

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

SECOND SECTION

CASE OF GEORGIA v. RUSSIA (IV)

(Application no. 39611/18)

JUDGMENT
(Merits)

Art 33 • Inter-State application • Administrative practices by Russia stemming from "borderisation" between breakaway regions of Abkhazia and South Ossetia and the Georgian government-controlled territory and resulting in multiple Convention violations
Art 2 (substantive and procedural) • Life • Administrative practice of using lethal force, which was not "absolutely necessary", against ethnic Georgian civilians attempting to enter or exit Abkhazia or South Ossetia • In exceptional case circumstances conditions for examination under Art 2 met in relation to victims who survived • Respondent State's responsibility also engaged for deaths of ethnic Georgians trying to cross the administrative boundary line (ABL) by alternative dangerous routes due to unlawful restrictions on freedom of movement imposed by *de facto* authorities of Abkhazia or South Ossetia • Administrative practice of failing to conduct an effective investigation
Art 3 (substantive and procedural) • Inhuman and degrading treatment • Administrative practice as regards the conditions of detention of ethnic Georgians and their ill-treatment in detention in Abkhazia and South Ossetia • Administrative practice of failing to conduct an effective investigation
Art 5 § 1 • Lawful arrest or detention • Administrative practice of unlawful arrests and detention of ethnic Georgians in Abkhazia and South Ossetia for "illegally crossing" the ABL • Findings in *Mamasakhlisi and Others v. Georgia and Russia* concerning Abkahzia's *de facto* authorities and courts applicable in respect of both regions
Art 2 P4 • Administrative practice of unlawfully restricting the freedom of movement of ethnic Georgians between Georgia and Abkhazia and South Ossetia resulting from the *de facto* transformation of the ABL into State borders
Art 8 • Family life • Home • Art 1 P1 • Peaceful enjoyment of possessions • Administrative practice of unlawfully restricting ethnic Georgians' access to their homes, land and other property as well as to cemeteries in Abkhazia and South Ossetia
Art 2 P1 • Right to education • Administrative practice of denying right to education in the Georgian language to ethnic Georgians living in Abkhazia and South Ossetia • Regions recognised by the overwhelming majority of the international community as an integral part of Georgia; Georgian thus considered to be one of the official languages in both of them • No indication impugned measures pursued a legitimate aim • Very essence of right impaired depriving it of its effectiveness

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 April 2024

FINAL

09/07/2024

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Georgia v. Russia (IV),

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

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

Having deliberated in private on 12 March 2024,

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

PROCEDURE

1. The case originated in an application (no. 39611/18) against the Russian Federation lodged with the Court under Article 33 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Georgia ("the applicant Government") on 22 August 2018. The applicant Government were represented before the Court by their Agent, Mr B. Dzamashvili.

2. The Russian Government ("the respondent Government") were represented by the General Prosecutor's Office of the Russian Federation.

3. After the Russian Federation had ceased to be a member of the Council of Europe and a High Contracting Party to the Convention, the President of the Chamber decided to appoint an *ad hoc* judge from among the members of the composition, applying by analogy Rule 29 § 2 (b) of the Rules of Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-9, 24 January 2023).

4. By a decision of 28 March 2023, the Court declared the application admissible.

5. The applicant Government, but not the respondent Government, filed written observations on the merits (Rule 58 § 1).

6. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 58 § 2).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. In the context of an armed conflict that occurred between Georgia and Russia in August 2008, the Russian armed forces invaded all of Abkhazia and

South Ossetia[1] (for more details about that conflict, see *Georgia v. Russia (II)* [GC], no. 38263/08, §§ 32-44, 21 January 2021). Russia recognised those two Georgian regions as independent States on 26 August 2008. That recognition was not followed by the international community[2]. On the basis of "friendship and cooperation" agreements with Abkhazia and South Ossetia, Russia then established military bases and stationed up to 3,800 Russian soldiers in each of those two regions. Subsequent agreements set up a joint military command between Russia and Abkhazia and incorporated the South Ossetian "military" into the Russian armed forces[3].

8. Furthermore, pursuant to agreements on "joint efforts in protecting the border"[4], Russian border guards (under the Federal Security Service of the Russian Federation) secure the administrative boundary line ("ABL") between those breakaway regions and the territory controlled by the Georgian government. It has been reported that there are around 900 Russian border guards in South Ossetia and around 1,500 in Abkhazia[5]. Since 2009, physical barriers and other measures have gradually been established to block people from crossing the ABL freely. As described by the European Union Monitoring Mission (EUMM) in Georgia[6], this process – often called "borderisation" – includes three main elements: (1) the establishment of physical infrastructure, such as fencing, barbed wire, guard towers, signs informing people that they are approaching the "borders" and advanced surveillance equipment, to force commuters, vehicles and goods to use controlled crossing points established at the ABL; (2) surveillance and

[1] "Abkhazia" and "South Ossetia" refer to regions of Georgia which are currently outside the *de facto* control of the Georgian government. Abkhazia has about 200,000 inhabitants, including about 50,000 ethnic Georgians concentrated in the Gali district; South Ossetia has about 30,000 inhabitants, including a small number of ethnic Georgians concentrated in the Akhalgori district (see International Crisis Group report "Abkhazia and South Ossetia: Time to Talk Trade", 2018, p. 1).

[2] Only Russia, Nicaragua, Venezuela, Nauru and Syria have recognised Abkhazia and South Ossetia as independent States.

[3] As regards Abkhazia, see the "Agreement between the Russian Federation and the Republic of Abkhazia of Alliance and Strategic Partnership" of 2014 and "Human Rights in Abkhazia Today", a report by Thomas Hammarberg and Magdalena Grono, July 2017, pp. 69-70; as regards South Ossetia, see the "Agreement between the Russian Federation and the Republic of South Ossetia on Alliance and Integration" of 2015.

[4] See the "Agreement between the Russian Federation and the Republic of Abkhazia on Joint Efforts in Protecting the State Border of the Republic of Abkhazia" and "Agreement between the Russian Federation and the Republic of South Ossetia on Joint Efforts in Protecting the State Border of the Republic of South Ossetia", both of 2009.

[5] See International Crisis Group report "South Ossetia: The Burden of Recognition", 2010, p. 8, and International Crisis Group report "Abkhazia: The Long Road to Reconciliation", 2013, p. 3. The numbers provided by the applicant Government were slightly higher: around 1,100 Russian border guards in South Ossetia and around 2,000 in Abkhazia.

[6] EUMM was deployed in September 2008 as an unarmed civilian monitoring mission. While its mandate is valid throughout all of Georgia, the *de facto* authorities of Abkhazia and South Ossetia have so far denied access to the territories under their control.

patrolling by either Russian border guards or security actors from the breakaway regions who monitor the situation and detain people if they are in violation of established rules; and (3) a crossing regime requiring commuters to have specific documents and only use "official" crossing points[7]. Reportedly, this process intensified in 2013[8]. Uncontrolled crossings have been a frequent occurrence, with people taking backdoor paths across the conflict divide to bypass the controlled crossing points. Many of those who cross outside controlled crossing points have no crossing documents. Others cross via uncontrolled paths because travel to the crossing points is too inconvenient[9]. Another reason is that it is not always clear where the ABL lies (only parts of the ABL have been marked so far)[10].

9. Georgia and the overwhelming majority of the international community consider the process of "borderisation" illegal under international law. The Georgian authorities refer to the ABL as the occupation line. In contrast, the Russian and the *de facto* Abkhaz and South Ossetian authorities treat the ABL as an international border on the grounds that Russia has recognised the two breakaway entities as independent States.

10. The relevant legal framework was set out in the admissibility decision in the present case (see *Georgia v. Russia (IV)* (dec.), no. 39611/18, §§ 14-19, 28 March 2023). The applicant Government referred to numerous other international materials. The most relevant of them are cited in paragraphs 30-31, 40-41, 61, 70 and 78 below.

11. Amnesty International described the situation as follows (see "Behind barbed wire: Human rights toll of 'borderisation' in Georgia", 2018, pp. 5-6):

> "In 2013 85-year-old Davit Vanishvili from Khurvaleti in Georgia was given a stark choice by Russian servicemen who were physically reinforcing a boundary between the breakaway region of South Ossetia/Tskhinvali Region and the rest of Georgian territory, a line they said ran through his village. He could stay in the family home on one side of the fence, regarded as part of South Ossetia/Tskhinvali Region, or move to the other side on Georgian-controlled territory, and live the rest of his life displaced. Davit chose to stay, but is now separated from the rest of his family and friends by the barbed wire which cuts through his village. Risking detention if he tries to cross, he and his wife survive through relatives and neighbours who pass his pension, medicine and other goods through the fence under cover of darkness. As thanks, he tends the graves of their deceased they can no longer reach, on his side of the wire.

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[7] See *EUMM Monitor*, Issue 7, October 2018, p. 3.

[8] See the report of the United Nations Special Rapporteur on the human rights of internally displaced persons, A/HRC/26/33/Add.1, 4 June 2014, § 45, and Amnesty International report "Behind barbed wire: Human rights toll of 'borderisation' in Georgia", 2018, pp. 20 and 24.

[9] See "Human Rights in Abkhazia Today", a report by Thomas Hammarberg and Magdalena Grono, July 2017, p. 67.

[10] See Amnesty International report "Behind barbed wire: Human rights toll of 'borderisation' in Georgia", 2018, pp. 21-23. According to the information provided by the Georgian authorities to Amnesty International in March 2018, the total length of the barbed wire and other fencing along the ABL with South Ossetia was at that time more than 52 out of 350 kilometres, and along the ABL with Abkhazia around 49 out of 145 kilometres.

Davit remains caught in one of the most painful legacies of the August 2008 Georgia-Russia conflict which continues to take a heavy toll on those in affected areas even after a cease-fire ended armed hostilities later that same month. He is among those divided or displaced by increasing securitization of what is known as the Administrative Boundary Line (ABL) running between Georgia's breakaway territories of South Ossetia/Tskhinvali Region and Abkhazia on the one hand, and Georgian-controlled territory on the other. Communities are separated from each other and the land that supports them. Villagers – some living in the poorest parts of the country - have lost access to pastures, farmland and orchards, to sources of water in summer, and firewood for winter. They are cut off from relatives, sources of income and cultural and social life. Each year hundreds are detained arbitrarily while trying to cross.

Many of these violations arise directly from moves to further entrench lines of separation arising from the 2008 – and previous – conflicts, turning what were once often just dotted lines on a map into a physical barrier. Known as 'borderization', it is a process spearheaded since 2009 by Russian forces seeking to transform the ABL into an 'international border' after Moscow's recognition of Abkhazia and South Ossetia/Tskhinvali Region as independent states. It entails the installation of physical barriers such as barbed wire, metal or wooden fences, trenches, anti-fire ditches or raked earth, together with 'border' signs and surveillance equipment to further mark – and securitize - the ABL.

...

Ensuring the rights to freedom of movement and liberty of those who live near the ABL remains a major challenge. People on both sides seek to cross the ABL for various reasons, such as to tend agricultural lands, see relatives, trade, access medical care, education or social benefits, and visit graveyards or religious buildings. However, crossings outside the limited number of designated crossing points and without proper documentation, which is often hard to secure, are considered illegal by the Russian and local *de-facto* authorities. This results in hundreds of people being arbitrarily detained every year, including, in the case of South Ossetia/Tskhinvali Region, both ethnic Georgians and ethnic Ossetians. Some of those held have alleged ill-treatment while detained.

Constraints on rights to liberty and freedom of movement are compounded by uncertainty with, and lack of information about, policies regarding the crossing of the ABL and its location in unmarked parts. So, for example, residents may be detained by Russian servicemen for allegedly crossing the 'state border', or solely for being in the vicinity of the ABL, even though they often do not know where it actually lies."

12. According to EUMM, the hotline set up by it in Georgia was activated 2,741 times in respect of detentions for ABL crossings in the period from 2011 to September 2018 (see *EUMM Monitor*, Issue 7, October 2018, p. 4).

THE LAW

I. SUBJECT-MATTER OF THE CASE

13. The applicant Government outlined their case as follows:

"The first administrative practice of the Russian authorities, and the 'authorities' of Russia's subordinate local administrations (*de facto* 'organs' of the Russian Federation in the occupied Georgian territories), of harassing, unlawfully 'arresting' and

‘detaining’ Georgians attempting to ‘cross’ the occupation lines, or living adjacent to them, restricting their freedom of movement, ‘detaining’ them against their will, and subjecting them to physical ill-treatment (sometimes amounting to torture or leading to death) – this administrative practice involves a systematic pattern of action which violates the Convention rights of the Georgian population living close to the occupation lines on both sides – Article 2 (the right to life); Article 3 (the protection from torture and inhuman or degrading treatment or punishment); Article 5 (the right to be protected against arbitrary deprivation of liberty) and Article 8 (the right to respect for one’s home, and one’s private and family life – lack of access to home and the graves of relatives) of the Convention; Article 2 of Protocol No. 4 (the right to freedom of movement); Article 1 of Protocol No. 1 (the right to property) and Article 2 of Protocol No. 1 (the right to education). The Government also rely on Article 14 (the prohibition on discrimination) and Article 18 (limitation on the use of restrictions on Convention rights) of the Convention;

The second administrative practice of the Russian authorities, and the ‘authorities’ of the subordinate local administrations, to shield perpetrators from justice for serious crimes of violence (including fatal violence) committed by ‘border guards’ or ‘officials’ for whose actions the Russian Federation is accountable under the Convention, as confirmed by *Georgia v. Russia (II)*, which amounts to a practice of impunity for public officials and others committing those crimes – this violates the procedural obligation inherent in Articles 2 and 3 of the Convention (the duty to conduct a prompt, independent and impartial investigation capable of leading to the identification, accountability, and punishment of the perpetrator); and Article 13 (the right to an effective remedy).”

14. In addition, the applicant Government complained that the respondent Government had violated Article 38 of the Convention by failing to provide all necessary facilities to the Court in its task of establishing the facts of the case.

15. At the request of the Court, the applicant Government submitted lists of the alleged victims of administrative practices contrary to Articles 2 and 3 of the Convention. Those lists contained thirty-three and seventy-six names, respectively, and a detailed account of each case. In respect of each case, the Government also provided different pieces of evidence, such as testimonies, forensic reports and, where relevant, death certificates. A reference to various media reports and/or materials originating from international organisations and independent international human rights protection associations was also provided in respect of most of the cases. The applicant Government further submitted a list of more than 2,800 alleged cases of arrest and detention for “illegally crossing” the ABL, including the names of the alleged victims, their dates of birth and places of residence, as well as the dates and places of their detention. As regards the other alleged administrative practices contrary to the Convention, the applicant Government provided photos of physical infrastructure erected at the ABL and a reference to numerous media reports and materials originating from international organisations and independent international human rights protection associations (see paragraph 10 above).

II. TEMPORAL SCOPE OF THE CASE

16. The Court notes that the applicant Government complained in essence about various human rights consequences of the process of "borderisation" outlined in paragraph 8 above. That process started in 2009. Accordingly, no events which occurred before 2009 will be considered as illustrations of the administrative practices alleged.

17. In view of the fact that the Russian Federation ceased to be a Party to the Convention on 16 September 2022, the Court has jurisdiction to deal with the applicant Government's complaints in so far as they relate to facts that took place before that date (see *Georgia v. Russia (IV)* (dec.), cited above, § 23, and the authorities cited therein).

III. RESPONDENT GOVERNMENT'S FAILURE TO PARTICIPATE IN THE PROCEEDINGS

18. The Court notes that, by failing to submit written observations on the merits when requested to do so (see paragraph 5 above), the respondent Government manifested their intention to abstain from participating further in the examination of the present application. The Court has already held that the cessation of a Contracting Party's membership of the Council of Europe does not release it from its duty to cooperate with the Convention bodies. This duty continues for as long as the Court remains competent to deal with applications arising out of acts or omissions capable of constituting a violation of the Convention, provided that they took place prior to the date on which the respondent State ceased to be a Contracting Party to the Convention (see *Svetova and Others v. Russia*, no. 54714/17, §§ 29-31, 24 January 2023). Since the present case relates to facts that took place before 16 September 2022 and the Court has jurisdiction to deal with it (see paragraph 17 above), the respondent Government's failure to engage with the proceedings cannot be an obstacle to its examination.

IV. CONCEPT OF "ADMINISTRATIVE PRACTICE"

19. In the present case, the Court is called upon to examine whether or not there existed "administrative practices" in breach of Articles 2 (substantive and procedural limbs), 3 (substantive and procedural limbs), 5 § 1, 8, 13, 14 and 18 of the Convention, Articles 1 and 2 of Protocol No. 1 and Article 2 of Protocol No. 4 (see *Georgia v. Russia (IV)* (dec.), cited above, § 69). It refers in this connection to the definition of the concept of "administrative practice" outlined in *Georgia v. Russia (I)* ([GC], no. 13255/07, §§ 122-24, ECHR 2014 (extracts)):

"122. The Court reiterates that an administrative practice comprises two elements: the 'repetition of acts' and 'official tolerance' (see *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, nos. 9940-9944/82, Commission decision of 6 December 1983, Decisions and Reports 35, p. 163, § 19, and *Cyprus v. Turkey*, cited above, § 99).

123. As to the 'repetition of acts', the Court describes these as 'an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system' (see *Ireland v. the United Kingdom*, cited above, § 159, and *Cyprus v. Turkey*, cited above, § 115).

124. By 'official tolerance' is meant that illegal acts 'are tolerated in the sense that the superiors of those immediately responsible, though cognisant of such acts, take no action to punish them or to prevent their repetition; or that a higher authority, in face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity, or that in judicial proceedings a fair hearing of such complaints is denied'. To this latter element, the Commission added that 'any action taken by the higher authority must be on a scale which is sufficient to put an end to the repetition of acts or to interrupt the pattern or system' (see *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, cited above, pp. 163-64, § 19). In that connection, the Court has observed that 'it is inconceivable that the higher authorities of a State should be, or at least should be entitled to be, unaware of the existence of such a practice. Furthermore, under the Convention those authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected' (see *Ireland v. the United Kingdom*, cited above, § 159)."

V. QUESTIONS OF PROOF

A. Burden of proof

20. The Court's approach, first set out in *Ireland v. the United Kingdom* (18 January 1978, §§ 160-61, Series A no. 25) and more recently confirmed in *Cyprus v. Turkey* ([GC], no. 25781/94, §§ 112-13 and 115, ECHR 2001-IV) and in *Georgia v. Russia (I)* (cited above, § 95), is that, as a general rule, the burden of proof is not borne by one or the other party, because the Court examines all material before it irrespective of its origin, and because it can, if necessary, obtain material of its own motion. It has since then relied on the concept of burden of proof in certain particular contexts. On a number of occasions, it has recognised that a strict application of the principle *affirmanti incumbit probatio* – that is, that the burden of proof in relation to an allegation lies on the party which makes it – is not possible, notably in instances when this has been justified by the specific evidentiary difficulties faced by the applicants (see *Baka v. Hungary* [GC], no. 20261/12, §§ 143 and 149, 23 June 2016, with further references, in relation to various substantive Articles of the Convention when only the respondent Government have access to information capable of corroborating or refuting the applicant's allegations).

21. Indeed, although it relies on the evidence which the parties adduce spontaneously, the Court routinely of its own motion asks them to provide material which can corroborate or refute the allegations made before it. If the respondent Government in question do not heed such a request, the Court cannot force the latter to comply with it, but can – if the respondent Government do not duly account for their failure or refusal – draw inferences (see, *mutatis mutandis*, *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 202, ECHR 2013, with further references). It can also combine such inferences with contextual factors. Rule 44C § 1 of the Rules of Court gives it considerable leeway on that point. At the same time, the failure of the respondent State to participate effectively in the proceedings should not automatically lead to acceptance of the applicant's claims. The Court must be satisfied on the basis of the available evidence that the claim is well founded in fact and in law (see *Svetova and Others*, cited above, § 30).

22. The possibility for the Court to draw inferences from the respondent Government's conduct in the proceedings before it is especially pertinent in situations – for instance, those concerning people in the custody of the authorities or those where a State restricts the access of independent human rights monitoring bodies to an area in which it exercises "jurisdiction" within the meaning of Article 1 of the Convention – in which the respondent State alone has access to information capable of corroborating or refuting the applicant's allegations (see, among other authorities, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 152, ECHR 2012, and *Georgia v. Russia (IV)* (dec.), cited above, § 67).

B. Standard of proof

23. The standard of proof before the Court is "beyond reasonable doubt" (see *Georgia v. Russia (I)* [GC], no. 13255/07, § 93, ECHR 2014 (extracts), and the authorities cited therein). That standard, however, is not co-extensive with that of the national legal systems which employ it. First, such proof can follow from the coexistence of sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact. Secondly, the level of persuasion required to reach a conclusion is intrinsically linked to the specificity of the facts, the nature of the allegation made, and the Convention right at stake. The Court has consistently reiterated those points (see, for instance, *Merabishvili v. Georgia* [GC], no. 72508/13, § 314, 28 November 2017, with further references).

C. Assessment of the evidence

24. The Court's approach concerning the assessment of the evidence, also set out as early as in *Ireland v. the United Kingdom* (cited above, § 210) and confirmed more recently in *Georgia v. Russia (I)* (cited above, § 138), is that

the Court is free to assess not only the admissibility and relevance but also the probative value of each item of evidence before it. In *Nachova and Others v. Bulgaria* ([GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII), the Court further clarified that point, saying that when assessing evidence it is not bound by formulae and adopts the conclusions supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions (see also *Georgia v. Russia (I)*, cited above, § 94). It has also stated that it is sensitive to any potential evidentiary difficulties encountered by a party. The Court has consistently adhered to that position, applying it to complaints under various Articles of the Convention (see *Baka*, cited above, § 143, with further references). Since it is ultimately for the Court to make its own findings and reach its own conclusions on the applicant's allegations, it will draw on all the material available, including the factual findings of the relevant domestic and international human rights observers (see *Kukhalashvili and Others v. Georgia*, nos. 8938/07 and 41891/07, § 148, 2 April 2020).

VI. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

25. The applicant Government relied on Article 2, which reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. The parties' submissions

26. The applicant Government complained of a pattern of killing of ethnic Georgian civilians attempting to enter or exit Abkhazia or South Ossetia, and a lack of an appropriate investigation into such allegations, in violation of the substantive and procedural aspects of Article 2. In that regard, they referred to three illustrative cases: namely, the deaths of Davit Basharuli (an ethnic Georgian resident of South Ossetia who had been arrested by the *de facto* authorities of South Ossetia on 4 June 2014 on suspicion of having committed a burglary and had not been seen again until 4 January 2015, when his body had been found hanging from a tree in a forest in South Ossetia; according to an expert report submitted by the applicant Government, his body bore signs of beating); Giga Otkhozoria (an ethnic Georgian who had been refused entry into Abkhazia and had then been chased and killed by a "border guard" of the

de facto authorities of Abkhazia in the territory controlled by the Georgian government on 19 May 2016); and Archil Tatunashvili (an ethnic Georgian who had been arrested by the *de facto* authorities of South Ossetia while trying to enter that breakaway region, interrogated about his involvement in the 2008 conflict and, according to an expert report submitted by the applicant Government, tortured to death). The applicant Government also submitted a list of thirty other alleged victims together with evidential material.

27. The respondent Government did not submit any observations on the merits.

B. The Court's assessment

1. *General principles*

28. Article 2 contains two substantive obligations: the general obligation to protect by law the right to life, and the prohibition of intentional deprivation of life, delimited by a list of exceptions. The exceptions delineated in paragraph 2 indicate that Article 2 extends to, but is not concerned exclusively with, intentional killing. The text of Article 2, read as a whole, demonstrates that paragraph 2 does not primarily define instances where it is permitted to kill an individual intentionally, but describes the situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than "absolutely necessary" for the achievement of one of the purposes set out in sub-paragraphs (a), (b) or (c) (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 175, ECHR 2011 (extracts)). Having regard to its fundamental character, Article 2 of the Convention also contains a procedural obligation to carry out an effective investigation into alleged breaches of its substantive limb (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 229, 30 March 2016).

2. *Application of the above-mentioned principles to the facts of the case*

29. The Court has carefully analysed the list of the alleged victims and all other evidence submitted by the applicant Government (see paragraph 15 above). Some of the incidents included in that list fall outside the temporal scope of this case (see paragraphs 16-17 above). Furthermore, some other incidents included in the list have no apparent link to the process of "borderisation" since they did not take place at the ABL or after an arrest for a "border violation". Nevertheless, the Court considers that at least twenty incidents from that list fall within the scope of the present case, including the deaths of seven ethnic Georgian residents of Abkhazia while trying to cross the ABL by alternative routes with the intention of collecting their pension or medication from the territory controlled by the Georgian government. The

respondent Government did not argue, let alone substantiate, that those incidents had not taken place.

30. The international materials submitted by the applicant Government also refer to instances of use of lethal force or incidental loss of life (see paragraph 24 above).

For example, the relevant part of the consolidated report of the Secretary General of the Council of Europe on the conflict in Georgia of 1 April 2021 (SG/Inf(2021)10) reads as follows:

> "34. In general, through the course of the past year, it was reported that the closure of the 'crossing points' had increased the number of attempted crossings of the ABL outside the 'crossing points' in insecure conditions creating occurrences of risk for life and health and bringing about instances of illegal detentions and fines."

The relevant part of the consolidated report of the Secretary General of the Council of Europe on the conflict in Georgia of 3 November 2022 (SG/Inf(2022)38) reads as follows:

> "36. The delegation was in particular informed that no progress had been achieved on the investigation demanded by the Georgian authorities into the deaths of Giga Otkhozoria, David Basharuli and Archil Tatunashvili, nor regarding the deaths of Irakli Kvaratskhelia and Inal Jabiev."

31. The Court finds that the incidents under consideration are sufficiently numerous and interconnected to amount not merely to isolated incidents or exceptions but to a pattern or system (see paragraph 19 above). Moreover, taking into account the apparent lack of an effective investigation into the incidents in question, the Court considers that the "official tolerance" element of the administrative practice (see paragraph 19 above) has also been established beyond reasonable doubt.

32. Turning to the compatibility of that practice with Article 2, the Court has first examined the incidents in which the victims were beaten to death or shot at by Russian or *de facto* Abkhaz and South Ossetian agents. While it is true that a number of those who were shot at by Russian agents at the ABL survived, the Court has held that in exceptional circumstances, depending on considerations such as the degree and type of force used and the nature of the injuries, use of force by State agents which does not result in death may disclose a violation of Article 2 if the behaviour of the State agents, by its very nature, puts the applicant's life at serious risk even though the latter survives (see *Makaratzis v. Greece* [GC], no. 50385/99, § 55, ECHR 2004-XI). The Court considers that those conditions are met in this case. It further considers that the respondent State did not argue, let alone substantiate, that the use of force had been no more than "absolutely necessary" for the achievement of one of the purposes set out in Article 2 § 2 of the Convention. As regards those who died while trying to cross the ABL by alternative routes (see paragraph 29 above), the Court reiterates that Article 2 of the Convention cannot be interpreted as guaranteeing to every

individual an absolute level of security in any activity in which the right to life may be at stake, in particular when the person concerned bears a degree of responsibility for the accident having exposed himself or herself to unjustified danger (see, for example, *Çakmak v. Turkey* (dec.), no. 34872/09, § 35, 21 November 2017). However, since in the present case the victims had to use dangerous routes because of unlawful restrictions on freedom of movement imposed by the *de facto* authorities of Abkhazia and South Ossetia (see paragraph 63 below), the Court considers that the respondent State's responsibility for those deaths is engaged.

33. Having regard to the above, the Court considers that it has sufficient evidence in its possession to conclude that there was an administrative practice contrary to the substantive limb of Article 2 of the Convention.

34. The Court further considers that it has sufficient evidence to conclude that there has not been an effective investigation into the incidents at issue and, accordingly, that there was also an administrative practice contrary to the procedural limb of Article 2 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

35. The applicant Government relied on Article 3, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

36. The applicant Government complained under the substantive limb of Article 3 that a number of ethnic Georgians, who had been detained by the Russian or the *de facto* authorities of Abkhazia or South Ossetia for "illegally crossing" the ABL, had later complained of ill-treatment in detention and/or inhumane conditions of detention. In that regard, they submitted a list of the alleged victims together with evidential material (see paragraph 15 above).

37. The respondent Government did not submit any observations on the merits.

B. The Court's assessment

1. General principles

38. The Court reiterates its recent case-law on Article 3 of the Convention that it has summarised in its pilot judgment *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, § 139-42, 10 January 2012) and reproduced in its judgment *Idalov v. Russia* ([GC], no. 5826/03, §§ 91-94, 22 May 2012):

> "... Article 3 enshrines one of the most fundamental values of democratic societies. The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, for example *Labita v. Italy*

[GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see, among other authorities, *Vasyukov v. Russia*, no. 2974/05, § 59, 5 April 2011).

In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000‑XI, and *Popov v. Russia,* no. 26853/04, § 208, 13 July 2006).

When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, § 50, 8 November 2005)."

2. Application of the above-mentioned principles to the facts of the case

39. The Court has carefully analysed the list of the alleged victims and all other evidence submitted by the applicant Government (see paragraph 15 above). Some of the incidents included in that list fall outside the temporal scope of this case (see paragraphs 16-17 above). Furthermore, some other incidents included in that list have no apparent link to the process of "borderisation" since the alleged ill-treatment did not take place at the ABL or following an arrest for a "border violation". Nevertheless, the Court considers that at least fifty incidents from that list fall within the scope of the present case (at least twenty of them concern Abkhazia and at least thirty South Ossetia). The respondent Government did not argue, let alone substantiate, that those incidents had not taken place.

40. The international materials submitted by the applicant Government also refer to instances of ill-treatment (see paragraph 24 above).

For example, the relevant part of the consolidated report of the Secretary General of the Council of Europe on the conflict in Georgia of 11 April 2017 (SG/Inf(2017)18) reads as follows:

> "44. It is anticipated that the reduction in the number of crossing points will inevitably lead to an increased number of detentions, which continue to occur regularly in case of crossings in 'unauthorised' points and/or due to lack of valid documents. According to the Georgian Security Service, 190 detention cases were reported in the course of 2016 across the ABL with Abkhazia. While as a rule those apprehended are released after being shortly detained and paying a 'fine', the delegation continued to receive reports about instances of ill-treatment. ..."

The relevant part of the consolidated report of the Secretary General of the Council of Europe of 11 April 2018 (SG/Inf(2018)15) reads:

> "54. ... in the meeting with the delegation, the Georgian Public Defender expressed concerns about the allegations of ill-treatment in Tskhinvali detention facilities."

The 2022 report of the United Nations High Commissioner for Human Rights on cooperation with Georgia (A/HRC/51/64, 12 July 2022) reads, in so far as relevant, as follows:

> "48. OHCHR continued to receive reports of arbitrary deprivations of liberty and ill-treatment in both Abkhazia and South Ossetia."

41. Lastly, the material conditions in places of detention in Abkhazia were described in the 2017 report by Thomas Hammarberg and Magdalena Grono "Human Rights in Abkhazia Today" as "bad to the extent that they may well cause severe health problems". The relevant part of the report (pp. 23-24) reads:

> "We visited the main prison in Dranda where 278 inmates were held at the time. We also paid a visit to the pre-trial detention centre in Sukhumi where 42 persons were held and which in practice serves as the ordinary prison for women and the few minors who are incarcerated.
>
> The physical conditions in those two institutions are bad to the extent that they may well cause severe health problems, including of a psychological nature, for those kept there. ...
>
> The officials with whom we discussed these shortcomings made no attempt to hide the problems. On the contrary, they demonstrated deep concern about the situation, and expressed frustration with the lack of material resources."

42. The applicant Government claimed, and the respondent Government did not deny, that many ethnic Georgians who had been detained for a "border violation" in Abkhazia had been held in such conditions and that the material conditions of detention were no better in South Ossetia (as regards the number of those concerned, see paragraph 52 below).

43. The Court finds that the incidents under consideration are sufficiently numerous and interconnected to amount not merely to isolated incidents or exceptions but to a pattern or system (see paragraph 19 above). Moreover, taking into account the apparent lack of an effective investigation into the incidents in question, the Court considers that the "official tolerance" element of the administrative practice (see paragraph 19 above) has also been established beyond reasonable doubt.

44. Turning to the compatibility of that practice with Article 3, the Court considers that it clearly attained the minimum level of severity required to fall within the scope of that Article.

45. Having regard to the above, the Court considers that it has sufficient evidence in its possession to conclude that there was an administrative practice contrary to the substantive limb of Article 3 of the Convention.

46. The Court further considers that it has sufficient evidence to conclude that there has not been an effective investigation into the incidents at issue and, accordingly, that there was also an administrative practice contrary to the procedural limb of Article 3 of the Convention.

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

47. The applicant Government relied on Article 5 § 1, which provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. The parties' submissions

48. The applicant Government submitted that the Russian and the *de facto* authorities of the breakaway regions detained ethnic Georgians for "illegally crossing" the ABL on an almost daily basis and stated that all such detentions were inevitably unlawful since neither the Russian nor the *de facto* authorities could order "lawful" arrest or detention, within the meaning of Article 5 § 1 of the Convention, in Georgian territory.

49. The respondent Government did not submit any observations on the merits.

B. The Court's assessment

1. General principles

50. It is well established in the Court's case-law in respect of Article 5 § 1 that any deprivation of liberty must not only be based on one of the exceptions listed in sub-paragraphs (a) to (f) but must also be "lawful". In laying down that any deprivation of liberty must be carried out "in accordance with a procedure prescribed by law", Article 5 § 1 primarily requires any arrest or detention to have a legal basis in domestic law. However, these words do not merely refer back to domestic law. They also relate to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention (see, for example, *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013).

51. The Court has set out the general principles established in its case-law in respect of the lawfulness of acts adopted by the authorities of unrecognised entities in its judgment in *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, §§ 136-41, 23 February 2016).

2. Application of the above-mentioned principles to the facts of the case

52. The applicant Government submitted a list of more than 2,800 alleged cases of arrest and detention for "illegally crossing" the ABL (see paragraph 15 above). The respondent Government did not argue, let alone substantiate, that those incidents had not taken place. Moreover, the large-scale nature of such arrests is apparent from the international materials submitted by the applicant Government. By way of example, the hotline set up by EUMM in Georgia was activated 2,741 times in respect of detentions for ABL crossings in the period from 2011 to September 2018 (see paragraph 12 above). The Court finds that those incidents are sufficiently numerous and interconnected to amount not merely to isolated incidents or exceptions but to a pattern or system (see paragraph 19 above). As regards the "official tolerance" element of the administrative practice (see paragraph 19 above), it notes that the practice of arrests and detentions for "illegally crossing" the ABL is a direct consequence of the official position of the Russian Federation and the breakaway regions according to which the ABL is treated as an international border (see paragraph 9 above).

53. Turning to the compatibility of that practice with Article 5 § 1 of the Convention, the Court has held that the *de facto* authorities of Abkhazia could not order "lawful arrest or detention" within the meaning of Article 5 § 1 (a) and (c) for the following reasons (see *Mamasakhlisi and Others v. Georgia and Russia*, nos. 29999/04 and 41424/04, §§ 425-27, 7 March 2023):

> "425. Turning to the present applications, the Court observes that none of the parties has provided information to it about the specific provisions of domestic law that served as the legal basis for the arrest and detention by the *de facto* Abkhaz authorities of the first and third applicants. Nonetheless, assuming that the acts of the *de facto* Abkhaz

authorities and courts were in compliance with the local laws in force within Abkhaz territory at the time of the facts complained of, those acts had in principle to be regarded as having a legal basis in domestic law for the purposes of the Convention. That said, no information has been submitted to the Court to enable it to determine whether the legal provisions applied to the applicants were compatible with the requirements under Article 5 of the Convention. The Court furthermore notes the scarcity of official sources of information concerning the legal and court system in Abkhazia – a fact that makes it difficult to obtain a clear picture of the applicable laws. Consequently, the Court is not in a position to verify whether the *de facto* Abkhaz authorities and courts, and the practices that they follow, fulfil the requirements mentioned above.

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

54. Given the absence of any relevant new information to the contrary, the Court considers that this conclusion continues to be valid with respect to Abkhazia. Furthermore, the Court sees no reason to decide otherwise with respect to South Ossetia.

55. Having regard to the above, the Court considers that it has sufficient evidence in its possession to conclude beyond reasonable doubt that there was an administrative practice contrary to Article 5 § 1 of the Convention.

IX. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4

56. Article 2 of Protocol No. 4 provides:

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the

prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

A. The parties' submissions

57. The applicant Government argued that the process of "borderisation" had resulted in unjustified restrictions on freedom of movement into and out of Abkhazia and South Ossetia.

58. The respondent Government did not submit any observations on the merits.

B. The Court's assessment

1. Preliminary remark

59. In the case at hand, the Court will limit its examination to the applicant Government's complaint about the impact of the process of "borderisation" on the day-to-day freedom of movement of ethnic Georgians across the ABL. It will not deal with the issue of the inability of ethnic Georgians to return to their homes in Abkhazia and South Ossetia because that matter has already been examined by the Court (see *Georgia v. Russia (II)*, cited above, § 299).

2. General principles

60. The Court has held that any measure restricting the right to liberty of movement within the territory of the respondent State must be in accordance with law (see *De Tommaso v. Italy* [GC], no. 43395/09, § 104, 23 February 2017, and *Gartukayev v. Russia*, no. 71933/01, § 21, 13 December 2005). As to the lawfulness of acts carried out by the authorities of unrecognised entities, see *Mozer* (cited above, §§ 136-41).

3. Application of the above-mentioned principles to the facts of the case

61. The Court observes that the applicant Government's allegations under this head concern the alleged restrictions on freedom of movement between Georgia and its breakaway regions of Abkhazia and South Ossetia resulting from the *de facto* transformation of the ABL into State borders. Accordingly, they fall to be examined under paragraph 1 of Article 2 of Protocol No. 4. Those allegations were not disputed by the respondent Government. They are, furthermore, confirmed by the international materials submitted by the applicant Government (see paragraph 15 above).

For example, the 2022 report of the United Nations High Commissioner for Human Rights on cooperation with Georgia (A/HRC/51/64, 12 July 2022) reads, in so far as relevant, as follows:

> "41. Impediments to freedom of movement persisted in both Abkhazia and South Ossetia and adjacent areas, in particular along the Administrative Boundary Line. Such restrictions continued to have negative consequences on human rights with the effect of further exacerbating the isolation of the communities living on either side of the Line. These restrictions negatively impacted the already limited access of local residents to education, health care, pensions, markets and other services available in the Tbilisi-controlled territory.
>
> 42. During the reporting period, restrictions that had been introduced in March 2020, purportedly to contain the spread of COVID-19 at two main crossing points between Abkhazia and Tbilisi-controlled territory, were lifted in July 2021. The crossing of the Administrative Boundary Line became possible at the main Enguri crossing point (vehicular and pedestrian) and the Saberio-Pakhulani crossing point (pedestrian only), with the latter mostly serving the needs of a significantly smaller group of residents of adjacent villages. Other crossing points remained closed. According to available information, temporary restrictions on the freedom of movement at both crossing points for those travelling from Abkhazia to Tbilisi-controlled territory (with the exception of medical workers and patients, schoolchildren and Enguri hydropower plant workers) were imposed by the authorities in control during the two rounds of the Georgian local elections held in October 2021. These restrictions had not been implemented during the elections conducted in Tbilisi-controlled territory in previous years. While the Administrative Boundary Line was opened for general crossing in July 2021, the movement continued to be restricted for those who had a 'foreign permanent resident permit' or an Abkhaz 'passport', while the extension and the issuance of form No. 9, a temporary identity document issued to ethnic Georgians for crossing purposes, was suspended. According to information received, the closures and restrictions on the freedom of movement had a significant impact on the lives and livelihoods of the affected people, including on the physical and mental state of older persons and other vulnerable communities, as well as those with chronic medical conditions.
>
> 43. According to various submissions, the closure of the Administrative Boundary Line in September 2019 by the authorities in control in South Ossetia for an indefinite period of time following the opening of a police guard post in the village of Chorchana, located on Tbilisi-controlled territory, continued to adversely impact the humanitarian and human rights of the predominantly ethnic Georgian population in Akhalgori District. The Government of Georgia raised concerns that people in Akhalgori District faced difficulties in getting permission to cross the Administrative Boundary Line and receive medical treatments, pensions and social services in the Tbilisi-controlled territory.
>
> 44. According to available information, during the reporting period measures and practices imposed by the authorities in control in Abkhazia and South Ossetia for the acquisition of personal documents continued to have negative implications for the realization of human rights of the affected population."

62. The Court finds that the incidents to which the international materials refer are sufficiently numerous and interconnected to amount not merely to isolated incidents or exceptions but to a pattern or system (see paragraph 19 above). Taking into account the regulatory nature of the impugned measures and their general application to all people concerned, the Court considers that

the "official tolerance" element of the administrative practice (see paragraph 19 above) has also been established beyond reasonable doubt.

63. Turning to the compatibility of that practice with Article 2 of Protocol No. 4, the Court has already held that the *de facto* authorities of Abkhazia and South Ossetia could not order "lawful arrest" within the meaning of Article 5 § 1 (see paragraphs 53-54 above). For the same reasons, the Court considers that the *de facto* authorities of Abkhazia and South Ossetia could not lawfully order restrictions on freedom of movement either.

64. Having regard to the above, the Court considers that it has sufficient evidence in its possession to conclude beyond reasonable doubt that there was an administrative practice contrary to Article 2 of Protocol No. 4.

X. ALLEGED VIOLATIONS OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

65. The applicant Government further complained that the restrictions on freedom of movement into and out of Abkhazia and South Ossetia obstructed the access of ethnic Georgians from both sides of the ABL to homes, land and other property and cemeteries. They added that the restrictions on freedom of movement also separated families. In this connection, they alleged that there had also been a violation of Article 8 of the Convention and Article 1 of Protocol No. 1.

66. Article 8 of the Convention 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."

67. Article 1 of Protocol No. 1 provides:

> "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."

68. The respondent Government did not submit any observations on the merits.

A. General principles

69. Any interference with an individual's Article 8 rights can only be justified under Article 8 § 2 if it is in accordance with the law. This expression not only necessitates compliance with domestic law but also relates to the quality of that law, requiring it to be compatible with the rule of law (see *Big Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, § 332, 25 May 2021). Similarly, the Court has held that an essential condition for an interference with a right protected by Article 1 of Protocol No. 1 to be deemed compatible with this provision is that it should be lawful. The rule of law, one of the fundamental principles of a democratic society, is inherent in this Article, as in all other Articles of the Convention (see *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 112, 13 December 2016). As regards the lawfulness of acts carried out by the authorities of unrecognised entities, see *Mozer* (cited above, §§ 136-41).

B. Application of the above-mentioned principles to the facts of the case

70. The Court observes that the applicant Government's allegations under this head were not disputed by the respondent Government. Moreover, they were also confirmed by the international materials submitted by the applicant Government (see paragraph 15 above).

For example, the relevant part of the 2018 report by Amnesty International "Behind barbed wire: Human rights toll of 'borderisation' in Georgia" (pp. 34-36 and 42-45) reads as follows:

> "The main source of income for the villages along the ABL was livestock and farming. The local population traditionally used crops to feed their own families and sold the extra yield. Many had cattle and used to sell their dairy products in local markets both in Tbilisi-controlled territory and South Ossetia/Tskhinvali Region and Abkhazia. Losing access to their agricultural lands near the ABL has weakened the local population's already poor social and economic conditions, negatively impacting on the right to an adequate standard of living.
>
> Georgia is not a high-income country, with 20% of the population estimated to live below the national poverty line. Poverty is more prevalent in rural areas, and this is especially true for the region through which the South Ossetian/Tskhinvali Region ABL cuts. This area is regarded as the poorest part of the country, with 59% of the population living below the poverty line.
>
> Local villagers told Amnesty International that they lost access to their pasturelands, farmlands, and woodlands as the Russian servicemen set up barbed wire fences and trenches on their lands. The process started without prior consultation or, in many cases, without warning; and the owners of the affected land did not receive any compensation.
>
> In each of the villages visited by Amnesty International delegates along the South Ossetian/Tskhinvali Region ABL, locals showed the delegates from a distance the lands that used to belong them before the fences were constructed. The lands are now separated from the villages with barbed wire, trenches or fences. There are signs

installed by the Russian officers stating in English and Georgian that entry to the territory is prohibited. The local farmers have cultivated or used these lands as pastures adjacent to their houses for decades, many having documents proving their titles.

There are no comprehensive statistics available as to how many families lost how much land. The Georgian authorities told Amnesty International that, since the beginning of 'borderization', from 800 to 1,000 families in total had lost all or partial access to farmlands, pasturelands and woodlands that they had rights to either as private property (mostly farmlands) or as communal village land (mostly pasturelands and woodlands) near the ABL with South Ossetia/Tskhinvali Region. Residents of villages near the ABL with South Ossetia/Tskhinvali Region told Amnesty International that from 10 to 50 hectares of pasture or farmlands per village have been seized by the Russian border guards in the process of 'borderization' since 2011. In 2017, the Public Defender (Ombudsperson) of Georgia documented that in just one village, Jariasheni near the South Ossetian/Tskhinvali Region ABL, out of 138 families, 60 have lost access to at least some of their agricultural lands because of the 'borderization'.

...

In the case of Abkhazia, loss of land was mentioned by the interviewees only in the village of Khurcha. Since the ABL between Abkhazia and Tbilisi-controlled territory follows the River Enguri - a natural ABL marker - local villagers have lost less land than has been the case with South Ossetia/Tskhinvali Region. While Abkhazia is separated from the Tbilisi-controlled territory by a river, making it easy to understand where the ABL lays, the South Ossetian/Tskhinvali Region stretch of the ABL zigzags around and cuts through villages, meaning that often even locals are unaware where the 'border' runs.

As observed by Amnesty International delegates, the village of Khurcha has been left without any pasturelands, and is surrounded by fences, except for the narrow opening that connects the village to Tbilisi-controlled territory. Some families in Khurcha also reported losing access to five hectares of hazelnut plantations (the most lucrative farming industry in these parts). Locals complained to Amnesty International that their cattle often end up on the other side of the ABL and are then lost because they cannot retrieve them; those who try risk detention.

All these problems are compounded by the fact that those who lose their lands cannot find alternatives, because of a lack of available land. According to the Georgian Statistics Office data of 2009, the total area of land in Shida Kartli (a region of Georgia that includes areas effected by 'borderization' of the South Ossetian/Tskhinvali Region ABL) is 69,425 ha, of which 56,682 ha is in private ownership and 95% of the remaining non-private lands (or 12,116 ha) had already been leased by the state. Only a few of the residents interviewed told Amnesty International that they had been offered alternative farmlands by the Tbilisi authorities, and even then they declined since the offered plots were further from their villages than their original lands and lacked easily accessible water.

...

'Borderization' and restricted freedom of movement has negatively affected the right to family life as family members who ended up on different sides of the ABL find it hard, if not impossible, to visit each other.

A 60-year-old resident of a mixed Georgian-Ossetian village Tsitelubani in Tbilisi-controlled territory told Amnesty International that it had been five years since he last saw his sister, who is married and lives in the ethnic Ossetian village of Orchosani, which is only five kilometers across the ABL. He cannot cross into South

Ossetia/Tskhinvali Region. The only way she can travel to see him is to undertake a 300 km journey through the Caucasus mountains via Vladikavkaz in Russia, then on to Tbilisi and from there to his village on the Georgian-controlled side of the ABL – a journey she cannot afford to make.

For those extended families who have ended up on different sides of the ABL in this region the only way to visit each other is for those on the South Ossetian/Tskhinvali Region side to take this extended journey, although the direct distance between houses in many divided villages across the ABL could be just a few hundred meters. Residents on the Tbilisi-controlled side of the ABL do not even have the option of travelling to the South Ossetian/Tskhinvali Region side of the ABL via Vladikavkaz in Russia, as, according to the Akhalgori residents the *de facto* officials would not allow locals in South Ossetia/Tskhinvali Region to invite their relatives from the other side of the ABL. Elderly people from mixed Georgian-Ossetian marriages who after borderization' chose to remain in their homes in South Ossetia/Tskhinvali Region, are deprived of help and support from younger family members who had been living on the other side of the ABL or decided to move to Tbilisi-controlled territory after the 2008 armed conflict.

Tsitelubani residents told Amnesty International that before the installation of barbed wire and fences they used to go to the village of Orchosani to meet their relatives and extended family members almost daily. They explained that after the 'borderization' some still managed to cross over the ABL covertly at night, sometimes resulting in their detention by the Russian or *de facto* officials.

Residents in the village of Nikozi said that they still try to maintain contact with neighbors and friends who ended up on the South Ossetian/Tskhinvali Region side of the ABL since 2011, and that when they see each other near the ABL they often initiate a conversation over a fence. However, the residents explained that if Russian border guards see ethnic Ossetians speaking to those on the Tbilisi-controlled side of the fence, they intervene and threaten them with detention.

According to interviews with different sources both in Tbilisi-controlled territory and those from the Gali and Akhalgori districts, prior to 'borderization', locals on both sides of the ABL maintained close extended family relations. Before the 2008 armed conflict, mixed Georgian-Ossetian families were common, and many villages across the ABL are still ethnically mixed. In Abkhazia, ethnic Georgians in Gali still maintain close links with Georgians living in Tbilisi-controlled territory and visit them often.

According to information available to Amnesty International, ethnic Georgians living in Tbilisi-controlled territory require officially-approved invitations to be able to visit their relatives in Gali district. Gali residents told Amnesty International that it takes around 10 days to have an invitation approved and it can cost up to 5,000 RUB (USD 73). However, such approvals are routinely refused without explanation and when issued they do not always guarantee entry to Abkhazia. Gali residents told Amnesty International that often the *de facto* Abkhaz authorities deny entry without providing a clear reason to the holders of the invitation. A displaced person from Abkhazia's Gali region who lives in Tbilisi told Amnesty International that in July 2017 he was denied entry to Gali to see his dying grandfather who had suffered a heart attack even though he had secured the invitation beforehand. The interviewee explained that the *de facto* Abkhaz security officers stopped him at the Enguri Bridge crossing point after he presented the invitation. The officers told him they would have to wait for the call from Sukhumi for the final clearance. He waited for two days at the crossing point and when the call still had not arrived, he decided to turn back. No reasons were given for the denial of entry. The interviewee said he was never able to see his grandfather,

> who died shortly afterwards. Amnesty International delegates heard other cases like this when they spoke to the Gali district residents in March 2018 in the Zugdidi District.
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> Georgians who live in Gali and do not possess the necessary documents issued by the Abkhaz *de facto* authorities find it impossible to visit their relatives in Tbilisi-controlled territory, as without those documents they are either unable to leave Abkhazia for Tbilisi-controlled territory or unable to re-enter Abkhazia.
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> ...
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> Interviewees in the village of Khurvaleti told Amnesty International that they had lost access to the village cemetery which ended up behind barbed wire in 2013. Georgian authorities also report that locals have lost access to a cemetery in the village of Kveshi. In addition, eight village cemeteries across the South Ossetia/Tskhinvali Region stretch of the ABL have ended up next to the barbed wire fences and due to the threat of detentions by the Russian border guards and South Ossetian/Tskhinvali Region forces local people are advised not to visit them. These graveyards are family burial sites which would normally be regularly visited as part of the local religious tradition."

71. The Court finds that the incidents to which the international materials refer are sufficiently numerous and interconnected to amount not merely to isolated incidents or exceptions but to a pattern or system (see paragraph 19 above). Taking into account the regulatory nature of the impugned measures and their general application to all people concerned, the Court considers that the "official tolerance" element of the administrative practice (see paragraph 19 above) has also been established beyond reasonable doubt.

72. Turning to the compatibility of that practice with Article 8 of the Convention and Article 1 of Protocol No. 1, the Court has already held that the *de facto* authorities of Abkhazia and South Ossetia could not order "lawful arrest" within the meaning of Article 5 § 1 (see paragraphs 53-54 above). For the same reasons, the Court considers that an interference by those authorities with a right protected by Article 8 of the Convention or Article 1 of Protocol No. 1 could not be lawful either.

73. Having regard to the above, the Court considers that it has sufficient evidence in its possession to conclude beyond reasonable doubt that there was an administrative practice contrary to Article 8 of the Convention and Article 1 of Protocol No. 1.

XI. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 1

74. The applicant Government complained that the ethnic Georgians living in Abkhazia and South Ossetia had been denied the right to education in the Georgian language. The process of "borderisation" had made the situation even worse because of restrictions on freedom of movement into and out of Abkhazia and South Ossetia. The applicant Government submitted that there was no evidence that the impugned measures pursued a legitimate aim. They added that the sole purpose of those measures was to entrench the separatist ideology in order to enforce the Russification of the language and culture of the ethnic Georgians living in Abkhazia and South Ossetia. They

claimed that there had been a violation of Article 2 of Protocol No. 1, which reads as follows:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

75. The respondent Government did not submit any observations on the merits.

A. General principles

76. The Court refers to the interpretation of the scope of Article 2 of Protocol No. 1 which it provided in the *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* ((merits), 23 July 1968, Series A no. 6 – "the '*Belgian linguistic case*'"). In that case, the Court held that the Convention did not require States to establish any particular education system, but rather to guarantee to persons subject to their jurisdiction the right to avail themselves of the means of instruction which existed at a given time. The Convention did not lay down any "specific obligations concerning the extent of these means and the manner of their organisation or subsidisation". The Court concluded that the first sentence of Article 2 of Protocol No. 1 did not "specify the language in which education [had to] be conducted in order that the right to education should be respected". However, "the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be" (see the "*Belgian linguistic case*", cited above, p. 31, § 3). This interpretation of the scope of Article 2 of Protocol No. 1 has subsequently been confirmed in other cases (see, most notably, *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 137, ECHR 2012 (extracts)).

77. The Court has also held that the right to education is not absolute, but may be subject to limitations. Provided that there is no injury to the substance of the right, these limitations are permitted by implication since the right of access "by its very nature calls for regulation by the State" (see the "*Belgian linguistic case*", cited above, p. 32, § 5). In order to ensure that the restrictions that are imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness, the Court must satisfy itself that they are foreseeable for those concerned and pursue a legitimate aim. However, unlike the position with respect to Articles 8 to 11 of the Convention, it is not bound by an exhaustive list of "legitimate aims" under Article 2 of Protocol No. 1 (see *Catan and Others*, cited above, § 140). Furthermore, a limitation will only be compatible with Article 2 of Protocol No. 1 if there is a reasonable relationship of proportionality between

the means employed and the aim sought to be achieved (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 154, ECHR 2005-XI).

B. Application of the above-mentioned principles to the facts of the case

78. The Court observes that the applicant Government's allegations under this head were not disputed by the respondent Government. Moreover, they were also confirmed by the international materials submitted by the applicant Government (see paragraph 15 above).

For example, the relevant part of the consolidated report of the Secretary General of the Council of Europe on the conflict in Georgia of 27 March 2019 (SG/Inf(2019)12) reads as follows:

> "54. As regards access to education in the native language, representatives of the Georgian central government submitted that approximately 100 schoolchildren are affected by transition to Russian in grades one to four of the formerly Georgian-language schools in Akhalgori, Znauri and Sinaguri. They qualify this practice as discriminatory, noting that the ethnic Georgian population in Akhalgori is deprived of access in native language."

The 2022 report of the United Nations High Commissioner for Human Rights on cooperation with Georgia (A/HRC/51/64, 12 July 2022) reads, in so far as relevant, as follows:

> "55. Concerns persist about continued restrictions on the use of Georgian as a language of instruction in Abkhazia and South Ossetia, which particularly affects the ethnic Georgian population.
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> 56. According to available information, since September 2015, the Russian language has been gradually replacing Georgian as the language of instruction starting from grades one to four in the schools in Gali and adjacent districts. In September 2021, the Russian language replaced Georgian in the upper two grades of all the remaining Georgian schools in Gali District, completing the transition of Georgian schools to the Russian language of instruction. The last generation of students studying in the Georgian language graduated in May 2022. The Government of Georgia considers that this policy constitutes linguistic discrimination, and notes that it annually deprives more than 4,000 schoolchildren and around 600 children at kindergartens of their right to receive education in their native Georgian language.
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> 57. According to information received, not all teachers in Gali District have a good command of Russian and may switch to Georgian when they are not able to explain the subject. Children, especially from rural areas, experience language barriers and many have to take additional paid classes to follow the curriculum, which puts an additional financial burden on their families. There is a shortage of textbooks in Russian and many families cannot afford to buy them. This change in the language of instruction and associated issues are undermining the quality of education in the schools and are likely to lead to significantly lower learning achievements for ethnic Georgian children in Abkhazia. According to information received, the restriction of ethnic Georgians from access to education in their mother tongue is discriminatory; Abkhaz, Armenian and Russian communities in Abkhazia continue to enjoy different degrees of education in their native languages.

> 58. In its submission, the Government of Georgia stated that the authorities in control in South Ossetia discouraged school graduates from ethnic Georgian backgrounds from considering studying at universities in Tbilisi-controlled territory, threatening them that they would not be able to return to South Ossetia if they did so."

The 2017 report by Thomas Hammarberg and Magdalena Grono "Human Rights in Abkhazia Today" reads, in so far as relevant (pp. 66-67), as follows:

> "A number of school children have been crossing the conflict divide on a daily basis, though the numbers have steadily decreased from some 128 in 2009–2010, to around 50 in 2014–2016 and to 38 in 2016–2017. Since the 2017 closure of crossing points, the trend has further worsened.
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> ...
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> Of specific concern have been repeated cases of children who cross at uncontrolled crossings points – be it through a neighbour's hazelnut plantation or a garden that stretches along the divide. These children have had regular problems with crossings and there are regular cases of them being held up or even detained by Russian border guards, given Russian and Abkhaz objection to so-called uncontrolled crossings, as discussed below. A recent case was reported on 1 November 2016 of a detention of four pupils who tried to use an uncontrolled crossing to go to school in Ganmukhuri. They were reportedly detained and taken to one of the facilities of the Russian military base. Their parents were later advised that children could cross if they used regular crossings. For some children though, the detour to a controlled crossing is up to ten kilometers one way."

79. The Court finds that the incidents to which the international materials refer are sufficiently numerous and interconnected to amount not merely to isolated incidents or exceptions but to a pattern or system (see paragraph 19 above). Taking into account the regulatory nature of the impugned measures and their general application to all people concerned, the Court considers that the "official tolerance" element of the administrative practice (see paragraph 19 above) has also been established beyond reasonable doubt.

80. Turning to the compatibility of that practice with Article 2 of Protocol No. 1, the critical question is whether Georgian could be considered to be one of the official languages in Abkhazia and/or South Ossetia (see paragraph 76 above). In this connection, the Court observes that there is no dispute between the parties that, according to the "legislation" of the two breakaway regions, only Abkhaz and Russian are the official languages in Abkhazia and Ossetian and Russian in South Ossetia. However, the Court also notes that it is evident that the overwhelming majority of the international community (including all members of the Council of Europe) recognises Abkhazia and South Ossetia as an integral part of Georgia and supports its territorial integrity according to the principles of international law (see, for example, the decision of the Committee of Ministers of the Council of Europe on the conflict in Georgia, adopted at the 1315th meeting of the Ministers' Deputies on 2 May 2018 (CM/Del/Dec(2018)1315/2.1); the Resolution of the European Parliament of 14 June 2018 on Georgian occupied territories 10 years after the Russian invasion (P8_TA(2018)0266); and the Resolution

on Ten Years After the August 2008 War in Georgia, adopted by the Organization for Security and Co-operation in Europe Parliamentary Assembly at its twenty-seventh annual session in Berlin from 7 to 11 July 2018). Therefore, Georgian, as the official language of Georgia, could be considered to be one of the official languages in both Abkhazia and South Ossetia for the purposes of Article 2 of Protocol No. 1 and the impugned measures amounted to an interference with the right to be educated in one of the national languages guaranteed by that Article (see *Cyprus v. Turkey*, cited above, §§ 273-80, concerning the use of Greek as the language of instruction in an area within the territory of the Republic of Cyprus governed by the "Turkish Republic of Northern Cyprus", and *Catan and Others*, cited above, §§ 141-50, concerning the use of Moldovan/Romanian as the language of instruction in an area within the territory of the Republic of Moldova governed by the "Moldavian Republic of Transdniestria"; contrast *Valiullina and Others v. Latvia*, nos. 56928/19 and 2 others, §§ 128-36, 14 September 2023, concerning the use of Russian as the language of instruction in Latvia).

81. The Court agrees with the applicant Government that there is no evidence before the Court to suggest that the impugned measures pursued a legitimate aim. Even assuming that the provision of education in Georgian in schools situated in the Georgian-controlled territory could suffice to fulfil the obligation laid down in Article 2 of Protocol No. 1, that option is unrealistic and would subject the children concerned to long and perilous journeys (see, for example, the 2017 report by Thomas Hammarberg and Magdalena Grono "Human Rights in Abkhazia Today", cited in paragraph 78 above). The Court has already held in a similar context that given the fundamental importance of primary and secondary education for each child's personal development and future success, it was impermissible to force children and their parents to make such difficult choices with the sole purpose of entrenching the separatist ideology (see *Catan and Others*, cited above, § 144).

82. Accordingly, the Court considers that the right in question was curtailed to such an extent as to impair its very essence and deprive it of its effectiveness.

83. Having regard to the above, the Court considers that it has sufficient evidence in its possession to conclude beyond reasonable doubt that there was an administrative practice contrary to Article 2 of Protocol No. 1.

XII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

84. The applicant Government also relied on Articles 13, 14, 18 and 38 of the Convention. The respondent Government did not submit any observations on the merits. The Court considers that, in the circumstances of the present case, the applicant Government's complaints under this heading amount in effect to the same complaints, albeit seen from a different angle, as those which the Court has already considered in relation to Articles 2, 3, 5 § 1 and

8 of the Convention, Articles 1 and 2 of Protocol No. 1 and Article 2 of Protocol No. 4. It has found that those Articles have been violated. Therefore, it is not necessary to examine whether in this case there has been a violation of Articles 13, 14, 18 and 38 of the Convention (see, for example, *Cyprus v. Turkey*, cited above, §§ 199, 206, 317 and 388, and *Georgia v. Russia (II)*, cited above, § 340).

XIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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."

86. The Court considers that the question of the application of Article 41 of the Convention is not ready for decision.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that there has been a violation of the substantive and procedural limbs of Articles 2 and 3 of the Convention;

2. *Holds* that there has been a violation of Articles 5 § 1 and 8 of the Convention, Articles 1 and 2 of Protocol No. 1 and Article 2 of Protocol No. 4;

3. *Holds* that it is not necessary to examine whether there has been a violation of Articles 13, 14, 18 and 38 of the Convention;

4. *Holds* that the question of the application of Article 41 is not ready for decision;

   accordingly,

   (a) *reserves* the said question in whole;

   (b) *invites* the applicant Government and the respondent Government to submit, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

5. *Reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 9 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President