



Russia responsible for unlawful arrests, ill-treatment and detention of two vulnerable men by *de facto* Abkhaz authorities

In today's Chamber judgment¹ in the case of **Mamasakhlisi and Others v. Georgia and Russia** (application nos. 29999/04 and 41424/04) the European Court of Human Rights held, unanimously, that there had been, in respect of the first and third applicants:

- a violation of Article 3 (prohibition of inhuman or degrading treatment),
- 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 and no violation by Georgia.

The case concerned events prior to the armed conflict in 2008 between Georgia and Russia and, in particular, Mr Mamasakhlisi's and Mr Nanava's arrests in 2001 and 2003 respectively, and their alleged ill-treatment, conviction and continued detention by the *de facto* Abkhaz authorities. The Court found that, while Georgia had exercised no control over Abkhaz territory at the time, it had jurisdiction by virtue of the events having taken place on its territory recognised under public international law. As regards Russia, the Court concluded that, due to its sustained and substantial political and economic support for Abkhazia and dissuasive military involvement, Russia had exercised effective control and decisive influence over the area and thus had jurisdiction in respect of the matters complained of.

The Court found that Mr Mamasakhlisi's and Mr Nanava's arrests and detention had been unlawful. Mr Mamasakhlisi had been ill-treated and detained in inhuman and degrading conditions. Neither of the applicants had received adequate medical attention or benefited from a fair hearing by an independent and impartial tribunal established by law. They had not been able to organise their defence and effectively benefit from the assistance of a lawyer.

In terms of apportioning responsibility for the violations of the Convention, the Court found Russia responsible for the violations and no violation by Georgia. The Court specifically considered that the Georgian Government had done everything within its power to secure Mr Mamasakhlisi's and Mr Nanava's rights under the Convention but had come up against the persistent refusals of the *de facto* Abkhaz authorities to cooperate and the inactivity of the Russian authorities to take necessary action to address the complaints once they had been notified of them. As a result of its continued support for Abkhazia during the relevant period, Russia was responsible for the violations of the applicants' rights.

Principal facts

The first applicant, Levan Mamasakhlisi, is a Georgian national who was born in 1980 in Gagra, in the Autonomous Republic of Abkhazia, Georgia, and lives in Tbilisi. The second applicant, Dinara

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.

Mamasakhlisi, his grandmother, was a Georgian national born in 1938 in the Khobi District, Georgia; she died in 2011. The third applicant, Grigol Nanava, was a Georgian national who was born in 1922 and died in 2006.

Mr Mamasakhlisi and Mr Nanava were each arrested by the *de facto* Abkhaz security forces in August 2001 and June 2003 respectively. Mr Mamasakhlisi was in hospital having sustained serious injuries at his mother's flat in Abkhazia, Georgia, when a handmade grenade had exploded in his hands, blowing off his right hand and three fingers of his left hand and injuring his chest, abdomen and both eyes; the 81-year-old Mr Nanava was crossing the border between Abkhazia and the rest of Georgia when he was apprehended. They were found guilty by the *de facto* Abkhaz courts, Mr Mamasakhlisi of treason (among other things) and Mr Nanava of terrorism, and were sentenced to twelve and six years' imprisonment respectively. They were both eventually pardoned by the *de facto* president of Abkhazia on humanitarian grounds and released in February 2007 and May 2005 respectively.

Dinara Mamasakhlisi was Levan Mamasakhlisi's grandmother. He was her only relative and both of them claimed that they were very close to each other.

An investigation and criminal case opened by the Office of the Prosecutor General of Georgia in 2006 established that Mr Mamasakhlisi had been subjected to violence, humiliation and torture to make him plead guilty to treason and terrorism committed as an undercover agent of the Georgian Government. As a result, in November 2006, the head of the *de facto* Security Service of Abkhazia in Sukhumi, his deputy and a prosecutor were criminally charged and in March 2008 the Sukhumi District and City Court (a legitimate court of the Autonomous Republic of Abkhazia, located outside Abkhaz territory) found them guilty of torturing and illegally imprisoning Mr Mamasakhlisi.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), and 6 (right to a fair trial), Mr Mamasakhlisi and Mr Nanava complained that they had been arrested and detained unlawfully, had been ill-treated during their questioning, had been held in inhuman and degrading conditions without adequate medical attention, and had not had a fair trial. They also complained of a breach of Article 13 (right to an effective remedy) and a breach of Article 2 of Protocol No. 7 to the Convention (right of appeal in criminal matters) as a result of a failure to have their conviction and sentences reviewed by a higher tribunal. Relying on Article 8 (right to respect for private and family life), all three applicants complained that they had been unable to see their family members.

The applications were lodged with the European Court of Human Rights on 3 August 2004 (application no. 29999/04) and on 19 November 2004 (no. 41424/04).

They were initially notified to the respondent Governments in 2006, after which the Georgian Government withdrew their observations made in 2008 in their entirety. The parties were eventually invited, in the second half of 2016, to submit their consolidated observations at the same time. Thereafter, each party commented on the other's submissions and on the applicants' claims for just satisfaction.

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),
Pauliine Koskelo (Finland),
Lado Chanturia (Georgia),

Lorraine Schembri Orland (Malta),
Diana Sârcu (the Republic of Moldova),

and also Hasan Bakırcı, *Section Registrar*.

Decision of the Court

The Court joined the two applications due to their similar subject matter.

Regarding the two respondent Governments' objections of non-exhaustion of **domestic remedies**, the Court considered that neither of them had proven that a remedy had been available that would have been capable of providing redress in respect of the applicants' Convention complaints and of offering reasonable prospects of success. It therefore dismissed those objections.

Regarding the question of whether the **six-month time-limit** to submit their applications had been respected by the applicants, given that they had only applied to the Court in the second half of 2004 but had been detained in August 2001 and June 2003 respectively, the Court found as follows. It had acknowledged in the past that the psychological effects of torture and other ill-treatment may render people incapable of instigating proceedings without delay. Because of the exceptional circumstances, the Court accepted that, after their arrests, Mr Mamasakhlisi's and Mr Nanava's vulnerability might well have made them feel helpless and unable to influence what was happening to them. Also, bearing in mind the context following an armed conflict in which no political solution had been reached, they might have been waiting for developments that could resolve crucial factual or legal issues. With that in mind and the absence of effective domestic remedies, the Court considered that there was a plausible and acceptable explanation for the delay in lodging the applications with the Court.

The Court also observed that, as regards the complaints of unlawful continued detention in poor conditions and in the absence of medical care, the applications had in any case not been submitted outside the six-month time-limit since the situations complained of had not come to an end at the time when the applicants had applied to the Court.

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. The Court found that Abkhazia had only been able to survive because of Russia's sustained and substantial political and economic support, and military influence that had been dissuasive to the point of having been decisive in practice. Abkhazia's high level of dependency on Russian support during the period in question enabled the Court to conclude that Russia had exercised effective control and decisive influence over Abkhaz territory. Therefore, the matters complained of fell within Russia's jurisdiction under Article 1 of the Convention.

The Court also 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.

Article 3

The Court noted that hardly any medical information had been provided on Mr Mamasakhlisi's state of health during the time he spent in detention. It seemed that no medical examinations or related reports, or diagnoses and details of prescribed treatment, had been drawn up by the authorities. There was no sign of a prison medical file on him, and no independent medical personnel had been

allowed to examine him. The Court was therefore not satisfied that he had received adequate medical attention during his detention and, upon assessing Mr Nanava's complaint, held the same for Mr Nanava.

Regarding the conditions in the temporary detention facilities in which Mr Mamasakhlisi had been held, namely the Security Service IVS and the Sukhumi IVS, the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report, following the CPT's visit to Abkhazia in 2009, corroborated his allegations. Accordingly, in the absence of proof from either Government refuting the applicant's related allegations, there had also been a violation of Article 3 in that respect.

As regards his allegations of ill-treatment, the Court noted that, following a series of medical examinations carried out by a team of doctors between February and August 2007, a final medical report issued in 2008 by a medical facility specialising in rehabilitation for victims of torture and violence diagnosed Mr Mamasakhlisi with post-traumatic stress disorder due to trauma experienced in detention. The doctors found that the applicant's condition was consistent with his allegations of having been subjected to systematic physical and psychological torture. The Court found a violation of Article 3 in that respect, having drawn inferences from the total lack of any evidence refuting the applicant's related complaints. For Mr Nanava, the Court did not have enough elements, such as a post-release medical certificate containing similar findings, to come to the same conclusion.

The Court considered that the Georgian Government had done everything within its power to secure Mr Mamasakhlisi's and Mr Nanava's rights under the Convention but had come up against the persistent refusals of the *de facto* Abkhaz authorities to cooperate and the inactivity of the Russian authorities to take necessary action to address the complaints once they had been notified of them. There had therefore been no violation of Article 3 in respect of both applicants by Georgia.

As Russia had exercised effective control over Abkhazia during the period in question due to its military, economic and political support, the Court considered that Russia was responsible for the violation of Article 3 in respect of both applicants.

Article 5

Neither of the parties had provided information to the Court about the specific provisions of domestic law that had served as the legal basis for the arrest and detention by the *de facto* Abkhaz authorities of Mr Mamasakhlisi and Mr Nanava. Furthermore, the Court noted the scarcity of official sources of information concerning the legal and court system in Abkhazia – a fact that made it difficult to obtain a clear picture of the applicable laws. In the absence of such information, the Court was unable to determine whether the legal provisions applied to the applicants were compatible with the requirements under Article 5 of the Convention. There was also no reason to assume that there was a system reflecting a judicial tradition compatible with the Convention in the region. The Court therefore concluded that the applicants' arrest and detention could not be considered "lawful" within the meaning of Article 5 § 1(c) and 5 § 1(a) of the Convention. There had therefore been a violation of those provisions.

As the situation in respect of the level and judicial system in Abkhazia could not be attributed to Georgia, the Court found that there had been no violation of Article 5 § 1(a) and (c) of the Convention by Georgia. On the other hand, as Russia had exercised effective control over the region, the Court found that there had been a violation of Article 5 § 1(a) and (c) of the Convention by the Russian Federation.

Article 6

As there was no reason to assume that there was a system reflecting a judicial tradition compatible with the Convention in Abkhazia, the Court held that the *de facto* Abkhaz courts could not qualify as a "tribunal established by law" for the purposes of Article 6 § 1 of the Convention. There had thus

been a breach of that provision taken together with Article 6 § 3. Specifically, it found that Mr Mamasakhlisi and Mr Nanava 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 in respect of Article 5, the Court found no violation in respect of Georgia and violation in respect of Russia.

Article 8

With a view to its case-law, the Court considered that no additional factors of dependence other than normal ties of affection existed between Mr Mamasakhlisi and his grandmother, both of whom were adults at the time of the events and did not form part of the same “core family”. Accordingly, Article 8 of the Convention was not applicable in their case, and that part of the application was declared inadmissible.

Mr Nanava’s complaint under Article 8 was linked to the ones already examined, and the Court did not consider it necessary to examine it separately.

Other Articles

As the applicants’ complaints under Article 13 and Article 2 of Protocol No. 7 were linked to the ones already examined, the Court did not consider it necessary to examine them separately.

Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Mamasakhlisi and Mr Nanava (the first and third applicants) 35,000 euros (EUR) each in respect of non-pecuniary damage and EUR 23,300 jointly in respect of costs and expenses.

The judgment is available only in English.

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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.