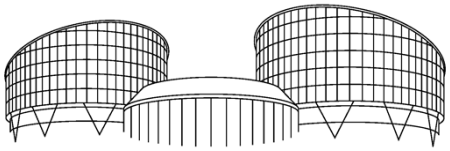

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF O.J. AND J.O. v. GEORGIA AND RUSSIA

(Applications nos. 42126/15 and 42127/15)

JUDGMENT

Art 1 • Jurisdiction of Russia and Georgia over Abkhazia • Effective control exercised by Russia over Abkhaz territory in view of strong Russian presence and Abkhaz authorities' dependency on the Russian Federation • Responsibility of Russia for acts of Abkhaz authorities in relation to detained applicants • Positive obligations of Georgia with regard to Abkhazia, a part of its territory over which at the time it had no control • No responsibility on the part of Georgia for acts as positive obligations satisfied
Art 5 § 1 (a) and (c) • Unlawful arrest and detention • Conclusions reached in *Mamasakhlisi and Others v. Georgia and Russia* applied • No information as to applicable laws and scarcity of official sources of information concerning legal and court system in Abkhazia • No basis for assuming existence of system in the region reflecting a judicial tradition compatible with the Convention
Art 6 § 1 (criminal) and 6 § 3 (c) • Conclusions reached in *Mamasakhlisi and Others v. Georgia and Russia* applied • Lack of fair hearing by an independent and impartial tribunal established by law • *De facto* Abkhaz courts could not qualify as a "tribunal established by law" • No real opportunity to organise defence and effectively benefit from the assistance of a lawyer throughout proceedings • Situation in respect of the legal and judicial system in Abkhazia could not be attributed to Georgia

STRASBOURG

19 December 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of O.J. and J.O. v. Georgia and Russia,

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Egidijus Kūris,
Lado Chanturia,
Saadet Yüksel,
Lorraine Schembri Orland,
Diana Sârcu*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the applications (nos. 42126/15 and 42127/15) against Georgia and Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 21 August 2015 by two Georgian nationals, Mr O.J. ("the first applicant") and Mr J.O. ("the second applicant"; together "the applicants"), who were born in 1977 and 1964 respectively;

the decision not to have the applicants' names disclosed;

the decision to give notice of the applications to the Georgian Government, represented by their Agent, Mr B. Dzamashvili, and to the Russian Government, represented successively by Mr G. Matyushkin, Mr M. Galperin and Mr M. Vinogradov, Representatives of the Russian Federation at the European Court of Human Rights;

the parties' observations;

the decision to uphold the Georgian Government's objection to examination of the applications by a Committee;

Having deliberated in private on 28 November 2023,

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

INTRODUCTION

1. The applications concern the applicants' complaints that they had been ill-treated during their arrest and subsequent unlawful detention in the Autonomous Republic of Abkhazia, Georgia, (hereinafter "Abkhazia") and that they had not received a fair hearing in the proceedings before the *de facto* Supreme Court of Abkhazia ("the *de facto* SCA"), which had sentenced them to imprisonment for "endangering the constitutional order of Abkhazia through the commission of espionage". The Court notes that the term "Abkhazia" refers to the region in Georgia which is currently outside the *de facto* control of the Georgian Government. The applications further concern the absence of an effective remedy in respect of their complaints.

2. On 16 March 2022 the Committee of Ministers of the Council of Europe, in the context of a procedure launched under Article 8 of the Statute

of the Council of Europe, adopted Resolution CM/Res(2022)2, by which the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022.

3. On 22 March 2022 the Court, sitting in plenary session in accordance with Rule 20 § 1 of the Rules of Court, adopted the "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights". It stated that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022.

4. On 5 September 2022 the plenary Court took formal notice of the fact that the office of judge in respect of the Russian Federation would cease to exist after 16 September 2022. This, as a consequence, entailed that there was no longer a valid list of *ad hoc* judges who would be eligible to take part in the consideration of cases where the Russian Federation was the respondent State.

5. By a letter of 8 November 2022, the Russian Government were informed, *inter alia*, that the Court intended to appoint one of the sitting judges of the Court to act as an *ad hoc* judge for the examination of applications against that State which the Court remained competent to deal with (applying by analogy Rule 29 § 2). The Russian Government were invited to comment on that arrangement by 22 November 2022 but they did not submit any comments.

6. Accordingly, in the present case the President of the Chamber decided to appoint an *ad hoc* judge from among the members of the composition, applying by analogy Rule 29 § 2 (b).

THE FACTS

I. DETENTION AND SENTENCING OF THE APPLICANTS

7. The applicants were represented by Mr D. Khachidze, a lawyer practising in Tbilisi.

8. The facts of the case may be summarised as follows on the basis of the submissions provided by the applicants.

9. The Georgian Government emphasised their inability to obtain information regarding the factual circumstances and stated that they did not challenge the applicants' assertions. The Russian Government did not contest the facts as described by the applicants but stated that no evidence of the involvement of Russian agents in the events complained of had been provided.

10. Both applicants were arrested on 15 March 2012 in the second applicant's house in Tagiloni, a village in Gali Region, Abkhazia, by a special-forces team of the *de facto* Abkhaz Security Services ("the *de facto*

security services"), who found two hand grenades and a hunting knife in the house after they had searched it.

11. Criminal proceedings for espionage were brought against the applicants and the *de facto* SCA subsequently delivered a judgment on 16 April 2013 finding both of them guilty as charged (see paragraph 1 above) and sentencing the first applicant to eleven years and six months' imprisonment and the second applicant to thirteen years' imprisonment. Specifically, the *de facto* SCA found that in early 2011 the applicants, acting under the instructions of the Department of Military Intelligence of the Ministry of Defence of Georgia ("the DMI"), had recruited D.K. – a soldier from the Russian military unit of border guards based at Tagiloni village – as an informant for the DMI and had themselves served as intermediaries for transmitting information to the Georgian authorities.

12. According to the applicants, they had been ill-treated by the *de facto* security services at the time of their arrest, as well as over several days thereafter while being questioned about their ties with the DMI and the Russian informant mentioned above. Both applicants had allegedly been beaten while handcuffed to chairs, as well as subjected to waterboarding. In addition, the first applicant had 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. The second applicant had had a rope tied around his neck in a simulation of strangulation.

13. The applicants were assigned lawyers on 19 March 2012 who advised them to confess in order to stop the beatings. Subsequently, both applicants declared that they had had ties to the DMI (see paragraph 11 above). On 23 March 2012 both applicants were charged with espionage (see paragraph 1 above) and the second applicant also with unlawful possession of ammunitions and a cold weapon.

14. According to the applicants, even though after their "confessions" the beatings had become less frequent, they had continued to be ill-treated while being questioned twice a week by the *de facto* security services and by Russian military staff working for the Russian Federal Security Service.

15. The applicants spent the first six months of their detention at the *de facto* security services' premises in Sukhumi and the following three months at the temporary detention facilities of the *de facto* Abkhaz Ministry of the Interior in Sukhumi. They were then transferred to Dranda Prison where their trial took place.

16. It appears that at some point in time D.K. (see paragraph 11 above) was arrested and charged with high treason in Russia. During the criminal proceedings against him, he allegedly confessed that he had served as an informant for the DMI and incriminated the applicants.

17. According to the applicants, although they had told the *de facto* SCA that their confessions had been extracted under torture, the *de facto* SCA had relied on those statements as part of the evidence used to convict them.

18. An appeal against the judgment was in principle possible within a ten-day period, as indicated in the *de facto* SCA's judgment; however, considering that an appeal would be futile, the applicants did not pursue it.

19. According to the applicants, the Georgian authorities had been informed of their detention and ill-treatment from the early days after their arrest.

20. The applicants' family members repeatedly reached out to officials at the Ministry of Defence, who repeatedly assured them orally that all measures had been taken to secure the applicants' release. In addition, on 6 February 2015 relatives of the applicants wrote a letter addressed to the President of Georgia, the Prime Minister and the State Minister for Reconciliation and Civic Equality ("the State Minister"). The information was subsequently passed on to the Chief Public Prosecutor, the Ministry of Foreign Affairs and the DMI.

21. On 20 February 2015 the first applicant's wife received a reply from the State Minister's office informing her that consultations concerning the applicants were underway and that she would be informed of any developments. Later in 2015 the first applicant's sister wrote a letter to the State Minister. On 4 August 2015 the State Minister's office replied, informing her that there were some "positive indications" concerning the applicants and again assuring her that the family would be informed in due course of further developments.

22. Both applicants were released on 10 March 2016 following interventions by the Georgian authorities and, in particular, negotiations they had started with the *de facto* Abkhaz authorities in May 2015 (see paragraph 36 below).

II. RELATIONS BETWEEN THE RESPONDENT STATES AND THE *DE FACTO* ABKHAZ AUTHORITIES

A. Relations between the Russian Federation and the *de facto* Abkhaz authorities

1. The applicants' submissions

23. The applicants submitted that the Russian Federation had been exercising effective control over the territory of Abkhazia through its military forces since 1993.

2. The Georgian Government's submissions

24. The Georgian Government submitted that the *de facto* Abkhaz authorities had had Russia's continued and decisive support to the extent that they had survived and continued to survive only by virtue of Russian military, economic, financial and political support. In particular, Abkhazia had been

absorbed into Russia's military, security, political, economic, social and humanitarian sectors. This had been demonstrated more specifically by the application of the Law on Citizenship of the Russian Federation; Russia's direct involvement in the *de facto* Abkhaz administration, including key positions within the *de facto* defence, law enforcement and security authorities; Russia's military aggression against Georgia; the recognition by Russia of Abkhazia as an independent State; the agreements signed by Russia with Abkhazia in violation of international law and the sovereignty of Georgia; Russia's continued occupation of Abkhazia; Russia's control of the different territory "borders" within Georgia; the large number of Russian troops and their military bases; and Russia's essential financial support of the Abkhaz administration and their investment in infrastructure projects, including a gas pipeline.

3. The Russian Government's submissions

25. The Russian Government stated that the Russian troops participating in peacekeeping operations in Georgia had withdrawn from the temporarily occupied regions of Georgia to the security zones at the borders of Abkhazia (and South Ossetia) by 22 August 2008. They had completed their planned withdrawal to Russia by 1 September 2008. On 9 October 2008 the peacekeepers of the Russian Federation had also been withdrawn from the above-mentioned security zones, whereas the events of the present case had allegedly occurred in 2012.

26. The Russian Government also emphasised that the applicants had been apprehended by officers of the "Abkhaz security services" who were representatives of a "government body which was not subordinate to the Russian Federation". Furthermore, the applicants had been kept in the Abkhaz security services' premises in Sukhumi, which was a place "not belonging to the competence of the Russian Federation".

B. Relations between Georgia and the *de facto* Abkhaz authorities

1. The applicants' submissions

27. The applicants did not make specific submissions on this matter. They pointed out more generally that, although Georgia had not been able to exercise control over Abkhaz territory since 1993, the government of Georgia had not made a reservation regarding the application of the Convention in that territory.

2. The Russian Government's submissions

28. The Russian Government did not make specific submissions on this matter.

3. The Georgian Government's submissions

(a) Measures for resolving the conflict and observing human rights in Abkhazia

29. The Georgian Government submitted that Georgia had been making all possible efforts to resolve the conflict and ensure respect for human rights in Abkhazia.

30. Since 1992 Georgia had been keeping the international community informed of the situation in Abkhazia and had been requesting, both in bilateral and multilateral contexts, support for the peaceful resolution of the conflict. The government of Georgia had spared no effort to address the issues of ending the occupation of the territory, the implementation of the Ceasefire Agreement of 12 August 2008 mediated by the European Union (for more information about the ceasefire agreement, see *Georgia v. Russia (II)* [GC], no. 38263/08, § 153, 21 January 2021) and the humanitarian situation on the ground. Particular attention had been paid to the implementation of reconciliation and engagement policies as well as to confidence-building measures.

31. They further submitted that, following the 2008 conflict, the Geneva International Discussions ("the GID")[1] had been the sole forum for exchange between Georgia and Russia which was aimed at addressing the consequences of the August 2008 military conflict, in particular in the occupied regions in Georgia. The Georgian representatives at the GID had continually raised the subject of the human rights situation in Abkhazia, specifically as regards, but not limited to, kidnappings, unlawful detention and lack of access by people to their property located in Abkhaz territory, and had deplored that the territory had remained inaccessible to the international community. During the period in question in the present applications, namely between 2012 and 2015, the Georgian authorities had registered 996 cases of human rights breaches in Abkhazia, which included but were not limited to abductions, arbitrary detentions, ill-treatment, restrictions on freedom of movement and verbal and physical abuse.

32. On 7 March 2013 the Georgian Parliament had adopted a Resolution on Basic Directions of Georgia's Foreign Policy, which reaffirmed Georgia's territorial integrity and its policy of non-recognition of Abkhazia (and South Ossetia). Measures in respect of the protection of human rights of people living near the occupation line had been part of the Action Plan of the Government of Georgia on the Protection of Human Rights 2014-2016. The Ministry for Foreign Affairs had also produced quarterly reports on the

[1] The Geneva International Discussions are international talks, launched in October 2008, to address the consequences of the 2008 conflict in Georgia. Co-chaired by the Organisation for Security and Co-operation in Europe, the European Union and the United Nations, the Geneva process brings together representatives of the participants of the conflict – Georgia, the Russian Federation and the *de facto* authorities of Abkhazia and South Ossetia – as well as the United States.

human rights situation in Georgia. Those reports had identified problems and had systematically appealed to the international community, including States as well as international, intergovernmental and non-governmental organisations (NGOs), to continue to call on the Russian Federation to bear responsibility for human rights violations in the occupied regions and to stop placing barbed wire fences and other obstacles (and remove those already placed) along the occupation line. The State Minister's office had systematically collected and processed material on human rights breaches in Abkhazia and prepared related reports for the GID, monitored elections in Abkhazia and daily Abkhaz media and cooperated with international and local NGOs working in Abkhazia.

33. The Georgian Government further submitted that Georgia had also been committed to creating favourable conditions for a long-term reconciliation process which was aimed at promoting interaction among the divided populations of Georgia, who had been separated by occupation lines, and the reintegration of Abkhazians. The State Minister's office had been pursuing policies promoting civil society development in Abkhazia. As part of the State's strategy in the occupied territories, residents of those territories had been able to benefit from State-subsidised medical treatment in Georgia according to their needs. Georgia had also been sending vaccines, life-saving medication and some medical equipment to the Abkhaz territory.

34. The Georgian authorities had also pursued efforts towards ensuring the safe, unconditional and dignified return to Abkhazia of forcibly displaced people as well as their descendants.

35. Georgia's policy as regards Russia in the period between 2012 and 2016 had been aimed at de-escalating tensions and creating an environment conducive to genuine dialogue. While this had led to the partial restoration of economic and humanitarian ties with Russia, it had not translated into finding political solutions to the problem.

(b) Individual measures taken by Georgia to ensure the applicants' rights under the Convention

36. The Georgian Government pointed out that on 10 March 2016 the applicants had been released from their unlawful detention as a result of the Georgian authorities' lengthy, complex and intensive efforts, which had lasted ten months. The Georgian authorities had been providing the applicants with psychological, social, financial and legal assistance since their release.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

37. The parties did not provide any relevant information.

THE LAW

I. PRELIMINARY ISSUES

38. In view of the fact that the Russian Federation ceased to be a Party to the Convention on 16 September 2022 (see paragraph 2 above), the Court decides that it has jurisdiction to deal with the applicants' complaints in so far as they relate to facts that took place before that date (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, 25 January 2023).

II. JOINDER OF THE APPLICATIONS

39. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1).

III. ADMISSIBILITY ISSUES

A. The parties' submissions

1. The Russian Government

40. The Russian Government raised a number of objections to the admissibility of the applications. In the first place, they stated that the applicants had failed to properly apply to the Court because they had authorised their representative to act on their behalf, not in the application form itself, but in a separate authority form and the application before the Court had been signed only by their representative but not by the applicants themselves. Furthermore, the applicants' signatures on their passports differed from their signatures on the authority forms, which raised doubts as to whether the applicants had indeed authorised their legal representative to act on their behalf in the proceedings before the Court.

41. In addition, they submitted that the applicants had failed to comply with the six-month time-limit, as they had not justified the delay of about four years in turning to the Court, calculated from the time of the facts complained of. The Russian Government referred explicitly to the general applicable principle under the Convention concerning the absence of effective remedies (see paragraph 47 below), yet did not specifically state that there had not been effective remedies at the applicants' disposal.

42. Lastly, the Russian Government asserted that the applications were incompatible with the Convention *ratione loci.* Their submissions on that point can be found in paragraph 26 above.

2. The Georgian Government

43. The Georgian Government did not make any submissions as regards admissibility.

3. The applicants

44. The applicants stated that they had signed the authority forms in 2015 while they had been detained in Abkhazia. Their passports, however, had been issued in 2009 and 1994 respectively. The long period which had elapsed between the issuance of their passports and their signing of the authority forms explained the difference in signatures. They confirmed that they had authorised their representative to act on their behalf in the proceedings before the Court. Without specifying further, they added that meetings between themselves and their relatives or their lawyer in Abkhaz territory had depended on the will of the local *de facto* administration. Lastly, they stated that Russia had been exercising effective control over the territory of Abkhazia since 1993 and that Russian officers had been directly involved in their ill-treatment during interrogation.

B. The Court's assessment

1. The applicants' signatures on the documents in their applications to the Court

45. The Court accepts that, in view of having been detained by the *de facto* authorities in Abkhazia at the time of lodging their applications with the Court, the applicants validly authorised their representative to act on their behalf in the proceedings before the Court. In particular, given that their access to family members and their lawyer depended on the will of the *de facto* authorities, as asserted by them and not disputed by the two respondent Governments, the Court accepts that the applicants' authorising their representative in an authority form separate from the application form itself does not raise an issue in terms of compliance with the procedure for applying to the Court. The Court further notes that the matter raised by the Russian Government is not one of the grounds for inadmissibility set out in Article 35 of the Convention. Accordingly, this preliminary objection must be dismissed, as the application cannot be rejected for failure to comply with the procedural rules of the Court (see *Tokel v. Turkey*, no. 23662/08, §§ 45-48, 9 February 2021, with further references).

46. In addition, the Court is prepared to accept that the difference between the signatures on the applicants' passports and those on the authority forms may well be due, as submitted by them, to the long period which elapsed between the issuance of their passports and the signing of the authority forms.

2. Compliance with the six-month time-limit

47. As regards the objection that the applications were lodged outside the six-month time-limit which had been applicable under the Convention at the time of the events, the Court reiterates the following. In the absence of remedies, the time-limit for applicants to lodge their complaints with the Court is to be calculated from the date of the act or decision which is said not to comply with the Convention and, furthermore, it must not apply to a "continuing situation" (see, among many other authorities, *Georgia v. Russia (I)* (dec.), no. 13255/07, § 47, 30 June 2009). Neither of the respondent Governments submitted that there existed any effective remedies in respect of the applicants' complaints. Accordingly, the Court finds that, since no effective remedies existed in relation to the applicants' complaints, it was necessary for them to apply to the Court within six-months from the time when the acts complained of occurred.

48. Bearing in mind that a complaint is always characterised by the alleged facts (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 115, 20 March 2018), the Court notes that the applicants complained in the first place that they had been ill-treated at the time of their arrest and subsequently during interrogation (see paragraphs 12 and 14 above). However, they did not explicitly complain, and it cannot be deduced from the material in the case file, that their alleged ill-treatment continued after they had been sentenced on 16 April 2013 (see paragraphs 12 and 14 above). In view of the description provided by the applicants in the context of their complaints under Article 3, and particularly in the absence of specific complaints of physical ill-treatment and/or intense mental suffering caused to them by the *de facto* Abkhaz authorities after 16 April 2013, the Court finds that such a complaint has not been made before it by either of the applicants.

49. The Court also notes that the applicants' detention pending trial, falling to be examined under Article 5 § 1 (c) of the Convention, came to an end on 16 April 2013, the date on which they were sentenced. That was also the date when the criminal proceedings against them, in respect of which they complained under Article 6 §§ 1 and 3 of the Convention, ended with their conviction, against which they did not appeal. However, the applicants applied to the Court on 21 August 2015, which was long after the six-month time-limit under the Convention had expired in respect of the above complaints, made specifically under Article 3, Article 5 § 1 (c) and Article 6 §§ 1 and 3.

50. Apart from stating on that point that they had been detained in Abkhazia until their release in March 2016 and that "therefore the situation was of a continuing nature", the applicants did not in any way explain why or how they had been prevented from applying to the Court within six months from 16 April 2013. In the absence of any indications from the applicants on that point, it is not for the Court to speculate about any possible reasons why they did not submit their applications before it within the time-limit (contrast

Mamasakhlisi and Others v. Georgia and Russia, no. 29999/04, §§ 254-55 and 271-74, 7 March 2023).

51. That said, in the exceptional circumstances of this case (compare *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 275, ECHR 2014 (extracts), and *Mamasakhlisi and Others*, cited above, § 273), the Court is prepared to accept that being detained in Abkhaz territory by the *de facto* Abkhaz authorities represented in itself a serious obstacle to the applicants' applying to the Court within the time-limit required under the Convention. This can be inferred from the applicants' submission above that access to their relatives and lawyer in Abkhaz territory had been up to the *de facto* administration (see paragraph 36 above). The Court finds that obstacle sufficient to exempt the applicants from the obligation to comply with the requisite time-limit with regard to their complaints made under Article 3, Article 5 § 1 (c) and Article 6 §§ 1 and 3 (compare *Mamasakhlisi and Others*, cited above, § 273).

52. The Court further observes that, at the time when they lodged their applications with the Court, the applicants were still being detained, allegedly unlawfully. Consequently, as regards the complaint which falls to be examined under Article 5 § 1 (a) of the Convention, their applications were not submitted outside the six-month time-limit, given that the situations complained of had not come to an end.

53. In the light of the foregoing, the Court considers that the applications were not lodged out of time. The Russian Government's objection in that regard must therefore be dismissed.

*3. Jurisdiction (*ratione loci *and* ratione personae*)*

54. The general principles have been summarised by the Court in *Georgia v. Russia (II)* ([GC], no. 38263/08, § 81, 21 January 2021, with further references) and most recently in *Ukraine and the Netherlands v. Russia*, cited above, §§ 547-75). The essence of those principles is that a State's jurisdictional authority under Article 1 is primarily territorial, as well as that there are certain exceptions – the spatial concept of jurisdiction and the personal concept of jurisdiction – recognised by the Court as capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries. In each case, the question of whether exceptional circumstances exist that require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be determined with reference to the particular facts (see, among other authorities, *Georgia v. Russia (II)*, cited above, § 82).

55. 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."

56. It follows from Article 1 that member States must answer for any infringement of the rights and freedoms protected by the Convention committed against individuals placed under their "jurisdiction" (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 311, ECHR 2004-VII). The Court must first determine whether, in respect of the matters complained of, the applicants fell within the jurisdiction of either or both of the respondent States within the meaning of Article 1 of the Convention (compare *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 82, ECHR 2012 (extracts)).

57. In the present case, issues arise as to the meaning of "jurisdiction" with regard to both territorial jurisdiction (in the case of Georgia) and the exercise of extraterritorial jurisdiction (in the case of the Russian Federation).

(a) Jurisdiction of Georgia

58. The Court notes that the events of which the applicants complained took place solely in Georgian territory subsequent to its ratification of the Convention on 20 May 1999. On the basis of all the material in its possession, the Court considers that the government of Georgia, the only legitimate government of that State under international law, had no authority over Abkhazia during the period during which the events covered by the applications occurred. It has not been argued otherwise by the parties.

59. In earlier cases (see, among other authorities, *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, § 99 23 February 2016, with further references, and *Mamasakhlisi and Others*, cited above, § 318), the Court held that individuals detained in the territorial State had fallen within that State's jurisdiction even though it had not had effective control over the region in question. The State's obligation under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the [Convention] rights and freedoms" had, however, been limited in the circumstances to a positive obligation to take the diplomatic, economic, judicial or other measures that were both in its power to take and in accordance with international law (see *Ilaşcu and Others*, cited above, § 331).

60. The Court sees no reason to distinguish the present case from those cited above and thus finds that the facts of the applications fell within the jurisdiction of Georgia. Although Georgia had no effective control over the acts of the *de facto* authorities in Abkhazia, the fact that the region was recognised under public international law as part of Georgia's territory gave rise to a positive obligation for that State, under Article 1 of the Convention, to use all the legal and diplomatic means available to it to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention to those living there (see *Ilaşcu and Others*, § 333, and *Catan and Others*, § 109, both cited above). That positive obligation relates both to the measures needed to re-establish its control over Abkhaz territory, as an expression of its jurisdiction, and to measures needed to ensure respect for the individual

applicants' rights. The Court will consider below (see paragraphs 78 to 80, and 88-89 below) whether Georgia has satisfied this positive obligation.

(b) Jurisdiction of the Russian Federation

61. The Court must next determine whether the facts complained of by the applicants also fell within the jurisdiction of the Russian Federation. The Court found in *Georgia v. Russia (II)* (cited above, §§ 174, 175, 295 and 312) that, even after October 2008, the strong Russian presence and the Abkhaz authorities' dependency on the Russian Federation, on whom their survival had depended, had indicated that the Russian Federation had exercised continued "effective control" over Abkhazia, placing the events which occurred after the cessation of hostilities (12 August 2008) within the jurisdiction of the Russian Federation. The Court further held in its recent decision on admissibility in *Georgia v. Russia (IV)*((dec.), no. 39611/18, § 44, 20 April 2023) that its conclusion in *Georgia v. Russia (II)* (cited above, §§ 162-75 and 299) that there had been continued "effective control" of Russia over Abkhazia at least until 23 May 2018 continued to be valid, in the absence of any relevant new information to the contrary.

62. On the basis of the above, it follows that the events complained of by the applicants in the present case, which took place in Abkhaz territory between 15 March 2012 (the date of their arrest) and 10 March 2016 (the date of their release), fell within the jurisdiction of the Russian Federation. The Russian Government's objection *ratione loci* must therefore be dismissed.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

63. The applicants complained that they had been repeatedly tortured at the time of their arrest and during their subsequent detention. They relied on Article 3, which reads as follows:

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

64. The two respondent Governments did not submit specific observations in respect of this complaint. Their comments in respect of the allegations in the applications more generally have been summarised in paragraph 8 above.

65. The Court, for the reasons which follow immediately below, finds that the applicants' complaints under Article 3 are inadmissible.

66. Undoubtedly, the Convention prohibits in absolute terms torture and inhuman and degrading treatment, irrespective of the victim's conduct (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V). Furthermore, where the events at issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of

persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as lying with the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

67. Notwithstanding the above, allegations of ill-treatment must be supported by appropriate evidence (see, among many other authorities, *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" yet considers that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (ibid.).

68. The Court is aware that the applicants were kept in detention for approximately three years subsequent to the alleged torture and therefore had a limited ability to secure or gather evidence for such treatment (see paragraphs 12-14 and 51 above). Nevertheless, the Court cannot but note that the applicants did not submit medical certificates attesting to any physical after-effects of their detention in Abkhazia (compare *Mangîr and Others v. the Republic of Moldova and Russia*, no. 50157/06, § 47, 17 July 2018 and *Tanış v. Turkey* (dec.), no. 15442/08, §§ 46-49, 9 February 2016). Likewise, they did not submit any reports of psychological evaluations carried out after their release (contrast *Mamasakhlisi and Others*, cited above, § 389). The Court has already emphasised the importance of independent and thorough examinations of persons on release from detention (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 118, ECHR 2000-X). In view of the description provided by the applicants of ill-treatment (see paragraphs 12 and 14 above), medical reports prepared subsequently to their release could have provided relevant prima facie evidence if they had recorded, for example, possible signs of any physical injuries or psychological effects that the alleged ill-treatment might have had on them (compare and contrast *Mamasakhlisi and Others*, cited above, §§ 390 and 395). Furthermore, the applicants have not provided any other evidence, such as, for example, statements made by their lawyer or their family members, to corroborate their version of the events (compare, *mutatis mutandis*, *Borodin v. Russia*, no. 41867/04, § 99, 6 November 2012, and *Mangîr and Others*, cited above, § 47).

69. Accordingly, although the applicants provided a rather detailed account of their alleged ill-treatment, the Court is unable, on the basis of the materials submitted, to find *prima facie* that they were subjected to the ill-treatment alleged.

70. The Court accordingly finds that the applicants' complaints under Article 3 of the Convention are inadmissible as being manifestly ill-founded

and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 5 § 1 (a) AND (c) OF THE CONVENTION

71. The applicants complained that they had been detained unlawfully in Abkhazia. They relied on Article 5 § 1 of the Convention. The Court considers that this complaint concerns the applicants' allegedly unlawful detention pending trial and their continued unlawful detention after their conviction on 16 March 2013, which fall to be examined under Article 5 § 1 (a) and (c) of the Convention respectively, which reads as follows:

Article 5 § 1 (a) and (c)

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;"

A. Admissibility

72. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

73. The applicants submitted that Georgia had been aware of the violations of the applicants' Convention rights since 2012 when they had been detained in Abkhazia but the Georgian authorities had not taken any measures before May 2015 to put an end to those violations (see paragraphs 22 and 36 above).

74. In addition to their general comments in respect of the allegations made by the applicants (which have been summarised in paragraph 8 above), the two respondent Governments stated as follows. The Russian Government emphasised the absence of causal links between the acts of the Russian Federation and the alleged violations of the applicants' rights. The Georgian

Government submitted that they did not contest that the applicants had been unlawfully arrested and had remained in unlawful detention between 15 March 2012 and 10 March 2016.

2. The Court's assessment

75. It is well established in the Court's case-law under Article 5 § 1 of the Convention that any deprivation of liberty must not only be based on one of the exceptions listed in sub-paragraphs (a) through (f) but must also be "lawful"; this necessitates that it have a legal basis in domestic law and that it be compatible with the rule of law, a concept inherent in all the Articles of the Convention.

76. Previously, in *Mamasakhlisi and Others* (cited above, §§ 422-28), the Court, for the first time, examined complaints concerning unlawful arrest and detention, both 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 respondent Governments about the specific provisions of domestic 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 found that the *de facto* authorities and courts could not order the applicants' "lawful arrest or detention" within the meaning of Article 5 § 1 (a) and (c) of the Convention. The Court held that the applicants' arrest and detention had been unlawful for the purposes of that provision, in violation of Article 5 § 1 (a) and (c) of the Convention.

77. In the absence of any new and pertinent information to the contrary, the Court considers that the conclusion reached in *Mamasakhlisi and Others* (ibid.) is also valid in the present case. Accordingly, there has been a violation of Article 5 § 1 (a) and (c) of the Convention in the instant case.

3. Responsibility of the respondent States

78. The Court must next determine whether Georgia fulfilled its positive obligations both with respect to the measures needed to re-establish its control over Abkhaz territory, as an expression of its jurisdiction, and to measures needed to ensure respect for the individual applicants' rights (see, as regards the applicable principles, *Ilaşcu and Others*, § 333, and *Catan and Others*, § 109, both cited above; see also paragraph 60 above). In respect of the first aspect of Georgia's positive obligation specifically, Georgia was required, firstly, to refrain from supporting the *de facto* authorities of Abkhazia and, secondly, to take all political, judicial and other measures at its disposal to re-establish its control over that territory.

79. The Court observes that Georgia has never recognised Abkhazia as an independent State, nor has any material been submitted to the Court to show that Georgia has ever provided support to the *de facto* Abkhaz authorities. The Court concluded in *Mamasakhlisi and Others* (cited above, § 400) 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. In view of the information, which has not been contested by the other parties, submitted by the Georgian Government in respect of the period after 2008 (see paragraphs 29 to 35 above), the Court finds that Georgia has taken pertinent measures within its power, deploying domestic and international efforts which were sufficiently aimed at continuing to guarantee the rights and freedoms under the Convention to those living in Abkhazia.

80. As regards the second aspect of Georgia's positive obligations, namely measures needed to ensure respect for the individual applicants' rights, the Court observes that it was the Georgian authorities who enabled the applicants' release following ten months of targeted and intense negotiations. Bearing in mind the inactivity of the Russian authorities in taking necessary action to address the applicants' complaints once they had been notified of them, as well as the sheer number of registered breaches of Convention rights in Abkhaz territory during the relevant period (see paragraph 31 above) and the inevitable delay in dealing with all of them at a high diplomatic level, the Court cannot conclude that the initial lack of reaction (see paragraphs 22 and 36 above) amounted, by itself, to a failure by Georgia to take whatever steps it could in order to secure the applicant's rights (compare *Mozer*, cited above, § 154).

81. As regards the Russian Federation, on the basis of its finding above in respect of Russia's effective control over Abkhazia during the relevant period (see paragraphs 61 and 62 above), the Court finds that by virtue of the Abkhaz authorities' dependency on Russia for their survival, Russia's responsibility under the Convention was engaged.

82. Accordingly, there has been no violation of Article 5 § 1 (a) and (c) of the Convention by Georgia in respect of the applicants and there has been a violation of those provisions by the Russian Federation in respect of the applicants.

VI. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

83. The applicants complained that they had not had a fair trial in the criminal proceedings against them in Abkhazia. They relied on Article 6 §§ 1 and 3, which reads as follows:

"1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of

his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

A. Admissibility

84. The Court notes 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.

B. Merits

1. The parties' submissions

85. The parties did not make specific submissions. Apart from their comments summarised in paragraph 8 above, the Georgian Government stated that they did not contest the applicants' complaint that they had not had a fair trial.

2. The Court's assessment

86. The Court reiterates that the requirements of Article 6 § 3 of the Convention are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 of the Convention. It will therefore examine the applicants' complaints under these provisions taken together (see, among many other authorities, *Kornev and Karpenko v. Ukraine*, no. 17444/04, § 63, 21 October 2010). In certain circumstances, a court belonging to the judicial system of an entity not recognised under international law may be regarded as a "tribunal established by law", provided that it forms part of a judicial system operating on a "constitutional and legal basis" reflecting a judicial tradition compatible with the Convention, in order to enable individuals to enjoy the Convention guarantees (see *Ilaşcu and Others*, cited above, § 460).

87. The Court has already 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 (see *Mamasakhlisi and Others*, cited above, § 440, with further references; see also paragraph 76 above). The Court sees no reason to find otherwise in the present case, in the absence of any pertinent information. Specifically, it finds that the applicants did not benefit from a fair hearing by an independent and impartial tribunal established by law. In addition, with reference to the information before it, the Court finds that it cannot be said that the applicants were given a real opportunity to organise their defence and effectively benefit from the assistance of a lawyer throughout the whole proceedings, as required under Article 6 § 3 (c) of the Convention (see, on this last point, *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 255, 13 September 2016). Accordingly, there has been a breach of Article 6 § 1 of the Convention taken together with Article 6 § 3 of the Convention.

3. Responsibility of the respondent States

88. The Court considers that there is no material difference in the nature of each respondent State's responsibility under the Convention in respect of the various complaints lodged in the present case (compare *Mozer*, cited above, § 183, and *Mamasakhlisi and Others*, cited above, § 429). Furthermore, the Court finds that the situation in respect of the legal and judicial system in Abkhazia, as described in paragraph 76 above, cannot be attributed to Georgia.

89. Accordingly, for the reasons set out above in respect of the complaint under Article 5 of the Convention (see paragraph 76 above), the Court finds that there has been no violation of Article 6 §§ 1 and 3 of the Convention by Georgia. On the other hand, for the reasons set out in paragraph 81 above, the Court finds that there has been a violation of Article 6 §§ 1 and 3 of the Convention by the Russian Federation.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

90. Lastly, the applicants complained that they had not had effective domestic remedies available to them with respect to their complaints above. They relied on Article 13 which reads as follows:

> "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."

91. The Court observes that the complaint under Article 3 was declared inadmissible. It follows that the applicants have no "arguable claim" of a violation of their rights under Article 3 for the purposes of Article 13 of the

Convention. Consequently, the complaint under Article 13 is also manifestly ill-founded.

92. The Court finds that the applicants' complaint under Article 13 is closely linked to the complaints examined above under Articles 5 and 6 and must therefore likewise be declared admissible. Nevertheless, having regard to its finding in paragraphs 77 and 87 above, the Court considers that it is not necessary to examine the complaint under Article 13 separately.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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."

94. The Court notes that it has found Russia responsible for the violations of the Convention in the present case. Accordingly, it will only examine the applicants' claims for just satisfaction with respect to Russia. In view of the fact that it has not found a breach of any provision of the Convention by Georgia, it will not examine the just satisfaction claims in respect of Georgia.

A. Damage

95. The applicants claimed 150,000 euros (EUR) each in respect of non-pecuniary damage.

96. The Russian Government did not wish to comment on the applicants' just satisfaction claims, reiterating that their applications were inadmissible.

97. Having regard to the violations found above, the Court considers that the applicants undeniably suffered non-pecuniary damage, which cannot be compensated by the mere finding of a violation. Consequently, ruling on an equitable basis as required by Article 41 of the Convention, the Court awards the applicants EUR 16,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount, to be paid by the Russian Federation.

B. Costs and expenses

98. The applicants claimed EUR 2,173 for costs and expenses. They submitted a legal fee agreement indicating the amount of EUR 2,000 in fees for the representation of the applicants before the Court, signed by their representative before the Court and the first applicant's sister on 3 June 2015. They also submitted an agreement for translation services in the amount of EUR 173, signed by a different lawyer and a translator.

99. A representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see *Luedicke, Belkacem and Koç v. Germany* (Article 50), 10 March 1980, § 15, Series A no. 36, and *Airey v. Ireland* (Article 50), 6 February 1981, § 13, Series A no. 41). Accordingly, the fees of a representative who has acted free of charge are not actually incurred (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 221, Series A no. 324). The opposite is the case with respect to the fees of a representative who, without waiving them, has simply taken no steps to pursue their payment or has deferred it (see *X v. the United Kingdom* (Article 50), 18 October 1982, § 24, Series A no. 55, and *Pakelli v. Germany*, 25 April 1983, § 47, Series A no. 64). The fees payable to a representative under a conditional-fee agreement are actually incurred only if that agreement is enforceable in the respective jurisdiction (see *Dudgeon v. the United Kingdom* (Article 50), 24 February 1983, § 22, Series A no. 59; *Gentilhomme, Schaff-Benhadji and Zerouki v. France*, nos. 48205/99 and 2 others, § 27, 14 May 2002; *Pshenichnyy v. Russia*, no. 30422/03, § 38, 14 February 2008; *Saghatelyan v. Armenia*, no. 7984/06, § 62, 20 October 2015; and *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, § 89, 21 April 2016).

100. In the present case the applicants did not submit documents showing that they themselves had paid or were under a legal obligation to pay the fees charged by their representative or the expenses incurred by them (compare *Merabishvili v. Georgia* [GC], no. 72508/13, § 372, 28 November 2017, with further references). In the absence of such documents, the Court is not in a position to assess the points mentioned in the previous paragraph. It therefore finds no basis on which to accept that the costs and expenses claimed by the applicants have actually been incurred by them.

101. It follows that the claim must be rejected.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that it has jurisdiction to deal with the applicants' complaints in so far as they relate to facts that took place before 16 September 2022;

2. *Decides* to join the applications;

3. *Declares* the complaints of the applicants under Article 5 § 1 (a) and (c), Article 6 §§ 1 and 3 and Article 13 of the Convention in conjunction with those two Convention provisions admissible, and the remainder of the applications inadmissible;

4. *Holds* that there has been a violation of Article 5 § 1 (a) and (c) of the Convention in respect of the applicants by the Russian Federation and no violation by Georgia;

5. *Holds* that there has been a violation of Article 6 §§ 1 and 3 in respect of the applicants by the Russian Federation and no violation by Georgia;

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

7. *Holds*
   (a) that the Russian Federation is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      EUR 16,000 (sixteen thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) 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 19 December 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President