

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

SECOND SECTION

CASE OF MALACHINI AND OTHERS v. RUSSIA

(Applications nos. 9184/09 and 22580/10)

JUDGMENT

Art 1 • Jurisdiction of Russia for complaints of alleged torture and killing of three Georgian prisoners of war in the administrative capital of South Ossetia during the five-day active phase of the 2008 armed conflict between Georgia and Russia • Finding of spatial jurisdiction did not bring within the respondent State's jurisdiction events which had taken place outside the area in question, or those involving "military operations carried out during the active phase of hostilities" as identified in *Georgia v. Russia (II)* [GC] • Jurisdiction of Russia for complaints concerning the alleged torture of Georgian prisoners of war arrested in the five-day active phase of hostilities and detained beyond that phase as per findings in *Georgia v. Russia (II)* [GC] • Continued "effective control" over South Ossetia
Art 2 (substantive and procedural) • Life • Death of three Georgian prisoners of war during the active phase of the hostilities in circumstances engaging the respondent State's responsibility • Failure to account for their deaths
Art 3 (substantive and procedural) • Torture of Georgian prisoners of war during and after the active phase of the hostilities in circumstances engaging the respondent State's responsibility • Failure to conduct an effective investigation
Art 41 • Just satisfaction • Awards for non-pecuniary damages payable only with respect to damage not already compensated under *Georgia v. Russia (II)* [GC] to avoid double compensation for the same damage

Prepared by the Registry. Does not bind the Court.

STRASBOURG

23 June 2026

FINAL

23/09/2026

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



In the case of Malachini and Others v. Russia,

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Péter Paczolay,
Oddný Mjöll Arnardóttir,
Gediminas Sagatys,
Stéphane Pisani,
Juha Lavapuro*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the applications (nos. 9184/09 and 22580/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Georgian nationals, whose details are set out in the appended table ("the applicants"), on the dates indicated therein;

the decision to give notice to the Russian Government ("the respondent Government") of the applications;

the observations submitted by the applicants;

the comments submitted by the Georgian Government, who had exercised their right to intervene, pursuant to Article 36 § 1 of the Convention;

the decision of the President of the Section to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-9, 24 January 2023);

Having deliberated in private on 2 June 2026,

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

INTRODUCTION

1. The present case relates to an international armed conflict that occurred between Georgia and the Russian Federation in August 2008, the chronology of which was described in the Court's judgment in the inter-State case of *Georgia v. Russia (II)* ((merits) [GC], no. 38263/08, §§ 32-44, 21 January 2021). In particular, it primarily concerns the applicants' complaints under Articles 2 and 3 of the Convention in relation to the alleged torture and killing of three Georgian prisoners of war between 9 and 11 August 2008, and the alleged torture of other surviving prisoners of war between 9 and 19 August 2008.

THE FACTS

2. The applicants were represented, most recently, by Ms T. Oniani, of the Georgian Young Lawyers' Association, a non-governmental organisation based in Tbilisi (Georgia), and by Mr E. Wesselink, of the Stichting Justice Initiative, a non-governmental organisation based in Utrecht (the Netherlands).

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

I. BACKGROUND

4. During the night of 7 to 8 August 2008, after an extended period of mounting tensions and incidents, heavy fighting erupted in and around Tskhinvali, the administrative capital of South Ossetia.[1] On 8 August 2008 Russian ground forces penetrated into Georgia by crossing through Abkhazia and South Ossetia before entering the neighbouring regions in undisputed Georgian territory. They were assisted by the Russian air force and the Black Sea fleet. Armed fighting between the opposing forces took place mainly in South Ossetia, as well as in the area of Gori, situated in the "buffer zone" in undisputed Georgian territory, to the south of South Ossetia. From 10 August 2008 Georgian armed forces withdrew first from Tskhinvali and then from the Gori area, while Russian armed forces progressively invaded all of Abkhazia and South Ossetia, as well as the "buffer zone". A ceasefire agreement between the Russian Federation and Georgia was concluded on 12 August 2008. Part of the invaded areas of Georgia, notably the "buffer zone", was vacated by Russian troops by 10 October 2008 (see *Georgia v. Russia (II)*, cited above, §§ 32-44).

II. THE APPLICANTS' CIRCUMSTANCES

A. Application no. 9184/09 – Malachini and Others v. Russia

5. On 8 August 2008 two Georgian servicemen, Mr Ushangi Sopromadze, a junior sergeant with the 1st Gori tank brigade, and Mr Kakhaber Khubuluri (also referred to as Khubulov in the public reports, owing to his apparent Ossetian ancestry – see paragraph 38 below), a corporal with the 42nd battalion of the 4th Vaziani Infantry Brigade of the Georgian Land Forces, were apprehended, alongside other Georgian servicemen (see paragraph 6 below), by the South Ossetian forces at the Shanghai settlement, on the outskirts of Tskhinvali. They were alleged to have been tortured and killed by South Ossetian and Russian forces on 10 and 11 August 2008 respectively (see paragraphs 9-10 below). The application to the Court was

[1] The terms "Abkhazia" and "South Ossetia" refer to the regions of Georgia which are currently outside the *de facto* control of the Georgian government.

submitted on their behalf by Ms Tea Tabatadze, Mr Gigi Tabatadze and Mr Zaza Sopromadze (the wife and children, respectively, of Mr Sopromadze) and Ms Izolda Khubuluri (Mr Khubuluri's mother).

6. The remaining applicants, Mr Malachini, Mr Zirakashvili, Mr Kutashvili, Mr Kavtiashvili and Mr Meladze, also Georgian servicemen in the 41st and 42nd battalions of the 4th Vaziani Infantry Brigade at the time, were detained and allegedly tortured by South Ossetian and Russian forces in the period between 8 and 19 August 2008.

7. According to the applicants, on 8 August 2008, as the positions of the Georgian ground troops had come under aerial bombing, the Georgian servicemen started their retreat but were ambushed by South Ossetian forces. Mr Sopromadze, Mr Khubuluri and the remaining Georgian servicemen (except Mr Kavtiashvili, who was apprehended on 9 August 2008 – see paragraph 8 below) were captured and taken to an unspecified building in Tskhinvali. They were beaten. At a certain point on 8 August 2008, three Russian servicemen entered the room where the detainees were being held. The officers wore uniforms and helmets with the inscription "MC", indicating that they belonged to the Russian peacekeepers' battalion.

8. On the morning of 9 August 2008, the detained Georgian servicemen were taken to a sports hall of a nearby school and subsequently to a basement of a residential building nearby. The South Ossetian forces were apparently searching for Georgian servicemen who had remained in Tskhinvali. In the evening the detained servicemen were returned to the building where they had initially been held (see the previous paragraph). There they saw Mr Kavtiashvili being interrogated and beaten. He had been injured during clashes between his unit on the one hand and the peacekeepers' battalion and elements of the Russian 58th army on the other hand, in the early morning of 9 August 2008, and had been captured by the South Ossetian forces.

9. On 10 August 2008 the detained Georgian servicemen were moved to a bunker, where they were interrogated and beaten, and they were then led out to walk to another facility, suffering insults and physical ill-treatment along the way. Mr Kavtiashvili could not walk and was carried by other detainees, including Mr Khubuluri and Mr Sopromadze (as also confirmed by a video recording which subsequently emerged on the internet – see paragraph 17 below). Mr Malachini saw Russian tanks stationed on a hill nearby. The beating ended when one serviceman shouted in Russian to stop. Once the detained servicemen had arrived in the central square of Tskhinvali, a large crowd consisting mostly of civilians started beating them. They were then taken to Tskhinvali school no. 6 and shown to some Russian journalists in the sports hall of the school (as also confirmed by video material submitted by the applicants – see paragraph 17 below). Then they were taken to a small windowless room. Both Ossetian and Russian servicemen entered it from time to time and beat them, while asking questions. Some hours later, still on 10 August 2008, Ossetian and Russian servicemen entered the room. One of

them asked if there were any tankmen among the detainees. He then inspected their hands and identified Mr Sopromadze as the tankman. Mr Sopromadze was taken away and, within minutes, the other Georgian detainees heard the sound of an automatic rifle being fired. After approximately five minutes, two Ossetian fighters entered the room and ordered the detainees to follow them. Mr Sopromadze's body was lying face down with multiple gunshot wounds. The detainees were ordered to wrap the body and carry it outside.

10. On 11 August 2008 Mr Khubuluri was led away from the room. He was regarded as a traitor owing to his Ossetian ancestry. The applicants were later told that he had been executed on account of "his treachery". Subsequently, Mr Malachini and Mr Zirakashvili were ordered to dig a grave for Mr Sopromadze's body (video material submitted by the applicants showed them digging the grave – see paragraph 17 below).

11. On 12 August 2008 the detainees were taken to the Tskhinvali police station. Mr Kavtiashvili was verbally abused and ordered to spit on the Georgian flag while a South Ossetian fighter stepped on his injured leg. Soon two Russian servicemen arrived at the police station and transferred Mr Kavtiashvili to a city hospital in Tskhinvali. There he was interrogated by different Russian authorities (the Investigative Committee of the General Prosecutor's Office, the Federal Security Service, and the Ministry of Emergency Situations). He was asked, while being threatened with death, to confirm the presence of dead bodies of civilians in the streets as the Georgian army pushed forward into the city. His refusal was met with violence, and he eventually testified that on occasion he had seen some dead bodies in the streets of Tskhinvali, and signed the interrogation report without reading it. He was subsequently operated on his injured leg and transferred to a hospital in Vladikavkaz (Russian Federation).

12. As for the remaining servicemen who stayed behind at the police station on 12 August 2008, they were interrogated, beaten, had their skin and fingers burnt, and were made to walk on the Georgian flag (as also confirmed by video material available in the present case – see paragraph 17 below). Mr Kutashvili was interrogated by Russian servicemen and the remaining Georgian servicemen by South Ossetian forces.

13. In the evening of 12 August 2008, the Georgian servicemen were transferred to another police station, where they stayed until 17 August 2008. They reported having been subjected to verbal and physical abuse there.

14. On 17 August 2008 Russian servicemen transferred the Georgian detainees to a Russian base to prepare them for a prisoner exchange.

15. On 19 August 2008 thirteen Georgian servicemen, including the five applicants referred to in paragraph 6 above, were transferred to the Georgian authorities in exchange for five Russian prisoners of war.

16. On 16 November 2008 several unidentified bodies of deceased Georgian servicemen were handed over to the Georgian authorities. In

December 2008 two of the bodies were identified through DNA analysis as those of Mr Khubuluri and Mr Sopromadze.

17. Among other documents, the applicants submitted official expert reports confirming the identity of the deceased individuals through DNA analysis and the presence of injuries caused by an unspecified explosive substance; medical documents and photographic evidence documenting injuries; witness statements; and video evidence which had emerged on the internet following their release (the source is no longer available). The applicants explained that they had been filmed on several occasions. One of the video recordings showed injured and bleeding Georgian prisoners of war carrying Mr Kavtiashvili, who could not walk on his own because of his injuries (see paragraph 9 above). Another video showed Georgian prisoners of war in the sports hall of a school (apparently Tskhinvali school no. 6). Yet another video recording showed Mr Malachini, Mr Zirakashvili and two other detainees digging a grave (see paragraph 10 above). One other video recording showed Georgian prisoners of war being made to walk over the Georgian flag.

18. The applicants also submitted documents showing that they had contacted the Russian authorities with a request to investigate the matter. On 23 April 2009 the Russian authorities referred their enquiry to the military-crimes investigation unit in the North Caucasus military district (apparently based in South Ossetia), an investigative branch of the Investigative Committee at the Office of the General Prosecutor of the Russian Federation.

B. Application no. 22580/10 – Chikviladze and Antsukhelidze v. Russia

19. On 9 August 2008 Mr Giorgi Antsukhelidze, an assistant gunner in the 41st Battalion of the 4th Infantry Brigade, Georgian Land Forces, went missing during an encounter with the opposing ground forces in the Shanghai settlement of Tskhinvali. It subsequently emerged that he had been detained on that date, and that he had died during detention (see paragraphs 20-24 below). The application to the Court was submitted on Mr Antsukhelidze's behalf by his wife, Ms Maka Chikviladze, and his children, Ms Ana Antsukhelidze and Mr Levani Antsukhelidze.

20. On 16 November 2008 several unidentified bodies of deceased Georgian servicemen were handed over to the Georgian authorities. In December 2008 one of the bodies was identified through DNA analysis as that of Mr Giorgi Antsukhelidze.

21. The applicants were informed of Mr Antsukhelidze's death sometime in January 2009.

22. In January 2009 two video recordings were published online (the source is no longer available). They featured Mr Antsukhelidze, as identified

by his wife and the Georgian authorities. One of the videos showed him sitting on the ground in an outdoor area, covered in blood, with his hands tied behind his back. He was being interrogated by men in military uniforms, some of whom stepped on his neck and jumped on his back with their boots on, in an apparent attempt to make him kiss the ground, while cursing at him. The men were speaking Russian, Georgian (apparently with an Ossetian accent) and Ossetian. The second video recording did not show his face. It showed men in military uniforms beating and dragging him away, threatening, in the Ossetian language, to kill him.

23. On 29 January 2009 the Georgian authorities issued a death certificate indicating 9 August 2008 as the date of Mr Giorgi Antsukhelidze's death. It is unclear whether this determination was based on his last known sighting or on an expert examination indicating the approximate date of death.

24. On 11 May 2009 the Chief Prosecutor's Office of Georgia informed the applicants' representative that a criminal investigation was ongoing into the loss of life of military personnel during the hostilities of August 2008. They also noted, among other things, that the relevant video material (see paragraph 22 above) had been forwarded to the Military Police Department of the Ministry of Defence.

25. On 24 May 2009 a senior investigator of the Military Police Department of the Ministry of Defence reviewed the video material (see paragraph 22 above) in the presence of Ms Chikviladze. The resulting report noted that the material depicted Mr Antsukhelidze's torture, and that the individuals surrounding him were "presumably" the so-called South Ossetian fighters ("*boyevik*").

26. On 3 June 2009 the General Inspectorate of the Ministry of Defence issued a report on Mr Antsukhelidze's death. The report stated that he had been deployed to the Tskhinvali region on 7 August 2008, as a servicemember in the 41st Battalion, 4th Infantry Brigade, Georgian Land Forces. It further noted that he had been considered missing as of 9 August 2008, "following a clash with massive opposing forces." The report noted that a DNA analysis of an unidentified body transferred to the Georgian authorities on 16 November 2008 had confirmed that it belonged to Mr Antsukhelidze. The report concluded that he had "died while performing his duties", and that his family was therefore entitled to financial assistance from the Ministry of Defence.

27. The applicants additionally submitted documents showing that they had contacted the Russian authorities with a request to investigate the matter. On 28 October 2009 the Russian authorities referred the enquiry to the military-crimes investigation unit in the North Caucasus military district (apparently based in South Ossetia), an investigative branch of the Investigative Committee at the Office of the General Prosecutor of the Russian Federation.

28. Mr Antsukhelidze was posthumously awarded the title of National Hero of Georgia.

RELEVANT INTERNATIONAL MATERIAL

I. EUROPEAN UNION

A. Directorate General for External Policies of the European Union

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

> "All of the so called frozen conflicts erupted in connection with the break-up of the Soviet Union. ...
>
> ...
>
> The issue of the breakaway regions in Georgia is inseparable from the relations between Georgia and Russia.
>
> ...
>
> Russian cooperation on the settlement of the conflicts in South Ossetia and Abkhazia is crucial. These two ... breakaway regions both border on the Russian [F]ederation and their leaderships have strong ties with Moscow. The Russian attitude is highly ambiguous. While officially recognising Georgia's territorial integrity, Russia nurtures these regions['] secessionist strivings through various kinds of support and the offering to their inhabitants of visa-free entry to Russia as well as Russian citizenship. Russian peacekeepers are widely regarded as partial. In the Georgian political debate, calls for their departure are regularly heard.
>
> ...
>
> South Ossetia broke out of Georgia as a result of fighting that started in January 1991 and may have claimed about 1 000 lives. Some 60 000 Ossetians and 10 000 Georgians became refugees or IDPs. A cease-fire agreement, the Sochi Agreement, ended the fighting in 1992. A Joint Control Commission (JCC) made up by Georgian, South Ossetian, North Ossetian and Russian representatives was put in place and a Joint Peace Keeping Force (JPKF) with the same composition was created. ..."

30. A study on the "frozen conflicts of the EU's Eastern neighbourhood and their impact on the respect of human rights" (8 April 2016) prepared by the same Directorate General of the EU noted, *inter alia*, as follows:

> "South Ossetia *de facto* seceded from Georgia in the civil war of 1991-1992. In 2004 the Georgian government successfully regained control over several villages on the periphery of the separatist region; however, in the 2008 Georgian-Russian war separatist and Russian forces recaptured these territories."

B. The Independent International Fact-Finding Mission on the Conflict in Georgia

31. In its report of September 2009, the Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG – hereafter "the EU Fact-Finding Mission"), established by a decision of 2 December 2008 of the Council of the European Union, described the August 2008 armed conflict in the following terms (Volume I, p. 5):

> "On the night of 7 to 8 August 2008, after an extended period of ever-mounting tensions and incidents, heavy fighting erupted in and around the town of Tskhinvali in South Ossetia. The fighting, which soon extended to other parts of Georgia, lasted for five days. In many places throughout the country it caused serious destruction, reaching levels of utter devastation in a number of towns and villages. Human losses were substantial. At the end, the Georgian side claimed losses of 170 servicemen, 14 policemen and 228 civilians killed and 1 747 persons wounded. The Russian side claimed losses of 67 servicemen killed and 283 wounded. The South Ossetians spoke of 365 persons killed, which probably included both servicemen and civilians. Altogether about 850 persons lost their lives, not to mention those who were wounded, who went missing, or the far more than 100 000 civilians who fled their homes. Around 35 000 still have not been able to return to their homes. The fighting did not end the political conflict nor were any of the issues that lay beneath it resolved. Tensions still continue. The political situation after the end of fighting turned out to be no easier and in some respects even more difficult than before."

32. The EU Fact-Finding Mission summarised the course of the events in question as follows (Volume I, pp. 10-11):

> "On the night of 7 to 8 August 2008, a sustained Georgian artillery attack struck the town of Tskhinvali. Other movements of the Georgian armed forces targeting Tskhinvali and the surrounding areas were under way, and soon the fighting involved Russian, South Ossetian and Abkhaz military units and armed elements. It did not take long, however, before the Georgian advance into South Ossetia was stopped. In a counter-movement, Russian armed forces, covered by air strikes and by elements of its Black Sea fleet, penetrated deep into Georgia, cutting across the country's main east-west road, reaching the port of Poti and stopping short of Georgia's capital city, Tbilisi. ..."

33. The report summarised the outbreak of the large-scale hostilities in the following terms (Volume II, pp. 210-11):

> "**Outbreak of large-scale hostilities**
>
> The rising tension in South Ossetia in the period of June-early August 2008, which was characterized by some analysts as a low-intensity war, culminated in a large-scale Georgian military operation against the South Ossetian capital of Tskhinvali and the surrounding areas, undertaken in the night of 7-8 August 2008.
>
> On 7 August at 23.35 hours Georgian artillery units began firing smoke bombs and, subsequently, at 23.50 hours, opened fire on both fixed and moving targets of the 'enemy forces' on the territory of South Ossetia. According to Georgian Government officials, this interval was supposed to allow the civilian population enough time to leave dangerous zones or to find protection/shelters.

In the early morning of 8 August, Georgian troops launched a ground attack against the city of Tskhinvali as well as operations on the left flank of the city (by the 4th Infantry Brigade coming from Vaziani) and on the right flank (by the 3rd Infantry Brigade coming from Kutaisi). The flank operations seemed to aim, *inter alia*, at occupying important heights surrounding Tskhinvali and then at moving further northwards to take control of the strategically important Gupta bridge and the roads, including the Ossetian-controlled Dzara by-pass road, leading from the Roki tunnel to Tskhinvali to block movements of the Russian troops from the north.

After securing the heights in the vicinity of Tskhinvali, the Georgian forces (including Ministry of Interior special forces), supported by artillery and tanks, moved into the town. By the afternoon of 8 August, the Georgian forces reportedly managed to seize control of a great part of the town of Tskhinvali (with the exception of its northern quarters and a part of its centre) and a number of villages, including Znauri, Muguti, Khetagurovo, Kokhati, Tsinagari, Orchosani, Didmukha, Gromi, Artsevi and Dmenisi.

However, the Georgian troops in Tskhinvali and vicinity started to encounter growing fire power from the opposite side, including from the Russian air force and artillery. The flank operations of the Georgian forces were generally not particularly successful and they did not manage to achieve their main goal of blocking the Gupta bridge and the main routes leading to Tskhinvali from the Roki tunnel and the Java base. In the meantime the Gupta bridge was targeted by Georgian artillery and aircraft (4 Su-25) and reportedly damaged, but the bridge was quickly repaired by the Russian and the South Ossetian forces.

Russian forces engaged in the armed conflict, including ground and air forces as well as the Black Sea Fleet, also attacking targets on Georgian territory outside South Ossetia. In the morning of 8 August, Russian air forces reportedly started their attacks in central Georgia (Variani, Gori), gradually extending them to other parts of Georgia including the Senaki military base (9 August), military targets in the port of Poti and the capital of Tbilisi. Some civilian targets were also damaged.

Experiencing growing resistance, in the evening of 8 August the Georgian forces withdrew from the centre of Tskhinvali but still held their positions in the southern parts of the town. Then they were regrouped and reinforced by the 2nd Infantry Brigade from Senaki. Reportedly, the 4th Brigade reinforced the Ministry of Interior special forces in Tskhinvali, while positions and objectives of the 4th Brigade on the left flank were transferred to the 2nd Brigade.

After regrouping, the Georgian forces undertook attempts to regain their control of position in Tskhinvali in the afternoon of 9 August but met with resistance, suffered losses and had to withdraw. Meanwhile, elements of the 2nd Infantry Brigade engaged a column of Russian armoured vehicles heading towards the north-western entrance of Tskhinvali with the Commander of the 58th Army, Army General Anatoly Khrulyov, who was injured in the ambush.

With Russia's intervention advancing and its forces gaining superiority on the ground, signs of collapse of morale seemed to appear among the Georgian troops in the afternoon of 10 August.

On 10 August, the Georgian side declared that it would observe a unilateral ceasefire and would move its forces out of South Ossetia. The opposite sides did not follow suit.

By midnight on 10 August, most Georgian troops had left the territory of South Ossetia in the direction of Gori. On 11 August, the Georgian forces withdrew from Gori to the town of Mtskheta, and started preparing a defensive line in the mountainous

terrain for protection of Tbilisi, the capital. In the process of withdrawal, a significant quantity of military equipment was reportedly left behind.

The withdrawing Georgian troops were followed by Russian forces, who entered deeper into Georgian territory by crossing the administrative boundaries of South Ossetia and occupying a number of locations, including the town of Gori (on 12 August). While in Gori, Russian forces reportedly destroyed installations and barracks at the local military base. The Russian forces were occasionally accompanied or followed by South Ossetian militia who committed serious human rights violations, particularly in the Georgian villages of South Ossetia. ...”

34. The report describes the Russian Federation’s relationship with South Ossetia – and in particular with the South Ossetian security forces – as follows (Volume II, pp. 18-19, 127-35 and 303-04):

“**‘Creeping annexation’**

Georgia’s objection to the dominant Russian role in the peacekeeping operation in its conflict zones was motivated mainly by the perception that Russia’s contribution to conflict management in the South Caucasus was not ‘peacekeeping, but keeping in pieces’. Russia was seen as the protagonist responsible for keeping the conflicts in the region frozen, in order to maintain a ‘controllable instability’ for the purposes of its own power projection in the South Caucasus. Moreover, Russia was promoting progressive annexation of Abkhazia and South Ossetia by integrating these territories into its economic, legal and security space. The open annexation of these territories was blocked by several obstacles, ranging from Russia’s military conflict in Chechnya to its interest in avoiding a massive confrontation with the West.

The clearest demonstration of this Russian policy of integrating separatist entities of neighbouring states into its own legal jurisdiction was ‘passportisation’, the awarding of Russian passports and citizenship of the Russian Federation to residents of Abkhazia and South Ossetia.

In this context, in 2007 Russia paid residents of Abkhazia a total of 590 million rubles in the form of pensions and allocated 100 million rubles to South Ossetia, where the overwhelming majority of the non-Georgian population were already holders of Russian passports.

According to commentaries by Russian political analysts, Moscow was using economic means ‘to try to caution Georgia against attempts to take back the unrecognised republics by force’.

Another aspect of ‘creeping annexation’ was the fact that the separatist governments and security forces were manned by Russian officials. Russia appointed its former civilian and military leaders to serve in key posts in Abkhazia and especially in South Ossetia, including the *de facto* Defence Ministers of Abkhazia (Sultan Sosnaliev) and South Ossetia (Anatoly Barankevich) and the *de facto* Chief of the Abkhaz General Staff (LtGen Gennadi Zaytsev). Russian journalist Julia Latynina once described the power elite in South Ossetia as a joint business venture between KGB generals and Ossetian entrepreneurs using money allocated by Moscow for the fight against Georgia.

...

3.1. The Legal Status of South Ossetia and Abkhazia

...

3. Effective government

...

a) South Ossetia

South Ossetia had already established a new constitutional order in 1993, and in a revised form in 2001 with executive, legislative and judicial branches. Nevertheless, there are many doubts as to the effectiveness and independence of the system.

First, as the majority of people living in South Ossetia have acquired Russian citizenship, Russia can claim personal jurisdiction over them. ... From the point of view of Russian constitutional law, the legal position of Russian citizens living in South Ossetia is basically the same as the legal position of Russian citizens living in Russia.

Second – and still more importantly – Russian officials already had *de facto* control over South Ossetia's institutions before the outbreak of the armed conflict, and especially over the security institutions and security forces. The *de facto* Government and the 'Ministries of Defence', 'Internal Affairs' and 'Civil Defence and Emergency Situations', the 'State Security Committee', the 'State Border Protection Services', the 'Presidential Administration' – among others – have been largely staffed by Russian representatives or South Ossetians with Russian citizenship that have worked previously in equivalent positions in Central Russia or in North Ossetia. According to the South Ossetian Constitution, these officials are directly responsible to the *de facto* President of South Ossetia as 'head of state' and of the executive branch (Art. 47 para. 1 of the Constitution). Still, despite this constitutional accountability, the fact that the decisive positions within the security structures of South Ossetia were occupied by Russian representatives, or by South Ossetians who had built their careers in Russia, meant that South Ossetia would hardly have implemented policies contrary to Russia's interests.

De facto control of South Ossetia was gradually built up by Moscow. Russian representatives were not as present within the South Ossetian leadership before summer 2004. Thus the process of state-building was not gradually stabilised after South Ossetia's declaration of independence in 1992, but suffered setbacks after 2004. Even if South Ossetia was not formally dependent on any other state, Russian foreign influence on decision-making in the sensitive area of security issues was so decisive that South Ossetia's claim to independence could be called into question.

To sum up, Russia's influence on and control of the decision-making process in South Ossetia concerned a wide range of matters with regard to the internal and external relations of the entity. The influence was systematic, and exercised on a permanent basis. Therefore the *de facto* Government of South Ossetia was not 'effective' on its own.

...

The statements made by the Russian Federation and the *de facto* Abkhaz authorities reject any allegation of overall control. The Russian Federation has declared that 'prior to the conflict in August one could only speak of cooperation between the Russian peacekeeping contingent and South Ossetian and Abkhaz military units wherever peacekeeping forces may be present within parameters commonly accepted in similar situations in other countries. These relations were governed by the mandate of the peacekeeping force.' While strong economic, cultural and social ties exist between the Russian Federation and the authorities of Abkhazia, those authorities have stated that, in the course of the operation in the Kodori Valley, 'the Abkhaz army, while remaining in contact with Russian forces acting from Abkhaz territory, operated independently.' Further aspects of the assistance and the military structure and command linking the Russian Federation and those entities would need to be substantiated in order to

establish such control. According to Georgia, 'the Abkhaz and South Ossetian military formations did not independently control, direct or implement the military operations during either the armed conflict or the occupation periods. Rather, these military formations acted as agents or *de facto* organs of the Respondent State and as such constituted a simple continuation of the Russian Federation's armed forces.'

In factual terms, one may have to draw a distinction with regard to the nature of the relationship between Russia and South Ossetia on the one hand, and between Russia and Abkhazia on the other. In the former, ties seem to be stronger. During the meeting between the IIFFMCG experts and the representatives of the Ministry of Internal Affairs of Georgia, the representatives stressed the political and economic links between Russia and South Ossetia. They also claimed that Russia exercises control over South Ossetia through various channels ranging from financial help to the presence of Russian officials in key military positions in the South Ossetian forces."

35. As regards Russia's involvement in the conflict, the EU Fact-Finding Mission reported as follows (Volume I, p. 20, and Volume II, pp. 215-17 and 263):

"The Mission is not in a position to consider as sufficiently substantiated the Georgian claim concerning a large-scale Russian military incursion into South Ossetia before 8 August 2008. However, there are a number of reports and publications, including of Russian origin, indicating the provision by the Russian side of training and military equipment to South Ossetian and Abkhaz forces prior to the August 2008 conflict. Additionally there seems to have been an influx of volunteers or mercenaries from the territory of the Russian Federation to South Ossetia through the Roki tunnel and over the Caucasus range in early August, as well as the presence of some Russian forces in South Ossetia, other than the Russian JPKF [Joint Peacekeeping Forces] battalion, prior to 14.30 hours on 8 August 2008. ... In addition to the Russian ground and air forces, the Black Sea fleet also soon engaged in the armed conflict, attacking targets on Georgian territory outside South Ossetia and providing naval cover for land operations.

...

The official Russian material submitted to the IIFFMCG in July 2009 holds that 'On 8 August at 14.30 units of the 693rd and 135th Motorised Rifle Regiments of the 19th Motorised Rifle Division charged with the task of carrying out the peacekeeping mission entrusted to the Russian Federation and protecting Russian citizens were deployed from the territory of the Russian Federation to the territory of South Ossetia through the Roki tunnel and began to move into South Ossetia. The air force and artillery units launched strikes against Georgian military facilities to restrict movements of the enemy reserves, disrupt its communications, incapacitate base airfields, destroy warehouses and bases containing fuel and lubricants and to seal off the areas of hostilities.'

In addition to the two regiments of the 19th Motorised Rifle Division of the 58th Army referred to in the Russian information mentioned above, previous information provided to the IIFFMCG by the Russian authorities in mid-May 2009 stated that a number of other military units participated in the Russian operation on the eastern front (South Ossetia) including elements from the 42nd Motorised Rifle Division (from Chechnya), the 76th Assault Division (Pskov), the 98th Airborne Division (Ivanovo), the 20th Motorised Rifle Division (Volgograd), the 234th Assault Division, the 205th Separate Motorised Rifle Brigade, the 429th and 71st Motorised Rifle Regiments, the 104th Assault Regiment, the 331st Parachute Regiment and the 45th Special Purpose Regiment (Moscow district).

According to the Georgian official material submitted to the IIFFMCG the 33rd Motor Rifle Mountain Brigade (Dagestan), the 114th Rocket Brigade (Astrakhan district), the Separate Anti-Aircraft Rocket Brigade (Volgograd) and the 10th Special Forces Brigade (Krasnodar district) also participated in the Russian operation on the eastern front.

Some experts assess that over 12,000 Russian troops were deployed on the eastern front, i.e. in South Ossetia and beyond, in the course of the August crisis.

...

Russia was involved in the conflict in several ways. First, Russian peacekeepers who were stationed in South Ossetia on the basis of the Sochi Agreement were involved in the fighting in Tskhinvali. Second, Russian regular troops were fighting in South Ossetia, Abkhazia and deeper in Georgian territory. Third, North Caucasian irregulars took part in the fighting. Finally, Russia supported Abkhaz and South Ossetian forces in many ways, especially by training, arming, equipping, financing and supporting them."

II. INTERNATIONAL CRIMINAL COURT

36. In its decision of 27 January 2016 on the Prosecutor's request for authorisation of an investigation, Pre-Trial Chamber I of the International Criminal Court held that there was a "reasonable basis to believe that a crime within [the] jurisdiction of the Court ha[d] been committed". It summarised the relevant facts as follows:

"9. In the months leading to the August 2008 conflict, tensions increased in and around South Ossetia between the Georgian and South Ossetian sides. Throughout July 2008, there were reports of armed clashes, detention of Georgian military personnel by South Ossetian forces, shelling and firing on Tskhinvali and southern environs causing several casualties and property damage, an alleged violation of Georgian airspace by four Russian military aircraft and shooting incidents in South Ossetia, a series of explosions which targeted, amongst other, South Ossetian and Georgian military and political leaders. From 24 to 28 July 2008, several explosions occurred in the southern environs of Tskhinvali and the Georgian-administered village of Avnevi, close to the post of the Georgian Joint Peacekeeping Force (JPKF) battalion. From 29 to 31 July 2008, exchanges of fire were reported between the Georgian-administered Sveri village and the South Ossetian-administered Andzisi village, between a South Ossetian militia post and a Georgian police post in Khetagurovo, as well as the targeting of the Joint Monitoring Team of the JPKF.

10. In the night 1-2 August 2008 a series of intense exchanges of fire, including sniper fire and mortar shelling, occurred between Georgian and South Ossetian controlled areas causing casualties. Exchanges of fire continued, albeit to a lesser extent, during the nights of 2-3 and 3-4 August 2008. Georgian peacekeeper positions were reportedly shelled by South Ossetian forces prior to the outbreak of hostilities, such as in Andzisi, Sarabuki, Nuli, Avnevi and the Frone valley. While the Georgian side claims that the attack was conducted by South Ossetian forces, the identity of the perpetrators and the timing of the attack remain contested.

11. In the afternoon of 6 August 2008, firing took place along the entire line of contact between the Georgian and South Ossetian sides and intensified again on 7 August 2008 involving mortars and artillery and reportedly causing human casualties. Despite the televised announcement of a unilateral cease-fire by the President of Georgia in the

evening of 7 August 2008, fighting began anew around 22.00 hours. Soon, the fighting involved Russian, South Ossetian and Abkhaz military units and irregular armed elements which developed into a combined inter-state and intra-state conflict opposing Georgian and Russian forces at one level and South Ossetian and Abkhaz fighters, accompanied by irregular armed groups, and Georgian forces at another.

12. On 8 August 2008, Georgian armed forces entered the territory of South Ossetia from the south, while Russian armed forces entered from the north. More precisely, in the morning of 8 August 2008, the Georgian armed forces launched a ground attack against the city of Tskhinvali as well as operations on the left and right flanks of the city. The flank operations seemed to aim at moving northwards with a view to blocking movements of the Russian troops from the north. The supporting material also suggests that Russian peacekeeping forces were deliberately attacked on 8 August 2008 by Georgian armed forces on two locations: (i) the JPKF headquarters in the centre of Tskhinvali; and (ii) the headquarters of the Russian Peacekeeping Forces Battallion (RUPKFB) in Verkhniy Gorodok in the southwestern part of Tskhinvali. Whether the Russian peacekeeping force was at that time directly participating in the hostilities and whether the Georgian forces initiated the attack or were instead responding to an attack is contested. Between 8 and 10 August 2008, the Georgian armed units allegedly attacked also other observation posts of the RUPKFB from the JPKF in Eredvi, Vanati, Kekhvi, Pauk, Prisi, Avnevi, Tsunaristba, Kverneti, Andzisi, Artsevi, and Megvrekisi.

13. However, the Georgian forces encountered significant armed opposition from South Ossetian forces, supported by Russian armed forces. In the morning of 8 August 2008, the Russian air forces reportedly attacked locations in central Georgia, including Variani and Gori, and gradually extended their attacks to other parts of Georgia, including Tbilisi. The Russian forces were joined by South Ossetian militias.

14. Experiencing resistance, the Georgian forces withdrew from the centre of Tskhinvali in the evening of 8 August 2008. On 10 August 2008, the Georgian government declared its intention to observe a unilateral ceasefire and move its forces out of South Ossetia; by midnight, most Georgian troops had left the South Ossetian territory in the direction of Gori. On 11 August 2008, the Georgian armed forces withdrew from Gori to Mtskheta with a view to preparing a defensive line for protection of the capital of Tbilisi.

15. The Georgian armed forces were pursued by Russian and South Ossetian troops who moved beyond the administrative boundary of South Ossetia and occupied adjacent areas, including the town of Gori, on 12 August 2008. They set up military positions in a number of Georgian-administered towns, including Gori.

16. Following the adoption of a six-point peace plan dated 12 August 2008, agreed in talks between the Russian President and the French President, acting on behalf of the European Union, exchanges of hostilities between Georgian and Russian forces were said to have ceased. The Presidents of Georgia and Russia signed a ceasefire agreement on 15 and 16 August 2008 respectively. Despite public confirmation of the peace plan by the Russian President on 12 August 2008, Russian and South Ossetian forces reportedly continued their advances for some time thereafter and occupied additional locations, including Akhalgori/Leningori on 16 August 2008, which had previously been under Georgian control and administration.

17. As of 15 August 2008, Russian troops withdrew from undisputed Georgian territory but created a 20km ‘buffer zone’ in the area adjoining the administrative boundary line of South Ossetia inside Georgian-administered territory. Most Russian troops withdrew from their positions beyond the administrative boundaries of South

Ossetia after 22 August 2008, some other remained, however, in the 'buffer zone' until the beginning of September 2008.

18. Following the agreement reached in Moscow on 8 September 2008, Russian forces withdrew from most parts of the 'buffer zone' on 8-9 October 2008. The Georgian police returned to the 'buffer zone' on 10 October 2008."

37. Pre-Trial Chamber I noted as follows:

"27. With respect to the war crimes, the Chamber considers first that the information reasonably indicates that an international armed conflict existed between Georgia and the Russian Federation between 1 July 2008 and 10 October 2008. The existence of such international armed conflict is rather uncontroversial as concerns the period of armed hostilities between Georgian and Russian armed forces between 8 and 12 August 2008 and the period of Russian occupation of parts of Georgian territory, in particular the 'buffer zone', until at least 10 October 2018. In addition, the Chamber considers, at this stage, that there is sufficient indication that the Russian Federation exercised overall control over the South Ossetian forces, meaning that also the period before the direct intervention of Russian forces may be seen as an international armed conflict (see above paras 9-11).

28. The Chamber observes, at the same time, that this last point is actually irrelevant at the present stage, as, as correctly pointed out also by the Prosecutor ..., the war crimes under consideration exist equally in international and non-international armed conflicts."

III. NON-GOVERNMENTAL ORGANISATIONS

38. According to the Human Rights Watch report "Up in Flames", issued on 23 January 2009:

"Russian and Ossetian forces detained at least 13 Georgian military servicemen during active fighting. All these detainees were entitled to prisoner of war (POW) status and should have been treated as such. Human Rights Watch interviewed four, post-release, all of whom had been captured in Tskhinvali by Ossetian militias on August 8. Human Rights Watch also interviewed one of the Ossetian militia fighters responsible for holding the Georgian soldiers for the first three days following their capture. All four Georgian military servicemen were held in informal places of detention, including a dormitory and schools, for several days, and were then transferred to Ossetian police. Ossetian police held several Georgian soldiers for six days, including three of the four interviewed by Human Rights Watch. They transferred one of the Georgian serviceman interviewed by Human Rights Watch to Russian custody, where he was treated for wounds. Georgian soldiers reported that they had been subjected to severe torture and ill-treatment throughout their detention by Ossetian forces. Human Rights Watch documented the execution of three Georgian servicemen while in the custody of Ossetian forces.

Ossetian forces eventually transferred 13 Georgian prisoners of war to Russian forces, and Russian authorities exchanged them for five Russian prisoners of war on August 19.

Russian forces had or ought to have had full knowledge that Ossetians detained Georgian servicemen. They apparently participated in the execution of two Georgian soldiers, as well as in interrogations of Georgian POWs [prisoners of war] in Ossetian custody. Furthermore, the Georgian soldiers were held in Tskhinvali, over which Russia

exercised effective control from August 9, and therefore are to be regarded as having fallen into Russia's power. Russia was therefore obligated to afford them POW status and to treat them in conformity with the protections of the Third Geneva Convention, which include absolute prohibitions on ill-treatment and require POWs to be treated humanely and kept in good health. The execution, torture, and ill-treatment of prisoners of war are grave breaches of the Third Geneva Convention and constitute war crimes. The ICCPR and ECHR also provide an absolute prohibition on torture and other degrading or inhuman treatment and an obligation to protect the right to life of those in detention.

Beatings and Humiliation during Initial Days of Detention

Three Georgian servicemen interviewed by Human Rights Watch – Davit Malachini, Imeda Kutashvili, and Kakha Zirakishvili – were detained together by Ossetian forces on the afternoon of August 8.

The three were among a group of seven Georgian soldiers Ossetian forces took to the basement of a four-story building, where Ossetian women and elderly as well as wounded Ossetian militia fighters were hiding. Although some soldiers described the building as an apartment block, an Ossetian militia fighter interviewed by Human Rights Watch and involved in the detentions stated that the building was actually a dormitory of the agricultural technical institute. The Georgian soldiers were given some food, water, and cigarettes on the first day of detention. That evening additional men arrived at the building, including some wearing helmets with plastic masks. According to Davit Malachini, a 26-year-old sergeant, 'They kicked us, cursed us, and beat us with the butts of their guns. They spoke Russian and Ossetian.' Imeda Kutashvili, 21, who had been serving in the military for only nine months, recalled, 'They were beating us and swearing at us, saying, "You pigs, why did you come here [to Tskhinvali]?"'

The fourth Georgian soldier Human Rights Watch interviewed was Zaza Kavtiashvili. On August 9 Kavtiashvili, 32, who had been shot in the knee during street fighting in Tskhinvali that day and had been hiding on the ground floor of the dormitory, crawled down to the basement to seek shelter for the night. He had no idea that Ossetian forces and others, including the group of Georgian POWs, were there. Ossetian forces captured him and held him with the others. Kavtiashvili recalled the moment of his detention:

> They were as surprised as I was that I crawled right to them. But there was nothing I could do. I could not walk. My leg was numb. They started beating me as soon as they detained me. They beat me on the head with the butt of a gun. They stood on my wounded leg and demanded to know where I had dropped my flak jacket.

The Ossetian captors held the POWs in the dormitory for two nights. On the morning of August 10 they transferred all eight POWs to a school, possibly School No. 6, on the outskirts of Tskhinvali. The Ossetians forced the POWs to walk approximately two kilometers through Tskhinvali; the others had to carry Kavtiashvili because he could not walk. On the way, Russian troops, Ossetian forces, and civilians beat and humiliated the group. According to Kavtiashvili, 'Anyone who wanted to beat us, beat us. I fainted several times because I had already lost so much blood. I was in a lot of pain. Some people attacked us and grabbed dirt and shoved it into the mouths of the guys carrying me, saying, "You wanted this land, well here it is!"' Their route took them through Tskhinvali central square. Davit Malachini told Human Rights Watch, 'When we got to the square, whoever wanted to beat us, beat us ... They kicked and punched us, and those who were armed hit us with gun butts. We fell to the ground. They threatened us, saying, "Let's kill them. Let's execute them."' Kakha Zirakishvili, age 33, recalled.

> They took us to the very center of the city, where many people beat us: Ossetian militia, local residents, Ossetian troops, anyone who wanted to... They beat us with gun butts, iron bars, whatever they had: wooden sticks, chairs, even. Some of us lost consciousness. When we lost consciousness [some of the attackers] would urinate on our faces to wake us up and began beating us again.

From the central square the men were then taken to the school, which was apparently functioning as a makeshift base. According to Zaza Kavtiashvili, as many as a few hundred Ossetian fighters were at the school, where they would eat and rest before going back outside. Ossetian forces and civilians again beat the POWs upon their arrival at the school. According to Davit Malachini, 'First they beat us outside of the school. Ten or fifteen people would come and beat us, then another group. Someone broke my rib. I couldn't breathe normally. They beat me on the eyes, back, legs, and head.'

Execution of Three Georgian POWs

The Ossetian captors took the Georgian POWs into a small room that led off from a gymnasium, where Russian federal forces were among those present. The Ossetians and Russians inspected each of the Georgian soldiers' hands, apparently in an attempt to determine whether any of them bore the calluses characteristic of artillerists or tank gunners. The captors singled out one of the men as a tank gunner and ordered him into a small shower room next door. The other POWs identified the tank driver as Sopromadze but did not know his first name.

In describing what happened next, Davit Malachini told Human Rights Watch, 'They called the tank gunner out into a small room and then we heard shooting. Quite a lot of machine gun fire.' Malachini, Zirakishvili, Kutashvili and one other Georgian POW were then also called into the room. 'The tank gunner was lying face down. They had shot him in the back of the head. We saw that his head was open and his brain was exposed. It looked like a watermelon cut in half.'

Although the Ossetian captors claimed that they had shot the tank gunner because he was trying to escape, both Zirakishvili and Kutashvili described the scene in the room as one in which some hasty preparation had apparently taken place. 'Some kind of tarp or tent lay on the floor and, from the position of the body lying on the tarp, it seemed that he had been kneeling at the edge of the tarp when they shot him,' said Zirakishvili. An Ossetian militia fighter, who was among the captors, confirmed that the tank gunner was singled out and taken away deliberately. 'One [of the prisoners], a tank gunner, was taken away by some of our own [Ossetians] and Russians. I don't know what happened to him but we had seven prisoners again,' he told Human Rights Watch.

The four POWs were then made to carry the body outside into a courtyard, while the Ossetian captors threatened to kill them. Kutashvili stated that Russian federal troops were also in this yard, and one Russian soldier with a gun, whom, based on his appearance, Kutashvili believed was ethnic Russian, approached him saying, 'I'm going to kill you now.' However, another Russian federal soldier, whom Kutashvili described as 'a large man with a full beard,' and whom he believes was possibly Chechen, intervened to stop the shooting, claiming that Kutashvili reminded him of his own son who also had been wounded in battle. The first soldier pushed the bearded soldier aside and again made as if to shoot Kutashvili. The bearded soldier punched the first soldier, and then protected Kutashvili from further threats or beatings that night.

The other POWs were beaten again after moving the body outside. Two POWs were made to clean up the blood and remains in the shower room. The Georgian soldiers then carried the body of the tank gunner to a location near a railway line where they were ordered to dig a grave. According to Malachini, by the time they finished digging the

grave, it was dark, and so they wrapped the body in the tarp with a rope and left it unburied.

The next day, August 11, the POWs witnessed one of their group, whom they identified only as 21-year-old Khubulov, being singled out and led away, apparently because his surname was Ossetian and he claimed to be ethnic Ossetian. Khubulov was beaten and dragged away from the others, while the captors yelled at him, saying, 'You will die! You are a traitor.' The Georgian POWs we interviewed never saw Khubulov again. When Zaza Kavtiashvili asked some of his Ossetian captors about Khubulov's fate, one of them replied, 'We [killed him] because he was an Ossetian traitor.'

The Ossetian militia fighter who was among the captors and was interviewed by Human Rights Watch apparently corroborated Khubulov's execution. He told us, 'And then a Chechen fighter [possibly from the Russian Ministry of Defense's Vostok battalion], who came to us with some Russians and Chechens realised that one of our prisoners was an ethnic Ossetian. He could not believe it at first, and then got very angry. He said that traitors had to be punished, and took him out in the yard and just shot him.'

Human Rights Watch documented a third extrajudicial killing of a Georgian soldier, which also took place on August 11. A law enforcement officer of the South Ossetian forces described to us how they had executed a Georgian armed man:

> The day before yesterday [August 11, 2008], the Georgians killed two of my soldiers in the village of Tamarasheni. We had been conducting a sweep operation there. We detained three of them. Two of them didn't do anything to us so we just let them go – we couldn't take them anywhere as I had to take care of my own men first. The third one seemed to be high on something – a normal person would have surrendered, and this one was shooting at us instead. We questioned him. He was the one who killed our guys. We executed him.

Torture and Ill-Treatment by Ossetian Police

The Ossetian captors transferred the group to what was apparently Ossetian police custody. According to one of the Ossetian militia captors, 'We did not know what to do with all these prisoners and just passed them on to the [Ossetian] Ministry of Interior on August 11.' The POWs described these Ossetian forces as all having identical 'star-shaped badges on their belts,' as being 'physically big and strong,' and possibly being Ossetian special forces.

Although Ossetian forces eventually transferred the injured Zaza Kavtiashvili to Russian forces that day, they first interrogated him and beat and humiliated him. He described the ordeal:

> They separated us in the yard. [They] started interrogating us. They would beat me, question me, then beat me, all the while also insulting and humiliating me. They brought a Georgian flag into the yard and ordered me to spit on it. I refused. One of the Ossetians put a Makarov gun into my mouth and threatened to kill me if I would not spit. One of the Ossetians also put his foot on my wounded knee and pressed hard on it. Someone from the second floor of the building ordered them to stop this and then they took us inside the building to a room. There they beat me with chairs, metal sticks, and the butts of guns. They broke my right arm. After all this they handed me over to the Russian forces.

After being transferred to Russian military custody, Kavtiashvili underwent surgery on his leg at a Russian Ministry of Emergency Situations hospital in Tskhinvali, and after several days was taken to Java and from there flown to a military hospital in

Vladikavkaz, North Ossetia, for further treatment. Kavtiashvili was exchanged with other Georgian POWs on August 19.

Several Georgian POWs, including three interviewed by Human Rights Watch, were held in Ossetian police custody until August 17, when they were handed over to Russian troops. Ossetian police held the Georgian POWs in degrading conditions and subjected them to torture and severe ill-treatment. The soldiers were held in pairs in small cells and given very little water and almost no food for six days. Ossetian police interrogated the soldiers a number of times. One Georgian POW stated that Russian military forces visited them while in detention several times and also sometimes interrogated them. Although both Imeda Kutashvili and Kakha Zirakishvili had been wounded during the Russian aerial bombardment, they received no medical care during their 12 days in Ossetian detention.

Kakha Zirakishvili told Human Rights Watch about his experience in police detention, saying that the previous days' beatings 'were nothing compared to what we faced at this place':

> They put us into cells and gave us only 100 grams of water for two people per day. They beat us regularly. Five or seven guys would come into the cell, beat us, get tired, go out, rest, come back, beat us. They would beat us until we were unconscious. They punched us, kicked us, hit us with hammers and with gun butts. They hit my hands with a hammer. They broke a bone in my right hand, as well as in [my fingers]. They also beat me a lot in my face and head with a hammer and even in the mouth. I lost one tooth on the bottom as a result of the beating. Sometimes, two people would stand on my arm, while another burned my hands with a lighter... They gave us bread once ... but they gave us so little water for six days that I couldn't eat anything.

Davit Malachini and Imeda Kutashvili were held in the same cell and described similar treatment. Malachini told Human Rights Watch,

> Three Ossetians would come regularly, beat us for five, ten, fifteen minutes, leave, come back again. They would beat us from morning until late at night. This went on for six days. They tortured us. They put a bucket on my head and would beat a stick against the bucket. Two guys would stand on my arm and a third guy would burn my finger with a lighter. The skin was totally burned through to the bone. They beat my ankles with iron rods and broke one bone on my foot. They beat me on the head with butts of Makarov pistols. We were only given a small amount of water and some bread and once some buckwheat. But I could not eat because I was in so much pain. My jaw had been beaten. They swore at us and cursed at us saying, 'Did you want our land? Did you want our money? If you wanted our land you can go and dig your own grave here.'

Imeda Kutashvili also stated that the Ossetians gave him very little water and almost no food, and beat him regularly with hammers on his hand as well as by placing a bucket on his head and hitting it. He also described beatings by Ossetian police using 'anything they had on hand.' 'They beat us with chairs, belts, and ropes, and when the shovel broke, they used the handle,' he said. 'They beat me on the arms and on the soles of my feet with an iron rod. While they were beating me I tried to cover my head, and they broke my hand. Sometimes I lost consciousness and they would put water in my face to wake me up.' Davit Malachini stated that while in Ossetian police detention he witnessed police urinating on another soldier's face to wake him up in order to begin beating him again.

The physical and psychological consequences of this treatment are described below.

At some point during the detention of Georgian POWs by Ossetian police, Russian journalists were allowed to film the Georgian soldiers and asked them their names, ages, and how they were being treated. Some of this video was placed on the internet and included images of Malachini, Kutashvili, and Zirakishvili.

Transfer to Russian custody and release

On August 17, Ossetian police transferred Malachini, Kutashvili, and Zirakishvili to Russian forces, who took them to a base. The Georgian soldiers were in very poor physical condition: Davit Malachini said, 'By that time I couldn't really even move my arms. My feet dragged. My legs and arms were so swollen. I was trembling all over. I couldn't control it.' Kakha Zirakishvili said, 'We couldn't even really stand or walk. We leaned on each other in order to move.'

The Russian forces questioned the three men and then placed them in a basement together with five or six other Georgian soldiers who had been detained separately. The Russian forces did not physically ill-treat the three. They allowed the Georgian soldiers to wash, shave, and rinse their uniforms and gave them food, water, and some basic medical treatment.

Malachini, Zirakishvili, and Kutashvili, together with 10 others, were transferred to Georgian custody on August 19 in exchange for Russian POWs."

THE LAW

I. PRELIMINARY REMARK

39. The Court notes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a Party to the Convention. The Court therefore finds that it has temporal jurisdiction to deal with the applicants' complaints (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023, and *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, § 389, 30 November 2022).

II. JOINDER OF THE APPLICATIONS

40. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

41. Relying on Article 2 of the Convention, the applicants submitted that three Georgian prisoners of war – Mr Kakhaber Khubuluri, Mr Ushangi Sopromadze and Mr Giorgi Antsukhelidze – had been killed during their detention. Article 2 of the Convention 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

42. The respondent Government did not make any submissions.

43. The applicants submitted, *inter alia*, that the conduct of the South Ossetian authorities had been attributable to Russia at the time of the relevant events. In particular, the Russian Federation had exercised overall or effective control over Tskhinvali and had, as a result, been responsible for the conduct of the South Ossetian military and paramilitary forces. The applicants emphasised that Russia had exercised decisive influence or overall control over the South Ossetian officials on account of its continuous military, economic and political support. The applicants further submitted that, even accepting the respondent State's lack of effective control over the territory in question during the period of active hostilities, this could not preclude Russia's responsibility given that the events had taken place under the instruction or in presence of the Russian forces.

44. In their third-party submissions the Georgian Government argued, *inter alia*, that the Court had limited the exclusion from the respondent State's jurisdiction of the five-day "active phase of the hostilities" to certain categories of claims under Article 2 of the Convention, namely those involving military operations ("bombing, shelling, artillery fire"). They also stated that one of the prisoners of war, Mr Antsukhelidze, had been tortured to death and, referring to paragraph 258 of *Georgia v. Russia (II)* (merits) ([GC], no. 38263/08, 21 January 2021), submitted that that incident had been raised in their submissions in the context of the inter-State proceedings.

B. Admissibility

45. At the outset, the Court notes that the present case raises an issue under Article 1 of the Convention concerning the respondent State's jurisdiction. The provision in question provides as follows:

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

46. The relevant general principles regarding extraterritorial jurisdiction were summarised in *Georgia v. Russia (II)* (cited above, §§ 113-24), *Ukraine and the Netherlands v. Russia* ((dec.), cited above, §§ 552-75), and,

subsequently, in *Ukraine and the Netherlands v. Russia* ((merits) [GC], nos. 8019/16 and 3 others, §§ 350-55, 9 July 2025).

47. In this regard, the Court notes that on 21 January 2021 it delivered its judgment in *Georgia v. Russia (II)*, in which it was required, *inter alia*, to examine whether the conditions for the exercise of extraterritorial jurisdiction by a State under the Court's case-law could be regarded as fulfilled. It found, as regards the "five-day war" of 8-12 August 2008, that Russia did not have Article 1 jurisdiction in respect of the military operations which it had conducted during the active phase of the hostilities. The Court explained (§§ 126 and 136-137):

> "126. ... [I]t can be considered from the outset that in the event of military operations – including, for example, armed attacks, bombing or shelling – carried out during an international armed conflict, one cannot generally speak of 'effective control' over an area. The very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos means that there is no control over an area. This is also true in the present case, given that the majority of the fighting took place in areas which were previously under Georgian control ...
>
> ...
>
> 136. ... The obligation which Article 1 imposes on the Contracting States to secure to everyone within their jurisdiction the rights and freedoms guaranteed by the Convention is, as indicated above, closely linked to the notion of 'control', whether it be 'State agent authority and control' over individuals or 'effective control' by a State over a territory.
>
> 137. In this connection, the Court attaches decisive weight to the fact that the very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos not only means that there is no 'effective control' over an area as indicated above (see paragraph 126), but also excludes any form of 'State agent authority and control' over individuals."

48. As regards Georgia's jurisdiction in relation to military operations in the course of the hostilities, the Court has also clarified that, having regard to the exceptionally large-scale nature of the international armed conflict which took place between the armed forces of the two Contracting States between 8 and 12 August 2008 over, *inter alia*, the establishment of control of the South Ossetian region, and the fact that both sides – the Russian and Georgian armed forces – resorted to massive bombing and shelling of the territories within the same period of time, it would be impossible to track either direct and immediate cause or even sufficiently close proximity between the actions of the armed forces and the effects produced on the individuals (see *Bekoyeva and Others v. Georgia* (dec.), nos. 48347/08 and 3 others, § 37, 5 October 2021).

49. As regards the period following the cessation of the active phase of the hostilities, the Court found in *Georgia v. Russia (II)* (cited above) that the Russian Federation exercised "effective control", within the meaning of the Court's case-law, over South Ossetia, Abkhazia and the "buffer zone" from 12 August to 10 October 2008, the date of the official withdrawal of the

Russian troops. Even after that period, the Court found that the strong Russian presence and the South Ossetian and Abkhazian authorities' dependency on the Russian Federation, on whom their survival was contingent, indicated that there was continued "effective control" over South Ossetia and Abkhazia (ibid., §§ 174-175).

50. Concerning, specifically, the treatment of the prisoners of war during as well as after the cessation of hostilities, the Court stated as follows (ibid., §§ 268-269):

> "268. The Court observes at the outset that it can be seen from the Human Rights Watch, Amnesty International and 'August Ruins' reports, among others, that Georgian prisoners of war were detained in Tskhinvali between 8 and 17 August 2008 by South Ossetian forces.
>
> 269. Given that they were detained, *inter alia*, after the cessation of hostilities, the Court concludes that they fell within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention ... and dismisses the preliminary objection raised by the respondent Government in that regard. It must next determine whether there has been a violation of the rights protected by the Convention capable of engaging the responsibility of the Russian Federation."

51. Subsequently, in *Ukraine and the Netherlands v. Russia* ((dec.), cited above, §§ 558 and 576-577), the Court explained as follows:

> "558. In *Georgia v. Russia (II)*, there was a clear, single, continuous five-day phase of intense fighting during which Russian troops advanced on Georgian territory seeking to establish control ('the five-day war'); after that, a ceasefire agreement was reached and largely observed. The Grand Chamber was therefore able to refer to 'the five-day war' as a distinct 'active phase of hostilities' and to separate out complaints which it identified as concerning 'military operations carried out during the active phase of hostilities'. It summarised the alleged attacks falling under this heading as covering 'bombing, shelling and artillery fire' (see, for example, § 51 of the judgment). Since it found jurisdiction to exist in respect of the detention and treatment of civilians and prisoners of war even during the 'five-day war' (see §§ 238-39 and 268-69 of the judgment), there can be no doubt that a State may have extraterritorial jurisdiction in respect of complaints concerning events which occurred while active hostilities were taking place. The *Georgia v. Russia (II)* judgment cannot, therefore, be seen as authority for excluding entirely from a State's Article 1 jurisdiction a specific temporal phase of an international armed conflict.
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> ...
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> 576. According to the approach in *Georgia v. Russia (II)*, the first question to be addressed in cases concerning armed conflict is whether the complaints concern 'military operations carried out during an active phase of hostilities', in the sense of 'armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos'. In that case, the question was answered in the affirmative and, as a result, there was no extraterritorial jurisdiction of either kind in respect of the relevant substantive complaints (see §§ 126 and 137 of that judgment), although there was a duty to investigate deaths which had occurred (see §§ 329-30 of the judgment).
>
> 577. Since the vast majority of allegations advanced in the present case (see paragraphs 373-382 above) cannot be said to fall into this category, the Court will first

> examine whether extraterritorial jurisdiction arose at any point in the present case before considering whether certain complaints or aspects of them might be said to be excluded from any jurisdiction established, on the basis that they occurred outside any area of effective control or concerned 'military operations carried out during an active phase of hostilities'. It will accordingly first determine whether the respondent Government enjoyed at any point effective control over the relevant parts of the Donetsk and Luhansk regions (see paragraph 560 above)."

52. Against this background, and turning to the circumstances of the present case, the Court notes that witness testimony and written evidence submitted during the inter-State proceedings in *Georgia v. Russia (II)* referred, under Article 3 of the Convention, to the incidents involving Mr Khubuluri and Mr Sopromadze (see *Georgia v. Russia (II)*, cited above, §§ 257-64). The incident involving Mr Antsukhelidze was not mentioned explicitly, but the Georgian Government, in their third-party submissions, affirmed that they had raised it in the inter-State proceedings (see paragraph 44 above; see also *Georgia v. Russia (II)*, cited above, § 258). However, and in any event, in *Georgia v. Russia (II)* the Court was not called upon to examine those incidents under Article 2 of the Convention. Accordingly, it must now determine whether they fall within the respondent State's jurisdiction, having regard to the specific facts of the case (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 559).

53. In this connection, the Court emphasises that the present case concerns the alleged torture and killing of three Georgian servicemen during their detention between 9 and 11 August 2008. The facts underlying the complaint are confirmed by a substantial body of evidence, including consistent and corroborated eyewitness statements, video material, forensic evidence, and the reports of non-governmental organisations (see paragraphs 7-10, 17, 19-26 and 38 above). Accordingly, these incidents cannot, by their very nature, be regarded as "acts of war" or "military operations" carried out during the active phase of the hostilities in a context of chaos or confusion, in respect of which the Court has found that Russia did not have jurisdiction under Article 1 (compare *Georgia v. Russia (II)*, cited above, §§ 105, 113 and 126, and *Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 558 and 576). There can therefore be no doubt that the respondent State may have extraterritorial jurisdiction in respect of the incidents complained of in the present case, which took place not while the servicemen were fighting but while they were held in custody, even if they occurred while active hostilities were ongoing (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 558).

54. The Court further notes that Georgian prisoners of war, including those concerned in the present case, were detained in the town of Tskhinvali, the administrative capital of South Ossetia, by the South Ossetian forces (see *Georgia v. Russia (II)*, cited above, § 268). In this connection, despite the fact that South Ossetia falls within Georgia's internationally recognised borders, it is notable that except for several ethnic Georgian villages around

Tskhinvali (ibid., § 111), the Georgian government was prevented from exercising its authority and control over the remaining parts of the region, including the town of Tskhinvali, prior to the outbreak of the hostilities in 2008 (see paragraphs 29-30 and 34 above). Accordingly, the question regarding the nature of the control exercised by the Russian Federation in South Ossetia before the start of the active phase of the hostilities, as well as during the five-day war, is relevant to the assessment of whether Russia was responsible for the actions of the South Ossetian forces in respect of the detained individuals in the territory concerned (contrast and compare *Georgia v. Russia (II)*, cited above, §§ 111-12 and 126; see also *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 576).

55. The Court reiterates in this connection that whether a Contracting State exercises effective control of an area outside its national territory is a question of fact. In resolving it the Court will primarily have reference to the strength of the State's military presence in the area. However, other indicators may also be relevant, such as the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 560; see also *Mamasakhlisi and Others v. Georgia and Russia*, nos. 29999/04 and 41424/04, § 338, 7 March 2023).

56. In this connection, the Court has already established that prior to the hostilities of August 2008 Russia exercised effective control and decisive influence over the territory of Abkhazia, which was only able to survive as a *de facto* entity because of Russia's sustained and substantial political and economic support, and dissuasive military involvement (see *Mamasakhlisi and Others*, cited above, § 339). Within this context, ties between Russia and South Ossetia appear to have been comparable, if not stronger (see paragraph 34 above).

57. In particular, and specifically within the context of the well-documented detention of Georgian prisoners of war in Tskhinvali by the South Ossetian forces (see paragraphs 53-54 above), the Court takes into account the EU Fact-Finding Mission's reference, also noted in *Georgia v. Russia (II)*, to the "creeping annexation" of South Ossetia by the Russian Federation prior to the beginning of hostilities, as demonstrated by the so-called "passportisation" process, along with its economic and political implications, as well as by the fact that the separatist government and security forces were staffed and *de facto* controlled by Russian officials (see paragraph 34 above; see also *Georgia v. Russia (II)*, cited above, §§ 156 and 169-70). The report of the EU Fact-Finding Mission further indicated, *inter alia*, that Russia had exercised systematic influence on and control of the decision-making process in South Ossetia concerning a wide range of matters with regard to the internal and external relations of the entity; that Russia had provided training and military equipment to South Ossetian forces prior to the August 2008 conflict; and that the *de facto* government of South

Ossetia was not "effective" on its own (see paragraph 34 above). Importantly, the pre-existing relationship of subordination between South Ossetia and the Russian Federation lasted throughout the active phase of the hostilities and after the cessation of hostilities (see *Georgia v. Russia (II)*, cited above, § 168).

58. As regards the five-day period of hostilities, and in particular the town of Tskhinvali, where the individuals concerned were detained, various sources demonstrate that during the hostilities the South Ossetian forces were assisted not only by the respondent State's aerial forces but also by its ground troops (see paragraphs 33 and 35-37 above, see also *Georgia v. Russia (II)*, cited above, § 36). While there was fighting on the ground in and around Tskhinvali on 8 and 9 August 2008, and the Georgian ground forces' official withdrawal from the region was effected on 10 August 2008 (see *Georgia v. Russia (II)*, cited above, §§ 35-38), the Georgian troops had apparently already started retreating from the town of Tskhinvali on 9 August 2008, on account of the growing firepower they had encountered from the opposite side, including from the Russian air force and artillery (see paragraphs 7 and 33 above). This resulted in the further consolidation of control by the South Ossetian and Russian forces over Tskhinvali, while chaotic events, including aerial bombardment and fighting, continued elsewhere, primarily in areas which had previously been under Georgian control (see *Georgia v. Russia (II)*, cited above, §§ 111-12 and 126).

59. What is more, the relevant material indicates not only a significant Russian military presence on the ground at least as of 9 August 2008, but also Russia's military and logistical support to the forces of the *de facto* authorities on the ground, including at the sites where the Georgian prisoners of war were held (see paragraphs 7-9, 12, 17 and 38 above; see also *Georgia v. Russia (II)*, cited above, §§ 185, 260, 262-264 and 277).

60. Lastly, and in line with the methodology applied in earlier cases, the Court also takes into account the developments that occurred just days after the detention and alleged killing of the prisoners of war concerned in the present case (see *Mamasakhlisi and Others*, cited above, § 328, with further references). Specifically, the events described above resulted, following the ceasefire agreement of 12 August 2008, in the exercise by the respondent State of "effective control", within the meaning of the Court's case-law, over the entire region of South Ossetia, including the areas previously controlled by Georgia, as well as over the Georgian "buffer zone" adjacent to it. Even after 10 October 2008, the date of the official withdrawal of the Russian troops from the "buffer zone", the strong Russian presence and the South Ossetian authorities' dependency on the Russian Federation, on whom their survival is contingent, as is shown particularly by the cooperation and assistance agreements signed with the latter, indicate that there was continued "effective control" over South Ossetia (see *Georgia v. Russia (II)*, cited above, § 174).

61. The foregoing elements demonstrate beyond reasonable doubt that the three Georgian prisoners of war were detained in territory over which Russia exercised "effective control", within the meaning of the Court's case-law.

62. The finding of spatial jurisdiction in the present case does not, however, bring within the respondent State's jurisdiction events which took place outside that area, or those involving "military operations carried out during the active phase of hostilities", in the sense of "armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos", as identified by the Court in *Georgia v. Russia (II)* (see paragraphs 47-48 above; see also *Ukraine and the Netherlands v. Russia* ((dec.), cited above, § 698). It is also without prejudice to any question of personal jurisdiction.

63. The Court further notes the next of kin of Mr Khubuluri, Mr Sopromadze and Mr Antsukhelidze have *locus standi* in respect of their complaint under Article 2 of the Convention (see *Dzidzava v. Russia*, no. 16363/07, §§ 44-47, 20 December 2016).

64. In the light of the foregoing, the Court finds that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. General principles

65. Article 2 ranks as one of the most fundamental provisions in the Convention and also enshrines one of the basic values of the democratic societies making up the Council of Europe (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, § 147, Series A no. 324). According to Article 2 § 2, as interpreted by the Court, the use of lethal force may be justified where it is no more than absolutely necessary for, and strictly proportionate to, the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c) of that Article (see *Ukraine and the Netherlands v. Russia* (merits), cited above, § 450, with further references).

66. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 130, ECHR 2014; and *Kurt v. Austria* [GC], no. 62903/15, § 157, 15 June 2021). This implies, in certain circumstances, a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII, and *Finogenov and Others*

v. Russia, nos. 18299/03 and 27311/03, § 209, ECHR 2011 (extracts)). For the Court to find a violation of the positive obligation to protect life, it must be established that the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman*, cited above, § 116). In the law-enforcement context, the Court has clarified that Article 2 has to be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see *Osman*, § 116, and *Finogenov and Others*, § 209, both cited above).

67. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the authorities are under a duty to protect them. Consequently, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused. The obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 131).

68. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation. In the absence of such explanation the Court can draw inferences which may be unfavourable for the respondent Government (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Hassan v. the United Kingdom* [GC], no. 29750/09, § 49, ECHR 2014).

2. Application of the general principles to the present case

69. The Court observes that Mr Khubuluri, Mr Sopromadze and Mr Antsukhelidze were subjected to extreme acts of violence while in detention, as evidenced by the relevant video material, various reports, and the statements of witnesses (see paragraphs 7-10, 17, 22 and 38 above).

70. In so far as Mr Khubuluri and Mr Sopromadze are concerned, the Court finds that the case file contains credible evidence demonstrating beyond reasonable doubt that they were killed while in detention (see paragraphs 7-10, 17 and 38 above).

71. As for Mr Antsukhelidze, his body was handed over to the Georgian authorities in November 2008, over three months following his capture (see

paragraph 20 above). While the exact cause and circumstances of his death remain unclear, it is certain that he was last seen in the custody of the South Ossetian forces while being subjected to violence and death threats (see paragraph 22 above), and he can be presumed to have met a violent death sometime afterwards.

72. Against this background, while the direct participation of Russian forces, or the precise extent of such participation, may not be clearly demonstrated in respect of all three prisoners of war in question, the Court has established that the prisoners of war fell within the spatial jurisdiction of the Russian Federation (see paragraphs 52-62 above). For this reason, Russia was also responsible for the actions of the South Ossetian forces, without it being necessary to provide proof of "detailed control" of each of those actions (see, *mutatis mutandis*, *Georgia v. Russia (II)*, cited above, § 276). The deaths of Mr Khubuluri, Mr Sopromadze and Mr Antsukhelidze can therefore be attributed to the respondent State.

73. The above-mentioned acts are particularly serious given that they were perpetrated against prisoners of war, who have a special protected status under international humanitarian law (see *Georgia v. Russia (II)*, cited above, § 278).

74. In the light of the foregoing, and having regard to the material available before it, the Court considers it established that Mr Khubuluri, Mr Sopromadze and Mr Antsukhelidze died in circumstances engaging the respondent State's responsibility.

75. The Court further finds that the respondent State has not accounted for those deaths, as required under the procedural aspect of Article 2 of the Convention (see paragraphs 18 and 27 above; see also, *mutatis mutandis*, *Storimans-Verhulst and Others v. Russia*, no. 26302/10, § 37, 7 October 2025). In particular, while the evidence available in respect of the applicants' complaints points to the extra-judicial execution of the individuals concerned, the Government have not produced any evidence or arguments capable of rebutting that version of events (see the case-law quoted in paragraphs 65 and 68 above).

76. There has therefore been a violation of the substantive and procedural aspects of Article 2 of the Convention in the present case.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

77. Relying on Article 3 of the Convention, the applicants primarily complained that they themselves or their relatives, all Georgian servicemen, had been tortured during their detention as prisoners of war. The provision in question reads as follows:

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

A. The parties' submissions

78. The respondent Government did not make any submissions.

79. The applicants submitted that the Georgian prisoners of war concerned in the present applications had been subjected to treatment amounting to torture, within the meaning of Article 3 of the Convention, and that the respondent State had failed to carry out an effective investigation into the matter.

80. In their third-party submissions the Georgian Government submitted, *inter alia*, that the findings of the Grand Chamber in *Georgia v. Russia (II)* (cited above, §§ 268-81) confirmed that the Georgian prisoners of war detained in Tskhinvali between 8 and 17 August 2008 had been victims of an administrative practice of torture, in breach of Article 3 of the Convention.

B. Admissibility

81. At the outset, the Court considers that its findings regarding Russia's jurisdiction in respect of the complaints under Article 2 of the Convention (see paragraphs 52-62 above) apply equally to the complaints under Article 3.

82. Additionally, the Court notes that the applicants who personally suffered the alleged torture have *locus standi* to bring the complaint in question. As regards the complaints concerning the torture of Mr Ushangi Sopromadze, Mr Kakhaber Khubuluri and Mr Giorgi Antsukhelidze (see paragraphs 69-76 above), the Court finds that their relatives (notably, Ms Tea Tabatadze, Mr Gigi Tabatadze, Mr Zaza Sopromadze, Ms Izolda Khubuluri, Ms Maka Chikviladze, Ms Ana Antsukhelidze and Mr Levani Antsukhelidze) likewise have standing to bring those complaints, on account of the close link, in the circumstances of the present case, between the ill-treatment and the relevant individuals' death (see *Karpylenko v. Ukraine*, no. 15509/12, §§ 103-106, 11 February 2016, with further references, and *Dzidzava*, cited above, § 47).

83. Lastly, the Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. General principles

84. Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation: even in the most difficult circumstances, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC],

no. 39630/09, § 195, ECHR 2012, and *Ukraine and the Netherlands v. Russia* (merits), cited above, § 1060).

85. In order to determine whether any particular form of ill-treatment should be classified as torture, the Court must have regard to the distinction drawn in Article 3 between this notion and that of inhuman or degrading treatment. This distinction would appear to have been embodied in the Convention to allow the special stigma of "torture" to attach only to deliberate inhuman treatment causing very serious and cruel suffering (see *Aksoy v. Turkey*, 18 December 1996, § 63, *Reports* 1996-VI). In addition to the severity of the treatment, there is a purposive element, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 26 June 1987 and which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (Article 1 of the United Nations Convention) (see, *inter alia*, *Georgia v. Russia (II)*, cited above, § 271, and *İlhan v. Turkey* [GC], no. 22277/93, § 85, ECHR 2000-VII).

86. The Court reiterates that where an individual raises an arguable claim that he or she has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be an effective official investigation. Such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *El-Masri*, cited above, § 182).

2. Application of the general principles to the present case

87. The Court has already assessed the factual and legal circumstances regarding the practice complained of in the present applications. Specifically, it has found that there was an administrative practice contrary to Article 3 of the Convention as regards the acts of torture of which the Georgian prisoners of war were victims (see *Georgia v. Russia (II)*, cited above, §§ 272-81).

88. Having regard to the account given by the prisoners of war in question as regards the extreme acts of violence they were subjected to during their detention, and the extensive material confirming the veracity of their account (see paragraphs 7-10, 17, 22 and 38 above; see also *Georgia v. Russia (II)*, cited above, §§ 260-65), the Court finds that the Georgian servicemen concerned in the present case were all victims of treatment contrary to

Article 3 of the Convention (see also *Georgia v. Russia (II)*, cited above, §§ 274-75).

89. The Court considers that the ill-treatment inflicted on the Georgian prisoners of war caused "severe" pain and suffering and must be regarded as acts of torture within the meaning of Article 3 of the Convention. Those acts are particularly serious given that they were perpetrated against prisoners of war, who have a special protected status under international humanitarian law (see *Georgia v. Russia (II)*, cited above, § 278).

90. Even if the direct participation of the Russian forces has not been clearly demonstrated in all instances, since it has been established that the prisoners of war fell within the jurisdiction of the Russian Federation, the latter was also responsible for the actions of the South Ossetian forces, without it being necessary to provide proof of "detailed control" of each of those actions (see paragraphs 52-62, 72 and 81 above; see also *Georgia v. Russia (II)*, cited above, § 276).

91. The Court further finds that the respondent State has failed to carry out an effective investigation into the applicants' complaints, as required under the procedural aspect of Article 3 of the Convention (see paragraphs 18, 27 and 75 above).

92. There has therefore been a violation of the substantive and procedural aspects of Article 3 of the Convention in the present case.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

93. The applicants also raised other complaints under Articles 3, 5, 13 and 14 of the Convention. Having regard to the facts of the case and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the admissibility and merits of the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 156, with further references; see also, for the general principles, *Tsaava and Others v. Georgia* [GC], nos. 13186/20 and 4 others, §§ 225-229, 11 December 2025).

VI. VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. Article 41 of the Convention provides:

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

A. Damage

95. Without specifying any amounts, the applicants claimed just satisfaction in respect of pecuniary and non-pecuniary damage arising from

the physical and/or psychological trauma allegedly suffered as a consequence of the events complained of, which, in their submission, had resulted in medical expenses and loss of income. They invited the Court to determine the amounts to be awarded on an equitable basis.

96. The respondent Government did not comment.

97. Pursuant to Rule 60 § 1 of the Rules of Court, an applicant who wishes to obtain an award of just satisfaction in respect of pecuniary damage must make a specific claim to that effect. Since in the present case the applicants failed to specify the amounts claimed, the Court makes no award under this head (see *Carter v. Russia*, no. 20914/07, § 178, 21 September 2021).

98. By contrast, since non-pecuniary damage does not, by its nature, lend itself to precise calculation, Rule 60 does not prevent the Court from examining claims for non-pecuniary damage which applicants did not quantify, leaving the amount to the Court's discretion (see *Nagmetov v. Russia* [GC], no. 35589/08, § 72, 30 March 2017). Ruling on an equitable basis, the Court considers it appropriate to award the applicants the following sums, plus any tax that may be chargeable, in respect of non-pecuniary damage:

(a) EUR 65,000 jointly to Ms Tea Tabatadze, Mr Gigi Tabatadze and Mr Zaza Sopromadze;

(b) EUR 65,000 to Ms Izolda Khubuluri;

(c) EUR 65,000 jointly to Ms Maka Chikviladze, Ms Ana Antsukhelidze and Mr Levani Antsukhelidze; and

(d) EUR 40,000 each to the remaining applicants.

99. The Court notes that the Grand Chamber has already awarded just satisfaction in the case of *Georgia v. Russia (II)* for the benefit of individual victims of administrative practices in breach of the Convention (see *Georgia v. Russia (II)* (just satisfaction) [GC], no. 38263/08, §§ 30-33, 36 and 40-48, 28 April 2023). In so far as the applicants may also be individual victims covered by the just satisfaction judgment of the Grand Chamber in *Georgia v. Russia (II)*, the sums awarded in the present judgment shall be payable only with respect to damage not already compensated under the Grand Chamber judgment, so as to avoid double compensation for the same damage.

B. Costs and expenses

100. The applicants did not claim any costs or expenses. Accordingly, there is no call to make an award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Holds* that the relatives of Mr Ushangi Sopromadze, Mr Kakhaber Khubuluri and Mr Giorgi Antsukhelidze (notably, Ms Tea Tabatadze, Mr Gigi Tabatadze, Mr Zaza Sopromadze, Ms Izolda Khubuluri, Ms Maka Chikviladze, Ms Ana Antsukhelidze and Mr Levani Antsukhelidze) have standing to introduce the present application in the deceased's stead;

3. *Declares* the complaints concerning the deaths in custody and alleged torture of the relevant prisoners of war admissible;

4. *Holds* that there has been a violation of the substantive and procedural aspects of Article 2 of the Convention on account of the death in custody of Mr Ushangi Sopromadze, Mr Kakhaber Khubuluri and Mr Giorgi Antsukhelidze;

5. *Holds* that there has been a violation of the substantive and procedural aspects of Article 3 of the Convention on account of the torture of Mr Ushangi Sopromadze, Mr Kakhaber Khubuluri, Mr Giorgi Antsukhelidze, Mr Davit Malachini, Mr Zaza Kavtiashvili, Mr Imeda Kutashvili, Mr Malkhaz Meladze, and Mr Kakhaber Zirakashvili;

6. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints;

7. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts in respect of non-pecuniary damage:
      (i) EUR 65,000 (sixty-five thousand euros), plus any tax that may be chargeable, jointly to Ms Tea Tabatadze, Mr Gigi Tabatadze and Mr Zaza Sopromadze;
      (ii) EUR 65,000 (sixty-five thousand euros), plus any tax that may be chargeable, to Ms Izolda Khubuluri;
      (iii) EUR 65,000 (sixty-five thousand euros), plus any tax that may be chargeable, jointly to Ms Maka Chikviladze, Ms Ana Antsukhelidze and Mr Levani Antsukhelidze;
      (iv) EUR 40,000 (forty thousand euros), plus any tax that may be chargeable, to each of the remaining applicants;
   (b) that in so far as the applicants may also be individual victims covered by the just satisfaction judgment of the Grand Chamber in *Georgia v. Russia (II)* (no. 38263/08, 28 April 2023), the sums awarded in the present judgment shall be payable only with respect to damage not

already compensated under the Grand Chamber judgment, so as to avoid double compensation for the same damage;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 23 June 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Arnfinn Bårdsen President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of birth Place of residence Nationality	Represented by
1.	9184/09	Malachini and Others v. Russia	09/02/2009	**Davit MALACHINI** 1982 Kareli Georgian **Zaza KAVTIASHVILI** 1976 Tbilisi Georgian **Izolda KHUBULURI** 1959 Gori Georgian **Imeda KUTASHVILI** 1987 Tbilisi	Lawyers of the Georgian Young Lawyers' Association and Stichting Justice Initiative

No.	Application no.	Case name	Lodged on	Applicant Year of birth Place of residence Nationality	Represented by
				Georgian **Malkhaz MELADZE** 1982 Batumi Georgian **Tea TABATADZE** 1984 Tbilisi Georgian **Gigi TABATADZE** 2005 Tbilisi Georgian **Zaza SOPROMADZE** 2007 Tbilisi Georgian	

No.	Application no.	Case name	Lodged on	Applicant Year of birth Place of residence Nationality	Represented by
				Kakhaber ZIRAKASHVILI 1972 Tbilisi Georgian	
2.	22580/10	Chikviladze and Antsukhelidze v. Russia	08/04/2010	**Maka CHIKVILADZE** 1981 Tbilisi Georgian **Ana ANTSUKHELIDZE** 2009 Tbilisi Georgian **Levani ANTSUKHELIDZE** 2007 Tbilisi Georgian	Lawyers of the Georgian Young Lawyers' Association and Stichting Justice Initiative