



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

SECOND SECTION

CASE OF TAGANOVA AND OTHERS v. GEORGIA AND RUSSIA

(Applications nos. 18102/04 and 4 others)

JUDGMENT

*This version was rectified on 21 January 2025
under Rule 81 of the Rules of Court.*

Art 56 • Declaration by Georgia upon ratification of the Convention with respect to Abkhaz territory not capable of restricting the Convention's territorial application thereto • Art 57 • Georgia's reservation in respect of Art 1 P1 not valid as Art 57 requirements not met

Art 1 • Jurisdiction of Russia and Georgia over Abkhazia • Effective control exercised by Russia over Abkhaz territory in view of strong Russian presence and Abkhaz authorities' dependency on the Russian Federation • Responsibility of Russia for complaints concerning the Abkhaz authorities in relation to applicants nos. 2-6 • 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 as positive obligations satisfied

Art 1 P1 • Peaceful enjoyment of possessions • Art 8 • Home • Family life • Lack of access to properties and homes left behind in Abkhazia a continuing situation falling within Court's jurisdiction *ratione temporis* • Court competent to examine complaints in respect of Russia from the date it ratified the Convention (5 May 1998) up to the date it ceased to be a Party (16 September 2022) and in respect of Georgia as regards the complaints falling under Art 1 P1 from the date it ratified P1 (7 June 2022) and with regard to the remaining complaints from the date it ratified the Convention (20 May 1999)

Art 35 § 1 • Exhaustion of domestic remedies • Lack of effective remedies in both Russia and Georgia with respect to complaints of applicants nos. 2-6 under Art 1 P1 Art 1 P1 • Peaceful enjoyment of possessions • Art 8 • Home • Family life • Applicants nos. 3-6 continuously deprived of access to, control, use and enjoyment of their property without any compensation and of access to their homes

Art 1 P1 • Peaceful enjoyment of possessions • Art 8 • Home • Inability of applicant no. 2 to access his home in Abkhazia for a prolonged period of time until its return to him • Excessive individual burden • Inability to enjoy his home
Art 6 § 1 (civil) • Access to court • Second applicant's inability to have his dismissal from his job post examined by the *de facto* Abkhaz courts • Conclusions reached in *Mamasakhlisi and Others v. Georgia and Russia* applied • *De facto* Abkhaz courts could not qualify as a "tribunal established by law" • Situation in respect of the legal and judicial system in Abkhazia could not be attributed to Georgia

Prepared by the Registry. Does not bind the Court.

STRASBOURG

17 December 2024

FINAL

17/03/2025

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

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

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

Arnfinn Bårdsen, *President*,

Saadet Yüksel,

Lado Chanturia,

Pauliine Koskelo,

Jovan Ilievski,

Davor Derenčinović,

Gediminas Sagatys, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the applications against Georgia and Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), namely no. 18102/04 lodged against Georgia and no. 48656/06 lodged against Russia by Mrs Galina Alekseevna Taganova and Mr Taniel Apolonovich Esartia, both Russian nationals (“the first and second applicants”); no. 5148/05 lodged against Georgia and Russia by Ms Ketevan Mekhuzla, a Georgian national (“the third applicant”); no. 26166/05 lodged against Georgia and Russia by Ms Ksenia Sanaia, a Georgian national (“the fourth applicant”); and no. 42765/05 lodged against Georgia and Russia by Ms Suliko Dvali and Ms Marina Gogia, both Georgian nationals (“the fifth and sixth applicants”), on the various dates indicated in the appended table;

the decisions to give notice to the Georgian and Russian Governments of the applications;

the parties’ observations;

the comments submitted under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court in respect of application no. 48656/06 by the Georgian Government, which was invited to intervene by the Vice-President of the Section;

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 in respect of Russia, applying by analogy Rule 29 § 2 of the Rules of Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);

Having deliberated in private on 26 November 2024,

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

INTRODUCTION

1. The applicants in applications nos. 18102/04 and 48656/06 complained primarily about their inability, over a prolonged period of time, to enjoy peacefully their home and movable property situated in Abkhaz territory, and to have access to a court in relation to that. The complaints in application

no. 18102/04 (against Georgia) were made under Article 1 of Protocol No. 1 to the Convention, as well as under Articles 6 § 1, 13 and 14 of the Convention, while the complaints in application no. 48656/06 (against Russia) were made under Articles 3 and 8 of the Convention, Article 1 of Protocol No. 1 to the Convention, and Articles 13 and 14 in conjunction with the above-mentioned provisions.

2. The applicants in applications nos. 5148/05, 26166/05 and 42765/05 (against both Georgia and Russia), who had been granted legal aid, complained about having been denied access to, and having been unable to enjoy, their homes located in Abkhaz territory. They invoked Articles 3 and 8 of the Convention, Article 1 of Protocol No. 1 to the Convention, and Articles 13 and 14 in conjunction with the above-mentioned provisions.

3. 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. Application no. 18102/04 was communicated to the Georgian Government on 28 February 2006. Applications nos. 5148/05, 26166/05 and 42765/05 were communicated to the Georgian and Russian Governments on 6 February 2007. Following an exchange of observations between the Georgian and Russian Governments, in 2008 the Georgian Government withdrew their observations in their entirety. Application no. 48656/06 was communicated to the Russian Government on 13 July 2016. On 15 September 2016 the parties were invited by the Court to submit their consolidated observations on the admissibility and merits of applications nos. 18102/04, 5148/05, 26166/05 and 42765/05, 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.

5. 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 Ms Jess Gavron, lawyers from the European Human Rights Advocacy Centre (“EHRAC”).

6. 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.

7. The Russian Government were successively represented by 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.

THE FACTS

8. The facts of the case may be summarised as follows.

I. EVENTS RELATING TO THE FIRST AND SECOND APPLICANTS,
MS TAGANOVA AND MR ESARTIA (NOS. 18102/04 AND
48656/06)

A. House at no. 185 Sukhumi Road

9. The first and second applicants were wife and husband, who were born in 1943 and 1948, respectively, and lived in Abkhazia. The second applicant, who was of Georgian ethnicity, acquired Russian nationality in 2000 at the latest. He died on 29 May 2012. His wife, the first applicant, informed the Court on 1 June 2012 that she wished to pursue the proceedings before the Court on his behalf as well.

10. On an unspecified date the second applicant's parents built a house at no. 185 Sukhumi Road in the village of Psakhara (then known as Kolkhida), Gagra District, Abkhazia, Georgia. An extract of a record issued in 1969 by the Gagra local authorities indicated that on 5 June 1950 the authorities had designated 0.15 hectares of land in the local collective farm (колхоз) for the second applicant's father's use because he had been living and working there permanently. The second applicant and his parents lived in that house for an unspecified period of time.

11. According to the house's "technical passport", dated 13 October 1989, the second applicant and his father each owned half of that house; a note in the technical passport, made in a section called "special remarks", read "old house suitable for demolition". On 13 August 2002 the *de facto* Gagra municipal authorities issued the second applicant with a certificate confirming that he had been registered at no. 185 Sukhumi Road since 1 January 1977.

12. At some point in time the second applicant built a new house at no. 185a Sukhumi Road, on the same plot of land as the house described above. He started living in the new house in 1977 together with his family (at the time), having lived with them in the old house at no. 185 Sukhumi Street between 1975 and 1977.

13. In 1992, after sending his three children, his parents and his former wife away from Abkhazia following the outbreak of hostilities, the second applicant started living with the first applicant in the (old) house at no. 185 Sukhumi Road. At an unspecified date later that same year the applicants were thrown out of that house by Abkhaz fighters. A certificate issued to the first applicant on 12 February 2004 by the head doctor of Gagra Hospital indicated that she had been working at the hospital since 1992 and her salary at the time of issuing the certificate was 500 Russian roubles (RUB).

14. In 1992 the new house at no. 185a Sukhumi Road burned down, allegedly after being hit by a missile.

15. It would appear that the applicants then started using a house belonging to the second applicant's son. The second applicant, who had left

Abkhazia temporarily in 1993 to attend his mother's funeral, returned to the village of Psakhara on an unspecified date thereafter. Apparently in his absence, the first applicant was thrown out of the house of the second applicant's son, allegedly by individuals from the *de facto* Abkhaz administration, following which she started living in the hospital where she also worked.

16. The applicants married on 15 January 1998. Unlike thousands of Abkhaz residents of Georgian ethnic origin, they did not flee Abkhazia.

17. On an unspecified date before 1994, the house at no. 185 Sukhumi Road was given by the *de facto* Abkhaz authorities to a certain N.B., an ethnic Abkhazian. According to a certificate dated 4 August 2003, sent by the *de facto* Directorate of Municipal Affairs of Gagra to the *de facto* Gagra District Court, the house at no. 185 Sukhumi Road was (at that time) at the disposal of the Psakhara village administration.

1. Actions pursued by the applicants before the de facto Abkhaz authorities

18. According to the applicants, at an unspecified point in time (in the early 1990s) they contacted the *de facto* Gagra city administration and complained that they were unable to live in their house at no. 185 Sukhumi Road. The administration replied, saying that since the house was not occupied, they could return to it. However, once the applicants moved into the house, individuals of Abkhaz origin who claimed to be the new owners turned up and forced them to leave. The *de facto* local administration and the police refused to intervene and advised them to apply to the courts.

19. According to the applicants, from 1994 onwards they submitted complaints to various *de facto* Abkhaz administrative bodies, as well as the *de facto* Gagra District Court, asking to have their house returned, that the second applicant be reinstated in his work post, and asserting that they were "victims of Abkhaz nationalism". The complaints were not dealt with and the applicants were passed back and forth between the court and the administrative authorities.

20. The first applicant submitted copies of letters dated 1994, in which she had complained to the *de facto* Abkhaz Ministry of the Interior about being threatened by several individuals, some of whom she indicated by name, and being asked by them to leave the dwelling (not specified) in which she lived at the time; in those letters her address was indicated as no. 49/5 Abazgaa Street, Gagra, Abkhazia, Georgia. She also submitted copies of letters, dated 2002 and 2003, in which she (and the second applicant) had written respectively to the Human Rights Committee in Moscow, the Administration of the Russian President, as well as the *de facto* Abkhaz municipal administration and the *de facto* Gagra District Court in relation to her inability to live in the house at no. 185 Sukhumi Road; in those letters her address was indicated as being no. 49/5 Abazgaa Street, Gagra, Abkhazia,

Georgia. The first applicant listed no. 49/5 Abazgaa Street, Gagra, Abkhazia, Georgia as her address also in a letter she wrote to the Court on 6 October 2006, complaining about the poor state in which the house at no. 185 Sukhumi Road had been returned to the second applicant and herself. A letter from the Russian Ministry of Foreign Affairs of 2008, addressed to the applicants, indicated no. 49/5 Abazgaa Street, Gagra as their address. Another address, in Krasnodar Region, Russia, was indicated in two letters of 2009 addressed to the first applicant by the Russian Ministry of Foreign Affairs. In a copy of the first applicant's Russian passport issued in 2000, her address was in Vladimir Region, Russia.

21. On 26 September 2003 the applicants received an order of the *de facto* Gagra District Court, issued on 18 July 2003 by a single-judge formation, stating that their complaint "lodged against the Psakhara local administration with a view to recovering the right to housing" was inadmissible, on the grounds that they had not indicated the name and address of the respondent party.

22. That order could be appealed against to the *de facto* Supreme Court of Abkhazia within fourteen days of being issued. As this deadline had already expired by the time the applicants were notified of the order, they lodged an application for supervisory review with the *de facto* Supreme Court of Abkhazia.

23. On 4 December 2003, ruling on the application for supervisory review in the applicants' presence, the *de facto* Supreme Court of Abkhazia took note of "the applicants' right of ownership over a property in the village of Psakhara, Gagra, which they had been thrown out of (*выгнали*) by the municipal administration", in the light of the case file. It then quashed the *de facto* Gagra District Court's order of 18 July 2003 (see paragraph 21 above) and remitted the case to it for examination on the merits. The *de facto* Supreme Court of Abkhazia indicated that if, during the *de facto* Gagra District Court's examination of the merits, the participation of other persons proved to be necessary for determining the applicants' rights over the disputed property, that court would have to summon those persons as respondent parties of its own motion.

24. In a decision of 9 February 2004, Judge B. from the *de facto* Gagra District Court refused to examine the applicants' case. The decision stated that in spite of several oral warnings, the applicants had not lodged their various claims and complaints separately, in accordance with specific provisions of the Abkhaz Code of Civil Procedure, and had not paid the State tax which was due (the amount in question was not indicated). The decision indicated that the applicants had fifteen days to remedy the flaws. An ordinary appeal against that order could be lodged with the *de facto* Supreme Court of Abkhazia within fourteen days of the order being issued.

25. On 12 February 2004 the applicants complained to the *de facto* Supreme Court of Abkhazia and the *de facto* Abkhaz Ministry of Justice

about how much money (RUB 3,500) the Gagra District Court judge had (orally) told them would be needed for legal representation in respect of each of their several claims and complaints, in addition to the State tax due in respect of each of them. They emphasised that the first applicant received only RUB 500 per month and the second applicant was unemployed. The applicants also complained that they had been thrown out of their own house and their complaints had remained unexamined for ten years. On 4 May 2004 the *de facto* Supreme Court of Abkhazia replied that in order to properly initiate proceedings, the applicants had to comply with the instructions given by the *de facto* Gagra District Court.

26. In the meantime, on 26 April 2004 the president of the *de facto* Gagra District Court had replied to a request sent by the *de facto* Abkhaz Ministry of Justice in connection with the applicants' case, stating that on 9 February 2004, in accordance with the law, it had been decided not to examine the applicants' case; he referred to the reasons detailed in paragraph 24 above. The letter further stated that the applicants were legally entitled to resubmit their complaint to the court and had to comply with the conditions set out in Articles 134 and 135 of the Abkhazian Code of Civil Procedure.

27. On 8 June 2004 the second applicant contacted the *de facto* Abkhaz President and the *de facto* mayor of the Gagra municipality, complaining that his house had been put up for sale by the municipality and requesting its return.

28. On 27 October 2004 the applicants complained to the head of the *de facto* Gagra municipal administration and to the *de facto* Gagra District Court, emphasising that they had been denied justice.

2. *Actions pursued by the applicants before the Russian authorities*

29. According to the applicants, in 2004 they wrote to the President of the Russian Federation, the Russian Ministry of Foreign Affairs and the General Prosecutor's Office of the Russian Federation, complaining that they could not have their house returned to them. They received several replies from those authorities, in essence indicating that their requests had been forwarded to the competent body.

30. On one occasion, in a letter of 30 June 2009, the Russian Ministry of Foreign Affairs replied as follows to the first applicant's request for assistance:

"The complexity of your problem lies in the fact that, bearing in mind the long-term absence of property owners who left Abkhazia during the Abkhaz-Georgian conflict in 1992-1993 and did not make the appropriate regular payments, the Abkhaz authorities enacted a number of laws and regulations providing for the confiscation of abandoned living quarters and their transfer into the possession of Abkhaz citizens."

31. The Russian Government, in their submissions made in November 2016 on the admissibility and merits of the applications, informed the Court that in view of the great number of property-related complaints which

Russian public authorities had received from Russian nationals in Abkhazia, Russia and Abkhazia had agreed to set up a Commission for the Protection of the Property Rights of Russian Citizens in Abkhazia (“the Property Commission”). The Property Commission, whose work aimed to resolve such property-related issues, had been operating in Abkhazia since 2010 with the support of the Russian embassy there.

32. According to the Russian Government, the first applicant applied to the Property Commission in 2012, and the Property Commission, having found that the accompanying documents submitted by her were not sufficient, advised her to bring judicial proceedings instead. In June 2016 the first applicant instead submitted a complete set of documents to the Property Commission, and in October 2016 the Russian embassy in Abkhazia informed her that her case was pending before the Property Commission. In addition, the different Russian authorities approached by the first and second applicants replied to their numerous enquiries and complaints, keeping the applicants informed of “the practical actions taken to address their property problems”.

33. According to the Georgian Government, electronic media sources reported that the Property Commission had adopted a decision in Sukhumi in December 2010 to reject applications relating to property rights lodged by Russian citizens of Georgian ethnicity. The Minister of Foreign Affairs of Georgia and the Minister of Reintegration of Georgia strongly criticised that, stating that this was the continuation of a policy of ethnic cleansing of Georgians in Abkhazia and the Russian Federation was violating international human rights; they also emphasised that until all internally displaced persons (IDPs) and refugees returned to Abkhazia, the process of the return of property could not be viewed as lawful. On 13 January 2011 the Georgian Ministry of Foreign Affairs issued a statement condemning the discrimination against ethnic Georgians and the violation of their property rights in occupied Abkhazia.

34. The Georgian Government further submitted that on 31 January 2011 the *de facto* Abkhaz president had stated that Georgians could return their properties left in Abkhazia only in the event that the Georgian Government paid 13 billion United States dollars (USD) in compensation for the damage inflicted during the Georgian-Abkhazian war in 1992-1993. According to him, the Property Commission, co-chaired by himself and the Ambassador of the Russian Federation, had been working on the matter of abandoned properties in Abkhazia. Representatives of the General Prosecutor’s Office of the Russian Federation and the General Prosecutor’s Office of Abkhazia were participating in the work of that commission.

3. Actions pursued by the applicants before the Georgian authorities

35. On 25 March 2004 the applicants turned to M.C., the legitimate head of the Service for the Protection of the Rights of Internally Displaced Persons

from Abkhazia, located in Tbilisi, asking for assistance with restoring their right to the peaceful enjoyment of their property. In letters of 14 April 2004 and 11 April 2006, M.C. asked the representative of the United Nations Observer Mission in Georgia (UNOMIG) and the Head of the UN Human Rights Office Abkhazia, Georgia (HROAG) to provide the applicants with help in restoring their rights.

36. In a letter of 19 May 2006, M.C. also requested assistance from the HROAG in progressing the applicants' request, and on 13 June 2006 he was informed in reply that HROAG representatives had met with the applicants in order to discuss their case.

37. In the meantime, in the spring of 2004 the applicants had written to the then Georgian President, asking for assistance. While they claimed that they had received a reply stating that their house would be returned to them within a month, in reality nothing materialised.

38. On 31 January 2007 the father of the second applicant submitted a declaration to the Georgian embassy in Ukraine in which he stated that the house at no. 185 Sukhumi Road in the village of Psakhara was his property. He attached a plan of the plot of land, a record from the register of households, a note in his Soviet passport and a building plan of the house. He referred to the second applicant as a family member. That declaration was subsequently recorded by the Ministry for Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia ("the Ministry for Displaced Persons"; more information about the Ministry's role in the context of provisional registration of property located in Abkhazia can be found in paragraphs 140-143 below).

4. Further developments

39. In June 2006 the first applicant wrote to a certain K.A. of the *de facto* Gagra municipal administration, complaining that for many years she and her husband, the second applicant, had had no access to the house at no. 185 Sukhumi Road. She stated that the explanation which they had been given by the head of the *de facto* administrative authorities had been that for years the applicants had failed to pay "rent for the land". She claimed that the *de facto* authorities should have been aware that doctors, like her husband, were exempt from taxes, and in any event, he should have been notified first.

40. In August 2006 the *de facto* local authorities returned the house situated at no. 185 Sukhumi Road in the village of Psakhara to the applicants. The official explanation, which they received in a letter of 22 August 2006 of the head of the *de facto* administration of Psakhara village, was that a lease agreement concluded in 1996 between the (*de facto*) local administration and a certain N.B. had come to an end in August 2006. That letter also stated that the lawful owner of the house was the second applicant who "had been living in Gagra since 1992 uninterruptedly". According to the applicants, everything in the house had been taken and it was uninhabitable.

41. In a letter of 18 July 2007, in the context of application no. 18102/04, the applicants informed the Court that the house was again being taken away from them. The Georgian Government informed the Court that following the requests made to the HROAG and the UNOMIG for assistance in restoring the applicants' property rights, on 16 August 2007 a HROAG representative had reported that during a meeting with the applicants on 9 August 2007 it had been confirmed that they had returned to their house on 8 September 2006, following the decision of the *de facto* Gagra administration. However, N.B., the third party mentioned above, had challenged that decision; the applicants continued to live in the house while his complaint was pending.

42. In a letter of 5 May 2008, in the context of application no. 18102/04, the applicants informed the Court that their house was being taken away from them.

43. In letters of 5 March 2009, 19 April 2010 and 20 October 2010, the applicants informed the Court that they had not received any response to their numerous complaints addressed to the Russian and Abkhaz authorities in connection with their unlawful *de facto* eviction.

B. The second applicant's dismissal from his job

44. In June 1993 the second applicant was removed from his post at the hospital by an order of the then hospital director. According to the applicants, his dismissal was part of a general wave of dismissals of medical staff of Georgian origin.

Actions pursued by the second applicant before the de facto Abkhaz authorities

45. According to the applicants, from 1994 onwards the second applicant submitted complaints to various *de facto* Abkhaz authorities, asking to be reinstated in his post and asserting that he was a "victim of Abkhaz nationalism".

46. In particular, on 13 May 2004 he complained to the *de facto* Gagra District Court of his unlawful dismissal, asking to be reinstated in his post and for compensation in respect of pecuniary damage, to be calculated from 1992. He also asked that the State tax be waived in his case, since he was unemployed and had no other income. It would appear that no action was taken in respect of that complaint.

47. On 19 May 2004 the second applicant complained to the *de facto* Supreme Court of Abkhazia and the *de facto* Abkhaz Ministry of Justice that the *de facto* Gagra District Court had denied him justice, and he asked to be reinstated in his post. No information on any follow-up to that complaint has been provided to the Court.

II. EVENTS RELATING TO THE THIRD APPLICANT, MS KETEVAN MEKHUZLA (NO. 5148/05)

48. In 1948 the third applicant settled in Sukhumi, Abkhazia, Georgia with her husband. She died in 2011 and Mr Badri Mekhuzla, born on 28 May 1949, informed the Court of her death and expressed a wish, as her son, to pursue the application before the Court in his late mother's stead. Mr Badri Mekhuzla did not submit initially a birth certificate or an heir's certificate proving that he was Ms Ketevan Mekhuzla's legal heir. On 26 July 2024 he sent a copy of a decision by a Georgian court, delivered on 19 March 2024, confirming that he was the heir of the estate of his mother, namely the third applicant.

49. In 1953 the third applicant and her husband built a house at no. 7 Tavadze Street in Sukhumi.

50. In 1960 the third applicant began working as a nurse at Sukhumi Hospital. In 1971 her husband died.

51. A decision of the Executive Committee of Sukhumi City Council ("the Sukhumi City Council"), dated 31 January 1990 and entitled "On the registration of irregularly built constructions", recorded that the Sukhumi City Council had granted the third applicant ownership rights over a house; the two-storey house had been built before September 1974 without the requisite permits and its address (in Sukhumi) was illegible.

52. After Sukhumi was occupied by separatists and their supporters, on 4 October 1993 the third applicant was forced to leave the city out of fear for her life. On her arrival in Tbilisi she joined her family, with whom she then lived in rented accommodation for years.

53. The third applicant had displaced person status within the meaning of the Internally Displaced Persons and Refugees Act of 28 June 1996 ("the 1996 IDPs Act", see paragraphs 100-101 below). According to her, after the mass exodus of the Georgian population from Abkhazia in 1993, her house was occupied by ethnic Abkhaz people. She heard that an Abkhaz family had taken over her house and had subsequently sold it.

54. The third applicant's identity card, issued by the Georgian authorities on 3 May 1999 and submitted to the Court, indicates no. 7 Tavadze Street, Sukhumi as her permanent address.

55. An identity card in the name of Badri Mekhuzla, born on 28 May 1949 (see paragraph 48 above), issued by the Georgian authorities on 10 December 2001 and submitted to the Court, indicates no. 7 Tavadze Street, Sukhumi as his permanent address.

56. Along with their observations on the admissibility and merits of the application, the representatives of the third applicant submitted a statement by Mr Badri Mekhuzla, whom they stated was the third applicant's son. His identity card number matched the one issued on 10 December 2001 (see paragraph 55 above). The statement by Badri Mekhuzla, dated 27 January

2017, contained a description of the property at no. 7 Tavadze Street, Sukhumi, in particular the fact that the house had its own central heating system and was decorated with expensive wooden furniture. He also explained how he had continued to live in that house after the death of his father in 1971 – initially with his sister and mother, the third applicant, and later with his wife and children, in addition to his mother.

57. Furthermore, Mr Badri Mekhuzla submitted that he had rented a factory which had produced sparkling drinks, where he had made non-alcoholic drinks that he had developed. In the Gulripshi municipality, he had grown kiwi on a 14-hectare plot of land, peaches on a 10-hectare plot of land and lemons on a 4-hectare plantation, as well as two different types of grapes. His family also had a plot of land in Zemo Eshera measuring 600 sq. m.

58. In addition, he stated that his family had rented four of their six rooms in the house to tourists during the summer season, and from autumn to spring they had rented those rooms to students. He claimed that the family's annual income had been RUB 8,000-9,000. His mother's monthly salary, that of his wife and his own had been RUB 90, RUB 140 and RUB 340 respectively. The monthly income from the production of non-alcoholic drinks had been RUB 14,000. The family had also had savings in a bank.

A. Actions pursued by the applicant before the Georgian authorities

1. Before the administrative authorities

59. On 15 November 2004 the third applicant applied to the National Public Registry Agency (NPRA) in Tbilisi for registration of her title to the house in Sukhumi, in accordance with the 1997 Civil Code of Georgia (see paragraph 123 below).

60. On 25 November 2004 the NPRA rejected her application (for more information about the NPRA see paragraph 135 below). The NPRA indicated that, having been set up on 1 June 2004 as a body attached to the Georgian Ministry of Justice, it was currently registering all rights with the assistance of the local and regional departments. Owing to the "well-known events in Abkhazia", no local or regional department of this kind had been set up in Sukhumi. Consequently, ownership rights in respect of properties left behind in that region could not be registered.

61. The third applicant did not challenge that rejection.

2. Before the courts

(a) At first instance

62. In the meantime, on 18 November 2004 the third applicant had lodged an "application for recognition of a legally significant fact" (under Article 312 of the Georgian Code of Civil Procedure) with the Sukhumi District and

City Court exiled in Tbilisi (for more related information, see paragraphs 120-122 below). In those non-contentious proceedings, she had requested that the court legally recognise her ownership of the house in Sukhumi, which she stated had been appropriated by an ethnic Abkhaz family in the meantime.

63. The Sukhumi District and City Court exiled in Tbilisi noted that the applicant had produced “all the requisite documents certifying that she had been the owner of the property since 1 January 1990 and her ownership had been duly registered at the time”. However, reiterating that Sukhumi was “not a territory controlled by Georgia and that Georgia could not exercise its jurisdiction there”, the court confirmed that it was unable to identify “the ethnic Abkhaz person who lived in the applicant’s house or the ethnic Abkhaz person to whom this property had been sold”.

64. The Sukhumi District and City Court exiled in Tbilisi also observed that the applicant’s representative before the court did not have authority to act on her behalf, and that the requisite State tax had not been paid. The court declared the application inadmissible on 25 November 2004.

(b) At last instance

65. On 13 December 2004 the third applicant appealed against the decision of 25 November 2004 of the Sukhumi District and City Court exiled in Tbilisi.

66. In a final decision of 6 January 2005, the High Court of the Autonomous Republic of Abkhazia (“the HCARA”) upheld the findings of the Sukhumi District and City Court exiled in Tbilisi (a lower court) that it was not possible to grant ownership rights in respect of a property in non-contentious proceedings, but only to confirm property rights which had been granted by a competent body and where documents relating to those rights had been lost. The HCARA also held that the situation in Abkhazia had neither deprived IDPs of their property nor invalidated their property rights.

B. Further developments

67. On 25 January 2007 the third applicant made a declaration in relation to her property in Abkhazia before the Ministry for Displaced Persons, thus completing the first step towards having her immovable property in Abkhazia recorded in a database. In accordance with Decree no. 124 of 14 February 2006 of the President of Georgia, the Ministry was the body responsible for setting up and maintaining that database of IDPs’ properties, with a view to their provisional registration with the NPRA (more information about the Ministry’s role in the context of provisional registration of property located in Abkhazia can be found in paragraphs 140-143 below).

III. EVENTS RELATING TO THE FOURTH APPLICANT, MS KSENIA SANAIA (NO. 26166/05)

68. The fourth applicant, Ms Ksenia Sanaia, was a Georgian national born in 1914. At the time of lodging her application she lived in Tbilisi. She died on 6 December 2006. Her son, Goliap Sanaia, born on 14 August 1936, informed the Court that he wished to continue the application brought by his late mother; on 3 July 2007 a Chamber of the Court allowed him to do so. Goliap Sanaia died on 21 January 2020. His wife, Larissa Sanaia, born in 1946 and married to him since 17 June 1967 (as evidenced by a marriage certificate), expressed a wish to pursue the application.

69. The fourth applicant married E.S. in 1935, as recorded in their marriage certificate, and settled with him in Gagra, Abkhazia, Georgia in 1946.

70. In 1948 they began building a house at no. 12 Sabcho Street, Gagra, which they completed in 1958. As Gagra was a seaside resort on the Black Sea, the fourth applicant and her husband rented rooms in their house to tourists. They also had a citrus plantation which provided an additional source of income.

71. In 1968 the fourth applicant's husband died.

72. When separatists and their supporters occupied Gagra in October 1992, the fourth applicant and her children's families were forced to leave the city. According to her, homes belonging to local people were visited by Abkhaz separatist forces, Russian soldiers and Chechen mercenaries, who gunned down any ethnic Georgians they came upon.

73. After her arrival in Tbilisi on an unspecified date in 1992 or 1993, the fourth applicant lived in a rented flat with her children. She had displaced person status within the meaning of the 1996 IDPs Act, and was a category 1 disabled individual.

74. As far as she knew, her house had been assigned to a family of Armenian ethnic origin as reward for one of the family members having actively fought alongside the separatists.

75. A copy of an entry in the register of the Technical Inventory Bureau of the Gagra Municipal Executive Board, dated 8 September 1960, indicated that the fourth applicant's husband, E.S., was registered at no. 12 Sabcho Street, Gagra. A copy of an entry in the same register, dated 17 January 1972, indicated that the fourth applicant herself lived in a house at no. 12 Sabcho Street, Gagra. A copy of the fourth applicant's Soviet passport bore a stamp of the Internal Affairs Department of the Abkhaz Autonomous Soviet Socialist Republic, dated 23 June 1992, indicating that her address was no. 12 Sabcho Street, Gagra. Her identity card, issued by the Georgian authorities on 26 November 2001, indicated no. 12 Sabcho Street, Gagra as her permanent address.

76. On 4 May 2006 the fourth applicant had her property recorded in the database maintained by the Ministry for Displaced Persons, which was a necessary legal condition for provisional registration in the Public Registry (more information about the Ministry's role in the context of provisional registration of property located in Abkhazia can be found in paragraphs 140-143 below).

IV. EVENTS RELATING TO THE FIFTH AND SIXTH APPLICANTS, MS SULIKO DVALI AND MS MARINA GOGIA (NO. 42765/05)

77. The fifth applicant, Ms Suliko Dvali, died on 19 June 2021. The sixth applicant, Ms Marina Gogia, who is the fifth applicant's daughter (as evidenced by a birth certificate), expressed a wish to pursue the application on her behalf as well.

78. The fifth applicant and her husband settled in Sukhumi, Abkhazia, Georgia in 1954. They initially lived on Mataradze Street.

79. In the 1980s the fifth applicant and her husband built a house at no. 4 Lakerbaia Street, Sukhumi and the family moved into it in 1989. As Sukhumi was a seaside resort, they rented the first floor to a tourist office. A citrus plantation around the house provided an additional source of income for the family.

80. A copy of a housing registration certificate, dated 13 September 1989 and bearing a stamp of the Internal Affairs Department of the Sukhumi regional authorities, indicated that the fifth applicant was registered at no. 4 Lakerbaia Street. The fifth applicant's identity card, issued on 26 February 2001, indicated no. 110 Mataradze Street, Sukhumi as her permanent address (see paragraph 78 above).

81. The fifth applicant also submitted copies of two documents, both of which were dated 10 June 1993. One of the documents was entitled "Certificate concerning the right to inherit by law". Its first paragraph stated that in accordance with Article 544 of the Civil Code of the Georgian Soviet Socialist Republic, the fifth applicant, registered at Mataradze Street, Sukhumi had inherited her late husband's property. The second paragraph read "The inherited property in relation to which the present certificate has been issued comprises one-half of the money deposited in the State Savings Bank", then indicated a specific account number and the amount of money in that account. The second document was entitled "Certificate concerning the right to ownership of the matrimonial assets, issued to the surviving spouse". In its first paragraph, a notary from the State notary office certified that the fifth applicant was the surviving wife of her late husband, who had passed away on 9 October 1992, and that she owned half of the matrimonial assets acquired by the spouses during the marriage. The second paragraph read "The matrimonial assets in respect of which the present certificate attests Ms Suliko Dvali's right of ownership comprise one-half of the money

deposited in the State Savings Bank”, then indicated a specific account number and the amount of money in that account.

82. In 1978 the sixth applicant, Ms Marina Gogia, married L.J. and moved to the village of Pshapi in Gulripshi Region, Abkhazia, Georgia. The couple built a house at no. 30, Cul-de-sac 10, Tbilisi Road, Pshapi, Gulripshi Region, Abkhazia, Georgia. The sixth applicant worked as a manager at the Sukhumi Central Savings Bank and her husband was a road infrastructure manager in Gulripshi Region. They put up twelve greenhouses containing lemon trees on their land, from which they collected an additional source of income for the family.

83. The sixth applicant produced a certificate, dated 17 May 1988 and signed by the director of the *kolkhoz* (collective farm) of the village of Pshapi, indicating that her husband had 0.15 hectares of land in the village.

84. She also submitted a copy of her own Soviet passport, in which a stamp dated 1976 indicated that she was registered as living on Mataradze Street in Sukhumi, and another stamp dated 7 June 1988 indicated that she was registered as living in the village of Pshapi in Gulripshi Region. A copy of her identity document issued in 2005 indicated Pshapi village in Gulripshi Region as her permanent address.

85. The sixth applicant also submitted the following: a copy of a decision of the Executive Committee of the Gulripshsky Regional Council of People’s Deputies, dated 28 August 1979, which indicated that the council in question had authorised her husband to build a house on a plot of land which he already had; a copy of a letter from the chairman of the Executive Committee of the Pshapshsky Rural Council of Workers’ Deputies no. 5, dated 2 April 1979, in which he asked the head of the region to create a cadastral plan of the land of the sixth applicant’s husband; a barely legible copy of the plans of a two-storey house, from which the address of the house cannot be made out (the plans are dated 28 October but the year is unclear, and the fifth applicant’s mother-in-law is named as the owner of the house); and a copy of a certificate (*справка*) dated 16 March 1988 in which the chair of the Pshapi village council certified that the sixth applicant’s husband “live[d] in the village of Pshapi in Gulripshi Region and [was] the head [of the family] after the death of his mother”, who was named.

86. The fifth and sixth applicants also submitted some witness statements from neighbours, who confirmed that they had lived in the vicinity of the applicants’ houses located at 4, Lakerbaia Street, Sukhumi and no. 30, Cul-de-sac 10, Tbilisi Road, Pshapi, Gulripshi Region.

87. The husbands of the fifth and sixth applicants died in 1992 and 1993, respectively.

88. When separatists and their supporters occupied Sukhumi in September 1993, the fifth and sixth applicants were forced to leave the city. After their arrival in Tbilisi, the fifth applicant, who had displaced person status within the meaning of the 1996 IDPs Act, lived in a rented flat with the

sixth applicant. Financial difficulties forced them to change their accommodation frequently.

89. According to the fifth and sixth applicants, after the mass exodus of ethnic Georgians from Abkhazia, their houses were occupied by persons of non-Georgian ethnic origin. As far as they knew, their houses had been assigned to families of Abkhaz ethnic origin.

90. On 6 October 2006 the fifth applicant made a declaration before the Ministry for Displaced Persons, thus completing the first step towards having her immovable property in Abkhazia recorded (see also on that point paragraphs 67 and 76 above). The sixth applicant did the same on 27 August 2007 (more information about the Ministry's role in the context of provisional registration of property located in Abkhazia can be found in paragraphs 140-143 below).

V. FURTHER DEVELOPMENTS CONCERNING APPLICATIONS NOS. 5148/05, 26166/05 AND 42765/05

91. On 22 September 2022 the Georgian Government informed the Court of the following factual developments. On 6 August 2018 the Government had adopted Resolution no. 400 on measures for declaring and inventorying real property located on occupied territories of Georgia. The purpose of that resolution was to protect the property rights of IDPs from the occupied territories of Georgia, as provided for under international law and the Georgian Constitution (see also paragraphs 145-151 below).

92. In accordance with the resolution, the NPRA, acting on requests by the third, fourth, fifth and sixth applicants or their successors, had "thoroughly declared and inventoried their respective immovable properties". The Government asserted that "upon restoration of jurisdiction of Georgia over Abkhazia, the applicants/their successors would be equipped with legally valid real-estate 'certificates', documenting their inherent rights over the property, which forms part of their complaint before the Court". The Government provided copies of the following documents in support of their submissions.

93. The first document was a certificate issued by the NPRA on 28 October 2021 indicating that a house situated at no. 7 Tabadze Street, Sukhumi had been recorded in the names of five individuals, the first of whom was Mr Badri Mekhuzla, holder of an identity card whose number matched the one submitted by the third applicant's representatives (see paragraphs 48 and 56 above). The certificate stated that it was a document identifying real estate situated on the occupied territories; it also comprised identification data relating to the property in question which were cadastral in nature, including numbers identifying the relevant city zone, sector, quarter and individual lot. The certificate also referred to a declaration request linked

to that property which had been registered by the authorities on 25 January 2007 (see paragraph 67 above).

94. The second document was a certificate issued on 29 October 2021 by the NPRA indicating that a house situated at no. 12 Sabcho Street, Gagra had been recorded in the names of four individuals, the first of whom was Mr Goliap Sanaia (see paragraph 68 above) and the second of whom was Ms Larissa Sanaia, who was the holder of an identity card whose number matched the one submitted to the Court by Goliap Sanaia's wife after his demise (*ibid.*). The certificate stated that it was a document identifying real estate situated on the occupied territories; it also comprised identification data relating to the property in question which were cadastral in nature, including numbers identifying the relevant city zone, sector, quarter and individual lot. The certificate also referred to a declaration request linked to that property which had been registered by the authorities on 4 May 2006 (see paragraph 76 above).

95. The third document was a certificate issued on 28 October 2021 by the NPRA indicating that the house at no. 30, Cul-de-sac 10, Tbilisi Road in the village of Pshapi, Gulripshi Region had been recorded in the names of three individuals: the second person named was Ms Marina Gogia, the sixth applicant, and the other two people were her children. The certificate stated that it was a document identifying real estate situated on the occupied territories; it also comprised identification data relating to the property in question which were cadastral in nature and included numbers identifying the relevant city zone, sector, quarter and individual lot. The certificate also referred to a declaration request linked to that property which had been registered by the authorities on 27 August 2007 (see paragraph 90 above).

96. The Government initially specified that, as regards the fifth applicant, the NPRA had not yet inventoried her property in Abkhazia because her heirs had not submitted an inheritance certificate as requested; they provided a letter to that effect from the NPRA. The Government added that, once the successor to the fifth applicant had submitted the necessary documentation in accordance with domestic law, the State authorities would complete the declaration and inventory process. On 7 December 2023 the sixth applicant informed the Court that on 27 September 2023 the Ambrolauri District Court recognized the receipt of inheritance by herself over her late mother's property (the fifth applicant).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RESERVATION BY GEORGIA

97. A reservation contained in the instrument for ratification of Protocol No. 1 to the Convention, namely Resolution no. 1243¹ of the Georgian Parliament of 27 December 2001 on the ratification by Georgia of Protocol No. 1, reads as follows, as far as applicable:

“The Parliament of Georgia declares that:

1. Article 1 of the Protocol shall not apply to persons who have or will obtain status of ‘internally displaced persons’ in accordance with ‘the Law of Georgia on Internally Displaced Persons’ until the elimination of circumstances motivating the granting of this status (until the restoration of the territorial integrity of Georgia). In accordance with the aforementioned law, Georgia assumes responsibility to ensure the exercise of rights over property that exist on the place of permanent residence of internally displaced persons after the reasons mentioned in Article 1, paragraph 1, of this law have been eliminated ...”

98. Protocol No. 1 to the Convention entered into force in respect of Georgia on 7 June 2002.

II. DECLARATION BY GEORGIA

99. A declaration contained in paragraph 8 of the instrument of ratification (see paragraph 97 above) reads as follows:

“Georgia declares, that due to the existing situation in Abkhazia and Tskhinvali region, Georgian authorities are unable to undertake commitments concerning the respect and protection of the provisions of the Convention and its Additional Protocols on these territories. Georgia therefore declines its responsibility for violations of the provisions of the Protocol by the organs of self-proclaimed, illegal, forces on the territories of Abkhazia and Tskhinvali region until the possibility of realization of the full jurisdiction of Georgia is restored over these territories.”

III. GEORGIAN LAW ON INTERNALLY DISPLACED PERSONS

100. From its enactment on 28 June 1996, the Internally Displaced Persons and Refugees Act of 28 June 1996 (“the 1996 IDPs Act”) provided that the Ministry for Displaced Persons, together with other agencies of central government and local authorities, was responsible for the practical implementation of the rights conferred upon IDPs by the Act (sections 5(2) and 8). Section 9 further specified that the State guaranteed the protection of IDPs’ rights.

101. Section 7(1) of the 1996 IDPs Act provided as follows:

¹ Rectified on 21 January 2025. The number of the Resolution previously read “no. 1234”.

“If IDPs return to their places of permanent residence after the reasons enumerated in section 1 of this Law have ceased to exist, [the following shall occur].

(a) The relevant bodies of executive authorities and local self-government, including the Ministry for Refugees and Accommodation [the Ministry for Displaced Persons], shall secure the exercise of their [the IDPS’] constitutional rights; create the necessary socio-economic living conditions for safety at their places of permanent residence; return to [them] their legal heritage [and] personal assets, including [homes] and land in the condition they are in at that time; and guarantee the return and repair of damaged [homes] to citizen[s]. Compensation for damage, after the amount [of damage] has been estimated, shall be processed by the local self-government bodies in accordance with the rules established by the government.

(b) The amount of damage and the rules on the payment of compensation shall be established by the relevant bodies of the executive authorities.”

102. On 18 December 2001 section 7 was amended as follows:

Section 7(2) and (3)

“2. The State shall provide internally displaced persons with temporary accommodation.

3. Housing disputes shall be settled in court. Moreover, pending the restoration of the State’s jurisdiction over the whole of the territory of Georgia, internally displaced persons shall not be evicted from dwellings in which they have been collectively housed, except where

- (a) an agreement has been concluded with the internally displaced persons concerned;
- (b) the internally displaced persons have been offered another appropriate dwelling which will not represent a worsening of their existing housing situation;
- (c) a natural disaster has occurred and appropriate compensation has been provided;
- (d) the dwelling in question has been unlawfully occupied by the internally displaced persons.”

103. Section 7, as worded above, remained in force until 6 April 2005. On that date, an amendment to the 1996 IDPs Act removed the above-mentioned provisions from section 7 and incorporated them – with some, mostly textual, corrections – into section 5(4).

104. Section 6(1) of the new IDPs Law (“the 2014 IDPs Act”), which was enacted on 1 March 2014 and repealed the 1996 IDPs Act, provides as follows:

“1. An internally displaced person (IDP) is a citizen of Georgia or a stateless person with a status in Georgia who has been forced to leave his or her permanent place of residence because the occupation of [that] territory by a foreign country, aggression, an armed conflict, global violence and/or a massive violation of human rights posed a threat to his or her life, health or freedom or that of a member of his or her family, and/or who, for any of the above reasons, cannot return to his or her permanent place of residence.”

105. Section 15 of the 2014 IDPs Act provides as follows:

“1. The State recognises the right to restitution of the immovable property of an IDP left behind in [that person’s] permanent place of residence, and the hereditary nature of this right.

2. The State shall take all possible measures to protect the immovable property owned and/or possessed by an IDP, which that IDP has had to leave behind for the reasons referred to in section 6(1) of this Act, from theft, destruction, wilful and other forms of unlawful use and misappropriation.

3. When the reason[s] referred to in section 6(1) of this Law have ceased to exist and an IDP returns to [his or her] permanent place of residence, the State shall take all possible measures to ensure that the immovable property owned and/or possessed by the IDP which he or she was forced to leave behind is returned to its legal owner and possessor.

4. The right provided for in subsection 1 of this section shall be retained even if the IDP has been provided with long-term accommodation.”

106. Section 18(2) of the 2014 IDPs Act provides:

“If an IDP returns to his or her permanent place of residence after the reason[s] referred to in section 6(1) of this Act have ceased to exist, the Ministry [for IDPs] and other State institutions, within the limits of the powers granted by the legislation of Georgia, shall

(a) ensure that an IDP exercises the rights granted by the Constitution of Georgia and this Act;

(b) take measures to create social, economic and legal conditions necessary for an IDP to live safely in his or her permanent place of residence;

(c) take all necessary measures to ensure that private property, including [homes] and smallholding[s], [are] returned to IDP[s] or to [their] legal heir[s] in the condition [they are] in [at that time], and restore demolished building[s] as far as possible and ensure that [they are] returned to the[ir] owner[s]; [and]

(d) coordinate the process of compensating for the damage sustained once the limited amount has been determined.”

IV. LAWS ON OCCUPIED TERRITORIES

107. A decree of the Georgian Parliament of 20 March 2002 on the unlawful misappropriation of State property and private property belonging to refugees and internally displaced persons in Abkhazia declared all actions by the illegitimate *de facto* Abkhaz authorities and all public, civil and international legal instruments issued by them null and void, as well as all civil-law transactions concluded after 14 August 1992 relating to the appropriation of State property and private property belonging to refugees and IDPs in Abkhazia.

108. Section 5(1) of the Law of Georgia on Occupied Territories, enacted on 23 October 2008, provides as follows:

“(1) Any transaction relating to real property that is concluded within the occupied territories in violation of the legislation of Georgia shall be considered null and void from the moment it is concluded and shall have no legal effect;

(2) The right of property shall be protected within the occupied territories and shall be governed by the legislation of Georgia.”

V. JUDGMENT OF THE GEORGIAN CONSTITUTIONAL COURT

109. On 16 November 2004 the Georgian Constitutional Court delivered a judgment in a case in which a third party had challenged the constitutionality of the above-mentioned reservation and declaration by the Georgian Parliament (see *Anzor Tevzaia v. the Parliament of Georgia*, No. 1/5/224, judgment of the Constitutional Court of 16 November 2004).

110. In particular, the appellant, a displaced person within the meaning of the 1996 IDPs Act, complained that the parliamentary resolution of 27 December 2001 on the ratification by Georgia of Protocol No. 1 to the Convention, in particular as regards the reservation and declaration (see paragraphs 97 and 99 above), was contrary to Articles 14 and 21 of the Constitution. The appellant complained that the State had used a territorial criterion to exclude all displaced persons from the benefit of Article 1 of Protocol No. 1.

111. The four-judge bench of the Constitutional Court remained divided as to whether the impugned resolution was compatible with Articles 14 and 21 of the Constitution.

112. In particular, two of the judges considered that the State’s inability to exercise its jurisdiction in the conflict zones in question did not mean that it could give this situation, however serious, precedence over its obligations, which were an inherent feature of any sovereign State. The Georgian State’s inability to honour its obligations in the territories in question did not allow it to declare itself exempt from those obligations. The State might possibly be considered to be exempt from responsibility for violations of the rights of individuals in these regions, but the positive obligation not to abandon its nationals to their fate constituted an indispensable value for the State. In the case at hand, the State had recognised the property rights of the displaced persons but had declared itself temporarily unable to protect them, thus leaving them outside the scope of Article 21 of the Constitution. Such an indefinite postponement by the State of its respect for the property rights of displaced persons could not be seen as an attempt to honour its positive obligations. If the State declared itself exempt from its responsibilities in the regions in question, those zones would become lawless – a situation which would be unacceptable.

113. According to the other two judges, the State had not sought to restrict the property rights of displaced persons by means of the reservation and declaration at issue, but had quite simply affirmed its powerlessness in a specific situation. It was the factual situation, not the State, which was restricting those persons’ rights. To rebuke the State for being objectively unable to ensure respect for the property rights of displaced persons would be

to overlook the facts of the situation, and would in no way provide those persons with an effective means of exercising their rights. The State was doing everything in its power at national and international level to restore its jurisdiction throughout the territory. Section 7 of the Displaced Persons Act made it clear that the State recognised property rights, but blunt reality obliged it to declare that it was powerless to protect the property left behind by displaced persons in their places of residence. The State's postponement of the protection of those rights could not be classified as interference with displaced persons' property rights. Accordingly, the lack of protection of displaced persons' right to respect for their property was due to factual reality rather than any failure by the State to respect this right.

114. Given the equal number of votes, the appeal was dismissed under section 21(6) of the Constitutional Court Act.

VI. RIGHT OF PROPERTY

115. Before the enactment of the Civil Code of Georgia in 1997 ("the 1997 CCG"), the right of property was regulated by the Civil Law Code of the Soviet Socialist Republic of Georgia of 26 December 1964 and the Housing Code of the Soviet Socialist Republic of Georgia of 4 June 1983.

116. At the material time, the relevant provisions of the above-mentioned Civil Law Code read as follows:

Article 10

"In accordance with the law, a citizen may have personal property. [He or she also] has the right to use a house and other property, to receive property by means of inheritance and to transfer it by means of a will ..."

Article 91

"A citizen's personal property may include property intended to satisfy his or her material and cultural needs."

117. Article 8 of the Housing Code (see paragraph 115 above) provided that "homes which constitute[d] citizens' personal property belong[ed] to the housing fund for individuals" (as opposed to State or cooperative housing funds).

118. On 15 July 1993 the Law on the Right to Property was enacted. It regulated issues related to the creation, exercise, protection and termination of property rights.

119. On 26 June 1997 the 1997 CCG was enacted. It guarantees the right of property and comprehensively regulates property, family and personal relations.

VII. LEGITIMATE COURTS OF ABKHAZIA

120. The Government of Georgia submitted that they have maintained legitimate courts of the Autonomous Republic of Abkhazia for the purpose of ensuring the effective protection of the rights of IDPs and the guarantees set out in the legislation of Georgia. Those courts are “in exile” and are located in Tbilisi and Zugdidi. They exercise their jurisdiction not only over IDPs, but also persons residing in Abkhazia.

121. Article 439 of the Code of Civil Procedure provides:

“Until the jurisdiction of Georgia is fully restored in the Autonomous Republic of Abkhazia, the violated and disputed rights and legitimate interests of internally displaced persons shall be ensured by the courts of the Autonomous Republic of Abkhazia in accordance with their territorial jurisdiction, in compliance with the requirements of Chapter III of the Civil Procedure Code of Georgia, provided that the defendant [in question] is also an internally displaced person.”

122. According to the Georgian Government, by maintaining legitimate courts of Abkhazia, they have provided IDPs with guarantees that they will have unimpeded access to the courts for the effective protection of their rights.

VIII. REGISTRATION OF PROPERTY

123. The registration of real estate was defined by the Law of Georgia on Land Registration of 14 November 1996 (“the 1996 Land Registration Act”) and the 1997 CCG, both of which aimed to ensure the stability of civil transactions, the protection of the rights of third parties, and the principle of transparency.

124. At the material time, section 2 of the 1996 Land Registration Act defined the notion and aims of registration as follows:

“The State registration (hereinafter referred to as land registration) of the right to land is an integral part of the land cadastre and includes essential data on the legal status, borders, quality and quantity of a plot of land and the immovable property related to it. The aim of land registration is the State recognition and approval of [a person’s] entitlement to rights over a plot of land and the immovable property related to it, and the transfer, restriction and abolition of [those] rights.”

125. The procedure for registering property in the Public Registry was carried out only after a right of ownership had been acquired in accordance with the principles of private law. Registration only constituted State recognition and approval of the fact that a transaction had taken place.

126. The legislation provided for a different procedure with respect to property rights which had arisen before the enactment of that Act. In particular, in accordance with section 2(4) of the 1996 Land Registration Act:

“Rights to land and to the immovable property related to the land which arose before the enactment of this Act shall be subject to mandatory State registration in accordance

with the requirements of this Act. Rights which arose following the enactment of this Act shall be valid after State registration.”

127. According to the Georgian Government, the 1996 Land Registration Act did not regulate the consequences of not registering a right to immovable property which had arisen before the adoption of that Act, and did not call into question a person’s right to property in the event that their real estate had not been registered.

128. On 28 December 2005 the Law on the registration of rights over immovable property (“the 2005 Registration Act”) was enacted. It repealed the 1996 Land Registration Act. In accordance with section 15 of the new Act, rights over immovable property could be registered in the Public Registry on a provisional basis, in order to ensure the registration of such rights. Furthermore, provisional registration prevented the registration of any other rights over the same property (see more about provisional registration in paragraphs 137-144 below). Provisional registration ceased to have effect after rights registered on a provisional basis had been fully registered. Section 33(2) of the 2005 Registration Act, as amended on 11 May 2007, provided that transactions concluded before the entry into force of the 1997 CCG, but not registered, constituted grounds for registering the property rights over the immovable property in question.

129. The 2005 Registration Act did not lay down any time-limits for registration or attach any consequences to non-registration.

130. On 19 December 2008 the Law on the Public Registry (“the 2008 Public Registry Act”) was enacted; it repealed the 2005 Registration Act. The 2008 Public Registry Act recognises that rights over immovable property which arose before the entry into force of the 1997 CCG are a precondition for registration, and sets no time limit for the registration of such rights. Under section 35 of the transitional and final provisions of the 2008 Public Registry Act, transactions concluded before the entry into force of the 1997 CCG and not registered by the relevant registration body within the time frames determined by the legislation in force at that time serve as a basis for the registration of a right over immovable property.

131. In accordance with Article 1513 of the 1997 CCG, a transitional provision, the person in possession of a property is presumed to be its owner (presumption of ownership). At the same time, this rule does not apply in cases when the nature of ownership can be identified by reference to the Public Registry (Article 158). The Public Registry is a collection of data on the creation and introduction of changes to rights over immovable and intangible property and the termination of such rights, as well as on the abandonment and introduction of changes to rights over immovable property (Article 311). In accordance with this rule, registration itself is linked to the existence of a document which proves that a property right exists. Therefore, if there is a document which proves that a property right exists, then the property right exists. Registration in the Public Registry is for the sole

purpose of protecting such rights, including the interests of an acquirer, within the law.

132. Article 185 of the 1997 CCG generally emphasises the role of registration and is linked to the accuracy of the records of the Public Registry.

133. Article 184 of the 1997 CCG expressly sets out a procedure for abandoning ownership rights over immovable property – unless a person has a declaration entered in the Public Registry relinquishing his or her ownership rights over immovable property and registers that declaration, he or she does not abandon those rights:

“The relinquishment of an ownership right over immovable [property] or another right (related to [that property]) requires a declaration by the entitled person relinquishing this right and the registration of [that declaration] in the Public Registry. The declaration shall be filed with (the agency that maintains) the Public Registry. The declaration on the [entitled person’s] relinquishment of the right shall become effective only after [that declaration] has been filed.”

134. According to the Georgian Government, the registration of immovable property in the Public Registry did not, in itself, create a person’s right to property. It only recognised and confirmed an ownership right over immovable property – an inalienable personal right guaranteed by the Constitution, international agreements and the laws of Georgia.

135. The National Public Registry Agency (the NPRA), a public-law entity under the Ministry of Justice of Georgia, was established by the Law of Georgia on the State Registry of 1 June 2004. The Charter of the Public Registry was approved by Order no. 835 of the Minister of Justice of Georgia of 19 July 2004. Subsequently, the Law on the State Registry and the Charter were repealed on 27 April 2016 and 16 May 2016 respectively. A new Charter of the Public Registry was adopted under Order no. 134 of the Ministry of Justice of Georgia of 3 May 2016. In accordance with that Charter, the main function of the NPRA is the registration of property rights, the establishment of a unified registry and the creation of a cadastral database of immovable property.

136. According to the Georgian Government, despite the existence of the legislative basis, the NPRA is currently unable to fulfil its obligations throughout the territory of Georgia. The Charter of the Public Registry of 19 July 2004, approved by the Minister of Justice of Georgia, and the current Charter of 3 May 2016 provide for the opening of registration offices in the Autonomous Republic of Abkhazia (regional offices in Sokhumi, Gagra, Gudauta, Gulripshi, Ochamchire and Gali). However, owing to the occupation by Russia, the NPRA is prevented from operating there. Without access to or effective authority over the territory concerned, the NPRA cannot ensure the collection, retention or analysis of accurate data and records. It is therefore deprived of the material on the basis of which an accurate and authentic register can be established and maintained and is unable to open registration offices in the Autonomous Republic of Abkhazia (or in

Tskhinvali Region), and it is not possible for it to accomplish its responsibilities on the ground in any other way.

A. Provisional registration of property

137. The Georgian Government submitted that, in accordance with the general legislation on registration of property, valid identification documents and cadastral information have to be presented to the NPRA. Identification documents and cadastral data relating to property located in Abkhazia were destroyed during the conflict or left behind by those who fled. In order for the registration of such property to be valid, it is necessary to carry out on-the-spot checks to avoid the infringement of the rights of third parties or situations where people who are not the rightful owners of property claim rights over it, thus putting the rights of potential buyers at risk.

138. For those reasons, registration of the property rights of IDPs is somewhat different from the type of registration used in respect of the rest of the population. In order to strike a fair balance between the interests of different individuals, the NPRA carries out provisional registration.

139. Provisional registration of property belonging to IDPs was initially provided for in the following instruments: Decree no. 124 of the President of Georgia on the measures to be taken with regard to recording property rights over immovable property located in the Autonomous Republic of Abkhazia and Tskhinvali Region, issued on 14 February 2006; Decree no. 255 of the President of Georgia on the approval of rules for the provisional registration of immovable property located in the Autonomous Republic of Abkhazia and Tskhinvali Region, issued on 8 April 2006; and Order no. 30 of the Minister for IDPs on the approval of rules for the recording of immovable property located in the Autonomous Republic of Abkhazia and Tskhinvali Region, issued on 31 March 2006. Subsequently, such provisional registration was regulated by Decree no. 326 of the President of Georgia on the approval of the rules on the provisional registration of immovable property located in the occupied territories of Georgia, issued on 21 June 2011.

140. Section 4(3) of Decree no. 255 provided that an interested person should enclose with his or her application for provisional registration the record certificate for the property in question and the cadastral plan issued by the Ministry for Displaced Persons, as well as one document from a list proving his or her rights over that immovable property. Furthermore, section 8(5) of the decree provided that where data obtained by aerial photography and sent by the Ministry for Displaced Persons were available, the NPRA would issue a cadastral plan and the record of provisional registration at the request of the interested person. As regards Decree no. 326, under its section 2(4), the Ministry for Displaced Persons prepares cadastral plan drawings by processing data received through aerial and space photography, and sends

them to the NPRA together with a declaration so that the immovable property can be registered on a provisional basis.

141. The purpose of the rules on provisional registration is to record real estate located in the occupied territories of Georgia and register rights over that property. Under the rules on provisional registration, the NPRA can register property rights on the basis of valid identification documents submitted by applicants, accompanied by specific declarations. The data contained in the declarations submitted by applicants, together with supporting documents, are used by the Ministry for Displaced Persons to create cadastral measurement plans.

142. Since January 2017 the Ministry for Displaced Persons has recorded 67,000 immovable properties located in the occupied territories by entering them into a database. Once that Ministry sends documents relating to the declared immovable property to the NPRA, the NPRA ensures that the property is registered on a provisional basis. In addition, the NPRA ensures the creation and updating of the cadastral database of immovable property located in the occupied territories of Georgia.

143. Provisional registration is a basis for full registration in the Public Registry after the full restoration of Georgia's jurisdiction over the occupied territories. The Georgian Government submitted that upon Georgia's *de facto* jurisdiction over Abkhazia being restored, Georgian citizens will have legally valid and technically approved documents relating to real estate in the Georgian and Abkhazian languages, confirming their rights over their property. On the basis of such documents, property-related issues will be regulated and IDPs will be resettled in their habitual places of residence.

144. The NPRA will be able to fully register property in the parts of Abkhazia currently beyond the control of the central government, after verifying the relevant archival documents locally and accurately verifying the location, boundaries, area and purpose of the property.

B. Resolution no. 400 on measures for declaring and inventorying real property located on occupied territories of Georgia

145. On 6 August 2018 the Government adopted Resolution no. 400 on measures for declaring and inventorying real property located on occupied territories of Georgia ("the resolution"). It provides for a two-step process: (1) the filing of declarations (supported by evidence) with the Ministry for Displaced Persons; and (2) the sending by the Ministry for Displaced Persons of the declarations which it has accepted and approved to the NPRA, which in turn makes relevant "records".

146. Under section 1 of the resolution, the management of declarations is handled by the Ministry for Displaced Persons, which identifies the declared property on the basis of information provided by the individual concerned. The Ministry for Displaced Persons creates and maintains an electronic

cadastral system and a database of the declarations filed with it. The NPRA also maintains a database of all documents forwarded to it by the Ministry for Displaced Persons, and ensures public access to the information.

147. Section 2 lists the information which has to be provided to the Ministry for Displaced Persons by the individual concerned. That includes identification data, proof of residence, identification of a permanent registered address, proof of ownership, and information relating to family members.

148. Under section 3, if a property is claimed by more than one person, the NPRA can amend the information in its records until the matter is finally resolved.

149. Section 4(1) of the resolution provides that the recording (or inventorying) of immovable property by the NPRA is the basis for the full registration of such property with the NPRA once Georgia's jurisdiction has been fully restored in respect of the occupied territories. Furthermore, under section 4(2), no contract may be concluded in relation to a property which has not been fully registered (after jurisdiction has been restored). The recording or inventorying of property does not create a right to compensation *vis-à-vis* the State (section 4(3)).

150. In accordance with section 5(1), declarations filed with the Ministry for Displaced Persons before the adoption of this resolution must be sent to the NPRA. Under section 5(2), following the entry into force of this resolution, declarations must be filled in and forwarded to the NPRA, together with the relevant cadastral plans.

151. This procedure also applies to people who have "neutral IDs or travel documents", that is, people with no passports or nationality.

IX. ADMINISTRATIVE DECISIONS, ACTS OR OMISSIONS

152. Article 2 § 1 (d) of the General Administrative Code of Georgia ("the GAC") defines an individual administrative decision as follows:

"[A] decision by an administrative body under administrative law which establishes, modifies, terminates or confirms the rights and obligations of a person or a limited group of persons. The decision of an administrative body to refuse to address an issue raised by an applicant which is within its competence, and any document issued or confirmed by an administrative body that may have legal consequences for a person or a limited group of persons, shall also be deemed an individual administrative decision".

153. Article 180 of the GAC provides that "an act by an administrative body must be appealed against within one month from the day when an interested party becomes aware that the act has been performed or that there has been a failure to perform the act".

154. In accordance with Article 177 § 3 of the GAC, "an act by an administrative body which is not connected to the issuance of an

administrative decision shall be appealed against in the manner determined by this chapter”.

155. Article 24 of the Administrative Procedure Code of Georgia (hereinafter “the APC”) provides that:

“1. An action may be brought to require [a person] to perform or abstain from performing an act which is not connected to the issuance of an individual administrative decision.

2. An action may be brought if an administrative body’s performance of or refusal to perform an act directly and immediately (individually) prejudices the legal rights or interests of the claimant.”

X. COMPENSATION

156. Article 207 of the GAC provides:

Application of the Civil Code of Georgia to compensation for damage caused by administrative bodies

“Unless otherwise provided for in this Code, damage caused by an administrative body shall be compensated for in accordance with the Civil Code of Georgia.”

157. Article 208 of the GAC provides:

Special procedure for the liability of State or local self-government bodies

“1. The State shall be liable for damage caused by a State administrative body and its officials or other public servants in the course of discharging their official duties ...”

158. Article 992 of the 1997 CCG provides:

Concept

“A person who unlawfully, intentionally or negligently causes damage to another person shall compensate the injured party for the damage.”

159. Article 1005 of the 1997 CCG provides:

Liability of the State for damage caused by its officials

“If an official breaches his or her official duty in relation to other persons, [either] intentionally or by gross negligence, then the State or the body for which the official works shall pay for the damage caused. If the damage is caused intentionally or by gross negligence, the official and the State shall be jointly and severally liable.”

XI. INTERNATIONAL MATERIAL

160. The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 28 June 2005, E/CN.4/Sub.2/2005/17, Annex), known as the Pinheiro Principles, are the most comprehensive standards on this subject. The aim of these

principles, which are based on existing international human rights and humanitarian law, is to provide States, UN agencies and the broader international community with international standards and practical guidelines on how best to address the complex legal and technical issues surrounding housing and property restitution. More information about the content of the principles has been summarised in the Court’s judgment in *Chiragov and Others v. Armenia* ([GC], no. 13216/05, § 98, 16 June 2015).

161. On 13 October 2022 the European Union issued a statement on the 56th round of the Geneva International Discussions. It contained the following passages:

“1. The European Union welcomes the 56th round of the Geneva International Discussions (GID) that was held in Switzerland on 5 October 2022. This was the first GID round held since December 2021. Nevertheless, the channels of communication between the Co-Chairs and the respective participants remained operational during this period.

2. As mandated by the EU-mediated Six-point Agreement of 12 August 2008 and the Implementing Measures of 8 September 2008, the GID process continues to serve as the only platform where consequences of the conflict, including issues related to the implementation of the Six-point Agreement and its Implementing Measures, are addressed. This includes discussions on core issues, such as non-use of force and international security arrangements, as well as internally displaced persons and refugees.

3. The European Union expresses its concern with regard to the severe and lasting impact this conflict has on the overall security situation in conflict-affected regions of Georgia, as well as on the civilian population. The EU is concerned about the continued illegal Russian military presence and activities in Georgia. We are also concerned about Russia’s attempts to *de-facto* integrate Georgia’s regions of Abkhazia and South Ossetia/Tskhinvali region into Russia’s regulatory and security space, as well as the ongoing ‘borderisation’ activities, the restrictions on movement of civilians across the administrative boundary lines and the arbitrary detentions of Georgian citizens.

4. The EU calls on Russia, as a party to this conflict, to recommit itself to respecting Georgia’s sovereignty and territorial integrity within its internationally recognised borders and to fulfil its obligations under the EU-mediated agreement of 12 August 2008 and its subsequent implementing measures of 8 September 2008 in full and without further delay. The EU also urges Russia to ensure the proper follow-up of the landmark judgement of 21 January 2021 of the European Court of Human Rights in the case *Georgia vs Russia*.”

162. Council of Europe bodies have repeatedly addressed issues concerning the restitution of property to internally displaced persons (IDPs) and refugees. The following resolution is of particular relevance in the context of the present case:

Parliamentary Assembly of the Council of Europe (PACE) Resolution 1708 (2010) on solving property issues of refugees and displaced persons

“...

3. The destruction, occupation and confiscation of abandoned property violate the rights of the individuals concerned, perpetuate displacement and complicate reconciliation and peace-building. Therefore, the restitution of property – that is, the restoration of rights and physical possession in favour of displaced former residents – or compensation, are forms of redress necessary for restoring the rights of the individual and the rule of law.

4. The Parliamentary Assembly considers that restitution is the optimal response to the loss of access and rights to housing, land and property because, alone among forms of redress, it facilitates choice between three ‘durable solutions’ to displacement: return to one’s original home in safety and dignity; local integration at the site of displacement; or resettlement either at some other site within the country of origin or outside its borders.”

163. The Parliamentary Assembly then referred to Council of Europe human rights instruments, in particular the European Convention on Human Rights, the European Social Charter and the Framework Convention for the Protection of National Minorities, and to the UN Pinheiro Principles, and called on member States to take the following measures:

“9. In the light of the above, the Assembly calls on member states to resolve post-conflict housing, land and property issues of refugees and IDPs, taking into account the Pinheiro Principles, the relevant Council of Europe instruments and Recommendation Rec(2006)6 of the Committee of Ministers.

10. Bearing in mind these relevant international standards and the experience of property resolution and compensation programmes carried out in Europe to date, member states are invited to:

10.1. guarantee timely and effective redress for the loss of access and rights to housing, land and property abandoned by refugees and IDPs without regard to pending negotiations concerning the resolution of armed conflicts or the status of a particular territory;

10.2. ensure that such redress takes the form of restitution in the form of confirmation of the legal rights of refugees and displaced persons to their property and restoration of their safe physical access to, and possession of, such property. Where restitution is not possible, adequate compensation must be provided, through the confirmation of prior legal rights to property and the provision of money and goods having a reasonable relationship to their market value, or other forms of just reparation;

10.3. ensure that refugees and displaced persons who did not have formally recognised rights prior to their displacement, but whose enjoyment of their property was treated as *de facto* valid by the authorities, are accorded equal and effective access to legal remedies and redress for their dispossession. This is particularly important where the affected persons are socially vulnerable or belong to minority groups;

...

10.5. ensure that the absence from their accommodation of holders of occupancy and tenancy rights who have been forced to abandon their homes shall be deemed justified until the conditions that allow for voluntary return in safety and dignity have been restored;

10.6. provide rapid, accessible and effective procedures for claiming redress. Where displacement and dispossession have taken place in a systematic manner, special adjudicatory bodies should be set up to assess claims. Such bodies should apply

expedited procedures that incorporate relaxed evidentiary standards and facilitated procedure. All property types relevant to the residential and livelihood needs of displaced persons should be within their jurisdiction, including homes, agricultural land and business properties;

10.7. secure the independence, impartiality and expertise of adjudicatory bodies, including through appropriate rules on their composition that may provide for the inclusion of international members. ...”

164. The decision of the Committee of Ministers of the Council of Europe of 2 May 2018 on the conflict in Georgia reads as follows:

“The Deputies

1. recalled their decisions on ‘The Council of Europe and the conflict in Georgia’ of 29 and 30 April and 2 May 2014 (1198th meeting), 12 May 2015 (1227th meeting), 4 May 2016 (1255th meeting) and 3 May 2017 (1285th meeting); reiterated the unequivocal support of the Council of Europe member States for the sovereignty and territorial integrity of Georgia within its internationally recognised borders;

2. stated that the conclusion and implementation of so-called treaties on alliance and strategic partnership/integration between the Russian Federation and Georgia’s regions of Abkhazia and Tskhinvali region/South Ossetia and the recent ratification by the Russian State Duma of a so-called agreement on the incorporation of military units of the Tskhinvali region of Georgia into the armed forces of the Russian Federation, as well as the recent opening of so-called customs points in the Georgian regions of Abkhazia and Tskhinvali region/South Ossetia aimed at the integration of these regions respectively into the customs sphere of the Russian Federation, impede the peaceful conflict resolution, undermine the ongoing efforts to strengthen security and stability in the region, constitute repeated violations of the sovereignty and territorial integrity of Georgia and have no legal validity; reiterated that any illegal act aimed at changing the status of the Georgian regions will have no legal effect; reiterated that any illegal act by the Russian Federation aimed at changing the status of the Georgian regions, including through issuing passports and establishing a so-called status of foreign residents, have no legal effect and further complicate the situation on the ground; called upon the Russian Federation to stop and reverse this process and to comply with its international law obligations and commitments, including under the EU mediated 12 August 2008 Ceasefire Agreement, in particular with regard to the withdrawal of military forces and allow the establishment of international security mechanisms on the ground;

3. stated that Georgia, as the only sovereign State under international law over its regions of Abkhazia and Tskhinvali region/South Ossetia, is still prevented from exercising legitimate jurisdiction over these regions due to the continuous impediments put by the Russian Federation, including its continuing military presence therein;

4. deeply regretted that despite the constant calls upon the Russian Federation to reverse this process, it continues installing razor and barbed wire fences and other artificial obstacles along the administrative boundary lines (ABLs) dividing families and communities, violating human rights and fundamental freedoms, complicating the settlement of the conflict involving two member States; expressed their concern that the closure of ‘crossing points’ across the ABL of the Georgian region of Abkhazia is detrimental for freedom of movement and livelihood of the local residents and further deteriorates the humanitarian situation on the ground;

5. underlined the efforts of Georgia to reach out to the residents of its regions of Abkhazia and Tskhinvali region/South Ossetia by enhancing humanitarian activities; expressed appreciation for the various initiatives taken by Georgia in this respect, *inter alia*, through providing education opportunities and free medical service to the residents of these regions; welcomed the new peace initiative of the Government of Georgia entitled ‘A step to a better future’, as a vivid sign of Georgia’s firm commitment to promote confidence and interaction between the societies split by the dividing lines;

6. expressed profound concern that the human rights situation in the Georgian regions of Abkhazia and Tskhinvali region/South Ossetia has been further deteriorating, including with regard to the right to education in native language, the right to freedom of movement, the right to property, and the right to liberty and security; expressed serious concern at the discrimination based on ethnic grounds; expressed concern that IDPs and refugees continue to be deprived of the right to return to their places of origin in a safe and dignified manner;

7. expressed grave concern over the detention of three Georgian citizens Mr Archil Tatumashvili, Mr Levan Kutashvili and Mr Ioseb Pavliashvili in Tskhinvali region/South Ossetia and the subsequent death of Mr Archil Tatumashvili in custody; condemned the fact that handing over his body became a topic for negotiations, which lasted almost one month; expressed concern over obstacles to the freedom of movement of Mr Levan Kutashvili and Mr Ioseb Pavliashvili, who were allowed to cross into Tbilisi Administered Territory after considerable delay;

8. expressed grave concern over impunity around the killing of an unarmed Georgian civilian on 19 May 2016 in the village of Khurcha;

9. expressed concern at the razing of intentionally damaged houses belonging to IDPs in Eredvi village, Tskhinvali region/South Ossetia, in violation of property rights;

10. bearing in mind that human rights and fundamental freedoms shall be protected by all relevant States Parties to the European Convention on Human Rights in the Georgian regions of Abkhazia and Tskhinvali region/South Ossetia, called on the authorities exercising effective control:

- to create conditions allowing for the voluntary, safe and dignified return of IDPs and refugees, and to protect their property rights;
- to guarantee and implement the right to education in schools and preschools, including education in the native language in Georgia’s regions of Abkhazia and Tskhinvali region/South Ossetia;
- to remove any impediment, restriction or limitation to the right to freedom of movement across the ABLs, including for medical and education purposes; to cease arbitrary detention of persons, including in the context of so-called ‘illegal border crossing’ and to re-open ‘crossing points’;
- to ensure that residents of the Georgian regions concerned are not subject to discrimination on any including ethnic ground and are prevented from holding Georgian passports;
- to investigate allegations of human rights violation and ensure appropriate follow-up in accordance with the European standards on human rights;
- to prevent further deterioration of monuments belonging to the cultural heritage throughout Georgia’s regions of Abkhazia and Tskhinvali region/South Ossetia;

11. deeply regretted that neither the Commissioner for Human Rights, the monitoring bodies, nor the Secretariat delegation preparing the Secretary General's consolidated reports have been granted access to the Georgian regions concerned; invited the Secretary General to engage in a dialogue with the Russian Federation and Georgia to this end; called on the Russian Federation to secure immediate and unrestricted access to the territories beyond the control of the Government of Georgia to the Council of Europe bodies;

12. encouraged the Secretary General to continue the submission of his biannual consolidated reports on the conflict in Georgia to the Committee of Ministers."

165. The Resolution of the European Parliament of 14 June 2018 on Georgian occupied territories 10 years after the Russian invasion and the Organization for Security and Co-operation in Europe (OSCE) Resolution on Ten Years After the August 2008 War in Georgia are along the same lines as the decision of the Committee of Ministers of the Council of Europe of 2 May 2018 (cited in the previous paragraph). They are available on the internet.

166. In a report of July 2017 entitled "Human Rights in Abkhazia Today", the former Human Rights Commissioner of the Council of Europe, acting as an independent expert for the European Union, together with another expert, stated:

Executive summary

"...

Most ethnic Georgians (with the exception of Gali returnees) have been unable to return, and their right to the property they had left behind is often violated.

...

Property issues

Property issues and property rights are among the most sensitive problems in Abkhazia at present. Property rights of ethnic Georgians displaced from Abkhazia are one of the key issues that will need to be addressed as part of a comprehensive conflict settlement.

...

In the wake of the conflict, a tumultuous, controversial and unregulated process of arbitrary property acquisitions started. Many Abkhaz took hold of property left behind by ethnic Georgians but also by others.

...

The property and accommodation rights of many were violated in the process. Ethnic Georgians (with the exception of those who have returned to Gali) are still deprived of the right to return, and in the majority of cases also of their right to the property they had left behind."

THE LAW

I. PRELIMINARY REMARKS

A. Temporal scope

167. The Court notes 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 applications in so far as they concern Russia (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). There is no temporal bar to the examination of the applications in respect of Georgia.

B. Right to pursue the application on behalf of the second, third, fourth and fifth applicants

168. The second applicant died on 29 May 2012. The first applicant expressed her wish to pursue the application in his stead (see paragraph 9 above). The Russian Government submitted that she had no standing to act on her late husband's behalf and pursue his application (no. 48656/06) before the Court, because she had not proved that she was his legal heir.

169. The third applicant died in 2011. Her son, Mr Badri Mekhuzla, asked the Court if he could pursue the application in his late mother's stead (see paragraph 48 above).

170. The fourth applicant died on 6 December 2006. Her son, Mr Goliap Sanaia, informed the Court in a letter of 19 March 2007 that he intended to pursue the application before the Court as the deceased's heir. On 3 July 2007 a Chamber of the Court allowed Mr Goliap Sanaia to pursue the application in lieu of his late mother. Mr Goliap Sanaia died on 29 January 2020 and his wife, Ms Larisa Sanaia, expressed a wish to continue the application (see paragraph 68 above).

171. The fifth applicant died on 16 June 2021. Her daughter, the sixth applicant, expressed a wish to continue to pursue the application in her late mother's stead (see paragraph 77 above).

172. As the Court observed in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* ([GC], no. 47848/08, § 137, ECHR 2014), where an applicant has died after lodging an application, it has accepted that his or her next of kin or heir may, in principle, pursue the application, provided that he or she has sufficient interest in the case (see, for instance, the widow and children in *Raimondo v. Italy*, 22 February 1994, § 2, Series A no. 281-A, and *Stojkovic v. the former Yugoslav Republic of Macedonia*,

no. 14818/02, § 25, 8 November 2007; the parents in *X v. France*, 31 March 1992, § 26, Series A no. 234-C; the nephew and potential heir in *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII; and the unmarried or *de facto* partner in *Velikova v. Bulgaria* (dec.), no. 41488/98, ECHR 1999-V; and contrast the universal legatee not related to the deceased in *Thévenon v. France* (dec.), no. 2476/02, ECHR 2006-III; the niece in *Léger v. France* (striking out) [GC], no. 19324/02, § 50, 30 March 2009; and the daughter of an original applicant in a case concerning non-transferable rights under Articles 3 and 8 where no general interest was at stake in *M.P. and Others v. Bulgaria*, no. 22457/08, §§ 96-100, 15 November 2011).

173. 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, among other authorities, *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 73, ECHR 2012 (extracts)).

174. In the instant case, the requests (listed above) to pursue the proceedings were submitted by individuals who are very close relatives of the deceased applicants and can thus claim to have a legitimate interest in obtaining a ruling even after their death. Bearing in mind the above, as well as the passage of time since the applications were lodged, 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 applications submitted by the deceased applicants on the sole ground that, owing to their condition and advanced age, they did not have the strength or the time to await the outcome of the proceedings before it (compare, *mutatis mutandis*, *Mamasakhlisi and Others v. Georgia and Russia*, nos. 29999/04 and 41424/04, § 241, 7 March 2023).

175. The Court accordingly accepts that the first applicant, who has been the wife of the second applicant since 1998 (see paragraph 10 above), has standing to pursue the application in his stead. The Court further finds that a number of elements in the file (see paragraphs 48, 55-56 and 93 above) are sufficient to show that Mr Badri Mekhuzla is the third applicant's son and therefore has standing to pursue the application on her behalf. In addition, the Court finds that Ms Larissa Sanaia, wife of the late Mr Goliap Sanaia, who was authorised by the Court to pursue the application in his late mother's stead (the fourth applicant), has standing to continue to pursue the application after Mr Goliap Sanaia's demise (see paragraphs 68 and 94 above). Lastly, the Court finds that the sixth applicant, who is the fifth applicant's daughter (see paragraph 77 above), has standing to pursue the application in her late mother's stead.

II. JOINDER OF THE APPLICATIONS

176. 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

177. The Court notes at the outset that in their submissions the two respondent Governments raised a number of objections to the admissibility of the applications. The Court will examine these issues in the following order:

- the Court's jurisdiction *ratione temporis*;
- the Court's jurisdiction *ratione materiae*, including the Georgian Government's reservation and declaration in respect of Article 1 of Protocol No. 1 to the Convention;
- the Court's jurisdiction *ratione loci* and *ratione personae*;
- compliance with the six-month rule;
- exhaustion of domestic remedies;
- alleged lack of substantiation of the complaints in application no. 48656/06;
- the matter allegedly being resolved in application no. 18102/04 and alleged lack of victim status in application no. 48656/06

A. Incompatibility *ratione temporis* of the applications with the Convention provisions

1. The parties' positions

178. The Russian Government stated that the applications lodged with the Court in respect of Russia were incompatible *ratione temporis*, as the events complained of had taken place before 5 May 1998, the date when the Convention had come into force in respect of Russia. In particular, the first and second applicants' house at no. 185a Sukhumi Road had burned down in 1992 (see paragraph 14 above); their house at no. 185 Sukhumi Road had allegedly been seized in the early 1990s (see paragraph 13 above); and the second applicant had been dismissed from his post in 1993 (see paragraph 44 above). Similarly, the remaining applicants had lost their houses as a result of instantaneous acts, all of which had taken place before Russia had ratified the Convention.

179. The Georgian Government submitted that the complaints in applications nos. 5148/05, 26166/05 and 42765/05 were incompatible *ratione temporis* with the Convention, since the applicants had abandoned their houses in 1992-1993, well before Georgia had ratified the Convention on 20 May 1999.

180. The applicants reiterated their complaints and stressed that they had been continuously deprived of the right to peaceful enjoyment of their possessions. They specified that their complaints in respect of Russia should be assessed from 5 May 1998, when Russia had ratified the Convention, and their complaints in respect of Georgia should be assessed from 20 May 1999, when Georgia had ratified the Convention. As regards the complaint under Article 1 of Protocol No. 1 to the Convention in respect of Georgia, it had to be assessed from 7 June 2002 onwards, when Georgia had ratified that Protocol (see paragraph 98 above).

2. *The Court's assessment*

(a) **General principles**

181. While, according to the Court's case-law, deprivation of an individual's home or property is in principle an instantaneous act and does not produce a continuing situation of "deprivation" in respect of the rights concerned (see, among other authorities, *Sargsyan v. Azerbaijan* (dec.) [GC], no. 40167/06, § 83, 14 December 2011), where deprivation of property and home results from an ongoing *de facto* situation, it is considered to be of a continuing nature (ibid. § 86). One test applied by the Court in order to distinguish between an instantaneous act and a continuing situation is to see whether the applicant can still be regarded as the legal owner of the property or other right at issue (see, in particular, *Papamichalopoulos and Others v. Greece*, no. 14556/89, § 41, 24 June 1993 and *Loizidou v. Turkey* ((merits), 18 December 1996, § 41, *Reports of Judgments and Decisions* 1996-VI; see also *Vasilescu v. Romania*, 22 May 1998, §§ 48-49, *Reports* 1998-III).

(b) **Application to the present case**

182. The Court accepts the Russian Government's argument that since the house at no. 185a Sukhumi Road in the village of Psakhara burned down in 1992 (see paragraph 14 above), this was an instantaneous act which occurred before Russia's ratification of the Convention. Accordingly, the first and second applicants' complaint relating to that property falls outside the Court's competence *ratione temporis* (compare *Moldovan and Others and Rostas and Others v. Romania* (dec.), nos. 41138/98 and 64320/01, 13 March 2001).

183. However, as regards the remaining properties identified above (see paragraphs 10, 49, 70, 79 and 82 above), the Court considers that the applicants have at least submitted *prima facie* evidence regarding their alleged property and residence in Abkhazia (compare *Sargsyan* (dec.), cited above, § 88). As to the question of whether the applicants did indeed own the immovable properties in Abkhazia as they claimed, the Court refers to its conclusion below (see paragraph 207 below).

184. Furthermore, the Russian Government have not claimed that the applicants were deprived of their alleged legal titles under specific legal

provisions adopted in Abkhazia in the meantime. In that connection, the Court refers to *Loizidou* (cited above, § 44) where, even though a law – the fundamental law of the “Turkish Republic of Northern Cyprus” (the “TRNC”) which purported to interfere with the applicants’ rights – had been enacted, the Court found that that law had no legal validity for purposes of the Convention. The reason for that finding was that the international community did not regard the “TRNC” as a State under international law, and the Republic of Cyprus had remained the sole legitimate Government of Cyprus – itself, bound to respect international standards in the field of the protection of human rights.

185. To the extent that some of the applicants in the instant case stated that their houses might have been acquired by third parties after they had fled Abkhazia during the armed conflict in the early 1990s, the Court has consistently held that deprivation of property is not considered an instantaneous act if it results from a legal act that is invalid (see *Chiragov and Others v. Armenia* (dec.) [GC], no. 13216/05, § 97, 14 December 2011). It notes in this connection that, in accordance with Georgian legislation, transactions relating to immovable property concluded within the occupied territories in violation of the legislation of Georgia are null and void from the moment they are concluded (see paragraphs 107-108 above).

186. The Court accordingly finds that the facts of the case are capable of falling within its jurisdiction *ratione temporis*. The applicants’ lack of access to their alleged properties in Abkhazia is to be considered as a continuing situation, which the Court has had competence to examine since 5 May 1998 in respect of Russia, since 7 June 2002 in respect of Georgia as regards the complaints falling under Protocol No. 1 to the Convention, and since 20 May 1999 in respect of Georgia as regards the rest of the complaints (compare *Sargsyan* (dec.), cited above, § 91). Furthermore, as regards the period after 16 September 2022 in respect of Russia, the Court has already held that a continuing situation that spans across the termination date (16 September 2022) falls within its temporal jurisdiction only for the part occurring before that date (see *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, § 61, 6 June 2023, and *Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC], §§ 162-163, 9 April 2024). In the present case, the Court accordingly finds that the factual situation in which the applicants claim to have been continuously deprived of the use of their homes does not have “overflowing” effects and ends at the date of termination.

187. Having regard to these considerations, the Court rejects the Georgian and Russian Governments’ objections *ratione temporis*.

B. Incompatibility *ratione materiae* of applications nos. 5148/05, 26166/05 and 42765/05, brought against both Georgia and Russia, and application no. 48656/06, brought against Russia, with the Convention provisions

1. The parties' positions

188. The Georgian Government submitted firstly that the complaints of the applicants in applications nos. 5148/05, 26166/05 and 42765/05 were incompatible *ratione materiae* with the Convention. This was because at the time of ratifying Protocol No. 1 to the Convention, Georgia had made a declaration and a reservation as regards that Protocol's application in Abkhaz territory (see paragraphs 97 and 99 above). Accordingly, the Government were not in a position to guarantee protection of the right to peaceful enjoyment of property enshrined in Article 1 of Protocol No. 1 to the Convention while Georgia did not have effective control over Abkhazia. Given that the four applicants in these three applications had been granted IDP status, they fell within the scope of application of the reservation and declaration referred to above.

189. The applicants considered that neither the declaration nor the reservation made by Georgia was compatible with Article 57 of the Convention. Specifically, the reservation was general in nature and too vague. It applied in respect of an indefinite period of time. The frozen conflict had lasted more than twenty-five years and the Georgian Government had given no indication as to when the restoration of Georgian territorial integrity was likely to be achieved. In addition, the complete exclusion of the protection of IDPs' property rights under Protocol No. 1 to the Convention was disproportionately broad. Lastly, the reservation, read in conjunction with the declaration, as suggested by the Georgian Government, showed that Georgia had in effect excluded Abkhaz territory from the application of Protocol No. 1 to the Convention, which was not permitted under Article 57 of the Convention.

190. The Russian Government advanced the argument that applications nos. 5148/05, 26166/05, 42765/05 and 48656/06 were all incompatible *ratione materiae* with the provisions of the Convention, since none of the applicants had shown that they owned the houses in Abkhazia which they claimed were theirs.

191. As regards the first applicant specifically, the Russian Government pointed out that she had showed no proof of ownership in respect of the house situated at no. 185 Sukhumi Road. According to the technical passport for the house dated 8 December 1989, the second applicant and his father were listed as joint owners of that house (see paragraph 11 above). Furthermore, the first applicant had submitted no documents to show that she might have owned a share of the house through being an heir to her husband's estate.

192. The applicants reiterated their complaints.

2. *The Court's assessment*

193. Article 57 provides as follows:

“1. Any State may, when signing [the] Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

2. Any reservation made under this article shall contain a brief statement of the law concerned.”

(a) *The first applicant*

194. The Court reiterates that the concept of “possessions” in the first paragraph of Article 1 of Protocol No. 1 to the Convention has an autonomous meaning which is not limited to the ownership of material goods and is independent from the formal classification in domestic law. In the same way as material goods, certain other rights and interests constituting assets can also be regarded as “property rights” and thus as “possessions” for the purposes of this provision. In each case, the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see, among other authorities, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 171, ECHR 2012).

195. However, as a general rule, the right to live in a particular property not owned by an applicant does not as such constitute a “possession” within the meaning of Article 1 of Protocol No. 1 (see *Durini v. Italy*, no. 19217/91, Commission decision of 12 January 1994, Decisions and Reports (DR) 76B, pp. 76-79; *Kovalenok v. Latvia* (dec.), no. 54264/00, 15 February 2001; *H.F. v. Slovakia* (dec.), no. 54797/00, 9 December 2003; *Bunjevac v. Slovenia* (dec.), no. 48775/09, 19 January 2006; *Gaćeša v. Croatia* (dec.), no. 43389/02, 1 April 2008; *Babenko v. Ukraine* (dec.), no. 68726/10, 4 January 2012, and *Ponyayeva and Others v. Russia*, no. 63508/11, § 36, 17 November 2016).

196. The first applicant has not submitted any document to show that she has property rights in respect of the house at no. 185 Sukhumi Road. While the documents in the file indicate that her late husband and his father each owned half of that house (see paragraph 11 above), she has not shown that she acquired any part of it by becoming an heir to her late husband's estate in order to be able to claim it as a possession in her own right. In the absence of any comments by the first applicant in that regard (compare *Ponyayeva and Others*, cited above, § 37, and contrast *Mago and Others v. Bosnia and Herzegovina*, nos. 12959/05, 19724/05, 47860/06, 8367/08, 9872/09 and 11706/09, § 78, 3 May 2012), the Court cannot assume that she acquired any part of the house following her husband's death either (contrast also *Molla Sali v. Greece* [GC], no. 20452/14, §§ 130-131, 19 December 2018, where,

given that the domestic courts had validated the applicant's husband's will and the applicant had subsequently accepted her husband's estate by notarised deed and had then registered the property transferred to her in the Land Registry, the Court considered that the applicant's proprietary interest in inheriting from her husband was of a sufficient nature and sufficiently recognised to constitute a "possession").

197. Accordingly, the Court finds that the first applicant has not shown that she has a possession within the meaning of Article 1 of Protocol No. 1 to the Convention (compare *Ponyayeva and Others*, cited above, § 37). It follows that her complaint under Article 1 of Protocol No. 1 as regards the house at no. 185 Sukhumi Road is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

198. The Court finds that the conclusion in the paragraph immediately above does not apply in respect of the first applicant's remaining complaints, namely those under Article 6 § 1, and related Articles 13 and 14 of the Convention in respect of Georgia (application no. 18102/04), and under Articles 3, 8, 13 and 14 in respect of Russia (application no. 48656/06).

(b) The remaining applicants

199. The Court reiterates that in order to be valid, a reservation must satisfy the following conditions: (1) it must be made at the time the Convention or the Protocols thereto are signed or ratified; (2) it must concern a particular provision of the Convention; (3) it must relate to specific laws in force at the time of ratification; (4) it must not be a reservation of a general character; and (5) it must contain a brief statement of the law concerned (see *Benavent Díaz v. Spain* (dec.), no. 46479/10, § 47, 31 January 2017, with further references). In respect of the objection by Georgia (see paragraph 188 above), the Court observes that the reservation in question (see paragraph 97 above) refers to a specific provision of the Convention, namely Article 1 of Protocol No. 1, which is one of the requirements for reservations to be valid under the Convention (see paragraph 193 above). That said, while the reservation refers to a specific Law in force in Georgia – the Law of Georgia on Internally Displaced Persons – it is silent on the question of how that Law, or some provisions thereof, are incompatible with Article 1 of Protocol 1 to the Convention, which is a separate explicit requirement under Article 57 of the Convention (*ibid.*). A simple reference to a Law, where it is not contrary to the Convention provision in question, does not suffice. Similarly, it cannot be said that the reservation contains a brief statement of the Law in question.

200. In addition, the wording of the reservation, while in theory limiting its application in space (to property left behind in Abkhaz territory) and time (until such time as Georgia re-establishes its effective control over Abkhazia), in reality has the effect of wholly depriving an entire category of people, namely IDPs, of protection as regards property belonging to them which is

located in a distinct part of Georgia's territory. To the extent that Georgia is not in a position to envisage when it will regain control over Abkhazia (see, *inter alia*, paragraph 164 above), IDPs will be deprived of protection of their rights over property on Abkhaz territory for an indefinite period of time. The Court reiterates that reservations must not be couched in terms that are too vague or broad for it to be possible to determine their exact meaning and scope (see, among other authorities, *Jėčius v. Lithuania*, no. 34578/97, § 79, ECHR 2000-IX).

201. On the basis of the above, the Court finds that the reservation entered by Georgia in the instant case does not fulfil the requirements of Article 57 of the Convention. In particular, it is unacceptably broad, since it denies part of Georgia's population protection of the right of property in respect of all property located in a part of the territory of Georgia for an indefinite period of time. Furthermore, it can be said that it is framed in general terms, to the extent that it has not been suggested that a domestic Law in force at the time contained provisions that were contrary to Article 1 of Protocol No. 1 to the Convention.

202. Consequently, the reservation does not meet the requirements of Article 57 of the Convention and is therefore not valid (contrast, *mutatis mutandis*, *Jėčius*, cited above, § 81).

203. As regards the declaration made by Georgia (see paragraph 99 above) in respect of its inability to make commitments concerning respect for and protection of the provisions of the Convention and its Additional Protocols in Abkhazia and Tskhinvali Region, the following is of relevance.

204. In its admissibility decision in *Ilașcu and Others v. Moldova and Russia* ((dec.), no. 48787/99, 4 July 2001), the Court held that neither the spirit nor the terms of Article 56 of the Convention, under which the Convention's application can be extended to territories other than the metropolitan territories of the Contracting Parties, could permit an interpretation which restricted the scope of the term "jurisdiction" within the meaning of Article 1 to only part of the territory of a Contracting State.

205. The declaration made by Georgia upon ratification is therefore not capable of restricting the territorial application of the Convention to certain parts of the internationally recognised territory of Georgia (compare also *Sargsyan* (dec.) cited above, § 65).

206. The Court accordingly finds that the applicants' complaints cannot be dismissed as incompatible *ratione materiae* with the provisions of the Convention. Accordingly, the Georgian Government's related objection must be dismissed.

207. In respect of the objection by Russia (see paragraph 190 above), the Court finds that the question of whether the applicants (other than the first applicant) did indeed own the houses in Abkhazia, as they claimed, must be reserved to a detailed examination of the facts and legal issues of the case at

the merits stage (compare *Chiragov* (dec.), cited above, § 101). Accordingly, it joins this question to the merits.

C. Incompatibility *ratione loci* and *ratione personae* of the applications with the provisions of the Convention

1. The parties' positions

208. According to the Russian Government, the applications were incompatible *ratione loci* with the provisions of the Convention, since Russia had no jurisdiction over Abkhazia. Specifically, Abkhaz territory had not been under Russia's effective control either before 2006 (as regards the relevant period in application no. 48656/06) or before 2006 and thereafter (as regards the other applications).

209. Application no. 48656/06 was also incompatible *ratione personae* with the provisions of the Convention, because the house at no. 185 Sukhumi Road had not been transferred to anyone by the Russian peace-keeping forces, with their direct participation and support, or on their behalf. Owing to the passage of time, it was impossible at present to collect reliable evidence in connection with the allegations made by the applicants. Caution therefore had to be applied when assessing the available material which had not been verified through an on-site visit (a fact-finding mission), interviews or cross-examination.

210. The applicants in applications nos. 5148/05, 26166/05 and 42765/05 submitted that Georgia and Russia had jurisdiction in respect of their complaints. As regards their right to peacefully enjoy their possessions, they reiterated their submissions made in respect of the relevant time-frame (see paragraph 180 above).

211. As regards application no. 48656/06, the applicants stated that it was compatible *ratione personae* and *ratione loci* with the Convention, since the matters complained of fell under the jurisdiction of Russia. There had been a continuing violation of the second applicant's right to peaceful enjoyment of his property between 5 May 1998 and 11 August 2006, since he had been unable to occupy his house during that period. There had been a further continuing violation of his right to peaceful enjoyment of his property from 5 May 1998 onwards, since no related compensation had been provided to him.

2. The Court's assessment

212. The general principles in respect of jurisdiction have been summarised by the Court most recently in *Ukraine and the Netherlands v. Russia* (cited above, §§ 547-75).

(a) The jurisdiction of Georgia

213. The Court notes that the continued inability of the applicants in the present applications to access their houses in Abkhazia has at all times concerned Georgian territory. 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 after it ratified the Convention on 20 May 1999 (compare *Mamasakhlisi and Others*, cited above, §§ 317-319). It has not been argued otherwise by the parties. In earlier cases (see, among other authorities, *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, § 99, 23 February 2016, 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.

214. The Court accordingly finds that the facts of the present 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 *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 333, ECHR 2004-VII, *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 109, ECHR 2012 (extracts), *Mozer*, cited above, § 100, and *Turturica and Casian v. the Republic of Moldova and Russia*, nos. 28648/06 and 18832/07, § 28, 30 August 2016). 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 requires 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 311-316 and 356-361 below) whether Georgia has satisfied this positive obligation.

(b) The jurisdiction of Russia

215. In its judgment in *Mamasakhlisi and Others* (cited above, § 340) the Court found that Russia had jurisdiction under Article 1 of the Convention over complaints concerning events that had taken place on Abkhaz territory between August 2001 and February 2007. In its judgment in *Georgia v. Russia (II)* ([GC], no. 38263/08, §§ 174, 175, 295 and 312, 21 January 2021) 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 *Georgia v. Russia (IV)* ((dec.), no. 39611/18, § 44, 28 March 2023) the Court held that its conclusion in *Georgia v. Russia (II)* (cited above, §§ 162-75 and 299) – that Russia had continued to exercise “effective control” over Abkhazia until 23 May 2018 at least – remained valid, in the absence of any relevant new information to the contrary.

216. In the instant case, the Court considers that, in the absence of any relevant new information and taking into account its findings in *Georgia v. Russia (II)* ([GC], § 168), and *Mamasakhlisi and Others* (§ 329 with further references, § 334 and § 217), both cases cited above, Russia had effective control over Abkhazia during the relevant period, which went from 5 May 1998 (when the Convention entered into force in respect of Russia) to 16 September 2022 (see *Kutayev*, cited above, §§ 5-6). 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; *Mozer*, cited above, § 157, and *Turturica and Casian*, cited above, § 33). 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.

3. Conclusion

217. It follows that the matters complained of, other than the first applicant’s complaints dismissed in paragraph 197 above, fall within the jurisdiction of Georgia and Russia under Article 1 of the Convention. Russia had jurisdiction from 5 May 1998 to 16 September 2022, and Georgia has had jurisdiction since May 1999. Consequently, the Court dismisses the objections *ratione personae* and *ratione loci* raised by the two Governments.

D. Compliance with the six-month time-limit

1. The parties’ positions

218. The Russian Government submitted that the first and second applicants (application no. 48656/06) had failed to comply with the six-month time-limit under the Convention. The final domestic decision in their case had been the (*de facto*) Gagra District Court’s decision of 9 February 2004 (see paragraph 24 above), and they had only applied to the Court two years

later. In addition, in 2006 those applicants had made the same complaints against Russia which they had made against Georgia two years earlier in 2004 (in application no. 18102/04). No explanation had been provided for the two-year delay in lodging the application with the Court in respect of Russia.

219. The Russian Government further advanced the argument that the applicants in applications nos. 5148/05, 26166/05 and 42765/05 had also failed to lodge their applications with the Court in time. Since they considered that no effective remedies had been available to them, they should have applied to the Court within six months of the events complained of, all of which had taken place in 1992-1993.

220. The applicants stated that the six-month time-limit did not apply to their situation. They had been subjected to a continuing violation of their right to peaceful enjoyment of their property, since it had been impossible for them to safely return to their houses and no related compensation had been provided. In any event, as regards application no. 48656/06, no issue arose in respect of the six-month time-limit under the Convention, as the applicants had applied to the Court on 11 November 2006, which was less than six months after the house at no. 185 Sukhumi Road had been returned to them (see paragraph 40 above).

2. *The Court's assessment*

(a) *General principles*

221. The Court reiterates that, as a rule, the six-month period (as applicable at the relevant time) 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).

222. 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).

223. 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* (dec.), cited above, §§ 135-136). The Court observes that the situation 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.), cited above, § 140).

224. There are important differences between cases concerning the continued failure to investigate disappearances and cases relating to the continued denial of access to property and home. The passage of time and the ensuing deterioration of evidence and the effects on the fulfilment of the obligation at issue are less important where complaints relate to property (*ibid.* § 137). Nevertheless, it cannot be said that the passage of time is without any relevance for the exercise of the rights at issue and for the Court's own examination of the case (see *Chiragov and Others* (dec.), cited above, § 137). In that connection, the continuing nature of the violation of the rights to property and home is based on the consideration that an applicant who has remained the legal owner of the property concerned is deprived of having access to and enjoying his possessions (*ibid.*).

225. Even where there are alleged continuing violations of the right to respect for one's property or home in the context of a long-standing conflict, once an applicant has become aware or should be aware that there is no realistic hope of regaining access to his or her property or home in the foreseeable future, any unexplained or excessive delay in lodging an application may lead to the application being rejected as out of time (*ibid.*, § 141). While the Court has not indicated general time frames, it accepts that in complex post-conflict situations the time frames must be generous in order to allow for the situation to settle and to permit applicants to collect comprehensive information on the chances of obtaining a solution at domestic level (*ibid.*, § 142).

(b) Application of those principles to the instant case

226. In the instant case, similarly to the applicants in *Chiragov and Others* ((dec.), cited above, § 143), the applicants lodged their application with the Court twelve to fourteen years after their forced eviction from their alleged properties in Abkhazia in 1992 or 1993, and some eleven years after the ceasefire agreement of May 1994 (see, in respect of that agreement and its background, *Mamasakhlisi and Others*, cited above, § 31). Various rounds of peace talks and negotiations were conducted without an overall solution to the conflict being achieved.

227. Russia ratified the Convention on 5 May 1998 and Georgia did so on 20 May 1999. Those were therefore the earliest dates when the applicants could have lodged their applications in respect of the continuing situations of which they complained to the Court. Furthermore, since 1992 and throughout the 2000s Georgia has pursued numerous efforts aimed at resolving the conflict (see *Mamasakhlisi and Others*, cited above, §§ 212-220). Thus, for some time after the ratification of the Convention by Georgia and Russia, the applicants, like thousands of refugees and IDPs, could reasonably expect that a solution to the conflict would eventually be achieved – a solution that would provide a basis for the settlement of property issues and for the return of displaced persons. It cannot be said that a decisive phase or one single event or public statement extinguished all hope of a political solution and therefore made it clear to the applicants that they should submit their applications without undue delay.

228. As to whether the 2004 decision of the Georgian Constitutional Court (see paragraphs 109-114 above) could be regarded as such a single event, following which the applicants might have realised that no effective domestic remedies were available to them in Georgia and that they should turn to the Court within six months of that decision, the Court refers to its general principles set out in paragraphs 221-225 above. In particular, it notes that in post-conflict situations, where no effective remedies are available, it may be reasonable for applicants to await the outcome of political processes which, in the circumstances, may offer the only realistic hope of obtaining a solution.

229. In any event, another important element has to be taken into account, namely the applicants' personal situations (compare *Chiragov and Others* (dec.), cited above, § 146). Although the Russian Government questioned whether the applicants in applications nos. 5148/05, 26166/05 and 42765/05 actually owned property in Abkhazia located at the addresses given by them, it is clear that they were displaced during the conflict (see paragraphs 52, 72 and 88 above) and had to move to new places of residence in parts of the country which were controlled by Georgia. As a result, they lost the homes, possessions and sources of income which they may have had. At no point in time did the applicants receive any information indicating that they could return to Abkhazia. The Court has already had occasion to point out, in another context, that asylum-seekers belong to a particularly underprivileged and vulnerable section of the population (see *Chiragov and Others* (dec.), cited above, § 146). The Court considered that the same could be said of displaced persons (*ibid.*).

230. In the circumstances of the instant case, the Court concludes that the applicants acted without undue delay by lodging their applications in 2004, 2005 and 2006, that is, about seven to eight years after the ratification of the Convention by Russia (as regards the applications directed against Russia which were lodged with the Court in 2005 and 2006), and two to four years

after the ratification of Protocol No. 1 to the Convention by Georgia (as regards the applicants' main complaint in the present applications).

231. The Court therefore rejects the Russian Government's objection that the applications were submitted out of time for the purposes of Article 35 § 1 of the Convention.

E. Exhaustion of domestic remedies

232. The Georgian Government submitted that the applicants in application no. 18102/04 (against Georgia) had failed to exhaust domestic remedies. In particular, they had neither applied to the NPRA for registration of their properties nor sought compensation before the legitimate Georgian authorities. As regards the remaining applicants, none of them had exhausted domestic remedies to obtain compensation or to register their rights to the properties in question.

233. The Russian Government stated that the applicants in application no. 48656/06 (against Russia) had failed to exhaust domestic remedies, both in Abkhazia and in Russia. In particular, if the applicants claimed that Russia was responsible for the violation of their rights, they should have sought protection of those rights before the judicial authorities in Russia, which they had not done. As regards the applicants' complaint which had been lodged with the Russian authorities and not with the courts, the Russian Government stated that writing to the Russian Ministry of Foreign Affairs was not a remedy that had to be exhausted. Furthermore, prior to the establishment of diplomatic relations between the Russian Federation and Abkhazia in September 2008, there had been no reason for Russia to assist the Abkhaz authorities in resolving the issue of unlawful deprivation of immovable property owned by Russian nationals in Abkhazia. Since September 2008 the issue had been a regular subject of bilateral talks between the two countries, including at the level of their ministries of foreign affairs. In 2008-2009 the Russian Embassy in Abkhazia had forwarded the applicants' complaints to the Abkhaz Government for consideration and adoption of appropriate measures.

234. As regards the remaining applicants, the Russian Government submitted that the third applicant had not appealed against the judgment of the Sukhumi District and City Court exiled in Tbilisi of 25 November 2004 (see paragraphs 62-64 above), and the rest of the applicants had not applied to either judicial or administrative bodies in Abkhazia or Georgia. It was thus impossible to determine whether the domestic courts would have been able to adjudicate on the applicants' claims had they initiated proceedings before them.

235. The applicants asserted that there had been no effective remedies in either Russia or Georgia which they had been obliged to exhaust, and neither of the respondent Governments had demonstrated otherwise.

236. The Court finds that these issues are closely linked to the merits of the case. It therefore decides to join this objection to the merits, with the exception of the complaints by the first applicant which were declared inadmissible in paragraph 197 above.

F. Alleged lack of substantiation of the applicants' complaints in application no. 48656/06

1. Submissions by the Russian Government

237. The Russian Government submitted that application no. 48656/06 was unsubstantiated and was therefore manifestly-ill-founded. It was not true that the applicants had been evicted from their house at no. 185 Sukhumi Road in the village of Psakhara, Gagra District and had been prevented from returning to it between 5 May 1998 and 11 August 2006 as they had claimed. Instead, the applicants had left it voluntarily during the Georgian-Abkhaz conflict and had only returned to Abkhazia "presumably in 2002". At that point in time they had discovered that the house had been transferred to a local resident owing to non-payment of the relevant taxes. The latter argument was supported by the information contained in a reply from the Russian Ministry of Foreign Affairs to a request for assistance made by the applicants (see paragraphs 30 above), and by the content of the first applicant's letter of 2006 addressed to the *de facto* administrative authorities in Abkhazia (see paragraph 39 above).

238. In addition, the applicants had not submitted any evidence to prove that everything had been taken from the house at no. 185 Sukhumi Road and that it was uninhabitable when it was returned to them in 2006. In any event, according to the above-mentioned technical passport for that house, it was to be demolished (see paragraph 11 above); it had therefore become uninhabitable long before the applicants were evicted.

239. Furthermore, the applicants had not shown that they had complained to the police that everything in the house had been taken when it had been returned to them in August 2006; accordingly, their related allegation was unsubstantiated. Similarly, their complaint that they had received no compensation for the loss of their movable property was entirely unsubstantiated.

240. In any event, the applicants had failed to complain to the Russian peace-keeping forces of any of the above matters. It seemed that instead of accusing Georgia of breaching their property rights, they had blamed Russia, even though Abkhazia was an autonomous entity of Georgia until 2008.

2. *Submissions by the applicants*

241. The applicants submitted that they had been continuously deprived of the enjoyment of their house and of their movable property – which had been left in the house when they were evicted.

3. *The Court's assessment*

242. On the basis of the material before it, the Court finds that the first and second applicants' complaint concerning the alleged loss of their movable property has not been substantiated. Accordingly, it is manifestly ill-founded and as such must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

243. The Court further considers that the remaining complaints of the first and second applicants (in application no. 48656/06), which are to be examined under Articles 3, 8, 13 and 14 of the Convention, and in respect of the second applicant, also under Article 1 of Protocol No. 1 to the Convention (but not in respect of the first applicant, whose related complaint was declared inadmissible, see paragraph 197 above), raise serious questions of fact and law under the Convention, the determination of which requires an examination of the merits. Accordingly, it joins this question to the merits.

244. The Court therefore concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and rejects the Russian Government's related objection.

G. The matter allegedly being resolved in application no. 18102/04 and alleged lack of victim status in application no. 48656/06

245. The Georgian Government advanced the argument that application no. 18102/04 had to be struck out of the list of cases under Article 37 § 1(b) as the matter of the dispute had been resolved, given that the house at no. 185 Sukhumi Road in the village of Psakhara, Gagra District had been returned to the applicants in August 2006. The *de facto* Gagra District Court had decided to return the property to the applicants as a result of pressure which the HROAG office had exerted on the *de facto* municipal bodies in Abkhazia, following requests by the Georgian authorities to that effect. Article 37 § 1 reads as follows:

“The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

- (a) the applicant does not intend to pursue his application; or
- (b) the matter has been resolved; or
- (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

246. The Court reiterates that, under Article 37 § 1 (b) of the Convention, it may “... at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ... the matter has been resolved ...”. In order to ascertain whether that provision applies to the present case, the Court must answer two questions in turn: firstly, whether the circumstances complained of directly by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 97, ECHR 2007-I).

247. In the present case, the Court notes that the first applicant’s complaints have already been declared inadmissible (see paragraph 197 above). Accordingly, it finds that it has to first of all establish whether the risk of the second applicant’s being deprived of the house persisted after 2006; next, the Court must consider whether the measures taken by the authorities constitute sufficient redress for the second applicant’s complaint.

248. With reference to the information received in letters from the applicants between 2007 and 2010 (see paragraphs 41-43 above), namely that the house had been taken away from them after August 2006 (despite the complaint being confined to the period before 11 August 2006, see paragraph 328 below), the Court finds that the circumstances complained of persisted after 2006. As to the measures taken by the Georgian authorities to redress the effects of a possible violation, the Court notes that the second applicant neither received an alternative dwelling or related compensation in respect of his inability to live in the house during a number of years, nor were the Georgian authorities in a position to guarantee that the house would be returned to him definitively without a threat of possible repeated unlawful eviction (see paragraphs 3 and 41 above). Consequently, the Court considers that the Georgian authorities have not shown that they have taken, or even that in the circumstances they could take, adequate and sufficient measures to remedy this complaint.

249. Accordingly, the Court finds that the conditions for the application of Article 37 § 1 (b) of the Convention are not met. The matter giving rise to this complaint cannot therefore be considered to be “resolved” within the meaning of Article 37 § 1 (b).

250. The Russian Government claimed that the applicants in application no. 48656/06 were no longer victims, emphasising that the house at no. 185 Sukhumi Road had been returned to them in 2006.

251. The applicants repeated their complaint.

252. The Court reiterates that the adoption of a measure favourable to the applicant by the domestic authorities will deprive the applicant of victim status only if the violation is acknowledged expressly, or at least in substance,

and is subsequently redressed (see, among other authorities, *Apap Bologna v. Malta*, no. 46931/12, § 41, 30 August 2016, with further references). Whether the redress given is effective will depend, among other things, on the nature of the right alleged to have been breached, the reasons given for the decision and the persistence of the unfavourable consequences for the person concerned after that decision (see *Oliari and Others v. Italy*, nos. 18766/11 and 36030/11, § 78, 21 July 2015). The redress afforded must be appropriate and sufficient. Whether an individual has victim status may also depend on the amount of compensation awarded by the domestic courts and the effectiveness (including the promptness) of the remedy affording the award (see *Paplauskienė v. Lithuania*, no. 31102/06, § 51, 14 October 2014).

253. In the present case, the Court notes that the first condition, namely acknowledgment of a violation, has not been satisfied.

254. As to the second criterion, the Court notes that, according to its case-law, appropriate redress in Article 1 of Protocol No. 1 cases requires an award in respect of both pecuniary and non-pecuniary damage, the latter generally being required when an individual has been deprived of or has suffered an interference with his or her possessions contrary to the Convention (see *Apap Bologna*, cited above, § 43).

255. To the extent that the above criteria have not been satisfied in the case of the second applicant, the Court finds that he was not deprived of his status as a “victim”.

Conclusion

256. On the basis of the above, the Court finds that the second applicant’s applications in respect of Georgia and Russia cannot be struck out of the list of cases. The related objections of the Georgian and Russian Governments are therefore dismissed.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

257. The applicants complained that their continued inability to live in their houses in Abkhazia had imposed an excessive burden on them, in violation of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Applications nos. 5148/05, 26166/05 and 42765/05, brought against both Georgia and Russia

1. Admissibility

258. The Court notes that the complaints under Article 1 of Protocol No. 1 to the Convention in applications nos. 5148/05, 26166/05 and 42765/05 are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

2. Merits

(a) Submissions by the parties

(i) The Russian Government

259. The Russian Government submitted that the applicants in these applications had failed to exhaust domestic remedies. In particular, the third applicant had not appealed against the decision of the Sukhumi District and City Court in exile in Tbilisi of 25 November 2004 (see paragraph 64 above), and the remaining applicants had not applied to either judicial or administrative bodies in Abkhazia or Georgia. It was therefore impossible to determine whether the domestic courts would have been able to rule on the applicants' claims if they had brought proceedings before them.

260. As regards the possibility of obtaining compensation for the loss of their houses, the third applicant could have authorised a third party to represent her in such proceedings before the Abkhazian judicial authorities, or could have applied to them by post. Similarly, all the applicants could have applied to the Georgian authorities for compensation, but they had failed to do so and there was no objective justification for this. Although the Government denied that Russia had jurisdiction over the applicants, they stated that if the applicants considered that their Convention rights had been breached by the authorities of the Russian Federation, they should have sought appropriate protection before the Russian courts.

261. Finally, the third applicant's inability to return to Abkhazia over the years had been due to the actions of her own son, who had taken part in the Abkhaz-Georgian military conflict in 1992-1993, and not actions or inaction on the part of the Russian authorities. Furthermore, there was no evidence that the house of the fourth applicant (or the house of any other person) had been taken over "by the hostile party through the fault of the Russian Federation". As regards the fifth and sixth applicants, as they had not shown that they were the owners of the houses which they claimed to own, their claims were dependent on the outcome of legal proceedings which third parties could have initiated in respect of those properties. Lastly, all the applicants had left Abkhazia voluntarily, without any pressure from the Russian peacekeeping forces.

262. The Russian Government further stated that Russia had not controlled the *de facto* Abkhaz authorities, and it had been those authorities' actions which had been linked to violations of property rights in Abkhazia, according to documents of the United Nations concerning the relevant period. Georgia bore responsibility for such actions, as the territory in question had been under its control.

(ii) *The Georgian Government*

263. According to the Georgian Government, none of the applicants had exhausted domestic remedies, since they had neither sought registration of their rights to the properties in question nor sought compensation for those properties.

264. The Government reiterated that there had been no redress for the deprivation of property other than the return of the applicants to their homes.

(α) As regards registration of the properties

265. However, the applicants had failed to exhaust domestic remedies, as they had failed to properly pursue the registration of their properties. As could be seen from the third applicant's applications at national level – which the fourth, fifth and sixth applicants had said illustrated the futility of such applications – she had failed to challenge the NPRA's refusal to register her property (see paragraph 61 above) before a court, under Article 24 of the Georgian Code of Administrative Procedure or the General Administrative Code. In any event, her application for registration had been rejected because there had been no territorial unit of the NPRA in Abkhazia, not because she had failed to submit a cadastral plan; the latter requirement had been abolished in 2006 when the rules on provisional registration had been adopted. The third applicant had also failed to ask the court to order the NPRA to register her property (as she had only sought to establish her title to her house in Abkhazia established in non-contentious proceedings).

266. In order to demonstrate what the outcome of the domestic proceedings would have been if the applicants had applied to a national court and asked it to register their property, the Government referred to proceedings brought by a third party, I.T. In particular, I.T. had asked the Sukhumi District and City Court in exile in Tbilisi to order the Mayor of Sukhumi to guarantee his full property rights over his property in Sukhumi and to order the NPRA to register his property. In a final judgment of 13 February 2013, the Supreme Court of Georgia had rejected I.T.'s request for registration of his property. The Supreme Court had found that I.T.'s failure to challenge the NPRA's refusal to register his property in Sukhumi, as well as his failure to seek provisional registration of his property, could not be remedied by applying directly to the courts for full registration of his property. The Supreme Court had also refused to order the Mayor of Sukhumi to guarantee I.T.'s property

rights in Sukhumi. Referring to the declaration and reservation made by the Georgian Parliament at the time of ratification of Protocol No. 1 to the Convention (see paragraphs 97 and 99 above), the Supreme Court had agreed with the Sukhumi District and City Court exiled in Tbilisi that it would be legally unreasonable to issue such an unenforceable order, given that the Georgian Government could not exercise State authority in Abkhazia.

267. The Georgian Government submitted that, in view of the above, the applicants had had effective remedies at their disposal and, unlike I.T., they had never applied to the courts for registration of their property in the Public Registry. Importantly, as the final judgment in I.T.'s case had been delivered only after the applicants had filed the applications in question with the Court, they could not rely on the outcome of that case to justify their failure to exhaust domestic remedies. Moreover, under all relevant laws governing property registration, including the 1996 Land Registration Act (see paragraph 123 above), it had been possible to appeal against a refusal by the competent authority to register property. The Government referred to a number of domestic judgments in which the courts had overturned refusals by the NPRA to register property where a number of conditions had been met. However, the fourth, fifth and sixth applicants had not even attempted to turn to the NPRA or the national courts to have their properties registered before lodging their applications with the Court.

268. The Georgian Government submitted that the fact that the applicants' immovable property located in Abkhazia had not been registered in the Public Registry did not mean that they had lost their ownership rights or been deprived of such rights. In any event, on different dates in 2006 and 2007 all the applicants had had their properties registered in the database administered by the Ministry for Internal Displacement (see paragraphs 67, 76 and 90 above). This demonstrated that the Georgian authorities had recognised the applicants' rights to their immovable property before the property was provisionally registered with the NPRA.

(β) As regards compensation in respect of the properties

269. Furthermore, the applicants had failed to seek compensation at domestic level in respect of any damage which they might have sustained as a result of the authorities' failure to implement measures to ensure their peaceful enjoyment of their property in Abkhazia, Georgia. In particular, they could have brought a claim against the responsible State authority, either under Article 207 and Article 208 § 1 of the General Administrative Code of Georgia (see paragraphs 156-157 above), or under Articles 992 and 1005 of the 1997 CCG (see paragraphs 158-159 above). In support of this argument, the Government referred to the Court's judgment in *Saghinadze and Others v. Georgia* (no. 18768/05, §§ 95-96, 27 May 2010), in which the Court had found the remedy under the 1997 CCG effective. The Government also submitted copies of a number of domestic judgments in which the Supreme

Court of Georgia had allowed claimants' requests for compensation for unlawful acts or omissions by administrative bodies.

270. Notwithstanding the above, the Government specified that compensation could not be obtained in respect of damage resulting from a person's inability to enjoy property left behind in Abkhazia, given that the Georgian authorities were not responsible for the actions of the *de facto* Abkhaz authorities and were unable to ensure access to the property located there. In this connection, they referred to the case of a third party, L.U. (see, for more detail on that case, paragraph 273 below). However, under the legal provisions specified in paragraph 269 immediately above, the applicants could have sought compensation for any damage sustained "as a result of the alleged failure of the Georgian authorities to register their property with the NPRA or to implement every possible measure aimed at facilitating their return and peaceful enjoyment of their properties" in Abkhazia. The Government explained that they had been unable to put forward examples of cases in which such claims had been successful because no IDPs had sought compensation in domestic proceedings.

(iii) The applicants

271. According to the applicants, there had been no effective remedies for their complaints in either Russia or Georgia, and neither of the respondent Governments had demonstrated otherwise.

272. In particular, as regards the registration of their property in the Public Registry, there had been no body in Georgia responsible for registering the property of IDPs at the time when they had submitted their applications to the Court. Moreover, their legal representatives had not been able to enter Abkhazia to request and obtain cadastral plans, which according to the 1996 Land Registration Act, had had to be attached to all applications for registration of property. In any event, after provisional registration had become possible in 2006 (see paragraph 139 above), all applicants had their properties recorded accordingly (see paragraphs 67, 76 and 90 above). However, a decision on the registration of their property was not a remedy that could have redressed their complaints about their inability to enjoy their property peacefully.

273. As regards possible claims for damages before the legitimate Georgian courts (see paragraph 270 above), in practice, judicial proceedings for compensation for the loss of IDPs' property in Abkhazia offered no prospect of success in practice. This was demonstrated in particular by a final judgment of 26 February 2004 in favour of a third party, L.U., in which the Supreme Court of Georgia had dismissed a claim by L.U. for compensation for the loss of her property in Abkhazia. According to the Supreme Court, there was no causal link between the actions of the Georgian authorities and the damage sustained by the claimant (L.U.) and the damage had not been caused by unlawful actions of the State authorities. Furthermore, under

section 7 of the Law on IDPs from the Occupied Territories of Georgia, the State was only obliged to restore property rights to IDPs upon their return to their permanent place of residence.

274. In any event, in view of the reservation and declaration made by the Georgian authorities (see paragraphs 97 and 99 above), pursuing a civil claim for damages would have been futile.

275. Finally, the Court's conclusions in the *Saghinadze* case (cited above) were irrelevant to the applicants' situation, because the applicant in *Saghinadze* had complained about the loss of property he had occupied in Tbilisi, whereas the applicants' claims related to property they had left behind in Abkhazia, the protection of which had been suspended in time on the basis of the reservation and declaration made by the Georgian Parliament (*ibid.*).

(b) The Court's assessment

(i) Whether the applicants possessed the houses as they claimed

276. The Court reserved the question of whether the applicants actually had possessions within the meaning of Article 1 of Protocol No. 1, and joined it to the merits (see paragraph 207 above). It will examine that question immediately below.

277. The Court reiterates that it has previously dealt with cases concerning the property and housing rights of persons displaced as a result of an international or internal armed conflict. Issues have arisen in the context of the occupation of Northern Cyprus, the actions of security forces in Turkey and Russia, and in a number of other conflict situations. The general principles governing the assessment of claims relating to the property and homes of displaced persons have been summarised in *Chiragov and Others v. Armenia* ([GC], no. 13216/05, §§ 129-136, ECHR 2015).

278. In sum, the Court's case-law has developed a flexible approach regarding the evidence to be provided by applicants who claim to have lost their property in situations of international or internal armed conflict (*ibid.*, § 136).

279. In the present case, the third applicant submitted the following documents to the Court: a decision of the Sukhumi City Council, dated 31 January 1990 and entitled "On the registration of irregularly-built constructions", which stated that the Sukhumi City Council had granted her ownership rights to a two-storey house built before September 1974 without the necessary permits and located at an illegible address in Sukhumi (see paragraph 51 above); her identity card, issued by the Georgian authorities on 3 May 1999, which stated that her permanent address was no. 7 Tavadze Street, Sukhumi (see paragraph 54 above); and a statement she had made to the Ministry of Internal Displacement in 2007 regarding her property in Abkhazia (see paragraph 67 above).

280. The fourth applicant submitted the following documents to the Court: a marriage certificate issued in Abkhazia in 1935 (see paragraph 69 above); a copy of an entry in the register of the Technical Inventory Bureau of the Gagra Municipal Executive Board, dated 8 September 1960, indicating that her husband, E.S., was registered at no. 12 Sabcho Street, Gagra (see paragraph 75 above); a copy of an entry in the same register, dated 17 January 1972, according to which the fourth applicant herself lived in a house at no. 12 Sabcho Street, Gagra (ibid.); a copy of her Soviet passport, bearing a stamp of the Internal Affairs Department of the Abkhaz Autonomous Soviet Socialist Republic dated 23 June 1992 and indicated that her address was no. 12 Sabcho Street, Gagra (ibid.); her identity card, issued by the Georgian authorities on 26 November 2001, indicating no. 12 Sabcho Street, Gagra as her permanent address (ibid.); and a statement she made to the Ministry for Displaced Persons in 2006 regarding her property in Abkhazia (see paragraph 76 above).

281. The fifth and sixth applicants submitted the following documents to the Court: a copy of a registration certificate, dated 13 September 1989 and bearing a stamp of the Internal Affairs Department of the Sukhumi regional authorities, which indicated that the fifth applicant was registered at no. 4 Lakerbaia Street (see paragraph 80 above); copies of two certificates showing that the fifth applicant had inherited money deposited in a bank from her late husband (see paragraph 81 above); a certificate, dated 17 May 1988 and signed by the director of the *kolkhoz* (collective farm) of the village of Pshapi, which showed that the sixth applicant's husband had 0.15 ha of land in the village (see paragraph 83 above); copies of the sixth applicant's Soviet passport and of her identity card, issued respectively in 1988 and 2005, both of which indicated that her permanent address was in the village of Pshapi in Gulripshi Region (see paragraph 84 above); a copy of the sixth applicant's identity card issued in 2005 which indicated that her permanent address was in Pshapi village (see paragraph 84 above); copies of different letters, certificates and house plans relating to the sixth applicant's purported links to a house and land in Pshapi, Gulripshi Region (see paragraph 85 above); statements from neighbours indicating that she had lived in Pshapi village (see paragraph 86 above), and copies of declarations which the fifth and sixth applicants had made before the Ministry for Displaced Persons in 2006 and 2007 respectively in relation to their properties in Abkhazia (see paragraph 90 above).

282. In addition, the Georgian Government provided the Court with copies of certificates issued by the NPRA in 2021, indicating that the houses claimed by the third, fourth and sixth applicants had been recorded in their name or those of their heirs (see paragraphs 91-95 above).

283. In the Court's view, the material in the case file demonstrates that the third, fourth, fifth and sixth applicants lived in Abkhazia, for at least a significant part of their lives. Having regard to the applicants' own statements

and those of their neighbours, and in the absence of any evidence to the contrary, it must be assumed that they were still living there at the time of their flight in the early 1990s (compare, *mutatis mutandis*, *Chiragov and Others*, cited above, § 137).

284. In view of the documents relating to property submitted by the applicants and the evidence as a whole, the Court finds that they have sufficiently substantiated their claims that the houses in question were their property within the meaning of Article 1 of Protocol No. 1 at the time when they were evicted from them in the early 1990s (compare, *mutatis mutandis*, *Solomonides v. Turkey*, no. 16161/90, §§ 31, 33 and 35, 20 January 2009, where, in the absence of original records and documents, the Cypriot authorities had reconstructed the Land Books and issued certificates confirming the applicant's ownership of the property, who had fled the "TRNC", leaving behind his property situated there; *Kerimova and Others v. Russia*, nos. 17170/04 and 5 others, § 293, 3 May 2011, where the local authorities had issued certificates confirming that the applicants had lived in properties located at the addresses given in their applications to the Court; *Chiragov and Others*, cited above, § 143, and *Sargsyan v. Azerbaijan* [GC], no. 40167/06, §§ 192-194, ECHR 2015; and contrast *Elsanova v. Russia* (dec.), no. 57952/00, 15 November 2005, and *Damayev v. Russia*, no. 36150/04, § 108, 29 May 2012, where the complaint in question had been made extremely succinctly and abstractly, and the applicant had submitted no documents or detailed claims at any stage of the proceedings; *Lisnyy and Others v. Ukraine and Russia* (dec.), nos. 5355/15, 44913/15 and 50853/15, § 30, 5 July 2016, where the applicants had submitted only a copy of their passports, photographs of a destroyed house, and various reports by international organisations on the general situation in the country, but no proof of ownership or any other right that they might have had in respect of that house; *Kudukhova v. Georgia*, nos. 8274/09 and 8275/09, § 33, 20 November 2018, and *Georgia v. Russia* (II) (just satisfaction) [GC], no. 38263/08, § 41, 28 April 2023, where the evidence submitted to show proprietary interests had consisted of only a list of surnames, names, dates of birth and identity numbers).

285. In particular, all of the applicants in applications nos. 5148/05, 26166/05 and 42765/05 were at the very least personally registered at the houses in Abkhazia which they claimed belonged to them (see paragraphs 51 and 54 as regards the third applicant, paragraph 75 as regards the fourth applicant, paragraph 80 as regards the fifth applicant and paragraphs 84 and 95 above as regards the sixth applicant, and contrast the situation of the first applicant, who was not herself registered in the house which she claimed belonged to her, see paragraphs 9-20 above).

286. More specifically, as regards the certificates issued to the applicants by the NPRA in 2021 (see paragraphs 91-95 and 145-151 above), the Court observes that the authorities dealing with the Public Registry recorded the

applicants' properties on the basis of information, including documents of a cadastral nature, drawn up and sent to them by the Ministry for Displaced Persons. While in compiling this information, the Ministry for Displaced Persons appears to have relied primarily on submissions of the applicants themselves (see paragraph 146 above), the 2018 resolution required those submissions to be accompanied by some supporting documents evidencing property rights (see paragraph 147 above). In these circumstances, the Ministry for Displaced Persons appears to have been satisfied that the evidence available to the applicants could be used to prove that the properties in question belonged to them. In addition, in accordance with the 2018 resolution, NPRA records are open to the public and it is possible to correct a record (following a final decision on the matter) in the event that a property is claimed by somebody other than the person in whose name it has been recorded by the NPRA, thereby minimising the risk of error.

287. On the basis of the characteristics of both the system of provisional registration (see paragraphs 137-144 above) and the new procedure (see paragraphs 145-151 above), the Court finds that the certificates for the inventorying and recording properties issued by the NPRA to the third, fourth and sixth applicants in question constitute *prima facie* evidence that they had ownership rights over the properties at issue (compare, *mutatis mutandis*, *Solomonides*, cited above, § 35). As regards the fifth applicant, the Court finds that the fact that she had been registered by the local administration at the time as the occupant of the house at no. 4 Lakerbaia Street is sufficient to accept her claim of ownership (compare *Chiragov and Others*, cited above, § 133; see also paragraph 278 above). As the Russian Government, apart from claiming that these applicants had not proved their ownership of the houses (see paragraph 190 above), failed to produce convincing evidence in rebuttal, the Court considers that the applicants had "possessions" within the meaning of Article 1 of Protocol No. 1 (see *Solomonides*, cited above, § 35).

288. Moreover, there is no indication that the applicants' property rights were extinguished – legitimately or otherwise – either before or after the ratification of the Convention by Russia and Georgia. Their proprietary rights are thus still valid (compare *Chiragov and Others*, cited above, § 149).

289. The Russian Government's objection *ratione materiae* concerning these applicants is therefore dismissed.

(ii) *Whether the applicants have exhausted domestic remedies*

290. Both Governments submitted that the applicants had failed to exhaust domestic remedies, a question which the Court joined to the merits and will examine below.

291. As regards the arguments put forward by the Georgian Government, in particular that the applicants had not properly pursued the registration of their property in Georgian-controlled territory (see paragraphs 265-267 above), the Court reiterates the general principles pertaining to the exhaustion

of domestic remedies which it has set in a number of judgments. In particular, applicants are obliged to exhaust only those domestic remedies which are available in theory and in practice at the relevant time – that is to say, remedies which are accessible, capable of providing a remedy for their grievances and of offering reasonable prospects of success, and of which they can avail themselves directly (see *Sejdovic v. Italy* [GC], no 56581/00, § 46, ECHR 2006-II, and *Paksas v. Lithuania* [GC], no. 34932/04, § 75, ECHR 2011 (extracts)).

292. The Court observes that, as pointed out by the Georgian Government, the relevant law in force at the time (see paragraph 127 above) attached no consequences to a failure to register immovable property. This was also the situation under the law governing registration which was enacted in December 2005 (see paragraph 129 above). Indeed, the Georgian Government themselves specified that the fact that the applicants' immovable property located in Abkhazia had not been registered had not resulted in them losing their ownership rights or being deprived of such rights (see paragraph 268 above). The registration of immovable property in the Public Registry did not in itself create the right of ownership of a person, but merely recognised and confirmed the right of ownership of that immovable property (*ibid.*).

293. Consequently, the Court finds that the applicants' failure to register their properties in Abkhazia with the competent registration authorities in Georgian-controlled territory (or in the case of the third applicant, her failure to complete the procedure, see paragraph 61 above) is irrelevant for the purposes of exhaustion of domestic remedies. To the extent that registration was not a condition for the validity of their property rights and could not in itself provide adequate redress, the Court considers that the applicants' failure to register their properties is immaterial in the circumstances. The one example of domestic case-law put forward by the Government (see paragraph 266 above) illustrated a situation in which the claimant in question had not succeeded in having his property registered; in any event, that case was concluded after the applicants submitted their applications to the Court and cannot therefore be regarded as relevant to the remedies which they should have sought (see, on this last point, among many others, *Dimitar Yanakiev v. Bulgaria* (no. 2), no. 50346/07, § 53 with further reference, 31 March 2016).

294. As regards the applicants' failure to seek compensation for their inability to enjoy peacefully their property left behind in Abkhazia (see paragraph 269 above), the Court notes that under the relevant legislation, the acts of State officials which caused damage to a claimant had to be unlawful, intentional or negligent (see paragraph 158-159 above), or the damage had to have been caused by officials of a State administrative body in the performance of their official duties (see paragraph 157 above). None of those conditions appear to have been present in the applicants' situation (see, *inter*

alia, paragraph 164, point 3 above). In addition, since the Georgian Constitutional Court found that the inability of people to enjoy their property left behind in Abkhazia was due to objective reasons beyond the control of the State (see paragraphs 112-113 above) and the Supreme Court of Georgia found that it would be legally unreasonable to order the Mayor of Sukhumi to guarantee a claimant's property rights there (see paragraph 266 above), the Court finds it difficult to see how an action for damages, as suggested by the Government, would have had any prospect of success in the circumstances.

295. The Court also finds it telling that the Government have not provided examples of case-law demonstrating that such a claim – specifically one concerning property left behind in occupied territories – would not have been futile. The examples of case-law submitted by the Government in that connection (see paragraph 269 above) all concerned situations where the acts or omissions of administrative authorities involved issues not related to the occupied territories; moreover, the Government explicitly specified that the reason for the lack of Abkhazia-specific case-law relating to compensation was the fact that no IDPs had sought compensation domestically (see paragraph 270 above). That said, the Court notes that the applicants did provide a domestic court decision from a case where such a claim had been unsuccessful – where the claimant (L.U.) had sought damages for the loss of property left behind in Abkhazia (see paragraph 273 above). The Court pays particular attention to the reasoning of the Georgian court in those proceedings, namely the opinion that the State only had an obligation to restore property rights to IDPs after their return to their permanent place of residence.

296. The Court finds decisive the Government's own submissions on the matter of compensation claims (see paragraph 270 above), namely that compensation could not be obtained in respect of damage resulting from a person's inability to enjoy property left behind in Abkhazia decisive, given that the Georgian authorities were not responsible for the actions of the *de facto* Abkhaz authorities and were unable to ensure access to the properties located there (*ibid.*). Accordingly, the Court considers that the Government's insistence (see paragraph 270 above) that the applicants could nonetheless have sought compensation for any damage sustained "as a result of the alleged failure of the Georgian authorities to register their property with the NPRA or to implement every possible measure aimed at facilitating their return and peaceful enjoyment of their properties in Abkhazia" is at best theoretical and as such is not capable of convincing the Court that such a claim would have had any prospects of success (contrast *Fartunova and Kolenichev v. Bulgaria*, (dec.), no. 39017/12, §§ 52-53, 16 June 2020).

297. The Court further finds that the circumstances of the *Saghinadze* case (cited above, see paragraph 269 above) are significantly different from those of the applicants, and therefore that case cannot be taken as a reference. In particular, the applicant in *Saghinadze* complained that he had lost a house

located in Georgian-controlled territory which had originally been given to him by his employer (the Georgian Ministry of the Interior) for the purpose of temporary accommodation. The loss had allegedly been as a result of direct heavy-handed conduct by Georgian law-enforcement authorities on territory controlled by Georgia (in particular, approximately sixty armed special forces agents wearing black balaclava-like masks had broken into the applicant's cottage and forcibly ousted his relatives from it). However, the applicants in the present applications did not complain that the Georgian authorities had directly interfered with their rights.

298. Accordingly, the Court finds that the Georgian Government have failed to discharge the burden of proving that a remedy was available to the applicants in applications nos. 5148/05, 26166/05 and 43765/05, which was capable of providing redress in respect of their Convention complaints and offered reasonable prospects of success.

299. The Court therefore dismisses the Georgian Government's objection concerning the non-exhaustion of domestic remedies.

300. Turning to the arguments put forward by the Russian Government (see paragraphs 234 and 259-262 above), specifically in respect of the third applicant, the Court observes that she did appeal against the judgment of the Sukhumi District and City Court in exile in Tbilisi (see paragraphs 65-66 above). In addition, in view of the enduring political situation and the difficulties stemming from that, it cannot be said that it was a realistic possibility for the applicants (who had been living for years as IDPs) to authorise a third party to represent their interests in Abkhazia. No examples of successful claims brought by Georgian citizens seeking protection of their property in Abkhazia have been submitted by the Russian Government. The Property Commission which Russia set up in 2010 (see paragraph 31 above) appears to have been created specifically for the purpose of protecting Russian citizens' property rights in Abkhazia, but none of the applicants in applications nos. 5148/05, 26166/05 and 42765/05 held Russian citizenship (contrast with the characteristics of the Immovable Property Commission set up by the "TRNC" for the purpose of examining applications made in respect of properties left behind in northern Cyprus after the Turkish military operations there in 1974, which the Court, in *Demopoulos and Others v. Turkey* ((dec.) [GC], nos. 46113/99 and 7 others, §§ 104-129, ECHR 2010), found represented an "accessible and effective framework of redress in respect of complaints about interference with the property owned by Greek Cypriots").

301. In addition, as examined above, seeking compensation before the Georgian authorities, as Russia suggested, was not a viable option either (see paragraph 296 above). Lastly, no examples have been provided by the Russian Government to show that proceedings before the Russian courts would have had any prospects of success.

302. Accordingly, the Court dismisses the Russian Government's objection concerning the non-exhaustion of domestic remedies.

(iii) Whether there has been a continuing violation of the applicants' right to peaceful enjoyment of their properties

303. The Court observes that it has not been argued that the applicants' houses in Abkhazia were destroyed at any point in time, either before or after the Convention entered into force in respect of Russia and Protocol No. 1 to the Convention entered into force in respect of Georgia, or that the applicants lost their rights over the houses (see paragraph 288 above). Accordingly, they all have existing rights which constitute "possessions" within the meaning of Article 1 of Protocol No. 1. Given that the matters complained of come within the jurisdiction of both Georgia and Russia (see paragraphs 217 and 187 above), the question to be examined is whether one or both of the respondent Governments are responsible for a violation of the applicants' right to the peaceful enjoyment of their possessions.

304. As regards which of the three rules under Article 1 of Protocol No. 1 apply in the case of these applicants (see, in respect of the rules, among other authorities, *Sargsyan*, cited above, § 217), the Court finds that the applicants cannot be said to have been deprived of their rights in respect of the houses in Abkhazia (see paragraphs 184-185 and 288 above). It follows that the case does not involve a deprivation of property within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1. Nor has it been claimed that the situation complained of was the result of any measures aimed at controlling the use of property. The Court therefore considers that the situation of which the applicants complained falls to be examined under the first sentence of the first paragraph, as it concerns a restriction of their right to the peaceful enjoyment of their possessions (compare *Sargsyan*, cited above, § 218, and the cases cited therein).

305. Bearing in mind the applicants' complaint, the Court's task is to determine whether they have been denied access to their properties since 5 May 1998, the date when Russia ratified the Convention, and whether they have thereby suffered a violation of their rights. The Court notes that 7 June 2002, the date when Georgia ratified Protocol No. 1 to the Convention, is encompassed by the relevant period identified immediately above.

306. As established above (see paragraphs 299 and 302 above), no effective domestic remedies have been identified, whether in territory controlled by Georgia or in Abkhazia or Russia. Consequently, the applicants have not had access to any legal means to obtain compensation for the loss of their property or, more importantly in the present context, to gain physical access to the places where they used to live and thus access to the property and homes left behind (compare *Chiragov and Others*, cited above, § 194).

307. Moreover, thirty years after the ceasefire agreement (see, in respect of that agreement and its background, paragraph 226 with further references),

people displaced during the conflict have still not been able to return to Abkhazia (see paragraphs 34 and 164-166 above). In this regard, the Court also notes the EU statement issued in the context of the Geneva International Discussions (see paragraph 161 above). It is clear that since the applicants fled Abkhazia, and specifically since Russia and Georgia ratified the Convention, realistically it has not been possible for them to return to that territory in the circumstances which have prevailed. Those circumstances include the establishment of close cooperation agreements between Russia and Abkhazia, which Russia has in the meantime recognised as a State, and no prospect of a political solution in sight.

308. Consequently, there has been an interference with the applicants' rights under Article 1 of Protocol No. 1, in that they have been continuously denied access to their property and have thereby lost control over it and any opportunity to use and enjoy it (compare, among other authorities, *Loizidou*, cited above, § 63). This amounts to an interference with the peaceful enjoyment of their possessions.

309. The Russian Government claimed that the applicants had voluntarily chosen to leave and had not shown that someone had prevented them from returning. In respect of whether the applicants had left voluntarily, the Court refers to the relevant information as set out in the case of *Mamasakhlisi* (cited above, §§ 27 and 29). As regards the question whether anyone had prevented their return to Abkhazia, the Court finds that the applicants were objectively unable to return to their property in Abkhazia, certainly not safely, as is clear from the content and conclusions of a number of international documents on the subject (see paragraphs 161-166 above), and from the information provided by the Georgian Government on the conditions imposed by the *de facto* authorities in relation to the return of IDPs (see paragraph 34 above). No justification has been provided for the applicants' continued inability to return, which has resulted in their continued denial of access to their properties.

310. Accordingly, there has been a continuing violation of Article 1 of Protocol No. 1 because the applicants, as Georgian owners of property left behind in Abkhazia, have been denied access to and control, use and enjoyment of their property, as well as any compensation for the interference with their property rights (compare *Cyprus v. Turkey*, cited above, § 189).

(α) The responsibility of Georgia

311. The Court must next determine whether Georgia fulfilled its positive obligations to take appropriate and sufficient measures to secure the applicants' rights under Article 1 of Protocol No. 1 to the Convention (see paragraph 214 above). In *Mamasakhlisi* (cited above, § 319) the Court held that Georgia's positive obligation related both to measures needed to re-establish its control over the Abkhaz territory, as an expression of its

jurisdiction, and to measures to ensure respect for individual applicants' rights.

312. As regards the first aspect of Georgia's obligations, re-establishing control, the Court found in *Mamasakhlisi*, which concerned the period between 2001 and 2007, that Georgia had deployed sufficient efforts to re-establish its authority over the Abkhaz region of Georgia, as the Georgian authorities had continued to assert their sovereignty over Abkhaz territory both before and after Georgia's ratification of the Convention, both internally and internationally. In addition to the specific efforts examined in *Mamasakhlisi*, the Court observes that in 2002 the Georgian authorities adopted a decree declaring all actions, legal acts and civil-law transactions concluded in Abkhazia after 14 August 1992 null and void (see paragraph 107 above). Furthermore, the Georgian Law on Occupied Territories, enacted in 2008, declared null and void all real estate transactions which were carried out in contravention of Georgian law and also stated that the right of property was protected within the occupied territories (see paragraph 108 above).

313. As regards the rights of IDPs, the relevant legislation (see paragraphs 100-101 above) provided that the State had to recognise the right to restitution in respect of immovable property left behind by IDPs and the hereditary nature of this right. The State was also obliged to take all possible measures to protect the immovable property of IDPs from theft, destruction or any other form of unlawful interference. The State had to restore the right of ownership of immovable property left behind in the occupied territories to the rightful owners when the reasons for fleeing the territory had ceased to exist and the IDPs had returned to their permanent place of residence (*ibid.*). In addition, over the years, Government representatives have repeatedly raised the *de facto* situation in Abkhazia in various international fora and with numerous high-level officials of international organisations such as the United Nations, the Council of Europe, the OSCE, Human Rights Watch, and so on. On these occasions, the Government have requested assistance in the protection of human rights, stressing their inability to act on Abkhaz territory. The Government, albeit unsuccessfully so far, have repeatedly attempted to establish a joint human rights office between the UN and the OSCE, and have continued working with international partners to counter the *de facto* annexation of the occupied regions. The Georgian Ministry of Foreign Affairs has sent several notes of protest to its Russian counterpart, condemning actions to transfer ownership of immovable property located in Abkhazia to the Russian State under a bilateral agreement between Russia and Abkhazia.

314. Importantly, as regards the territory controlled by Georgia, the Court has already found that Georgia, by enacting various legal instruments, confirmed IDPs' rights in the housing sector and established solid guarantees for their protection in the territory under Georgian control (see *Saghinadze*, cited above, § 107). Specifically, the 1996 IDPs Act recognised that an IDP's possession of a dwelling in good faith constituted a right of a pecuniary

nature; thus, it was not possible to evict an IDP from an occupied dwelling against his or her will without offering either similar accommodation or appropriate financial compensation in exchange (*ibid.*). Furthermore, in a judgment of 28 November 2001 in the case of *Khintibidze and Others*, the Supreme Court of Georgia confirmed that the temporary dwelling of IDPs is an asset protected by the rules on property contained in the Civil Code, even if the person concerned had no registered property rights over it (*ibid.*).

315. Turning to the second aspect of the positive obligations, namely ensuring respect for the applicants' rights, the Court notes the measures taken by the Georgian authorities to secure the applicants' properties. Initially, they introduced the so-called provisional registration procedure, whereby IDPs who had left their homes behind could proceed to have them identified and registered by the State on a provisional basis, with a view to asserting their property rights when the relevant conditions obtained (see paragraphs 137-144 above). Subsequently, the authorities appear to have consolidated this by developing a mechanism for recording and inventorying such property (see paragraphs 145-151 above), whereby the recording (or inventorying) of immovable property by the NPRA serves as grounds for the full registration of such property with the NPRA once Georgia's jurisdiction over the occupied territories is fully restored. As can be seen above (paragraphs 91-95), this mechanism was applied in the individual situations of the applicants and the relevant authorities – the NPRA – issued all but the fifth applicant with certificates recording their houses in Abkhazia.

316. Accordingly, on the basis of all of the above, the Court considers that Georgia has not failed to fulfil its positive obligations in respect of the applicants (compare *Mozer*, cited above, § 154). There has therefore been no violation by Georgia of Article 1 of Protocol No. 1 to the Convention.

(β) The responsibility of the Russian Federation

317. In so far as the responsibility of the Russian Federation is concerned, the Court has found that Russia exercised effective control over Abkhazia during the period in question (see paragraph 216 above). In the light of this conclusion, and in accordance with its 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 (compare *Sandu and Others v. the Republic of Moldova and Russia*, nos. 21034/05 and 7 others, § 89, 17 July 2018). By virtue of its continued military, economic and political support for Abkhazia, which could not otherwise survive, Russia's responsibility under the Convention is engaged as regards the violation of the applicants' rights (*ibid.*). Apart from denying responsibility for any violation of the applicants' right to the peaceful enjoyment of their possessions in Abkhazia, the Russian Government have not justified the above-mentioned interference with the applicants' property rights.

318. In that connection, the Court does not find that the negotiations which have been taking place in various fora and at various times, including the Geneva International Discussions (for more related information see *Matkava and Others v. Russia*, no. 3963/18, § 6, 19 December 2023), may be taken as a legal justification for the interference with the applicants' rights. These negotiations do not exempt the Russian Government, which exercised effective control and decisive influence over Abkhazia, from taking other measures (compare *Chiragov and Others*, cited above, § 198), especially when negotiations have been going on for such a long time. As in relevant previous cases in which it has examined the responsibility of States exercising control over an area (*ibid.*), the Court refers to Resolution 1708 (2010) on solving property issues of refugees and displaced persons of the Parliamentary Assembly of the Council of Europe (see paragraph 162 above). This resolution, drawing on relevant international standards, calls upon member States to "guarantee timely and effective redress for the loss of access and rights to housing, land and property abandoned by refugees and IDPs without regard to pending negotiations concerning the resolution of armed conflicts or the status of a particular territory".

319. The Court thus finds that the provision of assistance to Russian citizens who have lost their property located in Abkhazia, which Russia claimed to have been doing since 2010 at the latest (see paragraph 31 above), does not exempt the Government from their obligations towards Georgian citizens, such as the applicants in applications nos. 5148/05, 26166/05 and 42765/05, who had to flee during the 1992-1993 conflict. Reference is made to the principle of non-discrimination laid down in Article 3 of the Pinheiro Principles.

320. As to the nature of the measures which the Russian Government could and should have taken in order to protect the applicants' property rights, the relevant international standards, in particular the Pinheiro Principles (see paragraph 160 above) and the Resolution referred to in paragraph 318 above provide inspiration and guidance. In the circumstances of the present case, where decades have elapsed in the absence of a political solution (compare, *mutatis mutandis*, *Demopoulos and Others*, cited above, §§ 84-85) and pending a comprehensive peace agreement, the establishment of a property-claims mechanism appears to be particularly important. The Court has already held in comparable situations in earlier cases before it that such a mechanism must be easily accessible and provide for procedures with flexible standards of proof, enabling applicants and others in their situation to have their property rights restored and to obtain compensation for the loss of their enjoyment (compare *Chiragov and Others* [GC], cited above, § 199; see also *Demopoulos and Others*, cited above, § 127). The Court finds that its above conclusions are likewise valid in the context of the instant case.

321. Accordingly, and having found that there has been a breach of the applicants' rights under Article 1 of Protocol No. 1 to the Convention (see

paragraph 310 above), the Court holds that there has been a violation of that provision by the Russian Federation.

B. Application no. 18102/04 (against Georgia) and no. 48656/06 (against Russia)

1. Admissibility

322. The Court has already found above (see paragraph 197 above) that the first applicant's related complaint is inadmissible. The Court has also held that the first applicant has standing to pursue the application on behalf of the second applicant after the latter's demise (see paragraph 175 above). The Court has further found (see paragraph 244 above) that the second applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. No other grounds have been established for declaring his complaint under Article 1 of Protocol No. 1 as regards the house at no. 185 Sukhumi Road inadmissible. It must therefore be declared admissible.

2. Merits

(a) Submissions by the parties

(i) The Russian Government

323. In addition to their submissions listed above (see paragraphs 177, 233 and 237 above), the Russian Government submitted that the second applicant had not shown that he owned the house at no. 185 Sukhumi Road in the village of Psakhara. At the same time, however, the Government stated that, as could be seen from the technical specifications of the house at no. 185 Sukhumi Road in the village of Psakhara, the second applicant and his father each owned half of the house.

324. The Russian Government submitted also that the second applicant had only begun to apply to the Abkhaz courts in 2002; he had been inactive for many years before that and had not provided any explanation for this. The applicant's claim before the (*de facto*) Gagra District Court had not been examined on its merits as he had failed to comply with the requirements of Abkhazian civil procedural law (see paragraph 24 above). As to his allegation that he could not afford to pay the State tax for bringing the claims which a judge of the (*de facto*) Gagra District Court had told him was due in his case (see paragraph 25 above), referring to data provided by the Pension Fund of Russia, the Government stated that both the second applicant and his wife had been receiving old-age pensions from Russia at the relevant time. In particular, in 2004 the second applicant had received RUB 21,561.21 in the form of such a pension, and his wife had received a total amount of RUB 24,539.65. This showed that they had been able to pay the tax in

question and that their failure to do so could not be attributed to the Russian Government.

325. The Government also submitted that the establishment of a non-governmental organisation called the Centre for the Legal Protection of Compatriots in Sukhumi in 2014 was an important step towards ensuring the protection of the rights of Russian citizens in Abkhazia.

326. Furthermore, the Government argued that the second applicant had not been able to demonstrate that Russia was guilty of the violation alleged. Russia had not assigned judges to the (*de facto*) Gagra District Court, or officials to the (*de facto*) Psakhara administration or the (*de facto*) Municipal Department of the Interior of Gagra. The Russian Government were not related to those authorities, nor did they control any acts or omissions on their part. Since the second applicant had not provided any evidence to show that Russian peace-keepers had been involved in the alleged breaches of his rights, for example by preventing his return to the old house at no. 185 Sukhumi Road, his application was entirely unsubstantiated, and Russia could not be expected to provide examples of effective remedies in Russia and particularly in Abkhazia.

327. As to the argument that the Property Commission (see paragraph 31 above) was ineffective because the first applicant had unsuccessfully applied to it in respect of the house at no. 185 Sukhumi Road in 2012, the Government made the following submissions. The first applicant had initially submitted an incomplete package of documents to the Property Commission, and consequently the examination of that case had been suspended until June 2016 when she had provided the necessary documents. The Property Commission was effective, as confirmed by the fact that, since 2014, it had accepted as well-founded a number of applications from Russian citizens who had lost their dwellings in Abkhazia and had provided them with accommodation in apartments in Sukhumi, Abkhazia. In total, the Property Commission had received around 130 such applications from Russian citizens (homeowners) and had accepted the requests in about sixty of them.

328. The Government also submitted that the second applicant had not applied to the Abkhaz authorities for compensation.

329. Lastly, according to the Government, over a period of fourteen years the Georgian authorities had failed to take measures to protect the second applicant's rights. For example, they had not provided compensation for any pecuniary or non-pecuniary damage which he had suffered through not being able to have his rights upheld.

(ii) The Georgian Government

330. In the first place, the Georgian Government submitted that the second applicant had failed to exhaust domestic remedies, as he had not applied to the NPRA in order to register his property rights. The Government referred to the claim lodged by a third party, I.T. (see paragraph 266 above).

331. The Government stated that as the provisional registration of property left behind in the occupied territories had not existed at the time when the second applicant had applied to the Court, he should have sought to “register the property in the Public Register in the ordinary manner”. Registration was an effective domestic remedy and the applicant had never applied to the legitimate courts for registration of the property in question. Instead, the applicant had turned to the *de facto* courts, which were illegitimate and whose operation was unlawful under Georgian law.

332. Secondly, the second applicant had not sought compensation before the Georgian courts for his inability to enjoy peacefully his property in Abkhazia. In particular, he could have brought a tort claim against the competent State authority under Articles 992 and 1005 of the 1997 CCG (see paragraphs 158-159 above). That remedy had been fully accessible to him, was capable of providing redress and offering reasonable prospects of success. In this connection, the Government referred to the judgment of the Court in the case of *Saghinadze* (cited above, § 95). The applicant had not made any attempt to seek redress at national level in order to receive compensation for the Government’s alleged failure to implement necessary measures and guarantee his property rights in Abkhazia, but had instead lodged the present application directly with the Court.

(iii) *The second applicant*

333. At the time of submitting observations on the admissibility and merits in applications nos. 18102/04 (against Georgia) and 48656/06 (against Russia), the representatives of the second applicant specified that the complaint concerned his inability to enjoy peacefully the property at no. 185 Sukhumi Road between respectively 7 June 2002 and 5 May 1998, and 11 August 2006 (when the house had been returned to him)².

334. The second applicant stated that no effective remedies had been available to him in Abkhazia or Russia (in the context of application no. 48656/06), and the Russian Government had not demonstrated otherwise. He had exhaustively pursued remedies before the *de facto* Abkhaz courts (see paragraphs 19-28 above), but his applications had been left unexamined owing to his inability to pay the excessive State tax. The applicant did not dispute the fact that he had indeed been receiving a pension from Russia. However, this did not alter the fact that the State tax due in respect of each of his claims, as he had been informed by the *de facto* Gagra District Court, had been excessive.

² Rectified on 21 January 2025. The sentence previously read: “At the time of submitting observations on the admissibility and merits in applications nos. 18102/04 (against Georgia) and 48656/06 (against Russia), the representatives of the second applicant specified that the complaint concerned his inability to enjoy peacefully the property at no. 185 Sukhumi Road between 7 June 2002 and 11 August 2006 (when the house had been returned to him).”

335. As to the existence and operation of the Property Commission in Abkhazia (see paragraphs 31-34 above), it had been criticised internationally for excluding Russian citizens of Georgian ethnicity from its scope. In any event, it had not been set up at the time when the applicant had lodged the present application (no. 48656/06) with the Court, so it had not been a remedy within the meaning of the Convention. Moreover, it had been ineffective.

336. No effective domestic remedies had been available to the applicant before the Georgian legitimate courts either (in the context of application no. 18102/04). The Georgian Government, which had had jurisdiction over the applicant's complaints during the relevant period between 7 June 2002 and 11 August 2006, had not shown otherwise.

(b) The Court's assessment

(i) Whether the second applicant owned the house at no. 185 Sukhumi Road

337. In the present case, the second applicant submitted a technical passport for the house at no. 185 Sukhumi Road, dated 13 October 1989, showing that he and his father each owned half of that house (see paragraph 11 above). He also presented a certificate, issued to him on 13 August 2002 by the *de facto* Gagra municipal authorities, confirming that he had been registered at no. 185 Sukhumi Road in the village of Psakhara since 1 January 1977 (*ibid.*). In addition, he submitted documents relating to claims he had made in 2003 and 2004 to the *de facto* Abkhazian authorities concerning that house, including decisions of the *de facto* courts in Abkhazia (see paragraphs 21-28 above).

338. In the Court's view, the above documents show, first and foremost, that the second applicant lived and worked in Abkhazia, at least for the greater part of his life. Having regard to the applicant's own statements, and in the absence of any evidence to the contrary, he must be regarded as living in Abkhazia at the time of Russia's ratification of the Convention and at the time of Georgia's ratification of Protocol No. 1 to the Convention, on 5 May 1998 and 7 June 2002 respectively, notwithstanding his temporary absence from the territory in relation to his mother's funeral (see paragraph 15 above).

339. As to proof of possessions, the Court has already held that a technical passport is a significant piece of evidence which provides *prima facie* evidence of property rights. Such passports have been accepted by the Court in many previous cases (see, among other authorities, *Chiragov and Others*, cited above, § 140), since they do not simply contain the specifications of the property in question, but also the relevant owners' names (*ibid.*, § 141).

340. In view of the documents submitted by the second applicant, the Court finds that he has sufficiently substantiated his claim that the house at no. 185 Sukhumi Road (which he owned jointly with his father, who is not an applicant in the present case) was his possession within the meaning of Article 1 of Protocol No. 1 at the time when he was evicted from it in the

early 1990s (see paragraph 13 above). There is no indication that the applicant's property rights were extinguished – lawfully or otherwise – either before or after the ratification of the Convention by Russia and Georgia. His proprietary rights are therefore still valid.

341. The Russian Government's objection *ratione materiae* concerning the second applicant is therefore dismissed.

(ii) *Whether the second applicant has exhausted domestic remedies*

342. Both Governments submitted that the second applicant had failed to exhaust domestic remedies, a question which the Court joined to the merits (see paragraph 236 above) and which will be examined below.

343. As regards the arguments put forward by the Georgian Government, in particular that the applicant had not pursued the registration of his property, the Court finds, with reference to its findings in paragraphs 292 and 293 above, that the authorities have not shown how an application for registration of this property submitted in Georgian-controlled territory could have provided an adequate redress for the applicant's inability to enjoy peacefully his house in Abkhazia for a number of years.

344. As to the applicant's failure to seek compensation before the Georgian courts, the Georgian Government have not shown that such a legal avenue would have had any prospect of success. In addition to its findings in paragraphs 294 and 296 above, the Court observes that the Georgian Government have not produced any case-law demonstrating that people in the same situation as the second applicant had any remedy available to them. As to *Saghinadze and Others*, the Court finds that it is of no relevance to the applicant's situation, given that the circumstances of that case differed significantly (see also paragraph 297 above).

345. As to the Russian Government's arguments, in particular that the applicant had been inactive in Abkhazia (see paragraph 324 above), the Court observes that he pursued a number of avenues (see paragraph 19 above), including claims before the *de facto* courts in Abkhaz territory after the Convention entered into force in respect of Russia (see paragraphs 21-28 above). Although the Government pointed out that the failure of the *de facto* Abkhazian courts to examine the applicant's claims was due to his own failure to pay the State tax due, they did not provide any information about the legal basis for the imposition of that tax in the applicant's case (compare *Sandu and Others*, cited above, § 45). Relevant information would have addressed questions like the manner of calculation of that tax, whether the system afforded a sufficient degree of flexibility, and whether the proportionality of the tax could be assessed by the *de facto* courts as a procedural guarantee against arbitrariness (see, albeit in the context of an Article 6 complaint, *Chorbadzhiyski and Krasteva v. Bulgaria*, no. 54991/10, § 64, 2 April 2020, with further references). The Court notes that the applicant challenged the tax before the *de facto* Supreme Court of Abkhazia, claiming

that he was not in a position to pay it (see paragraph 25 above). The *de facto* Supreme Court of Abkhazia replied in a rather brief letter, and did not deal with the merits of his complaint by examining his personal situation and applying the relevant legal provisions to it (*ibid.*). In these circumstances, the applicant cannot be blamed for not having exhausted the available procedure before the *de facto* Abkhazian courts.

346. The Russian Government argued that the application in respect of the house at no. 185 Sukhumi Road was still pending before the Property Commission (see paragraph 327 above), which was an effective body capable of affording redress to the applicant. However, the Court notes that even without examining its characteristics in detail in order to determine its potential effectiveness in the applicant's case, by 2016 that body had still not issued a decision on the application (see paragraph 32 above). Accordingly, even though the second applicant's representatives complained before the Court of his inability to enjoy peacefully his possession in the period before 11 August 2006, the Court cannot disregard the fact that in 2016, some ten years later, the issue still appears to have been unresolved. In any event, as the second applicant had pointed out (see paragraph 335 above), the Property Commission had not yet been set up at the time when application no. 48656/06 was lodged with the Court.

347. On the basis of the above, the Court finds that the two respondent Governments have failed to discharge the burden of proving that there was a remedy available to the second applicant which was capable of providing redress in respect of his complaints under Article 1 of Protocol No. 1 to the Convention and which offered reasonable prospects of success. The Court therefore dismisses their related objections concerning the exhaustion of domestic remedies.

(iii) Whether there has been a continuing violation of the second applicant's right to peaceful enjoyment of his property

348. The Court observes that it has not been argued that the second applicant's house at no. 185 Sukhumi Road in Abkhazia was destroyed either before or after the Convention entered into force in respect of Russia and Protocol No. 1 to the Convention entered into force in respect of Georgia (see paragraph 340 above). Although the technical passport for the house did indeed indicate that it was old and suitable for demolition (see paragraphs 11 and 238 above), to the extent that the second applicant did not lose his rights over the property, he had existing rights which constituted "possessions" within the meaning of Article 1 of Protocol No. 1. Given that the matters complained of come within the jurisdiction of both Georgia and Russia (see paragraphs 217 and 187 above), the question to be examined is whether one or both of the respondent Governments are responsible for a violation of the applicant's right to the peaceful enjoyment of his possessions (see paragraph 303 above).

349. The Court finds that, as in the case of other applicants (see paragraph 304 above), the situation falls to be examined under the first sentence of the first paragraph of Article 1 of Protocol No.1, as it concerns a restriction of the second applicant's right to the peaceful enjoyment of his possessions.

350. Bearing in mind the applicant's complaint, the Court's task is to determine whether he was denied access to his property between 5 May 1998, the date on which Russia ratified the Convention, and 11 August 2006, as alleged by his representatives (see paragraph 333 above). The Court notes that this period includes 7 June 2002, the date on which Georgia ratified Protocol No. 1 to the Convention. The Court must also determine whether the applicant has thereby suffered a violation of his rights.

351. The Court observes that the second applicant did not flee Abkhazia and that he additionally acquired Russian nationality (see paragraph 9 above), unlike the rest of the applicants whose applications were considered in the paragraphs following 258 above. However, it is undisputed that he did not have access to his house until August 2006 at the earliest. This is so notwithstanding the explanations offered by the Russian Government for his inability to use the house (see paragraph 237 above). As established above (see paragraph 347 above), no effective domestic remedies have been identified, whether in the territory controlled by Georgia or in Abkhazia or in Russia. The applicant has not had access to any legal means to obtain compensation for the loss of his property or, more importantly in the present context, to gain physical access to his house.

352. Consequently, there has been an interference with the applicant's rights under Article 1 of Protocol No. 1, in that he was continuously denied access to his property during the period complained about and thereby lost control over it and any opportunity to use and enjoy it (compare, among other authorities, *Loizidou*, cited above, § 63). This amounts to an interference with the peaceful enjoyment of his possession.

353. The Russian Government argued that the applicant's house had been temporarily transferred to a local resident because of the applicant's failure to pay taxes and rent for the land on which the house stood (see paragraph 237 above). However, they did not provide the Court with the text of any "laws and regulations" which might have been the basis for this transfer of possession by the *de facto* authorities (see also, in that connection, paragraph 184 above); but merely referred to a letter from the Russian Ministry of Foreign Affairs addressed to the applicant which mentioned in passing the existence of such laws (see paragraph 30 above). According to the applicant, the *de facto* authorities' explanations for the fact that a third party had occupied his house for ten years had been that a lease agreement had been concluded between those authorities (which had unilaterally taken over the house) and the third party (see paragraphs 17 and 40 above).

354. As the Court has held above, for the purposes of Article 1 of Protocol No. 1 the second applicant must be regarded as having remained the legal owner of the house (jointly with his father, see paragraphs 340 and 348 above, and compare *Loizidou*, cited above, § 62), even though the house was temporarily occupied by a third party (see paragraphs 17, 40 and 237 above). The Court reiterates that in order to be compatible with Article 1 of Protocol No. 1, the interference must comply with the principle of lawfulness and pursue a legitimate aim by means which are reasonably proportionate to the aim pursued (see *Beyeler v. Italy*, [GC], 2000, §§ 108-114). As regards the lawfulness of the interference with the applicant's possession, it is not necessary to address the question of whether any such "laws and regulations" can be given legal validity within the meaning of the Convention (contrast *Loizidou*, cited above, § 44), since there is nothing in the present case to suggest that there was a legal basis for the interference with the applicant's rights guaranteed by Article 1 of Protocol No. 1 to the Convention, particularly in the absence of specific relevant information (compare *Paduret v. the Republic of Moldova and Russia*, no. 26626/11, § 29, 9 May 2017, and *Sandu and Others*, cited above, § 82). This conclusion dispenses the Court from examining whether the other requirements of Article 1 of Protocol No. 1 to the Convention were complied with.

355. Accordingly, the second applicant's inability to access his property in Abkhazia for a prolonged period of time, at least until 11 August 2006, placed an excessive individual burden on him, in violation of Article 1 of Protocol No. 1 to the Convention.

(α) The responsibility of Georgia

356. The Court must next determine whether Georgia fulfilled its positive obligations to take appropriate and sufficient measures to secure the second applicant's rights under Article 1 of Protocol No. 1 to the Convention, once it was put on notice of his complaint in the present application (no. 18102/04) (see paragraph 214 above). In *Mamasakhlisi* (cited above, § 319), the Court held that Georgia's positive obligations related both to measures needed to re-establish its control over the Abkhaz territory, as an expression of its jurisdiction, and to measures to ensure respect for individual applicants' rights.

357. As regards the first aspect of Georgia's obligations, namely re-establishment of control, the Court found in *Mamasakhlisi*, which covered the period between 2001 and 2007, that Georgia had made sufficient efforts to re-establish its authority over the Abkhaz region of Georgia, as the Georgian authorities had continued to assert their sovereignty over Abkhaz territory both before and after Georgia's ratification of the Convention, both domestically and internationally. In addition to the specific efforts examined in *Mamasakhlisi*, in 2002 the Georgian authorities adopted a decree declaring null and void all actions, legal acts and civil law transactions concluded in

Abkhazia after 14 August 1992 (see paragraph 107 above). Furthermore, the Law of Georgia on Occupied Territories, adopted in 2008, declared null and void all transactions involving real property which were carried out in contravention of Georgian law; it also stated that the right of property within the occupied territories was protected (see paragraph 108 above).

358. In addition, over the years, Government representatives have repeatedly raised the *de facto* situation in Abkhazia in various international fora and with numerous high-level officials from international organisations such as the United Nations, the Council of Europe, the OSCE, Human Rights Watch, and so on. On these occasions, the Government have requested assistance in the protection of human rights, stressing their inability to act on Abkhaz territory. The Government have repeatedly tried, albeit unsuccessfully, to establish a joint UN-OSCE human rights office, and have continued working with international partners to counter the *de facto* annexation of the occupied regions. The Georgian Ministry of Foreign Affairs has sent several notes of protest to its Russian counterpart, condemning actions to transfer ownership of immovable property located in Abkhazia to the Russian State under a bilateral agreement between Russia and Abkhazia.

359. Turning to the second aspect of the positive obligations, namely ensuring respect for the applicant's individual rights, the Court notes that the right of property has been recognised and guaranteed by Georgian legislation and international treaties throughout the twentieth century, and a whole range of legislation is aimed at securing the property of persons in Abkhazia (see paragraphs 115-119 and 123-151 above). Furthermore, the 1995 Georgian Constitution recognises the supremacy of international treaties over national legislation.

360. In addition, although the second applicant remained in Abkhazia and apparently did not apply for IDP status (see paragraph 104 above), the measures taken by Georgia in relation to IDPs (examined in paragraph 313 above) are also relevant to his situation. In particular, in January 2007 the second applicant's father had his declaration in relation to the property at issue (the house at no. 185 Sukhumi Road in the village of Psakhara, Gagra District) recorded with the Ministry for Displaced Persons (see paragraph 38 above), which was the first step towards the provisional registration of property located in Abkhazia. In addition, the Georgian authorities strongly criticised the Property Commission set up in Abkhazia to "protect the right of property of Russian citizens", stating that it was a continuation of a policy of ethnic cleansing of Georgians in Abkhazia and that the Russian Federation was violating international human rights (see paragraph 33 above). They also issued a statement condemning the discrimination against ethnic Georgians and the violation of their property rights in occupied Abkhazia (*ibid.*). Furthermore, as soon as the applicant approached them, the competent Georgian authorities sought assistance from the UNOMIG and the HROAG in restoring his rights in Abkhazia (see paragraphs 35-36 above).

361. Accordingly, on the basis of all of the above, the Court considers that Georgia has not failed to fulfil its positive obligations in respect of the second applicant (compare *Mozer*, cited above, § 154). There has therefore been no violation of Article 1 of Protocol No. 1 to the Convention by Georgia.

(β) The responsibility of the Russian Federation

362. In so far as the responsibility of the Russian Federation is concerned, the Court has established that Russia exercised effective control over Abkhazia during the period in question (see paragraphs 216 above). In the light of this conclusion, and in accordance with its 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 (compare *Sandu and Others*, cited above, § 89). By virtue of its continued military, economic and political support for Abkhazia, which could not otherwise survive, Russia is responsible under the Convention for the violation of the second applicant's rights (*ibid.*). Apart from denying responsibility for any violation of the second applicant's right to the peaceful enjoyment of his possessions in Abkhazia, the Russian Government have not justified the above interference with his property rights.

363. Despite the Russian Government's claim that since 2010 a specialised entity in Abkhazia has been providing assistance to Russian citizens who have lost their property in Abkhazia (see paragraph 31 above), the Court has already held above (see paragraph 346 above) that this Property Commission was ineffective in the second applicant's case, at least until 2016, and in any event it did not exist during the period complained of (namely until 11 August 2006). As the Court has already held above (see paragraph 320 above), pending the conclusion of a comprehensive peace agreement, the establishment of a property-claims mechanism – one which is easily accessible and provides for procedures operating with flexible standards of proof and which enable applicants to have their property rights restored and to obtain compensation for the loss of their enjoyment – is of particular importance. This conclusion applies equally in the instant context.

364. Accordingly, and having found that there has been a breach of the second applicant's rights under Article 1 of Protocol No. 1 to the Convention (see paragraph 355 above), the Court holds that there has been a violation of that provision by the Russian Federation, between 5 May 1998 and 11 August 2006.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

365. All applicants claimed (except in the context of application no. 18102/04) that their inability to return to their houses situated in Abkhazia also involved a continuing violation of their right to respect for their home and family life, as well of their right not to be subjected to inhuman and

degrading treatment. They relied on Articles 8 and 3 of the Convention. The applicants' representatives in application no. 48656/06 specified that the violation had taken place between 5 May 1998 and 11 August 2006.

366. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 ad 126, 20 March 2018), is of the view that the complaint falls to be examined under Article 8, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The parties' submissions

1. The applicants

367. The applicants complained that they had been unable to enjoy peacefully their home and family life, relying on the same arguments as those submitted under Article 1 of Protocol No. 1. In particular, they maintained that their continuing inability to return to their houses also violated their rights under Article 8 of the Convention.

2. The respondent Governments

368. In respect of application no. 48656/06, the Russian Government submitted that the applicants, having waited in vain for two years for Georgia to comply with its Convention obligations, had decided to direct an application against Russia instead, in the hope of achieving a better solution, given its superior financial resources compared with Georgia. The first and second applicants had not been evicted from the house in question but had voluntarily left it. In any event, the first applicant had only lived in it for less than a year in 1992, so she could not call it her home. The first applicant had moved to live in Russia at some point, as could be seen from her marriage certificate (concluded in Vladimir Region, Russia) and the subsequent address (also in Vladimir Region, Russia) which she had given to the Russian authorities when she had lodged an application with them in 1999.

369. All the other applicants had voluntarily left their houses in the early 1990s. In any event, they had not provided proof of their residence at the addresses in question.

370. The Georgian Government stated that they had done everything in their power to secure the applicants' Article 8 rights.

B. The Court's assessment

1. *Applications nos. 5148/05, 26166/05 and 42765/05, against both Georgia and Russia*

371. 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.

372. The Court reiterates that the notions of “private life”, “family life” and “home” under Article 8 are, like “possessions” under Article 1 of Protocol No. 1, autonomous concepts which do not depend on classification under domestic law, but the factual circumstances of a case. As noted above (see paragraphs 48-52, 68-72, 77-88 above), up until the applicants (in these three applications) fled Abkhazia respectively in 1992 and 1993, they lived and worked in that region for major parts of their lives. They all married and had children there. They also earned their living there. Furthermore, their families built and owned the houses in which they lived. It is thus clear that the applicants had long-established lives and homes in the territory, and that their situation contrasts with that of the applicant in *Loizidou* (cited above). The applicants did not voluntarily take up residence elsewhere, but moved to live as internally displaced persons in Tbilisi out of necessity (see paragraphs 52, 72-73 and 88 above). In the circumstances of the case, the applicants’ forced displacement and involuntary absence from different towns in Abkhazia cannot be considered to have broken their link to their homes in that territory, notwithstanding the length of time that has passed since they fled (compare *Sargsyan*, cited above, § 254 with further reference).

373. For the same reasons as those presented under Article 1 of Protocol No. 1, the Court finds that the fact that the applicants were denied access to their homes constitutes an unjustified interference with their right to respect for their home and family life.

374. Accordingly, the Court concludes that there has been a continuing breach of the applicants’ rights under Article 8 of the Convention. 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 *Mözer*, cited above, § 183, and *Mamasakhlisi*, cited above, § 429). Thus, for the reasons given in respect of the complaint under Article 1 of Protocol No. 1 to the Convention (see paragraphs 311-316 above), the Court finds that there has been no violation of Article 8 of the Convention by Georgia. However, for the reasons given in paragraphs 317 to 319 above, the Court finds that there has been a violation of Article 8 of the Convention by the Russian Federation³.

³ Rectified on 21 January 2025. The sentence previously read: “However, for the reasons given in paragraphs 317 to 319 above, the Court finds that there has been a violation of

2. *Application no. 48656/06, against Russia*

375. The Court observes that the first applicant appears to have spent only a minimal amount of time in the house situated at no. 185 Sukhumi Road, before being evicted in 1992 (see paragraphs 13, 15 and 18 above) and that she lived for most of the time at other addresses (see paragraph 20 above). In these circumstances, it finds that the first applicant cannot claim to have had a right to respect for her home as regards that dwelling. Accordingly, since the facts of the case do not fall under Article 1 of Protocol No. 1, the Court finds that her related complaint on this point is incompatible *ratione materiae* with the Convention and must be rejected as inadmissible, pursuant to Article 35 §§ 3 (a) and 4 of the Convention. Furthermore, since she continued to live together with her husband, the second applicant, albeit in other locations but still in Abkhazia, it cannot be said that her right to family life has been breached. Accordingly, this part of her complaint is manifestly ill-founded and must be rejected as inadmissible, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

376. In respect of the second applicant, on whose behalf the first applicant is pursuing the application, the Court notes that he was registered at the old house at no. 185 Sukhumi Road in 1977 (see paragraph 11 above). Indeed, he lived in the old house for an unspecified period of time after it had been built (see paragraph 10 above) and at least between 1975 and 1977 (see paragraph 12 above), and the old house was built on the same plot as the new house (*ibid.*). In 1977 he moved to the new house (at no. 185a Sukhumi Road, see paragraph 12 above) with his then family and lived in it between 1977 and 1992, when the new house was destroyed (see paragraph 14 above). In 1992 he moved to the old house at no. 185 Sukhumi Road with the first applicant (see paragraph 13 above). Even though later that year he was forced to leave the old house at no. 185 Sukhumi Road, the Court finds on the basis of all related information in its possession that the second applicant could claim that the old house in question had been his home before his *de facto* eviction from it in 1992. 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. The Court thus finds that his inability to enjoy it between 5 May 1998 (when Russia ratified the Convention) and August 2006 (as submitted by his representatives, see paragraph 333 above) constitutes an interference with his right to respect for his home, for which no justification has been provided by the respondent Russian Government. As regards his complaint relating to his family life, the same considerations and conclusions apply as in the case of the first applicant (see paragraph 375 above); accordingly, his related complaint on this point

Article 8 of the Convention by the Russian Federation, between 5 May 1998 and 16 September 2022.”

must be rejected as inadmissible, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

377. Accordingly, there has been a violation of Article 8 of the Convention in respect of the second applicant as regards his right to home. For the reasons given in respect of the complaint under Article 1 of Protocol No. 1 to the Convention (see paragraphs 311 to 316 above), the Court finds that there has been no violation of Article 8 of the Convention by Georgia in respect of the second applicant. However, for the reasons given in paragraphs 317 to 319 above, the Court finds that there has been a violation, in respect of the second applicant, of Article 8 of the Convention by the Russian Federation, between 5 May 1998 and 11 August 2006.

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

378. In the context of application no. 18102/04, directed against Georgia, the first and second applicants complained that they had been unable to have their claims concerning the lack of access to the house and the second applicant's unlawful dismissal examined by the *de facto* Abkhaz courts.

379. The Court finds that the complaint relating to the lack of access to the house has in effect been examined under Article 1 of Protocol No. 1 to the Convention and Article 8 of the Convention, and that no separate issue arises under Article 6 § 1 (compare, *mutatis mutandis*, *Šilih v. Slovenia* [GC], no. 71463/01, § 216, 9 April 2009).

380. As regards the complaint concerning the alleged lack of access to a court by the second applicant in relation to his dismissal from his job (in 1992), insofar as it concerns the period after 20 May 1999 (when the Convention entered into force in respect of Georgia), 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. The Court finds that it is not necessary to examine specifically whether the "State tax" imposed by the *de facto* courts was excessive or acceptable under the Convention (see paragraphs 324 and 334 above), since it has already held in earlier cases that a *de facto* Abkhaz court cannot qualify as a "tribunal established by law" for the purposes of Article 6 § 1 of the Convention (see *Mamasakhlisi*, cited above, § 440, and *Georgia v. Russia* (IV), cited above, §§ 53-54). In the absence of any information capable of convincing it otherwise in the context of the present application, the Court finds that this conclusion still stands.

381. In terms of the responsibility of the respondent State (Georgia), there is no material difference in the nature of its responsibility under the Convention in respect of the various complaints made in the present case (compare *Mamasakhlisi*, cited above, § 441). Furthermore, the situation in respect of the legal and judicial system in Abkhazia cannot be attributed to Georgia.

382. Accordingly, the Court finds that there has been no violation of Article 6 § 1 of the Convention by Georgia.

VII. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH DIFFERENT ARTICLES OF THE CONVENTION UNDER WHICH THE APPLICANTS COMPLAINED

383. The applicants claimed that no effective remedies had been available to them in respect of their complaints. They relied on Article 13, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

384. The Court has already found violations of Article 1 of Protocol No. 1 to the Convention and Article 8 of the Convention with regard to the applicants, other than the first applicant, for being continuously denied access to their possessions and homes, and unable to enjoy their family life (save for the second applicant). Their complaints are therefore “arguable” for the purposes of Article 13 and must likewise be declared admissible (see, for instance, *Doğan and Others v. Turkey*, nos. 8803/02 and 14 others, § 163, ECHR 2004-VI (extracts)). However, since the present complaint contains the same or similar elements as those already dealt with in the context of the objections concerning the non-exhaustion of domestic remedies, the Court considers that it is not necessary to examine it separately.

385. As regards the first applicant, the Court finds that it is not necessary to rule on her complaint (made in application no. 18102/04) under Article 13, taken in conjunction with Article 6 of the Convention, because Article 6 is *lex specialis* in regard to this part of the application (compare *Jasiūnienė v. Lithuania*, no. 41510/98, § 32, 6 March 2003). Her complaints (made in application no. 48656/06) under Article 13, in conjunction with Article 1 of Protocol No. 1 to the Convention and Article 8 of the Convention, are manifestly ill-founded, since the Court has found above that she has no arguable claims under the latter two provisions (see paragraphs 197 and 375 above); they must therefore be declared inadmissible, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

386. In relation to the complaints set out above, the applicants claimed that they had been subjected to discrimination based on ethnic affiliation. They relied on Article 14, which provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

387. The Court’s findings of violations of Article 1 of Protocol No. 1 and Article 8 of the Convention in the present case relate to a general situation which involves the flight of most Georgian citizens of Georgian ethnicity from Abkhaz territory, and their inability to return to that territory. The applicants’ complaint under Article 14 of the Convention, other than the first applicant, is thus intrinsically linked to the other complaints and must therefore be declared admissible. However, in view of the violations found under the other provisions, the Court considers that no separate issue arises under Article 14 (see, for a similar approach, *Chiragov and Others*, cited above, § 220).

388. As regards the first applicant, and her complaint under Article 14 in conjunction with Article 1 of Protocol No. 1 (in application no. 18102/04), and under Article 14 in conjunction with Article 1 of Protocol No. 1 and Article 8 of the Convention (in application no. 48656/06), the Court observes as follows.

389. Indeed, Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded thereby. However, the prohibition of discrimination enshrined in Article 14 extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide (see, among other authorities, *Valiullina and Others v. Latvia*, nos. 56928/19 and 2 others, § 145, 14 September 2023). It must therefore be determined whether the first applicant’s situation fell within the ambit of Article 1 of Protocol No. 1 and Article 8 of the Convention.

390. The Court concluded above that the first applicant had no right of possession within the meaning of Article 1 of Protocol No. 1 to the Convention (see paragraph 197 above), and could not claim to have had a right to respect for her home (see paragraph 370 above). Accordingly, the Court finds that the facts of the case as they concern the first applicant do not fall within the ambit of Article 1 of Protocol No. 1 or Article 8 (contrast *Valiullina and Others*, cited above, § 147). Consequently, Article 14 does not apply in the instant case (compare, *mutatis mutandis*, *Dobrowolski and Others v. Poland*, (dec.), no. 45651/11 and 10 other applications, §§ 29-30, 13 March 2018).

391. It follows that the complaint under Article 14 taken in conjunction with Article 1 of Protocol No. 1 to the Convention and with Article 8 of the Convention is incompatible *ratione materiae* with the provisions of the

Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

392. 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.”

393. 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 against Russia.

A. Damage

1. Claims by the applicants

(a) In respect of application no. 48656/06

394. In respect of non-pecuniary damages, the applicants claimed jointly EUR 100,000.

395. The applicants further claimed pecuniary damages in the amount of EUR 156,402. Specifically, they stated that this amount represented the loss they had suffered as a result of lack of access to their house at no. 185, Sukhumi Road. This sum was reached by calculating an average of EUR 1,606 in monthly rent of 96 months and six days (covering the period between 5 May 1998 and 11 August 2006, the period when they were deprived of their property). They claimed that they would have earned the above amount by renting out their house, located in the attractive seaside district of Gagra, had they not been deprived of access to it. The monthly rental amount indicated above was calculated on the basis of several monthly rentals, listed on an online property booking website, in respect of properties in Gagra of a size similar to that of their house.

(b) In respect of applications nos. 5148/05, 26166/05 and 42765/05

396. The applicants submitted as a general point that their claims as regards these three applications were made against both Georgia and Russia, and asked the Court to exercise its discretion to apportion any damages awarded to the applicants between Georgia and Russia.

397. Each applicant in these applications claimed EUR 50,000 for non-pecuniary damages.

398. As regards pecuniary damages, they submitted the following claims. In the first place, they claimed restitution of their property, including the right to return to their houses and to enjoy them as their homes. They argued that

as long as their immovable properties continued to exist, the respondent Governments could not claim that restitution was materially impossible.

399. Alternatively, in case restitution of their properties were either not ordered or not effected, the applicants in the three applications indicated in the paragraph immediately above claimed pecuniary damages as follows.

400. The third applicant (in application no. 5148/05) claimed a total of EUR 19,097 from Russia only, and EUR 427,465.88 jointly from Russia and Georgia. Those amounts represented: (a) EUR 259,991 in respect of her inability to access her property at 7 Tavadze Street; (b) EUR 82,049 in respect of the movable property she had allegedly lost with the house; (c) EUR 17,401 in respect of loss of rental income (claimed solely from Russia in respect of the period between 5 May 1998 and 7 June 2002) and EUR 85,033 in respect of loss of rental income (claimed jointly from Russia and Georgia), and (d) EUR 1,696.24 in respect of the cost of rent in Tbilisi (claimed solely from Russia in respect of the period between 5 May 1998 and 7 June 2002) and EUR 392.88 in respect of the cost of rent in Tbilisi (claimed jointly from Russia and Georgia).

401. The fourth applicant (in application no. 26166/05) claimed a total of EUR 22,517 from Russia only, and EUR 351,476 jointly from Russia and Georgia. Those amounts represented: (a) EUR 227,876.38 in respect of her inability to access her property at no. 12 Sabcho Street; (b) EUR 13,748 in respect of the movable property she had allegedly lost with the house; (c) EUR 16,378 in respect of loss of rental income (claimed solely from Russia in respect of the period between 5 May 1998 and 7 June 2002) and EUR 79,869 in respect of loss of rental income (claimed jointly from Russia and Georgia), and (d) EUR 6,139 in respect of loss of income from the sale of fruit (claimed solely from Russia in respect of the period between 5 May 1998 and 7 June 2002) and EUR 29,947 in respect of loss of income from the sale of fruit (claimed jointly from Russia and Georgia).

402. The fifth applicant (in application no. 42765/05) claimed a total of EUR 371,827, which corresponded to EUR 322,200 in respect of the loss of her immovable property at no. 4 Lakerbaia Street, and EUR 49,627 in respect of alleged loss of her movable property.

403. The sixth applicant (in application no. 42765/05) claimed a total of EUR 233,995 from Russia only, and EUR 5,333,453 jointly from Russia and Georgia. These amounts represented: (a) EUR 3,476,303 in respect of her inability to access her property; (b) EUR 142,878 in respect of the movable property she had allegedly lost with the house; (c) EUR 8,761.64 in respect of the cost of rent in Tbilisi (claimed solely from Russia in respect of the period between 5 May 1998 and 7 June 2002) and EUR 64,120 in respect of the cost of rent in Tbilisi (claimed jointly from Russia and Georgia), and (d) EUR 225,234 in respect of loss of income from the sale of fruit (claimed solely from Russia in respect of the period between 5 May 1998 and 7 June

2002) and EUR 1,650,152 in respect of loss of income from the sale of fruit (claimed jointly from Russia and Georgia).

2. Submissions by the Russian Government

(a) As regards application no. 48656/06

404. As to the non-pecuniary damages claimed, the claims were excessive and unreasonable, and no compensation was due to the applicants since their rights had not been violated.

405. As regards pecuniary damages, their claim was “manifestly ill-founded, speculative and not relevant to the subject-matter of the application pending before the European Court” and their calculation was “fundamentally distorted and not based on the true factual basis”. The applicants’ reference to contemporary monthly rental costs in respect of luxury dwellings in Gagra was not relevant, since they had never had any luxury property in Gagra. What was more, the rental prices used by them as a basis were relevant for 2017, while they had lost their alleged property in the early 1990s.

(b) As regards applications nos. 5148/05, 26166/05 and 42765/05

406. As to non-pecuniary damages claimed, the claims were excessive and unreasonable, and no compensation was due to the applicants since their rights had not been violated.

407. As to the pecuniary damages claimed, and specifically for compensation of the loss of use of their properties after 5 May 1998, the Government were of the opinion that the claims were manifestly ill-founded, speculative and not relevant to the subject matter of the applications before the Court. The calculation of pecuniary damages was “fundamentally distorted and not based on the true factual basis”. There was “no clear causal link between the damage claimed and the violation alleged”.

408. The applicants claims for compensation in respect of movable property were not supported by any admissible evidence. Their claims for loss of income from rent and sale of fruit were unreasonable, manifestly ill-founded and had no connection with the subject matter of their complaints before the Court. Likewise, their claims in respect of the costs incurred for having had to rent dwellings in Tbilisi were “not related to the present case” since they had left their houses in Abkhazia voluntarily without any pressure from Russian peacekeepers.

3. The Court’s assessment

409. The Court first notes that it is dealing with a continuing situation which has its roots in the unresolved conflict over Abkhazia, a territory which forms part of the internationally recognised borders of Georgia, but over which Georgia does not exercise effective control (see paragraph 3 above).

The active military phase in the conflict over Abkhazian territory took place in 1992-94 but, despite a cease-fire agreement concluded in May 1994 (see *Mamasakhlisi*, cited above, § 31) and negotiations conducted in the framework of the Geneva International Discussions (for more information, see *Matkava and Others*, cited above, § 6), no peace agreement has been reached. At the same time, around thirty years have elapsed since the applicants or their heirs (with the exception of the first and second applicants) lost access to their properties situated in Abkhazian territory; many of the considerations listed in the Court's decision in the case of *Demopoulos and Others* (cited above, §§ 84-85) are valid also in the present context. The Court reiterates that it has *ratione temporis* competence in respect of the applicants' claims between 5 May 1998 and 16 September 2022 in respect of Russia.

(a) As regards application no. 48656/06

410. Under the terms of Article 41 of the Convention, the Court may only award just satisfaction to an applicant if it “finds that there has been a violation of the Convention or the Protocols thereto” with respect to that applicant (see, *mutatis mutandis*, *Neumeister v. Austria* (Article 50), 7 May 1974, § 30, Series A no. 17, and *De Wilde, Ooms and Versyp v. Belgium* (Article 50), 10 March 1972, § 21 (i), Series A no. 14), and then also finds that the damage alleged to have been suffered by that applicant stems from that particular violation. In this case, no such findings have been made in relation to the first applicant, whose complaints were declared inadmissible (see paragraphs 197, 375, 379 and 385 above). It follows that her claim both in respect of pecuniary and non-pecuniary damages must be rejected.

411. The Court considers that the second applicant must have sustained non-pecuniary damage as a result of the protracted, unresolved situation, the insecurity about the fate of his house and the ensuing emotional suffering and distress. In the present case, the finding of a violation does not constitute in itself sufficient just satisfaction for the non-pecuniary damage suffered (see, *a contrario*, *Doğan and Others v. Turkey* (just satisfaction), nos. 8803/02 and 14 others, § 61, 13 July 2006). Similarly, the Court considers that some award of pecuniary damages can be made in respect of the prolonged impossibility for the second applicant to use his house; however, the pecuniary damage sustained by him does not lend itself to precise assessment. In conclusion, the Court considers it appropriate to award the second applicant an aggregate sum for pecuniary and non-pecuniary damage. Making its assessment on an equitable basis, the Court awards the applicant EUR 25,000 covering all heads of damage, plus any tax that may be chargeable on that amount.

(b) As regards applications nos. 5148/05, 26166/05 and 42765/05

412. The Court finds as a general consideration that, as the applicants have not been deprived of their property rights over the houses discussed

above, compensation cannot be awarded for the loss of the houses as such, but only for the loss of use of the properties (compare *Sargsyan v. Azerbaijan* (just satisfaction) [GC], no. 40167/06, § 43, 12 December 2017).

413. As regards the applicants' claims for pecuniary loss, the Court's case-law establishes that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention (see *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 81, ECHR 2014). On the basis of the specific claims and supporting documents submitted by the third, fourth, fifth and sixth applicants, the Court considers that some award of pecuniary damages can be made since, as a result of the violation found, they have had to live as IDPs, away from their properties and homes, following their fleeing Abkhazia in the early 1990s and with no political solution in sight⁴. In view of the multitude of difficulties related to assessing the loss incurred by the applicants during such a prolonged period of time, and bearing in mind that the different parts of Georgia in which they and their houses ended have evolved considerably and differently over time, the Court considers that the pecuniary damage sustained by the applicants does not lend itself to precise assessment (compare *Chiragov and Others v. Armenia* (just satisfaction) [GC], no. 13216/05, § 73, 12 December 2017). An award may still be made notwithstanding the large number of imponderables involved.

414. The Court further considers that the applicants must have sustained non-pecuniary damage as a result of the protracted, unresolved situation, the insecurity about the fate of their houses and the ensuing emotional suffering and distress.

415. It follows from the foregoing that the applicants are entitled to compensation for certain pecuniary losses, in particular as a result of their prolonged impossibility to use their houses, and for non-pecuniary damage. The Court considers that the pecuniary and non-pecuniary damage are closely connected. The amount of just satisfaction to be awarded must be determined at the Court's discretion, having regard to what it considers to be equitable. In conclusion, the Court has regard to Russia's primary obligation to make reparation for the consequences of a breach of the Convention. Pending a solution at the political level, it considers it appropriate in the present case to award an aggregate sum for pecuniary and non-pecuniary damage (compare *Sargsyan* (just satisfaction), cited above, § 57). Making its assessment on an equitable basis, the Court awards each applicant in these three applications

⁴ Rectified on 21 January 2025. The sentence previously read: "On the basis of the specific claims and supporting documents submitted by the third, fourth, fifth and sixth applicants, the Court considers that some award of pecuniary damages can be made since, as a result of the violation found, they have had to live as IDPs, away from their properties and homes, for almost thirty years following their fleeing Abkhazia in the early 1990s and with no political solution in sight."

EUR 35,000, covering all heads of damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

1. The parties' positions

(a) As regards applications nos. 5148/05, 26166/05 and 42765/05

416. These applicants claimed EUR 23,175 for the costs of their legal representation before the Court as effected by their Georgian representatives, at an hourly rate of EUR 50. In support of that claim, they submitted contracts for legal representation. They also claimed EUR 1,100 for translation costs of the applications and some accompanying documents; and, EUR 280 in postal costs.

417. These applicants claimed the following amounts with respect to the cost and expenses incurred in London: 28,387.5 British pounds (GBP) for legal representation at an hourly rate of 150, and GBP 553.94, USD 468 and EUR 8.24 for administrative costs. The applicants asked that all awarded amounts be paid directly into the bank account of the EHRAC, the organisation with which their British representatives were associated.

418. The Russian Government contested those claims, considering that they should be declined in their entirety. As regards the claim in respect of the legal fees of one of the British lawyers, they Government pointed out that the applicants failed to provide a copy of the related contract with the lawyer.

(b) As regards application no. 48656/06

419. The second applicant claimed EUR 4,200 in legal fees incurred by his Georgian representatives, and EUR 500 for postal and translation expenses in Georgia. He also claimed GBP 14,325 incurred in legal fees by his British representatives in the United Kingdom plus GBP 3,136.52 for administrative and translation costs incurred in the United Kingdom. The applicants asked that all awarded amounts be paid directly into the bank account of the EHRAC, the organisation with which their British representatives were associated.

420. The Russian Government contested those claims, considering that they should be declined in their entirety. As regards the claim in respect of the legal fees of the British lawyers, they Government pointed out that the applicants failed to provide a copy of the related contracts with the lawyers. As to the contract for legal services claimed in respect of the fees for the Georgian lawyers, it had not been signed by either party.

2. The Court's assessment

421. 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. In the present case, regard being had to all of the documents in its possession and the above criteria, and taking into account the legal aid granted by the Court to the applicants in applications nos. 5148/05, 26166/05 and 42765/05, the Court awards the applicants jointly, in respect of all applications, EUR 18,000 covering costs under all heads, to be paid by the Russian Federation (compare *Mamasakhlisi*, cited above, § 455). That amount is to be paid directly to the applicants' legal representatives as requested (see, *mutatis mutandis*, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288, 15 December 2016), namely into the bank account of the European Human Rights Advocacy Centre (EHRAC).

C. Default interest

422. 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 the facts which took place before 16 September 2022;
2. *Decides* to join the applications;
3. *Joins* the Russian Government's objection to the admissibility of all applicants' complaints (on grounds of incompatibility *ratione materiae*), and to the admissibility of the first and second applicants' complaints under Article 3, 8, 13 and 14 of the Convention and of the second applicant's complaints under Article 1 of Protocol No. 1 to the Convention (on the ground that they are unsubstantiated), to the merits of their related complaints;
4. *Joins* the Georgian and Russian Governments' objection to the admissibility of the applicants' complaints (on the grounds of non-exhaustion of domestic remedies) to the merits of their complaint under Article 1 of Protocol No. 1 to the Convention;
5. *Declares* the complaints of the second, third, fourth, fifth and sixth applicants under Article 1 of Protocol No. 1 to the Convention, under Article 8 of the Convention (save for the second applicant's complaint about a breach of his family life), under Articles 13 and 14, and under

Article 6 § 1 of the Convention in respect of the second applicant, admissible, and the remainder of the applications inadmissible;

6. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the second applicant for the period from 5 May 1998 to 11 August 2006, in respect of the third, fourth and fifth applicants for the period from 5 May 1998 to their respective deaths, and in respect of the sixth applicant from 5 May 1998 to 16 September 2022 by the Russian Federation and no violation by Georgia⁵;
7. *Holds* that there has been a violation of the right to home under Article 8 of the Convention in respect of the second applicant for the period from 5 May 1998 to 11 August 2006 by the Russian Federation and no violation by Georgia, and a violation of the rights to home and family life under Article 8 in respect of the third, fourth and fifth applicants for the period from 5 May 1998 to their respective deaths, and in respect of the sixth applicant from 5 May 1998 to 16 September 2022 by the Russian Federation and no violation by Georgia⁶;
8. *Holds* that no separate issue arises under Article 6 § 1 of the Convention as regards the complaint about access to a court in connection with lack of access to the house by the first and second applicants, and that there has been no violation of Article 6 § 1 of the Convention by Georgia in connection with the second applicant's complaint about lack of access to a court in relation to his dismissal from his job post;
9. *Holds* that there is no need to examine separately the complaints under Articles 13 and 14 of the Convention;
10. *Holds*
 - (a) that the Russian Federation is to pay the applicants, within three months from the date on which the judgment becomes final in

⁵ Rectified on 21 January 2025. This provision previously read: “*Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the second applicant for the period from 5 May 1998 to 11 August 2006, and in respect of the third, fourth, fifth and sixth applicants for the period from 5 May 1998 to 16 September 2022 by the Russian Federation and no violation by Georgia;”

⁶ Rectified on 21 January 2025. This provision previously read: “*Holds* that there has been a violation of the right to home under Article 8 of the Convention in respect of the second applicant for the period from 5 May 1998 to 11 August 2006 by the Russian Federation and no violation by Georgia, and a violation of the rights to home and family life under Article 8 in respect of the third, fourth, fifth and sixth applicants for the period from 5 May 1998 to 16 September 2022 by the Russian Federation and no violation by Georgia;”

accordance with Article 44 § 2 of the Convention, the following amounts:

- (i) EUR 25,000 (twenty-five thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of both pecuniary and non-pecuniary damage;
- (ii) EUR 35,000 (thirty-five thousand euros) to each of the third, fourth, fifth and sixth applicants, plus any tax that may be chargeable, in respect of both pecuniary and non-pecuniary damage;
- (iii) EUR 18,000 (eighteen thousand euros) jointly to all applicants, plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid directly to the applicants' legal representatives, namely into the bank 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;

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

Done in English, and notified in writing on 17 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by	Communicated on
1.	18102/04	Taganova and Esartia v. Georgia	10/03/2004	Galina Alekseevna TAGANOVA 1943 Nizhny Novgorod Russian Tariel Apolonovich ESARTIA 1948 Gagra Russian	See text of judgment	28/02/2006
2.	5148/05	Mekhuzla v. Georgia and Russia	30/12/2004	Ketevan MEKHUZLA 1926 Tbilisi Georgian	See text of judgment	06/02/2007
3.	26166/05	Sanaia v. Georgia and Russia	23/06/2005	Ksenia SANAIA 1914 Tbilisi Georgian	See text of judgment	06/02/2007
4.	42765/05	Dvali and Gogia v. Georgia and Russia	07/11/2005	Souliko DVALI 1937 Tbilisi Georgian Marina GOGIA 1960 Tbilisi Georgian	See text of judgment	06/02/2007
5.	48656/06	Taganova and Esartia v. Russia	11/11/2006	Galina Alekseevna TAGANOVA 1943 Nizhny Novgorod Russian Tariel Apolonovich ESARTIA 1948 Gagra Russian	See text of judgment	13/07/2016