermath of the first applicant's conviction and imprisonment, a State commission created by the President of Georgia contacted the head of the Abkhaz commission, in order to negotiate regarding his case (see paragraph 222 above). Thereafter, at least on one occasion in 2003 and on another in 2004, respectively the Ombudsman of Georgia and the legitimate Ombudsman of the Autonomous Republic of Abkhazia (located outside of

Abkhaz territory), approached HROAG, seeking assistance with sending its representatives to visit the first applicant and provide him with necessary care (see paragraphs 223 and 224 above).

403. Furthermore, Georgia included information on the first applicant's case in its reports to various UN bodies working for the implementation of different human rights instruments (see paragraphs 224 and 230 above). Starting in 2005, the authorities repeatedly turned, among others, to UNOMIG and HROAG with similar requests regarding the provision of medical assistance to the applicant (see paragraph 65 above). The requests intensified further in 2006, the authorities seeking to have the first applicant medically evaluated by independent experts and/or moved to an appropriate medical establishment where he could be adequately treated (see paragraphs 227 and 228 above). Those pleas were made both to international organisations and to the authorities of the Russian Federation (see paragraph 228 above). In the second half of 2006 alone, the Georgian authorities made a striking number of written appeals to numerous foreign embassies in Tbilisi, as well as various international organisations, emphasising the first applicant's situation, and seeking support more generally for ensuring human rights protection in Abkhazia (see paragraph 229 above). In doing so, the Georgian authorities continually stressed their inability to take successful steps themselves, because they lacked effective control over the Abkhaz territory (see paragraphs 224 and 229 above).

404. In addition, the Court observes that, while the judgment adopted by the legitimate Sukhumi court in 2008 (see paragraph 86 above) lacks practical enforceability in the absence of effective control (see paragraph 87 above), the authorities convicted the individuals found responsible for torture and illegal imprisonment of the first applicant after notice of the application had been given to the Georgian Government in 2006 (see paragraphs 80 to 88 and 231 above; and compare with *Mozer*, cited above, §§ 26, 52-53, and 153; *Vardanean*, cited above, § 42; *Turturica and Casian*, cited above, § 53; *Draci v. the Republic of Moldova and Russia*, no. 5349/02, § 61, 17 October 2017; *Mangîr and Others v. the Republic of Moldova and Russia*, no. 50157/06, § 41, 17 July 2018; *Ilaşcu and Others*, cited above, § 346). Thus the authorities made every effort to pursue steps aimed at securing the first applicant's rights, including by showing determination to combat the sense of impunity the offenders might consider themselves to enjoy by virtue of being on territory outside of the effective control of the Georgian authorities.

405. In addition, as from 2005 the Georgian authorities provided medication free of charge to the first applicant's grandmother, which she in turn sent to the first applicant (see paragraph 226 above; and compare with *Ilaşcu and Others*, cited above, § 346; compare also, *mutatis mutandis*, with *Vardanean*, cited above, § 42 (iii)).

406. In respect of the third applicant, the Court observes that the Georgian authorities started raising the issue of his situation already in 2003, when he had been arrested, both directly with the *de facto* Abkhaz authorities as well as with the CIS CPF and representatives of the UN and the OSCE (see paragraphs 232 to 235 above; compare also with *Ivanţoc and Others*, cited above, § 109 *Vardanean*, cited above, § 42; *Mozer*, cited above, § 153; *Turturica and Casian cited above*, § 53; *Ilaşcu and Others*, cited above, § 347, last sentence). The Georgian authorities repeatedly asked to be given access to him and/or to be allowed to send him a lawyer, without success, as the *de facto* Abkhaz authorities persistently refused these requests. The Georgian Government publicly condemned the third applicant's conviction and sentencing in *de facto* Abkhazia, and the SRSGG asked for his release (see paragraph 234 above).

407. It is true that, unlike the first applicant's case, the authorities did not open criminal proceedings into his arrest and detention, or into his complaint about having been ill-treated during interrogation, either on being notified of his arrest or once the application had been communicated to them by the Court bringing the applicant's specific allegations to the their attention (see paragraphs 232 to 235 above). However, in this respect the Georgian authorities requested the CIS CPF to investigate the third applicant's detention and also sought, as early as July 2003, a joint investigation (see paragraph 233 above). These attempts to assist the third applicant were rejected by the *de facto* Abkhaz authorities. The Court reiterates that there should be some form of effective official investigation where an individual makes a credible assertion that he or she has suffered treatment infringing Article 3 of the Convention, or where the authorities have sufficiently clear indications that torture or ill-treatment might have been inflicted (see, for a recapitulation of the applicable general principles, *S.M. v. Croatia* [GC], no. 60561/14, §§ 311-320 with further references, 25 June 2020; see also *Mocanu and Others*, cited above, § 319, and *Zakharov and Varzhabetyan v. Russia*, nos. 35880/14 and 75926/17, § 48 with further references, 13 October 2020). However, it recognises that, in the specific circumstances of the present case, and in particular in the absence of effective control over Abkhaz territory or influence over the *de facto* Abkhaz authorities by the Georgian authorities, any judicial investigation in respect of persons living there or linked to offences committed in that region would – on its own – be inconsequential and, at most, symbolic (compare with *Ilaşcu and Others*, cited above, § 347; see also, *mutatis mutandis*, *Bekoyeva and Others v. Georgia* (dec.), no. 48347/08, § 46 with further references, 5 October 2021).

408. The Court finds that the actions taken by the Georgian authorities are also to be seen against the background of the continued efforts made by other authorities at the highest levels; the intervention of those other authorities had been requested or engaged pursuant to the reports of the Georgian authorities

which had brought the situation of both applicants to international attention. In the context of these efforts to ensure protection of the third applicant's rights, the Court concludes that the Georgian authorities took all necessary measures within their power at the time to secure his rights (compare with *Mozer*, cited above, § 154). Finally, as it can be seen from the facts (see paragraph 100 above), the Georgian authorities attempted to provide the third applicant with medical assessment and care.

Conclusion

409. Having regard to all the material in its possession, the Court considers that the Georgian government did not fail to do everything within their powers to secure to the first and third applicants their rights under the Convention, especially in view of the persistent refusals of the *de facto* Abkhaz authorities to cooperate with the Georgian authorities during the period under consideration, and the inactivity of the Russian authorities to take necessary action to address the complaints once they had been notified of them (contrast on this point, and *mutatis mutandis*, with *Ilaşcu and Others*, cited above, §§ 114, 178 and 185, see also paragraphs 82, 88, 98, 100, 222, 233 and 234 above). The Court accordingly concludes that Georgia discharged its positive obligations with regard to the acts complained of, all of which occurred after it had ratified the Convention (compare, *mutatis mutandis*, with *Ivanţoc and Others*, cited above, § 111; *Mozer*, cited above, § 155; *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 148, ECHR 2012 (extracts); *Draci*, cited above, § 61; *Mangîr and Others*, cited above, § 42; *Vardanean*, cited above, § 43; *Turturica and Casian*, cited above, § 54).

410. There has therefore been no violation of Article 3 in respect of both applicants by Georgia.

(b) As regards the Russian Federation

411. The Court has established that Russia exercised effective control over Abkhazia during the period in question (see paragraph 339 above). In the light of this conclusion, and according to the Court's case-law, it is not necessary to determine whether or not Russia exercised detailed control over the policies and actions of the subordinate local administration (see *Mozer*, cited above, § 157 with further references). By virtue of its continued military, economic and political support for Abkhazia during the relevant period, which could not have otherwise survived, Russia's responsibility under the Convention is engaged as regards the violation of both applicants' rights.

412. Accordingly, there has been a violation of Article 3 in respect of both applicants by the Russian Federation.

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

413. The first and third applicants complained that their arrest and detention had been unlawful, in breach of Article 5 § 1 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ...
>
> (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 or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ..."

A. Admissibility

414. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicants

415. The first and third applicants submitted that they had been arrested and held in detention on the basis of Abkhaz laws which were not part of the Georgian legal system, but which had been applied by an unlawful separatist regime that had not been recognised by the international community. The applicants had not been involved in any criminal activities at the time of their arrest.

(b) The Russian Government

416. The Russian Government pointed out that according to the mayor of Gali (Abkhazia), the third applicant had been arrested on lawful grounds. Furthermore, the authorities of the Russian Federation had had no involvement in the arrest or detention of the first and third applicants, which had been carried out by the *de facto* Abkhaz state security service in the Gulripshi District, beyond the territorial responsibility of the CIS CPF, or in their detention in Dranda Prison. No evidence had been produced regarding any involvement of Russian agents in the alleged violation of the rights of both applicants.

(c) The Georgian Government

417. The Georgian Government informed the Court that in the light of their inability to obtain complete information regarding the factual circumstances of the case owing to Russia's continued occupation of Abkhazia they were not in a position to submit observations on the specific aspects of the merits. They did not challenge the assertions made by the first and third applicants in their respective applications. In particular, they did not dispute that both applicants had been unlawfully arrested and had remained in unlawful detention in Abkhazia that had lasted from August 2001 until February 2007 in respect of the first applicant and from June 2003 until May 2005 in respect of the third applicant. They stated that every individual arrested and detained by the *de facto* Abkhaz authorities had been an illegal detainee, since the *de facto* organs had not been legitimate and their authority had not been recognised under Georgian and international law.

418. The Government pointed to the individual measures that they had undertaken in order to secure the rights of the first and third applicants (see paragraphs 222-231and 232-235 above). They furthermore emphasised that Russia, as a Contracting Party to the Convention, which had continuously had effective control over the unrecognised entity, was responsible for the violation of the applicants' rights, as enshrined under the Convention.

2. The Court's assessment

419. The Court notes that the first applicant was arrested on 7 August 2001 and subsequently held in detention following his conviction until his release on 14 February 2007. The third applicant was arrested on 29 June 2003 and subsequently held in detention following his conviction until his release on 5 May 2006. Accordingly, both Article 5 § 1 (c) and Article 5 § 1 (a) of the Convention are applicable.

420. It is well established in the Court's case-law in respect of Article 5 § 1 that any deprivation of liberty must not only be based on one of the exceptions listed in sub-paragraphs (a) to (f) but must also be "lawful". Where the "lawfulness" of detention is in issue, including the question of whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. This primarily requires any arrest or detention to have a legal basis in domestic law, but also relates to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention (see, for example, *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013).

421. The requirement of lawfulness entails that any detention must satisfy certain standards, failing which there would be a violation of Article 5 § 1 of the Convention, the detention being unlawful and/or arbitrary even if it apparently otherwise falls under an Article 5 § 1 (a)-(f) category.

422. In the present case, the Court has to determine whether each of the first and third applicants was detained "lawfully", "in accordance with a "procedure prescribed by law", "for the purpose of bringing him before the competent legal authority" and "after conviction by a competent court". A question arises as to whether each of the applicants' respective detentions can be regarded as "lawful" for the purpose of Article 5 § 1 of the Convention, given that they were ordered by the *de facto* authorities in Abkhazia, an unrecognised entity. The Court has set out the general principles established in its case-law in respect of the lawfulness of acts adopted by the authorities of unrecognised entities in its judgment in the case of *Mozer* (cited above, §§ 136-141).

423. With reference to the above-stated general principles, as established in its case-law, the Court considers that the primary concern must always be for Convention rights to be effectively protected throughout the territory of all Contracting Parties, even if a part of that territory is under the effective control of another Contracting Party. Accordingly, it cannot automatically regard as unlawful, for the limited purposes of the Convention, decisions taken by the law-enforcement authorities and courts of an unrecognised entity purely because of the latter's unlawful nature and the fact that it is not internationally recognised (compare *Mozer*, cited above, § 142).

424. In line with this rationale the Court finds it already established in its case-law that the decisions taken by the courts of unrecognised entities – including decisions taken by their criminal courts – may be considered "lawful" for the purposes of the Convention, provided that they fulfil certain conditions (see *Ilaşcu and Others*, cited above, § 460). This does not in any way imply any recognition of that entity's ambitions for independence (see *mutatis mutandis*, *Cyprus v. Turkey*, cited above, § 92).

425. Turning to the present applications, the Court observes that none of the parties has provided information to it about the specific provisions of domestic law that served as the legal basis for the arrest and detention by the *de facto* Abkhaz authorities of the first and third applicants. Nonetheless, assuming that the acts of the *de facto* Abkhaz authorities and courts were in compliance with the local laws in force within Abkhaz territory at the time of the facts complained of, those acts had in principle to be regarded as having a legal basis in domestic law for the purposes of the Convention. That said, no information has been submitted to the Court to enable it to determine whether the legal provisions applied to the applicants were compatible with the requirements under Article 5 of the Convention. The Court furthermore notes the scarcity of official sources of information concerning the legal and court system in Abkhazia – a fact that makes it difficult to obtain a clear picture of the applicable laws. Consequently, the Court is not in a position to verify whether the *de facto* Abkhaz authorities and courts, and the practices that they follow, fulfil the requirements mentioned above.

426. There is also no basis for assuming that there is a system reflecting a judicial tradition compatible with the Convention in the region, similar to the one in the rest of the Georgia (compare and contrast the situation in Northern Cyprus, referred to in *Cyprus v. Turkey*, cited above, §§ 231 and 237). The division between the Georgian and *de facto* Abkhaz judicial systems took place in the early 1990s – well before Georgia joined the Council of Europe in 1999. Moreover, Georgia became a Council of Europe member State after the Parliamentary Assembly found that Georgia had made significant progress in creating a pluralist society based on respect for human rights and the rule of law and which was able and willing, in the sense of Article 4 of the Council of Europe's Statute, to continue the democratic reforms in progress in order to bring all the country's legislation and practice into line with the principles and standards of the Council of Europe (see Opinion No. 209 (1999) of the Parliamentary Assembly of the Council of Europe on the application by Georgia for membership in the Council of Europe). In that context, Georgia undertook a number of concrete commitments the implementation of which has been subject of continued monitoring by the Assembly's committee on the honouring of the obligations and commitments by member states. No such analysis or monitoring was made of the *de facto* Abkhaz legal system, which was thus never part of a system reflecting a judicial tradition considered compatible with Convention principles before the split into separate judicial systems occurred in the early 1990s (see *Mozer*, cited above, § 148).

427. The foregoing considerations are sufficient to enable the Court to conclude that the *de facto* authorities and courts could not order the applicants' "lawful arrest or detention" within the meaning of Article 5 § 1(c) and 5 § 1(a) of the Convention. Accordingly, both applicants' arrest and detention were unlawful for the purposes of that provision.

428. There has accordingly been a violation of Article 5 § 1(a) and (c) of the Convention.

3. Responsibility of the respondent States

429. The Court considers that there is no material difference in the nature of each respondent State's responsibility under the Convention in respect of the various complaints made in the present case (compare with *Mozer*, cited above, § 183). Furthermore, the Court finds that the situation in respect of the legal and judicial system in Abkhazia, as described in paragraph 426 above, cannot be attributed to Georgia. Accordingly, for the reasons given in respect of the complaint under Article 3 of the Convention (see paragraphs 399 to 409 above), the Court finds that there has been no violation of Article 5 § 1 (a) and (c) of the Convention by Georgia. On the other hand, for the reasons given in paragraph 411 above, the Court finds that there has been a violation of Article 5 § 1 (a) and (c) of the Convention by the Russian Federation.

VI. ALLEGED VIOLATIONS OF ARTICLE 5 §§ 3 AND 4 OF THE CONVENTION

430. The applicants complained that by failing to bring them before a judge or other officer authorised by law to exercise judicial power and by not having been entitled to a trial within a reasonable time or to release within a reasonable time, their rights under Article 5 § 3 had been breached by both Georgia and Russia. They furthermore complained that because they had been denied the possibility of initiating proceedings by which the lawfulness of their detention could be decided speedily by the relevant court, their rights under Article 5 § 4 had also been breached.

431. Article 5 §§ 3 and 4 of the Convention reads as follows:

> "3. 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."

> "4. 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."

432. The Georgian Government did not make any specific submissions in respect of this complaint.

433. The Russian Government did not make any submissions on this point.

434. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible. However, in view of the reasons for finding that the applicants' detention was unlawful (see paragraphs 425 to 427 above), the Court considers that it is unnecessary to examine separately the complaints under Article 5 §§ 3 and 4.

VII. ALLEGED VIOLATIONS OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

A. Submissions by the parties

435. The applicants complained of a failure to provide them with a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in breach of Article 6 § 1. They furthermore complained under Article 6 § 3 (c) of a failure to allow them to defend themselves or to secure access to legal assistance of their own choosing. The relevant parts of Article 6 of the Convention read as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

> 3. Everyone charged with a criminal offence has the following minimum rights:

...

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

436. The Georgian Government did not make any specific submissions in respect of this complaint. The Russian Government stated that the first applicant had not provided any evidence in connection with his complaint that the trial against him had been held behind closed doors. There had been no such information in the judgment convicting him.

B. The Court's assessment

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

438. In so far as the applicants complained of a violation of Article 6 § 3 (c) of the Convention, the Court notes that the requirements of these provisions are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 of the Convention. The Court will therefore examine the applicant's complaints under these provisions taken together (see, among many other authorities, *Kornev and Karpenko v. Ukraine*, no. 17444/04, § 63, 21 October 2010).

439. The Court reiterates that in certain circumstances, a court belonging to the judicial system of an entity not recognised under international law may be regarded as a "tribunal established by law", provided that it forms part of a judicial system operating on a "constitutional and legal basis" reflecting a judicial tradition compatible with the Convention, in order to enable individuals to enjoy the Convention guarantees (see *Ilaşcu and Others*, cited above, § 460).

440. With reference to the analysis in paragraphs 425 to 427 above, the Court considers that the *de facto* Abkhaz courts could not qualify as a "tribunal established by law" for the purposes of Article 6 § 1 of the Convention (compare, among many cases, *Vardanean v. the Republic of Moldova and Russia*, no. 22200/10, § 39, 30 May 2017, and *Apcov v. the Republic of Moldova and Russia*, no. 13463/07, § 57, 30 May 2017; also contrast *Protopapa v. Turkey*, no. 16084/90, § 84, 24 February 2009). The Court therefore finds that there has been a breach of Article 6 § 1 of the Convention taken together with Article 6 § 3 (c) of the Convention. Specifically, it finds that the first and third applicants did not benefit form a fair hearing by an independent and impartial tribunal established by law. In addition, with reference to the information before it (see paragraphs 40, 45, 49, 57, 87, 99, 224, 233, 234 and 348 above), the Court finds that it cannot be said that the applicants were given a real opportunity to organise their

defence and effectively benefit from the assistance of a lawyer throughout the whole proceedings, as required under Article 6 § 3 (c) of the Convention (see, on this last point *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 255, 13 September 2016).

C. Responsibility of the respondent States

441. As stated in paragraph 429 above, the Court considers that there is no material difference in the nature of each respondent State's responsibility under the Convention in respect of the various complaints made in the present case. Furthermore, the Court reiterates its findings in paragraph 429 above that the situation in respect of the legal and judicial system in Abkhazia, as described in paragraph 426 above, cannot be attributed to Georgia. Accordingly, for the reasons given in respect of the complaint under Article 3 of the Convention (see paragraphs 399 to 409 above), the Court finds that there has been no violation of Article 6 § 1 and Article 6 § 3 (c) of the Convention by Georgia. For the reasons given in paragraph 411 above, the Court finds that there has been a violation of Article 6 § 1 and Article 6 § 3 (c) of the Convention by the Russian Federation.

VIII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

442. The applicants furthermore complained that they had suffered a breach of Article 2 of Protocol No. 7 to the Convention as a result of a failure to ensure their right to have their conviction and sentences reviewed by a higher tribunal. They also complained of a breach of Article 13 of the Convention. The third applicant complained that his right to respect for his private and family life under Article 8 of the Convention had been breached.

443. The Court notes that these complaints are linked to the ones examined above and must therefore likewise be declared admissible. Nevertheless, having regard to its findings above, the Court considers that it is not necessary to examine them separately. The Court further finds that it is not necessary in this case to examine the Russian Government's objection in respect of Article 8 as regards the third applicant.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

444. 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."

445. The Court notes that it has found Russia responsible for the violations of the Convention in the present case. Accordingly, it will examine the applicants' claims for just satisfaction relating to Russia. To the extent

that it has not found a breach of any Convention provision by Georgia, it will not examine the just satisfaction claims in respect of Georgia.

A. Damage

446. The first and third applicants did not claim any pecuniary damages. In the light of the gravity of their cases, their extreme vulnerability, the egregious treatment they had been subjected to and the duration of the violations of their Convention rights, the first applicant claimed a total of 250,000 euros (EUR) and the third applicant a total of EUR 180,000 in respect of non-pecuniary damage. The applicants submitted that if the Court were to find that the applicants' cases against one Government were inadmissible, they claimed the full amounts for non-pecuniary damages indicated above against the other Government.

447. The Russian Government submitted that the claims for non-pecuniary damages of the first and third applicants were excessive and that no compensation was due to them since their rights had not been violated.

448. Having regard to the violations found above and their gravity, the Court considers that the first and third applicants undeniably suffered non-pecuniary damage, which cannot be made good by the mere finding of a violation. Consequently, regard being had to the seriousness of the violations of the Convention of which the applicants were victims, and ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards the first and third applicants each EUR 35,000 for non-pecuniary damage, plus any tax that may be chargeable on that amount (see *El-Masri*, cited above, § 270, and *Gutsanovi v. Bulgaria*, no. 34529/10, § 240, ECHR 2013 (extracts)), to be paid by the Russian Federation.

B. Costs and expenses

449. The first applicant claimed EUR 29,250 in costs and expenses incurred in Georgia, which comprised: EUR 27,250 for the legal fees incurred jointly by Mr P. Beria, Ms N. Katsitadze, Mr V. Vakhtangidze and Mr G. Mitrtskhulava before the Court for the period between 2004 and 2017, at an hourly rate of EUR 50; EUR 1,800 for translation costs of the application and enclosed documents; and, EUR 200 in postal costs. He claimed EUR 19,000 of above amount from the Government of the Russian Federation.

450. The third applicant claimed EUR 8,460 in costs and expenses incurred in Georgia, which comprised: EUR 7,100 for the legal fees incurred jointly by Mr P. Beria, Ms N. Katsitadze and Mr G. Mitrtskhulava before the Court for the period between 2004 and 2017; EUR 1,360 for translation costs of the application and other relevant documents. He claimed EUR 6,000 of the above amount from the Government of the Russian Federation.

451. The first and third applicants claimed the following amounts with respect to the cost and expenses incurred in London: 22,387.50 British pounds (GBP) for the joint legal fees of Mr Philip Leach and Mr Jarlath Clifford from EHRAC, at an hourly rate of GBP 150; GBP 553.94 for administrative costs; GBP 296.45, EUR 8.24 and 468 United States dollars for translation costs. In addition, the applicants claimed GBP 6,300 incurred in the proceedings before the Court, as legal fees at an hourly rate of GBP 150, for the preparation by Mr Jarlath Clifford of the submission against Russia only and GBP 60 for administrative costs in the London office.

452. The Russian Government stated that the applicants had failed to provide a copy of the contract for legal fees with Jarlath Clifford and could therefore not claim that the expenses of GBP 6,300 in that respect had actually been incurred. Furthermore, the applicants' claims for costs and expenses for legal services had to be rejected. No evidence had been presented in respect of the claim for GBP 60 for translation in the London office. If the Court were to award a sum for costs and expenses, it had to be reasonable and in accordance with its case-law.

453. According to the Court's settled 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 (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 130, 5 July 2016). A representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see *Luedicke, Belkacem and Koç v. Germany* (Article 50), 10 March 1980, § 15, Series A no. 36, and *Airey v. Ireland* (Article 50), 6 February 1981, § 13, Series A no. 41). Accordingly, the fees of a representative who has acted free of charge are not actually incurred (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 221, Series A no. 324). The opposite is the case with respect to the fees of a representative who, without waiving them, has simply taken no steps to pursue their payment or has deferred it (see *X v. the United Kingdom* (Article 50), 18 October 1982, § 24, Series A no. 55, and *Pakelli v. Germany*, 25 April 1983, § 47, Series A no. 64). The fees payable to a representative under a conditional fee agreement are actually incurred only if that agreement is enforceable in the respective jurisdiction (see *Dudgeon v. the United Kingdom* (Article 50), 24 February 1983, § 22, Series A no. 59; *Pshenichnyy v. Russia*, no. 30422/03, § 38, 14 February 2008; *Saghatelyan v. Armenia*, no. 7984/06, § 62, 20 October 2015, and *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, § 89, 21 April 2016).

454. In the present case, the Court notes that the first and third applicants submitted conditional fee agreements with their Georgian representatives only. As to their British representatives, the applicants submitted time-sheets, entitled "professional fees", detailing the number of hours spent by Mr Jarlath Clifford and Mr Philip Leach on the case. No contractual agreement, however, was submitted between the applicants and their British

representatives. The above-mentioned time-sheets made no reference to payment arrangements between them and the applicants. In view of the above, the Court finds that the documents submitted by the applicants only show that they are under a legal obligation to pay the fees charged by their Georgian representatives, in respect of Russia. In the absence of such documents in respect of the fees claimed by the applicants' British representatives, the Court is not in a position to assess the points mentioned in the paragraph immediately above. It therefore finds no basis on which to accept that the costs and expenses claimed by the applicants in respect of their British representatives have actually been incurred by them.

455. Regard being had to the documents in its possession and the above criteria, and in view of the legal aid granted by the Court to the applicants, the Court considers it reasonable to award jointly to the applicants the sum of EUR 23,300 covering costs under all heads, to be paid by the Russian Federation.

C. Default interest

456. 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. *Holds* that it has jurisdiction to deal with the applicants' complaints in so far as they relate to facts that took place before 16 September 2022;

2. *Decides* to join the applications;

3. *Joins* the Russian Government's objection to the admissibility of the third applicant's complaint under Article 8 to the merits of that complaint;

4. *Declares* the complaints of the first and third applicants under Article 3, Article 5 §§ 1(a)(c), 3 and 4, Article 6 §§ 1 and 3(c), Article 13 and Article 2 of Protocol No. 7 to the Convention, and the complaint of the third applicant under Article 8, admissible, and the remainder of the application inadmissible;

5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first and third applicants by the Russian Federation and no violation by Georgia;

6. *Holds* that there has been a violation of Article 5 § 1(a)(c) of the Convention in respect of the first and third applicants by the Russian Federation and no violation by Georgia;

7. *Holds* that there has been a violation of Article 6 §§ 1 and 3(c) in respect of the first and third applicants by the Russian Federation and no violation by Georgia;

8. *Holds* that there is no need to examine the remaining complaints and that it is not necessary to examine the Russian Government's objection in respect of Article 8 as regards the third applicant;

9. *Holds*,
   (a) that the Russian Federation 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:
      (i) EUR 35,000 (thirty-five thousand euros) to each of the first and third applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 23,300 (twenty-three thousand, three hundred euros) jointly to the first and third applicants, plus any tax that may be chargeable to the applicants, in respect of costs and expenses incurred by their Georgian representatives;
   (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;

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

Done in English, and notified in writing on 7 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President