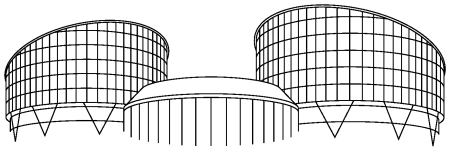

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BERDZENISHVILI AND OTHERS v. RUSSIA

(Applications nos. 14594/07, 14597/07, 14976/07, 14978/07, 15221/07, 16369/07 and 16706/07)

JUDGMENT
(*Merits*)

STRASBOURG

20 December 2016

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

In the case of Berdzenishvili and others v. Russia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 29 November 2016,

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

PROCEDURE

1. The case originated in seven applications (nos. 14594/07, 14597/07, 14976/07, 14978/07, 15221/07, 16369/07 and 16706/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by 19 Georgian nationals ("the applicants"), whose names, dates of birth and places of residence are shown on the list appended to this judgment. The applications were lodged on 2 April 2007, 30 March 2007, 5 April 2007, 4 April 2007, 5 April 2007, 6 April 2007 and 10 April 2007 respectively.

2. The applicants were represented by several lawyers, whose names are shown on the list appended to this judgment. The Russian Government ("the Government") were represented by their Agent, Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that they had been arrested, detained and collectively expelled as part of an administrative practice that was in place in autumn 2006 in the Russian Federation directed against Georgian nationals. According to the applicants these acts resulted in violations of Articles 3, 5, 6, 8, 13, 14, 17 and 18 of the Convention and of Article 1 of Protocol No. 1, Articles 2 and 4 of Protocol No. 4 and of Article 1 of Protocol No. 7.

4. The applications were allocated to the former Fifth Section of the Court. On 9 February 2010 a Chamber of the former Fifth Section decided to communicate the applications to the Government for information and to adjourn their examination pending the outcome of the proceedings in the inter-State case *Georgia v. Russia (I)* [GC] (no. 13255/07).

5. On 5 February 2014 the President of the Court decided to allocate the applications to the former First Section, which, on 27 January 2015, decided to invite the Government to submit observations on the admissibility and merits of the applications and to produce the relevant documents. Subsequently the applications were allocated to the Third Section.

6. The Government and the applicants each submitted observations on the admissibility and merits of the cases. In addition, third-party comments were received from the Government of the Republic of Georgia (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The background to the cases

7. During the period from the end of September 2006 to the end of January 2007 identity checks of Georgian nationals residing in Russia were carried out in the streets, markets and other workplaces and at their homes. Many were subsequently arrested and taken to police stations. After a period of custody in police stations, they were grouped together and taken by bus to a court, which summarily imposed administrative penalties on them and gave decisions ordering their administrative expulsion from Russian territory. Subsequently, after sometimes undergoing a medical visit and a blood test, they were taken to detention centres for foreigners where they were detained for varying periods of time, and then taken by bus to various airports in Moscow, and expelled to Georgia by aeroplane. Some of the Georgian nationals against whom expulsion orders were issued left the territory of the Russian Federation by their own means (for further details as to the background of the case see *Georgia v. Russia (I)* [GC], no. 13255/07, § 45, ECHR 2014).

B. The particular circumstances of each case (arrest, detention and expulsion of the applicants)

1. *Vaja BERDZENISHVILI (born on 28 July 1976, application no. 14594/07)*

8. The applicant entered the territory of the Russian Federation on 1 June 2006 on a multiple entry business visa, valid until 27 May 2007. On 4 October 2006 immigration officers stopped the applicant on the street, checked his identity documents and brought him to the Department of the

Interior in the Vykhino District of Moscow, where he was detained. On 5 October 2006 the Kuzminskiy District Court of Moscow fined the applicant (RUB 1,000) for failure to observe the applicable registration procedure and ordered his administrative expulsion from the Russian Federation. He was subsequently, around midday, released. On 8 October 2006 the applicant left the Russian Federation by his own means.

2. Tengiz KBILASHVILI (born on 11 November 1964, application no. 14597/07)

9. The applicant entered the territory of the Russian Federation on 12 August 2006 on a multiple entry business visa. Subsequently he registered at his place of residence with the competent authority and worked as a driver in Moscow. On 1 October 2006 the applicant was detained in the Cheremushkinskiy militia department. On 3 October 2006 the Cheremushkinskiy District Court of Moscow found the applicant liable under Article 18.10 § 2 of the Code of Administrative Offences, as he had not applied for a work permit. The court fined the applicant (RUB 1,000) and ordered his administrative expulsion from the Russian Federation. He was subsequently transferred to the Kankova militia department, where he was detained until the next day. On 4 October 2006 he was transferred to the Centre for Temporary Detention of Aliens no.1, where he stayed until his deportation. On 6 October 2006 the applicant was taken to a military airport and was flown to Georgia with a cargo plane.

3. Abram GIVISHVILI (born on 2 January 1964, application no. 14976/07)

10. The applicant entered the territory of the Russian Federation on 6 July 2000 under the visa-free regime and settled in the village of Mescheryakovka in the Arkadakskiy District of the Saratov Region. On 10 October 2006 the applicant was arrested by police officers during an identity check operation in the area of his residence. Later that same day the Arkadakskiy Disrtict Court of the Saratov Region found him guilty of staying in the country without the required residence permit. The court fined the applicant (RUB 1,000), ordered his detention and his expulsion. Subsequently the applicant was transferred to a detention centre for aliens. On 12 October 2006, after friends of the applicant had paid the administrative fine and bought him an aeroplane ticket to Armenia for the next day, the applicant was released. On 13 October 2006 the applicant left the territory of the Russian Federation, leaving behind his property and belongings.

4. Liana NACHKEBIA (born on 24 July 1948, application no. 14978/07)

11. The applicant entered the territory of the Russian Federation in 2004 and worked on a market in Moscow. On 4 October 2006 the market was raided by a special unit of the police and the applicant, together with around twenty other Georgian nationals, was arrested. The applicant was brought to the Department of the Interior in the Southern Orekhovo-Borisovo District of Moscow. On 5 October 2006 the Nagatinskiy District Court of Moscow found her guilty of staying in the country without the required residence permit. The court fined the applicant (RUB 1,000), ordered her detention and her expulsion. Subsequently the applicant was transferred to the Centre for Temporary Detention of Aliens no. 2. On 17 October 2006 the applicant was taken to a military airport and flown to Georgia with a cargo plane.

5. Eka CHKAIDZE and David JAOSHVILI (born respectively on 1 December 1979 and on 12 February 1975, application no. 15221/07)

12. The applicants entered the territory of the Russian Federation in December 2002/January 2003 and lived there without the required visa, at the latest since 25 December 2003. On 6 October 2006 both applicants were apprehended by the police and brought to the Ivanovskoye police station of the Department of the Eastern Administrative District of Moscow. On the same day the Perovskiy District Court of Moscow fined both applicants (RUB 1,500 each) for staying in the country without the required registration and ordered their expulsion. Subsequently both applicants were released. On 16 October 2006 the applicants left the Russian Federation by their own means with their son, leaving behind most of their belongings.

13. An alleged detention of the applicants' son and the fact whether the applicants owned a car, which they had to leave behind when leaving the Russian Federation, are matters of contention (see paragraphs 50-52 below).

6. TWELVE APPLICANTS (application no. 16369/07)

(a) Irina CHOKHELI (born on 29 August 1967)

14. The applicant entered the Russian Federation on an unknown date on a multi-entry business visa, valid until 15 August 2007. She had registered her place of residence through a private agency and received a certificate valid until 16 March 2007. On 11 October 2006 the applicant was apprehended by police officers for an inspection of her identity documents and was brought to the Vykhino police station in Moscow, where she was subsequently detained. On 12 October 2006 the Kuzminskiy District Court of Moscow fined the applicant (RUB 1,000) for not complying with the applicable registration obligation, ordered her detention and expulsion. On

13 October 2006 the applicant was transferred to the Centre for Temporary Detention of Aliens no. 2, where she was detained until her expulsion. On 17 October 2006 she was brought by bus to Demododova airport and was flown to Georgia.

(b) Levan KOBAIDZE and Koba KOBAIDZE (born respectively on 8 April 1986 and 7 October 1988)

15. The first applicant stayed in the Russian Federation on a multi-entry business visa, valid until 13 February 2007, and had registered his place of residence through a private agency. The second applicant had a temporary document issued by the Consulate of Georgia, authorising his residency in the Russian Federation until 5 November 2006. On 11 October 2006 the applicants were apprehended by police officers for an inspection of their documents and brought to the Vykhino police station in Moscow, where they were subsequently detained. On 12 October 2006 the Kuzminskiy District Court of Moscow fined the applicants (RUB 1,000 each) for not complying with the applicable registration obligation and ordered their detention and expulsion. On 12 October 2006 the applicants were transferred to the Centre for Temporary Detention of Aliens no. 1, where they were detained until their expulsion. On 28 October 2006 the applicants were brought by bus to Demododova airport and were flown to Georgia.

(c) Nato SHAVSHISHVILI (born on 18 March 1956)

16. The applicant had lived in Russia since 2005 and had a visa and registration valid until 19 October 2006. On 18 October 2006 the applicant left the Russian Federation by her own means.

17. An alleged detention of the applicant in the beginning of October 2006 is a matter of contention (see paragraphs 53-55 below).

(d) David LATSABIDZE (born on 15 March 1961)

18. The applicant had lived in Moscow since 1992. He worked as an engineer, had a visa valid until 28 October 2006 and a registration certificate, issued by a private agency, valid until the same day.

19. It is a matter of contention, whether the applicant had been detained, whether his expulsion was ordered by a court and whether he was deported (see paragraphs 56-59 below).

(e) Artur SARKISIAN and Andrei SARKISIAN (born respectively on 23 February 1981 and on 12 November 1982)

20. The applicants had lived in the Russian Federation since 1993, most recently in Moscow. The first applicant had a visa valid from 8 May 2006 until 7 May 2007. The second applicant had a visa valid from 30 June 2006 until 19 June 2007. Both applicants were in possession of registration certificates, valid until respectively 8 November 2006 and 30 December

2006. The applicants left the Russian Federation on 19 October 2006 by their own means.

21. An alleged detention of both applicants is a matter of contention (see paragraphs 60-62 below).

(f) Gocha KHMALADZE (born on 17 December 1968)

22. The applicant had lived in the Russian Federation since 2001. He had a visa valid until 30 August 2007 and a registration certificate that had expired on 18 September 2006. On 11 October 2006 the applicant was arrested by police officers and was brought to the Department of the Interior in the Vykhino district of Moscow, where he was detained. On 12 October 2006 the Kuzminskiy District Court of Moscow fined the applicant (RUB 1,000), ordered his detention and subsequent expulsion. After the decision of the District Court the applicant was transferred to the Centre for Temporary Detention of Aliens no. 1, where he was detained until his expulsion. On 28 October 2006 the applicant was brought by bus to Demododova airport and was flown to Georgia.

(g) Irina KALANDIA (born on 18 January 1980)

23. The applicant had lived in Moscow since 1997. She had a valid visa and a registration, but no work permit. On 27 September 2006 she was apprehended by police officers in a grocery store, and, after her identity papers had been checked and an administrative report had been drawn up, the applicant was released. On 6 October 2006 the Simonovskiy Court of Moscow found the applicant guilty of working without the required work permit and fined her (RUB 1,000). In addition the court ordered her detention and subsequent expulsion. After the court hearing the applicant was detained and brought to the Centre for Temporary Detention of Aliens no. 2, where she was detained until her expulsion. On 10 October 2006 the applicant was brought to Demododova airport and was flown to Georgia.

(h) Kakha TSIHISTAVI (born on 24 February 1983)

24. The applicant entered the Russian Federation in May 2005 and settled in Moscow. He had a valid visa until 1 March 2007. On 3 October 2006 the applicant was apprehended by officers of the Department of the Interior of the Mozhayskiy district of Moscow and brought to their station, where he was detained. On the same day the Kuntsevskiy District Court of Moscow fined the applicant for not observing the applicable registration procedure and ordered his detention and expulsion. The applicant was brought to the Centre for Temporary Detention of Aliens no. 1, where he was detained until his expulsion. On 11 October 2006, after the applicant's relatives had bought him an aeroplane ticket to Georgia, he was brought to the airport and released. The applicant left the Russian Federation on that day.

(i) Koba NORAKIDZE (born on 17 April 1969)

25. The applicant had arrived in Moscow for the first time in February 2002. Since then he had lived, with short interruptions, in the Russian Federation and worked as a driver. After the last interruption he entered the Russian Federation on 4 March 2006 on a one month visa. On 6 October 2006 the Litkarinskiy Town Court of Moscow Region discontinued proceedings against the applicant for not observing the applicable registration procedure. On 23 October 2006 the Kuzminskiy District Court of Moscow fined the applicant (RUB 1,000) for not observing the applicable registration procedure. The court also ordered his expulsion from the Russian Federation. On 24 October 2006 the applicant left Russia by aeroplane.

26. The arrests and detentions surrounding the two court decisions are matters of contention (see paragraphs 63-66 below).

(j) Khatuna DZADZAMIA (born on 27 January 1983)

27. The applicant arrived in the Russian Federation in 1993 for the first time. On 6 September 2004 she was expelled from the Russian Federation due to a violation of visa-related regulations. On 8 October 2004 the applicant returned to Moscow. For the relevant time the applicant had a visa and registration, valid until respectively 8 October 2006 and 28 February 2007. The Presnenskiy District Court of Moscow decided that the expulsion decision of 2004 had included a five year ban from entering the Russian Federation. Consequently it fined the applicant (RUB 1,500), ordered her detention and expulsion. After several days of detention the applicant was expelled from the Russian Federation.

28. The exact circumstances and dates of the applicant's arrest, detention, court decision and expulsion are matters of contention (see paragraphs 67-70 below).

7. Inga GIGASHVILI (born on 29 September 1969, application no. 16706/07)

29. The applicant entered the territory of the Russian Federation on 12 August 2006 on a multiple entry business visa. Subsequently she registered at her place of residence with the competent authority through a private agency. On 11 October 2006 the Tverskoy District Court of Moscow fined the applicant (RUB 1,000) for not having a valid, but a counterfeited, registration certificate. The court also ordered her detention and expulsion. At the latest on 12 October 2012 the applicant was transferred to the Centre for Temporary Detention of Aliens no. 2, where she was held until her expulsion. On 17 October 2006 the applicant was taken to a military airport and was flown to Georgia with a cargo plane.

30. The date of the applicant's arrest and her detention before 12 October 2006 are matters of contention (see paragraphs 71-73 below).

C. Conditions of detention

31. The conditions of detention in the different places of detention are a matter of contention (see paragraphs 111-112 below).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Immigration laws and particular situation of Georgian nationals

32. The entry and residence of immigrants are governed by two laws: Federal Law no. 115-FZ of 25 July 2002 on the Legal Status of Foreign Nationals in the Russian Federation and Federal Law no. 109-FZ of 18 July 2006 on the Registration in the Russian Federation of Migrants who are Foreign Nationals or Stateless Persons.

Since the entry into force on 29 October 2002 of the Law on the Legal Status of Foreign Nationals, all citizens of the Commonwealth of Independent States (CIS) – including Georgian nationals – are required to regularise their situation by applying for a residence permit, although they were previously lawfully resident on Russian territory. Under sections 20 and 21 of that Law, they must also submit a registration application to the local offices of the Russian Federal Migration Service, in order to obtain a registration certificate indicating their place of residence. If they want to carry on a professional activity they are required to obtain a work permit and a migrant worker's card in accordance with section 13. A business visa (*деловая*) of variable duration is issued to foreign nationals wanting to take part in a seminar or having business contacts in the Russian Federation, but does not authorise them to work there legally.

In addition, since 5 December 2000, following the denunciation of the Bishkek Agreement of 9 October 1992 on visa-free travel for the citizens of several member States of the CIS, including Georgia, all Georgian nationals must apply for a visa to enter Russian territory.

B. Administrative expulsion procedure

33. Any foreign national who infringes the immigration regulations of the Russian Federation (Articles 18.8, 18.10 and 18.11 of the Code of Administrative Offences) is liable to administrative penalties and risks expulsion (Article 3.2). In addition, pursuant to Article 18.10 § 2 of the Code of Administrative Offences, a foreign national who engages in work

activities without a work permit is also liable to an administrative fine and risks administrative expulsion.

34. Any decision concerning an accusation of an administrative nature that may result in expulsion from the Russian Federation is to be taken by a judge of an ordinary court (Article 23.1 § 3). An appeal lies to a court or appeal court within ten days (Article 30.1 § 1, 30.2 § 2 and 30. 3 § 1). This deadline may be extended at the request of the appellant (Article 30.3 § 2). An appeal against an administrative expulsion order is to be examined within one day of the lodging of the appeal documents (Article 30.5 § 3), is exonerated from court fees and is of suspensive effect (Articles 31.1, 31.2 § 2, and 31.3 §§ 1, 2 and 3). Lastly, a foreign national may also lodge an appeal with the courts of review against an administrative expulsion order that has become enforceable (judgments of the Constitutional Court of 22 April 2004 and 12 April 2005 on the constitutionality of Articles 30.11 §§ 1, 2 and 3 of the Code of Administrative Offences).

THE LAW

I. PRELIMINARY ISSUES

A. The Government's preliminary objection

35. The Government submitted that the Court should refrain from examining the issues raised in the individual applications, as it has already, in its judgment on the inter-State application *Georgia v. Russia (I)* (cited above), found violations of the rights of particular nationals of the Republic of Georgia and therefore of the rights of the individual applicants. The Government argued that finding violations of Convention rights of the same persons under the same circumstances under proceedings instituted on an individual application would result in "double jeopardy of the state", which would not be acceptable under international law.

36. The applicants argued that there is no prohibition of "double jeopardy of a state" known to international law, as the double jeopardy doctrine only protects individuals from being tried or punished twice for the same offence. As far as the submission of the Government might be interpreted as an objection under Article 35 § 2 (b) of the Convention, the applicants argue that the individual applications can not be regarded as substantially the same as the inter-State application. The applicants submit that the inter-State case was brought by the Government of Georgia but not by the individual applicants and that therefore the Court only decided on violations of rights of unnamed nationals of the Republic of Georgia but did

not give a ruling on individual violations of rights guaranteed by the Convention (see *Georgia v. Russia (I)*, cited above, § 128).

37. The Court notes that the Convention only entails a prohibition of "double jeopardy of states" in so far as pursuant to Article 35 § 2 (b) of the Convention the Court shall not deal with any application that

> "... is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information."

In that regard the Court reiterates that for an application to be "substantially the same", it must concern substantially not only the same facts and complaints but be introduced by the same persons. It is therefore not the case that by introducing an inter-State application an applicant Government thereby deprives individual applicants of the possibility of introducing, or pursuing, their own claims (*Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 118, ECHR 2009). Therefore the Court concludes that the prior examination of the inter-State case *Georgia v. Russia (I)* (cited above) does not hinder the Court from examining the present individual applications.

B. Withdrawal of his application by Mr Gocha KHMALADZE

38. The Court notes that by letter of 27 October 2015 the legal representative of Mr Gocha Khmaladze informed the Court that his client no longer wishes to pursue the application. In accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights, as defined in the Convention and its Protocols, which require the continued examination of this part of the application.

39. The Court therefore decides to strike the application no. 16369/07, insofar as it has been brought by Mr Gocha Khmaladze, out of its list of cases under Article 37 § 1 (a) of the Convention.

C. Death of Mr Koba NORAKIDZE

40. The applicant Koba Norakidze (application no. 16369/07) died on 1 May 2012. The representatives of the applicant notified the Court about this fact by letter of 27 October 2015. They also informed the Court that the son of the deceased, Mr Tato Norakidze, wishes to pursue the application lodged by his father before the Court.

41. The Government objected to a continuation of the application by Mr Tato Norakidze, and argued that the fact that the applicant's representatives had not informed the Court earlier about the applicant's death should be considered a loss of interest to pursue the application.

42. The Court recalls that in various cases where an applicant died in the course of the proceedings it has taken into account the statements of the applicant's heirs or of close members of his family who expressed the wish to pursue the proceedings before the Court. It is not decisive that the next of kin has only manifested his or her wish to pursue the application only after a considerable time but that he or she has a legitimate interest in pursuing the application. Human rights cases before the Court generally have a moral dimension and persons near to an applicant may thus have a legitimate interest in seeing to it that justice is done even after the applicant's death (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, with further references).

43. In sum the Court considers that Mr Tato Norakidze, as the son of the deceased applicant, has a legitimate interest in pursuing the application. The Court therefore concludes that the conditions for striking the case out from the list of pending cases, as defined in Article 37 § 1 of the Convention, are not met. Accordingly the Court must continue to examine the application at Mr Tato Norakidze's request.

II. JOINDER OF THE APPLICATIONS

44. Having regard to the similar subject matter and factual background of the seven applications, the Court has decided to join them, in accordance with Rule 42 § 1 of the Rules of Court.

III. THE COURT'S ASSESSMENT OF THE EVIDENCE AND THE ESTABLISHMENT OF THE FACTS

A. General Principles

45. The Court reiterates that the proceedings before the Court are adversarial in nature. It is therefore for the parties to substantiate their factual arguments by providing the Court with the necessary evidence. Whereas the Court is responsible for establishing the facts, it is up to the parties to provide active assistance by supplying it with all the relevant information. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (*Lisnyy and others v. Ukraine and Russia* (dec.), nos. 5355/15, 44913/15, 50853/15, § 25, 5 July 2016, with further references).

46. In cases in which there are conflicting accounts of events, the Court is inevitably confronted with the same difficulties as those faced by any first-instance court when establishing the facts. As to facts in dispute, the Court reiterates its jurisprudence requiring a standard of proof "beyond reasonable doubt" in its assessment of evidence. Such proof may follow

from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*Aslakhanova and Others v. Russia*, nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, § 95, 18 December 2012, with further references).

47. Furthermore, it is to be recalled that Convention proceedings do not in all cases lend themselves to a strict application of the principle *affirmanti incumbit probatio* (*El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 152, ECHR 2012). Under certain circumstances the Court has borne in mind the difficulties associated with obtaining evidence and the fact that often little evidence can be submitted by the applicants in support of their applications (*Saydulkhanova v. Russia*, no. 25521/10, § 56, 25 June 2015). According to the Court's settled case-law, in these cases it is for the applicant to make only a prima facie case and to adduce appropriate evidence. If, in response to such allegations made by the applicants, the Government then fail to disclose crucial documents to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn. The prima facie threshold is reached primarily on the basis of witness statements, including the applicants' submission to the Court and to domestic authorities, and other evidence (see *Aslakhanova*, cited above, §§ 97, 99, with further references). However, where the applicants fail to make a prima facie case, the burden of proof can not be reversed (see *Saydulkhanova*, cited above, § 56, with further references).

48. The Court has already found that these considerations apply to disappearances examined under Article 5 of the Convention, where, although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she was officially summoned by the authorities, entered a place under their control and has not been seen since. In such circumstances, the onus is on the Government to provide a plausible and satisfactory explanation as to what happened on the premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty. Furthermore, the Court reiterates that, again in the context of a complaint under Article 5 § 1 of the Convention, it has required proof in the form of concordant inferences before the burden of proof is shifted to the Government (see *El-Masri*, cited above, § 153, with further references).

B. Application to the present case

49. The Court reiterates that it concluded in *Georgia v. Russia (I)* (cited above, § 159) that from October 2006 a coordinated policy of arresting, detaining and expelling Georgian nationals had been put in place in the Russian Federation, which had amounted to an administrative practice. While the Court does not suggest that at that time all Georgian nationals were arrested or detained in the Russian Federation, it nevertheless finds it

appropriate to apply the principles concerning reversing the burden of proof to the present case. Nonetheless, where the applicants failed to make a prima facie case, no strong inferences will be drawn and proof "beyond reasonable doubt" would be required.

1. Eka CHKAIDZE and David JAOSHVILI (born respectively on 1 December 1979 and on 12 February 1975, application no. 15221/07)

50. According to the applicants their then six year old son had been detained for five hours at the Ivanov district police department on 9 October 2006 and he was only released after the payment of a bribe. The applicants also indicated that their belongings, which they had to leave behind in Russia, included a car.

51. The Government objected to the allegation of the detention of the applicants' son and stated that an inquiry by the prosecutor's offices had not produced any proof for this allegation. The Government also indicated that no vehicle was registered in the name of the applicants in the database of the State Traffic Police Department.

52. The Court observes that the applicants' submission was of a general nature and lacked several important details, such as the exact time of the detention, the amount of the paid bribe, the make, model or registration number of the car (see, *a contrario*, *El-Masri*, cited above, § 156). The Court also notes that the applicants did neither submit any documents or witness statements regarding the alleged detention of their son and the ownership of the car nor have they informed the Court of any attempts they may have made in order to obtain at least fragmentary documentary evidence to substantiate their allegations (see *Lisnyy and others*, cited above, § 30). Accordingly, the Court finds that the applicants have not made a prima facie case and that the information in the Court's possession does not suffice to establish that the applicants' son had been detained on 9 October 2006 or that the applicants had to leave behind their car (see, *mutatis mutandis*, *Sargsyan v. Azerbaijan* [GC], no. 40167/06, § 183, ECHR 2015).

2. Nato SHAVSHISHVILI (born on 18 March 1956, application no. 16369/07)

53. The applicant alleged that on or around 28 to 30 September 2006 she was arrested by police officers and brought to the Department of the Interior, where she was detained for four days. Due to health issues, according to the applicant half her body had become paralysed, she was released on the evening of the fourth day. On 18 October 2006 she left the Russian Federation by aeroplane.

54. The Government submitted that neither the Federal Migration Service nor the Department of the Interior had any records or information about the placement of the applicant in any detention facility.

55. The Court observes that the applicant alleges a detention in a not closer specified police station. The Court also notes that the applicant was not able to provide the exact date of her arrest and that she did not submit any medical certificate regarding her paralysis, which was allegedly the reason for her release. Having regard to these uncertainties, the Court finds that the applicant has neither made a prima facie case nor that the applicant's detention has been established beyond reasonable doubt (see, *mutatis mutandis*, *Lisnyy and others*, cited above, §§ 27, 28).

3. David LATSABIDZE (born on 15 March 1961, application no. 16369/07)

56. According to the applicant he was arrested on 10 October 2006 by officers of the migration authorities and was brought to the Department of the Interior for the Serpokhova district of Moscow, where he was kept for approximately one and a half hours. On the same day the applicant was taken to an unspecified District Court in Moscow, which ordered his detention and expulsion. Subsequently the applicant was transferred to the Serpokhova special detention centre, where he was detained until his expulsion. On 17 October 2006 the applicant was taken by bus to Domodedovo airport and he was flown, by cargo plane, to Georgia.

57. The Government submitted that neither the Federal Migration Service nor the Department of the Interior had any records or information about the placement of the applicant in any detention facility. It further indicated that a Serpukhovskiy temporary detention centre does not exist.

58. The Government provided several documents with regard to administrative proceedings concerning the applicant. These include an administrative offence report from the Leninskiy district dated 13 October 2006, indicating the applicant's arrest on the same day at 10 o'clock and a decision of the Vidnoye Town Court of the Moscow Region, also dated 13 October 2006, fining the applicant (RUB 1,000) for not observing the applicable registration procedure, and ordering the applicant's expulsion. The Court decision also indicates that the applicant shall be held at the Reception Centre of Serpukhov until his expulsion. Furthermore, the judgment shows a stamp of Domodova airport, dated 17 October 2006.

59. On the basis of the material in its possession, the Court finds it established that the applicant was arrested on 13 October 2006 and taken to the Leninskiy police station, where he was held for one and a half hours. Subsequently the applicant was brought before the Vidnoye Town Court, which fined the applicant and ordered his detention and expulsion. The applicant was then detained until 17 October 2006 in the Reception Centre

of Serpukhov. On 17 October the applicant was taken by bus to Domodedovo airport and was then flown, by cargo plane, to Georgia.

4. Artur SARKISIAN and Andrei SARKISIAN (born respectively on 23 February 1981 and on 12 November 1982, application no. 16369/07)

60. The applicants submitted that on 2 October 2006 they were stopped by police officers in the street next to the Oktiaborskoe pole metro station in Moscow for identity checks. Subsequently they were taken to the Department of the Interior for the Shchukino district of Moscow. After two hours they were transferred to a special detention centre in the Khoroshevo-Mnevniki district. After eight days in the detention centre they were, for the first time, allowed to call their mother and were able to ask her to buy aeroplane tickets for them. After the applicants' mother had done so and presented the aeroplane tickets to the officers of the detention centre, the applicants were released. On 19 October 2006 the applicants left the Russian Federation by aeroplane from Domodedova airport in Moscow.

61. The Government submitted that an inquiry into the alleged detention in the Department of the Interior for Shchukino and Khoroshevo-Mnevniki districts of Moscow did not confirm the applicants' version of events. According to the Government the applicants had not been brought to the police station of the North-Western Administrative District of Moscow either, as that police station was closed for reconstruction at the relevant time. Lastly, the Government submitted that no criminal proceedings were instigated against the applicants.

62. The Court notes that the applicants have submitted copies of their passports, showing that they left Russian territory on 19 October 2006, in support of their application. However, the Court also observes that the applicants have not submitted any documents, such as the aeroplane tickets and the receipts of the purchase, or witness statements, such as from their mother, corroborating their submission regarding their detention and release. Under these circumstances the Court finds it unable to conclude that the applicants have made a prima face case. Consequently, the burden of proof can not be reversed and fully shifted to the Government (see *Saydulkhanova*, cited above, § 56, with further references). The Court considers it not established beyond reasonable doubt that the applicants had been detained between 2 and 10 October 2006.

5. Koba NORAKIDZE (born on 17 April 1969, application no. 16369/07)

63. According to the applicant's submission, on 4 October 2006 four police officers of the Litkarenko Department of the Ministry of the Interior visited him at home and checked his identity documents. Owing to him

being Georgian and under the pretence that he was suspected of theft, he was taken to the Litkarino police station, where he was identified in an identity parade by the theft victim. Subsequently he was detained and only after the intervention of one of the applicant's friends, who worked for the Federal Security Service, his involvement in the alleged theft was cleared up and the investigation was dropped. The applicant was nonetheless not released but kept in a cell of the police station overnight. On 5 October 2006 he was transferred to the special detention centre in the Lubedtsi district in Moscow, where he was detained until 6 October 2006, when the Litkarinskiy Town Court of Moscow Region discontinued proceedings against the applicant for not observing the registration procedure. Approximately two weeks later the applicant was stopped by two men in plainclothes on the highway, who forced the applicant into their car and put a hood over his head. After a two hour drive, the applicant was led to an unspecified police station and placed in a cell. On the third day of detention in the police station the applicant was handed a decision of the Kuzminskiy District Court, ordering his expulsion and fining the applicant (RUB 1,000). The next day, 24 October 2006, the applicant was taken to the Sheremetevo airport by police officers and put on a flight to Gandja, Azerbaijan.

64. The Government submitted that the applicant was apprehended on 22 October 2006 by officers of the Department of the Interior of the Kuzminski district of Moscow and was brought before the Kuzminskiy District Court on 23 October 2006. The court fined the applicant for not observing the applicable registration procedure and ordered the applicant's expulsion. The Government also stated that neither the Federal Migration Service nor the Department of the Ministry of the Interior had any records or information about any subsequent detention of the applicant and that the applicant was not forcibly removed from the Russian Federation, but left on his own on 24 October 2006.

65. The applicant submitted *inter alia* the decision of the Litkarinskiy Town Court of Moscow Region of 6 October 2006 and of the Kuzminskiy District Court of 23 October 2006. The Government submitted in addition to the decision of the Kuzminskiy District Court, reports concerning the arrest and detention of the applicant on 22 October 2006.

66. The Court observes that the applicant has not submitted any proof concerning his detention from 4 to 6 October 2006 and from 21 to 24 October 2006, and that his submission concerning the second alleged detention is partially fragmentary. The Court also notes that the Kuzminskiy District Court did not order the applicant's subsequent detention in one of the Centres for Temporary Detention of Aliens, as the Russian courts did in other cases. Accordingly the Court considers the information submitted by the applicant insufficient to conclude that he has made a prima facie case. Therefore, the burden of proof can not be reversed and shifted to the Government (see *Saydulkhanova*, cited above, § 56, with further

references). The Court considers it not established beyond reasonable doubt that the applicant had been detained between 4 and 7 October 2006. However, based on the information and documents provided by the Government, the Court concludes that the applicant had been detained in the Department of the Interior of the Kuzminski district of Moscow on 22 and 23 October 2006.

6. Khatuna DZADZAMIA (born on 27 January 1983, application no. 16369/07)

67. The applicant initially submitted that at the end of September 2006 she had submitted her passport and several other documents to her University, for the renewal of her registration. On 8 October 2006 she received a call from the University, informing her that there were problems with her passport and that she had to go to the Presninski Passport Department. When she went there the next day, she was notified about a decision to expel her, owing to her visa-related offence in 2004. On 11 October 2006 she returned to the passport department to prove that she was an internally deplaced person and had a right to stay in the Russian Federation. In the evening on the same day she was taken to the Presninski District Court, which confirmed her expulsion. Subsequently she was brought to the Police Department of the Presninski District, where she was detained until midnight. During the following hours the police attempted to bring her to several different detention centres, where she was not admitted as they were already full or only for men or for convicted persons. At around 6 o'clock in the morning of 11 October 2006 she was admitted to a Women's Immigration Reception Centre, near Butirskaia prison, and was detained until her expulsion. On 17 October 2006 the applicant was brought to Domodedova airport and flown to Georgia by an aircraft belonging to the Ministry of Emergency Situations of the Russian Federation.

68. According to the Government the applicant was apprehended on 4 October 2006 by officers of the Federal Migration Service of the Presnenskiy District Division. On 5 October 2006 the Presnensky District Court of Moscow found the applicant guilty of not complying with a five year ban from entering the Russian Federation. The court fined the applicant (RUB 1,500) and ordered her expulsion and detention. Subsequently the applicant was placed in the Centre for Temporary Detention of Aliens no. 2 until her expulsion on 10 October 2006.

69. The applicant subsequently submitted a copy of her passport, showing a stamp leaving the Russian Federation on 10 October 2006 and entering Georgia over Tbilisi airport on the same date. The Government provided a copy of the decision of the Presnensky District Court of Moscow dated 5 October 2006.

70. On the basis of the material in its possession, provided by the applicant and the Government, the Court concludes the following:

The applicant was arrested on 4 October 2006 by officers of the Federal Migration Service of the Presnenskiy District Division and detained until the next day. On 5 October 2006 the Presnensky District Court of Moscow fined the applicant (RUB 1,500) and ordered her expulsion and detention. From 5 until 10 October 2006 the applicant was detained in the Centre for Temporary Detention of Aliens no. 2. On 10 October 2006 the applicant was expelled from the Russian Federation.

7. Inga GIGASHVILI (born on 29 September 1969, application no. 16706/07)

71. The applicant submitted that on 7 October 2006, after her husband Tengiz Kbilashvili, who is also an applicant (application no. 14597/07), had been deported, she went to the local passport department, to arrange her departure from the Russian Federation. In the local passport department her passport was taken from her and she was transferred to a militia department for detention. Later that day, she was transferred to the Centre for Temporary Detention of Aliens no. 2, where she was detained until her expulsion on 17 October 2006.

72. According to the Government the applicant was arrested on 11 October 2006 and was subsequently brought before the Tverskoy District Court of Moscow, which *inter alia* ordered the applicant's detention (see paragraph 29 above). On 12 October 2006 she was transferred to the Centre for Temporary Detention of Aliens no. 2, where she was detained until her expulsion on 17 October 20006. The Government submitted several documents in this regards, including a report of the applicant's arrest, the court decision and reports from an initial medical examination in the detention centre, all dated 11 October 2006.

73. On the basis of the material in its possession, and noting that the alleged earlier detention is not only not corroborated by any other evidence but also contradicted by the documents submitted by the Government, the Court can not conclude that it has been established beyond reasonable doubt that the applicant had been detained prior to the 11 October 2006. It has been established, however, that the applicant was arrested on 11 October 2006 and fined by the Tverskoy District Court of Moscow, which also ordered her detention and expulsion until 17 October 2006 (see paragraph 29 above).

IV. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL No. 4 TO THE CONVENTION

74. The applicants, except Ms Liana Nachkebia, complained that they, as Georgian nationals, were collectively expelled from the Russian Federation in violation of Article 4 of Protocol No. 4 to the Convention, which reads as follows:

> "Collective expulsion of aliens is prohibited."

75. The applicants argued that from the beginning of October 2006 there was a coordinated policy in place in the Russian Federation to expel Georgian nationals. In accordance with that policy the applicants were arrested, detained and subsequently expelled, without an examination of the individual case or the particular circumstances of each applicant. Consequently the applicant were unable to be heard and to submit their arguments before the Russian courts, but were expelled on the basis of a standardised court decision.

76. The Government only contested the factual background of certain applications (see paragraphs 50-73 above), but otherwise referred to the judgment of the Court in *Georgia v. Russia (I)* (cited above, § 178) finding a violation of Article 4 of Protocol No. 4 to the Convention.

77. The Government of Georgia reiterated the arguments submitted in *Georgia v. Russia (I)* (cited above) and referred to the reports of international organisations mentioned in the judgment. It further maintained that the expulsion of the present applicants had been based on their national and ethnic origin and not on their situation under the immigration rules of the Russian Federation.

A. Admissibility

78. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. General Principles

79. The Court reiterates its case-law according to which collective expulsion, within the meaning of Article 4 of Protocol No. 4 to the Convention, is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken following, and on the basis of, a reasonable and objective examination of the particular case of each individual alien of the group (see *Khlaifia and Others v. Italy*

[GC], no. 16483/12, § 237, 2 November 2016, with further references). The Court has subsequently specified that a reasonable and objective examination requires that each person concerned has been given the opportunity to put arguments against his or her expulsion to the competent authorities on an individual basis (see, among other authorities, *Sultani v. France*, no. 45223/05, § 81, ECHR 2007-IV (extracts), *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 184, ECHR 2012). That does not mean, however, that where there has been a reasonable and objective examination of the particular case of each individual the background to the execution of the expulsion orders plays no further role in determining whether there has been compliance with Article 4 of Protocol No. 4 to the Convention (see *Khlaifia and Others*, cited above, § 237, with further references).

80. In *Georgia v. Russia (I)* (cited above, §§ 159, 175, 178) the Court concluded that:

> "...from October 2006 a coordinated policy of arresting, detaining and expelling Georgian nationals was put in place in the Russian Federation which amounted to an administrative practice for the purposes of Convention case-law.
>
> ... during the period in question the Russian courts made thousands of expulsion orders expelling Georgian nationals. Even though, formally speaking, a court decision was made in respect of each Georgian national, the Court considers that the conduct of the expulsion procedures during that period, after the circulars and instructions had been issued, and the number of Georgian nationals expelled – from October 2006 – made it impossible to carry out a reasonable and objective examination of the particular case of each individual.
>
> ... the expulsions of Georgian nationals during the period in question were not carried out following, and on the basis of, a reasonable and objective examination of the particular case of each individual and that this amounted to an administrative practice in breach of Article 4 of Protocol No. 4."

2. Application in the present case

(a) Nato Shavshishvili, Artur Sarkisian and Andrei Sarkisian (application no. 16369/07)

81. The Court observes that regarding the applicants Nato Shavshishvili, Artur Sarkisian and Andrei Sarkisian no official expulsion decisions by a court or any other Russian authority had been issued and that they left the Russian Federation by their own means. The Court also notes that it is not established that the applicants Artur Sarkisian and Andrei Sarkisian were coerced by detention officers to leave the country. However, the Court also acknowledges that owing to the administrative practice in place at the relevant time Georgian nationals in the Russian Federation had to fear to be arrested, detained and expelled. The Court considers it therefore comprehensible that some Georgian nationals left the Russian Federation prior to an official expulsion order anticipating being arrested, detained and

expelled. Nonetheless, in absence of such an official expulsion order or any other specific act by the authorities the Court finds itself unable to conclude that these three applicants have been the subject of a "measure compelling aliens, as a group, to leave a country".

82. There has accordingly been no violation of Article 4 of Protocol No. 4 to the Convention.

(b) The remaining applicants

83. The Court observes that regarding the remaining applicants there have been decisions by different courts, ordering the expulsion of the applicants from the Russian Federation. Consequently the Court concludes that the applicants were subjected to the administrative practice of expelling Georgian nationals and that the expulsions of the applicants were not carried out following, and on the basis of, a reasonable and objective examination of the particular case of each individual.

84. There has accordingly been a violation of Article 4 of Protocol No. 4 to the Convention.

V. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 7 TO THE CONVENTION

85. The applicants, except Ms Liana Nachkebia, complained that the procedural guarantees in the event of a deportation, as set out in Article 1 Protocol No. 7 to the Convention, were infringed. Article 1 of Protocol No. 7 to the Convention reads as follows:

> "1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
>
> (a) to submit reasons against his expulsion,
>
> (b) to have his case reviewed, and
>
> (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.
>
> 2. An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security."

A. Admissibility

86. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

87. The Court notes that Article 1 of Protocol No. 7 to the Convention refers expressly to aliens "lawfully resident in the territory of a State". The Court also observes that the applicants Eka Chkaidze and David Jaoshvili did not claim to have been lawfully residing in the Russian Federation.

88. Having regard to all the material in its possession, the Court considers that it has been neither established that the applicants Nato Shavshishvili, Artur Sarkisian and Andrei Sarkisian were expelled from the Russian Federation nor that any of the expelled applicants had been lawfully residing in the territory of the Russian Federation.

89. Accordingly, the Court considers that the complaint raised by the applicants under this Article is not sufficiently substantiated and that the evidence before it is insufficient to conclude that there has been a violation.

90. There has therefore been no violation of Article 1 of Protocol No. 7 to the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 4 OF THE CONVENTION

91. All applicants complained of a violation of their right to liberty and security. They relied on Article 5 §§ 1 and 4 of the Convention, which, as far as relevant, read as follows:

> "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:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

92. The applicants argued that their detention was not only arbitrary but did not serve the purpose of ensuring the applicants' expulsion. According to the applicants their detention was based on a xenophobic attitude towards Georgian nationals. Moreover, they submit that they had no practical opportunity to challenge the legality of the action taken against them, since they were denied the right to obtain legal advice and were deported without having the opportunity to challenge the court decisions, with which they were not provided and which were based on deeply flawed proceedings.

93. The Government only contested the factual background of certain applications (see paragraphs 50-73 above), but otherwise referred to the judgment of the Court in *Georgia v. Russia (I)* (cited above, §§ 187, 188) finding a violation of Article 5 §§ 1 and 4 of the Convention.

94. The Georgian Government reiterated the factual submissions of the applicants and concluded that the arbitrary fashion in which the Georgian nationals were arrested and detained rendered their detention unlawful for the purposes of Article 5 § 1 of the Convention. The Government also argued that the arrest of Georgian nationals (including the present applicants) in autumn 2006, had been based on their national and ethnic origin and not on their situation under the immigration rules in the Russian Federation.

A. Admissibility

95. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

96. The Court notes at the outset that the detention of the applicants was linked to their subsequent expulsion from the Russian Federation and was part of the administrative practice of arresting, detaining and expelling Georgian nationals. Consequently the applicants were detained with a view to their expulsion and Article 5 § 1 (f) of the Convention is thus applicable in the instant case.

1. General Principles

97. The Court reiterates that Article 5 § 1 (f) does not require that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his committing an offence or fleeing. In this respect, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation" (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, Reports of Judgments and Decisions 1996-V, p. 1862, § 112).

98. Where the 'lawfulness' of detention is in issue the Convention refers essentially to the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, namely to protect

the individual from arbitrariness (see *Čonka*, cited above, § 39, with further references).

99. Regarding Article 5 § 1 the Court held in *Georgia v. Russia (I)* (cited above, §§ 185-187) that

> "[*T*]the expulsions of the Georgian nationals were preceded by mass arrests – in the street, at their workplace or at their homes. ... Moreover, it [*the Court*] has concluded that a coordinated policy of arresting, detaining and expelling Georgian nationals was implemented in the Russian Federation from October 2006.
>
> Accordingly, the fact that those expulsions were described as "collective" by the Court means, in the circumstances of the case, that the arrests that preceded them were arbitrary.
>
> Having regard to the foregoing findings, the Court considers that the arrests and detentions of Georgian nationals during the period in question amounted to an administrative practice in breach of Article 5 § 1 of the Convention."

100. The Court reiterates that by virtue of Article 5 § 4 arrested or detained persons are entitled to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty (*Idalov v. Russia* [GC], no. 5826/03, § 160, 22 May 2012). The notion of "lawfulness" must have the same meaning under paragraph 4 of Article 5 as in paragraph 1, so that the detained person is entitled to a review of the "lawfulness" of his detention in the light not only of domestic law but also of the text of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1 (see *Georgia v. Russia (I)*, cited above, § 183, with further references).

101. Concerning domestic remedies in the Russian Federation against arrest and detention and against expulsion orders the Court established in *Georgia v. Russia (I)* (cited above, §§ 152-156) that

> "[*H*]having regard to all the material in its possession, the Court considers that during the period in question there were real obstacles for the Georgian nationals in using those remedies, both during the proceedings before the Russian courts in the Russian Federation and once they had been expelled to Georgia.
>
> It considers that in the Russian Federation those obstacles arose as a result of the procedures carried out before the Russian courts as described by the Georgian witnesses, namely, that they had been brought before the courts in groups. Whilst some referred to an interview with a judge lasting an average of five minutes and with no proper examination of the facts of the case, others said that they had not been allowed into the courtroom and had waited in the corridors, or even in the buses that had delivered them to the court, with other Georgian nationals. They said that they had subsequently been ordered to sign the court decisions without having been able to read the contents or obtain a copy of the decision. They had had neither an interpreter nor a lawyer. As a general rule, both the judges and the police officers had discouraged them from appealing, telling them that there had been an order to expel Georgian nationals.

> Furthermore, the climate of precipitation and intimidation in which these measures were taken also explains the reluctance of the Georgian nationals to use those remedies.
>
> In Georgia, over and above the psychological factor, it considers that there were practical obstacles in using these remedies because of the closure of transport links between the two countries. Furthermore, it was very difficult to contact the consulate of the Russian Federation in Georgia, which was very short staffed with only three diplomats at the material time."

102. Consequently, the Court came to the conclusion that in the absence of effective and accessible remedies available to Georgian nationals against the arrests, detentions and expulsion orders during the period in question that there has been a violation of Article 5 § 4 of the Convention (see *Georgia v. Russia (I)*, cited above, § 188).

2. Application to the present case

(a) Nato Shavshishvili, Artur Sarkisian and Andrei Sarkisian (application no. 16369/07)

103. As regards these three applicants the Court notes that it has been unable to establish beyond reasonable doubt that the applicants were detained respectively in an unspecified Department of the Interior and a special detention centre in the Khoroshevo-Mnevniki district (see paragraphs 55, 62 above). Consequently the Court concludes that there has not been a violation of Article 5 §§ 1 and 4 of the Convention.

(b) Eka Chkaidze and David Jaoshvili (application no. 15221/07)

104. The Court observes that these two applicants did not complain about a detention of themselves but about the detention of their son, then six years old. The Court notes that based on the material in its possession it was unable to establish beyond reasonable doubt that the applicants' son had been detained in a police station for five hours on 9 October 2006 (see paragraph 52 above). Consequently the Court concludes that there has been no violation of Article 5 §§ 1 and 4 of the Convention.

(c) The remaining applicants

105. As regards the remaining applicants the Court sees no reason why it should depart in the present case from its findings in the inter-State case (see *Georgia v. Russia (I)*, cited above, §§ 187, 188). It observes that the remaining applicants were all detained, either in police stations or first in police stations or militia departments and subsequently in detention centres for aliens. The Court reiterates that the arrests and detentions at that time were arbitrary and amounted to an administrative practice in breach of Article 5 § 1 of the Convention (see *Georgia v. Russia (I)*, cited above, § 187). Moreover, the Court still considers that during the period in question

there were real and practical obstacles for Georgian nationals to instigate a review of the "lawfulness" of his or her detention.

106. Accordingly there has been a violation of Article 5 §§ 1 and 4 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

107. The applicants Vaja Berdzenishvili (application no. 14594/07), Tengiz Kbilashvili (application no. 14597/07) and Inga Gigashvili (application no. 16706/07) also complained under Article 2 of Protocol No. 4 to the Convention about their detention. Article 2 of Protocol No. 4 to the Convention provides:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
>
> 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

108. The Court reiterates that while Article 5 § 1 of the Convention concerns the deprivation of liberty, Article 2 of Protocol No. 4 governs mere restrictions on the liberty of movement. However, the difference between both concepts is not one of nature or substance but one of degree or intensity (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 115, ECHR 2012, *Guzzardi v. Italy*, 6 November 1980, §§ 92, 93, Series A no. 39).

109. Having regard to the Court's conclusions regarding Article 5 § 1 of the Convention (see paragraphs 103-106 above), the Court considers that it is not necessary to examine Article 2 of Protocol No. 4 to the Convention separately.

VIII. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

110. The applicants further complained about the conditions of their detention. They relied on Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

1. The applicants

111. The applicants submitted that the conditions of detention were inhuman and degrading. They indicated that the detention centres were severely overcrowded; that the detainees had to sleep in turns or on the concrete floor of the cells, as there were an insufficient number of beds in the cells; that the toilettes were not fully separated from the rest of the cell; that the general condition of the cells were insanitary and that the quality of food was poor. In addition, in regards to the detention centres for women, the applicants stated that the toilets were not in the cells, but were located in the corridors. Therefore, they had no free access to the toilets and were only taken to the facilities two to three times a day. In the meantime they had to use buckets in the cells instead. Regarding the cells in the different police stations the applicants submitted that they also were extremely overcrowded, that they very rarely had any beds or chairs and that, even if they were detained over night, they were not provided with any food.

2. The Government

112. The Government contested the description of the detention centres. The Government submitted that the women had at least 2 sqm per person and the men at least 4,5 sqm per person in each cell of the detention centres; that there were sufficient beds in each cell, and that every detainee was provided with bedding and bed linen. Regarding the toilet facilities the Government indicated that the toilet facilities were separated with see-through partitions and kept in a good condition. In addition the detainees were provided twice a week with sufficient detergents and disinfection solutions for personal hygiene and sanitary treatment of the toilet facilities and cells.

3. The Georgian Government

113. The Georgian Government referred to the judgment of the Court in the inter-State case, where it had held that the conditions of detention had caused undeniable suffering to the Georgian nationals and constituted both inhuman and degrading treatment which amounted to an administrative practice in breach of Article 3 of the Convention.

B. The Court's assessment

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

1. General Principles

115. The Court reiterates its recent case law on conditions of detention and Article 3, which it has summarised in its pilot judgment *Ananyev and Others v. Russia*, and reproduced in its judgment *Idalov v. Russia*:

> "In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.
>
> When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant. The length of the period during which a person is detained in the particular conditions also has to be considered"

(see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 141, 142, 10 January 2012, *Idalov v. Russia* [GC], no. 5826/03, §§ 93, 94, 22 May 2012, with further references).

116. The Court also reiterates its findings from the inter-State case *Georgia v. Russia (I)* [GC] regarding the conditions of detention of Georgian nationals in autumn 2006:

> "The parties disagreed on most aspects of the conditions of detention of the Georgian nationals. However, where conditions of detention are in dispute, there is no need for the Court to establish the veracity of each and every disputed or contentious point.
>
> ...
>
> The Court does not doubt that the conditions of detention were extremely difficult given the large number of Georgian nationals detained with a view to their expulsion in such a short time. In that connection it finds the statements of the Georgian witnesses at the witness hearing more credible than those of the Russian officials, who described very good conditions of detention.
>
> Having regard to all the material submitted to the Court, it appears first and foremost undeniable that the Georgian nationals were detained in cells in police centres or severely overcrowded detention centres for foreigners. In any event the personal space available to them did not meet the minimum standard as laid down in the Court's case-law. Moreover, the Georgian nationals had to take it in turns to sleep because of the lack of individual sleeping places.
>
> The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" within the meaning of Article 3 of the Convention.
>
> Generally speaking, the Court has indicated on several occasions that overcrowding in Russian prisons was a matter of particular concern to it. In a large number of cases, it has consistently found a violation of the applicants' rights on account of a lack of sufficient personal space during their detention. The present case, which concerns detention centres for foreigners, is no exception in this respect.

> The Court also refers to the report of the European Committee for the Prevention of Torture (CPT) on the Russian Federation of December 2001 in which it stated that it was very concerned about the conditions of detention of foreign nationals in these centres, stressing overcrowding in cells (report to the Russian Government on the CPT's visit to the Russian Federation from 2 to 7 December 2001, § 32, CPT/Inf (2003) 30).
>
> Furthermore, the Court cannot but note in the present case that the evidence submitted to it also shows that basic health and sanitary conditions were not met and that the detainees suffered from a lack of privacy owing to the fact that the toilets were not separated from the rest of the cells.
>
> In that connection the Court reiterates that the inadequacy of the conditions of detention constitutes a recurring structural problem in the Russian Federation which results from a dysfunctioning of the Russian prison system and has led the Court to conclude that there has been a violation of Article 3 in a large number of judgments since the first finding of a violation in 2002 in the case of *Kalashnikov v. Russia* (no. 47095/99, ECHR 2002-VI) and to adopt a pilot judgment in the above-cited case of *Ananyev and Others*. The Court therefore sees no reason to depart from that conclusion in the present case.
>
> Having regard to all the foregoing factors, the Court concludes that the conditions of detention caused undeniable suffering to the Georgian nationals and should be regarded as both inhuman and degrading treatment which amounted to an administrative practice in breach of Article 3 of the Convention"

(see *Georgia v. Russia (I)*, cited above, §§ 194-205, with further references).

2. Application to the present case

(a) Nato Shavshishvili, Artur Sarkisian and Andrei Sarkisian (application no. 16369/07) and Eka Chkaidze and David Jaoshvili (application no. 15221/07)

117. The Court reiterates that it has not established beyond reasonable doubt that these five applicants were detained (see paragraphs 52, 55, 62 above). Accordingly, the Court considers that regarding these applicants there has been no violation of Article 3 of the Convention on.

(b) The remaining applicants

118. As far as it had been contested by the Government, the Court has established that the remaining applicants had been detained. Moreover, the Court sees no reason to depart from its findings in the case *Georgia v. Russia (I)* [GC].

119. Accordingly, there has been a violation of Article 3 of the Convention on account of the inhuman and degrading conditions of detention.

IX. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

120. The applicants Vaja Berdzenishvili (application no. 14594/07), Tengiz Kbilashvili (application no. 14597/07), Abram Givishvili (application no. 14976/07), Liana Nachkebia (application no. 14978/07), Eka Chkaidze, David Jaoshvili (application no. 15221/07) and Inga Gigashvili (application no. 16706/07) further complained that their expulsion decisions were based on unfair trials, not complying with the guarantees of Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

121. The Court reiterates that procedures for the expulsion of aliens do not concern the determination of a "civil right" for the purposes of Article 6 § 1. The fact that the exclusion orders incidentally have major repercussions on one's private and family life or on one's prospects of employment cannot suffice to bring those proceedings within the scope of civil rights protected by Article 6 § 1 of the Convention. Such orders constitute a special preventive measure for the purposes of immigration control and therefore also do not concern the determination of a criminal charge against the applicant for the purposes of Article 6 § 1. The fact that they might be imposed in the context of criminal proceedings cannot alter their essentially preventive nature (see *Maaouia v. France* [GC], no. 39652/98, §§ 38, 39, ECHR 2000-X, with further references).

122. The Court concludes that the decisions regarding the applicants' expulsions did not concern the determination of a civil right or obligation or of a criminal charge against them, within the meaning of Article 6 § 1 of the Convention.

123. Consequently, Article 6 § 1 is not applicable in the instant case and the applicants' complaint under Article 6 § 1 has to be declared incompatible *ratione materiae* within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 of the Convention.

X. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 3 AND 5 § 1 OF THE CONVENTION, ARTICLE 4 OF PROTOCOL No. 4 AND ARTICLE 1 OF PROTOCOL No. 7

124. The applicants further complained that they had no effective remedy to challenge their unlawful arrests, detention and expulsion. They relied on Article 13 in conjunction with Articles 3 and 5 § 1 of the Convention, Article 2 of Protocol No. 4 and Article 1 of Protocol No. 7. Article 13 of the Convention 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."

125. The Court notes that this complaint is linked to the complaints under the substantive provisions examined above and must therefore likewise be declared admissible.

126. The Court reiterates that Article 13 has been consistently interpreted by the Court as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, for example, *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, pp. 23-24, § 54). The provided remedy must be "effective" in practice as well as in law (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 62, ECHR 2003-V, with further references).

127. As regards the applicants' complaint under Article 13 in conjunction with Article 5 § 1 of the Convention, the Court notes that according to its established case-law the more specific guarantee of Article 5 § 4, being a *lex specialis* in relation to Article 13, absorb its requirements (*Khadisov and Tsechoyev v. Russia*, no. 21519/02, § 162, 5 February 2009). The Court reiterates that concerning the applicants Nato Shavshishvili, Artur Sarkisian and Andrei Sarkisian (application no. 16369/07) and Eka Chkaidze and David Jaoshvili (application no. 15221/07) it was not able to establish that they were detained and consequently did not find a violation of Article 5 § 1 and 4 of the Convention (see paragraphs 103, 104). Having already found a violation of Article 5 § 4 of the Convention in regards to the remaining applicants, the Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 § 1 of the Convention.

128. The Court also considers that finding a violation of Article 4 of Protocol No. 4 to the Convention in itself means that there was a lack of effective and accessible remedies (see *Georgia v. Russia (I)*, cited above, § 212). Accordingly, there is no need to examine separately the applicants' complaint under Article 13 of the Convention read in conjunction with Article 4 of Protocol No. 4.

129. As regard the applicants' complaint under Article 1 of Protocol No. 7 to the Convention the Court notes that it concluded that the complaint was not sufficiently substantiated and that the evidence before it was insufficient to conclude that there had been a violation (see paragraphs 87-90 above). Consequently, the Court can not conclude, from the material in its possession, that the applicants had an arguable complaint under Article 1 of Protocol No. 7 in relation to their complaint under Article 13.

130. With regard to the complaint under Article 13 of the Convention taken in conjunction with Article 3, the Court notes that concerning the applicants Nato Shavshishvili, Artur Sarkisian and Andrei Sarkisian (application no. 16369/07) and Eka Chkaidze and David Jaoshvili (application no. 15221/07) it was not able to establish that they were detained. Therefore, the Court did not find a violation of Article 3 with regard to these applicants and their alleged conditions of detention. For the same reason the Court can not conclude that these applicants have an arguable claim under Article 3 in relation to their complaint under Article 13 of the Convention.

131. Nonetheless, having regard to its finding of a violation of Article 3 of the Convention with regard to the other applicants, the Court cannot but conclude that the complaint made by the applicants in conjunction with this Article is "arguable" for the purposes of Article 13. Moreover, the Court notes that in its pilot judgment *Ananyev and Others* it found that at the relevant time there was no effective remedy in the Russian legal system that could be used to put an end to the conditions of inhuman and degrading detention or to obtain adequate and sufficient redress in connection with a complaint about inadequate conditions of detention (see *Ananyev and Others*, cited above, § 119).

132. Accordingly, it considers that this case is no different (see *Georgia v. Russia (I)*, cited above, § 216) and therefore concludes that there has been a violation of Article 13 of the Convention taken in conjunction with Article 3 in regards to those applicants, for whom the Court has found a violation of Article 3.

XI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 3, 5 § 1 AND 6 OF THE CONVENTION, ARTICLES 2 AND 4 OF PROTOCOL No. 4 AND ARTICLE 1 PROTOCOL No. 7

133. The applicants further complained that they were arrested, detained and expelled not based on infringements of the relevant immigration provisions but owing to their Georgian nationality. They relied on Article 14 of the Convention taken in conjunction with Articles 3, 5 § 1 and

6 of the Convention, Articles 2 and 4 of Protocol No. 4 and Article 1 of Protocol No. 7. Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

134. The Court notes that this complaint is linked to the complaints under the substantive provisions examined above and must therefore likewise be declared admissible.

135. The Court notes that Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions, and to this extent it is autonomous, there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter. In addition, the Court has established in its case-law that in order for an issue to arise under Article 14 there must be a difference in treatment of persons in relevantly similar situations. Such a difference of treatment is discriminatory if it has no objective and reasonable justification (see *Hämäläinen v. Finland* [GC], no. 37359/09, §§ 107, 108, ECHR 2014)

136. The Court considers that, in the particular circumstances of the case, the complaints lodged by the applicants under Article 14 taken in conjunction with Article 5 § 1 and Articles 2 and 4 of Protocol No. 4 are the same – even though submitted under a different angle – as those complaints brought under the substantive provisions. The Court reiterates that regarding the arrest and detention, as far as they could be established, the Court has found a violation under Article 5 § 1 and concluded that it had not been necessary to examine the complaint under Article 2 of Protocol No. 4. The Court had further found a violation of Article 4 of Protocol No. 4 regarding the expulsion of the applicants. Accordingly, it considers that it is unnecessary to determine whether there has in the instant case been a violation of Article 14 taken in conjunction with those provisions on account of discriminatory treatment against the Georgian nationals (see *Georgia v. Russia (I)*, cited above, § 220).

137. The Court also considers it unnecessary to determine whether there has been a violation of Article 14 of the Convention taken in conjunction with Article 3, given that the inadequacy of the conditions of detention in Russian prisons concerned all the detainees regardless of their nationality (see *Georgia v. Russia (I)*, cited above, § 221).

138. The Court further notes that it has declared the complaint under Article 6 incompatible *ratione materiae*. Accordingly, the Court concludes that the complaint under Article 14 in conjunction with Article 6 does not fall in the ambit of one of the rights and freedoms safeguarded by the

Convention. As far as Article 1 of Protocol No. 7 to the Convention is concerned, the Court notes that it was unable to establish that any of the applicants were lawfully in the Russian Federation. Accordingly, the Court is also not able to determine whether there has been a difference in treatment of persons in relatively similar situation, meaning lawfully in the country. In sum, the Court concludes that there has not been a violation of Article 14 taken in conjunction with Article 6 of the Convention and Article 1 of Protocol No. 7.

XII. ALLEGED VIOLATION OF ARTICLES 17 AND 18 OF THE CONVENTION

139. The remaining applicants of application no. 16369/07 complained that their arrests, detention and expulsion were based on their nationality and ethnicity, but not on infractions of the Russian immigration rules. They relied on Articles 17 and 18 of the Convention, which read as follows:

Article 17 (prohibition of abuse of rights)

"Nothing in [the] Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

Article 18 (limitation on use of restrictions on rights)

"The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

140. Having regard to its findings under Article 4 of Protocol No. 4 to the Convention and Articles 3 and 5 §§ 1 and 4 of the Convention (see paragraphs 84, 119, 106 above), the Court considers it not necessary to examine the same issues under Articles 17 and 18.

XIII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

141. Lastly, the applicants Abram Givishvili (application no. 14976/07), Eka Chkaidze and David Jaoshvili (application no. 15221/07) complained under Article 1 of Protocol No. 1 to the Convention that they had to abandon their property and possessions in Russia, when they had to leave the Russian Federation. The applicant Abram Givishvili (application no. 14976/07) also invoked Article 8 of the Convention in that regard.

142. The Court considers that the complaints raised by the applicants under Article 8 of the Convention and Article 1 of Protocol No. 1 are not sufficiently substantiated and that the material in the Court's possession is insufficient to conclude that there has been any appearance of a violation.

143. It follows that these parts of the applications are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

XIV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

144. Article 41 of the Convention provides:

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

A. Damage

145. The applicants claimed in respect of non-pecuniary damage:

(i) Vaja Berdzenishvili (application no. 14594/07) 100,000 euros (EUR);
(ii) Tengiz Kbilashvili (application no. 14597/07) 100,000 euros (EUR);
(iii) Abram Givishvili (application no. 14976/07) 100,000 euros (EUR);
(iv) Liana Nachkebia (application no. 14978/07) 100,000 euros (EUR);
(v) Eka Chkaidze and David Jaoshvili (application no. 15221/07) 100,000 euros (EUR);
(vi) Irina Chokheli (application no. 16369/07) 25,000 euros (EUR);
(vii) Levan Kobaidze (application no. 16369/07) 25,000 euros (EUR);
(viii) Koba Kobaidze (application no. 16369/07) 25,000 euros (EUR);
(ix) Nato Shavshishvili (application no. 16369/07) 25,000 euros (EUR);
(x) David Latsabidze (application no. 16369/07) 25,000 euros (EUR);
(xi) Artur Sarkisian (application no. 16369/07) 25,000 euros (EUR);
(xii) Andre Sarkisian (application no. 16369/07) 25,000 euros (EUR);
(xiii) Irina Kalandia (application no. 16369/07) 25,000 euros (EUR);
(xiv) Kakha Tsikhistavi(application no. 16369/07) 25,000 euros (EUR);
(xv) Tato Norakidze, as the successor of Koba Norakidze, (application no. 16369/07) 25,000 euros (EUR);

(xvi) Khatuna Dzadzamia (application no. 16369/07) 25,000 euros (EUR);

(xvii) Inga Gigashvili (application no. 16706/07) 100,000 euros (EUR).

146. In addition Abram Givishvili (application no. 14976/07) claimed 70,000 euros (EUR) and Eka Chkaidze and David Jaoshvili (application no. 15221/07) claimed 3,000 euros (EUR) in respect of pecuniary damage.

147. The Government considered the claimed amounts evidently excessive and argued that the applicants did not submit sufficient documents regarding the claimed pecuniary damage. Moreover, the Government submitted that due to the application of Article 41 in the inter-State case *Georgia v. Russia (I)*, in which the applicants were named as victims, the Court should take the already granted application of damages into account.

148. The Court notes that thus far no specific damages under Article 41 of the Convention have been awarded to the victims in the inter-State case *Georgia v. Russia (I)* and that the question of the application of Article 41 is still pending before the Grand Chamber. The Court therefore considers the question of awarding damages in the present case not ready for examination and decides to reserve this question.

B. Costs and expenses

149. The applicants Vaja Berdzenishvili (application no. 14594/07), Tengiz Kbilashvili (application no. 14597/07), Liana Nachkebia (application no. 14978/07), Eka Chkaidze and David Jaoshvili (application no. 15221/07) and Inga Gigashvili (application no. 16706/07) also claimed each EUR 1,500 for the costs and expenses incurred before the Court. Abram Givishvili (application no. 14976/07) claimed EUR 2,000 for the costs and expenses incurred before the Court. The applicants of application no. 16369/07 claimed together 3,037.65 pounds sterling (GBP) for the costs and expenses incurred before the Court.

150. The Government considered the claimed amounts evidently excessive and argued that the applicants did not submit sufficient documents regarding the claimed costs and expenses.

151. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the above requirements have been met (see *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, § 94, ECHR 2013 (extracts)). Pursuant to Rule 60 §§ 2 and 3 of the Rules of Court all just satisfaction claims have to be submitted together with any relevant

supporting documents, and a failure to do so may lead to a rejection of the claim in whole or in part.

152. The Court notes that the applicants Vaja Berdzenishvili (application no. 14594/07), Tengiz Kbilashvili (application no. 14597/07), Abram Givishvili (application no. 14976/07), Liana Nachkebia (application no. 14978/07), Eka Chkaidze and David Jaoshvili (application no. 15221/07) and Inga Gigashvili (application no. 16706/07) have not submitted any legal or financial documents in support of their claims for cost and expenses. Having regard to the absence of these documents the Court dismisses their claims for cost and expenses.

153. Concerning the applicants of application no. 16369/07, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of GBP 3,037.65.

C. Default interest

154. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Dismisses*, unanimously, the Government's preliminary objection as to a "double jeopardy of the state";

2. *Decides*, unanimously, to strike the application no. 16369/07, insofar as it has been brought by Mr Gocha Khmaladze, out of its list;

3. *Dismisses*, unanimously, the Government's request to strike the application no. 16369/07, insofar as it has been brought by Mr Koba Norakidze, out of its list;

4. *Decides*, unanimously, to join the applications;

5. *Declares*, unanimously, the complaints concerning Articles 6 and 8 of the Convention and concerning Article 1 of Protocol No. 1 inadmissible and the remainder of the applications admissible;

6. *Holds*, by six votes to one, that there has been a violation of Article 4 of Protocol No. 4 to the Convention in respect to Mr Berdzenishvili, Mr Kbilashvili, Mr Givishvili, Ms Chkaidze, Mr Jaoshvili, Ms Chokheli,

Mr L. Kobaidze, Mr K. Kobaidze, Mr Latsbidze, Ms Kalandia, Mr Tsikhistavi, Mr Norakidze, Ms Dzadzamia and Ms Gigashvili;

7. *Holds*, unanimously, that there has been no violation of Article 4 of Protocol No. 4 to the Convention in respect to Ms Shavshishvili, Mr Artur Sarkisian and Mr Andrei Sarkisian;

8. *Holds*, unanimously, that there has been no violation of Article 1 of Protocol No. 7 to the Convention;

9. *Holds*, by six votes to one, that there has been a violation of Article 5 §§ 1 and 4 of the Convention in respect to Mr Berdzenishvili, Mr Kbilashvili, Mr Givishvili, Ms Nachkebia, Ms Chokheli, Mr L. Kobaidze, Mr K. Kobaidze, Mr Latsbidze, Ms Kalandia, Mr Tsikhistavi, Mr Norakidze, Ms Dzadzamia and Ms Gigashvili;

10. *Holds*, unanimously, that there has been no violation of Article 5 §§ 1 and 4 of the Convention in respect to Ms Chkaidze, Mr Jaoshvili, Ms Shavshishvili, Mr Artur Sarkisian and Mr Andrei Sarkisian;

11. *Holds*, unanimously, that there is no need to examine the complaint under Article 2 of Protocol No. 4 to the Convention;

12. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention in respect to Mr Berdzenishvili, Mr Kbilashvili, Mr Givishvili, Ms Nachkebia, Ms Chokheli, Mr L. Kobaidze, Mr K. Kobaidze, Mr Latsbidze, Ms Kalandia, Mr Tsikhistavi, Mr Norakidze, Ms Dzadzamia and Ms Gigashvili;

13. *Holds*, unanimously, that there has been no violation of Article 3 of the Convention in respect to Ms Chkaidze, Mr Jaoshvili, Ms Shavshishvili, Mr Artur Sarkisian and Mr Andrei Sarkisian;

14. *Holds*, by six votes to one, that there has been a violation of Article 13 of the Convention taken in conjunction with Article 3 of the Convention in respect to Mr Berdzenishvili, Mr Kbilashvili, Mr Givishvili, Ms Nachkebia, Ms Chokheli, Mr L. Kobaidze, Mr K. Kobaidze, Mr Latsbidze, Ms Kalandia, Mr Tsikhistavi, Mr Norakidze, Ms Dzadzamia and Ms Gigashvili;

15. *Holds*, unanimously, that there has been no violation of Article 13 of the Convention taken in conjunction with Article 3 of the Convention in respect to Ms Chkaidze, Mr Jaoshvili, Ms Shavshishvili, Mr Artur Sarkisian and Mr Andrei Sarkisian;

16. *Holds*, unanimously, that there has been no violation of Article 13 of the Convention taken in conjunction with Article 1 of Protocol No. 7 to the Convention;

17. *Holds*, unanimously, that there is no need to examine the complaints under Article 13 of the Convention taken in conjunction with Article 5 § 1 of the Convention and Article 4 of Protocol No. 4 to the Convention;

18. *Holds*, unanimously, that there has been no violation of Article 14 of the Convention taken in conjunction with Article 6 of the Convention and Article 1 of Protocol No. 7 to the Convention;

19. *Holds*, unanimously, that there is no need to examine the complaints under Article 14 of the Convention taken in conjunction with Articles 3 and 5 of the Convention and Articles 2 and 4 of Protocol No. 4 to the Convention;

20. *Holds*, unanimously, that there is no need to examine the complaint under Article 17 of the Convention;

21. *Holds*, unanimously, that there is no need to examine the complaint under Article 18 of the Convention;

22. *Holds*, by six votes to one, that the question of the application of Article 41 of the Convention is, as far as the award of damages is concerned, not ready for decision and accordingly reserves the said question;

23. *Holds*, by six votes to one,
(a) that the respondent State is to pay the applicants of application no. 16369/07, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the total amount of GBP 3,037.65 (three thousand and thirty-seven pounds sterling sixty-five pence), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

24. *Dismisses*, unanimously, the remainder of the applicants' claim for costs and expenses.

Done in English, and notified in writing on 20 December 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Luis López Guerra
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the statement of dissent of Judge Dedov is annexed to this judgment.

L.L.G.
F.A.

STATEMENT OF DISSENT BY JUDGE DEDOV

My dissent in the present case is based on my opinion in the case *Georgia v. Russia (I)* cited in the judgment.

APPENDIX

List of applicants

No.	Application no.	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	14594/07	02/04/2007	**Vaja BERDZENISHVILI** 28/07/1976 Kareli	Nikoloz LEGASHVILI
2.	14597/07	30/03/2007	**Tengiz KBILASHVILI** 11/11/1964 Bagdady	Nikoloz LEGASHVILI
3.	14976/07	05/04/2007	**Abram GIVISHVILI** 02/01/1964 Tbilisi	Nikoloz LEGASHVILI
4.	14978/07	04/04/2007	**Liana NACHKEBIA** 24/07/1948 Tbilisi	Nikoloz LEGASHVILI
5.	15221/07	05/04/2007	**Eka CHKAIDZE** 01/12/1979 Tbilisi **David JAOSHVILI** 12/02/1975 Tbilisi	Nikoloz LEGASHVILI
6.	16369/07	06/04/2007	**a) Irina CHOKHELI** 29/08/1967 Tblisi **b) Levan KOBAIDZE** 08/04/1986 Tbilisi **Koba KOBAIDZE** 07/10/1988 Tbilisi **c) Nato SHAVSHISHVILI** 18/03/1956 Tbilisi **d) David**	Tamar ABAZADZE, Nino JOMARJIDZE, Ketevan SHUBASHVILI, Tamar DEKANOSIDZE (Georgian Young Lawyer's Association) and Philip LEACH, Kate LEVINE, Jessica GAVRON, Vahe GRIGORYAN, Joanna EVANS (European Human

No.	Application no.	Lodged on	Applicant Date of birth Place of residence	Represented by
			LATSABIDZE 15/03/1961 Rustavi **e) Artur SARKISIAN** 23/02/1981 Tbilisi **Andrei SARKISIAN** 12/11/1982 Tbilisi **f) Gocha KHMALADZE** 17/12/1968 Tbilisi **g) Irina KALANDIA** 18/01/1980 Zugdidi **h) Kakha TSIKHISTAVI** 24/02/1983 Telavi **i) (Koba NORAKIDZE** 17/04/1969 – 01/05/2012**)** **Tato NORAKIDZE** 03/09/1991 Tbilisi **j) Khatuna DZADZAMIA** 27/01/1983 Tbilisi	Rights Advocacy Centre)
7.	16706/07	10/04/2007	**Inga GIGASHVILI** 29/09/1969 Bagdady	Nikoloz LEGASHVILI