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

SECOND SECTION

DECISION

Application no. 45431/08
Ariana Zakharyevna SHAVLOKHOVA against Georgia
and 4 other applications
(see list appended)

The European Court of Human Rights (Second Section), sitting on 5 October 2021 as a Chamber composed of:

Jon Fridrik Kjølbro, *President,*
Aleš Pejchal,
Egidijus Kūris,
Branko Lubarda,
Pauliine Koskelo,
Lado Chanturia,
Saadet Yüksel, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the above applications lodged on the various dates indicated in the appended table,

its decision of 20 November 2018 in application no. 24964/09,

the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

the comments submitted by the Government of the Russian Federation,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants, who are all Russian nationals, is set out in the appendix. The first to fourth applicants were represented by Mr V. Torkanovskiy, a lawyer practising in Moscow. The fifth applicant was represented by lawyers from Klishin and Partners, a law firm based in Moscow.

2. The Georgian Government ("the Government") were successively represented by their Agents, Mr L. Meskhoradze and Mr B. Dzamashvili, of the Ministry of Justice.

A. The circumstances of the case

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

1. Background

4. The five applications listed in the appendix were lodged in the context of an armed conflict that occurred between Georgia and the Russian Federation in August 2008. The chronology of the conflict was described by the Court in its judgment in the inter-State case of *Georgia v. Russia (II)* ([GC] (merits), no. 38263/08, §§ 32-44, 21 January 2021).

5. In sum, during the night of 7 to 8 August 2008, after an extended period of mounting tensions and incidents, heavy fighting erupted in and around the town of 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 enemy forces took place essentially 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).

2. The applicants' individual situations

6. According to the first applicant's individual account, the security situation in Tskhinvali started to deteriorate as early as 1 August 2008, with the Georgian armed forces and South Ossetian militia constantly exchanging fire from various mortar and artillery systems. On 2 August 2008 mass evacuation of the civilian population of Tskhinvali started. The first applicant, together with thousands of other residents of the city, 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.

removed with the help of the Russian authorities to Vladikavkaz, in the Russian Federation.

7. Unlike the first applicant, the second to fifth applicants decided not to leave their homes in the Tskhinvali area (they lived either in the centre or suburbs of Tskhinvali) despite the security concerns. During the night of 7 to 8 August 2008 they were awakened by the eruption of intense shelling. The second, fourth and fifth applicants immediately went down to the basements of the block of flats where they were living to find shelter; they managed to leave their shelters either on 9 and 10 August 2008, when the gunfire and shelling slightly decreased. As regards the third applicant, she spent the aforementioned two days of intense shelling confined to her house.

8. Between 10 and 12 August 2008 the second to fifth applicants were removed either to the Russian Federation or the northern parts of South Ossetia with the help of Russian military personnel. The evacuation operation was equally perilous as the shelling and bombing of vehicles circulating on the roads of South Ossetia was not uncommon at that time.

9. All five applicants returned to their homes in the Tskhinvali area on unknown dates at the end of August. Whilst the third applicant noticed relatively minor damage caused to her house, the remaining four applicants claimed that, in their absence, their flats had been heavily damaged by either air strikes or artillery fire.

10. On 9 August 2008 the Chief Prosecutor's Office ("the CPO") of Georgia opened a general criminal investigation into war crimes committed against the civilian population and other possible breaches of international humanitarian law during the active phase of the international armed conflict between Georgia and the Russian Federation and its immediate aftermath. Within the framework of that investigation, the CPO carried out numerous investigative actions by interviewing several thousand witnesses – Georgian military personnel who had taken part in the armed clashes and the civilian population from the zone affected by the conflict – and collecting telephone intercepts and public statements made by the South Ossetian *de facto* authorities as well as various intelligence and military reports, satellite images and other information available from media and other open sources.

11. On an unspecified date in October 2008 the fourth applicant, together with his friend, crossed the administrative border of South Ossetia and travelled to the village of Nikozi situated in the "buffer zone", in the undisputed Georgian territory, after that territory had already been vacated by the Russian armed forces and returned to the control of the Georgian authorities (see 5 above). He was arrested there by Georgian police forces on suspicion of unlawful possession of firearms. Specifically, an automatic rifle with cartridges and a grenade-launcher was found in the vehicle in which he and his friend were circulating. The fourth applicant, following a court order, was placed in pre-trial detention, which he served in Tbilisi

prison no. 5. On an unidentified date in April 2009 the Gori District Court convicted him as charged, imposing a suspended prison sentence. The fourth applicant was released from the courtroom immediately and was able to return to Tskhinvali on the same day. No further information about those criminal proceedings was submitted.

12. On an unspecified date in early March 2015, the CPO finally discontinued the criminal investigation into the events that had taken place in and around South Ossetia between 8 and 12 August 2008 during the armed clashes between Georgia and Russia (see paragraph 10 above). The decision was based, *inter alia*, on the domestic authorities' inability to access any part of the South Ossetian region, including its administrative capital Tskhinvali, for the purposes of carrying out on-site investigations. On 17 March 2015 the CPO issued a public notification about the discontinuation of the investigation (see *Georgia v. Russia (II)*, cited above, § 322) and, according to the submissions filed with the Court by the first, third and fourth applicants on 25 November 2019 (see paragraph 19 below), they both took due note of that notification.

B. Relevant international material

1. The European Union

13. The Report of the Independent International Fact-Finding Mission on the Conflict in Georgia (Volume I) established in December 2008 by the Council of the European Union, stated, *inter alia* (p. 10):

> "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. The confrontation developed into a combined inter-state and intra-state conflict, opposing Georgian and Russian forces at one level of confrontation as well as South Ossetians together with Abkhaz fighters and the Georgians at another. Such a combination of conflicts going on at different levels is particularly prone to violations of International Humanitarian Law and Human Rights Law. This is indeed what happened, and many of these instances were due to the action of irregular armed groups on the South Ossetian side that would not or could not be adequately controlled by regular Russian armed forces."

2. Human Rights Watch

14. On 22 January 2009 Human Rights Watch issued a fact-finding report on the events that unfolded during the five-day war between Georgia and the Russian Federation. The report was based on the collection of

findings reported by a team of researchers who had conducted several research missions from August to November 2008 in South Ossetia and in undisputed parts of Georgia.

15. An excerpt from the report describing the difficulties in establishing the exact provenance of artillery strikes in South Ossetia read as follows (p. 38):

> "... In a number of cases, ... there were no direct witnesses and no reliable information regarding the circumstances of the attack. Also, since Georgian and Russian forces use some identical Soviet-era weapons systems including main battle tanks, Grad multiple-launch rockets, BMP infantry fighting vehicles, and tube artillery, Human Rights Watch could not always conclusively attribute specific battle damage to a particular belligerent, especially for the attacks that happened on and after the evening hours of August 8 when both Russian and Georgian troops were present in Tskhinvali. ..."

16. A chapter from the report describing the treatment of the civilian population of Tskhinvali by Georgian ground forces on 8 and 9 August 2008 read as follows (pp. 61-63):

> **The Conduct of Georgian Troops during the Ground Offensive**
>
> "The majority of witnesses interviewed by Human Rights Watch did not complain about other types of violations against them by the Georgian forces. Judging by their statements, in most cases the troops entering the villages did not deliberately cause physical harm to civilians.
>
> Several Ossetian interviewees said that Georgian soldiers told them they were under orders to look for and pursue Ossetian militias, but to spare women, children and elderly during the ground offensive.
>
> Zareta Z., from the village of Sarabuki, said that when Georgian soldiers entered the basement where she was hiding with her husband, they told them:
>
> 'Now you'll live with us, with Georgians, and we'll live in peace. Misha [Saakashvili] told us not to touch women and children. We're instructed to kill the young guys [fighters] only. And that's what we'll do. You are not to worry.'
>
> Another woman from the same village, 'Svetlana S.,' also said that the Georgian soldiers were telling the residents 'We have not killed any residents and we are not going to! Everyone is safe!'
>
> Madina M. from Khetagurovo said that she was terrified when Georgian troops entered the village, but to her surprise they were 'polite' and did not harm her. She said:
>
> 'They were going from yard to yard and looking for young guys. They did not know our guys weren't around anymore. I was so frightened ... I thought they'd be doing cruel things to women and to the elderly, like during the first war, back in 1992. But they were ... polite, really. They kept saying that they had an order not to touch women, children, and old people, and we had nothing to fear from them. They were so young – seemed to be 19 or 20, no more than that. Those who came into our basement even told us, "We don't want to die either."'
>
> Several women from five mountain villages in Akhalgori district populated mainly by Ossetians also confirmed that the Georgian forces did not harm civilians when they

entered the villages on the night of August 7-8. A woman from Tsinagari told Human Rights Watch:

'They told us not to be afraid and said that if our men wouldn't shoot, they wouldn't shoot either. They shot in the air – probably trying to frighten us. They entered the houses, checked identification documents, even some of our neighbours' passports. They also looked for young guys and for the men. But all our men were already gone by then – they joined the militia and hid in the woods. The Georgians were also looking for firearms, but our men had taken their weapons with them, so there was nothing much to find.'

A small number of witnesses from different villages complained, however, that the Georgian forces ransacked their houses as they were looking for Ossetian fighters, and in a few cases took money, valuables, Russian identification documents, or other things from the residents. ..."

COMPLAINTS

A. Complaints made in the initial applications forms, lodged on the various dates in 2008 and 2009 listed in the appendix

17. Relying on Articles 2, 3, 5, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1, the applicants complained that the military actions undertaken by the Georgian armed forces between 8 and 12 August 2008, during the active phase of the international armed conflict between Georgia and the Russian Federation, had put their lives, as well as those of their family members, under real and immediate danger, obliged them to spend several days in anxiety and fear, restricted their physical liberty and seriously damaged their flats. They further claimed that the respondent State had discriminated against them on the basis of their ethnic origin and, as an additional corollary to that discriminatory motive, that they had not had effective domestic remedies at their disposal.

B. Complaints introduced on 7 April 2011

18. On 7 April 2011 the fourth applicant, providing a cursory description of the relevant facts (see paragraph 11 above) and citing Articles 3 and 5 of the Convention, complained, in his observations on the admissibility and merits of his application case, for the first time about the conditions and unlawfulness of his pre-trial detention in relation to the criminal proceedings that had lasted from October 2008 to April 2009.

C. Complaints introduced on 25 November 2019

19. On 25 November 2019 the first, third and fourth applicants, relying on various provisions of the Convention, complained for the first time, in their additional submissions on the admissibility and merits of the case, that the respondent State had lacked in candour in its attempts to investigate the

war crimes allegedly committed by its armed forces against the ethnic Ossetian inhabitants of South Ossetia during the armed conflict of 8-12 August 2008.

THE LAW

A. Joinder of the applications

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

B. The complaints lodged in the original application forms

21. All five applicants made a number of complaints in relation to the events that occurred between 8 and 9 August 2008, that is during the active phase of the armed conflict between Georgia and the Russian Federation, under Articles 2, 3, 5, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1 (see paragraph 17 above). The relevant parts of these provisions read as follows:

Article 2 § 1

"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally ..."

Article 3

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

Article 5 § 1

"1. Everyone has the right to liberty and security of person. ..."

Article 8 § 1

"1. Everyone has the right to respect for his private and family life [and] his home ..."

Article 13

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

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... association with a national minority..."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. ..."

1. The Government's submissions

22. The Government submitted that the applications were inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention. That is, the applicants had lodged their complaints with the Court without trying to obtain redress at the national level first, either by lodging criminal complaints or suing the respondent State's Ministry of Defence for the wrongs allegedly inflicted on them in the course of the military clashes. They argued that there were no circumstances absolving the applicants from the obligation to put their grievances to the domestic authorities, and that the applicants' personal opinion of the effectiveness of the domestic remedies could not be decisive. Alternatively, the Government submitted that the applications should be declared inadmissible for being manifestly ill-founded or constituting an abuse of the right of individual petition because the applicants had not provided any evidence in support of their claims. In actual fact, the five applications in issue were part of a politically orchestrated attempt to overload the Court with hundreds of unsubstantiated applications, represented by a small group of lawyers practising in the Russian Federation, for post-war propaganda purposes – to create a false image of the respondent State being a malicious violator of the Convention and/or of international humanitarian law. Such political purposes had nothing to do with the essence of the right of individual petition, as it was to be understood under Article 34 the Convention.

23. Even assuming that the acts complained of by the applicants had occurred within the specified time frame of 8 to 9 August 2008, the Government submitted that they could not be held imputable to the respondent State because it could not be established beyond reasonable doubt that they had been caused by the Georgian armed forces. To that end, the Government submitted that the respondent State had not been the only military force present in the conflict area at the material time; they submitted a copy of internal combat reports and other evidence to show that the South Ossetian militia had, as early as 7 August, started heavy shelling of numerous villages in the zone, as well as checkpoints of the Georgian peacekeeping troops, while the Russian armed forces had launched a large-scale military offensive in the early morning of the following day. The Government submitted statements by Russian military servicemen who had participated in the armed clashes, according to which the Russian army had shelled Tskhinvali and its suburbs on 8 and 9 August with the Russian-produced rocket-launching system Grad for the purpose of putting Georgian forces, who had at that time been in full control of Tskhinvali, at a military disadvantage and preparing the zone for an offensive by their ground forces. The Government also submitted documents concerning the artillery and other rocket-launching systems that the Georgian armed forces had been using before and during the August war. According to those documents, the Georgian army had not been equipped with the

Russian-produced Grad artillery systems but had been using the DANA, self-propelled artillery pieces which had been procured from the Czech Republic. As regards the treatment of the civilian residents of Tskhinvali by Georgian soldiers, the Government, referring to the relevant excerpts of a fact-finding report issued by Human Rights Watch (see paragraph 16 above), argued that there existed no credible reports of ill-treatment of civilians by military personnel of the respondent State.

2. The applicants' submissions

24. The applicants submitted that there existed special circumstances absolving them from the obligation to exhaust domestic remedies and that, in any event, the domestic remedies advanced by the Government – lodging criminal complaints and suing the respondent State for the disproportionate use of military force against the civilian residents of Tskhinvali – were ineffective. They submitted that they had been afraid to travel to Tbilisi or otherwise get in direct contact with the central authorities for fear of persecution on the basis of either their Russian nationality or their Ossetian ethnic origins. They further added that they had not been able to lodge their complaints by mail either, as the postal services between Georgia and Russia had been suspended for several months in the immediate aftermath of the August war. As regards the ineffectiveness of the suggested criminal remedy, the applicants stated, among other arguments, that the respondent State's investigative authorities should not have remained passive and waited to receive their criminal complaints but, on the contrary, should have opened criminal cases in respect of the killing of their relatives of their own motion. As to the civil remedy suggested by the Government, the applicants submitted that they did not need to exhaust that remedy because they did not wish to obtain damages but rather to have the military servicemen in question criminally prosecuted and punished for the crimes they had committed.

25. The applicants argued that the Georgian armed forces' offensive on Tskhinvali in the night of 7 to 8 August 2008 had mostly consisted of shelling the city with multiple Grad rocket launchers, and that during the daytime of 8 August 2008, after the Georgian ground forces had taken control of Tskhinvali, they had intentionally used lethal force against the city's civilian population. The applicants submitted that, before conducting an attack on the city, the Georgian forces should have warned the civilian population and allowed them to leave Tskhinvali by means of a humanitarian corridor. The applicants further submitted that it could be established beyond reasonable doubt that the military actions that had entailed a breach of their various rights under the Convention were attributable to the Georgian armed forces. They claimed, without submitting any evidence, that on 8 and 9 August 2008 the Georgian armed forces had been the only military power in control of Tskhinvali and its surrounding

areas, that the Russian armed forces had been stationed at least ten kilometres further to the north, and the South Ossetian militia could hardly be accused of having shot at their own fellow residents of Tskhinvali. Referring to the Court's relevant case-law, the applicants submitted that an indiscriminate shelling and aerial bombing of civilians could not be acceptable in a democratic society or reconcilable with any of the grounds regulating the use of force set out in Article 2 § 2 of the Convention or under the customary rules of international humanitarian law (see *Benzer and Others v. Turkey* (revision), no. 23502/06, § 184, 13 January 2015).

3. The third party's submissions

26. The Government of the Russian Federation submitted that the respondent State had initiated the international armed conflict by attacking the civilian population of Tskhinvali and the largely unarmed Russian peacekeepers stationed in the city's surrounding areas. As regards the exhaustion of domestic remedies, the third party stated that the applicants should be absolved from the obligation to pursue them given the special circumstances of the cases at hand. The Russian Government further argued that the Georgian Government had failed to prove that the criminal and civil remedies put forward were effective. As to the question of whether or not the acts constitutive of the alleged violations of the applicants' various rights under the Convention had been caused by acts of the Georgian armed forces, the Russian Government stated that the burden of proof rested on the Georgian Government, and that, in the absence of any evidence to the contrary, the Court should make negative inferences as to the responsibility of the respondent State for the acts in question.

4. The Court's assessment

27. The Court notes at the outset that the cases raise an issue under Article 1 of the Convention concerning the respondent State's jurisdiction in the circumstances of the armed conflict at the origin of the matters complained of.

28. Article 1 of the Convention reads as follows:

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

29. The Court reiterates that the exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention. From the standpoint of public international law, the words "within their jurisdiction" in Article 1 of the Convention must be understood to mean, *inter alia*, that jurisdiction is presumed to be exercised normally throughout the State's territory. However, this presumption may be limited in exceptional

circumstances, particularly where a State is prevented from exercising its authority in part of its territory, which may be as a result of (i) military occupation by the armed forces of another State which effectively controls the territory concerned, (ii) acts of war or rebellion, or (iii) the acts of a foreign State supporting the installation of a separatist State within the territory of the State concerned (compare *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, §§ 311-12, ECHR 2004-VII, with further references). The above-mentioned limitation of the "normal" exercise of jurisdiction means in practice that when a State is prevented from exercising authority over a territory due to exceptional circumstances, it does not lose the jurisdictional link within the meaning of Article 1 of the Convention altogether but rather has its responsibility under the Convention significantly reduced to discharging a number of positive obligations, such as, for instance, taking diplomatic, economic, judicial or other measures (see *Ilaşcu and Others*, cited above, 333 and 335, and also *Sargsyan v. Azerbaijan* [GC], no. 40167/06, §§ 130 and 131, ECHR 2015).

30. The Court observes that the acts allegedly constitutive of violations of the applicants' various Convention rights took place in and around Tskhinvali, the administrative capital of South Ossetia, on 8 and 9 August 2008. These two days fall within the five-day international armed conflict that took place between the military forces of Georgia and the Russian Federation mostly in South Ossetia, but also in Abkhazia, as well as in undisputed Georgian territory, between 8 and 12 August 2008 (see *Georgia v. Russia (II)*, ([GC] (merits), no. 38263/08, §§ 35-40, 51, 109-11 and 113, 21 January 2021). Consequently, whilst these regions clearly fall within the respondent State's internationally recognised borders and thus are covered by the notion of its territorial jurisdiction under Article 1 of the Convention (compare, *mutatis mutandis*, *Assanidze v. Georgia* [GC], no. 71503/01, §§ 108-09, 134, 139 and 141, ECHR 2004-II), the Court must answer the question of whether or not there existed a valid limitation of the normal exercise of that jurisdiction. This major question must be addressed against the reality of the "acts of war" that took place in South Ossetia on the above-mentioned days in August 2008.

31. In this respect, the Court observes that it has already comprehensively examined the active phase of the hostilities (from 8 to 12 August 2008) between Georgia and the Russian Federation in the case of *Georgia v. Russia (II)* (cited above, §§ 105-44). As was emphasised in that judgment, that inter-State case was the first time since the decision in *Banković and Others v. Belgium and Others* ((dec.) [GC], no. 52207/99, ECHR 2001-XII) that the Court had been required to examine the question of jurisdiction in relation to military operations in the context of an international armed conflict. Having noted that the notion of "jurisdiction" contained in Article 1 was a threshold criterion for the question of attributability of alleged violations to a Contracting State, the Court went on

to conclude 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 [the] area ..., but also excludes any form of 'State agent authority and control' over individuals" (ibid., §§ 129 and 137). With respect to the latter, the Court underscored that "State agent authority and control" can hardly materialise during an international armed conflict which consists of massive bombing, shelling and ground attacks effected by the opposing sides' armed forces for the purpose of putting each other *hors de combat*, because such a large-scale war cannot be equated with isolated and specific military actions involving an "element of proximity" (ibid., §§ 127-38).

32. The Court considers that the same considerations, which exclude an "element of proximity" between military actions and the alleged violations of individual victims' various rights under the Convention, apply equally to the presumption of the "normal exercise" by the respondent State of its territorial jurisdiction over Tskhinvali and other conflict-stricken areas of South Ossetia (see paragraph 29 *in fine* above for the general case-law principle concerning the possibility of limitation of territorial jurisdiction by "acts of war or rebellion"). Indeed, 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 Georgian army proper and the effects produced on the applicants (contrast *Solomou and Others v. Turkey*, no. 36832/97, § 25, 24 June 2008, and *Andreou v. Turkey*, no. 45653/99, §§ 48-50, 27 October 2009). In this connection, and as an additional illustration of the level of disarray unavoidably reigning during such large-scale international armed conflicts, it cannot go unnoticed that while the applicants claim that they and their relatives were victims of shelling by the Russian-produced artillery system Grad, the respondent Government submitted evidence, which was not disputed by the applicants, suggesting that the Russian armed forces might also have used the same artillery system to shell Tskhinvali for the purpose of stopping the Georgian ground forces' advance in Tskhinvali on 8 and 9 August (see paragraphs 15 and 23 above, and compare, *mutatis mutandis*, *Şirin Yılmaz v. Turkey*, no. 35875/97, §§ 71-76, 29 July 2004, where the Court, faced with a complaint about a killing by artillery shells during a non-international armed conflict, was unable to conclude that the killing was, beyond reasonable doubt, imputable to the security forces of the respondent State). Then again, while the applicants assert that the civilian population of Tskhinvali had been singled out by Georgian soldiers

(see paragraphs 17 and 25 above), such allegations seem to be unsupported by the available fact-finding materials (see paragraph 16 above). The Court considers that these and other possible contradictions and inconsistencies between the military actions which actually occurred in the conflict zone and the effects of those actions on individual victims can be explained by such complexities as the exceptionally large number of alleged victims and contested incidents, the magnitude of the evidence produced, the difficulty in establishing the relevant circumstances and the fact that such situations are predominantly regulated by legal norms other than those of the Convention, notably international humanitarian law and/or the law of armed conflict (compare *Georgia v. Russia (II)*, cited above, § 141).

33. The Court thus concludes that the events that unfolded in South Ossetia and other areas of Georgia, including in the so-called "buffer zone", where the massive fighting between the armed forces of the Russian Federation and the respondent State took place between 8 and 12 August 2008, were "acts of war", in a context of chaos, effectively preventing the respondent State from exercising its authority over the areas in question for the duration of the armed conflict. In the same way as those "acts of war" or, borrowing the language of the inter-State judgment, the "active phase of the hostilities" did not fall within the extra-territorial jurisdiction of the Russian Federation, one side of the international armed conflict, the same events cannot be considered, for the same reasons as indicated in that judgment (*Georgia v. Russia (II)*, cited above, §§ 133-44), as attracting the normal exercise of the territorial jurisdiction of Georgia, the other side of the conflict, merely because the territory in which the hostilities took place was formally Georgian. Any other conclusion would, in the eyes of the Court, go against the spirit of the Grand Chamber's ruling in the above-mentioned inter-State case, where the international armed conflict between the two Contracting States, as well as the repercussions of this conflict for the overall jurisdictional test contained in Article 1 of the Convention, were already comprehensively examined.

34. Following the logic of the above-mentioned *Ilaşcu* approach, Georgia's inability to exercise State authority over the relevant territories during the active phase of the hostilities is to be understood as a limitation of the normal exercise of the respondent State's territorial jurisdiction over the war-stricken territories (see *Ilaşcu and Others*, cited above, § 312). Thus, as matter of principle, the respondent State was still expected under the Convention to take diplomatic, economic, judicial or other measures (see paragraph 29 *in fine* above). However, the Court considers that it would be unrealistic to expect the respondent State to have taken any such measures during the active phase of the hostilities, in a context of chaos and confusion. Given the ongoing massive armed conflict, such positive measures of a public order nature were, on the one hand, impossible to implement and, on the other, of no real value, as they could not have

meaningfully contributed to the protection of the applicants' rights in times of war.

35. It follows that the applicants' various complaints under Articles 2, 3, 5, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1, which stem from the acts of war that took place on the territory of Georgia between 8 and 9 August 2008, must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. The complaints introduced on 7 April 2011 and 25 November 2019

36. As regards the additional complaints introduced by the first, third and fourth applicants (see paragraph 19 above), the Government objected that those fresh complaints did not fall within the scope of the original applications which were lodged with the Court on 28 August and 27 September 2008, of which they had been notified pursuant to Rule 54 § 2 (b) of the Rules of Court on 6 January 2009 and 23 March 2010, and on which the parties had exchanged final observations. The relevant applicants did not provide any comments in reply to the Government's objection.

37. The Court reiterates that if, after the notification of an application to the respondent Government, the applicant introduces new grievances that cannot be considered as an elaboration of his or her original complaints and on which the parties have commented, the Court will not normally take these fresh matters into consideration (see, among many other authorities, *Kovach v. Ukraine*, no. 39424/02, § 38, ECHR 2008, and *Saghinadze and Others v. Georgia*, no. 18768/05, § 72, 27 May 2010). However, even assuming that the first, third and fourth applicants' complaints about (i) the latter applicant's pre-trial detention and (ii) the respondent State's unwillingness to shed light on the alleged war crimes committed in South Ossetia fall within the scope of these applications, these new complaints are in any event belated. Thus, whilst the fourth applicant had been released from the contested detention in April 2009, he introduced his complaint with the Court on 7 April 2011 (see paragraphs 11 and 18 above). Then again, whilst the respondent State had finally discontinued the relevant domestic investigation as early as March 2015, the relevant complaints were lodged on 25 November 2019 (see paragraphs 12 and 19 above).

38. Accordingly, these complaints have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 21 October 2021.

Stanley Naismith Registrar	Jon Fridrik Kjølbro President

Appendix

No.	Application no.	Case name	Lodged on	Applicant Date of Birth
1.	45431/08	*Shavlokhova v. Georgia*	02/09/2008	**Ms Ariana SHAVLOKHOVA** ("the first applicant") 13/04/1979
2.	50669/08	*Tekhova v. Georgia*	01/09/2008	**Ms Ilona TEKHOVA** ("the second applicant") 23/01/1978
3.	55291/08	*Alborova v. Georgia*	02/09/2008	**Ms Yuliya ALBOROVA** ("the third applicant") 02/08/1941
4.	20517/09	*Bekoyev v. Georgia*	27/09/2008	**Mr Akhsartak BEKOYEV** ("the fourth applicant") 10/08/1950
5.	24964/09	*Dzhioyeva v. Georgia*	22/09/2008	**Ms Khadizat DZHIOYEVA** ("the fifth applicant") 07/07/1948