



Russia responsible for unlawful arrests and detention of two men in Abkhazia

In today's **Chamber** judgment¹ in the case of [O.J. and J.O. v. Georgia and Russia](#) (applications nos. 42126/15 and 42127/15) the European Court of Human Rights held, unanimously, that there had been:

- a violation of Article 5 § 1(a)(c) (right to liberty and security), and

- a violation of Article 6 §§ 1 and 3(c) (right to a fair trial)

of the European Convention on Human Rights by the Russian Federation. It found no violation by Georgia.

The case concerned the arrest, detention and sentencing of two men on spying charges in the Autonomous Republic of Abkhazia -- the region in Georgia which is currently outside the *de facto* control of the Georgian Government.

The Court found that, while Georgia had exercised no control over Abkhaz territory at the time (2012-2016), it had jurisdiction by virtue of the events having taken place on its territory recognised under public international law. As regards Russia, referring to its findings in [Georgia v. Russia \(II\) \(IGC\)](#), no. 38263/08, §§ 174, 175, 295 and 312, 21 January 2021), the Court concluded that Russia had exercised continued effective control over the area and thus had jurisdiction in respect of the matters complained of.

In terms of apportioning responsibility for the violations of the Convention, the Court found Russia responsible for the violations and not Georgia. The Court specifically considered that the Georgian authorities had taken pertinent measures within their power to continue to guarantee the rights and freedoms under the Convention to those living in Abkhazia. Furthermore, they had enabled Mr O.J.'s and Mr J.O.'s release following ten months of targeted and intense negotiations, the Russian authorities having made no effort to address the applicants' complaints once they had been notified of them.

Principal facts

The applicants, Mr O.J. and Mr J.O., are Georgian nationals, who were born in 1977 and 1964 respectively.

Both of them were arrested in March 2012 in Mr J.O.'s house in Tagiloni, a village in Abkhazia – the region in Georgia which is currently outside the *de facto* control of the Georgian Government –, by the *de facto* security services, who found two hand grenades and a hunting knife in the house when they searched it. During their detention they were questioned about their ties with the Georgian Department of Military Intelligence and with one of its alleged informants. Criminal proceedings for espionage were brought against them and they were subsequently found guilty as charged by the *de facto* Supreme Court of Abkhazia, which found that in early 2011 they, acting under the instructions of the Military Intelligence Department of the Georgian Ministry of Defence, had recruited D.K. – a

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Russian border guard based at Tagiloni village – as an informant and had themselves served as intermediaries for transmitting information to the Georgian authorities. Mr O.J. was sentenced to 11 years and six months’ imprisonment and Mr J.O. to 13 years’ imprisonment, the latter having been found guilty of an additional charge of unlawful possession of ammunitions and a cold weapon.

According to the applicants, they had been ill-treated by the *de facto* security services at the time of their arrest and during their questioning. They alleged that they had been beaten while handcuffed to chairs and subjected to waterboarding. Mr O.J. had allegedly had his teeth loosened – but not removed – by means of forceps used for tooth extraction and had been threatened with rape and told that footage of it would be uploaded on the Internet. Mr J.O. had had a rope tied around his neck, simulating strangulation. Subsequently, and on advice from the lawyers assigned to them, both applicants had admitted to having ties to the Department of Military Intelligence.

The two men alleged that, although they had told the *de facto* Supreme Court that their confessions had been extracted under torture, those statements had been used as part of the evidence used to convict them.

Both men were released on 10 March 2016 following interventions by the Georgian authorities and, in particular, negotiations with the *de facto* Abkhaz authorities.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of torture), 5 § 1 (right to liberty and security), 6 § 1 and 6 § 3 (right to a fair trial), and 13 (right to an effective remedy) of the Convention, Mr. O.J. and Mr J.O. claimed that they were ill-treated by the *de facto* security services during their arrest and during part of their allegedly unlawful detention. They maintained that they had not received a fair hearing and that they had had no effective remedy for their complaints.

Both applications were lodged with the European Court of Human Rights on 21 August 2015. The Court decided to examine them jointly in a single judgment.

The Court’s procedure for processing of applications against Russia can be found [here](#).

Judgment was given by a Chamber of seven judges, composed as follows:

Arnfinn **Bårdsen** (Norway), *President*,
 Jovan **Ilievski** (North Macedonia),
 Egidijus **Kūris** (Lithuania),
 Lado **Chanturia** (Georgia),
 Saadet **Yüksel** (Türkiye),
 Lorraine **Schembri Orland** (Malta),
 Diana **Sârcu** (the Republic of Moldova),

and also Hasan **Bakırcı**, *Section Registrar*.

Decision of the Court

In so far as the complaints concerned Russia, the Court established that it had jurisdiction to deal with the case as the facts giving rise to the alleged violations of the Convention had taken place before 16 September 2022, the date on which Russia ceased to be a Party to the European Convention.

In determining whether the applicants fell within the jurisdiction of either or both Georgia and Russia, within the meaning of Article 1 of the Convention, the Court reiterated that it was a question of fact whether a contracting State exercised effective control over an area. Although Georgia had no effective control over the acts of the *de facto* authorities in Abkhazia, it had jurisdiction over the

area because Abkhazia was recognised under public international law as part of Georgia's territory. Georgia's obligations in this context were however limited to pursuing whatever measures were in its power to take. As regards Russia, referring to its findings in [Georgia v. Russia \(II\)](#) ([GC], no. 38263/08, §§ 174, 175, 295 and 312, 21 January 2021), the Court concluded that Russia had exercised continued effective control over the area. Therefore, the matters complained of fell within Russia's jurisdiction under Article 1 of the Convention.

Article 3

Although Mr O.J. and Mr J.O. had provided a rather detailed account of their alleged ill-treatment, no material, such as for example post-detention medical certificates or statements made by their lawyer or family members, had been submitted that enabled the Court to find that they had been subjected to the ill-treatment that they alleged. Their complaints under Article 3 were therefore rejected.

Article 5 § 1

The Court considered that the applicants' complaint that they had been detained unlawfully in Abkhazia concerned their detention pending trial and after their conviction on 16 March 2013 and fell to be examined under Article 5 § 1 (a) and (c) of the Convention.

It was well established in the Court's case-law that any deprivation of liberty had to have a legal basis in national law and be compatible with the rule of law. In [Mamasakhlisi and Others v. Georgia and Russia](#) the Court had examined complaints concerning unlawful arrest and detention pending trial and following conviction, ordered by the *de facto* Abkhaz authorities in the period before 14 February 2007. Referring to the lack of information provided by the Governments about the specific provisions of national law that had served as a legal basis, to the scarcity of official sources of information concerning the legal and court system in Abkhazia as well as to the absence of a basis for assuming that there was a system reflecting a judicial tradition compatible with the Convention in the region similar to the one in the rest of the Georgia, the Court had found that the applicants' arrest and detention had been unlawful in violation of Article 5 § 1 (a) and (c) of the Convention.

In the absence of any new and pertinent information to the contrary, the Court considered that the conclusion reached in *Mamasakhlisi and Others* was also valid in this case. Accordingly, there had been a violation of Article 5 § 1 (a) and (c) of the Convention.

The Court had concluded in *Mamasakhlisi and Others* that, in respect of the period before 14 February 2007, Georgia had deployed sufficient efforts to re-establish its authority over the Abkhaz region of Georgia, Georgian authorities having continued to assert their sovereignty over Abkhaz territory, both before and after Georgia's ratification of the Convention, and both internally and internationally. It had never recognised Abkhazia as an independent State and had never provided support to the *de facto* Abkhaz authorities.

In view of the information submitted by the Georgian Government in respect of the period after 2008, the Court found that Georgia had taken pertinent measures within its power, deploying domestic and international efforts sufficiently aimed at continuing to guarantee the rights and freedoms under the Convention to those living in Abkhazia. The Court observed that it was the Georgian authorities who had enabled Mr O.J.'s and Mr J.O.'s release following ten months of targeted and intense negotiations, the Russian authorities having made no effort to address the applicants' complaints once they had been notified of them. As Russia had exercised effective control over Abkhazia during the period in question, the Court considered that Russia was responsible for the violation of Article 5 § 1 (a) and (c) in respect of both applicants.

Article 6 §§ 1 and 3

The Court had already held, in *Mamasakhlisi and Others*, that, as there was no reason to assume that there was a system reflecting a judicial tradition compatible with the Convention in Abkhazia, the *de facto* Abkhaz courts could not qualify as a “tribunal established by law” for the purposes of Article 6 § 1 of the Convention. The Court saw no reason to find otherwise in this case. There had thus been a breach of Article 6 § 1 taken together with Article 6 § 3. Specifically, it found that Mr O.J. and Mr J.O. had not benefited from a fair hearing by an independent and impartial tribunal established by law, and they had not been given a proper opportunity to organise their defence and effectively benefit from the assistance of a lawyer. For the same reasons as set out in respect of the complaints under Article 5 § 1, the Court found no violation in respect of Georgia and a violation in respect of Russia.

Article 13

The Court did not consider it necessary to examine the applicants’ complaint separately under this Article.

Just satisfaction (Article 41)

The Court held that Russia was to pay Mr O.J. and Mr J.O. 16,000 euros (EUR) each in respect of non-pecuniary damage and dismissed their claims in respect of costs and expenses.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court’s press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Jane Swift (tel.: + 33 3 88 41 29 04)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Neil Connolly (tel.: + 33 3 90 21 48 05)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.