



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

SECOND SECTION

CASE OF MATKAVA AND OTHERS v. RUSSIA

(Application no. 3963/18)

JUDGMENT

Art 1 • Jurisdiction of States • Killing of applicants' relative by a border guard of the *de facto* Abkhaz authorities on Georgian-controlled territory • Applicant's relative at the time of his death fell within the jurisdiction of Russia according to a combination between "spatial" and "personal" concepts of jurisdiction

Art 2 (substantive and procedural) • Life • Unlawful use of lethal force, which was excessive and not strictly necessary under the circumstances, attributable to the Respondent State • No effective investigation

Art 38 • Non-compliance with State obligation to furnish all necessary facilities

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 December 2023

FINAL

19/03/2024

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

In the case of Matkava and Others v. Russia,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Pauliine Koskelo,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenç,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 3963/18) against 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 four Georgian nationals, as indicated in the attached table (“the applicants”), on 11 January 2018;

the decision to give notice of the application to the Russian Government (“the Government”);

the decision of the President of the Section to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);

the third-party comments received from the Georgian Government, who exercised their right to intervene (Article 36 § 1 of the Convention and Rule 61 § 2).

Having deliberated in private on 28 November 2023,

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

INTRODUCTION

1. The case concerns the applicants’ complaints that their close relative, who was respectively their son, husband and father, had been killed by a border guard of the *de facto* Abkhaz authorities and that there had been no effective investigation into the killing. The applicants complain of a violation of Article 2 of the Convention.

THE FACTS

2. The applicants, who are the mother, wife and two minor children of Giga Otkhozoria (deceased), were born between 1956 and 2008 and live in Zugdidi. The applicants were represented initially by Mr G. Tabatadze, Ms N. Jomarjidze, Ms T. Dekanosidze and Ms T. Abazadze from the Georgian Young Lawyers Association, as well as by Mr P. Leach,

Ms J. Sawyer, Ms K. Levine, Ms J. Evans and Ms J. Gavron from the European Human Rights Advocacy Centre in the United Kingdom, and later by Ms M. Chikadze and Ms T. Oniani from the Georgian Young Lawyers Association.

3. The Government were represented by their Agent, Mr M. Galperin, Representative of Russia to the European Court of Human Rights.

4. The facts of the case, as submitted by the applicants, and not disputed by the respondent Government, may be summarised as follows.

I. BACKGROUND

5. Joint military units of the Russian Federation and the *de facto* Republic of Abkhazia (hereafter also referred to as “Abkhazia”, “the Republic of Abkhazia” or “Abkhaz territory”) were stationed at the relevant time as “border guards” near the bridge on the River Khaia, which separates the village of Khurcha, Zugdidi District, Georgia from the village of Nabakevi, Gali District, *de facto* Republic of Abkhazia. It had been reported that the populations on both the Abkhaz and the Georgian sides of the administrative boundary line (“ABL”) had limited freedom of movement. According to the State Security Service of Georgia (“the SSSG”), 190 cases of individuals being detained had been reported in the course of 2016 across the ABL with Abkhazia. While as a rule those apprehended were released after being detained for a short period of time and paying a “fine”, some detainees had been reportedly ill-treated.

6. Following the armed conflict that occurred between Georgia and the Russian Federation in August 2008, the Geneva International Discussions were launched in October 2008 in Geneva, Switzerland, in an effort to address the consequences of the conflict. In February 2009 the Incident Prevention and Response Mechanism (“the IPRM”) was created; its primary objective has been to discuss daily incidents on or near the ABL, address security concerns, and ensure the protection of human rights in the occupied territories. The IPRM comprises representatives of Georgia, Russia, the *de facto* Republic of Abkhazia and the European Union Monitoring Mission in Georgia. Following a four-year break in its activities, the IPRM resumed its meetings in late May 2016.

II. THE KILLING OF GIGA OTKHOZORIA

7. On 19 May 2016 at around 2.15 p.m. Giga Otkhozoria travelled with his acquaintances, L.A. and R.K., by car from Zugdidi, Georgia to a point on the ABL located in the area of Samegrelo-Zemo Svaneti, Georgia and the *de facto* Republic of Abkhazia. The three of them had wished to take food for a funeral to the village of Nabakevi, which is located in Gali District, Abkhazia.

8. When Giga Otkhзорia, L.A. and R.K. arrived at the ABL, Giga got out of the car and walked towards Abkhaz territory across the bridge on the River Khaia in order to seek assistance from the “border guards” in moving the food across the bridge. The guards in question wore military uniforms (unmarked camouflage). Several of the guards – including their head, R.K.-O. – started a conversation with Giga Otkhзорia, which quickly grew into an argument. In order to avoid further escalation of the verbal conflict, Giga headed back to his vehicle, accompanied by his travel companions L.A. and R.K. Four guards (R.K.-O., A.K., B.K. and A.T.) ran after Mr Otkhзорia and caught up with him on Georgia-controlled territory – specifically, at the village of Khurcha, Zugdidi District. Then R.K.-O. shot Giga Otkhзорia with a firearm in his upper thigh, the front of his abdomen and his chest. As a result of these injuries, Mr Otkhзорia fell to the ground, following which R.K.-O. fired another shot directly into his head. The four guards then ran back into Abkhaz territory.

9. Georgian police officers drove Giga Otkhзорia to the hospital in Zugdidi immediately after the shooting; however, Giga Otkhзорia died on the way to the hospital. According to the medical report drawn up in respect of his death, the cause of death was the gunshot wound to his head, which had damaged brain matter and inflicted multiple fractures of the face, cranial roof and skull base bones.

III. INVESTIGATION INTO THE KILLING

A. Investigation by the Georgian authorities

10. The Prosecutor’s Office of Georgia opened an investigation into the killing of Giga Otkhзорia on the same day that it happened. The Office charged R.K.-O. *in absentia* with murder, and with the illegal purchase, storage and carrying of firearms. R.K.-O. was declared a wanted person.

11. Within the context of the investigation, a forensic medical report was drawn up following a forensic medical examination. It recorded no traces of drugs or alcohol in the victim’s blood. It also confirmed the wounds, their size and shape, how they were inflicted, as well as the damage to the victim’s body. Other steps carried out, as reported on the official prosecution service website on 10 March 2017, included: the collection of physical evidence from the scene; the carrying out of a complex trace evidence examination, biological and chemical analyses, and a complex ballistic analysis; the collection of eyewitness evidence; the seizing and transcribing of a video tape, in respect of which a habitoscopy (portrait) examination was conducted.

12. On 27 May, 6 July 2016 and 24 January 2017, respectively, the Georgian authorities allowed the Abkhaz and Russian IPRM representatives access to various items contained in the case file compiled during the investigation into Giga Otkhзорia’s killing (including a video recording of

the incident and forensic reports). The Georgian authorities also requested that R.K.-O. be arrested and handed over to them – to no avail.

13. On 3 October 2016 the Georgian Young Lawyers Association (hereafter “the GYLA”) approached the SSSG on behalf of the applicants, enquiring about the progress of the investigation. On 19 October 2016 the SSSG replied that the Georgian IPRM representatives had requested R.K.-O.’s arrest and handover; the *de facto* Abkhaz authorities had replied that Abkhaz legislation did not allow the handover of a “citizen of Abkhazia” to another country.

14. On 26 December 2016 the Zugdidi District Court in Georgia found R.K.-O. guilty of the charges against him – the unlawful carrying of a firearm and ammunition, the unlawful acquisition and storage of a firearm and ammunition, and premeditated murder – and sentenced him *in absentia* to twelve years’ imprisonment. The court delivered its judgment after a public hearing held in the absence of the defendant (R.K.-O.) and with the participation of a prosecutor and a court-appointed lawyer representing the defendant. That court relied on (i) thirty-six witness statements, of which fourteen were given by eyewitnesses (including the two individuals, L.A. and R.K., who had accompanied Giga Otkhozoria in the car as far as the bridge) who had described in open court the circumstances in which the victim had been shot by R.K.-O.; (ii) experts’ witness statements given during the hearing regarding the injuries and the causal link between the injuries and death; and (iii) reports produced by five experts. The said reports concerned the bullets retrieved from the victim’s body, his clothes, the crime scene and the establishment of the cause of death. The eyewitnesses, who were local villagers, explained that they knew R.K.-O., as he had been stationed along the ABL for some time and had crossed into Zugdidi on various occasions. Some stated that his name was easy to remember, as it was unusual.

15. In January 2017 the Prosecutor’s Office of Georgia lodged an appeal with the Kutaisi Court of Appeal, seeking a longer sentence. The appellate court held a public hearing with the participation of the prosecution and the court-appointed lawyer for the defence, who requested that the prosecutor’s appeal be rejected. The appellate court allowed the appeal on 7 March 2017 and increased R.K.-O.’s sentence to fourteen years in prison. It upheld the remainder of the lower court’s judgment. The decision indicated that it was subject to appeal by R.K.-O for one month from the moment either of his arrest or of his voluntary surrender to the Georgian authorities. The decision has not been challenged before the Supreme Court of Georgia; nor has it been enforced, as the perpetrator has not been handed over to the Georgian authorities.

16. At the request of the Georgian authorities, on 18 March 2017 Interpol issued a Red Notice against R.K.-O. The notice has remained not acted upon.

17. In June 2017, articles published in some Georgian and Russian media outlets reported that the investigation opened into Giga Otkhozoria’s murder

in *de facto* Abkhazia had been terminated. Specifically, the Russian State-owned news agency *Sputnik* reported on 1 June 2017 that the Abkhaz authorities had terminated their investigation into the killing, having returned the material provided to them by the Georgian authorities because it had been of no use; an article in the Georgian media of 2 June 2017 reported that the Georgian authorities had provided comprehensive material regarding Giga Otkhзорia's murder, including photographic, video and other evidence to the authorities in Sokhumi, as well as to the international organisations participating in the IPRM meetings in Gali.

18. On 27 June 2017 the GYLA, as a representative of the applicants, asked the SSSG whether the Georgian authorities had requested the arrest and handover of the perpetrator of Giga Otkhзорia's murder, and also enquired about the status of the investigation in *de facto* Abkhazia. On 11 July 2017 the SSSG replied that the *de facto* Abkhaz authorities had terminated the investigation into the murder of the applicants' relative.

B. Investigation by the *de facto* Abkhaz authorities

19. On 20 May 2016 the *de facto* Abkhaz authorities opened an investigation into the killing of the applicants' relative, and R.K.-O. was charged with his murder. On 22 June 2016 the *de facto* Military Court of Abkhazia authorised R.K.-O.'s placement under house arrest. He was also suspended from his post with the *de facto* State Security Service of Abkhazia. On an unspecified date the *de facto* Military Prosecutor of Abkhazia interrogated L.A. and R.K. (see paragraph 8 above), as well as the sister of the first applicant, as witnesses in respect of Giga Otkhзорia's murder.

20. In May and July 2016, the Abkhaz IPRM representatives informed the other parties there that the *de facto* Military Prosecutor of Abkhazia was investigating the murder, that the suspect had been dismissed from his official position as a security officer in the *de facto* State Security Service of Abkhazia, that his service gun had been taken from him, and that he had been placed under house arrest. In August 2016 representatives of the *de facto* Abkhaz authorities to the IPRM provided an update on the progress of the investigation.

21. On 27 January 2017 the GYLA wrote to the *de facto* Military Prosecutor of Abkhazia and, specifying that it (that is, the GYLA) represented the mother and widow of Giga Otkhзорia, informed the *de facto* Military Prosecutor of Abkhazia's Office that the Georgian authorities had conducted an investigation into the killing and that the first-instance court had found R.K.-O. guilty of murder, and had sentenced him to twelve years in prison. The GYLA then asked a number of questions related to the progress of the investigation in Abkhazia. No reply to that enquiry has been received.

22. On 21 April 2017 the *de facto* Military Prosecutor of Abkhazia terminated the investigation into the murder for lack of sufficient evidence.

The Office specified in a statement to local media on 1 June 2017 that they had repeatedly asked the Georgian authorities to hand over all evidence collected by them – including video footage and medical expert reports. However, the only thing that the Georgian authorities had done was to send to them some documents in the Georgian language, without a stamp or a signature, and the Abkhaz authorities had returned those as not being useful for the investigation. R.K.-O. was released from house arrest on the same date that the investigation was terminated.

23. The Delegation of the European Union to Georgia issued a press release on 12 June 2017 deploring the decision of the *de facto* Abkhaz authorities to drop charges against the suspect in Giga Otkhozoria's killing. Specifically, their statement read that "after one full year of intensive work and the handover of investigation materials at the IPRM meetings, this failure to bring justice was a great disappointment."

24. The applicants have not been granted victim status; nor were they informed directly by the Abkhaz authorities of the termination of the investigation.

25. On 15 August 2017 the GYLA, representing late Giga Otkhozoria's mother and wife, wrote to the *de facto* Military Prosecutor of Abkhazia, enquiring into the reasons for which the investigation into the murder of the applicants' relative had been terminated in Abkhazia (see paragraph 18 above). The letter also asked whether the evidence provided by the Georgian authorities to the *de facto* Abkhaz authorities – which was gathered during the investigation conducted in Georgia into the killing – had been taken into account. Their enquiry has thus far gone unanswered.

C. Investigation by the Russian authorities

26. No Russian State authority has opened an investigation into Giga Otkhozoria's killing.

27. In January and in March 2017 the GYLA wrote on behalf of the applicants to the Office of the Prosecutor General of the Russian Federation, asking about progress in the investigation being conducted in *de facto* Abkhazia. The GYLA also urged the Office of the Prosecutor General of the Russian Federation to cooperate with the *de facto* Abkhaz authorities within the context of the investigation and, if the *de facto* Abkhaz authorities had not conducted an effective investigation, to do so itself without delay.

28. The Office of the Prosecutor General of the Russian Federation replied on 21 March 2017 that Abkhazia was a sovereign State. It also stated that the jurisdiction of the Office of the Prosecutor General of the Russian Federation did not extend to that territory and indicated that the applicants should address all questions related to the investigation to the relevant Abkhaz authorities.

29. On 28 June 2017 the GYLA wrote to the Investigative Committee of the Russian Federation requesting confirmation of the status of the investigation in *de facto* Abkhazia. On 11 July 2017 that Committee replied that it had forwarded the enquiry to the Office of the Prosecutor General of the Russian Federation. On 25 July 2017 the Office of the Prosecutor General of the Russian Federation, in a letter replying to the enquiry of 28 June 2017, reiterated its comments made in its reply of 21 March 2017.

RELEVANT LEGAL FRAMEWORK

30. The applicants submitted the following information, which has not been disputed by the Russian Government, in respect of the relevant laws in Georgia, *de facto* Abkhazia and Russia.

I. GEORGIAN LAW

31. According to Article 1 of the Constitution of Georgia:

“Georgia is an independent, unified and indivisible State, as confirmed by the referendum of 31 March 1991 held throughout the territory of the country, including the Autonomous Soviet Socialist Republic of Abkhazia and the Former Autonomous Region of South Ossetia, and by the Act of Restoration of the State Independence of Georgia of 9 April 1991”.

32. Article 7 of the Constitution stipulates that criminal law and powers of investigation lie within the exclusive authority of Georgian State authorities. Only the Parliament of Georgia has authority to adopt laws such as the Criminal Code of Georgia and the Criminal Procedural Code (“the CPC”) of Georgia.

33. Under Article 4 § 1 of the Criminal Code of Georgia, a person who has committed a crime on the territory of Georgia shall be held criminally liable under this Code. Article 2 § 4 of the CPC establishes a similar principle – namely that, regardless of the place of the commission of the offence, criminal proceedings are to be conducted on the territory of Georgia, in accordance with Georgian legislation.

34. The Law on occupied territories, adopted by Georgia in late 2008, defined the status of Abkhazia and established a special legal regime that would be applicable there. Its section 7(1) provides that:

“The occupied territories are an integral part of Georgia, to which the legislation of Georgia shall apply. Responsibility for a violation of the universally recognised human rights defined by the Constitution of Georgia in the occupied territories shall be laid on the Russian Federation, under the principles of international law.”

35. Article 189 § 1 of the CPC deals with hearings in the absence of the accused. Specifically:

“1. Proceedings may be held without the participation of an accused if the latter avoids appearing before the trial court. In such a case, it shall be mandatory that a defence lawyer of the accused participate in the proceedings.”

36. Article 45 of the CPC provides for mandatory defence, *inter alia*, in cases where the accused fails to appear before law enforcement bodies. Under Article 46 of the CPC, the State covers the costs of defence, if the CPC provides for mandatory defence and no defence lawyer hired by the accused takes part in the criminal case.

37. Under Article 292 of the CPC, a convicted person who has been sentenced *in absentia* may appeal the judgment within one month: of being detained; of appearing before the relevant authorities; or from the announcement of the judgment by the court of first instance, if a convicted person requests the review of the appeal without his/her participation.

II. LAW OF THE *DE FACTO* REPUBLIC OF ABKHAZIA

38. Article 1 of the *de facto* Constitution of *de facto* Abkhazia declares the Republic of Abkhazia to be a sovereign democratic State. Under its Articles 36 and 47 § 5, legislative authority shall be exercised by the Parliament of the Republic of Abkhazia, which has the exclusive authority to enact a criminal code and a criminal procedural code. Article 75 of the *de facto* Constitution stipulates that the Prosecutor General of the Republic of Abkhazia and the local prosecutors subordinate to him must supervise the legality of criminal investigations.

39. The Criminal Code of the *de facto* Republic of Abkhazia provides, *inter alia*, for the protection of the rights and freedoms of individuals, as well as the protection of property, public order and public safety, the environment, the constitutional system, and the ensuring of peace and the prevention of crime.

40. Under Article 4 of the Criminal Code of the *de facto* Republic of Abkhazia:

“... persons who have committed crimes are equal before the law and subject to criminal liability, irrespective of their sex, race, nationality, language, origin, property and official status, place of residence, religious and other beliefs, membership of public associations or other circumstances”.

41. Article 99 § 1 of the Criminal Code of the *de facto* Republic of Abkhazia stipulates that murder is the intentional causing of death to another person and that it is punishable by deprivation of liberty for a term of six to twelve years. Murder committed by reason of national, racial or religious hatred or because of a blood feud is punishable by deprivation of liberty for a term of eight to fifteen years, life imprisonment, or the death penalty.

42. Under the Criminal Procedure Code of the *de facto* Republic of Abkhazia, proceedings in respect of a criminal case conducted on the territory of Abkhazia, regardless of the place of the commission of the crime, are to be

conducted in conformity with this Code, unless otherwise stipulated by an international treaty to which the Republic of Abkhazia is party. Prosecution on behalf of the State in criminal cases is carried out by a prosecutor, an investigator and an inquirer. Where there is a suspicion of a crime having been committed, the prosecutor or the other law-enforcement officials shall take measures aimed at establishing the facts and identifying the person(s) responsible.

43. Under Article 24 of the Criminal Procedure Code of the *de facto* Republic of Abkhazia, criminal proceedings shall be terminated in the event of: the absence of a crime; the expiration of the statutory limitation period for prosecution; the death of the suspect or accused; the absence of a related complaint by the victim in cases of private prosecution; or the absence of a court statement as to whether the elements of a crime had been present. The termination of a criminal case prompts the immediate ending of the criminal prosecution.

44. Under Article 42 of the Criminal Procedure Code of the *de facto* Republic of Abkhazia victims have the right to be recognised as such by a decision of the inquirer, investigator or prosecutor. Victims also have the right to: be informed of the charges brought against the suspect; provide evidence; refuse to testify against themselves, their spouse or other close relatives; have a representative; take part in the investigative measures (with the permission of the investigator or inquirer); make themselves acquainted with the records of the investigative measures and with experts' conclusions; make themselves acquainted with and make copies of all or any of the material used to support the criminal case after the investigation into that case has been completed; receive copies of the decision to open criminal proceedings, to recognise their victim status, or to close the criminal case in question; receive copies of decisions given or sentences imposed by the courts; participate in the judicial proceedings; give evidence for the prosecution; make themselves acquainted with the record of the hearings and submit comments regarding that record; complain of actions undertaken by the investigators, inquirers or prosecutors.

45. Article 421 § 1(1) of the Criminal Procedure Code of the *de facto* Republic of Abkhazia provides that individuals shall not be extradited if the person whose extradition is sought by a foreign State is a citizen of the Republic of Abkhazia.

III. LAW OF THE RUSSIAN FEDERATION

46. Article 105 of the Criminal Code of Russia establishes criminal responsibility for murder. Article 105 § 1 stipulates that the crime of murder consists of the intentional causing of the death of another person, which is punishable by deprivation of liberty for a term of six to fifteen years. Article 21 of the Criminal Procedure Code provides that responsibility for

criminal prosecution on behalf of the State lies with the prosecutor, the investigator and the inquirer, who have to undertake the measures stipulated in the Criminal Procedure Code in order to establish the fact that a crime has taken place and to identify the person, or persons, guilty of committing that crime.

IV. INTERNATIONAL LAW

47. The European Convention on Extradition of 13 December 1957 (“the Extradition Convention”) was ratified by Russia on 10 December 1999 and entered into force on 9 March 2000. This Convention obliges the Contracting Parties to surrender to each other, subject to the provisions and conditions laid down in the Convention, “all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.” A Contracting Party has the right to refuse extradition of its nationals, but section 6(2) provides that where that is the case the requesting Party may ask it to submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate.

THE LAW

I. COMPLIANCE WITH ARTICLE 38 OF THE CONVENTION

48. The Court has on many occasions held that it is of the utmost importance that the Contracting States furnish all necessary facilities to the Court (see, among many others, *Timurtaş v. Turkey*, no. 23531/94, § 66, ECHR 2000-VI). It is inherent in proceedings relating to cases of this nature, where an individual applicant accuses State agents of violating rights under the Convention – his own or someone else’s – that in certain instances only the respondent Government have access to information capable of corroborating or refuting these allegations. A failure on a Government’s part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant’s allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (*ibid.*, §§ 66 and 70).

49. The obligation to furnish the evidence requested by the Court is binding on the respondent Government from the moment that a request has been formulated (see *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 296, 26 April 2011). The Court has previously found that a respondent Government fails to comply with the requirements of Article 38 in cases where they do not provide any explanation for their refusal to submit documents that have been requested (see, for instance, *Maslova and*

Nalbandov v. Russia, no. 839/02, §§ 129-131, 24 January 2008; *Bekirski v. Bulgaria*, no. 71420/01, §§ 115-116, 2 September 2010, and *Tigran Ayrapetyan v. Russia*, no. 75472/01, §§ 64-65, 16 September 2010).

50. Furthermore, it is not required that the Government's alleged interference should have actually restricted, or have had any appreciable impact on, the exercise of the right to individual petition (see, *mutatis mutandis*, *McShane v. the United Kingdom*, no. 43290/98, § 151, 28 May 2002). The procedural obligations of the Contracting Party in question under Article 38 of the Convention must be enforced irrespective of the eventual outcome of the proceedings in question, and in such a manner as to avoid any actual or potential chilling effect on the applicants or their representatives.

51. In the present case the applicants alleged that their relative had been killed by a *de facto* Abkhaz agent and that no proper investigation had taken place. In view of those allegations, at the time the Russian Government were given notice of the application, the Court asked the Government to produce a copy of the entire case file compiled during the investigation into the criminal investigation opened by the *de facto* Abkhaz authorities in respect of the killing of Giga Otkhozoria.

52. The Government did not, in response, provide a copy of the investigation file. Nor did they give any reasons for their failure to do so.

53. Reiterating the importance of a respondent Government's cooperation in Convention proceedings, the Court finds that the respondent State failed to comply with its obligations under Article 38 of the Convention to furnish all necessary facilities to assist the Court in its task of establishing the facts, and the Court will draw appropriate inferences from the Government's failure to produce the documents (see *Carter v. Russia*, § 94; and *Kogan and Others v. Russia*, § 54).

II. PRELIMINARY ISSUES

54. 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).

55. The Court also refers to its decision in the case of *Georgia v. Russia (IV)* ((dec.), no. 39611/18, 20 April 2023), which primarily concerned allegations of administrative practices incompatible with the Convention. In that case the applicant Government asked the Court to consider the case of the murder of Giga Otkhozoria (together with two other individual cases) – not only as an illustration of the administrative practices

alleged, but also as individual violations of the Convention. In its decision in that inter-State case the Court held that it would only examine the allegations of administrative practices made by Georgia and would consider the three individual cases identified by the Georgian Government as constituting alleged illustrations of such practices (see *Georgia v. Russia (IV)*, cited above, § 21). The Court accordingly will examine below the complaints made in the present individual application, which do not form part of the examination by the Court in the said inter-State case.

Principles relating to the admissibility of evidence and the Court's assessment of the facts

56. The Court reiterates that, as master of its own procedure and its own rules, it has complete freedom in assessing not only the admissibility and relevance but also the probative value of each item of evidence before it (see, *inter alia*, *Carter v. Russia*, no. 20914/07, § 97, 21 September 2021). The Court is not bound, under the Convention or under the general principles applicable to international tribunals, by strict rules of evidence, and there are no procedural barriers to the admissibility of evidence in the proceedings before it (*ibid.*, with further references).

57. The Court also reiterates that, in assessing evidence, it adopts 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. 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).

58. The Court’s reliance on evidence obtained as a result of a domestic investigation and on facts established within domestic proceedings will depend on the quality of the domestic investigative process, and the thoroughness and consistency of the proceedings in question (see *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, § 238, ECHR 2011; *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 586, 13 April 2017, and *Carter*, cited above, § 98).

59. In the instant case, the Court observes that the establishment of the impugned facts was based on investigative and judicial proceedings conducted in Georgia (see paragraphs 10-11 and 14-15 above). It notes in particular that the judicial proceedings were adversarial in nature (see Article 9 § 1 of the Georgian Code of Criminal Procedure, and contrast with *Carter*, cited above, § 79) and that the accused was represented by a court-appointed lawyer (in accordance with Article 189 § 1 of the Georgian Code of Criminal Procedure). The proceedings were conducted by professional judges, who are not appointed by the executive authorities

(contrast, in the context of inquiries in the United Kingdom, *Carter*, cited above, § 80) and are fully independent from them (compare *Carter*, cited above, § 101). The procedure followed during the criminal proceedings in Georgia was in strict compliance with the rules provided for in detail in the Georgian Code of Criminal Procedure (contrast *Carter*, cited above, § 81). The judicial proceedings comprised public hearings (compare *Carter*, cited above, § 101) during which numerous witnesses gave statements (compare *Carter*, cited above, § 105). The judges examined all available evidence obtained from a variety of sources, and the judgments finding the defendant guilty specifically referred to that evidence. The judges were precluded from considering the evidence obtained by the *de facto* Abkhaz authorities, since the latter had not shared any material with them but had instead terminated the investigation (see paragraph 22 above). Importantly, the Russian Government did not contend that the proceedings in Georgia or their conclusions were “one-sided” in the absence of the accused (contrast *Carter*, cited above, § 107); they asserted instead that the applicants’ “request to ... extradite the Abkhazian board guard to Georgia are unsubstantiated”. Also, the Georgian authorities duly requested the arrest and handover of the suspect (see paragraph 13 above), who in any event was represented during the judicial proceedings by a court-appointed lawyer (see paragraphs 14-15 above) and, according to the appellate judgment, retains the right to appeal against it should he be apprehended (see paragraph 15 above). While the Court had no access to the actual elements of evidence collected by the Georgian authorities, apart from a copy of a video recording purporting to have captured the killing of the victim, it is satisfied on the basis of the above that the national decision-making process incorporated adequate safeguards to protect the interests of all persons concerned (compare, *mutatis mutandis*, *Carter*, cited above, § 108). As there is no reason to doubt the quality of the investigative process followed by the Georgian authorities, or the independence, fairness and transparency of the judicial proceedings in Georgia, the Court considers that it cannot disregard the findings in those proceedings in respect of the killing of Giga Otkhзорia, despite the lack of participation in the proceedings of the convicted agent of the *de facto* Abkhaz authorities (see paragraphs 14-15 above; also compare, *mutatis mutandis*, *Carter*, cited above, § 110). Accordingly, the Court finds that the judgments delivered in the proceedings in Georgia should be admitted as evidence (*ibid.*).

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

60. The applicants complained that their relative had been killed as a result of unlawful use of force by an agent of the *de facto* Abkhaz authorities and that no effective investigation had been conducted into the killing by

either the *de facto* Abkhaz or Russian authorities. They relied on Article 2 of the Convention, which reads as follows:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Admissibility

1. *The Russian Government’s submissions*

61. The Government stated that they maintained before the Court the position that they had set out within the context of the inter-State case *Georgia v. Russia* (II), no. 38263/08 – namely, that Abkhazia was an independent State and that Russia’s relations with it were based first and foremost on the principles of non-interference and cooperation. They specified that in that inter-State case they had comprehensively explained their position in respect of jurisdiction and the effective control allegedly exerted by Russia over Abkhazia, and they reiterated to the Court the main points that they had made.

62. Specifically, the Russian forces were stationed in Abkhazia with a view to deterring and if necessary repelling any Georgian aggression; they were absolutely not there to exercise police powers over the population or in general – they did not have the time, training or language skills for that. The support that Russia had been providing to Abkhazia had been in its capacity as an intermediary and facilitator in efforts to resolve the ethnic conflict in Georgia, which had flared up even before the Soviet Union had ceased to exist. Abkhazia’s economy had been growing as a result of the State’s own efforts. Russia had not been interfering with Abkhaz policies in the fields of education, border control and domestic or international issues.

63. The Abkhaz government had not been installed by force by Russia; nor was it a “puppet” of the Russian Federation. Indeed, it was the result of the longstanding aspirations and democratic will of its people.

64. Russia did not exercise jurisdiction over the territory of Abkhazia by virtue of any kind of effective control or influence. In any event, even given the support that Russia provided to Abkhazia, it bore no responsibility for the actions of the Abkhaz authorities.

2. *The applicants' submissions*

65. The applicants stated that they had done everything within their power to pursue an effective criminal investigation into their relative's murder and thus exhaust domestic remedies both in *de facto* Abkhazia and in Russia. On no less than five occasions between January and August 2017 they had made enquiries with the *de facto* Abkhaz authorities and the Russian authorities about progress in the investigation, but to no avail (see paragraphs 21, 25, 27 and 29 above). Their access to the *de facto* Abkhaz authorities had remained hindered by the ongoing post-conflict situation and the practical difficulties of bringing and pursuing legal proceedings in *de facto* Abkhazia. They emphasised the absence of a postal service between *de facto* Abkhazia and the rest of Georgia, the closure of checkpoints, the restrictions on crossing the administrative boundary line, and the dire situation in terms of human rights in *de facto* Abkhazia.

66. As they had received no response from the *de facto* Abkhaz authorities to their written enquiry of 15 August 2017 (see paragraph 25 above), there had been no legal basis on which to appeal against any refusal to proceed with the investigation. Within six months of being officially informed by the Georgian authorities that the *de facto* Abkhaz authorities had terminated the investigation into Giga Otkhozoria's murder (see paragraph 18 above), the applicants had lodged their application with the Court.

67. As regards the question of jurisdiction, the applicants submitted that Russia exercised "effective control" or, at least, a "decisive influence" over the territory of Abkhazia and the *de facto* Abkhaz authorities. Further, the murder of Giga Otkhozoria by an Abkhaz border guard in the course of carrying out border-control operations had constituted the exercise of authority and control by *de facto* Abkhaz authorities, for whose conduct Russia was responsible by virtue of the effective control that it exercised over those authorities (as noted above).

68. On the basis of the above-noted considerations, the applicants stated that their complaints were compatible *ratione loci* and *ratione personae* with the Convention.

3. *The third party's comments*

69. The Georgian Government referred to the Court's findings in the case of *Georgia v. Russia (II)*, cited above, and stated that the Grand Chamber of the Court had finally determined that Russia had had effective control over Abkhazia from 12 August 2008 until at least 23 May 2018. It followed that Russia had exercised effective control during the relevant period, and that Russia had been responsible for the violations of the Convention rights in that case. The present application was therefore compatible *ratione personae* with the Convention, and the Georgian Government referred in support of that

assertion to the Court's decision in the case of *Ukraine and the Netherlands v. Russia* (cited above, §§ 565-72).

70. The Russian Government had failed to answer the questions posed by the Court in respect of the admissibility requirements under the Convention. They had made no attempt to enquire of the *de facto* authorities whether an investigation had taken place into Giga Otkhozoria's murder. That blunt denial of responsibility had reflected not only the absence of any effective domestic remedies, but also a "practice of impunity".

71. Furthermore, the failure to conduct a Convention-compliant investigation had amounted to a continuing violation in respect of which the six-month rule did not apply. In any event, the applicants had submitted their application with reasonable expedition – namely within six months of it becoming clear that the investigation by the *de facto* Abkhaz authorities did not constitute an adequate or effective remedy. The Russian Government had shown themselves wholly unwilling to ensure the accountability of the public officials involved in the killing.

4. *The Court's assessment*

(a) *Application of the six-month rule*

72. The Court reiterates that, by contrast with an objection as to the non-exhaustion of domestic remedies (which must be raised by the respondent Government), it cannot set aside the application of the six-month rule solely because the respondent Government have not made a preliminary objection to that effect (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I; *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III, and *Maltabar and Maltabar v. Russia*, no. 6954/02, §§ 80-81, 29 January 2009). Although the Russian Government did not raise an objection concerning the application of the six-month time-limit in their observations on the admissibility of the instant case, there is no estoppel, notwithstanding the requirements of Rule 55 of the Rules of Court, because the six-month rule set out in Article 35 § 1 of the Convention is a public-policy one which the Court can, and indeed must, apply – even of its own motion (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 247, 28 November 2017, with further references).

73. The Court will accordingly examine whether the six-month rule, which was applicable at the relevant time, was complied with in the applicants' case. In particular, it observes that the applicants' relative was murdered on 19 May 2016, that the perpetrator was sentenced *in absentia* by the appellate court in Georgia on 7 March 2017 and that that sentence has not been challenged further, that the Russian authorities have never opened an investigation into the killing, and that on 21 April 2017 the *de facto* Abkhaz authorities terminated the investigation into the killing that they had opened

on 20 May 2016. The applicants lodged their application with the Court on 11 January 2018.

74. As a rule, the six-month period runs from the date of the final decision in the process of exhausting domestic remedies (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 72, 10 January 2012). Where 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 the knowledge of that act or its effect on or prejudice to the applicant (*ibid.*). In cases featuring a continuing situation, the six-month period runs from the cessation of that situation (see, *inter alia*, *Seleznev v. Russia*, no. 15591/03, § 34, 26 June 2008).

75. For the reasons set out below, the Court finds that the application was not lodged out of time.

76. In the first place, the *de facto* Abkhaz authorities opened, on their own initiative, criminal proceedings into the murder of Giga Otkhozoria on the day after the incident (see paragraph 19 above). Thus, they created a related expectation for the applicants that the ensuing investigation would be expeditious and thorough. Furthermore, a sister of one of the applicants and the two acquaintances of the immediate victim who had travelled with him all appear to have been interrogated by the *de facto* Abkhaz authorities in the course of that investigation, as submitted by the applicants and not contested by the respondent Government – see paragraph 19 above, thereby maintaining an expectation for the applicants that the investigation would be effective.

77. Secondly, the applicants did not remain inactive nor did they fail to display due diligence (contrast, *mutatis mutandis*, *Bekoyeva and Others v. Georgia* (dec.), no. 48347/08, 5 October 2021). In particular, they enquired in writing, through their representative, about the progress of the investigation and urged the following authorities to proceed with it at the following times: in January and August 2017 – the *de facto* Military Prosecutor of Abkhazia (see paragraphs 21 and 25 above); in January, March and June 2017 – the Office of the Prosecutor General of the Russian Federation (see paragraphs 27 and 29 above); and in October 2016 and June 2017 – the Georgian authorities (see paragraphs 13 and 18 above), asking the latter whether they had requested the arrest and handover of the perpetrator, and asking them about the status of the investigation in *de facto* Abkhazia.

78. Thirdly, the Georgian authorities completed the investigation that they had opened into the incident and sentenced the perpetrator *in absentia* in March 2017 (see paragraphs 14-15 above). They asked the *de facto* Abkhaz authorities to hand him over (see paragraphs 12-13 above). Such a handover would have allowed the perpetrator's punishment to be effected, which could further explain the fact that the applicants waited for some time for the handover to take place.

79. Lastly, and crucially, the applicants lodged their application with the Court within six months of being informed for the first time on 11 July 2017, by an official source (the Georgian State authorities) in reply to an explicit related enquiry, that the *de facto* Abkhaz authorities had terminated the criminal investigation into their relative's murder. Following this, the applicants became active once it became clear that no effective investigation will be provided (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 262, ECHR 2014 (extracts)). The Court finds that although some media reports announcing the end of the investigation in *de facto* Abkhazia were published before that date (see paragraphs 17, 22 and 23 above), the applicants cannot be reproached for not having turned to the Court immediately thereafter and for having instead waited to receive an official reply.

80. On the basis of all elements examined above, the Court finds that it does not appear unreasonable for the applicants to have waited for about one year for the investigation in *de facto* Abkhazia to yield results, and to have lodged their application with the Court within six months of being officially informed of the end of the proceedings in Abkhazia.

(b) Jurisdiction

81. The Government's position has been summarised in paragraphs 61-64 above.

82. The applicants contended that their relative had, under Article 1 of the Convention, been within the jurisdiction of the Russian Federation at the moment of his death and that Russia had not complied with its investigative duty under Article 2.

83. The Court considers that the question of whether the applicants' case falls within the jurisdiction of the respondent State is closely linked to the merits of their complaints. It therefore joins this preliminary question to the merits.

(c) Conclusion on admissibility

84. The Court considers that the application raises serious questions of fact and law which are of such complexity that their determination should depend on an examination on the merits. It cannot, therefore, be considered manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

B. Merits

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

(a) The parties' positions

85. The applicants argued that their family member fell within Russia's jurisdiction under both the "spatial" and the "personal" concepts developed by the Court in its case-law. Specifically, they claimed that – by virtue of the military, political and economic support that it afforded *de facto* Abkhazia - Russia had jurisdiction over Abkhaz territory and the actions carried out by the *de facto* authorities there; also, under the agent-authority-and-control concept of jurisdiction Russia had jurisdiction over the actions carried out by the *de facto* authorities outside Abkhaz territory.

86. The Government did not submit additional arguments, apart from those summarised in paragraph 61-64 above.

87. The third party's position is summarised in paragraphs 69-71 above.

(b) The Court's assessment

88. 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."

89. As provided by this Article, an engagement undertaken by a Contracting State is confined to "securing" the listed rights and freedoms for persons within its own "jurisdiction" (see, among many others, *Soering v. the United Kingdom*, 7 July 1989, § 86, Series A no. 161). "Jurisdiction" under Article 1 is a threshold criterion. The exercise of jurisdiction is a necessary condition for it to be possible for a Contracting State to be held responsible for acts or omissions imputable to it that give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (*see Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 311, ECHR 2004-VII).

(i) General principles

90. The general principles in respect of jurisdiction 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, §§ 547-75). The essence of those principles is that a State's jurisdictional authority under Article 1 of the Convention is primarily territorial; however, 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) (see *Georgia v. Russia (II)*, cited above, § 115).

91. 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 v. Armenia* ([GC], no. 13216/05, § 168, 16 June 2015) 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.

92. The principles governing the application of the personal concept of jurisdiction have been set out in *Al-Skeini and Others* (cited above, §§ 133-37) and reiterated in *Hassan* (cited above, § 74), *Jaloud v. the Netherlands* ([GC] (no. 47708/08, § 139, ECHR 2014) and, most recently, in *Ukraine and the Netherlands v. Russia*, cited above, §§ 565-72). In all cases of “State agent authority and control”, any jurisdiction established is a personal one over the victim (*ibid.*, § 571). The extent of the State’s obligations under Article 1 of the Convention is to secure to that individual the Convention rights and freedoms that are relevant to his or her situation. In this sense, therefore, the Convention rights can be divided and tailored (see *Al-Skeini and Others*, cited above, § 137, and *Carter*, cited above § 126).

93. 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, *inter alia*, *Georgia v. Russia (II)*, cited above, § 82).

94. 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*, cited above, § 311).

(ii) *Application of the general principles to the instant case*

95. In its judgment in the case of *Georgia v. Russia (II)* ([GC], cited above, §§ 174, 175, 295 and 312) the Court found that, even after October 2008, the strong Russian presence and the Abkhaz authorities’ dependency on the Russian Federation, on whom their survival depended, indicated that

the Russian Federation continued to exercise “effective control” over Abkhazia, and thus had jurisdiction over Abkhaz territory. In its recent decision on admissibility in the case of *Georgia v. Russia (IV)* (cited above, § 44) the Court held that its conclusion in the case of *Georgia v. Russia (II)* (cited above, §§ 162-75 and 299) that there had been continual “effective control” of Russia over Abkhazia at least until 23 May 2018 remained valid, in the absence of any relevant new information to the contrary.

96. Consequently, on the basis of the Court’s conclusions noted in the preceding paragraph, the Court finds in the instant case that Russia had effective control over Abkhazia during the relevant period. Accordingly, its responsibility cannot be confined to the acts of its own soldiers or officials there; that responsibility must also be engaged by virtue of the acts of the local administration, which survived by virtue of Russian military, political and economic support (compare *Cyprus v. Turkey* [GC], no. 25781/94, § 77, ECHR 2001; *Ilaşcu and Others*, cited above, § 382, and *Mozer*, cited above, § 157). In accordance with the Court’s case-law (see, *inter alia*, *Georgia v. Russia (II)*, cited above, § 214), from the time when the Russian Federation exercised “effective control” over the territory of Abkhazia it was also responsible for the actions of the Abkhaz forces in that territory, without it being necessary to provide proof of “detailed control” of each of those actions.

97. Notwithstanding the above, the Court observes that in the instant case the act complained of – the killing of Giga Otkhozoria – took place not on Abkhaz territory but on Georgia-controlled territory (see paragraphs 7-10 above). Therefore, the spatial concept of jurisdiction alone, under which Russia has been found to have jurisdiction over the actions of Abkhaz forces acting in Abkhaz territory (see paragraphs 95-96 above), cannot be relied upon in respect of the act of killing. This is so because the killing was carried out on territory over which Russia exercised no control. It remains therefore to be established whether Russia can be said to have had jurisdiction over the act of killing under the personal concept of jurisdiction (see paragraph 92 above).

98. As noted above, the Court has already held that “a State may be held accountable for violations of the Convention rights and freedoms of persons who are in the territory of another State but who are found to be under the former State’s authority and control through its agents operating – whether lawfully or unlawfully – in the latter State” (see *Issa and Others v. Turkey*, no. 31821/96, § 71, 16 November 2004, and *Öcalan v. Turkey* [GC], no. 46221/99, § 91, ECHR 2005-IV). That approach was followed in a series of cases including *Isaak and Others v. Turkey* ((dec.), no. 44587/98, 28 September 2006), *Pad and Others v. Turkey* ((dec.), no. 60167/00, 28 June 2007), *Andreou v. Turkey* ((dec.), no. 45653/99, 3 June 2008) and *Al-Skeini and Others* (cited above, §§ 133-37); see also as a most recent authority on this particular topic *Carter* (cited above,

§ 123-132). In those cases, control over individuals on account of incursions and the targeting of specific persons by the armed forces or police of the respondent State was sufficient to bring the affected persons “under the authority and/or effective control of the respondent State through its agents” (see *Carter*, cited above, § 127). The Court notes specifically that in *Andreou v. Turkey* ((dec.), cited above), where it found Turkey to have had jurisdiction over the act complained of, notably the wounding of the applicant, the applicant had sustained her injuries while physically standing on Greek-Cypriot territory after being shot at by Turkish or Turkish Cypriot uniformed personnel, who had fired into the crowd while themselves standing on “TRNC” territory.

99. The Court has further held that the principle that a State exercises extraterritorial jurisdiction in cases concerning specific acts involving an element of proximity should apply with equal force in cases of extrajudicial targeted killings by State agents acting in the territory of another Contracting State outside of the context of a military operation (see *Carter*, cited above, § 130). This approach is consistent with the wording of Article 15 § 2 of the Convention, which allows for no derogations from Article 2, except in respect of deaths resulting from lawful acts of war (*ibid.*).

100. In the present case, the circumstances of Giga Otkhozoria’s death are not a matter of speculation or assumptions. Indeed, neither the *de facto* Abkhaz nor the Russian authorities elucidated the facts and identified the perpetrator of the killing, despite the temporary placement in house arrest of a suspect and his suspension from his post in the *de facto* Abkhaz security service forces (see paragraph 20 above). However, the Georgian authorities established, beyond reasonable doubt and following judicial proceedings at the end of two levels of jurisdiction, albeit conducted in the absence of the accused, that the act complained of had been perpetrated by a “border guard” (an agent of the *de facto* Abkhaz authorities) who they identified by name and who they found had shot several bullets into the victim, from close proximity – ultimately causing his death (see paragraphs 10-15 above). Bearing in mind the quality of the domestic investigative process in Georgia and the thoroughness and consistency of the proceedings in question (see paragraphs 11, 12, 14, 15 and 59 above), the Court considers that the identification of the perpetrator of the killing and the indication of his connection with the *de facto* Abkhaz authorities established a strong *prima facie* case that, in killing Giga Otkhozoria, R.K.-O. was acting as a representative of the *de facto* Abkhaz authorities for whom he was on duty when he shot the victim (compare *Carter*, cited above, § 165).

101. Given the foregoing, the Court cannot speculate on the reasons which could be put forward by the respondent State to show that the actions of the perpetrator were not attributable to the *de facto* Abkhaz authorities. The information needed to corroborate such a theory lies wholly, or in large part, within the exclusive knowledge of those *de facto* authorities which,

moreover, asserted exclusive jurisdiction over R.K.-O. by invoking statutory protection against extradition (see paragraph 13 above). In the light of those circumstances, the burden of proof was shifted onto the authorities of the respondent State. Given that the Court has found that Russia exercised jurisdiction over Abkhaz territory and the actions of the *de facto* authorities there, either those *de facto* authorities or the Russian authorities themselves were expected to carry out an effective investigation into that possibility and determine whether R.K.-O. had been on active duty when he killed Giga Otkhзорia (compare *Leonidis v. Greece*, no. 43326/05, § 58, 8 January 2009), which is a factor indicative of State responsibility (see *Carter*, cited above, § 166).

102. As can be seen from the facts of the case, the *de facto* Abkhaz authorities refused to cooperate with the Georgian authorities in respect of the investigation into the death of Giga Otkhзорia and the ensuing judicial proceedings (see paragraphs 13-17 above). Likewise, the Russian Government have not made any serious attempt either to elucidate the facts or to counter the findings arrived at by the Georgian authorities. In fact, they have failed to engage with any fact-finding efforts, whether they were conducted in Georgia or undertaken by the Court. There is no evidence that, despite their having full access to R.K.-O. following his immediate return to Abkhaz territory after the killing, the Russian authorities undertook any verification of the facts established by the Georgian authorities – facts which, as the Court has found above, demonstrated R.K.-O.’s responsibility for the killing of Giga Otkhзорia (see paragraph 59 above). Significantly, as it transpires from the case file, the Russian authorities failed to carry out an investigation themselves (see paragraph 26 above).

103. Consequently, the Court considers that adverse inferences may be drawn from the respondent State’s refusal to carry out an investigation or to disclose any documents relating to the investigation that had been started by the *de facto* Abkhaz authorities (see, among many others, *Magomed Musayev and Others v. Russia*, no. 8979/02, § 85, 23 October 2008; *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 184, ECHR 2009, and, *mutatis mutandis*, *Kukhalashvili and Others v. Georgia*, nos. 8938/07 and 41891/07, § 148, 2 April 2020, with further references). Noting the Government’s failure to displace the *prima facie* evidence of the *de facto* authorities’ involvement, the Court cannot but conclude that Giga Otkhзорia was killed by R.K.-O., acting as agent of the *de facto* Abkhaz authorities, in the course of carrying out “border-control” operations.

104. Accordingly, the Court finds that, even though the applicants’ relative was killed in territory over which Russia exercised no control, the opening of fire by a *de facto* Abkhaz agent on the victim from very close range – including a shot to his head (which was the direct and immediate cause of his death) – was such that the applicants’ relative must be regarded

as having been within the jurisdiction of Russia within the meaning of Article 1 (compare *Andreou v. Turkey* (dec.), cited above).

105. It follows that the Government's objection in respect of jurisdiction should be dismissed.

2. Alleged breach of the substantive obligation under Article 2 of the Convention

(a) The parties' submissions

106. The applicants submitted that Giga Otkhзорia had been killed as a result of the unlawful use of force by R.K.-O., an Abkhaz "border guard", in breach of the substantive aspect of Article 2, for which Russia bore responsibility. Mr Otkhзорia had not been armed and had not posed a threat to the life or limb of R.K.-O. or of his colleagues. Neither had Mr Otkhзорia been suspected of having committed a violent offence, and nor had R.K.-O. been seeking to lawfully arrest Mr Otkhзорia. In those circumstances, the firing of four shots at Mr Otkhзорia by R.K.-O. at close range – including a shot to Mr Otkhзорia's left lower abdomen and a final shot to his head when he had been lying severely injured on the ground – had constituted a use of force that had been in breach of Article 2.

107. The respondent Government did not submit observations on the merits.

108. The Georgian Government, making submissions as a third party, agreed with the applicants' submissions above. They added that the circumstances of the killing by a *de facto* Abkhaz agent on duty were not in doubt, but had been clearly established by the domestic courts; those circumstances had not been disproved by the Russian authorities (who could have tried to do so by carrying out an effective investigation into the facts of the case). As Russia has not sought to argue that the killing of Giga Otkhзорia could be justified by any of the exceptions stipulated in Article 1, the acts of the Abkhaz separatists – including that of killing Giga Otkhзорia – were attributable to Russia.

(b) The Court's assessment

109. The Court has established above that at the time of his death the applicants' relative fell within the jurisdiction of Russia, according to a combination between the "spatial" and "personal" concepts of jurisdiction (see paragraphs 96 and 104 above). The Court reiterates in that connection that whenever a State through its agents exercises control and authority (and thus jurisdiction) over an individual, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section I of the Convention that are relevant to the situation of that individual (see the above-cited cases of *Al-Skeini and Others*, § 137, and *Jaloud*, § 154).

110. In view of the Court’s conclusion above that the applicants’ relative was killed by R.K.-O., acting as agent of the *de facto* Abkhaz authorities in the course of carrying out border-control operations (see paragraph 103 above), and in the absence of any indication in the case file (including submissions by the respondent Government) that the use of force might have been “absolutely necessary” in the circumstances and thus falling within the permitted exceptions under Article 2 of the Convention, the Court finds that Giga Otkhзорia was killed as a result of the unlawful use of lethal force by the *de facto* Abkhaz authorities, and that that force was excessive and not strictly necessary under the circumstances (compare *Andreou v. Turkey*, no. 45653/99, §§ 54-58, 27 October 2009; see also, regarding the point of “absolutely necessary”, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, §§ 286-87, ECHR 2007-II). Since Russia had effective control over Abkhazia during the period in question, its responsibility cannot be confined to the acts of its own soldiers or officials there but must also be engaged by virtue of the acts of the local administration, which survived thanks to Russian military, political and economic support (see paragraph 92 above). Therefore, the act complained of is attributable to the respondent State, whose responsibility for it under the Convention is consequently engaged.

111. There has therefore been a violation of the substantive limb of Article 2 of the Convention.

3. *Alleged breach of the procedural obligation under Article 2 of the Convention*

(a) *The parties’ submissions*

112. The applicants complained that both the *de facto* Abkhaz authorities and the Russian authorities had failed to carry out an effective investigation into the killing of their close relative, Giga Otkhзорia. Specifically, they had failed to take effective or sufficient steps to gather relevant evidence and to conduct any other necessary investigative measures, including complying with the specific obligations relevant to a cross-border investigation. In line with those obligations, the *de facto* Abkhaz authorities should have cooperated fully with the Georgian authorities by responding to their requests for assistance and also should have ensured that R.K.-O. was punished in accordance with the sentence passed in that regard by the Georgian courts (see paragraphs 14-15 above) – neither of which they had done. The Russian Government had also failed to provide a copy of the file of the criminal investigation by the *de facto* authorities into the killing, or make any submissions regarding the investigation in their observations.

113. In their reply to the applicants’ additional observations, the respondent Government stated that, since Abkhazia was a sovereign State that was not under the “effective control” of Russia, the applicants’ allegations

against Russia and “their request [that the Russian authorities open a] new investigation (or ensure that the Abkhaz authorities conduct an effective investigation) and extradite the Abkhaz border guard to Georgia [were] unsubstantiated”. The Government did not make any further observations.

114. The third party stated that, in addition to failing to carry out an effective investigation themselves and to submit a copy of the file in respect of the investigation carried out by the *de facto* Abkhaz authorities, Russia’s efforts to condone and shield from justice the perpetrator of Giga Otkhozoria’s murder had amounted to a “practice of impunity”.

(b) The Court’s assessment

(i) General principles

115. The Court has previously examined complaints under the procedural aspect of Article 2 where death had occurred in another State’s territory or in a neutral zone but had allegedly been caused by an agent of the Contracting State at issue, through the exercise of that agent’s authority and control (see *Al-Skeini and Others*, cited above, §§ 149-50; *Jaloud*, cited above, § 152, and *Isaak v. Turkey*, no. 44587/98, §§ 121-25, 24 June 2008). In all these cases, like the situation in the instant case, there was a clear jurisdictional link for the purposes of Article 1 between the deceased and the respondent State at issue. Where such a jurisdictional link existed, the Court has held that, having regard to its fundamental character, Article 2 of the Convention contains a procedural obligation to carry out an effective investigation into alleged breaches of its substantive limb (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 298, ECHR 2011 (extracts); *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 169, 14 April 2015, and *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 229, 30 March 2016). The duty to conduct such an investigation arises in all cases of killing and other suspicious deaths (see *Makuchyan and Minasyan*, cited above, § 154).

116. The relevant principles applicable to the conduct of an effective investigation have been summarised by the Court on many occasions as follows (see, for example, *Armani Da Silva*, cited above, §§ 229-39): those responsible for carrying out an investigation must be independent of those implicated in the events in question; the investigation must be “adequate”; its conclusions must be based on a thorough, objective and impartial analysis of all relevant elements; it must be sufficiently accessible to the victim’s family and open to public scrutiny; and it must be carried out promptly and with reasonable expedition. In order to be “adequate” the investigation must be capable of leading to the determination of whether the force used was or was not justified under the circumstances and of identifying and – if appropriate – the punishing of those responsible (*ibid.*). Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation’s ability to

establish the circumstances of the case and the identity of those responsible (see *Mustafa Tunç and Fecire Tunç*, cited above, § 175). The Court has also held that the enforcement of a sentence imposed within the context of the right to life must be regarded as an integral part of the State's procedural obligation under Article 2 (see *Makuchyan and Minasyan*, cited above, § 50, with further reference).

117. Lastly, within the context of cross-border or transnational cases, the Court has found that Article 2 may require from both States a two-way obligation to co-operate with each other as a component of their procedural obligations under that provision, implying at the same time an obligation to seek assistance and an obligation to afford assistance (see *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, § 233, 29 January 2019). In the absence of formal diplomatic relations, formalised means of cooperation are more likely to fail and States may be required to use other more informal or indirect channels of cooperation – for instance, through third States or international organisations. In respect of transnational cases that involve a contracting State and a *de facto* entity being under the effective control of another Contracting State, the Court is called upon to determine whether the States concerned used all means reasonably available to them to request and afford the cooperation needed for the effectiveness of the investigation and proceedings as a whole (*ibid.*, §§ 237-38).

(ii) *Application of these principles in the instant case*

118. The Court notes that Russia carried out no investigation whatsoever (see paragraph 26 above) and that, less than a year after its start, the *de facto* Abkhaz authorities terminated the investigation that they had opened into the killing of Giga Otkhozoria (see paragraph 22 above). The Russian authorities have failed to provide to the Court a copy of that investigation file, and to give an explanation for this failure. Neither has any outline or summary of the investigative steps carried out in *de facto* Abkhazia been provided (contrast *Carter*, cited above, § 140).

119. Furthermore, it cannot be said that the Russian authorities – either themselves or *via* the *de facto* Abkhaz authorities – complied with their obligation to seek and to afford assistance within the context of the investigation and judicial proceedings carried out by the Georgian authorities (see paragraph 117 above), having regard to the fact that (i) the suspect was on Abkhaz territory and (ii) Georgia requested his surrender, and subsequently his extradition. In this connection it appears that the *de facto* authorities disregarded entirely the efforts of the Georgian authorities to establish the facts of the case, by refusing to consider the evidence that the Georgian authorities had sent them and by returning it demonstratively with the unsubstantiated assertion that it was of no use (see paragraphs 17 and 21-22 above). Lastly, they refused to extradite R.K.-O. – who had in the meantime been found guilty in Georgia of killing Giga Otkhozoria – to either

take part in the criminal proceedings conducted against him there or to serve the sentence imposed on him by the Georgian courts.

120. As the Court has indicated above (see paragraph 53), a failure on a Government's part to submit material that is in their hands without a satisfactory explanation for that failure may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations. In the present case, on account of the Government's unjustified failure to submit the requested documentation, and in view of their failure to cooperate with the Georgian authorities in the criminal proceedings opened into the victim's killing, the Court finds that the respondent Government have failed to discharge their burden of proof in respect of demonstrating that the Russian authorities carried out an effective investigation capable of leading to the establishment of the facts and the bringing to justice of the person responsible for Giga Otkhozoria's killing.

121. Accordingly, the Court concludes that there has also been a violation by Russia of Article 2 of the Convention under its procedural limb.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

122. The applicants also complained under Article 13 of the Convention of the absence of effective remedies in respect of their complaint under Article 2.

123. The Court finds that the applicants' complaint amounts to a restatement of their complaint under the procedural limb of Article 2 of the Convention. For this reason, it concludes that, although this complaint is admissible, no separate issue arises under Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

125. The applicants each claimed 70,000 euros (EUR) in respect of non-pecuniary damage as a result of the murder of their son, husband and father, respectively.

126. The Government submitted that the sum claimed was excessively high and did not correspond to the Court's case-law.

127. The Court considers that the applicants must have suffered non-pecuniary damage that cannot be compensated for solely by the finding of a violation. Ruling on an equitable basis, and taking into consideration its

findings of both substantive and procedural breaches of Article 2 of the Convention, the Court awards the applicants jointly EUR 130,000 in respect of non-pecuniary damage caused, plus any tax that may be chargeable.

B. Costs and expenses

128. The applicants also claimed EUR 9,265.15 for the costs and expenses incurred before the Court, to be paid directly to the European Human Rights Advocacy Centre.

129. The Government submitted that the applicants had not supported their claim with evidence, given that the contracts with their legal representatives had been signed in 2019 while the claimed expenses referred to a period starting in 2017.

130. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, among many others, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 9,265.15 covering costs under all heads, plus any tax that may be chargeable to the applicants, to be paid directly to the European Human Rights Advocacy Centre.

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. *Holds* that the respondent Government have failed to comply with their obligations under Article 38 of the Convention;
3. *Declares* the application admissible;
4. *Holds* that there has been a violation of the substantive and procedural limbs of Article 2 of the Convention;
5. *Holds* that there is no need to examine the complaint under Article 13 in conjunction with Article 2 of the Convention;
6. *Holds*,
 - (a) that the respondent State is to pay the applicants jointly, 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 130,000 (one hundred thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 9,265.15 (nine thousand two hundred sixty-five euros and fifteen cents), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, this sum to be paid directly to the account of the European Human Rights Advocacy Centre;
- (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;

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

Done in English, and notified in writing on 19 December 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President

APPENDIX

List of applicants:

Application no. 3963/18

No.	Applicant's Name	Year of birth/registration	Nationality	Place of residence
1.	Nino MATKAVA	1986	Georgian	Zugdidi
2.	Akaki OTKHOZORIA	2008	Georgian	Zugdidi
3.	Ketevan OTKHOZORIA	2004	Georgian	Zugdidi
4.	Julieta TCHANTURIA	1956	Georgian	Zugdidi